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ORDINANCE NO. 170179

An ordinance of the City of Gainesville, Florida repealing and replacing Article VI, Chapter 23, of the City Code and setting forth requirements for the registration, permitting, insurance coverage, indemnification, construction bonds, security funds, force majeure, abandonment, liability, warranties and compensation for placing or maintaining communications service facilities and wireless support structures in the public rights-of-way; providing for severability, repealing clause; and an effective date.

WHEREAS, to promote the public health, safety and general welfare of its citizens, the City has adopted several ordinances, including Article VI, Chapter 23, of the City Code, entitled Registration Requirements For Use Of Public Rights-Of-Way By Communications Services Providers And Other Wireline Users Of Rights-Of-Way; and

WHEREAS, Section 337.401, *Florida Statutes*, addresses the authority of municipalities to regulate the placement and maintenance of communication facilities, and other utilities, in the public rights-of-way; and

WHEREAS, in 2017, Florida passed HB 687 which *inter alia*, amends Section 337.401, *Florida Statutes*, to create the new Subsection (7) known as the Advanced Wireless Infrastructure Deployment Act (“Wireless Deployment Act”), effective July 1, 2017, to address municipalities’ regulation of access to the public rights-of-way for wireless communications facilities and wireless support structures; and

WHEREAS, the Wireless Deployment Act provides that municipalities may require a registration process in accordance with Section 337.401(3), *Florida Statutes*, may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties and further provides that, for any applications filed before the effective date of ordinances implementing this subsection, an authority may apply current ordinances relating to the placement of

1 communications facilities in the right-of-way related to registration, permitting, insurance
2 coverage, indemnification, performance bonds, security funds, force majeure, abandonment,
3 municipality liability or municipal warranties.

4 **WHEREAS**, the communication industry is in a constant state of emerging technology
5 that includes the infrastructure required to support the increased demand and capacity to receive
6 and to transmit increased data and voice communications; and

7 **WHEREAS**, a new network of wireless communications infrastructure has emerged
8 comprised of a series of small individual antenna (“Small Cells”), or nodes (“Distributed
9 Antenna Systems” or “DAS”), and wireless backhaul networks that are linked to a larger hub
10 site; and

11 **WHEREAS**, the City has received requests to place wireless communications facilities
12 and wireless support structures within the public rights-of-way; and

13 **WHEREAS**, the current City Code does not contain requirements for registration,
14 insurance, permitting, insurance coverage, indemnification, performance bonds, security funds,
15 force majeure, abandonment, municipality liability or municipal warranties that address
16 sufficiently the placement or maintenance within the public rights-of-way for wireline and
17 wireless communications facilities or wireless support structures; and

18 **WHEREAS**, the City Commission determines that it is in the best interest of its
19 residents, businesses and visitors to enact sufficient regulations to protect the public health,
20 safety and welfare by exercising the City’s authority over the placement and maintenance of such
21 wireless facilities and infrastructure to the maximum extent under applicable law; and

22 **WHEREAS**, it is the intent of the City to require that the placement or maintenance of
23 any wireline or wireless communications facility or wireless support structure in the public

1 rights-of-way must have an effective registration which satisfies the requirements set forth herein
2 for such registration, to the extent not inconsistent with applicable federal and state laws and
3 regulations.

4 **WHEREAS**, at least 10 days' notice has been given of the public hearing once by
5 publication in a newspaper of general circulation notifying the public of this proposed ordinance
6 and of a public hearing in the City Commission meeting room, first floor, City Hall in the City of
7 Gainesville; and

8 **WHEREAS**, the public hearing was held pursuant to the published notice described at
9 which hearing the parties in interest and all others had an opportunity to be and were, in fact,
10 heard.

11 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF**
12 **THE CITY OF GAINESVILLE, FLORIDA:**

13 **Section 1. Findings.** The City Commission adopts the foregoing findings.

14 **Section 2.** Article VI, Chapter 23 of the City Code, specifically Sections 23-104 through
15 and including 23-111, are hereby repealed in their entirety and replaced ~~with the following~~ as
16 follows:

17 ~~Sec. 23-104. Definitions.~~

18 ~~For the purpose of this article, the following terms, phrases, words and derivations shall~~
19 ~~have the following meanings unless otherwise specifically provided in this article, unless the~~
20 ~~context clearly indicates otherwise or unless such meaning would be inconsistent with the~~
21 ~~manifest intent of the city commission.~~

22 ~~Cable means any conductor or lightwave guide with or without insulation, including~~
23 ~~cables composed of single or multiple components. The term cable includes telephone cable,~~

1 ~~coaxial cable, fiber optic cable, cable messenger wire, span wire and similar lines used for~~
2 ~~telephone, telegraph, signal, data, alarm, control, cable television and other similar purposes.~~

3 ~~*Cable service* means the transmission of video, audio, or other programming service to~~
4 ~~purchasers, and the purchaser interaction, if any, required for the selection or use of any such~~
5 ~~programming service, regardless of whether the programming is transmitted over facilities~~
6 ~~owned or operated by the cable service provider or over facilities owned or operated by one or~~
7 ~~more other providers of communications services. The term includes point to point or point to~~
8 ~~multipoint distribution services by which programming is transmitted or broadcast by microwave~~
9 ~~or other equipment directly to the purchaser's premises, but does not include direct to home~~
10 ~~satellite service. The term includes but is not limited to basic, extended, premium, pay per view,~~
11 ~~digital, and music services.~~

12 ~~*Communications facility* means the plant, equipment and property, including but not~~
13 ~~limited to, any and all such conduits, cables, poles, wires, supports, ducts, fiber optics, antenna~~
14 ~~and other structures, equipment, appurtenances and pathways as may be reasonably necessary to~~
15 ~~be used to provide communications services.~~

16 ~~*Communications services provider* means any person providing communications services~~
17 ~~as defined in F.S. § 202.11 and having customers inside the corporate limits of the City of~~
18 ~~Gainesville.~~

19 ~~*Conduit* means a structure containing one or more duct. The term conduit includes single~~
20 ~~or multiple ducts of any common material.~~

1 ~~Person means any person, individual, firm, copartnership, joint venture, association,~~
2 ~~corporation, partnership, society, club, estate, trust, business trust, receiver, syndicate, or other~~
3 ~~group or combination acting as a unit, and shall include the state and any political subdivision,~~
4 ~~municipality, state agency, bureau, board, commission, instrumentality or department, or any~~
5 ~~combination thereof, and the plural as well as the singular number.~~

6 ~~Public rights of way means public ways or public highways, streets or alleys, whether~~
7 ~~presently owned by or dedicated to the city or hereafter acquired or dedicated, or for which the~~
8 ~~city holds a property interest and exercises right of management or control; and includes the~~
9 ~~surface, the air space over the surface and the area below the surface of all public roads, streets,~~
10 ~~highways, alleys, boulevards, bridges, and tunnels.~~

11 ~~Wireline user or wireline occupant means any person other than a communications~~
12 ~~services provider having wirelines in, over, under or through the city's public rights of way.~~

13 ~~Sec. 23-105.—Registration required for communications facilities or other wireline occupants of~~
14 ~~public rights of way.~~

15 ~~(a) Cable shall be treated as a single unit for permitting purposes if it occupies one attachment~~
16 ~~point on an aerial structure or a single conduit in an underground application and all~~
17 ~~attachees at the attachment point and all cables within a single conduit are owned by the~~
18 ~~same person, organization or firm. No person, organization or firm, whether private or not-~~
19 ~~for-profit, shall construct, operate, maintain, repair, rebuild or replace a route that occupies~~
20 ~~public rights of way within the city without having registered to use the rights of way,~~
21 ~~unless that entity is a franchised cable company of the city.~~

1 ~~(b) Wireline users of the rights of way shall pay for use of the rights of way according to the~~
2 ~~following schedule:~~

3 ~~(1) All wireline users of rights of way other than communications service providers shall~~
4 ~~pay the fee established in Appendix A annually per linear mile or portion thereof for the~~
5 ~~use of the rights of way. Such payments will be made annually in advance and will be~~
6 ~~prorated for any partial year occupancy. So long as ownership of cable and/or conduit~~
7 ~~remains vested in an entity other than a communications services provider or wirelines~~
8 ~~are not used for purposes of providing communications services as defined in [F.S.] Ch.~~
9 ~~202, fees under this section will be due for occupancy of the rights of way.~~

10 ~~(2) A government owned wireline occupant of the rights of way shall make payments in~~
11 ~~the same way as any other wireline occupant of the rights of way.~~

12 ~~(c) The city manager or designee is hereby authorized to implement rules and procedures to~~
13 ~~effect and enforce the registration process and the collection of amounts due.~~

14 ~~(d) The registrant has the sole responsibility for identifying and obtaining any and all other~~
15 ~~necessary approvals, permits or agreements; and the registration hereunder does not, in any~~
16 ~~way, eliminate the registrant's obligation to obtain such approvals, permits or agreements~~
17 ~~from the city. No construction can be conducted without obtaining proper construction~~
18 ~~permits and approvals from the city manager or designee. All such construction will be~~
19 ~~subject to a fee for each permit as provided in Appendix A. Such permit fees shall be waived~~
20 ~~for all communications services providers in accordance with F.S. Ch. 202.~~

