

rized to do business in the state and having a financial rating in Best's Insurance Guide of B+ Class VI or better and a claims paying ability rating of A+ or better. All liability products shall provide that the city is an additional insured as to the operations under this franchise. The required coverages must be evidenced by properly executed certificate of insurance forms. The certificates must be signed by an authorized representative of the insurance company. Each insurance policy shall provide that at least 30 days advanced written notice by registered or certified mail be given to the city of any cancellation, intent not to renew or reduction in the policy coverages. The certificate of insurance must indicate that the city is an additional insured.

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

- (1) *Worker's compensation and employer's liability insurance.*

Worker's compensation	Florida statutory requirements
Employer's liability	\$500,000.00 limit each accident
	\$500,000.00 limit disease accident
	\$500,000.00 limit disease each employee

- (2) *Comprehensive general liability.* Bodily injury and property damage—\$5,000,000.00 combined single limit each occurrence.
- (3) *Automobile liability.* Bodily injury and property damage—\$5,000,000 combined single limit each accident.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-176. Bonds.

Grantee shall exercise none of the rights granted by this chapter until evidence of compliance with the following bonding and preceding insurance requirements has been filed with the city. Should the grantee fail to comply with said requirements, it shall acquire no rights, privileges or authority under the franchise whatsoever.

- (1) *Bond.* Every operator of a telecommunications facility may be required to obtain performance bonds and, if necessary, pay-

ment bonds to ensure the faithful performance of its responsibilities under this chapter and any franchise agreement for an initial build, any substantial rebuild, upgrade or extension of its facility, or when construction plans show that there would be more than 1,000 feet of open trenching in the right-of-way at any given time. The amount of performance and payment bonds shall be set by the city manager in light of the nature of the work to be performed, and is not in lieu of any additional bonds that may be required through the permitting process. The bond shall be in a form acceptable to the city attorney. The city may from time to time increase the amount of the required performance bond to reflect increased risks to the city and to the public.

- (2) *Notice.* The performance bonds required pursuant to this section shall require 30 days' prior written notice to the city and the grantee of an intention of nonrenewal, alteration or cancellation. The grantee shall, in the event of any such intended cancellation notice, obtain, pay all premiums for, and file replacement bonds or policies within 30 days following receipt by the city or the grantee of any notice of intended cancellation.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-177. Termination.

In the event that the grantee: (i) violates any of the material provisions of this chapter; (ii) ceases to operate its telecommunications system within the city for any consecutive period of seven days during the term of a franchise granted pursuant to this chapter; (iii) is prohibited by state or federal regulatory authorities from operating its telecommunications system or (iv) is precluded by governmental authorities from charging the franchise fee provided in this chapter to its customers, and the grantee provides the city with written notice of its desire to terminate this franchise, then the city, at its option, may forthwith declare a forfeiture and termination of, and revoke and cancel all rights granted under, a franchise, provided that, prior to such termination by the city

resulting from a violation by the grantee of any of the provisions of this chapter, the grantee shall be served by the city with a written notice setting forth all matters pertinent to such violation, and describing the action of the city with respect thereto. The grantee shall have 30 days after service of such notice within which to cure the violation, or within which to present a plan satisfactory to the city, to accomplish the same. In the event of such termination, the grantee shall, within 90 days following demand by the city, remove or abandon the system and take such steps as are necessary to render every portion of the telecommunications system remaining within the rights-of-way of the city safe, and shall thereupon be deemed to have abandoned same in its entirety; and the same shall thereupon become the sole property of the city without payment to the grantee; provided, however, if the city chooses to have all or any portion of the telecommunications system removed from the city's right-of-way, the grantee shall do so at the grantee's expense within 90 days after notice to the grantee.

(Ord. No. 99-46, § 1, 8-12-99)

efficient service in accordance with the rules and regulations as are, or may be, set forth by the PSC and FCC, or by other agencies of the state or federal government empowered to regulate the activities of the grantee.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-206. Authority to use right-of-ways.

