

**MANAGEMENT, ADMINISTRATION AND CONTROL OF THE  
USE OF THE CITY’S PUBLIC RIGHTS-OF-WAY**

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§ A FINDINGS AND PURPOSE.

(1) The City of Barberton, Ohio (the “City”) is concerned with the use of all Rights-of-Way in the City as such Rights-of-Way are valuable and limited resources.

(2) Changes in the public utilities and communications industries have increased the demand and need for access to Rights-of-Way and placement of facilities and structures therein.

(3) It is necessary to comprehensively plan and manage access to, and structures and facilities in, the Rights-of-Way and provide innovative and economic solutions to efficiently and economically utilize limited Rights-of-Way capacity.

(4) The City has authority under the laws and Constitution of the State of Ohio, including, but not limited to Article 18, Sections 3, 4, and 7, to regulate the public and private entities which use the Right-of-Way.

§ B SCOPE.

The provisions of this chapter shall apply to all users of the Rights-of-Way as provided herein.

§ C DEFINITIONS.

For the purposes of this chapter, the following terms, words, phrases, and their derivations shall have the meanings set forth herein, regardless of whether or not the words and phrases are capitalized. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

(1) “ABANDONED.” The designation given to a Facility when its operations or use are discontinued for a period exceeding ninety (90) consecutive days or a total of one hundred eighty (180) days in any 365-day period, without notice of the discontinued operations or use given to the City by the Provider and without the City’s approval, except for a period of discontinued operations or use that has been caused by acts of God.

(2) “AFFILIATE.” Each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a controlling interest in a Provider, (ii) each Person in which a Provider has, directly or indirectly a controlling interest, (iii) each officer, director, general partner, limited partner or shareholder holding an interest of fifteen percent (15%) or more, joint venture or joint venture partner, of a Provider, and (iv) each Person, directly or indirectly, controlling, controlled by, or under common control with the Provider; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen percent (15%) of such Provider, or any creditor of such Provider solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Provider.

(3) "ANTENNA." Communications equipment that transmits or receives radio frequency signals in the provision of wireless service.

(4) "APPLICANT." Any Person who seeks to obtain a Certificate of Registration and/or a Permit.

(5) "APPLICATION." The process by which an Applicant submits a request to obtain Certificate of Registration and/or a Permit.

(6) "APPLICATION FEE." The fee paid to the City for application for a Certificate of Registration pursuant to § E(1).

(7) "BANKRUPTCY CODE." The United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.

(8) "BEST EFFORT(S)." The best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable laws, regulations, safety, engineering and operational codes, available technology, human resources, and cost.

(9) "CABLE FRANCHISE." Has the same meaning as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522, which defines that term as follows:

An initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 546 of [Title 47 of the United States Code]), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

(10) "CABLE OPERATOR." Has the same meaning as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

(11) "CABLE SERVICE." Has the same meaning as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.

(12) "CERTIFICATE OF REGISTRATION." The document issued to each Provider and its unique System to occupy the Rights-of-Way within the City that outlines the terms of that occupancy of the Rights-of-Way.

(13) "CITY." The City of Barberton, Ohio.

(14) "CITY COUNCIL." The governing body of the City of Barberton, Ohio.

(15) “CODE (or C.O.).” The codified ordinances of the City of Barberton, Ohio.

(16) “CO-LOCATION.” The mounting or installation of transmission equipment or Wireless Facilities on an existing Wireless Support Structure for the purpose of transmitting and/ or receiving radio frequency signals for Wireless Service.

(17) “CONSTRUCT.” Shall mean, but not be limited to, digging, boring, Horizontal Directional Drilling (HDD), tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights-of-Way. “Construct” shall also include the act of opening and/or cutting into the surface of any paved or improved surface, or unimproved surface, that is any part of the Right-of-Way.

(18) “CONSTRUCTION.” Shall mean, but not be limited to, the act or process of digging, boring, tunneling, trenching, directional, drilling, horizontal directional drilling, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights-of-Way. “Construction” shall also include the act of opening and/or cutting into the surface of any paved or improved, or unimproved surface that is part of the Right-of-Way.

(19) “CONSTRUCTION BOND.” A bond posted to ensure proper and complete Construction and/or repair of a Facility and the affected Rights-of-Way pursuant to a Permit.

(20) “CONSTRUCTION AND MAJOR MAINTENANCE PLAN.” A written plan including maps of the expected location, design, other related equipment and Facilities of a Provider that describes in part or in full the Construction intended to be accomplished by the Provider in the Rights-of-Way over the next calendar year, to the satisfaction of the City.

(21) “CONSTRUCTION PERMIT.” The Permit specified in § Q et seq. which must be obtained before a Person may Construct in, locate in, occupy, maintain, move or remove Facilities from, in or on a Rights-of-Way.

(22) “COUNTY.” Summit County, Ohio. County specifically excludes any and all contractors, agents or other Persons acting on behalf of said County.

(23) "DECORATIVE POLE." A pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for the following (i) electric lighting; (ii) specifically designed informational or directional signage; or (iii) temporary holiday or special event attachments.

(24) "DEPARTMENT OF PUBLIC SERVICE." The Department of Public Service of the City.

(25) "DESIGN GUIDELINES." Detailed guidelines and specifications promulgated by the City in accordance with Ohio Revised Code section 4939 for the design and installation of Small Cell Facilities and Wireless Support Structures in the Right-of-Way.

(26) "EMERGENCY." A condition that poses a clear and immediate danger to life or health, safety, or of a significant loss of property.

(27) "FACILITY(IES)." Any tangible thing located in any Rights-of-Way within the City, and includes Wireless Facilities and Wireless Support Structures; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the Rights-of-Way between a Person's property and the street edge of pavement.

(28) "FCC." The Federal Communications Commission, or any successor thereto.

(29) "FERC." The Federal Energy Regulatory Commission as created and amended in accordance with the Federal Power Act, 16 U.S.C. 792, or its statutory successor.

(30) "FINANCE DIRECTOR." The duly appointed finance director for the City, or his/ her designee.

(31) "HEIGHT." The distance measured from the pre-existing grade level to the highest point on the structure, including the Small Cell Facility, even if said highest point is an Antenna or lightening protection device.

(32) "HISTORIC DISTRICT." A building, property, or site, or group of buildings, properties, or sites that are either of the following:

(a) Listed in the national register for historic places or formally determined eligible for listing by the keeper of the national register, the individual who

has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C.

(b) A registered historic district as defined in section 149.311 of the O.R.C.

(33) “INSPECTOR.” Any Person authorized by the Service Director to carry out inspections related to the provisions of this chapter.

(34) “LAW.” Any local, state and/or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff or other requirement in effect either at the time of execution of this Chapter or at any time during the location of, and/or while a Provider's Facilities are located in the public Rights of Way.

(35) “MAYOR.” The duly elected mayor of the City of Barberton, Ohio or his/ her designee.

(36) “MICRO WIRELESS PERMIT.” A Permit, which must be obtained before a Person can Construct, modify, collocate, or replace a Small Cell Facility or Wireless Support Structure, as set forth in § J, in or on the Rights-of-Way.