1 ~~(e) Whenever aerial facilities are erected and the process obstructs one or more sidewalks or~~
2 ~~city streets for a total of more than four hours, the attachment must be permitted in~~
3 ~~accordance with the process outlined in subsection (d) above.~~

4 ~~(f) The initial registration shall be accompanied by a map, or maps, in form acceptable to the~~
5 ~~city manager or designee, reflecting all of registrant's existing infrastructure in place in or~~
6 ~~upon public rights of way, and property. Registrants must provide, in condensed form, the~~
7 ~~best available information about infrastructure in place prior to 1990 from their existing~~
8 ~~records. The city manager or designee is authorized to specify the information format for~~
9 ~~infrastructure put in place subsequent to 1990. Subsequent registrations shall be required~~
10 ~~every two years and shall be accompanied by a map or maps sufficient to fully reflect any~~
11 ~~additions to or deletions from the registrant's infrastructure in place in the city's rights of~~
12 ~~way. The submission of the map or maps hereunder constitutes a condition precedent to the~~
13 ~~approval of either the initial or any renewal registration but does not relieve a registrant from~~
14 ~~the duty to provide maps for any subsequent project and/or construction for which a~~
15 ~~construction permit is required. Registrants shall be notified in writing when their~~
16 ~~registrations are considered complete and become effective and the next required renewal~~
17 ~~date. If the city manager or designee determines that the registration is not complete,~~
18 ~~applicant will be notified in writing as to the process necessary to complete the registration.~~

19 ~~(g) The acceptance of any payment required by this section shall not be construed as an~~
20 ~~acknowledgment that the amount paid is the correct amount due, nor shall such acceptance~~
21 ~~of payment be construed as a release of any claim which the city may have for additional~~
22 ~~sums due and payable.~~

1 ~~(1) All amounts due to the city from any communications services provider occupying the~~
2 ~~rights of way, whether or not such user is properly registered, shall be subject to audit~~
3 ~~by the city for amounts due and payable through September 30, 2001, and assessment or~~
4 ~~refund will be made if the payment is found to be in error.~~

5 ~~(2) All amounts due to the city from any occupant of the rights of way other than a~~
6 ~~communications services provider, whether or not such user is properly registered, shall~~
7 ~~be subject to audit by the city. Assessment or refund will be made if the payment is~~
8 ~~found to be in error.~~

9 ~~(h) Nothing in this article shall be construed to limit the liability of the registrant for all~~
10 ~~applicable federal, state and local taxes and regulatory fees. In addition, nothing in this~~
11 ~~article shall be construed to imply that the city cannot exercise its franchise rights regarding~~
12 ~~cable services companies for all rights and privileges existing under applicable federal law,~~
13 ~~except those which have been preempted by the State of Florida pursuant to the Unitary Tax~~
14 ~~on Communications Service Providers.~~

15 ~~(i) Any registrant proposing to install any facilities in or underground, shall, prior to causing~~
16 ~~such installation, be a member of and utilize Sunshine One Call (1-800-432-4770) or any~~
17 ~~successor alert and warning system to protect and locate their underground facilities.~~

18 ~~(j) Any misrepresentation of a material fact that has the effect of reducing or avoiding the~~
19 ~~payment of fees is expressly prohibited and will be cause for revocation of the registration,~~
20 ~~as well as subject the registrant to prosecution and penalties as provided by section 23-109~~
21 ~~of this Code.~~

1 ~~(k) A registrant may cancel a registration upon written notice to the city stating that it will no~~
2 ~~longer place or maintain any communications facilities in the public rights of way within~~
3 ~~the city and will no longer need to obtain permits to perform work in public rights of way. A~~
4 ~~registrant cannot cancel a registration if the registrant continues to own, place or maintain~~
5 ~~any communications facilities in public rights of way.~~

6 ~~(l) A registrant whose infrastructure is wholly aboveground must provide an annual certificate~~
7 ~~of general liability insurance to the city for a minimum of \$1,000,000.00 if the registrant has~~
8 ~~total infrastructure less than one mile in length and \$3,000,000.00 if the registrant has total~~
9 ~~infrastructure at least one mile in length. A registrant whose infrastructure is wholly or~~
10 ~~partially belowground must provide an annual certificate of general liability insurance to the~~
11 ~~city for a minimum of \$1,000,000.00 if the registrant has total infrastructure less than one~~
12 ~~mile in length and \$5,000,000.00 if the registrant has total infrastructure at least one mile in~~
13 ~~length. Contractors who install cable and/or conduit on behalf of registrants must either be~~
14 ~~covered under the registrant's insurance; provide a bond for 100 percent of the cost of the~~
15 ~~work being performed and any estimated costs of street or other repairs; or must provide~~
16 ~~insurance in the same amounts as is required of registrants. Thirty days' advance written~~
17 ~~notice by registered mail must be given to the city of any cancellation of, intent not to renew~~
18 ~~or reduction in policy coverages. The insurance requirements may be satisfied by evidence~~
19 ~~of self insurance, provided that adequate information is available to the city to ensure that~~
20 ~~the self insurance program is capable of providing the coverages required in this section.~~

21 ~~Sec. 23-106.— Registration terms.~~

22 ~~(a) An approved registration does not establish a right to place or maintain, or priority for the~~
23 ~~placement or maintenance of, a communications facility in city rights of way.~~

1 ~~(b) Any registration shall continue in full force and effect so long as the registrant is in~~
2 ~~compliance with this article and all applicable federal, state and local ordinances and~~
3 ~~regulations, and the space occupied is not needed for a public purpose. If the space is needed~~
4 ~~for a public purpose, the registrant shall cooperate in moving its system at the sole expense~~
5 ~~of the registrant in a timely manner so as not to delay any public project.~~

6 ~~(c) In the event any registration is revoked, the subject communications facilities shall, at the~~
7 ~~option of the city, be removed from the public rights of way at the sole expense of the~~
8 ~~registrant.~~

9 ~~(d) In the event that a communications facility owned by a registrant or franchisee is abandoned~~
10 ~~or the applicable registration or franchise is revoked, the subject facility shall become the~~
11 ~~property of the city and, at the option of the city, be removed from the public rights of way~~
12 ~~at the sole expense of the registrant. Should the registrant or franchisee fail to remove its~~
13 ~~facilities within 180 days of notice from the city to remove the same, the city may either~~
14 ~~take possession and operate the facilities for its benefit, or remove, or cause the removal of~~
15 ~~said facilities and the registrant or franchisee shall be fully and solely responsible for~~
16 ~~payment of the cost of the removal. So long as the communications facilities remains in~~
17 ~~place on public rights of way and the city has not taken possession of them, the registrant or~~
18 ~~franchisee shall continue to pay all applicable fees.~~

19 ~~(Ord. No. 951526, § 1, 5-28-96; Ord. No. 000714, § 1, 12-18-00; Ord. No. 001358, § 1, 6-25-01)~~

20 ~~Sec. 23-107. Registration locations:~~

21 ~~Any registration shall apply only to the location or locations stated on the~~
22 ~~registration and accompanying maps. Additions to or deletions from the system located~~

1 on the city's public rights of way shall be identified at the time the rights of way user
2 applies for the construction permit to accomplish the change. Each construction permit
3 application shall clearly state the nature of and change in the system.

4 (Ord. No. 951526, § 1, 5-28-96; Ord. No. 000714, § 1, 12-18-00)

5 ~~Sec. 23-108. Use of public rights of way.~~

6 ~~(a) Before commencing construction of communications facilities in, above, over, under, across,
7 through or in any way connected with the public rights of way of the city, the registrant
8 shall first obtain the written approval of, and other necessary permits from, the city.
9 Applications for such approval shall be made in the form prescribed by the city.~~

10 ~~(b) The registrant shall give the city written notice of proposed construction, within a reasonable
11 time, but in no event shall such notice be given less than ten days before commencement of
12 such construction, for each and every instance in which a construction permit is required,
13 unless the situation is an emergency. At any time when a contractor is conducting the work
14 on behalf of the registrant, such contractor must be authorized by a responsible official of
15 the registrant. Such authorization by the owner of the facility must be specifically made in
16 writing for each and every project and permit. Any registrant or any contractor applying for
17 a construction permit on behalf of a registrant must identify on the permit application each
18 and every owner of the facility to be installed. Construction permits shall not be granted for
19 any work on a facility whose owner is not registered. It shall be a violation of this article and
20 punishable in accordance with section 23-109 for any registrant to cause to be installed, or
21 any contractor to knowingly install, any facility for any firm, person or organization without
22 having identified such firm, person or organization on the construction permit application.~~