(a) Prior to the installation, placement or removal of any conduits, cables or pole lines, or the start of any type of construction on the city's rights-of-way, the grantee shall, pursuant to the requirements of existing or subsequently enacted city ordinances, obtain all permits from, and pay all fees to, the city. Said permits shall set out the place, date and time where the conduits, cables or pole lines, or other form of construction, are to be installed, or removed or where the construction is to be conducted. All permit applications submitted by the grantee shall contain plans showing existing and proposed utility facilities and specifications prepared and approved by a qualified professional engineer registered in the state, and letter(s) of no conflict provided by other utilities having facilities located in the area or areas that the grantee desires to place conduits, cable, pole lines and/or any other facilities or to begin construction. The grantee will not assert the existence of any vested rights as to any other matter if the city issues a permit except to the extent that it is entitled to place its facilities as indicated by the permit. Further, issuance of a permit by the city shall not be construed by the grantee as a warranty that the placement by the grantee of its conduits, cables, pole lines and/or other facilities, or the start of construction, is in compliance with any applicable rules, regulations or laws or that there are no physical conflicts between the grantee's facilities and other facilities located on the city's rights-of-way.

(b) Any type of construction proposed by the grantee shall be subject to the City Code and other rules, resolutions, regulations, policies and approvals required by the city engineer and public works director, of the city pertaining thereto, and shall be performed with the least possible interference with the use of the public rights-of-

DIVISION 3. OPERATIONAL RULES

Sec. 70-205. Compliance with state and federal law.

The grantee shall maintain and operate all parts of its telecommunications facilities in good, safe and operable condition and shall render

way and to adjoining property owners and in compliance with the rules and regulations of the state department of transportation.

(c) Any conduits, cables, pole lines or other facilities installed or placed without first having obtained the permits hereinbefore provided for shall be removed within 30 days' written notice by the city to remove the same and in default of compliance with such notice, the conduits, cables or poles may be removed by order of the city manager and the cost of removal shall be borne and paid by the grantee, or in the event the city approves the placement of same after the fact, the grantee shall obtain all requisite permits therefor and pay all applicable penalties and fees.

(d) The grantee shall maintain its telecommunications system so as not to interfere with other lawful uses of the public rights-of-way. To the extent possible, grantee shall make use of existing poles and other facilities available to the grantee. The grantee may erect additional poles or construct other facilities so long as all applicable permits and consents are obtained. The grantee shall use its best efforts to individually notify all adjacent property owners affected by the proposed construction prior to the commencement of that work. Such notification shall not be required for emergencies necessitating immediate repairs.

(e) Notwithstanding the grant to use public right-of-ways, no public right-of-way shall be used by the grantee if the city, in its sole discretion, determines that such use is inconsistent with the terms, conditions or provisions by which the public right-of-way was created or dedicated or is being used.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-207. Conditions of public right-of-way occupancy.

(a) All facilities, structures, lines and equipment erected by the grantee within the rights-of-way of the city shall be so located as to cause minimum interference with the proper use of streets, alley and other public rights-of-way and places and to cause minimum interference with the rights and reasonable convenience of property owners who own property adjoining any such streets, alleys or other public ways and places.

(b) The grantee shall not in any way displace, damage or destroy any sewer, water main, pipe or any other facilities belonging to the city, or to any third party who placed or maintains such facilities therein by express authority of the city, without the consent of the city, and the grantee shall be liable to the city or to the third party owner, as the case may be, for the cost of any repairs made necessary by any such displacement, damage or destruction and shall pay such costs upon written demand within 30 days of grantee's receipt of such demand.

(c) The grantee shall, at its own cost, replace and repair without delay any improvements, facilities or city rights-of-way that have been excavated, broken, removed, displaced, damaged or disarranged by the grantee in the conduct of its construction, maintenance and operation of any portion of the telecommunications system, or as a result of the deterioration of any portion of the telecommunications system, and restore the same to as good a condition as it existed prior to the grantee commencing its work, and upon failure of the grantee to do so after 20 days' written notice by the city's department of public works or the city engineer of such failure, the city may make such repairs and replacements as its deems necessary, and the grantee shall pay the city all costs of such repairs and replacements. The grantee, shall to the satisfaction of the city's engineer or public works director, maintain any repairs it makes pursuant to this section for a period of one year following the date of such repair.

(d) The grantee shall use all property and reasonable care in connection with any work which it may do in, over, under and across any public rights-of-way of the city in seeking to prevent harm, damage or injury to persons or property therefrom.

(e) The grantee shall produce and maintain a complete set of "as built" plans, including, but not limited to, horizontal and vertical profiles, within 30 days after construction of any portion of its telecommunications system; comply with all applicable laws, regulations and codes promulgated for the protection of the public, including, but not limited to, the National Electric Code, the National Electric Safety Code, the Florida Depart-

ment of Transportation Utilities Accommodation Guide, the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for Streets and Highways, and such other design or regulatory manuals that regulate the installation of structures within public rights-of-way; make said plans available to the city within 45 days after construction of any portion of its telecommunications system; and become a member of and maintain membership in a utility notification one call system.