(37) “MINOR MAINTENANCE PERMIT.” A Permit, which must be obtained before a Person can perform minor maintenance, as set forth in § S, in or on the Rights-of-Way.

(38) “OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (OMUTCD).” The uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to O.R.C. § 4511.09.

(39) “O.R.C.” The Revised Code of the State of Ohio.

(40) “OPEN VIDEO SERVICE.” Any video programming Services provided to any Person through the use of Rights-of-Way, which Person is certified by the FCC to operate an Open Video System pursuant to § 651 et seq. of the Telecommunications Act of 1996 (codified at 47 U.S.C. Title VI, Part V), regardless of the facilities used.

(41) “OPERATOR.” A Wireless Service Provider, Cable Operator, or a Video Service Provider that operates a Small Cell Facility and provides Wireless Service. For purposes of this chapter, "Operator" includes a Wireless Service provider, Cable Operator, or a Video Service Provider that provides information services as defined in the

"Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), as services that are fixed in nature or use unlicensed spectrum.

(42) “PERMIT.” A Construction Permit, Micro Wireless Permit, or a Minor Maintenance Permit as the context requires.

(43) “PERMIT COST.” All direct, incidental and indirect costs actually incurred or realized by the City for Permit issuance, Permit oversight and pavement degradation resulting from Construction activity.

(44) “PERMIT FEE.” Money paid to the City for a Permit.

(45) “PERMITTEE.” Any Person to whom a Construction Permit and/ or and/ or Micro Wireless Permit and/ or Minor Maintenance Permit has been granted by the City and not revoked.

(46) “PERSON.” Any natural person or corporate entity, business association or other business entity including, but not limited to, a firm, a partnership, a joint venture, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

(47) “PROVIDER.” A Person who owns or operates a System and has a valid Certificate of Registration. The City, County, Schools, Information Technology Centers, Small Cell Facility operators, and Cable Operators operating pursuant to a valid Cable Franchise, or video service provider operating pursuant to a valid video service authorization shall also be considered Providers.\_

(48) “PUBLIC UTILITY.” Any company described in section 4905.03 of the O.R.C., except in divisions (B) and (I) of that section, which company is also a “Public Utility” as defined in O.R.C. section 4905.02 and regulated by the PUCO; and includes any electric supplier as defined in O.R.C. section 4933.81.

(49) “PUCO.” The Public Utilities Commission of Ohio as defined in O.R.C. § 4901.02.

(50) “REGISTRATION MAINTENANCE FEE.” The money paid to the City to maintain a Certificate of Registration and compensate the City for actual costs incurred by the City in the management, administration and control of the Rights-of-Way of the City, and which are not reasonably recoverable by the city through construction permit fees or other approved recovery mechanisms.

(51) “REMOVAL BOND.” A bond posted to ensure the availability of sufficient funds to remove a Provider’s Facilities upon abandonment or disuse, or discontinuance of a Provider's use or occupation of the Rights-of-Way.

(52) “RESTORATION.” The process and the resultant effects by which a Rights-of-Way is returned to a condition as good as or better than its condition immediately prior to the Construction. “Restoration” shall occur in accordance with the rules or regulations as may be further enacted and amended by the City.

(53) “RIGHT(S) OF WAY.” The surface of, and the space within, through on, across, above or below, the paved or unpaved portion of any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which, on or after July 2, 2002, is owned or controlled, by the City. "Right-of-Way" excludes a private easement.

(54) “RIGHT(S) OF WAY COST.” All direct, incidental and indirect costs borne by the City for the management and administration of the Rights-of-Way and this chapter.

(55) “RULES AND REGULATIONS.” Any rules or regulations adopted by the Director of Public Service pursuant to Section H of this Chapter.

(56) “SERVICE(S).” The offering of any Service or utility for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, or alternatively, the provision (for a fee or otherwise) of any service or utility between two or more points for a proprietary purpose to a class of users other than the general public that in the opinion of the Mayor constitutes a service.

(57) “SERVICE DIRECTOR.” The duly appointed Service Director for the City, or his/ her designee.

(58) “SMALL CELL FACILITY.” A wireless facility that meets both of the following requirements:

(a) Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.



(b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(59) "STATE." The State of Ohio.

(60) "STEALTH." To minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Small Cell Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

(61) "SUPPLEMENTARY APPLICATION." Any application made to Construct on or in more of the Rights-of-Way than previously allowed, to extend a Permit that had already been issued, or to otherwise modify or amend the specifics of a Permit application.

(62) "SYSTEM." Any System of conduit, cables, ducts, pipes, wires, lines, towers, antennae wave guides, fiber optics, microwave, laser beams and any associated converters, equipment or Facilities or Utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing Services within the City. A System shall specifically include, but not necessarily be limited to: electric distribution and/or transmission systems, natural or artificial gas distribution and/or transmission systems, water distribution and/or transmission systems, storm sewer systems, sanitary sewer systems, cable television systems, video service networks, telecommunications systems (whether voice, video, data, or other), fiber optic systems, and wireless communications systems.

(63) "SYSTEM REPRESENTATIVE." The specifically identified agent/ employee of a Provider who is authorized to direct field activities of that Provider and serve as official notice agent for System-related information. Any such System Representative shall be required to be available at all times to receive notice of and immediately direct response to System related emergencies or situations.

(64) "TRENCHLESS TECHNOLOGY." Shall mean, but not be limited to, the use of directional boring, horizontal directional drilling, microtunneling and other techniques in the Construction of underground portions of Facilities which result in the least amount of disruption and damage to Rights-of-Way as possible.

(65) “UNDERGROUND FACILITIES.” All lines, cables, conduits, pipes, posts, tanks, vaults and any other Facilities which are located wholly or partially underneath Rights-of-Way.

(66) “UNUSED FACILITY(IES).” Facilities located in the Rights-of-Way which have remained unused for twelve (12) months and for which the Provider is unable to provide the City with a credible plan detailing the procedure by which the Provider intends to begin actively using such Facilities within the next twelve (12) months, or that the Provider has a potential purchaser or user of the Facilities who will be actively using the Facilities within the next twelve (12) months, or that the availability of such Facilities is required by the Provider to adequately and efficiently operate its System.

(67) “UTILITY(IES).” Any water, sewer, gas, storm sewer, sanitary sewer, sprinkler or culvert pipe and any electric power, telecommunications, signal, communications, or cable television or video service Provider conduit, fiber, wire, cable, or operator thereof.

(68) “UTILITY CORRIDOR(S).” Those specific areas of the Rights-of-Way designated as such by the Service Director pursuant to this chapter.

(69) “VIDEO SERVICE.” Means the same as “video service” as defined in O.R.C. § 1332.21(J).

(70) “VIDEO SERVICE AUTHORIZATION (VSA).” A “video service authorization” as issued to a Video Service Provider by the Director of the Ohio Department of Commerce in accordance with O.R.C. § 1332.24(A)(1).

(71) “VIDEO SERVICE NETWORK.” Means the same as “video service network” in O.R.C. § 1332.21(L).