- 1 ~~(c) The registrant must also obtain separate agreements for the use of existing utility poles and~~
2 ~~conduits, if applicable, with the owner(s) of such facilities affected by the proposed~~
3 ~~construction of the private communications system. The city is not responsible for~~
4 ~~negotiating such agreements on behalf of registrants.~~
- 5 ~~(d) It shall be unlawful for the registrant or any other person to open or otherwise disturb the~~
6 ~~surface of any street, sidewalk, driveway, public way or other public place, or to obstruct~~
7 ~~public streets or sidewalks as described in section 23 105(e), for any purpose whatsoever~~
8 ~~without obtaining approval as in subsections (a) and (b) above or to use utility poles and~~
9 ~~conduits without an agreement as in subsection (c) above.~~
- 10 ~~(e) The registrant shall restore any street or sidewalk it has disturbed in accordance with the~~
11 ~~provisions of the City Code and shall, at its own expense, restore and replace any other~~
12 ~~property disturbed or damaged, or pay the fair market value of such property to its owner, or~~
13 ~~shall make such other repairs or restorations as outlined in the approved construction permit.~~
- 14 ~~(f) The registrant shall, at its own expense, protect, support, temporarily disconnect, relocate in~~
15 ~~the same street or other public place, or remove from such street or other public place, any~~
16 ~~of its property when required to do so by the city because of street or other public~~
17 ~~excavation, construction, repair, regrading, or grading; traffic conditions, installation of~~
18 ~~sewers, drains, water pipes, city owned power or signal lines, undergrounding of city~~
19 ~~facilities; vacation or relocation of streets or any other type of structure or improvement of a~~
20 ~~public agency, or any type of improvement necessary for the public health, safety or welfare,~~
21 ~~or upon termination or expiration of the registration.~~
- 22 ~~(g) The registrant shall maintain all wires, conduits, cable, and other real and personal property~~
23 ~~and facilities subject to the registration in good condition, order and repair.~~

1 ~~(h) The registrant shall agree at the time of registration that it is the owner of all facilities~~
2 ~~installed under the terms of the registration, and must agree to retain responsibility for any~~
3 ~~such facilities in place until the registrant has notified the city that the ownership has~~
4 ~~changed and the new owner has agreed to assume responsibility therefor. The responsible~~
5 ~~party shall always be the owner of the facility who shall be deemed the owner for purposes~~
6 ~~of indemnifying the city, regardless of whether the facility, space or any transmission or~~
7 ~~other capacity of the facility inside the conduit is leased to other users.~~

8 ~~Sec. 23-109. Violation; penalty.~~

9 ~~(a) Any person who shall carry on or conduct any business or occupation or profession for~~
10 ~~which registration is required by this article without first registering shall be considered to~~
11 ~~be in violation of this chapter and, upon conviction, be subject to penalty as provided in~~
12 ~~section 1-9 of this Code. Any person who has facilities under or over city property and~~
13 ~~rights of way and who does not register timely under the terms of this article shall pay a late~~
14 ~~penalty of 12 percent per annum.~~

15 ~~(b) Failure of the city to enforce any requirements of this article shall not constitute a waiver of~~
16 ~~the city's right to enforce that violation or subsequent violations of the same type or to seek~~
17 ~~appropriate enforcement remedies.~~

18 ~~Sec. 23-110. Transfers and assignments.~~

19 ~~(a) The registrant shall not transfer or assign its interest in any registration issued in accordance~~
20 ~~herewith, other than a general assignment of the registrant's entire assets or a pledge of the~~
21 ~~assets as collateral on a loan, except as provided in section 23-108(h) above. For purposes of~~

1 ~~this section, a merger or consolidation of the registrant with another company shall not be~~
2 ~~deemed a transfer or assignment.~~

3 ~~Sec. 23-111. Existing communications facilities.~~

4 ~~Existing franchisees shall not be required to register until their current franchise expires.~~
5 ~~This obligation to register does not relieve any person, organization or firm of previously~~
6 ~~existing requirements to obtain a telecommunications permit or a valid registration under~~
7 ~~ordinances adopted in 1996 and 2000, and does not waive prior period penalties or fees for~~
8 ~~failure to obtain such permits and/or to register, as applicable, subsequent to July 1, 1996.~~

9
10 **Section 23-104. Definitions.**

11 For the purpose of this section, the following terms, phrases, words and derivations shall
12 have the meanings given herein. When not inconsistent with the context, words used in the
13 present tense include the future tense, words in the plural number include the singular number,
14 and words in the singular number include the plural number. The words "shall" and "will" are
15 mandatory, and "may" is permissive. Words not otherwise defined herein or in any permit that
16 might be granted hereunder shall be given the meaning set forth in the Communications Act of
17 1934, 47 USC 151 et seq., as amended (collectively the "Communications Act"), and, if not
18 defined therein, as defined by the Advanced Wireless Infrastructure Deployment Act, Section
19 337.401(7), Florida Statutes, and, if not defined therein, be construed to mean the common and
20 ordinary meaning.

21 *Abandon or abandonment* means the permanent cessation of all uses of a communications
22 facility, wireless facility or wireless support structure; provided that this term shall not include

1 cessation of all use of a facility within a physical structure where the physical structure continues
2 to be used. By way of example, and not limitation, cessation of all use of a cable within a
3 conduit, where the conduit continues to be used, shall not be an "abandonment" of a facility in
4 the public rights-of-way.

5 City Manager means the City of Gainesville, FL, City Manager or his/her designee.

6 Communications service means, without limitation, the transmission, conveyance or
7 routing of voice, data, audio, video, or any other information or signals to a point, or between or
8 among points, by and through electronic, radio, satellite, cable optical, microwave, or other
9 medium or method now in existence or hereafter devised, including Wireless Services, regardless
10 of the protocol used for such transmission or conveyance, open video system, cable service.

11 Communications service provider means any person making available or providing
12 communications services, as defined herein, or a wireless infrastructure provider.

13 Communications facilities, facilities or systems means any facility, equipment or
14 property, including, but not limited to, cables, conduits, converters, splice boxes, cabinets,
15 handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances,
16 wireless facilities, wireless support structure, wireline backhaul facilities, located, to be located,
17 used, or intended to be used, in the public rights-of-way of the City.

18 Law means any local, state or federal legislative, judicial or administrative order,
19 certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline
20 or other requirements, as amended, now in effect or subsequently enacted or issued including,
21 but not limited to, the Communications Act of 1934, 47 USC 151 et seq. as amended, all orders,
22 rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or
23 the governing state authority pursuant thereto, Section 337.401, Florida Statutes, as amended,

1 and all state statutes and regulations issued by state agencies pursuant thereto.

2 General Manager means the General Manager of Gainesville Regional Utilities, or his or
3 her designee.

4 Place or maintain or placement or maintenance or placing or maintaining means to erect,
5 construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A
6 communications services provider that owns or exercises physical control over communications
7 facilities in public rights-of-way, such as the physical control to maintain and repair, is "placing
8 or maintaining" the facilities. To the extent required by applicable law, a party providing service
9 only through resale or only through use of a third party's unbundled network elements is not
10 "placing or maintaining" the communications facilities through which such service is provided.
11 The transmission and receipt of radio frequency signals through the airspace of the public rights-
12 of-way is not placing or maintaining facilities in the public rights-of-way.

13 PSC means the Florida public service commission.

14 Public rights-of-way means the surface, the airspace above the surface and the area below
15 the surface of any public street, alley, viaduct, elevated roadway, bridge, public easement, or any
16 other public way for which the City is the authority that has jurisdiction and control and may
17 lawfully grant access to such property pursuant to applicable law. The term "public rights-of-
18 way" shall not include any real or personal City property except as described above and shall not
19 include City buildings, fixtures, or other structures or improvements, regardless of whether they
20 are situated in the public rights-of-way.

21 Registrant or facility owner means a communications service provider or other person
22 which seeks to use or occupy the public rights-of-way that has registered with the City in
23 accordance with the provisions of this article.

1 Registration and register means the process described in section 23-105 whereby a
2 communications service provider provides certain information to the City.

3 Utility pole means a pole or similar structure that is used in whole or in part to support
4 communications facilities or for electric distribution, lighting, traffic control, signage, or similar
5 function. The term includes the vertical support structure for traffic lights but does not include a
6 horizontal structure to which signal lights or other traffic control devices are attached and does
7 not include a pole or similar structure 15 feet in height or less unless the City issues a permit for
8 the construction of such pole. The term does not include a utility pole owned by Gainesville
9 Regional Utilities, a utility pole used to support City-owned or operated electric distribution
10 facilities, or any other utility pole exempt from such term pursuant to Section 337.401, Florida
11 Statutes.

12 Wireless support structure means a freestanding structure, such as a monopole or self-
13 supporting tower, or another existing or proposed structure designed to support or capable of
14 supporting communications facilities. The term does not include a utility pole.

15 **Section 23-105. Registration**

16 (a) Any person, entity or communications service provider that desires to place or
17 maintain a communications facility in the City shall be required to first register with the City in
18 accordance with the terms of this article. Upon an effective registration, the registrant shall
19 obtain a right-of-way use permit prior to performing any work in the City's rights-of-way.

20 (b) Any person, entity or communications service provider desiring to use the public
21 right-of-way shall file a registration with the City which shall include, as applicable, the
22 following information:

23 (1) Identity of the applicant and name, address and telephone number of

1 applicant's primary contact person in connection with the registration;

2 (2) A statement of whether the applicant presently serves any communications
3 services customers at retail within the jurisdictional limits of the City at the time of registration;
4 whether the applicant intends to have its communications facilities pass through the City; or
5 whether the applicant simply intends to lease its facilities to others who will be providing
6 communications service to retail customers within the jurisdictional limits of the City. This
7 information will allow the City to follow up, with the registrant, at the time the registrant begins
8 to make physical use of the public rights-of-way, and allow the City to determine whether a
9 linear mile charge is applicable in accordance with the City Code;

10 (3) Evidence of the insurance coverage required under this article and
11 acknowledgment that registrant has received and reviewed a copy of this article;

12 (4) A copy of any applicable federal and/or state certification, license or
13 certificate of franchise authorizing the applicant to provide communications services;

14 (5) A security fund in accordance with this article.