(f) In the event the city requires the grantee to adapt or conform any portion of its telecommunications system, or in any way to alter, temporarily or permanently relocate or to change any portion of same, to expand the city's right-of-way, or to enable another person to use the public rights-of-way of the city, the grantee shall be reimbursed by the person desiring or occasioning such change for any loss, cost or expense caused by or arising out of such change, alteration or relocation of any portion of the grantee's telecommunications system.

(g) In an emergency, as determined by the city, when the grantee or its representative is immediately unavailable or unable to provide the necessary immediate repairs to any portion of the grantee's telecommunications system that is damaged or malfunctioning or to any faults or settles or sunken areas that may develop in any area over, around or adjacent to same, the city when apprised of such an emergency, shall have the right to make the repairs to protect the public health, safety and welfare, with the total cost of same being charged to, and paid by, the grantee.

(h) In an effort to minimize the number of facilities within the city's rights-of-way, the disruption of traffic and roadway destruction, the grantee shall attempt in good faith to reach and enter into joint use agreements with the city and other parties who are expressly authorized by the city to use its rights-of-way. Nothing herein contained shall mandate that the grantee enter into joint use agreements.

(i) In the event that work to be conducted by the grantee requires streets or traffic lanes to be closed or obstructed, the grantee shall, pursuant to the requirements of existing or subsequently

enacted city ordinances, obtain all permits from and pay all fees therefor to the city, and shall obtain approval of its maintenance-of-traffic plan from the city's police and public works departments.

(j) In the event the grantee deems the trimming and removal of any trees reasonably necessary to construct any portion of its telecommunications system and to maintain the integrity and safety of same it shall, pursuant to the requirements of existing and subsequently enacted city ordinances, at grantee's expense; obtain all approvals and applicable permits from, and pay all applicable fees to, the city, and comply with all other requirements of said ordinances. All tree trimming shall be done in accord with the standards of the Florida Urban Forestry Council and/or American Society of Landscape Architects except where following such standards would violate applicable federal or state safety codes.

(k) In the event grantee's work requires the temporary obstruction of city owned parking spaces, grantee shall obtain city approval to block such spaces prior to doing so.

(l) Whenever, in case of fire or other disaster, it becomes necessary, in the reasonable judgment of the city, to remove or damage any of the grantee's facilities, no charge shall be made by grantee against the city for restoration and repair reasonably necessary under the circumstances. The city shall endeavor to avoid or limit damage to the extent necessary under the circumstances.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-208. Erection of poles.

No telecommunications system franchise shall be deemed to expressly or impliedly authorize the grantee to construct or install poles or wire-holding structures within a right-of-way for the purpose of placing cables, wires, lines or otherwise, without the written consent of the city for the public right of way within which the poles or structures are situated. Such consent shall be given by right-of-way utilization permit upon such terms and conditions as the city may prescribe, which shall include a requirement that the grantee

perform, at the grantee's sole expense, all tree trimming required to maintain the poles clear of obstructions.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-209. Undergrounding.

The grantee shall comply with the following provisions of this section 70-209 unless otherwise approved by the city's engineering and public works departments. To the maximum extent practicable, all facilities shall be constructed underground. Poles, underground cables or other facilities of the telecommunications system shall be placed between the property line and the curb line of all streets and avenues and shall not be within the roadway recovery area. Underground cables shall have consistent alignment parallel with the edge of pavement, a 36-inch depth of cover for and shall have two-foot horizontal clearance from other underground utilities and their appurtenances. The lowest wire on any poles placed in any public rights-of-way used by vehicle traffic generally shall not be less than 18 feet from the ground and, whenever telephone or electric power wires cross each other, wires shall cross and be maintained in accordance with the National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States in force at the time of the effective date of this article [Aug. 12, 1999] and as amended.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-210. Relocation.

