

## **ORDINANCE NO. 20-5313**

AN ORDINANCE OF THE CITY OF SARASOTA, FLORIDA AMENDING ORDINANCE NO. 01-4330 AND ORDINANCE NO. 18-5239, THE CITY OF SARASOTA RIGHTS OF WAY USE ORDINANCE, SO AS TO MAKE CHANGES REQUIRED IN ORDER TO BE IN COMPLIANCE WITH SECTION 337.401, FLORIDA STATUTES, AS AMENDED BY THE FLORIDA LEGISLATURE IN THE 2019 SESSION THROUGH SENATE BILL 1000; MAKING FINDINGS; MODIFYING DEFINITIONS; MODIFYING PROCEURES AND REQUIREMENTS APPLICABLE TO REGISTRATIONS; MODIFYING PROCEDURES AND REQUIREMENTS APPLICABLE TO PERMITS; MODIFYING INDEMNIFICATION REQUIREMENTS; REPEALNG ALL ORDNANCES INCONSISTENT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR READING BY TITLE ONLY.

WHEREAS, the City's rights of way are essential for the travel of persons and the transport of goods throughout the City and are a unique and physically limited resource requiring proper management by the City in order to maximize efficiency, minimize cost to City taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights of way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety, and general welfare; and

WHEREAS, the City Commission of the City of Sarasota has determined it is in the public interest of the City to permit the operation of certain facilities in the City's Rights of Way; and

WHEREAS, it is the intent of the City Commission of the City of Sarasota to act in a non-discriminatory manner and to encourage competition by providing access to the public rights of way of the City on a competitively neutral and non-discriminatory basis; and

WHEREAS, on September 17, 2001, the City Commission passed on second reading and finally adopted Ordinance No. 01-4330, the City of Sarasota Rights of Way Use Ordinance; and

WHEREAS, the City of Sarasota Rights of Way Use Ordinance was adopted in response to Chapter 2000-260, Laws of Florida, the “Florida Communications Tax Simplification Law” which limited the authority of public bodies relating to dealers of communications services; and

WHEREAS, on June 23, 2017 the Florida Legislature adopted the Advanced Wireless Infrastructure Deployment Act (hereinafter the Act) codified in Section 337.401(7), Florida Statutes, which placed certain limitations on local government authority to regulate wireless communications facilities within the public rights of way; and

WHEREAS, on April 16, 2018, the City Commission passed on second reading and finally adopted Ordinance No. 18-5239 which amended the Rights of Way Use Ordinance and implemented the 2017 Act; and

WHEREAS, during the 2019 Legislative Session, the Florida Legislature enacted Senate Bill No. 1000 which was approved by the Governor and took effect on July 1, 2019; and

WHEREAS, Senate Bill 1000 necessitates that the City amend the City of Sarasota Rights of Way Use Ordinance in order to implement the modifications to Section 337.401, Florida Statutes, made by Senate Bill 1000; and

WHEREAS, pursuant to Section 337.401(3)(d), Florida Statutes, at least ten (10) days prior to consideration of this Ordinance No. 20-5313 on first reading, the City provided the Secretary of State of the State of Florida notice of a proposed ordinance governing a telecommunications



company placing or maintaining telecommunication facilities in the City's roads or rights of way so that the Secretary of State could publish such notice on its designated internet website; and

WHEREAS, the Florida Supreme Court held in City of Hollywood v. Mulligan, 934 So.2d 1238, 1243 (Fla. 2006), that Article VIII, Section 2(b) of the Florida Constitution and the Home Rule Powers Act grant municipalities broad authority to enact ordinances under its municipal home rule powers and that under its broad home rule powers, a municipality may legislate concurrently with the legislature on any subject which has not been expressly preempted to the State; and

WHEREAS, the Florida Supreme Court recognized in D'Agastino v. City of Miami, 220 So.3d 410 (Fla. 2017) that a finding of express preemption is a very high threshold to meet and that implied preemption involving a municipality's home rule powers is disfavored; and

WHEREAS, the Telecommunications Act, 47 U.S.C. Section 332(c)(7)(A), preserves local zoning authority with respect to decisions regarding the placement, construction and modification of wireless service facilities; and

WHEREAS, it is in the interest of the City Commission of the City of Sarasota to recognize the rights of communications companies and other companies to install their facilities in public rights of way as a means of promoting the use of technology to the good of the people of the State; and

WHEREAS, it is the intent of the City Commission of the City of Sarasota to exercise the City's maximum regulatory authority over the use of and occupancy of roads and rights of way by all companies; and

WHEREAS, these policies are in complete accord with both the letter and the spirit of The Communications Act of 1934, as amended, and the Florida Communications Tax Simplification

Law, Chapter 2000-260, Laws of Florida; Chapter 2001-140, Laws of Florida; the Act and Senate Bill 1000; and

WHEREAS, it is the City's intent to treat each user or occupant of the City's public rights of way on a nondiscriminatory basis as required by applicable law in granting franchises for the use of the City's public rights of way or in the case where franchises may be prohibited by applicable law granting registrants' use of the City's public rights of way; and

WHEREAS, it is the intent of the City to promote the public health, safety and general welfare by (a) providing for the placement or maintenance of wireless facilities in the public rights of way within the City; (b) adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including Section 337.401, Florida Statutes, as amended by the Advanced Wireless Deployment Act and Senate Bill 1000, 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; (c) establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in the public rights of way by all communication services providers; (d) protecting the City's aesthetic qualities; and (e) minimizing disruption to the public rights of way; and

WHEREAS, it is the intent of the City to exercise its authority to adopt reasonable rules and regulations regarding the use and occupancy of the Public Rights of Way to the fullest extent under federal and state law.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF SARASOTA, FLORIDA:

**Section 1.   Creation of Ordinance.**

This Ordinance shall be known and may be cited as the City of Sarasota Rights of Way Use Ordinance.

## **Section 2.     Definitions.**

For the purpose of this Ordinance, the following terms, phrases, words and derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, 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 not otherwise defined herein or in any franchise agreement or registration that might be granted or approved hereunder shall be given the meaning set forth by Florida Statutes, and if not defined therein, as defined by the Communications Act of 1934, 47 U.S.C. 521 et seq., and as that Act may hereinafter be amended (collectively the "Communications Act"), and, if not defined therein, be construed to mean the common and ordinary meaning.

**A.     "Affiliate"** means any person which directly or indirectly owns or controls any part of a Franchisee or Registrant, any person which a Franchisee or Registrant directly or indirectly, in whole or in part, owns or controls, or any person under common ownership or control with a Franchisee or Registrant.

**B.     "Antenna"** means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

**C.     "Applicable codes"** means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this rights of way use ordinance. The term includes 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; however, such design standards may be waived by the city upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within 45 days after the date of the request. As used herein, reasonable design standards are those regulations specifically authorized by Section 337.401(7)(r), Florida Statutes. This City of Sarasota Rights of Way Use Ordinance, as amended from time to time, is included within the “Applicable Codes”.

D. **"City"** means Sarasota, an incorporated municipality of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

E. **"Collocate" or "collocation"** means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

F. **"Common Side-Lot Lines"** means a line drawn parallel to the side-lot line at the depth of a required side-yard setback as delineated in the Zoning Code.

G. **"Communications Company"** means every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision, offering Communications Services (as defined below). Communications Company shall also include any Person (as defined below) that places or maintains Facilities (as defined below) in Public Rights of Way (as defined below) for others to provide Communications Services but does not itself provide Communications Services. The term "Communications Company" does

not include a cable television company providing cable service as defined in 47 U.S.C. 522. The term "Communications Company" does not include an open video system.

H. **"Communications Service"** means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term does not include: (a) Information services as defined in 202.11(7), Florida Statutes; (b) Installation or maintenance of wiring or equipment on a customer's premises; (c) The sale or rental of tangible personal property; (d) The sale of advertising including, but not limited to, directory advertising; (e) Bad check charges; (f) Late payment charges; (g) Billing and collection services; (h) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer services; and (i) "cable service" as defined in Section 202.11(2), Florida Statutes or as that definition may be amended hereafter.