15 (c) The City will review the information submitted by the applicant. Such review will
16 be by the City Manager. If the applicant submits information in accordance with subsection 23-
17 105(b), the registration shall be effective and the City shall notify the applicant of the
18 effectiveness of registration in writing. The City shall notify the applicant of the non-
19 effectiveness of registration, and reasons for the non-effectiveness, in writing. The City shall so
20 reply to an applicant within 45 days after receipt of registration information from the applicant or
21 within such time frame as required by applicable law. Upon notification of the non-effectiveness
22 of the registration, nothing herein shall preclude the applicant from filing a subsequent
23 application addressing the basis for the non-effectiveness. If the applicant disputes the

1 determination of non-effectiveness for the particular application submitted, the applicant may file
2 an appeal of the City Manager's determination as set forth within this Ordinance. Failure to
3 comply with the appeals article for the particular application found to be non-effective shall be
4 sufficient grounds for the City to reject that particular application in the future. A registrant may
5 cancel a registration upon written notice to the City noticing that it will no longer maintain
6 facilities in the public rights-of-way and will no longer need to obtain permits to perform work in
7 public rights-of-way. Within 30 days of any change in the information required to be submitted
8 pursuant to subsection 23-105(b), a registrant shall provide updated information to the City.

9 (d) A registration shall not convey title, equitable or legal, in the public right-of-way.
10 Registrants may only occupy public rights-of-way for communications facilities. Registration
11 does not excuse a communications provider from obtaining an appropriate approval, access or
12 pole attachment agreement before locating its facilities on the City's or another person's
13 facilities. The City Commission hereby authorizes the City Manager or General Manager to
14 review, to process and to grant or to deny applications for access to the public rights-of-way or to
15 City utility poles consistent with the time frames and procedures set forth in applicable law and
16 Ordinances of the City. Registration does not excuse a communications services provider or
17 registrant from complying with all applicable City ordinances, including this article.

18 (e) Unless specifically prohibited by applicable law, each application for registration
19 or transfer shall be accompanied by an application fee in the amount established by the City
20 Commission. The fee amount shall approximate the City's costs and expenses incurred in
21 connection with approving the registration or transfer. If the application fee is insufficient to
22 cover all costs or expenses incurred by the City in connection with processing the registration,
23 the applicant shall reimburse the City for any such costs and expenses in excess of the

1 application fee. Fee amounts may be amended from time to time, by resolution of the City
2 Commission, for the purpose of complying with this provision.

3 (f) Registration with the City shall be nonexclusive. Registration does not establish
4 any priority for the use of the public right-of-way by a registrant or any other registrants.
5 Registrations are expressly subject to any future amendment to or replacement of this article and
6 further subject to any additional City ordinances, as well as any state or federal laws that may be
7 enacted during the term of the registration.

8 (g) A registrant shall renew its registration with the City by April 1 of even numbered
9 years in accordance with the registration requirements in this article, except that a registrant that
10 initially registers during the even numbered year when renewal would be due or the odd
11 numbered year immediately preceding such even numbered year shall not be required to renew
12 until the next even numbered year. If no information in the then-existing registration has
13 changed, the renewal may state that no information has changed. Failure to renew a registration
14 may, at the City's discretion, result in the City restricting the issuance of additional permits, and
15 any other remedies available to the City, until the communications services provider has
16 complied with the registration requirements of this article.

17 **Section 23-106. Compensation.**

18 (a) A registrant that places or maintains communications facilities in the public
19 rights-of-way shall be required to pay compensation to the City for access to the public rights-of-
20 way as required by applicable law and ordinances of the City. Compensation for access to the
21 public rights-of-way shall be in addition to any compensation or fees for attaching or collocating
22 communications facilities on City utility poles or otherwise using infrastructure or property
23 owned by the City. The City Commission hereby authorizes the City Manager to impose the

1 maximum fee allowed under applicable law for collocation or use of City property.
2 Compensation for access to the public rights-of-way shall be in addition to any fees or
3 compensation pursuant to pole attachment agreements or other agreements between a registrant,
4 and the City, which agreement shall be subject to the approval of the City Commission.

5 (b) A registrant pass-through provider that places or maintains communications
6 facilities in the public rights-of-way and does not remit communications services tax imposed by
7 the City pursuant to Chapter 202, Florida Statutes, as a condition for occupying or using the
8 public rights-of-way shall pay to the City annually \$500.00 per linear mile or portion thereof, of
9 any communications facility that is physically located in the public rights-of-way. Such payment
10 shall be made prior to the City issuing permits and annually thereafter. A registrant shall provide
11 the City with information as to the locations and linear miles or portions thereof of its facilities.
12 Any misrepresentation of a material fact that has the effect of reducing or avoiding the
13 payment of fees is expressly prohibited and will be cause for revocation of the registration, as
14 well as subject the registrant to prosecution and penalties as provided in the City Code.

15 (c) Notwithstanding anything herein to the contrary, the City shall at all times hereby
16 require the maximum compensation allowed under applicable law for use of the public rights-of-
17 way.

18 (d) Except to the extent prohibited by applicable law:

19 (1) The fee payments to be made pursuant to this article shall not be deemed
20 to be in the nature of a tax;

21 (2) Such fee payments shall be in addition to any and all taxes of a general
22 applicability;

23 (3) A registrant shall not have or make any claim for any deduction or other

1 credit of all or any part of the amount of said fee payments from or against any of said City taxes
2 or other fees or charges of general applicability which registrant is required to pay to the City,
3 except as required by law; and

4 (4) The fee specified herein is the consideration for use of the public rights-of-
5 way, for the purpose of placing and maintaining a communications facility. A registrant shall
6 pay applicable fees for placement or maintenance of a communications facility for so long as the
7 registrant owns any such facility and such facility remains in the public rights-of-way.

8 **Section 23-107. Reports and records.**

9 (a) To the extent not inconsistent with applicable law, the City may, at its option,
10 upon 60 days' notice to the registrant, but in no event more often than once per year, examine the
11 records and accounting files, and such other books and records, if such records relate to the
12 calculation of fee payments. The examination of such books, accounts, records or other materials
13 necessary for determination of compliance with the terms, provisions, and requirements of this
14 article shall be during regular hours of business of the registrant at an office of the registrant
15 located within the county, or at another location satisfactory to the City.

16 (b) Upon reasonable request, a registrant shall provide the following documents to the
17 City as received or filed:

18 (1) Any pleadings, petitions, notices, and documents, regarding any legal
19 proceeding involving any provisions of this article which are reasonably necessary for the City to
20 protect its interests under this article.

21 (2) Any request for protection under bankruptcy laws, or any judgment related
22 to a declaration of bankruptcy.

23 (3) Nothing in this article shall affect the remedies the registrant has available

1 under applicable law.

2 (4) Provided, however, nothing in this subsection shall be deemed to require
3 registrant to provide attorney work product information.

4 (c) In addition, the City may, at its option, and upon reasonable notice to the
5 registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents.

6 (d) The City shall keep any documentation, books and records of the registrant
7 confidential to the extent required under Florida Statutes.

8 **Section 23-108. Underground installation; relocation.**

9 (a) To the extent not inconsistent with applicable law, a registrant shall install any
10 communications facilities subject to the City's approval and permits, underground where there
11 are no above ground utilities or in areas that the City has commenced efforts to move above
12 ground utilities underground. This provision shall have primacy unless expressly preempted by
13 federal law or regulations, state law or applicable PSC rules or regulations. Notwithstanding this
14 provision, a registrant may install its communications facilities above ground subject to the City
15 Manager's approval and obtaining applicable permits, and, if applicable, the approval of the
16 owner of a structure upon which the registration seeks to install its communications facility.

17 (b) Every registrant which places or maintains communications facilities underground
18 shall maintain appropriate participation in the applicable notification center for subsurface
19 installations, such as Sunshine One Call (1-800-432-4770) or any successor alert and warning
20 system to protect and locate their underground facilities.

21 (c) Any communications facilities heretofore or hereafter placed upon, under, over,
22 or along any public rights-of-way that is found by the City Manager to be unreasonably
23 interfering in any way with the convenient, safe or continuous use or the maintenance,

1 improvement, extension or expansion of such public rights-of-way shall, upon written notice to
2 the registrant or its agent, be removed or relocated, within 30 days of such notice, by such
3 registrant at its own expense in accordance F.S. § 337.403. The City Manager may extend the
4 time within which a registrant shall remove or relocate a communications facility, for good cause
5 shown.

6 (d) The registrant shall not in any way displace, damage, or destroy any facilities, or
7 other property within the public rights-of-way including, but not limited to, electric, gas, sewer,
8 water main, pipe cable, conduit, fiber optic, or other pathway or any other facilities belonging to
9 the City. The registrant shall be liable to the City for the costs of any repairs made necessary by
10 any such displacement, damage or destruction, of facilities belonging to the City, and the
11 registrant shall pay such costs upon demand. In the case of an emergency, the City may
12 commence repairs without any prior notice to the registrant. The term emergency shall mean a
13 condition that may affect the public's health, safety or welfare in the sole determination of the
14 City. In the event of an emergency, the City may cause the repairs to be made at the facility's
15 owner expense, utilizing City employees, agents or contractors, charge any and all costs, and
16 require reimbursement within 14 calendar days after the submission of the bill by the City to the
17 registrant. After 30 days, the City may obtain reimbursement from the security fund. In all other
18 nonemergency circumstances, the registrant shall be given prior written notice. If such repairs
19 are not performed in a reasonable and satisfactory manner within the 14 calendar days after
20 receiving notice, the City may, cause the repairs to be made at the facility's owner expense,
21 utilizing City employees, agents or contractors, charge any and all costs, and require
22 reimbursement within 30 days after the submission of the bill by the City to the registrant. Again,
23 after 30 days, the City may obtain reimbursement from the security fund.