Except in case of any emergency, the grantee shall, within 180 days after receipt of written notice from the city, adjust, alter or relocate, at its own expense, any portion of its telecommunications system in the event that the city, at the direction of the city's department of public works or the city engineer, determines that such adjustment, alteration or relocation is necessary for the city's use of its property and rights-of-way, or if same unreasonably interferes with the convenient, safe or continuous use, or the maintenance, improvement, extension or expansion of any public right-of-way in the city. In the event that such

adjustment, alteration or relocation is incidental to work to be done by the city on a city road, such notice shall be given 60 days prior to the commencement of such work by the city. In the event such a contingency occurs and the grantee fails to cause the aforementioned adjustment, alteration or relocation as required herein, the city may remove or relocate such portion of the grantee's telecommunications system, and the total cost and expense therefore shall be charged to, and paid by, the grantee. The city shall provide the grantee with a notice and order as provided for in F.S. § 337.404, or any subsequently enacted law of the state, in the event it may charge the grantee for the cost and expense of removing such portion of its telecommunications system pursuant to this chapter.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-211. Movement of buildings.

Each grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the city, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and a grantee shall be authorized to require such payment in advance. A grantee shall be given not less than five working days' written notice to arrange for such temporary wire changes.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-212. Removal.

(a) Upon discontinuance of operation of all or a portion of a communications system, or expiration or termination of a communications system franchise, if the franchise is not renewed and if an assignee does not purchase the system, the grantee may remove any underground cable from the public rights-of-way which has been installed in such a manner that it can be removed without trenching or other opening of the public right-of-way along the extension cable to be removed. The grantee shall not remove any underground cable or conduit which requires trenching or other opening of the public ways along the extension or cable to be removed, except as authorized by the city's director of public works or as otherwise

provided in this section. The grantee shall remove, at the grantee's sole cost and expense, any underground cable or conduit by trenching or opening the public ways along the extension thereof or otherwise which is ordered to be removed by the city based on a determination by the city, at its sole discretion, that removal is required in order to eliminate or prevent a hazardous condition or promote the future utilization of the public rights-of-way for public purposes. Any order by the city to remove cable or conduit shall be mailed to the grantee not later than 30 calendar days from the date of expiration of the franchise. A grantee shall file written notice with the city manager not later than 30 days following the date of discontinuance of operation of all or part of its system, or as applicable, expiration or termination of the franchise, of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the director of public works. Removal shall be completed no later than 90 days following the date of expiration of the franchise, or as applicable, the notice given by the grantee under this section unless the grantee otherwise demonstrates that removal cannot be completed in that length of time, in which case a reasonable time frame shall be established by the city in consultation with the grantee which time shall not exceed one year from the date of expiration of the franchise, or the date of the written notice. Underground cable and conduit in the public rights-of-way which is not removed shall be deemed abandoned and title thereto shall be vested in the city.

(b) Upon expiration or termination of a franchise, if the franchise is not renewed and if an assignee does not purchase the system, the grantee, at the grantee's sole expense, shall either (1) remove from the public ways all aboveground elements of the system located in the right-of-way, or (2) render every portion of the system in the right-of-way safe, and abandon same in its entirety, and the same shall thereupon become the sole property of the city without payment to grantee.

(c) The grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit

such security as required by applicable ordinance, regulations or policies of the city; shall conduct and complete the work of removal in compliance with all such applicable ordinances, regulations and policies; and shall restore the public rights-of-ways to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than 90 days following the date of expiration of the franchise unless, for good cause shown the date is extended to a period not exceeding one year from the date of the expiration of the franchise.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-213. Inspection; correction of defects of the system.

(a) The city shall be able to inspect the construction and location of the system by the grantee to insure the proper performance of the terms of this chapter.

(b) If the grantee should violate any of the terms of this chapter or any of the rules and regulations as may hereafter be from time to time lawfully adopted, or any provision of the franchise agreement, the city shall promptly give grantee written notice of the violation, breach, default or noncompliance. The grantee shall within 30 days after service of such notice substantially undertake and promptly correct such default, breach, violation or noncompliance and certify the same to the city. In the event that the grantee fails to substantially undertake such corrective action within 30 days of the date of such written notice and promptly complete the corrective action, the city may, notwithstanding any other remedies provided in this chapter, or otherwise available under law:

- (1) Make such correction itself and charge the cost of the same to the grantee; and/or
- (2) Secure the proceeds from any financial performance instrument posted by the grantee or impose the sum of \$100.00 per day for each day as liquidated damages following the cure date that grantee fails to complete the corrective action; and/or
- (3) For a material breach of this chapter or the franchise agreement, declare the grantee in default and terminate the fran-

chise and the rights granted under the franchise pursuant to the provisions of section 70-19.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-214. Communications with regulatory agencies.