I. **"Facilities", or "Communications Facilities"** means any permanent or temporary plant, wiring, equipment, cables, conduits, converters, splice boxes, ducts, fiber optics, poles, Utility Poles, antennae, micro wireless facilities, small wireless facilities, wireless facilities, wireless support structures, cabinets, handholes, manholes, vaults, property, equipment, drains, surface location markers, appurtenances, and related facilities, or any other facilities or equipment located, to be located, used, or to be used, by a Person in the Public Rights of Way of the City.

J. **"Franchise"** means the permission granted by the City to a Franchisee in a Franchise Agreement to construct, maintain, operate and use Facilities in the Public Rights of Way within the Franchise area. The term does not include any license, permit, or registration that may be required by this Ordinance or other Laws, Ordinances or regulations of the City for the privilege of

transacting and carrying on a business within the City or carrying out any work in the Public Rights of Way.

K. **"Franchisee"** means any person granted a franchise pursuant to this Ordinance who has entered into a franchise agreement with the City.

L. **"Franchise Agreement"** means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth the terms and conditions under which the franchise will be exercised.

M. **"Grantor"** shall mean the City of Sarasota.

N. **"Law"** means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirements, as amended, now in effect or subsequently enacted or issued including, but not limited to, Applicable Codes, the Communications Act of 1934, as amended, the Florida Communications Services Tax Simplification Law, Chapter 2000-260, Laws of Florida, Chapter 2001-140, Laws of Florida, the Advanced Wireless Infrastructure Deployment Act, as amended by Senate Bill 1000, and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission, the Florida Public Service Commission, or any successor entity thereto.

O. **"Local Communications Services Tax"** means the discretionary communications services tax as defined in Chapter 2001-140, Laws of Florida. Unless otherwise expressly prohibited by applicable Law, the City reserves the right to amend this definition.

P. **"Micro wireless facility"** means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

Q. **"Person"** means any individual, corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, but shall not mean the City.

R. **"PSC"** means the Florida Public Service Commission.

S. **"Public Rights of Way"** means the surface, the airspace above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf, pier, court, lane, path, alley, way, drive, circle, easement, or public place including public utility easements dedicated for compatible uses, or any other property interest in which the City holds any kind of property interest or over which the City exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon.

T. **"Registrant"** means any Communications Company that receives City approval of a Registration for use or occupancy of the City's Rights of Way.

U. **"Registration"** means a form as designated by the City to be completed, signed, and notarized by a Registrant and submitted to the City for approval as a prerequisite to the Registrant's use or occupancy of the City's Rights of Way.

V. **"Small wireless facility"** means a wireless facility that meets the following qualifications:

i. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

ii. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not

included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

W. **“Utility Pole”** means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless the City grants a waiver for such pole.

X. **“Wireless facility”** means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiberoptic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

- i. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- ii. Wireline backhaul facilities; or
- iii. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.



Y. **“Wireless support structure”** means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

### **Section 3. Grant of Franchise or Registration.**

A. Unless otherwise authorized by applicable Law, it shall be unlawful for any person to construct, use, operate, or maintain any Facilities upon, along, under and over the Public Rights of Way without having obtained permission in the form of a Franchise or Registration from the City Commission pursuant to this Ordinance or other such Ordinance of the City as may be applicable. In addition, a Registrant must also obtain a permit which is granted administratively as a condition precedent to placing any Facilities upon, along, under, and over the Public Rights of Way. The permit shall specify the areas of Public Rights of Way in which the Facilities may be installed.

B. A Communications Company that desires to place or maintain Facilities for use on or in the Public Rights of Way shall submit a Registration to the City for approval. At the time of Registration, the Communications Company must provide its name; the name, address and telephone number of a contact person for the Communications Company; the number of the Communications Company's current Certificate of Authorization issued by the Florida Public Service Commission, the Federal Communications Commission, or the Department of State; a statement of whether the Communications Company is a pass-through provider as defined in Section 337.401(6)(a) 1., Florida Statutes; the Communications Company's Federal Employer Identification Number; and any required proof of insurance or self-insuring status adequate to defend and cover claims. Any other person that desires to place or maintain Facilities for use on or in the Public Rights of Way shall apply to the City for a Franchise..

C. Notwithstanding any other provision of this Ordinance, a Cable Services provider must enter into a cable services Franchise Agreement with the City prior to providing Cable Services.

D. A Franchise or Registration does not in and of itself establish a right to place or maintain or a priority for the placement and maintenance of Facilities in Public Rights of Way but shall establish for the Franchisee or Registrant a right to apply for a permit. Franchises and Registrations are expressly subject to any future amendment to or replacement of this Ordinance and further subject to any additional Ordinances, as well as any state or federal Laws that may be enacted. Upon execution and City adoption of a Franchise Agreement or City approval of a Registration, and administrative issuance of a Permit, a Franchisee or Registrant, respectively, is granted a non-exclusive Franchise or Registration solely to construct, use, operate, and maintain Facilities necessary for the provision of services including, but not limited to, Communications Services upon, along, under, and over the Public Rights of Way of the City of Sarasota. In addition, a Franchisee, Registrant, or other Person must obtain any other applicable authorizations from the City pursuant to any other applicable Laws.

E. A Franchisee or Registrant shall assist the City in its efforts to regulate and manage the Public Rights of Way pursuant to its police power and shall respond in a timely fashion to all of the City's lawful requests for information concerning its Facilities.

F. Failure to comply with this Section shall constitute a material violation of this Ordinance and shall subject the Franchisee or Registrant to the appropriate Enforcement Remedies including revocation of the Franchise or cancellation of the Registration.

#### **Section 4. Terms and Limits of Franchise or Registration.**

The Grantor may grant a non-exclusive Franchise or Registration for a period ~~not to exceed~~ of five (5) years and such Franchise area or service area shall be enumerated in the Franchise or administrative permit issued subsequent to a Registration or shall be as set forth in the applicable Certificate of Public Convenience and Necessity (the "Certificate") issued by the Florida Public Service Commission for services provided pursuant to such Certificate. If no such area is enumerated in such administrative permit, Franchise or Certificate, or if such service provided by Franchisee or Registrant does not require a Certificate of Public Convenience and Necessity, the Franchise Area or service area shall constitute the entire area within the legal boundaries of the City and such other areas as may hereinafter be annexed or incorporated by the City during the term of the Franchise or Registration. The Registrant must, at all times during the term of the Registration, update any registration information provided to the City within ninety (90) days after a change in such information.

#### **Section 5. Franchise Fee Payments: Local Communications Services Tax Payments.**

A. In consideration for the rights, privileges and permission granted herein, a Franchisee shall pay to the City the Franchise Fees set forth in its Franchise Agreement. Unless otherwise set forth in the Franchise Agreement, in the event that applicable Law currently permits or is amended to permit the City to collect other fees including, but not limited to, Franchise Fees, charges or taxes in addition to or higher than that set forth in the Franchise, or permits the City to calculate such fees, charges, or taxes on revenues not specified therein, the Franchisee agrees to automatically increase its fees, charges, or taxes to the City to that higher amount on the effective date of such Law. Unless otherwise set forth in applicable Law, all of the aforesaid payments

shall be made to the City quarterly, with such payments made within thirty (30) days following the end of each calendar quarter. Payments received after the 31<sup>st</sup> day shall be subject to interest and late charges of 1 1/2% per month.

B. In consideration for the rights, privileges and permission granted herein, a Registrant shall pay the Local Communications Services Taxes as set forth in City of Sarasota Ordinance No. 01-4316 and in Chapter 2001-140, Laws of Florida. In the event that applicable Law currently permits or is amended to permit the City to collect other fees, charges or taxes in addition to or higher than that set forth in this Ordinance and the City of Sarasota Ordinance No. 01-4316 and Ordinance No. 18-5239, or permits the City to calculate such fees, charges, taxes or Local Communications Services Taxes on revenues not specified therein, the Registrant agrees to automatically increase its fees, charges, taxes or Local Communications Services Taxes to the City to that higher amount on the effective date of such Law. Unless otherwise set forth in applicable Law, all of the aforestated payments shall be made to the City quarterly, with such payments made within thirty (30) days following the end of each calendar quarter. Payments received after the 31<sup>st</sup> day shall be subject to interest and late charges of 1 1/2% per month.