1 (e) Subject to F.S. § 337.403, whenever an order of the City requires such removal or
2 change in the location of any communications facility from the public rights-of-way, and the
3 facility owner fails to remove or change the same at its own expense to conform to the directive
4 within the time stated in the notice, the City may proceed to cause the communications facility to
5 be removed. The expense thereby incurred except as provided in F.S. § 337.403(1)(a)—(c), shall
6 be paid out of any money available therefor, and such expense shall be charged against the
7 owner of the communications facility and levied, collected and paid to the City.

8 (f) Subject to F.S. § 337.404, whenever it shall be necessary for the City to remove
9 or relocate any communications facility, the owner of the communications facility, or the owner's
10 chief agent, shall be given written notice of such removal or relocation and requiring the
11 payment of the costs thereof, and shall be given reasonable time, which shall not be less than 10
12 nor more than 20 days in which to file an appeal with the City Manager to contest the
13 reasonableness of the order. Upon receipt of a written appeal, the City Manager and owner shall
14 select a mediator and set the matter for hearing. The hearing shall be scheduled within 30
15 working days. Should the owner or the owner's representative not appear, the determination of
16 the cost to the owner shall be final, in accordance with F.S. § 337.404.

17 (g) A final order of the City imposed pursuant to Florida Statutes, and applicable
18 provisions of the City Code, if any, shall constitute a lien on any property of the owner and may
19 be enforced as provided therein.

20 (h) If the City declares an emergency and requests the removal or abatement of
21 facilities, by written notice, a registrant shall remove or abate the registrant's facilities by the
22 deadline provided by the City Manager. A registrant and the City shall cooperate to the extent
23 possible to assure continuity of service. If a registrant, after notice, fails or refuses to act, the City

1 may remove or abate the facility, at the sole cost and expense of the registrant, without paying
2 compensation to the registrant and without the City incurring liability for damages.

3 (i) Upon abandonment of a facility within the public rights-of-way of the City, the
4 owner of the facility shall notify the City within 90 days. The City shall provide notice of
5 abandonment of a facility in the public rights-of-way to the registrant via certified mail at the
6 address provided on the registration. If the facility owner does not respond to such notice and
7 provide information to demonstrate that the facility is not abandoned within thirty (30) calendar
8 days, the facility shall be deemed abandoned. The City may require that the facility owner of an
9 abandoned facility remove all or any portion of the facility, or the City may determine that such
10 non-removal will be in the best interest of the public health, safety and welfare. In the event that
11 the City does not direct the removal of the abandoned facility by the owner of the facility, then
12 such owner, shall be deemed to consent to the alteration or removal of all or any portion of the
13 facility as directed by the City or to the transfer of ownership of the abandoned facility to the
14 City, without further obligation on the part of the City.

15 (j) A registrant shall, on the request of any person holding a permit issued by the
16 City, temporarily raise or lower its communications facilities to permit the work authorized by
17 the permit. The expense of such temporary raising or lowering of facilities shall be paid by the
18 person requesting same, and the registrant shall have the authority to require such payment in
19 advance. The registrant shall be given not less than 30 days' advance notice to arrange for such
20 temporary relocation.

21 **Section 23-109. Use of rights-of-way.**

22 (a) A registrant agrees at all times to comply with and abide by all applicable
23 provisions of the state statutes and local laws including, but not limited to, applicable zoning

1 regulations not inconsistent with state and federal laws.

2 (b) Except in the case of an emergency, no communications service provider shall
3 construct any facility on, over, above, along, upon, under, across, or within any public right-of-
4 way which disrupts the public rights-of-way without first filing an application with and obtaining
5 a permit from the City therefor, pursuant to applicable permitting requirements of the City, and
6 other applicable City Code requirements, except as otherwise provided in this article. The City
7 has determined not to charge permit application fees to communications services providers that
8 remit communications services taxes for communications services provided within the City
9 pursuant to Chapter 202, Florida Statutes. The City reserves the right to charge applicable fees
10 for permit applications to all other persons seeking to perform construction within the public
11 rights-of-way to the extent not inconsistent with the City Code and applicable law. The term
12 "emergency" means a condition that affects the public's health, safety or welfare, which includes
13 unplanned out of service condition of a pre-existing service. Registrant shall still be required to
14 provide prior notice to the City in the event of an emergency. For the purposes of the notice
15 requirements herein, the City shall provide the registrant with a City contact. The City may
16 waive the permit requirement in nonemergency cases where there will be no disruption of the
17 public rights-of-way. When work is performed on an emergency basis, the registrant must still
18 apply for a permit by the following business day in accordance with public works department
19 permitting guidelines. In all instances, the registrant shall restore all damaged property and
20 indemnify the City from any and all damages caused by the registrant's emergency work. The
21 City may waive the permit requirement in cases where there will be no disruption of the public
22 rights-of-way.

23 (c) As part of any permit application, with respect to new or existing facilities, where

1 applicable, in the public rights-of-way, the registrant shall furnish to the director of public works
2 and the City Manager a proposal for construction of the communications facility that sets forth at
3 least the following:

4 (1) An engineering plan, consistent with the City's Engineering Design
5 Manual, and signed and sealed by a state registered professional engineer or prepared by a
6 person who is exempt from such registration requirements as provided in F.S. § 471.003
7 identifying the location of the proposed facility, including a description of the facilities to be
8 installed, where it is to be located, and the approximate size of facilities and equipment that will
9 be located in, on, over, or above the public rights-of-way, and the linear mileage of such facilities
10 for the purpose of determining compensation to be paid to the City.

11 (2) Maps showing the routing of new construction that involves an alteration
12 to the surface or subsurface of the public right-of-way. A registrant may not begin construction
13 until the plans and drawings have been approved in writing or electronically by the director of
14 public works and a right-of-way use permit has been issued.

15 (3) A description of the manner in which the facility will be installed (i.e.
16 anticipated construction methods and/or techniques).

17 (4) The time required to place the facility.

18 (5) A maintenance of traffic plan for any disruption of the public rights-of-
19 way.

20 (6) Information on the ability of the public rights-of-way to accommodate the
21 proposed facility, if available (such information shall be provided without certification as to
22 correctness, to the extent obtained from other users of the public rights-of-way).

23 (7) If appropriate, given the facility proposed, an estimate of the cost of

1 restoration to the public rights-of-way.

2 (8) And, such plan shall include the timetable for construction for each phase
3 of the project, and the areas of the City which will be affected.

4 (9) The City may request such additional information as it finds reasonably
5 necessary to review an application for a permit to perform work in the public rights-of-way
6 including, but not limited to, a survey showing that the area is within the public rights-of-way.

7 (d) The City shall have the power to prohibit or limit the placement of new or
8 additional facilities within the public rights-of-way, if there is insufficient space to accommodate
9 all of the requests to occupy or use the rights-of-way, for the protection of existing facilities in
10 the public rights-of-way, where such facilities will interfere with clear zones, public safety or the
11 Americans with Disability Act requirements, or for City plans for public improvements or
12 development projects which have been determined by the City to be in the public interest.

13 (1) In case of conflict or interference between the facilities of different
14 registrants, the registrant whose facilities were first permitted shall have priority over a
15 competing registrant's use of the public rights-of-way.

16 (2) There may be from time to time within the City various easements and
17 streets which the City does not have the unqualified right to authorize registrant to use; therefore,
18 the City does not warrant or represent as to any particular easement, rights-of-way, or portion of
19 a right-of-way or easement, that it has the right to authorize the registrant to install or maintain
20 portions of its facilities therein, and in each case the burden and responsibility for making such
21 determination in advance of the installation shall be upon the registrant. The City shall not be
22 required to assume any responsibility for the securing of any rights-of-way, easements or other
23 rights which may be required by the registrant for the installations of its facilities, nor shall the

1 City be responsible for securing any permits or agreements with other persons or utilities,
2 including utilities operated or owned by the City.

3 (3) Nothing in this article shall affect the City's authority to add, vacate, or
4 abandon public rights-of-way, and the City makes no warranties or representations regarding the
5 availability of any added, vacated or abandoned public rights-of-way for communications
6 facilities.

7 (4) Upon request of the City, a registrant may be required to coordinate the
8 placement or maintenance of facilities under a permit with any other work, construction,
9 installation or repairs that may be occurring or scheduled to occur within a reasonable time frame
10 in the subject public rights-of-way, and registrant may be required to reasonably alter its
11 placement or maintenance schedule as necessary so as to minimize disruptions and disturbance
12 in the public rights-of-way.