(a) Copies of all petitions, applications, communications and reports submitted to the PSC or any other state or federal regulatory commission or agency having jurisdiction in respect to any matters affecting the construction and occupancy of the system in the rights-of-way shall, if requested by the city, be filed with the city. Copies of responses or any other communications from the regulatory agencies to a grantee likewise shall, if requested, be filed with the city immediately on receipt.

(b) Copies of all certificates of approval issued by the PSC or any other state or federal regulatory agency or commission having jurisdiction over construction or operation of the system shall be filed with the city and the information supplemented within 45 days after modification, renewal and/or revocation of any such certificate(s).

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-215. Compliance with city, state and federal law.

Notwithstanding any other provision of this franchise to the contrary, the grantee shall at all times comply with all laws, rules and regulations of the city, the state and the federal government and any administrative agencies thereof. If any state or federal law, rules or regulation shall require or permit the grantee to perform any service, prohibit the grantee from performing a service in conflict with the provisions of this franchise or affect, in any way, the provision of services provided by the grantee, then, immediately following knowledge thereof, the grantee shall notify the city in writing of the point of conflict believed to exist between such state or federal law, rule or regulation and a franchise issued pursuant to this chapter or any ordinance, rule, regulation or charter provision of the city. If the city determines that a material

provision of this franchise does in fact conflict with such law, rule or regulation, it shall have the right to unilaterally amend any provision of this franchise to such reasonable extent as may be necessary to carry out the full intent and purpose of this franchise to the extent reasonably possible while also eliminating the conflict.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-216. Payment center.

The grantee shall establish and continuously maintain throughout the term of this franchise within the city at least one payment collection station at which customers can pay their bills for telecommunications services and, if necessary, receive change and paid receipts.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-217. Failure to enforce franchise.

The grantee shall not be excused from complying with any of the terms and conditions of this chapter by any failure of the city, upon any one or more occasions, to require the grantee's performance or compliance with any one or more of such terms and conditions of any franchise issued pursuant to this chapter.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-218. Headings.

All headings in this chapter are inserted for convenience only and shall not affect the construction or interpretation of this chapter.

(Ord. No. 99-46, § 1, 8-12-99)

Sec. 70-219—70-229. Reserved.

ARTICLE IV. WIRELESS FACILITIES IN THE RIGHTS-OF-WAY

Sec. 70-230. Intent and purpose; applicability to state-controlled rights-of-way.

(a) *Intent and purpose.* It is the intent of the city to promote the public health, safety and general welfare by:

- (1) Providing for the placement or maintenance of wireless facilities in the public rights-of-way within the city;

- (2) Adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. § 337.401 as amended by the Advanced Wireless Deployment Act, the city's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law;
- (3) Establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by all communications services providers;
- (4) Protecting the city's aesthetic qualities; and
- (5) Minimizing disruption to the public rights-of-way.

(b) *State-controlled rights-of-way.* This article shall apply to wireless facilities in public rights-of-way under the control and jurisdiction of the city. This article shall also apply to wireless and communications facilities in public rights-of-way under the control and jurisdiction of the Florida Department of Transportation, provided that the city is authorized to apply this article under a permit-delegation agreement between the city and department in accordance with F.S. § 337.401(1)(a), or as otherwise provided by law. (Ord. No. 17-49, § 2, 9-28-17)

Sec. 70-231. Definitions.

For purposes of this article, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words and phrases not otherwise defined in this article shall be interpreted in accordance with applicable definitions under chapter 70 of this Code of Ordinances and state and federal laws governing communications facilities, including F.S. § 337.401 except

where the context clearly indicates a different meaning, and shall otherwise be construed to mean the common and ordinary meaning.

Abandonment shall mean the permanent cessation of all uses of a communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "abandonment" of a facility in public rights-of-way.

Antenna means any transmitting or receiving device mounted on, within, or incorporated into a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), light, wireless telecommunications signals or other communication signals. For the purposes of this article, the term "antenna" does not include any device designed for over-the-air reception of radio or television broadcast signals, or multi-channel multi-point distribution service.

Applicable codes means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization and the Florida Building Code and the Florida Fire Prevention Code and or local amendments to those codes enacted to address building, accessibility and fire code standards and threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this subsection. The term includes this chapter as well as objective design standards adopted by ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements.

Applicant means the person registering and applying to locate wireless facilities in the right-