C. Unless otherwise prohibited by applicable Law, if a Franchisee makes payments to another jurisdiction in Florida at a higher rate or calculates Franchise Fee payments on a broader base during the term(s) of the Franchise Agreement entered into with the City, the Franchisee agrees to pay to the City such higher amount.

D. Except to the extent prohibited by applicable Law: (a) The franchise fee payments to be made pursuant to this Section shall not be deemed to be in the nature of a tax; (b) Such franchise fee payments and Local Communications Services Taxes shall be in addition to any and all fees and taxes of a general applicability within the City or other fees or charges which a Franchisee or Registrant shall be required to pay to the City or to any state or federal agency or

authority as required herein or by applicable Law, all of which shall be separate and distinct obligations of a Franchisee or Registrant unless prohibited by applicable Law; (c) A Franchisee or Registrant shall not have or make any claim for any deduction or other credit of all or any part of the amount of said franchise fee payments or Local Communications Services Taxes payments from or against any of said City taxes or other fees or charges of general applicability which a Franchisee or Registrant is required to pay to the City, except as required by Law; and (d) The franchise fee specified herein is the minimum fair market value for the grant of a Franchise for use of the Public Rights of Way, including all public easements, and other entitlements to use, occupy or traverse public property, for the purpose of operating Facilities.

E. Notwithstanding anything to the contrary in addition to the aforestated Franchise fees and Local Communications Services Taxes, a Franchisee shall reimburse the City for all reasonable costs including, but not limited to, consultant costs, attorneys' fees, accounting fees, and engineering fees related to the grant, modification, transfer, or renewal of any Franchise. Therefore, upon submission of a request for the grant, modification, transfer or renewal of a Franchise Agreement, a Franchisee shall make a non-refundable payment to the City in the amount of ten thousand dollars (\$10,000.00). The Franchisee shall pay the actual cost of these enumerated fees which exceed ten thousand dollars (\$10,000.00) upon invoice by the City. The purpose of this filing fee is to defray the City's costs reasonably incurred in processing the request.

## **Section 6. Review and Inspection of Books and Records.**

A. The City may, at its option, upon ten (10) days' notice to the Franchisee, examine the records of operation and accounting files, and such other books and records, if such records relate to the calculation of Franchisee fee payments or any other payments due to the City, or to proper performance of any terms of a Franchise Agreement. The examination of such books, accounts, records or other materials necessary for determination of compliance with the terms,

provisions, and requirements of a Franchise Agreement shall be during regular hours of business of the Franchisee at an office of the Franchisee located within the City. In the event that the City determines that there exists a discrepancy in the amount paid and the amount owed to the City by the Franchisee in excess of 2%, Franchisee shall pay all reasonable costs, fees and expenses of the audit.

B. No later than June 30th of each year, a Franchisee shall provide the City an Annual Report concerning the previous calendar year that includes at minimum the following:

1. A financial statement, including a statement of income, and a statement of sources of revenues. The statement shall be audited if Franchisee has audited statements performed in its normal course of business. If not, the statement shall be certified by the Franchisee's chief financial officer or other duly authorized financial officer of the Franchisee. The statement shall include notes that specify all significant accounting policies and practices upon which it is based. A summary shall be provided comparing the current year with previous years since the beginning of the Franchise.

2. A copy of updated maps depicting the location of the Facilities, showing areas served and locations of all trunk lines and feeder lines in the City. Upon request by the City, such maps shall be provided to the City in digitized form, at Franchisee's expense and documents (collectively referred to as "Filings") submitted by or on behalf of the Franchisee to the FCC, SEC, FPSC or any other State or Federal agency, court or regulatory commission which Filings may impact the Franchisee's operation of the Franchisee's Facilities in the City or that may impact the City's rights or obligations under this Ordinance or a Franchise Agreement issued pursuant to this Ordinance and any and all responses, if any, to the above-mentioned filings.

3. Any and all notices of hearings, deficiency, forfeiture, or documents instituting any investigation, civil or criminal proceeding issued by any state or federal agency

regarding the Franchisee, any Affiliate of the Franchisee, the Franchisee's Facilities or the Franchisee's use of Facilities; provided, however, that any such notice or documents relating to an Affiliate of Franchisee need to be provided only to the extent the same may directly or indirectly affect or bear on Franchisee's operations in the City.

4. Any request for protection under bankruptcy Laws, or any judgment related to a declaration of bankruptcy.

5. Notwithstanding anything to the contrary, the Franchisee agrees to provide the City, within thirty (30) days of filing or receipt of such, any document that may adversely impact the construction, operation or maintenance of the Franchisee's Facilities or use of Facilities.

6. The City reserves the right to require any copies of filings that the Franchisee submits to the Florida Public Service Commission to the extent not expressly prohibited by applicable Law.

C. The City may perform audits and may provide evidence to the Department of Revenue demonstrating a Registrant's failure to fully or correctly report taxable Communications Services sales in accordance with Florida Statute 202.37. In any audit performed in accordance with Florida Statute 202.37, the City, in accordance with Florida Statute 202.37(c), shall be bound by Department of Revenue rules and technical assistance advisements issued during the course of the audit. This section shall not limit the authority the City has pursuant to any other applicable Law to audit the payments due by any dealer of Communications Services using or occupying the Public Rights of Way in the City.

D. In addition, the City may, at its option, and upon reasonable notice to the Franchisee, inspect the Franchisee or Registrant's Facilities or the Facilities that the Franchisee or Registrant uses in the City to ensure the safety of its residents.

E. The City agrees to keep any documentation, books and records of the Franchisee or Registrant confidential to the extent required under Florida Statutes.

**Section 7. Underground Installation: Relocation.**

A. Consistent with requirements imposed by the City on utility companies, a Franchisee or Registrant may install Facilities above ground in areas where existing utility facilities are above ground and shall install Facilities underground in areas where existing utility facilities are or will be installed underground.

B. Any Facilities heretofore or hereafter placed upon, under, over, or along any Public Right of Way that is found by the City to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion, of such Public Rights of Way, shall, upon thirty (30) days' written notice to the Franchisee or Registrant or its agent, be removed or relocated by such Franchisee or Registrant at its own expense except as explicitly provided under applicable Law.

C. Whenever an order of the City requires such removal or change in the location of any Facility from the Public Rights of Way, and the Franchisee or Registrant thereof fails to remove or change the same at its own expense to conform the order within the time stated in the notice, the City shall proceed to cause the Facility to be removed. The expense thereby incurred shall be paid out of any money available therefore, and such expense shall be charged against the owner of the Facility and levied and collected and paid to the City and shall not be offset against any other payments due.



D. Whenever it shall be necessary for the City to remove or relocate any Facility, the owner of the Facility, or the owner's agent, shall be given notice of such removal or relocation and an order requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than twenty (20) nor more than thirty (30) days in which to appear before the City Commission to contest the reasonableness of the order. Should the owner or the owner's representative not appear, the determination of the cost to the owner shall be final.

E. A final order of the City shall constitute a lien on any property of the owner and may be enforced by filing an authenticated copy of the order in the office of the Clerk of the Circuit Court of the County wherein the owner's property is located.

#### **Section 8. Use of Public Rights of Way.**

A. Franchisees and Registrants shall at all times comply with and abide by all applicable provisions of the state statutes, Applicable Codes, the City Code and local Laws including, but not limited to, applicable zoning regulations.

B. All of Franchisee and Registrant's Facilities shall be installed, located and maintained so as not to unreasonably interfere with the use of the Public Rights of Way by the traveling public and to cause minimum interference with the rights and convenience of property owners who adjoin any of the rights of way. The use of trenchless technology (i.e. directional bore method) for the installation of Facilities in the Public Rights of Way as well as joint trenching or the co-location of facilities in existing conduit is strongly encouraged, and should be employed wherever feasible. The City may issue such rules and regulations concerning the installation and maintenance of a Facility in the Public Rights of Way, as may be consistent with the applicable Law. Such rules and regulations may include, but are not limited to, reasonable requirements and restrictions with respect to height, width and diameter of said Facilities.