13 (e) All facilities shall be installed, located and maintained so as not to unreasonably
14 interfere with the use of the public rights-of-way by the public and to cause unreasonable
15 interference with the rights and convenience of property owners who adjoin any of the public
16 rights-of-way. The registrant shall be liable for costs and expenses for the displacement, damage
17 or destruction of any paved area, irrigation system or landscaping within the public rights-of-
18 way. The registrant shall make such repairs upon request of the affected property owner. In the
19 event the registrant fails to make the appropriate repairs, to restore such property to as good a
20 condition as existed prior to commencement of work, the affected property owner may file a
21 complaint with the City Manager. In this instance, the registrant shall be given prior written
22 notice of the necessary repairs by the City Manager. If such repairs are not performed in a
23 reasonable and satisfactory manner within the 30 calendar days after receiving notice, the City

1 may cause the repairs to be made at the facility's owner expense, utilizing City employees, agents
2 or contractors, charge any and all costs, and require reimbursement within 30 days after the
3 submission of the bill by the City to the registrant. After 30 days, the City may obtain
4 reimbursement from the security fund. The "prior written notice" described in this subsection
5 shall be considered a final written decision for purposes of the appellate rights outlined in the
6 Code.

7 (f) The use of trenchless technology (i.e., directional bore method) for the
8 installation of facilities in the public rights-of-way as well as joint trenching and/or the
9 collocation of facilities in existing conduit is strongly encouraged, and may be required by the
10 City. The director of public works may waive the requirement of trenchless technology if the
11 director determines that field conditions warrant the waiver.

12 (g) The City Manager may issue such orders or additional rules and regulations
13 concerning the placement or maintenance of a communications facility in the public rights-of-
14 way, as may be consistent with applicable law and not inconsistent with this Article.

15 (h) All safety practices required by applicable law or accepted industry practices and
16 standards shall be used during construction, maintenance, repair and removal of the
17 communications facilities. Registrant's work, while in progress, shall be properly protected at all
18 times with suitable barricades, flags, lights, flares or other devices as are required by the Manual
19 on Uniform Traffic Control Devices (FDOT) and/or any requirements of the public works
20 department to protect all members of the public having occasion to use the portion of the streets
21 involved or adjacent property.

22 (i) In the event that at any time during the term of the rights granted herein the City
23 shall lawfully elect to alter, or change the grade of, any public rights-of-way, upon reasonable

1 notice by the City, the registrant shall make any necessary removals, relaying and relocations of
2 its communications facilities at its own expense, in accordance with applicable law. The City
3 reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas,
4 water, electric, storm drainage, communications or other types of facilities, cables or conduits,
5 and to do, and to permit to be done, any underground and overhead installation or improvement
6 that may be deemed necessary or proper by the City in the public rights-of-way occupied by the
7 registrant.

8 (j) A registrant shall obtain any and all required permits and pay any and all required
9 fees before commencing any construction on or otherwise disturbing any public rights-of-way as
10 a result of its construction.

11 (1) The registrant shall, at its own expense, restore such property to as good a
12 condition as existed prior to commencement of work. A registrant shall guarantee its restoration
13 in accordance with current public works standards. If such restoration is not performed in a
14 reasonable and satisfactory manner within 30 calendar days after the completion of construction,
15 the City may, after prior written notice to registrant, cause the repairs to be made at the facility's
16 owner expense, utilizing City employees, agents or contractors, charge any and all costs, and
17 require reimbursement within 30 days after the submission of the bill by the City to the
18 registrant.

19 (2) A permit from the City constitutes authorization to undertake only certain
20 activities on public rights-of-way in accordance with this article, and does not create a property
21 right or grant authority to impinge upon the rights of others who may have an interest in the
22 public rights-of-way.

23 (k) All ongoing installation, construction and maintenance of a communications

1 facility located in the public rights-of-way shall be subject to the City's periodic inspection for
2 compliance with this article, or any applicable provisions of the City Code.

3 (l) The City makes no warranties or representations regarding the fitness, suitability
4 or availability of the City's public rights-of-way for the registrant's communications facilities and
5 any performance of work, costs incurred or services provided by registrant shall be at registrant's
6 sole risk.

7 (m) The registrant shall, at no cost to the City, produce and provide a complete set of
8 as-built plans including, but not limited to, horizontal and typical vertical profiles, within 60 days
9 after construction of any portion of the system to the City Manager, with copies to the public
10 works department. A registrant shall also cooperate with the City by providing in a timely and
11 complete manner any additional information requested under this subsection. Upon completion
12 of any installation or construction of new facilities in public right-of-way and at no cost to the
13 City, the registrant shall provide such additional information, as may be requested, showing the
14 exact location of its facilities and structures, including but not limited to, maps, geographical
15 information systems, plats, construction documents, drawings and any other information the City
16 may find reasonably necessary. Such plans shall be provided in digitized format showing the
17 two-dimensional location of the facilities based on the City's geographical database data, or other
18 format acceptable to the City. All information required by this article shall be maintained in
19 accordance with the public record laws of the state.

20 (n) Suspension or denial of permits. Subject to subsection (p) of this section, the City
21 Manager may suspend an existing permit or deny an application for a permit for work in the
22 public rights-of-way for one or more of the following reasons:

23 (1) Violation of permit conditions, including conditions set forth in this article

1 or other applicable provisions of the City Code or regulations governing use of public rights-of-
2 way; or

3 (2) Misrepresentation or fraud by registrant in a registration or permit
4 application to the City; or

5 (3) Failure to properly renew or ineffectiveness of a registration; or

6 (4) Failure to relocate or remove facilities as may be lawfully required by the
7 City; or

8 (5) Failure of registrant, its employees, agents or subcontractors, in
9 connection with the subject permit, to place barricades or signs around the work area, take
10 reasonable safety precautions to alert the public of work at the work site, or repair, replace and
11 restore any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance,
12 soil, landscaping, dirt or other improvement, property or structure of any nature. In the event of
13 such failure, the City may perform the work utilizing City employees, agents or contractors,
14 charge any and all costs, and require reimbursement within 30 days after the submission of the
15 bill by the City to registrant. Upon payment to the City for the violations that gave rise to a
16 suspension or denial of permit, the suspension or denial shall be lifted.

17 (o) Immediately after the suspension or denial of permit pursuant to this article, the
18 City shall provide written notice of the violation, which notice shall contain a description of the
19 violation. A final written decision of the City Manager suspending a permit or denying an
20 application is subject to appeal. Upon correction of any violation that gave rise to a suspension or
21 denial of permit, the suspension or denial shall be lifted.

22 (p) All decisions of the City Manager may be appealed by filing a written notice of
23 appeal within 21 business days of the City Manager's decision. The appeal shall be filed with

1 the City Manager with a copy to the City Attorney. Any appeal not timely filed shall be waived.
2 The notice of appeal shall state the decision which is being appealed, the grounds for appeal, a
3 brief summary of the relief which is sought, and shall be accompanied by a reasonable
4 nonrefundable fee to be established by the City Commission to cover the City's costs of the
5 appeal. The City and the appellant shall mutually agree on a mediator. The City Manager shall
6 provide the materials considered by the City relevant to the City Manager's decision to the
7 mediator. The mediator may affirm, modify or reverse the decision of the City Manager within a
8 reasonable time after the conclusion of the hearing, but no later than 21 days. The City Manager
9 shall notify any party who has filed a written request for such notification of the date when the
10 matter will be presented to the mediator. Nothing contained herein shall preclude the mediator
11 from seeking additional information prior to rendering a final decision. The decision of the
12 mediator shall be reduced to a written order and a copy of the decision shall be forwarded to the
13 City Manager and the appealing party. Within the time prescribed by the appropriate Florida
14 Rules of Appellate Procedure, a party aggrieved by a decision of the mediator may appeal an
15 adverse decision to the circuit court in and for the county or applicable federal or district court.
16 The party making the appeal shall be required to pay to the City a fee to be established by City
17 Commission, to defray the costs of preparing the record on appeal.

18 (g) To the extent that any person or registrant leases or otherwise uses the facilities
19 of an entity that is duly registered or otherwise authorized to place and maintain facilities in the
20 public rights-of-way of the City, the person or registrant shall make no claim, nor assert any
21 right, which will impede the lawful exercise of the City's rights, including requiring the removal
22 of such facilities from the public rights-of-way of the City, regardless of the effect on the
23 person's ability to provide service or on the registrant's ability to maintain its own

1 communications facilities in the public rights-of-way of the City.

2 (r) The involuntary termination of an effective registration may only be
3 accomplished by an action of the City Commission. The City may declare the effective
4 registration terminated and revoke and cancel all privileges granted under that registration if a
5 federal or state authority suspends, denies, or revokes a registrant's certification to provide
6 communications service, the registrant is adjudicated bankrupt by a United States District Court
7 or through any legal proceeding of any kind, or that a receiver is appointed to take possession of
8 the assets of the registrant, the registrant abandons all of its facilities. Prior to such termination
9 by the City resulting from a violation of any of the provisions of this subsection, the registrant
10 shall be provided a written notice setting forth all matters pertinent to such violation, and
11 describing the action of the City with respect thereto. The registrant shall have 60 days after
12 receipt of such notice within which to cure the violation, or within which to present a plan,
13 satisfactory to the City, to accomplish the same. In the event of a vote by the City Commission
14 to terminate, the registrant shall, within a reasonable time following such termination, remove or
15 abandon the facilities and take such steps as are necessary to render every portion of the facilities
16 remaining within the public right-of-way of the City safe. If the registrant has either abandoned
17 its facilities or chooses to abandon its facilities, the City may either require the registrant's
18 bonding company to remove some or all of the facilities from the public right-of-way and restore
19 the public right-of-way to its proper condition or the City may require that some or all of the
20 facilities be removed and the public right-of-way restored to its proper condition at the
21 registrant's expense, utilizing City employees, agents or contractors, and charge any and all costs,
22 and require reimbursement. The obligations of the registrant and the bonding company hereunder
23 shall survive, for a period of 24 months from, the termination of the registration. At the City's

1 option, the City may acquire the ownership of such abandoned facility with no further
2 obligations of the registrant or bonding company. In the event of a termination of registration,
3 this provision does not permit the City to cause the removal or acquire ownership of any
4 facilities that are used to provide another service for which the registrant holds a valid
5 certification with the applicable governing federal and/or state agencies and is properly
6 registered with the City, for such certificated service. A registrant shall pay all fees owed to the
7 City for so long as the registrant owns any facility within the public rights-of-way.