(72) “VIDEO SERVICE PROVIDER (VSP).” Means the same as “video service provider” in O.R.C. § 1332.21(M).

(73) “WIRELESS FACILITY.” An antenna, accessory equipment, distributed antenna system, small cell facility, micro wireless facility, or other device or equipment used to provide Wireless Service, including such devices and equipment as provided for in section 4939 of the O.R.C..

(74) “WIRELESS SERVICE.” Any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using Wireless Facilities.

(75) “WIRELESS SUPPORT STRUCTURE.” A pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in this chapter, “Wireless Support Structure” excludes all of the following:

(a) A utility pole or other facility owned or operated by a municipal electric utility;

(b) A utility pole or other facility used to supply traction power to public transit systems including railways, trams, streetcars, and trolleybuses.

#### § D RIGHTS-OF-WAY ADMINISTRATION.

(1) Administration.

The Mayor shall be the principal City official responsible for the administration of this chapter, except as otherwise provided herein. The Mayor may delegate any or all of the duties hereunder to the Service Director or other designee.

(2) Rights-of-Way Occupancy.

Each Person who occupies, uses or seeks to occupy or use the Rights-of-Way to operate a System located in the Rights-of-Way, or who has, or seeks to have, a System located in any Rights-of-Way, shall apply for and obtain a Certificate of Registration pursuant to this chapter. Any Person owning, operating or maintaining a System in the Rights-of-Way without a Certificate of Registration, including Persons operating under a permit, license or franchise issued by the City prior to the effective date of this chapter shall apply for and obtain a Certificate of Registration from the City within ninety (90) days of the effective date of this chapter, unless exempted by § D(4). The ninety (90) day requirement will be extended if, due to an inability on the City’s behalf, all Persons obtaining or wishing to obtain a Certificate of Registration are not accommodated within the ninety (90) day period. The application for a Certificate of Registration will consist of providing the information set forth in § E(2) and as reasonably required by the Mayor.

(3) No Construction Without a Certificate of Registration.

Aside from the Minor Maintenance provisions outlined in section T, following the effective date of this chapter, no Person shall Construct or perform any work on or in any Rights-of-Way, nor shall a Provider use any System or any part thereof located on or in any Rights-of-Way without first obtaining a Certificate of Registration.

Whoever violates this section is guilty of a misdemeanor of the fourth (4th) degree as provided for in § X.

(4) Exceptions.

(a) The following entities are not obligated to obtain a Certificate of Registration: the City and resellers of Services that do not own any System or Facilities in the Rights-of-Way.

(b) The following entities are required to participate in the Certificate of Registration process, but shall be exempt from the financial obligations of the Application Fee required by § E(1) and the Registration Maintenance Fee required by § G(1): a county; cable operators for the purpose of providing only cable service and operating pursuant to a valid cable franchise; a Video Service Provider for the purpose of providing only video service and operating pursuant to a valid video service authorization issued in accordance with O.R.C. § 1332.24; and any entity which possesses an existing and valid non-terminable, non-amendable or non-revocable written privilege or authority previously granted by the City for the use or occupancy of the Right-of-Way, whereby such exemption shall be limited to a specific term and limited conditions or obligations as previously granted. In addition, cable operators shall be exempt from any requirement of the certificate of registration process that is in direct conflict with the requirements of, and/or specifically exempted by, a valid current and valid cable franchise with the city.

(5) Systems in Place Without a Certificate of Registration.

Any system or part of a system found in Rights-of-Way for which a Certificate of Registration has not been obtained or is not otherwise exempted under § D(4) shall be deemed to be a nuisance and an unauthorized use of the Rights-of-Way. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to abating the nuisance; taking possession of the facilities and/or noncomplying portion of such system; and/or prosecuting the violator.

(6) Future Uses.

Subject to applicable Law, in allowing Providers and Permittees to place Facilities in the Rights-of-Way, the City shall not be liable for any damages caused thereby to any Provider's Facilities that are already in place or that shall be placed in the Rights-of-Way unless those damages arise out of the sole negligence, gross negligence, willful misconduct, or fraud of the City. No Provider is entitled to rely on the provisions of this chapter as creating a special duty to any Provider.

(7) Discontinuance of Operations, Abandoned and Unused Facilities.

(a) A Provider who has discontinued or is discontinuing its operations of any System in the City shall:

(i) provide information satisfactory to the City that the Provider's obligations for its System in the Rights-of-Way under this section and any other sections in the City Code of Ordinances have been lawfully assumed by another Applicant and/or Provider; or

(ii) submit a written proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited Rights-of-Way capacity. Such proposal must be approved or denied by the Service Director. A denial by the Service Director shall be done in writing and describe the reasons for such a denial. The denial may be appealed by the Provider to the Mayor. The decision of the Mayor shall be final; or

(iii) submit a written proposal for abandonment of Facilities indicating why good engineering practice would support this type of solution. The Service Director must approve or deny said proposal within thirty (30) days. A denial by the Service Director shall be done in writing and describe the reasons for such a denial. The denial may be appealed by the Provider to the Mayor, who must make a determination on the appeal within thirty (30) days. The decision of the Mayor shall be final; or

(iv) completely remove all specifically identified portion(s) of its System in a manner acceptable to the City within a reasonable amount of time if the City believes that there exists a reasonable justification for such removal; or

(v) submit to the City within a reasonable amount of time and in accordance with O.R.C. § 4905.20 and 4905.21, a proposal for transferring ownership of its Facilities to the City. If a Provider proceeds under this clause, the City may, at its option where lawful:

a. purchase the Facilities; or

b. unless a valid Removal Bond has already been posted pursuant to § U, require the Provider to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Facilities.

(b) Facilities of a Provider who fail to comply with this Section and which remain Unused Facilities shall be deemed to be abandoned. Abandoned Facilities

are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to:

- (i) abating the nuisance;
  - (ii) taking possession of the Facilities and restoring them to a useable condition subject to a finding of the PUCO pursuant to the requirements of O.R.C. § 4905.20 and 4905.21; or
  - (iii) requiring removal of the Facilities by the Provider or by the Provider's surety.
- (c) If the City requires a Provider to remove Unused Facilities in any Rights-of-Way, the City shall use reasonable efforts to insure that this removal occur in conjunction with other scheduled excavations of the Rights-of-Way. If the City abates the nuisance it may take all action necessary to recover its costs and to abate said nuisance, including but not limited to, those methods set forth in O.R.C. § 715.261.

(8) Nature of Issuance.

A Certificate of Registration shall not convey equitable or legal title in the Rights-of-Way. A Certificate of Registration is only the nonexclusive, limited right to occupy Rights-of-Way in the City, for the limited purposes and for the limited period stated in the Certificate of Registration and in accordance with this chapter. The rights to occupy the Right-of-Way may not be subdivided or subleased; provided, however, that two (2) or more Providers may co-locate Facilities in the same area of the Rights-of-Way so long as each such Provider complies with the provisions of this chapter. Co-locating Providers may file a joint application for a Construction Permit. A Certificate of Registration does not excuse a Provider from obtaining appropriate access or pole attachment agreements before co-locating its Facilities on Facilities of others, including the City's Facilities. A Certificate of Registration does not prevent a Provider from leasing space in or on the Provider's System, so long as the sharing of Facilities does not cause a violation of law, including the provisions of this chapter. A Certificate of Registration does not excuse a Provider from complying with any provisions of the Code or other applicable law.