C. All safety practices required by applicable Law or accepted industry practices and standards shall be used during construction, maintenance, repair and operation of the Facilities.

D. The City reserves, without limitation, the right to place and maintain, and to permit others the right to place and maintain, sewer, gas, water, electric, storm drainage, communications facilities, other types of facilities, cables, conduit, and any improvements currently in or at a future date set forth in the City's zoning code, as that code may be amended from time to time, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in the Public Rights of Way occupied by a Franchisee or Registrant. The City further reserves, without limitation, the right to alter or change or cause to be altered or changed the grading, installation, relocation, or width of any Public Rights of Way. Upon reasonable notice by the City, a Franchisee or Registrant shall make any necessary removals, relaying and relocations of its Facilities at its own expense in accordance with Florida Statutes Chapter 337.

E. Franchisees and Registrants shall obtain any required permits and pay any required fees before commencing any construction on or otherwise disturbing any private property or Public Rights of Way as a result of the construction, operation, or modifications of its Facilities. Franchisees and Registrants acknowledge that as a condition of granting such permits, the City may impose reasonable rules or regulations governing the placement or maintenance of Facilities in the Public Rights of Way. Permits shall apply only to the areas of Public Rights of Way specifically identified in the permit. Franchisees and Registrants shall, at their own expense, restore such property to as good a condition as existed prior to Franchisee or Registrant's commencement of work. For twelve (12) months following the original completion of the work, the Franchisee or Registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this Ordinance at its own expense. If such

restoration is not performed in a reasonable and satisfactory manner within thirty (30) calendar days, the City may, after prior written notice to Franchisee or Registrant, cause the repairs to be made at Franchisee or Registrant's expense.

F. Franchisee or Registrant shall not place its Facilities so as to interfere with any other companies lawfully using the Public Rights of Way serving the residents of the City.

G. Franchisees and Registrants shall, at all times, comply with the City's zoning regulations now in effect or as may hereafter be amended.

H. To the extent not otherwise prohibited by federal or state Law, the City shall have the power to prohibit or limit the placement of new or additional Facilities within a particular area of the Public Rights of Way. The power of the City to prohibit or limit the placement of new or additional Facilities within a particular area of the Public Rights of Way shall include, but not be limited to, prohibiting the installation of Facilities, or directing that the installation of Facilities be underground, in or on Primary Grid Streets identified in the Comprehensive Plan or the Zoning Code, as ~~that Plan~~ may be amended from time to time. This is an effort of the City to improve the "walkability" of Primary Grid Streets and further efforts of the City shall include, but shall not necessarily be limited to, redesign, installation of streetscape improvements, and revisions to land development regulations intended to promote the pedestrian experience.

I. All ~~Small~~-Wireless Facilities shall use camouflage techniques which incorporate architectural treatment to conceal or screen their presence from public view through design to unobtrusively blend in aesthetically with the surrounding environment.

J. New and replacement Wireless Support Structures and Utility Poles that support Small Wireless Facilities shall match the style, design and color of the existing Utility Poles in the surrounding area. Further, all Wireless Support Structures and Utility Poles shall meet current safety standards in Applicable Codes.

K. Ground-based equipment boxes for ~~Small~~ Wireless Facilities must be located in areas with existing foliage or another aesthetic feature to obscure the view of the equipment box. Additional plantings may be required to meet this condition. Any new landscaping in Public Rights of Way must be approved by the City Engineer who may require a landscape maintenance agreement to be executed prior to approval.

L. With the exception of electric meters and disconnect switches, equipment such as back-haul components shall not be mounted on the exterior of the pole.

M. No exposed wiring or conduit is permitted in the Public Rights of Way.

N. The grounding rod may not extend above the top of sidewalk and must be placed in a pull box, and the ground wire between the pole and the ground rod must be inside an underground conduit.

O. All pull boxes must be vehicle load bearing, comply with FDOT Standard Specification 635 and be listed on the FDOT Approved Products List. A concrete apron must be installed along all pull boxes not located in the sidewalk. No new pull boxes may be located in pedestrian ramps.

P. In connection with excavation in the Public Rights of Way, a Franchisee or Registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes (~~2000~~) (~~2017~~) (2019) as it may be amended.

Q. The City hereby adopts by reference and incorporates herein the Florida Department of Transportation Utility Accommodation Manual dated July 30, 2017, as may be amended from time to time. All Franchisees and Registrants shall comply with all provisions of the Florida Department of Transportation Utility Accommodation Manual which are applicable. The City Engineer shall determine which provisions of the Florida Department of Transportation Utility Accommodation Manual are applicable and the decision of the City Engineer shall be final.

R. Franchisees and Registrants shall use and exercise due caution, care and skill in performing work in the Public Rights of Way and shall take all reasonable steps to safeguard work site areas.

S. Upon request of the City, and as notified by the City of other work, construction, installation or repairs, a Franchisee or Registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject Public Rights of Way, and the Franchisee or Registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the Public Rights of Way.

T. A Franchisee or Registrant shall not place or maintain its Facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the City or any other Person's facilities lawfully occupying the Public Rights of Way.

U. The City makes no warranties or representations regarding the fitness, suitability, or availability of City's Public Rights of Way for the Franchisee's or Registrant's Facilities and any performance of work, costs incurred or services provided by Franchisee or Registrant shall be at Franchisee or Registrant's sole risk. Nothing in this Ordinance shall affect the City's authority to add, vacate or abandon Public Rights of Way, and City makes no warranties or representations regarding the availability of any added, vacated or abandoned Public Rights of Way for Facilities.

V. The City shall have the right to make such inspections of Facilities placed or maintained in Public Rights of Way as it finds necessary to ensure compliance with this Ordinance.

W. A Registrant must obtain a right-of-way permit for work or restoration which involves excavation, closure of a sidewalk, or closure of a vehicular lane or parking lane. A permit is not

required if the Registrant is performing such service solely for restoration to existing Facilities and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. The Registrant must provide notice of such work to the City within thirty (30) days after restoration, and the Registrant will be required to obtain an after-the-fact permit for work which would otherwise have required a permit. A permit application to place a new or replace an existing Facility in Public Rights of Way shall include plans showing the location of the proposed installation of Facilities in the Public Rights of Way as necessary to avoid interference with other Facilities within fifty (50) feet. The application shall include photographs and graphic or simulated renderings. Specifically, color photographs from four (4) equally separated directions (north, south, east and west) clearly showing the nature and location of the site where each Facility proposed to be located shall be provided. Additionally, color photographs showing the location and condition of properties adjacent to the site of each proposed new Facility and true to scale graphic depictions or simulated renderings in color accurately representing the visual impact of same when viewed from the street and from adjacent properties from four (4) equally separated directions (north, south, east and west) shall be provided. If the plans so provided require revision based upon actual installation, the Franchisee or Registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the City, provided such electronic format is maintained by the Franchisee or Registrant. Such plans in a format maintained by the Franchisee or Registrant shall be provided at no cost to the City. This Subsection W shall not be interpreted as requiring a Registrant to obtain a permit for the maintenance, repair, replacement, extension or upgrading of existing aerial wireline communications facilities on utility poles or for aerial wireline facilities between existing wireline communication facility attachments on utility poles. This Subsection W shall not be interpreted as requiring a Registrant to obtain a permit for routine maintenance, the performance of service

restoration work on existing Facilities, or repair work including, but not limited to, emergency repairs of existing Facilities or extensions of such Facilities for providing communications services to customers; for replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or for installation, placement, maintenance or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with Applicable Codes.

X. A Franchisee or Registrant shall, on the request of any Person holding a permit issued by the City, temporarily raise or lower its Facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of Facilities shall be paid by the Person requesting the same, and the Franchisee or Registrant shall have the authority to require such payment in advance.