8 **Section 23-110. Compliance with other laws; police power; transfers and assignments.**

9 (a) A facility owner shall at all times be subject to and shall comply with all
10 applicable federal, state and local laws. A facility owner shall at all times be subject to all lawful
11 exercises of the police power of the City, to the extent not inconsistent with applicable laws.
12 Nothing in this Article shall operate to waive or to delay the City's ability under its police
13 powers to take appropriate action to protect the public health, safety and welfare.

14 (b) If the registrant transfers or assigns its registration incident to a sale or other
15 transfer of the registrant's assets, the transferee or assignee shall be obligated to comply with the
16 terms of this article. Written notice of any transfer, sale or assignment shall be provided to the
17 City within 20 days of the effective date of the transfer, sale or assignment. For the transfer of
18 registration to be effective, the transferee or assignee must comply with the registration
19 requirements under this Article.

20 (c) Notwithstanding anything in this article, pledges in trust or mortgages or other
21 hypothecations of the assets of the registrant to secure the construction, operation or repair of its
22 communications facilities may be made to any person without notice to the City.

23 **Section 23-111. Insurance; indemnification.**

1 (a) The registrant shall provide, pay for and maintain, throughout the term of its
2 registration, and with companies satisfactory to the City, the types of insurance described herein.
3 All insurance shall be from responsible companies duly authorized to do business in the state and
4 having a financial rating in Best's Insurance Guide of A+ or better. The insurance coverage
5 obtained by the registrant shall be approved by the risk management division. All liability
6 policies shall provide that the City is an additional insured as to the operations under the
7 registration and shall provide the severability of interest provision. The required coverage must
8 be evidenced by properly executed certificates of insurance. The certificates must be manually
9 signed by the authorized representative of the insurance company. Thirty days' advance written
10 notice must be given to the City of any cancellation or intent not to renew or reduction in the
11 policy coverage, which notice shall be sent by registered or certified mail to the City. Companies
12 issuing the insurance policies shall have no recourse against the City for payment of any
13 premiums or assessments, and the same shall be the sole responsibility of the registrant.

14 (b) The limits of coverage of insurance required shall be not less than the following:

15 (1) Worker's compensation within statutory limits and employers liability
16 insurance with limits of not less than \$1,000,000.00. This coverage must be evidenced by a
17 certificate of insurance that requires at least 30 days' advance written notice of cancellation,
18 nonrenewal or material change to the City.

19 (2) Commercial general liability insurance including premises/operations;
20 independent contractors; contractual liability; products/completed operations; XCU coverage;
21 and personal injury coverage for limits of no less than \$3,000,000.00 per occurrence combined
22 single limit and \$5,000,000.00 in the aggregate. The coverage must be evidenced by a certificate
23 of insurance that names the City as an additional insured and provides the City with at least 30

1 days' advance written notice of cancellation, nonrenewal or material change.

2 (3) Commercial automobile liability coverage for all owned, non-owned
3 and hired vehicles for limits of no less than \$1,000,000.00 per occurrence combined single limit.
4 This coverage must be evidenced by a certificate of insurance that names the City as an
5 additional insured, and provides the City with at least 30 days' advance written notice of
6 cancellation, nonrenewal or material change.

7 (4) Commercial excess or umbrella liability coverage may be used in
8 combination with primary coverage to achieve the required limits of liability. This coverage must
9 be evidenced by a certificate of insurance that names the City as an additional insured and
10 provides the City with at least 30 days' written notice of cancellation renewal or material change.

11 (c) The City may, in its sole discretion, allow a registrant to be self-insured for one or
12 more lines of insurance coverage. In such instances, the registrant shall demonstrate to the
13 satisfaction of the administration and risk management division of the City that it has adequate
14 financial resources to defend and cover claims in the amounts and categories as required by the
15 administration and risk management division of the City.

16 (d) Upon the effective date of a registration, the registrant shall submit to the City
17 proof that it has obtained the insurance required under this article, including a certificate of
18 insurance signed by the insurance agent.

19 (e) The City shall have the authority to increase or decrease the policy limits set forth
20 above upon 60 days' written notice to the registrant. Within 60 days from receipt of a notice to
21 increase its policy limits, the registrant shall submit to the City proof of such increased coverage.
22 The City shall not increase the policy limits required of the registrant unless it increases the
23 requirements for every other registrant operating in the City pursuant to this article. Upon

1 registrant's request, and a showing by the registrant of good cause, the City may decrease a
2 registrant's policy limit.

3 (f) The registrant shall file and maintain proof of insurance with the risk management
4 division. An insurance certificate obtained in compliance with this article is subject to City
5 approval, and in addition to all other requirements under this article, the insurance certificate
6 must contain the following provisions provide that:

7 (1) Notice of claims shall be provided to the City Manager by certified
8 mail; and

9 (2) The terms of this article which impose obligations on the registrant
10 concerning liability, duty and standard of care, including the indemnity section, are included in
11 the policy and that the risks are insured within the policy terms and conditions. The City may
12 require the certificate to be changed to reflect changing liability limits. A registrant shall
13 immediately advise the City of actual or potential litigation that may develop that would affect
14 insurance coverage herein.

15 (g) An insurer has no right of recovery against the City. The required insurance
16 policies shall protect the registrant and the City. The registrant's insurance shall be primary
17 coverage for losses covered by the policies.

18 (h) The policy clause "other insurance" shall not apply to the City where the City is
19 an insured under the policy.

20 (i) The registrant shall pay premiums and assessments. A company which issues an
21 insurance policy has no recourse against the City for payment of a premium or assessment.
22 Insurance policies obtained by a registrant must provide that the issuing company waive all right
23 of recovery by way of subrogation against the City in connection with damage covered by the

1 City.

2 (j) The registrant shall provide proof to the City of compliance with this article for an
3 effective registration. Failure to provide the City or to maintain the insurance required herein
4 will render the registration null and void without further action by the City.

5 (k) Indemnification shall be conducted pursuant to the following:

6 (1) The registrant shall, at its sole cost and expense, indemnify, hold and
7 defend the City and its officers, directors, agents, servants, employees, successors, and assigns
8 harmless from and against any and all claims suits, actions, damages and causes of action for
9 personal injury, death or property damage, any other losses, damages, charges of death or
10 property damage, any other losses, damages, charges or expenses, including attorneys' fees,
11 witness fees, court costs and any orders, judgments or decrees which may be entered which rise
12 out of, in connection with or attributable to, registrant's construction, maintenance, occupation,
13 placement, repair, relocation, removal or operation by the registrant of any portion of the
14 communications system or business excepting only those claims resulting from the gross
15 negligence of the City. The registrant shall undertake at its own expense, the defense of any
16 action which may be brought against the City for damages, injunctive relief or for any other
17 cause of action arising or alleged to have arisen out of, in connection with or attributable to, the
18 foregoing and, in the event any final judgment therein should be rendered against the City
19 resulting from the foregoing, the registrant shall promptly pay the final judgment together with
20 all costs relating thereto; the registrant being allowed, however, an appeal or appeals to the
21 appropriate court or courts from the judgment rendered in any such suit or action upon the filing
22 of such superseded bond as shall be required to prevent levy or judgment against the City during
23 such appeal or appeals.

1 (2) Nothing in this article shall prohibit the City from participating in the
2 defense of any litigation by its own counsel and obtaining indemnification of the reasonable
3 costs associated therewith upon a court order awarding such costs.

4 (3) The City shall give prompt written notice to a registrant of any claim
5 for which the City seeks indemnification. The registrant shall have the right to investigate,
6 defend and compromise these claims subject to prior City approval. Failure of the City to provide
7 written notice shall not waive the requirement of subsection (k)(1) of this section.

8 (4) Nothing contained in this provision shall be construed or interpreted as
9 a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28.

10 **Section 23-112. Construction bond.**

11 (a) Except in the case of an emergency, as described in section 23-108, prior to
12 performing any work in the public rights-of-way, a registrant shall establish in the City's favor a
13 construction bond as required by Section 23-38 of the City Code in an amount specified in an
14 engineering permit or other authorization as necessary to ensure the registrant's faithful
15 performance of the construction in the public rights-of-way, in accordance with applicable
16 sections of the City Code. The amount of the construction bond shall be as set forth in the
17 engineering permit, and may be modified in the City's reasonable discretion, based on the cost of
18 the restoration to take place in the public rights-of-way, and any previous history of the registrant
19 concerning restoration within the public rights-of-way of the City. The City, in its discretion,
20 may request a certified estimate of the cost of restoration by a state registered professional civil
21 engineer or certified by a person who is exempt from such requirements as provided in F.S. §
22 471.003.