(9) Other Approvals, Permits, and Agreements.

In addition to a Certificate of Registration, Providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such Services from the appropriate federal, state and local authorities and upon the City's reasonable request, shall provide copies of such documents to the City.

Further, a Certificate of Registration issued pursuant to this chapter shall not entitle a Provider to use, alter, convert to, or interfere with, the Facilities, Small Cell Facilities, Wireless Facilities, Wireless Support Structures, easements, poles, conduits, lines, pipelines, wires, fiber, cable or any other real or personal property of any kind whatsoever under the management or control of the City.

§ E CERTIFICATE OF REGISTRATION APPLICATIONS.

(1) Certificate of Registration Applications.

To obtain a Certificate of Registration to Construct, own, or maintain any System within the City, or to obtain a renewal of a Certificate of Registration issued pursuant to this chapter, an Application must be filed with the City on the form adopted by the Department of Public Service. For all applications the city shall collect an Application Fee. The Application Fee shall be equal to all the actual and direct costs incurred by the City that are associated with receiving, reviewing, processing and granting (or denying) an Application. At the time of its decision to either grant or deny an Application the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the Application and provide a written invoice to the Applicant for the appropriate amount. The City shall require that the Applicant remit all Application Fee amounts invoiced within thirty (30) days of its decision to either grant or deny a Certificate of Registration. Any Applicant who fails to timely remit such invoiced Application Fee amounts shall be subject to the penalties of this chapter, the imposition of any other legal or equitable remedies available to the City and the immediate revocation of any Certificate of Registration having been issued.

(2) Information Required for Application to Obtain a Certificate of Registration.

(a) The Applicant or Provider shall keep all of the information required in this section current at all times, provided further that Applicant or Provider shall notify the City of any changes to the information required by this section within thirty (30) days following the date on which the Applicant or Provider has knowledge of such change. The information provided to the City at the time of Application shall include, but not be limited to:

(i) Each Applicant's name, legal status (i.e. partnership, corporation, etc.), street address, e-mail address, telephone number and facsimile number, if applicable; and

(ii) The name, address, e-mail address, telephone number, and facsimile number, if applicable, of a System Representative. The System Representative

shall be available to the City at all times. Current information regarding how to contact the System Representative in an Emergency shall be provided at the time of Application and shall be updated as necessary to assure accurate contact information is available to the City at all times; and

(iii) A certificate of insurance where required to be provided to meet the requirements of this section shall:

a. Verify that an insurance company licensed to do business in the State of Ohio has issued an insurance policy to the Applicant;

b. Verify that the Applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the:

(A) use and occupancy of the Rights-of-Way by the Applicant, its officers, agents, employees and contractors; and

(B) placement and use of Facilities in the Rights-of-Way by the Applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of underground facilities and collapse of property;

c. Name the City, its elected officials, officers, employees, agents and volunteers as an additional insured as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverages, as is required within this chapter;

d. Require that the City be notified thirty (30) days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this section shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be diminished in value, canceled nor the intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the Mayor or her/his designee of such intent to cancel, diminish or not to renew."

e. Within thirty (30) days after receipt by the City of said notice, and in no event later than five (5) days prior to said cancellation, the Provider (or Applicant) shall obtain and furnish to the Service Director a certificate of insurance evidencing replacement insurance policies.



f. Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:

(A) Comprehensive general liability insurance: comprehensive general liability insurance to cover liability, bodily injury, and property damage must be maintained. Coverage must be written on an occurrence basis, with the following minimum limits of liability and provisions, or their equivalent:

(1) Bodily injury:  
Each occurrence - One Million Dollars  
(US\$1,000,000.00)  
Annual aggregate- Three Million  
Dollars  
(US\$3,000,000.00)

(2) Property damage:  
Each occurrence - One Million Dollars  
(US\$1,000,000.00)  
Annual aggregate - Three Million  
Dollars  
(US\$3,000,000.00)

(3) Personal Injury:  
Annual aggregate - Three Million  
Dollars  
(US\$3,000,000.00)

(4) Completed operations and products liability shall be maintained for six (6) months after the termination of a Certificate of Registration.

(5) Property damage liability insurance shall include coverage for the following hazards: E – Explosion, C – Collapse, U – Underground.

(B) Comprehensive auto liability insurance: Comprehensive auto liability insurance to cover owned, hired, and non-owned vehicles must be maintained. Applicant may maintain comprehensive auto liability insurance as part of Applicant's comprehensive general liability insurance, however, said insurance is subject to approval by the Mayor or her or his designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:

(1) Bodily injury:  
Each occurrence - One Million Dollars

(US\$1,000,000.00)  
Annual aggregate - Three Million  
Dollars  
(US\$3,000,000.00)

(2) Property damage:  
Each occurrence - One Million Dollars  
(US\$1,000,000.00)  
Annual aggregate - Three Million  
Dollars  
(US\$3,000,000.00)

(b) Additional insurance: The City reserves the right to require any other insurance coverage it deems necessary after review of any proposal submitted by Applicant.

(c) Selfinsurance: Those Applicants maintaining a book value in excess of fifty million dollars (US\$50,000,000.00) may submit a statement requesting to selfinsure. If approval to selfinsure is granted, Applicant shall assure the City that such selfinsurance shall provide the City with no less than would have been afforded to the City by a third party insurer providing Applicant with the types and amounts of coverage detailed in this Section. This statement shall include:

- (i) Audited financial statements for the previous year; and
- (ii) A description of the Applicant's selfinsurance program; and
- (iii) A listing of any and all actions against or claims made against Applicant for amounts over one million dollars (US\$1,000,000.00) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above fifty million dollars (US\$50,000,000.00).
- (iv) The Service Director may modify or waive these requirements if they are not necessary to determine the sufficiency of the self-insurance. The Service Director may request applicable and pertinent additional information if it is necessary to determine the sufficiency of the self-insurance.

(d) The City's examination of, or failure to request or demand, any evidence of insurance in accordance with this chapter shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit Applicant's obligations under this chapter.

(e) Documentation that Applicant or Provider maintains standard workers' compensation coverage as required by law. Similarly, Provider shall require any subcontractor to provide workers' compensation coverage in amounts required by law for all of the subcontractor's employees.

(f) If the Person is a corporation, upon specific request of the City, a copy of the certificate of incorporation (or its legal equivalent) as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.

(g) A copy of the Person's certificate of authority from the PUCO and/or the FCC and/or FERC, if the Person is lawfully required to have or actually does possess such certificate(s) from said commission(s) and any other approvals, permits, or agreements.

(h) Upon request of the City, a narrative (or if applicable, PUCO/FCC/ FERC application information) describing Applicant's proposed activities in the City including credible information detailing Applicant's financial, managerial, and technical ability to fulfill Applicant's obligations under this chapter and carry on Applicant's proposed activities.