Y. The City may suspend a permit for work in the Public Rights of Way for one or more of the following reasons: (1) violation of permit conditions, including conditions set forth in the permit, this Ordinance or other applicable Law; (2) misrepresentation or fraud by Franchisee or Registrant in a Franchise or Registration or permit application to the City; (3) failure to properly renew or ineffectiveness of the Franchise, Registration, or permit; or (4) failure to relocate or remove Facilities as may be lawfully required by the City. The City Manager shall provide notice and an opportunity to cure any violation in this Section 8(Y).

**Section 9. Requirements for New Communications Facilities, Utility Poles, Wireless Facilities, and Wireless Support Structures.**

A. *Permits Required.* New Communications Facilities, Utility Poles, Wireless Facilities, and Wireless Support Structures in Public Rights-of-Way shall meet the following permitting requirements:

1. All new Communications Facilities, Utility Poles, Wireless Facilities, and Wireless Support Structures shall be located to avoid any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians, bicyclists or motorists.

2. The separation distance between the ground mounted components of new and existing Communication Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures shall be a minimum of 120 feet.

3. New Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures shall avoid being placed in a Public Rights-of-Way of an Open Space, Recreation and Conservation (POS or MP) or Residential (RSF, RSM, RTD, or RMF) Zone District, as defined in the Zoning Code, to the greatest extent possible. An Applicant shall demonstrate through an engineering analysis why it is unable to locate new Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures outside an Open Space, Recreation and Conservation or Residential Zone District.

4. New Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures shall be located on Interstate Connector, Collector Roadways and Arterial Roadways to the greatest extent possible. An applicant shall demonstrate through an engineering analysis why it is unable to locate the proposed Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures in such areas instead of on Local Roadways.

5. New Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures shall maintain a clear zone from the back-of-curb to the inward edge of a Communications Facility, Utility Pole, Wireless Facility or Wireless Support Structure. Unless otherwise determined by the City Engineer, new Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures must be placed in the Amenity Zone as defined by the



ITE's *Designing Walkable Urban Thoroughfares: A Context Sensitive Approach*, but no closer to the road than 1.5 feet from the face of curb. Otherwise, new Communications Facilities, Utility Poles, Wireless Facilities, and Wireless Support Structures must be placed as close to the right of way line as possible. A five (5) foot pedestrian clear zone must be maintained. In high pedestrian areas, as determined by the City Engineer, an eight (8) foot pedestrian clear zone must be maintained to the greatest extent possible. New Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures must not be placed so as to require pedestrians to deviate from their natural path.

6. New Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures shall be located at least ten (10) feet from a driveway and at least thirty (30) feet from the center of existing trees with matured diameter of eight (8) inches or greater.

7. The size and height of new Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures in the Public Rights of Way shall be no greater than the maximum size and height of any other Utility Pole located in the Public Rights of Way within 500 feet of the proposed structure. If there are no Utility Poles within 500 feet of the proposed structure, the proposed height shall be no greater than 50 feet.

8. New Small Wireless Facilities shall be limited to the height of 10 feet above the Utility Pole or structure upon which the Small Wireless Facility is to be collocated.

9. New Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures shall be placed along Common Side-Lot Lines and not in front of residences, buildings or places of business.

~~10. New Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures shall be collocated on existing Utility Poles or Facilities to the greatest extent~~

~~possible. Consequently, any applicant for a new proposal to construct a new Communications Facility, Utility Pole, Wireless Facility or Wireless Support Structure must first demonstrate why the services cannot be Collocated on an existing Communications Facility, Wireless Facility, Wireless Support Structure or Utility Pole in the Public Rights of Way. An applicant shall demonstrate through an engineering analysis why it is unable to collocate the proposed Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures instead of installing new Facilities.~~

~~11.~~ 10. New Communications Facilities, Utility Poles, Wireless Facilities and Wireless Support Structures are prohibited within sidewalk café areas which have received a sidewalk café permit from the City.

~~12.~~ 11. Wireless Facilities, other than Small Wireless Facilities and Micro Wireless Facilities, are prohibited within the Public Rights of Way.

~~13.~~ 12. Wireless Facilities are prohibited on arms used to support or mount traffic control signals and warning signals and on arms attached to Utility Poles.

~~14.~~ 13. Wireless Facilities are prohibited on Utility Poles or similar structures fifteen (15) feet or less in height unless incorporated into and hidden in the pole under a top mounted street light in a design substantially similar to the acorn lights in the City.

~~15.~~ 14. Wireless Facilities shall not interfere with electrical lines, cable lines or their associated equipment. For public safety, Wireless Facilities shall be at least twenty (20) feet away from energized electrical distribution lines. Micro Wireless Facilities shall not be on cables strung between existing Utility Poles without the express written permission from the owner of the Utility Poles.

**Section 10. Permitting Procedures for New Small Wireless Facilities and Utility Poles.**

A. A Registrant seeking to collocate Small Wireless Facilities within the Public Rights of Way may, at the Registrant's discretion, file a consolidated application and receive a single permit for the collocation of up to thirty (30) Small Wireless Facilities. If the application includes multiple Small Wireless Facilities, the City may separately address Small Wireless Facility Collocations for which incomplete information has been received or which are denied.

B. Within fourteen (14) days after receiving an application for placement of Small Wireless Facilities or new Utility Poles in Public Rights of Way, the City shall notify the Registrant as to whether the application is complete. If an application is deemed incomplete, the City must specifically identify the missing information. An application is deemed complete if the City fails to provide notification to the Registrant within fourteen (14) days after receipt of the application. A complete application is deemed approved if the City fails to approve or deny the application within sixty (60) days after receipt of the application.

C. Within fourteen (14) days after receipt of filing of an application for placement of Small Wireless Facilities or new Utility Poles in the Public Rights of Way, the City may request that the proposed location be moved to another location in the Public Rights of Way and placed on an alternative Utility Pole or support structure or upon a new Utility Pole. The City and the Registrant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment for thirty (30) days after the date of this request. At the conclusion of the negotiation period, if the alternative location is accepted by the Registrant, the Registrant must notify the City of such acceptance, and the application may be deemed granted for any new location for which there is agreement and all other locations in the application. If an agreement is not reached, the Registrant must notify the City of such non-

agreement, and the City must grant or deny the original application within ninety (90) days after the date of filing of the original application.

D. The City shall approve a complete application for placement of Small Wireless Facilities or new Utility Poles in the Public Rights of Way unless said application does not meet the City's Applicable Codes. If an application is denied, the City must specify in writing the basis for denial, including the specific code provisions on which the denial was based and send the documentation to the Registrant by electronic mail on the day the City denies the application. The Registrant may cure the deficiencies identified by the City and resubmit the application within thirty (30) days after notice of the denial is sent to the Registrant. The City shall approve or deny the revised application within thirty (30) days after receipt or the application is deemed approved. Any subsequent review is limited to the deficiencies cited in the denial.

E. The City may deny a proposed collocation of a Small Wireless Facility or new Utility Pole in the Public Rights of Way if the proposed collocation or new Utility Pole:

1. materially interferes with the safe operation of traffic control equipment.
2. materially interferes with sight lines or clear zones for transportation, pedestrians or public safety purposes.
3. materially interferes with compliance with the Americans with Disabilities Act or similar Federal or State standards regarding pedestrian access or movement.
4. materially fails to comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, or
5. fails to comply with Applicable Codes, including the objective design standards authorized by Section 337.401(7)(r), Florida Statutes, and including the City of Sarasota Rights of Way Use Ordinance, as amended.

F. A Registrant may apply to the City to place Utility Poles in the Public Rights of Way to support the collocation of Small Wireless Facilities. The application must include an attestation that the Small Wireless Facilities will be collocated on the Utility Pole or structure and will be used by a wireless service provider to provide service within nine (9) months after the date the application is approved. Such an application shall be processed by the City pursuant to this Section 10.