23 (b) In the event a registrant subject to such a construction bond fails to complete the

1 work in a safe, timely and competent manner in accordance with the provisions of the permit,
2 there shall be recoverable, jointly and severally from the principal and surety of the bond, any
3 damages or loss suffered by the City as a result, including the full amount of any compensation,
4 indemnification or cost of removal or abandonment of any property of the registrant, or the cost
5 of completing the work, plus a reasonable allowance for attorneys' fees, up to the full amount of
6 the bond.

7 (c) In accordance with the current standards of the public works department of the
8 City, and satisfaction of all obligations in accordance with the bond, the City shall eliminate the
9 bond. Notwithstanding, the City may require a new bond for any subsequent work performed in
10 the public right-of-way.

11 (d) The construction bond shall be issued by a surety having a minimum rating of A-1
12 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the
13 City Attorney; and shall provide that:

14 "This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the City,
15 by certified mail, return receipt requested, of a written notice from the issuer of the bond of
16 intent to cancel or not to renew".

17 (e) The rights reserved by the City with respect to any construction bond established
18 pursuant to this article are in addition to all other rights and remedies the City may have under
19 this article, or at law or equity.

20 (f) The rights reserved to the City under this article are in addition to all other rights
21 of the City, whether reserved in this article, or authorized by other law, and no action, proceeding
22 or exercise of a right with respect to the construction bond will affect any other right the City
23 may have.

1 **Section 23-113. Security fund.**

2 At the time of registration, the registrant shall file with the City, for City approval, a cash
3 security, or irrevocable letter of credit, in the sum of \$50,000.00, in a form acceptable to the City
4 Manager. For purposes of the irrevocable letter of credit, the registrant must have as a surety a
5 company qualified to do business in the state. The cash security or irrevocable letter of credit,
6 shall be to secure the full and faithful performance by the registrant of all requirements, duties
7 and obligations imposed upon registrant by the provisions of this article, and to pay any taxes,
8 fees or liens owed to the City. The irrevocable letter of credit shall be furnished annually, or as
9 frequently as necessary, and shall provide a continuing guarantee of the registrant's full and
10 faithful performance at all times. Should the City draw upon the cash security or irrevocable
11 letter of credit, the City shall promptly notify the registrant, and the registrant shall within 30
12 calendar days restore the cash security, or irrevocable letter of credit, to full required amount. In
13 the event a registrant fails to perform its duties and obligations imposed upon the registrant by
14 the provisions of this article, subject to section 23-109, there shall be recoverable, jointly and
15 severally from the principal and issuer of the letter of credit, any damages or loss suffered by the
16 City as a result, including the full amount of any compensation or indemnification, plus a
17 reasonable allowance for attorneys' fees, up to the full amount of the fund. The cash security-or
18 letter of credit may be waived by the City where the City determines in its sole discretion that the
19 security fund is not necessary to secure the required performance under this article. The City may
20 from time to time increase the amount of the security fund to reflect the increased risks to the
21 City and to the public.

22 **Section 23-114. Enforcement remedies.**

23 (a) In addition to any other remedies available at law or equity or provided in this

1 article, the City may apply any one or a combination of the following remedies in the event a
2 registrant violates this article, or applicable local law or order related to use of the public rights-
3 of-way. It shall be unlawful to violate any provision of this article. Each day a violation of this
4 article occurs constitutes a separate and distinct offense:

5 (1) Failure to comply with the provisions of this article or other law applicable
6 to users and/or occupants of the public rights-of-way, may result in imposition of penalties to be
7 paid by the registrant to the City in an amount of not less than \$500.00 per day or part thereof
8 that the violation continues.

9 (2) A registrant's failure to obtain a permit before commencing work, except
10 in cases of an emergency, may result in imposition of penalties to be paid to the City in an
11 amount of not less than \$1,000.00 per day or part thereof that the violation continues.

12 (3) In addition to or instead of any other remedy, the City may seek legal or
13 equitable relief from any court of competent jurisdiction.

14 (b) Before imposing a fine pursuant to this article, the City shall give written notice
15 of the violation and its intention to assess such penalties, which notice shall contain a description
16 of the alleged violation. Following receipt of such notice, the registrant shall have a reasonable
17 period of time to either:

18 (1) Cure the violation and the City shall make good faith reasonable efforts to
19 assist in resolving the violation; or

20 (2) File an appeal as provided herein.

21 If the violation is not cured within that reasonable period of time provided, and no appeal is filed,
22 the City may collect all fines owed, beginning with the first day of the violation, either by
23 removing such amount from the security fund or through any other means allowed by law.

1 (c) In determining which remedy or remedies are appropriate, the City shall take into
2 consideration the nature of the violation, the person or persons bearing the impact of the
3 violation, the nature of the remedy required to prevent further violations, and such other matters
4 as the City determines are appropriate to the public interest.

5 (d) Failure of the City to enforce any requirements of this article shall not constitute
6 a waiver of the City's right to enforce that violation or subsequent violations of the same type or
7 to seek appropriate enforcement remedies.

8 (e) In any proceeding before the City Commission wherein there exists an issue with
9 respect to a registrant's performance of its obligations pursuant to this article, the registrant shall
10 be given the opportunity to provide such information as it may have concerning its compliance
11 with the terms of the article. The City Commission may find a registrant that does not
12 demonstrate compliance with the terms and conditions of this article in default and apply any one
13 or combination of the remedies otherwise authorized by this article.

14 (f) The City Manager shall be responsible for administration and enforcement of this
15 article, and is authorized to give any notice required by law.

16 (g) Nothing in this article shall affect the remedies the registrant has available under
17 applicable law.

18 **Section 23-115. Force majeure.**

19 In the event a registrant's performance of or compliance with any of the provisions of this
20 article is prevented by a cause or event not within the facility owner's control, such inability to
21 perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a
22 result thereof, provided, however, that such owner uses all practicable means to expeditiously
23 cure or correct any such inability to perform or comply. For purposes of this article, causes or

1 events not within a facility owners control shall include, without limitation, acts of God, floods,
2 earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots
3 or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency
4 or court. Causes or events within registrant's control, and thus not falling within this article, shall
5 include, without limitation, registrant's financial inability to perform or comply, economic
6 hardship, and misfeasance, malfeasance or nonfeasance by any of registrant's directors, officers,
7 employees, contractors or agents.

8 **Section 23-116. Reservation of rights.**

9 (a) The City reserves the right to amend this article as it shall find necessary in the
10 lawful exercise of its police powers. The City reserves the right to adopt further Ordinances to
11 regulate communications facilities in the public rights-of-way, including but not limited to
12 design standards, location guidelines, pole attachment procedures, and other provisions to the
13 extent not inconsistent with applicable law.

14 (b) This article shall be applicable to all communications facilities permitted to be
15 placed in the public rights-of-way, on or after its effective date, and shall apply to all existing
16 communications facilities in the public rights-of-way prior to the effective date of this article, to
17 the full extent permitted by state and federal law. Providers with existing communications
18 facilities have 120 days from the effective date of this article to comply with the terms of this
19 article, or be in violation thereof.

20 (c) The City reserves to itself the right to intervene in any suit, action or proceeding
21 involving any provision of this article. Registrant agrees to advise City of any such suits.

22 **Section 3. Severability.** If any word, phrase, clause, paragraph, section or provision
23 of this ordinance or the application hereof to any person or circumstance is held invalid or


1 unconstitutional, such finding shall not affect the other provisions or applications of the
2 ordinance which can be given effect without the invalid or unconstitutional provisions or
3 application, and to this end the provisions of this ordinance are declared severable.

4 **Section 4. Conflicts and Repeal.** This ordinance repeals, in part, the moratorium
5 (adopted by Ordinances No. 160401 and 160798) only as to placement of underground wireless
6 communication facilities within the public rights-of-way. The moratorium remains in effect for
7 the placement of above-ground wireless communication facilities in the public rights-of-way.
8 All other ordinances or parts of ordinances, in conflict herewith are to the extent of such conflict
9 hereby repealed.


10 **Section 5. Effective Date.** It is the express intent of the City that this ordinance shall
11 take effect as of 6:00pm on September 7, 2017, provided however this ordinance shall not be
12 effective as to placement of above-ground wireless communication facilities in the public rights-
13 of-way, until such time as moratorium ordinances No. 160401 and 160798 are fully repealed.

14 **PASSED AND ADOPTED** this 7th day of September 2017.

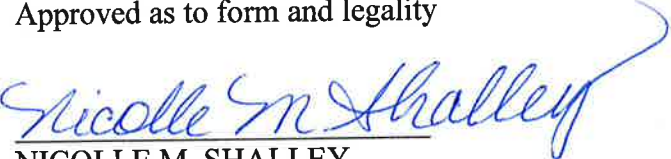
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LAUREN POE
MAYOR

ATTEST:


KURT M. LANNON
CLERK OF THE COMMISSION

Approved as to form and legality


NICOLLE M. SHALLEY
CITY ATTORNEY

29 This Ordinance passed on first reading this 17th day of August, 2017.
30 This Ordinance passed on second reading this 7th day of September, 2017.