(3) Criteria for Issuance of a Certificate of Registration.

(a) In deciding whether to issue a Certificate of Registration, the City shall consider:

(i) Whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens.

(ii) Whether the issuing of the Certificate of Registration will be consistent with this chapter and the City Code.

(iii) Whether Applicant has submitted a complete Application and has secured all certificates and other authorizations required by law in order to Construct and operate a System in the manner proposed by the Applicant.

(iv) Whether the Applicant is delinquent on any taxes or other obligations owed to the City, County or State of Ohio.

(v) Unless Applicant is otherwise exempted from such consideration by O.R.C. § 4939.03(c)(5), whether the Applicant has the requisite

financial, managerial, and technical ability to fulfill all of its obligations under this chapter and the issuance of a Certificate of Registration.

(vi) Any other applicable law, ordinance, rule or regulation.

(4) Grant or Denial of an Application for a Certificate of Registration.

(a) The City, not later than sixty (60) days after the date of filing by an Applicant of a completed Application, shall grant or deny the Application.

(b) If an Application for a Certificate of Registration is denied, the Applicant may request from the City, within thirty (30) days of the notice of denial, the City's reasons for denying the Application.

(5) Obligations of a Provider Upon Receipt of a Certificate of Registration.

In addition to the other requirements set forth herein and in the Rules and Regulations of the City each Provider shall:

(a) Use its Best Efforts to cooperate with other Providers and users of the Rights-of-Way and the City for the best, most efficient, and least obtrusive use of Rights-of-Way, consistent with safety, and to minimize traffic and other disruptions including street cuts; and

(b) When possible, participate in joint planning, Construction and advance notification of Rights-of-Way work, as may be required by the City; and

(c) Upon reasonable written notice, and at the direction of the Service Director, promptly remove or rearrange Facilities as necessary for public safety; and

(d) Perform all work, Construction, maintenance or removal of Facilities within the Rights-of-Way in accordance with industry standard of care, Construction and arboricultural practice (if applicable), including any appropriate state building codes, safety codes and law, and use Best Efforts to repair and replace any street, curb or other portion of the Rights-of-Way, or Facilities located therein, to a condition to be determined by the Service Director to be adequate under current standards and not less than substantially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other Providers, all in accordance with all applicable provisions of this chapter, the Code, and any Rules and Regulations that the City may adopt; and

(e) Construct, install, operate and maintain its Facilities and System in a manner consistent with all applicable laws, ordinances, construction standards and governmental requirements including, but not limited to, the City's Zoning Ordinance, the National Electric Safety Code, National Electric Code and applicable FCC, FERC, or other federal, state and/or local Rules and Regulations; and

(f) Be on notice that removal of trees, or the use of vegetation management programs within the Rights-of-Way of the City requires prior written approval by the Service Director or his/her designee. Any such activities, unless an Emergency, shall only be performed following the prior written approval of the Service Director or his/her designee and must be performed in accordance with the then most current standard horticultural and arboreal practices as promulgated by entities such as the National Arbor Day Foundation, the International Society of Arboriculture, and the Tree Care Industry, all as may be required by the City. Pruning shall at a minimum meet or exceed the requirements of the most current version of the American National Standards Institute ANSI A300 standard. Any additionally required horticultural and arboreal practices and guidelines shall be described in the Rules and Regulations adopted by the Service Director pursuant to § H(5). Emergency removal of trees or the use of vegetation management programs within the Rights-of-Way of the City may be performed in Rights-of-Way as described herein and in accordance with the Rules and Regulations, but the Service Director shall be provided notice of such Emergency work being performed within two (2) business days of the start of the work. Any non-emergency tree removal or the use of vegetation management programs within the Rights-of-Way that is performed without the Service Director or designee's written permission shall subject a Person to the penalties of § Y and may further require that the tree or vegetation be replaced, at the sole expense of the responsible Person, with a healthy tree or vegetation of like kind and quality; and

(g) Warrant that all worker facilities, conditions and procedures that are used during Construction, installation, operation and maintenance of the Provider's Facilities within the Rights-of-Way shall comply with all applicable standards of the Federal Occupational Safety and Health Administration; and

(h) Use its Best Efforts to cooperate with the City in any Emergencies involving the Rights-of-Way; and

(i) Provider shall, weather permitting, remove all graffiti within ten (10) calendar days of notice. Provider shall remove any and all graffiti on any of the Provider's Facilities located within the City Rights-of-Way. Should the Provider fail to do so, the City may take whatever action is necessary to remove the graffiti and bill the Provider for the cost thereof; and

(j) Providers shall field identify their Facilities in the Rights-of-Way whenever Providers are notified by the City that the City has determined that such identification is reasonably necessary in order for the City to begin planning for the Construction, paving, maintenance, repairing, relocating or in any way altering any street or area in the Rights-of-Way as defined in this chapter. The City shall notify the Providers of the City's date to begin the process at least thirty (30) days prior to the commencement of said activities. In field identifying Facilities:

(i) Providers shall identify all Facilities that are within the affected Rights-of-Way using customary industry standards and distinct identification; and

(ii) Facilities will be so marked as to identify the Provider responsible for said Facilities; and

(iii) Should any such marking interfere with the Facilities' function, create a safety problem or violate any safety code, alternative methods of marking the Facilities may be approved by the Service Director; and

(iv) All markings should be clearly readable from the ground and include the Provider's name, logo and identification numbering or tracking information. No advertising will be permitted.

(k) A Provider that is replacing an existing utility pole shall be responsible for coordinating with all other Providers to ensure the orderly transfer of all lines or cables to the replacement utility pole, the removal of the existing utility pole, and the Restoration of the Rights-of-Way within thirty (30) days, weather permitting, after the replacement utility pole is installed. Upon request, the Service Director may grant the Provider additional time for good cause.

(6) Establishment of Utility Corridors.

(a) The Service Director may assign specific corridors within the Rights-of-Way, or any particular segment thereof as may be necessary, for each type of Facilities that are, or that the Service Director expects, may someday be, located within the Rights-of-Way.

(b) Any Provider whose Facilities are in the Rights-of-Way and are in a position at variance with Utility Corridors established by the Service Director shall at the time of the next Construction of the area, excluding normal maintenance activities, move such Facilities to their assigned position within the Rights-of-Way. Existing Underground Facilities located within a designated Utility Corridor shall not be required

to relocate into adjacent or alternative portions of the Rights-of-Way unless they are in conflict with an actual or proposed public improvement project. The above requirements may be waived by the Service Director for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, law precluding such Underground Facilities, and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements, the Provider may appeal the denial of the Service Director to the Mayor. The decision of the Mayor shall be final.

(c) The Service Director shall make every good faith attempt to accommodate all existing and potential users of the Rights-of-Way as set forth in this chapter.

(d) Providers may enter into written agreements to use existing poles and conduits with the owners of same and shall use Best Efforts to install their Facilities within the Rights-of-Way.

(e) No Facility placed in any Rights-of-Way shall be placed in such a manner that interferes with normal travel on such Rights-of-Way.