G. A Registrant may apply to the City to collocate a Small Wireless Facility on a City Utility Pole which does not support an aerial facility used to provide communication services or electric service. The City will require a Registrant seeking to collocate a Small Wireless Facility on such a City Utility Pole to provide a make-ready estimate at the Registrant's expense as to the work necessary to support the Small Wireless Facility, including Utility Pole replacement, and perform the make-ready work within sixty (60) days of permit issuance. If pole replacement is required, the scope of the make-ready work estimate shall be limited to the design, fabrication and installation of a Utility Pole that is substantially similar in color and composition. Such an application shall be processed by the City pursuant to this Section 10.

H. A permit issued by the City pursuant to this Section 10 shall remain in effect for a period of one (1) year unless extended by the City.

I. All correspondence from the City to a Registrant for a permit pursuant to this Section 10 shall be in writing and provided by electronic mail.

**Section 11. Written Acceptance by the Franchisee or Registrant.**

A Franchisee or Registrant shall, within ten (10) days prior to the effective date of a Franchise, or as part of its registration documentation, provide an executed acknowledgment of the binding effect of the terms and conditions of this Ordinance and the Registration to the Deputy City Manager in the form designated by the City. Such acknowledgment shall be executed by a

duly authorized officer of the Franchisee or Registrant and shall represent a portion of the Franchise Agreement between the Franchisee and the City of Sarasota or a portion of the Registration with the City of Sarasota, respectively.

**Section 12. Compliance with Other Laws: Police Power.**

Franchisee and Registrant shall at all times be subject to and shall comply with all applicable Laws. Franchisee and Registrant shall at all time be subject to all lawful exercises of the police power of the City.

**Section 13. Transfer of Control: Sale or Assignment.**

A. A Franchisee or Registrant shall not sell, assign, delegate or otherwise transfer any portion of its Facilities to another, nor transfer or assign any rights or delegate any duties under a Franchise Agreement or Registration to another without the prior written approval of the City Commission, which shall not be unreasonably withheld or denied, and which shall be granted once the following conditions are satisfied. Requests for sale, assignment, delegation, transfer or the like shall be filed in the office of the City Manager and shall include: 1) a statement that the Assignee or the Transferee shall comply with the terms and conditions of this Ordinance and shall operate pursuant to the applicable Franchise Agreement or Registration and agrees to be bound by each and every one of the terms and provisions thereof; 2) proof that the Assignee or Transferee has met the insurance and indemnification requirements of this Ordinance and any Franchise Agreement or Registration; and 3) proof that the Assignee or Transferee has complied with all Laws with regard to the transfer of or obtaining a Certificate of Public Convenience and Necessity. If the rights granted herein are transferred or assigned by a Franchisee or Registrant to any third-party incident to a transfer, sale or assignment of the Franchisee or Registrant's Facilities, the transferee or assignee shall be obligated to comply with all of the terms and conditions of this Ordinance and

any applicable Franchise Agreement or Registration. In the event of a merger, both entities must be a Registrant or Franchisee in full compliance with this Ordinance.

B. Requests for approval of a proposed transfer, sale or assignment of a Franchise shall be accompanied by a payment of one hundred fifty dollars (\$150.00) to cover the City's administrative costs in processing the sale, assignment, delegation or transfer.

**Section 14. Insurance: Surety; Indemnification.**

A. A Franchisee or Registrant shall maintain, and by its acceptance of the Franchise Agreement or Registration specifically agrees that it will maintain throughout the entire term of the Franchise or Registration including any renewals thereof, the following liability insurance coverage insuring the Franchisee or Registrant and naming the City as an additional insured: worker's compensation and employer liability insurance to meet all requirements of Florida Law, automobile liability, and general comprehensive liability insurance with respect to the construction, operation and maintenance of the Facilities, and the conduct of Franchisee or Registrant's business in the City, in the minimum amounts of:

1. \$1,000,000 for property damages in any one accident;
2. \$2,000,000 for personal bodily injury to any one person; and
3. \$3,000,000 for personal bodily injury in any one accident.

B. All insurance policies shall be with sureties qualified to do business in the State of Florida and shall be with sureties with a minimum rating of A-I in Best's Key Rating Guide, Property/Casualty Edition. The City may require coverage and amounts in excess of the above minimums where necessary to reflect changing liability exposure and limits or where required by Law.

C. A Franchisee or Registrant shall keep on file with the City certificates of insurance which certificates shall indicate evidence of payment of the required premiums and shall indicate that the City, its officers, boards, commission, commissioners, agents and employees are listed as additional insureds. In the event of a potential claim such that the City claims insurance coverage, Franchisee or Registrant shall immediately respond to all reasonable requests by the City for information with respect to the scope of the insurance coverage.

D. All insurance policies shall name the City as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days prior written notice thereof has been given to the City. A Franchisee or Registrant shall not cancel any required insurance policy without submission of proof that the Franchisee or Registrant has obtained alternative insurance satisfactory to the City which complies with this Ordinance.

E. A Franchisee or Registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgements for damages or equitable relief, and costs and expenses arising out of the construction, maintenance or operation of its Facilities, the conduct of Franchisee or Registrant's business in the City, or in any way arising out of the Franchisee or Registrant's enjoyment or exercise of a Franchise or Registration granted hereunder, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance or a Franchise Agreement or Registration, provided, however, that Franchisee or Registrant's obligation hereunder shall not extend to any claims caused by the sole negligence of the City, its officials, boards, commissions, commissioners, agents or employees. The Registrant will not be required to indemnify the City for liabilities which were not caused by the Registrant. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings; and



claims arising out of copyright infringements or a failure by the Franchisee or Registrant to secure consents from the owners, authorized distributors, or providers of services, and claims against the Franchisee or Registrant for invasion of the right or privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark or patent, or of any other right of any person, firm, or corporation. Notwithstanding the foregoing, a Franchisee or Registrant may select counsel to represent the City in any action in which the City seeks indemnification. City agrees to notify Franchisee or Registrant, in writing, within ten (10) days of the City receiving notice, of any issue it determines may require indemnification. Nothing in this Section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Section shall be construed or interpreted: (a) as denying to either party any remedy or defense available to such party under the Laws of the State of Florida; or (b) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes (~~2017~~) (2019), as it may be amended.

#### **Section 15. Security Fund.**

A. A Franchise Agreement or Registration shall provide that prior to the Franchise Agreement becoming effective, or prior to the City's approval of a Registration, the Franchisee or Registrant shall post with the City a security fund. Such fund may be in the form of a cash deposit, letter of credit, corporate guarantee, indemnity bond or surety bond as determined by the City in its sole discretion. The security fund will be used to ensure the Franchisee or Registrant's faithful performance of and compliance with all provisions of this Ordinance, the Franchise Agreement or Registration, and other applicable Law, and compliance with all orders, permits and directions of the City, and the payment by the Franchisee of any claims, liens, fees or taxes due the City which arise by reason of the construction, operation or maintenance of the Facilities. The amount of the

security fund shall be no less than twenty-five thousand dollars (\$25,000.00) which is the minimum amount that the City determines is necessary to protect the public, to provide adequate incentive to the Franchisee or Registrant to comply with this Ordinance and the Franchise Agreement or Registration, and to enable the City to effectively enforce compliance therewith. The amount of the security fund may be increased in a Franchise Agreement or Registration in the City's sole discretion based on factors including, but not limited to, written recommendations from other local franchising authorities that regulate the Franchisee or Registrant and the Franchisee or Registrant's compliance and/or noncompliance with the regulations promulgated by other franchising authorities. In the event a Franchisee or Registrant fails to perform its duties and obligations imposed upon the Franchisee or Registrant by the provisions of this Ordinance, there shall be recoverable, jointly and severally, from the principal and surety of the Security Fund, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any Facilities of the Franchisee or Registrant in the Public Rights of Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the Security Fund. The Franchise Agreement or Registration shall provide for the procedures to be followed with respect to the security fund. Neither the posting of the cash deposit or filing of an indemnity bond or any form of surety bond with the City, nor receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Franchisee or Registrant or limit the liability of the Franchisee or Registrant under the terms of its Franchise or Registration for damages, either to the full amount of the bond or otherwise.