(f) Unless otherwise stated in a Certificate of Registration or Permit, all Facilities within the Rights-of-Way shall be Constructed and located in accordance with the City Code of Ordinances and with the following provisions:

(i) Whenever all existing Facilities that have been traditionally located overhead are located underground in a certain area within the City, a Provider who desires to place its Facilities in the same area must also locate its Facilities underground.

(ii) Whenever a Provider is required to locate or re-locate Facilities underground within a certain area of the City, every Provider with Facilities within the same area of the City shall concurrently re-locate their Facilities underground.

(iii) The above requirements may be waived by the Service Director for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, law precluding such undergrounding of facilities, and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements, the Provider may appeal the denial of the Service Director to the Mayor.

(7) Historic Districts.

(a) The City shall have the authority to prohibit the use or occupation of the Right of way by a Provider if the Right of way for which the Provider seeks use and occupancy lies within a Historic District.

(b) As a condition for approval for the Co-location or installation of Small Cell Facilities or Wireless Support Structures in an area of the City designated as a Historic District, the City may:

(i) Require reasonable, technically feasible, and nondiscriminatory design or concealment measures for the Small Cell Facilities and Wireless Support Structures.

(ii) Request that a Provider comply with the design and aesthetic standards of the Historic District or a Residential District, as provided in the City's Design Guidelines.

(iii) Request that a Provider explore the feasibility of using certain camouflage measures to improve the aesthetics of the Small Cell Facilities and Wireless Support Structures to minimize the impact to the area aesthetics.

(c) This section may not be construed to limit the City's authority to enforce local codes, administrative rules, or Rules and Regulations adopted by ordinance, which are applicable to a historic area designated by the state or City and historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.

#### § F REPORTING REQUIREMENTS.

(1) Construction and Major Maintenance Plan.

Each Provider shall, at the time of initial Application and using its Best Efforts by January 1 of each following year, file a Construction and Major Maintenance Plan with the Department of Public Service. Such Construction and Major Maintenance Plan shall be provided for all geographical areas requested by the Service Director, up to and including the entire geographical area of the City. It shall be submitted using a format(s) mutually agreeable to the Provider and the City and shall contain the information determined by the Service Director to be necessary to facilitate the coordination and reduction in the frequency of Construction in the Rights-of-Way. The Construction and Major Maintenance Plan shall include, but not be limited to, all



currently scheduled and/or anticipated Construction projects for the next calendar year. If none of such Construction projects are scheduled or anticipated for the next calendar year then the Construction and Major Maintenance Plan shall so state. The Provider shall use its Best Efforts in supplying this information and shall update the Construction and Major Maintenance Plan on file with the Service Director whenever there is a material change in scheduled and/or anticipated Construction projects. In an effort to assist Providers with the completion of their annual Construction and Major Maintenance Plan, the Service Director, on or before November 1 of each year, will send each Provider's System Representative a descriptive narrative (and any mapping information reasonably available) for all the planned Right-of-Way improvements and/or scheduled maintenance that the City then currently intends to undertake during the next calendar year. The City may, in its sole discretion, update and/or modify the descriptive narrative and mapping information provided.

(2) Mapping Data.

With the filing of its Application for a Certificate of Registration, a Provider shall be required to accurately inform the City of the number of miles (rounded up to the nearest mile) of Right-of-Way the Provider's System then currently occupies and begin submitting to the City all information that currently exists and which can be provided regarding the location of its Facilities in the Right-of-Way in hard copy or in the most advanced format (including, but not limited to, electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. A Provider shall have up to one (1) year from the date of the Provider's initial filing of an Application for a Certificate of Registration to completely submit all the mapping data for the System owned by the Provider or over which it has control that is located in any Rights-of-Way of the City in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-Way. The Provider shall supply the mapping data on paper if the Service Director determines that the format currently being used by the Provider is not capable of being read by the City. Any time after the issuance of a Certificate of Registration, and upon the reasonable request of the Service Director, a Provider shall be required to provide to the City any additional location information for any Facilities which it owns or over which it has control that are located in any Rights-of-Way of the City required by the City. Unless otherwise required by law, any and all actual direct, incidental and indirect costs incurred by the City during the process of reviewing, inputting and/or converting a Provider's mapping information to comport with the City's then current standard format (whether electronic or otherwise) shall be directly billed to, and must be timely remitted by, the

Provider. Failure to pay such mapping costs within sixty (60) days of receipt of an invoice shall subject an Applicant or Provider to revocation of its Certificate of Registration and the penalties of section Y. Further, each Provider that has been issued a Certificate of Registration shall accurately inform the City on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of Right-of-Way the Provider's System then occupied as of the immediately previous December 1. The Service Director may, in the future, adopt additional specifications and further define or modify the mapping data requirements under this section for reasons including, but not limited to, changes in technology or the law regarding public disclosure of a Provider's mapping information. When the City modifies and/or amends the mapping data requirements, the City shall use Best Efforts to avoid unreasonably increasing the burden to the Providers that may be associated with satisfying the amended mapping requirements. When the mapping requirements are amended, each Provider shall be served with a copy of the new specifications or modifications by regular U.S. Mail to the System Representative identified in each Certificate of Registration and in accordance with section X(4); provided, however, that any failure of any Provider to actually receive such notice shall not in any way affect the validity or enforceability of said specifications or modifications.

(3) Exemption from Disclosure.

In the event that the City receives a request from a third party for the disclosure of information a Provider has clearly marked as “confidential/proprietary information” then the City shall respond in accordance with O.R.C. Ch. 149. However, the City shall endeavor to use reasonable Best Efforts to timely place the Provider's System Representative on notice that such a request for public disclosure has been made, at which point it will be the Provider's sole and exclusive responsibility to take whatever steps it deems necessary to protect such documents from disclosure.

§ G COMPENSATION FOR CERTIFICATE OF REGISTRATION.

(1) Compensation.

As compensation for the City's costs to administer and implement this chapter, manage, administer and control the Rights-of-Way and maintain each Certificate of Registration issued, every Provider or any Person operating a System or otherwise using and occupying the Rights-of-Way shall pay to the City a Registration Maintenance Fee. The Registration Maintenance Fee shall be determined and assessed to Providers and other Persons operating a System or otherwise using and occupying the Rights-of-Way in accordance with the following process and formula:

(a) The City by February 28 of each year shall calculate all actual and incurred costs associated with Rights-of-Way management, administration and control for the previous calendar year that the City was not able to reasonably recover through Construction Permit Fees or other recovery mechanisms provided for in this chapter.

(b) Providers and Applicants, as required in section F(2), shall accurately inform the City upon application for a Certificate of Registration and on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of Right-of-Way the Provider's System then occupied as of the immediately previous December 1.

(c) The City shall total the entire number of miles of Right-of-Way reported as being used or occupied by all Providers.

(d) The City shall divide the calculated costs referenced in section G(1)(a) by the total number of miles of Right-of-Way reported as being used or occupied by all Providers as referenced in section G(1)(c) to arrive at a per-mile cost number.

(e) The City shall then multiply each Provider's mileage calculation as referenced in section G(1)(b) by the per-mile cost calculation referenced in section G(1)(d). The product shall be a Provider's then current annual Registration Maintenance Fee.