B. The rights reserved to the City with respect to the security fund or an indemnity bond are in addition to all other rights of the City, whether reserved by this Ordinance or authorized by other Law or the Franchise Agreement or Registration, and no action, proceeding or exercise of a

right with respect to such security fund or indemnity bond will affect any other right the City may have.

**Section 16. Construction Bond.**

A. A Franchise agreement or Registration shall provide that prior to performing any work in the Public Rights of Way, a Franchisee or Registrant shall establish in the City's favor a construction bond in an amount specified in the Franchise Agreement or Registration or other authorization as necessary to ensure the Franchisee or Registrant's faithful performance of the construction, upgrade, rebuild or other work. The amount of the construction bond shall be no less than Fifty Thousand Dollars (\$50,000.00). The amount of the construction bond may be increased in a Franchise Agreement or Registration in the City's sole discretion based on the amount and the value of the construction to take place in the Public Rights of Way. A Franchisee or Registrant which performs numerous maintenance and construction activities may post a blanket surety bond to cover all work activities performed within the public rights of way. The amount of the blanket surety bond shall be no less than Seventy-Five Thousand Dollars (\$75,000.00).

B. In the event a Franchisee or Registrant subject to such a construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the Franchise Agreement or Registration, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Franchisee or Registrant, or the cost of completing the work, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against the security fund pursuant to Section 15 hereof where such amount exceeds that available under the security fund.

C. A Franchise Agreement or Registration may specify that ~~six (6)~~ eighteen (18) months after the completion of the construction of the Facilities and payment of all construction obligations to the satisfaction of the City, the City may eliminate the bond. However, the City may subsequently require a new bond for any subsequent work in the Public Rights of Way.

D. The construction bond shall be issued by a surety having a minimum rating of A-I in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City Attorney; and shall provide that:

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

E. The rights reserved by the City with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the City may have under this Ordinance, a Franchise Agreement or Registration, or at Law or equity.

F. When a Franchise or Registration terminates for reasons including, but not limited to, revocation, any security will be maintained by the Franchisee or Registrant for one (1) year from the date of termination and the remaining fund will be returned to Franchisee or Registrant one (1) year from the termination date of the Franchise or Registration, provided there is no outstanding default or unpaid amounts owed to the City by Franchisee or Registrant.

G. The rights reserved to the City under this section are in addition to all other rights of the City, whether reserved in this Ordinance, Franchisee Agreement, or Registration, or authorized by other Law, and no action, proceeding or exercise of a right with respect to the security fund will affect any other right the City may have.

**Section 17. Enforcement Remedies.**

A. In addition to other remedies available at Law or equity or provided in this Ordinance, or in any Franchise Agreement or Registration, failure by a Franchisee or Registrant to comply with any of the provisions, terms and conditions of a Franchise Agreement or Registration granted hereunder may result in a revocation of the Franchise or cancellation of the Registration, or, in the alternative, at the discretion of the City, the City may impose liquidated damages for any violation by a Franchisee or Registrant of this Ordinance, a Franchise Agreement, or Registration, or Law applicable to users and/or occupants of the Public Rights of Way, which damages may be difficult to quantify but shall be determined in an amount no less than One Hundred Dollars (\$100.00) per day per violation.

B. Before imposing a fine pursuant to Section 17 herein, the City shall give a Franchisee or Registrant written notice of the violation and its intention to assess such damages, which notice shall contain a description of the alleged violation. Following receipt of such notice, Franchisee or Registrant shall have ten (10) days to cure the violation and the City shall make good faith reasonable efforts to assist the Franchisee or Registrant in resolving the violation. If the violation is not cured within that ten (10) day period, the City may collect all fines owed, beginning with the first day of the violation, either by removing such amount from the Security Fund or through any other means allowed by Law.

C. In addition to any other remedies available at Law or equity or provided in this Ordinance or in any Franchise Agreement or Registration, the City may apply any one or combination of the following remedies in the event a Franchisee or Registrant violates this Ordinance, its Franchise Agreement or Registration, or applicable Law:

1. Franchisee or Registrant's failure to comply with Sections 3(A), (B) and (C) herein shall result in imposition of liquidated damages to be paid by the Franchisee or Registrant to

the City in an amount of not less than One Thousand Dollars (\$1,000.00) per day or part thereof that the violation continues.

2. Revoke the Franchise or cancel the Registration pursuant to the procedures specified in Section 18 hereof.

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

D. In determining which remedy or remedies are appropriate, the City shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City determines are appropriate to the public interest.

E. Failure of the City to enforce any requirements of a Franchise Agreement or Registration or this Ordinance shall not constitute a waiver by the City of the right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

F. In any proceeding wherein there exists an issue with respect to a Franchisee or Registrant's performance of its obligations pursuant to this Ordinance, a Franchisee or Registrant has, throughout any such proceedings and appeals thereof, the burden of proving that said Franchisee or Registrant is in compliance with the terms of the Ordinance. The City Commission may find that a Franchisee or Registrant that does not demonstrate compliance with the terms and conditions of this Ordinance is in default and apply any one or combination of the remedies otherwise authorized by this Ordinance.

**Section 18. Revocation or Termination of Franchise or Cancellation of Registration.**

A. A Franchise may be revoked or a Registration may be cancelled by the City Commission for a Franchisee or Registrant's failure to construct, operate or maintain its Facilities as required by this Ordinance or the Franchise Agreement or Registration, or for any other material

violation of this Ordinance or material breach of the Franchise Agreement or Registration or material violation of applicable Law. To invoke the provisions of this Subsection A, the City shall give the Franchisee or Registrant written notice, by certified mail at the last known or registered address, that Franchisee or Registrant is in material violation of this Ordinance or material breach of the Franchise Agreement or Registration and describe the nature of the alleged violation or breach with specificity. If within thirty (30) calendar days following receipt of such written notice from the City to the Franchisee or Registrant, the Franchisee or Registrant has not cured such violation or breach, or has not commenced corrective action and such corrective action has not been actively and expeditiously pursued, the City may give written notice to the Franchisee or Registrant of its intent to revoke the Franchise or cancel the Registration, stating its reasons.

B. Prior to revoking a Franchise or canceling a Registration under Subsection A hereof, at a Franchisee or Registrant's request, the City Commission shall hold a public hearing, upon thirty (30) days' calendar notice, at which time the Franchisee or Registrant and the public shall be given an opportunity to be heard. If such request for a public hearing is not filed by a Franchisee or Registrant within thirty (30) days of the date of the final, written decision issued pursuant to Section 18(A), then the right to a public hearing is waived. Following the public hearing, or if the Franchisee or Registrant fails to request a public hearing then following the provision of written notice to the Franchisee or Registrant, the City Commission may determine whether to revoke the Franchise or cancel the Registration based on evidence presented at the hearing, and other evidence of record, or if no public hearing is held then based on evidence of record. If the City Commission determines to revoke a Franchise or cancel a Registration, it shall issue a decision setting forth the reasons for its decisions. A copy of such decision shall be transmitted to the Franchisee or Registrant.



C. Notwithstanding Subsections A and B hereof, any Franchise Agreement or Registration may, at the option of the City following a public hearing before the City Commission, be revoked or cancelled one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee or Registrant, whether a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding unless within the one hundred twenty (120) day period: (1) such assignment, receivership, or trusteeship has been vacated; or (2) such assignee, receiver, or trustee has fully complied with the terms and conditions of this Ordinance and Franchise Agreement or Registration and has executed an agreement, approved by a court of competent jurisdiction, to be bound by the terms and conditions of this Ordinance and the Franchise Agreement or Registration.

D. In the event of foreclosure or other judicial sale of any of the Facilities or other property of a Franchisee or Registrant, the City may revoke the Franchise or cancel the Registration, following a public hearing before the City Commission, by serving notice upon the Franchisee or Registrant of the successful bidder at the sale, in which event the Franchisee and all rights and privileges of the Franchisee will be revoked and will terminate thirty (30) calendar days after serving such notice, unless: (1) the City has approved the transfer of the Franchise or Registration to the successful bidder; or (2) the successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise Agreement or Registration and this Ordinance.