(f) The City shall perform its annual calculation of Registration Maintenance Fees following receipt of the Provider's required January 1 mileage report. Registration Maintenance Fees shall be invoiced to Providers within sixty (60) days of receipt of the Provider's required January 1 mileage report and shall be due within thirty (30) days of the date of the invoice. All fees shall be invoiced to Providers by March 1 of each calendar year.

(g) Cable companies operating under non-exclusive Cable Franchises for the purposes of providing Cable Service, Video Services Provider operating under a VSA for the purpose of providing Video Services, and providers of Open Video System services, which compensate the City under other mechanisms in an amount equal to or greater than the Annual Registration Maintenance Fee that would normally be required for their Right-of-Way use in the City, shall have the mileage of the Right-of-Way they use and/or occupy included in the calculations described in section G, but shall not be required to contribute to the recovery of Rights-of-Way Costs as defined by this chapter with the exception of Permit Costs.

(h) The City may by separate legislation enacted by City Council on or about February 28 of each year, in accordance with the results of section G(1)(d), enact an initial and thereafter a new annual Registration Maintenance Fee (per mile) by

appropriately increasing or decreasing the previous year(s) Registration Maintenance Fee (per mile). Revised Registration Maintenance Fees shall be effective upon passage.

(2) Timing.

Registration Maintenance Fees shall be paid each calendar year in accordance with G(1)(f). Registration Maintenance Fees shall be paid in full for the first year of the registration as a condition of the Certificate of Registration becoming effective. Fees may be prorated from the effective date of the Certificate of Registration to the end of the calendar year if less than one (1) full year.

(3) Taxes and Assessments.

To the extent taxes or other assessments are imposed by any taxing authority or community authority on the use of City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of such taxes or assessments. Such payments shall be in addition to any other fees payable pursuant to this chapter and shall not be considered an offset to, or in lieu of, the fees and charges listed in this chapter. The Registration Maintenance Fee is not in lieu of any tax, fee, or other assessment except as specifically provided in this chapter, or as required by applicable law.

(4) Interest on Late Payments.

In the event that any Registration Maintenance Fee is not paid to the City by April 1, the Provider shall pay a monthly late charge of one percent (5%) of the unpaid balance for each month or any portion thereof for which payment is not made. Late payments on Registration Maintenance Fees may result in the denial of future Right-of-Way permits.

(5) No Accord and Satisfaction.

No acceptance by the City of any Registration Maintenance Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such Registration Maintenance Fee payment be construed as a release of any claim the City may have for additional sums payable.

§ H OVERSIGHT AND REGULATION.

(1) Reports.

Upon the request of the City, a Provider shall promptly submit to the City any information or report, but not including confidential/ proprietary information as described in § H(2), that is reasonably related to a Provider's obligations under this chapter, or its business and operations with respect to the System or its operation, in such form and containing such information as the City shall specify. Such information or report shall be accurate and complete and supplied within thirty (30) days of the City's request.

(2) Confidential/ Proprietary Information.

All information submitted to the City that is considered confidential information, trade secret and/or proprietary information or information that upon public its disclosure would be highly likely to place critical portions of the Provider's System in real danger of vandalism, sabotage or an act of terrorism, must be clearly marked as such when submitted. The City shall endeavor to exercise all reasonable legal protections so as not to publicly disclose to any third party such information unless required by law. The City shall, following receipt of a request for public disclosure of clearly marked trade secret and/or proprietary information submitted by a Provider, endeavor to use reasonable Best Efforts to timely place the Provider's System Representative on notice that such a request for public disclosure has been made, at which point it will be the Provider's sole and exclusive responsibility to take whatever steps it deems necessary to protect such documents from disclosure.

(3) Provider's Expense.

All reports and records required under this chapter shall be furnished at the sole expense of a Provider.

(4) Right of Inspection and Audit.

The City's designated representatives shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to a Provider under the circumstances, documents, records, or other information which pertain to a Provider's operation of a System within the City that are related to its obligations under this chapter. All such documents shall be made available within the City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit.

(5) Rules and Regulations.

The Service Director may propose and adopt (and from time to time amend) the Rules and Regulations regarding this chapter, Design Guidelines,

construction standards and occupancy requirements of the Right-of-Way. Prior to the initial adoption of the Rules and Regulations, the Service Director shall provide written notice and a copy of the proposed language of such adoption, via regular U.S. Mail, to each Provider who holds a then current Certificate of Registration. Each Provider shall then have thirty (30) days following the date of the City's mailing to provide written comment regarding the proposed language to the Service Director. At least forty-five (45) days, but not more than sixty (60) days following the date of the City's mailing, the Service Director shall schedule and hold a meeting, to make available a forum at which all then current Providers may address any questions, concerns and make reasonable suggestions regarding the proposed new Rules and Regulations to the Service Director. The Service Director shall, following said meeting and the review of the Providers' comments and suggestions, adopt the Rules and Regulations in a manner that best serves the City.

§ I REGISTRATION TERM.

The term of each Certificate of Registration granted under this chapter shall be valid from the date of issuance until such time as it is revoked, terminated, has lapsed or is properly amended.

§ J SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES.

(1) In accordance with Ohio Revised Code section 4939, this section establishes terms and conditions for the use of the Right-of-Way by an Operator to Collocate Small Cell Facilities and Construct, maintain, modify, operate, or replace Wireless Support Structures to distribute Wireless Service in the City.

(2) The application procedures, permit fees, and auditing procedures outlined in this chapter shall be applicable to applications to establish Wireless Facilities. However, Wireless Facilities that are not Small Cell Facilities or Wireless Support Structures as defined in this chapter are not subject to this section J.

(3) In accordance with this chapter, and unless otherwise prohibited by Law, each Person who occupies, uses, or seeks to occupy or use the Rights-of-Way to operate a Small Cell Facility or Wireless Support Structure in the Right-of-Way, or who has, or seeks to have, a Small Cell Facility or Wireless Support Structure located in any Right-of-Way, shall apply for and obtain a Certificate of Registration for the System pursuant to this chapter.

(4) All Applications for the Construction or modification of a Small Cell Facility or Wireless Support Structure shall comply with the Construction Permit and Minor Maintenance Permit requirements set forth in this chapter and any other applicable Law.

(5) In addition to the requirements in (3) and (4) of this section J, a Micro Wireless Permit shall be submitted by any Person that seeks to Construct, modify, collocate, or replace a Small Cell Facility or Wireless Support Structure in any Right-of-Way. The City's consent shall not be required for the replacement of a Small Cell Facility and/ or Wireless Support Structure with a Small Cell Facility and/ or Wireless Support Structure, respectively, that is consistent with the City's Design Guidelines and is substantially similar to the existing Small Cell Facility and/ or Wireless Support Structure, or the same size or smaller than the existing Small Cell Facility and/ or Wireless Support Structure and complies with the requirements for Construction Permits as provided in this chapter.

(a) For processing a Micro Wireless Permit, the City may charge a fee for each Small Cell Facility and/or Wireless Support Structure in accordance with Law and as listed on the Micro Wireless Permit forms.