E. If the City revokes the Franchise or Registration, or for any other reason a Franchisee or Registrant abandons, terminates or fails to operate or maintain service to its subscribers for a period of six (6) months, the following procedures and rights are effective: (1) the City may require the former Franchisee or Registrant to remove its Facilities at the former



Franchisee or Registrant's expense; if the former Franchisee or Registrant fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee or Registrant's and/or surety's expense; or (2) if the Facilities are abandoned by a Franchisee or Registrant, the City may sell, assign, or transfer all or part of the Facilities subject to the limitations set forth in Section 20 herein or in any Franchise Agreement or Registration.

F. Where the City has issued a Franchise Agreement or approved a Registration specifically conditioned upon the completion of construction, system upgrade or other specific obligations by a specified date, failure of the Franchisee or Registrant to complete such construction or upgrade will result in the automatic forfeiture of the Franchise or cancellation of the Registration without further action by the City where so provided in the Franchise Agreement or Registration, unless the City, at its discretion, pursuant to good cause demonstrated by the Franchisee or Registrant, extends such time limit for a specified period of time.

G. Except as provided in Subsections B and F herein, no adverse action against the Franchisee or Registrant may be taken by the City, pursuant to this Section, without notice and a public hearing at which the Franchisee or Registrant is given an opportunity to participate.

#### **Section 19. Renewal of Franchise or Registration.**

A. Upon receipt of a renewal application, the City Commission shall consider the renewal application at a public meeting at which the City Commission will either: (1) agree to renew the Franchise or Registration, subject to negotiation of a Franchise Agreement satisfactory to the City and the Franchisee or subject to the Registration being accurate, complete, and updated in the opinion of the City, respectively; or (2) determine that the Franchise shall not be renewed or that the Registration shall not be extended.

B. The City reserves the right to consider any and all violations of federal, state, and local Law, Applicable Codes and any and all violations of this Ordinance or of a Franchise or

Registration granted pursuant to such Ordinance in determining whether or not to grant the renewal of a Franchise or extension of a Registration.

C. If the City Commission grants a renewal or extension, the City and the Franchisee shall agree on the terms of the Franchise agreement before such renewal becomes effective or the City and the Registrant shall agree that the Registration is accurate, complete, and updated before such extension becomes effective.

D. If a renewal of a Franchise or extension of a Registration is lawfully denied, the City may acquire ownership of the Facilities or effect the transfer of the ownership of the Facilities to another person upon approval by the City Commission subject to the limitations set forth in Section 20 herein and in any Franchise Agreement or Registration. The City may not acquire ownership of the Facilities during an appeal of a denial for renewal.

E. If a renewal of a Franchise or extension of a Registration is lawfully denied and no appeal to a court is pending, and the City does not purchase the Facilities or effect the transfer of the Facilities to another person, the City may require the former Franchisee or Registrant to remove its Facilities at the former Franchisee's or Registrant's expense. If the former Franchisee or Registrant fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's or Registrant's or surety's expense.

**Section 20. Municipal Ownership of Facilities.**

A. Upon the revocation, termination, or nonrenewal of a Franchise or the cancellation, termination, or nonrenewal of a Registration, unless otherwise provided in a Franchise Agreement or Registration in accordance with Section 20(B) below, the City shall have the right and privilege, at its option, to purchase the Facility hereby authorized, or other property used under or in connection with the Franchise granted or Registration herein, or such part of such property as

the City may desire to purchase at a valuation of the property real and personal which shall represent the fair market value.

B. A Franchise Agreement or Registration may provide that an entity other than the City has the first option to purchase or to receive in a transfer agreement the Facility in the event that a Franchise Agreement or Registration is revoked, terminated, or not renewed. Any such entity granted a first option to purchase or receive the Facility must agree in writing on or before the effective date of the purchase or transfer that it agrees to be bound by all terms and conditions of the Ordinance and any Franchise or Registration granted pursuant to this Ordinance and all applicable Law. Any such entity granted a first option to purchase or to receive the Facility must obtain all necessary franchises, permits, certificates, licenses and other authorizations required by applicable Law prior to purchasing or receiving the Facilities. The first option to purchase or to receive the Facility shall be null and void if the option holder does not fulfill all obligations under this Ordinance, a Franchise Agreement, and all Laws applicable to users and occupants of the Public Rights of Way.

C. The City hereby reserves any and all rights not otherwise expressly prohibited by applicable Law to exercise its authority to establish the terms and conditions including, but not limited to, fees and taxes, with respect to a Franchisee or Registrant's construction, maintenance, operation, or provision of any equipment, facilities or service not expressly granted hereunder.

**Section 21. Existing Facilities in Public Rights of Way.**

To the full extent permitted by state and federal Law, any Person with existing Facilities in the Public Rights of Way of the City has sixty (60) days from the Effective Date of this Ordinance to comply with the terms of this Ordinance including, but not limited to, those terms with regard to registration, or be in violation hereof.

**Section 22. Force Majeure.**

In the event a Franchisee or Registrant's performance of or compliance with any of the provisions of this Ordinance or a Franchise Agreement or Registration is prevented by a cause or event not within the Franchisee or Registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof, provided, however, that Franchisee or Registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance and any Franchise Agreement or Registration granted or renewed hereunder, causes or events not within a Franchisee or Registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within Franchisee or Registrant's control, and thus not falling within this Section, shall include, without limitation, a Franchisee or Registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Franchisee or Registrant's directors, officers, employees, contractors or agents.

**Section 23. Repeal of Conflicting Ordinances.**

That ordinances or part of ordinances, and all resolutions or part of resolutions in conflict herewith be and the same are hereby repealed the extent of such conflict.

**Section 24. Savings.**

All fees, charges and financial obligations previously accrued pursuant to any ordinances and resolutions repealed pursuant to Section 23 above shall continue to be due and owing until paid.

**Section 25. Severability.**

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 26. Reservation of Rights.**

A. Both the City and any Franchisee or Registrant reserve and may seek any and all remedies available under applicable Law. Neither the City nor any Franchisee or Registrant shall be deemed to have waived any rights or remedies available under applicable Law by virtue of accepting a Franchise Agreement or accepting a Registration pursuant to this Ordinance.

B. The City reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.

C. This Ordinance shall be applicable to all Facilities placed in the Public Rights of Way on or after the effective date of this Ordinance and shall apply to all existing Facilities in the Public Rights of Way prior to the effective date of this Ordinance, to the full extent permitted by state and federal Law.

D. Any additional regulations adopted by the City that are applicable to an entity erecting, constructing, maintaining or operating Facilities in the Public Rights of Way shall be incorporated into this Ordinance and complied with by all Franchisees and Registrants within thirty (30) days of the date of adoption of such additional regulations unless imposition of such regulations would be otherwise prohibited by applicable Law.

E. The adoption of this Ordinance is not intended to affect any rights or defenses of the City or a Communications Services provider under any existing franchise, license or other agreements.


F. Any Person who uses the Facilities of a Franchisee or Registrant, other than the Franchisee or Registrants that owns the Facilities, shall not be entitled to any rights to place or maintain such Facilities in excess of the rights of the Franchisee or Registrant that places or maintains the Facilities in the Public Rights of Way.



**Section 27. Effective Date.**

The Effective Date of this Ordinance is ~~April 16, 2018.~~ April 6, 2020.

PASSED on first reading by title only, after posting on the bulletin board at City Hall for at least three (3) days prior to first reading, as authorized by Article IV, Section 2, Charter of the City of Sarasota, Florida this 2<sup>nd</sup> day of March, 2020.

PASSED on second reading and finally adopted this 16<sup>th</sup> day of March, 2020.

  
\_\_\_\_\_  
Jen Ahearn-Koch  
Mayor

 **ATTEST:**  
  
\_\_\_\_\_  
Shayla Griggs  
City Auditor and Clerk

Yes Mayor Jen Ahearn-Koch  
Yes Vice Mayor Shelli Freeland Eddie  
Yes Commissioner Liz Alpert  
Yes Commissioner Hagen Brody  
Yes Commissioner Willie Charles Shaw