(b) The City shall grant or deny a Micro Wireless Permit in accordance with any required timelines under Law.

(i) If the City fails to approve or deny a Micro Wireless Permit within the required time period, provided that the time period is not otherwise tolled in accordance with the provisions of this section J, the Micro Wireless Permit shall be deemed granted upon the requesting entity notifying the City that the time period for granting or denying the Request of Consent has lapsed.

(c) Requests for Consent that do not meet the requirements listed on the Application or stated herein or in the City's Design Guidelines shall be deemed incomplete or shall otherwise denied by the City.

(i) If a Micro Wireless Permit is deemed incomplete, the City shall provide written notice to the Applicant that clearly and specifically delineates all missing documents or required information.

(A) Once the Applicant submits the documents or information in response to the City's notice of incompleteness, the City shall, within sixty (60) calendar days, grant, deny, or deem the Micro Wireless Permit to be incomplete due to not providing the information identified in the original notice of incompleteness.

(B) For a Micro Wireless Permit that is deemed incomplete for a second or subsequent time, the City shall continue to follow the process in 5(c)(i)(A) of this section J until such time that a complete Application is received from the Applicant. At such time, the City shall, within sixty (60) calendar days, grant or deny the Micro Wireless Permit.

(ii) If a Micro Wireless Permit is denied, the City shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information at the Applicant may reasonably request to obtain consent.

(A) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the city, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(d) The City shall permit a Person seeking to construct, modify, collocate, or replace more than one Small Cell Facility or more than one Wireless Support Structure within the Right-of-Way to file a consolidated Application for consent.

(i) No more than thirty (30) Small Cell Facilities or thirty (30) Wireless Support Structures shall be proposed within a single Application to receive a single permit for the Construction, modification, Collocation, or replacement of Small Cell Facilities or Wireless Support Structures in the Right-of-Way.

(ii) A single Application may only address multiple Small Cell Facilities or Wireless Support Structures if they each involve substantially the same type of Small Cell Facility and/or substantially the same type of Wireless Support Structure.

(iii) If an Applicant intends to submit five (5) or more Small Cell Facilities or Wireless Support Structures in a single Application, a pre-application meeting that includes the Applicant and the Service Department may be required by the City in order to help expedite the permitting process. This pre-application meeting may also include a site visit if so requested by the City.

(iv) The Director of Public Service may separately address Applications for which incomplete information has been received or which are denied.

(e) If the number of Requests for Consent is likely to result in difficulty processing Applications within the time limits set forth in Law due to the lack of resources of the City, then the City may toll the time limits as follows:



(i) The time period for the City to grant or deny a Micro Wireless Permit may be tolled for up to twenty-one (21) days for the first thirty (30) Requests for Consent for Small Cell Facilities or Wireless Support Structures received by the City above ninety (90) Small Cell Facility or Wireless Support Structure Requests for Consent within any consecutive thirty-day period.

(ii) For every additional thirty (30) Requests for Consent that the City receives above the threshold provided in section (5)(e)(i) of this section J, the City may toll the time period to grant or deny its consent for up to fifteen (15) additional days.

(iii) In no instance shall the City toll the time period for any Small Cell Facility or Wireless Support Structure Micro Wireless Permit by more than ninety (90) consecutive days.

(iv) Upon request by the Applicant, the City shall provide written notice of the time limit for a Small Cell Facility or Wireless Support Structure Micro Wireless Permit.

(6) The total annual charge to reimburse the City for Collocation of a Small Cell Facility by an Operator to a Wireless Support Structure owned by the City and located in the Right-of-Way shall be in accordance with Law.

(7) The City's approval term of a Collocation to a Wireless Support Structure shall be for a period of not less than ten (10) years, with a presumption of renewal for successive five-year terms, unless otherwise terminated or not renewed for cause or by mutual agreement between the Operator and the City.

(a) An Operator may remove its Small Cell Facilities at any time subject to applicable Permit requirements and may stop paying annual charges or fees established by Law.

(b) In the event that use of a Small Cell Facility or Wireless Support Structure is discontinued, the owner shall submit written notice to the City to discontinue use and the date when the use shall be discontinued. If the Small Cell Facility or Wireless Support Structure is not removed within three hundred sixty-five (365) days of discontinued use, the Small Cell Facility or Wireless Support Structure shall be considered abandoned in accordance with Ohio Revised Code section 4939 and the City may remove the Small Cell Facility or Wireless Support Structure at the owner's expense.

(8) The Director of Public Service is authorized to establish, implement, and amend, from time to time, Design Guidelines regarding, among other things: (1) the location of any ground-mounted Small Cell Facilities; (2) the location of a Small Cell Facility on a Wireless Support Structure; (3) the appearance and concealment of Small Cell Facilities, including those relating to materials used for arranging, screening, or landscaping; and (4) the design and appearance of a Wireless Support Structure, including any height requirements adopted by the City.

(a) The City, as opposed to the Construction of a new Wireless Support Structure in the Right-of-Way, shall prefer locating Small Cell Facilities on existing Wireless Support Structures without increasing the height of the Wireless Support Structure by more than five (5) feet, including the Antenna and any associated shroud or concealment material.

(b) The City shall permit, consistent with Law and for the purpose of providing Wireless Service, Collocation of a Small Cell Facility by an Operator to a Wireless Support Structure owned by the City and located in the Right-of-Way, provided that the Operator comply with the Design Guidelines under division (8) of this section J and any reasonable terms and conditions for such Collocation that are adopted by the City and consistent with the Design Guidelines and this chapter.

(i) The City may condition approval of the Collocation on replacement or modification of the Wireless Support Structure at the Operator's cost if the City determines that replacement or modification is necessary for compliance with its construction or safety standards.

(ii) A replacement or modification of the Wireless Support Structure shall conform to the applicable Design Guidelines and the City's applicable specifications for the type of structure being replaced.

(iii) The City may retain ownership of a replacement Wireless Support Structure.

(iv) The City may require removal and relocation of a Small Cell Facility or Wireless Support Structure, at the Permittee's sole expense, in order to accommodate Construction of a public improvement project by the City.

#### § K INDEMNITY.

(1) Indemnity Required.

Each Certificate of Registration issued pursuant to this chapter shall contain provisions whereby Providers agree to protect, defend, indemnify and hold the City and its agents, officers, elected officials, employees, volunteers, and subcontractors harmless from and against all damages, costs, losses or expenses:

(a) for the repair, replacement, or restoration of City property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of such Provider's acts or omissions; and

(b) from and against any and all claims, demands, suits, causes of action, and judgments:

(i) for damage to or loss of the property of any Person, and/or the death, bodily injury, illness, disease, workers' compensation, loss of services, or loss of income or wages to any Person;

(ii) arising out of, incident to, concerning or resulting from the act or omissions of such Provider, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such Certificate of Registration, no matter how, or to whom, such loss may occur.

(c) In any event, all Persons using or occupying the Rights-of-Way shall defend, indemnify and hold harmless the City as set forth above as a condition of their use and occupancy of the Rights-of-Way.

#### § L CIVIL FORFEITURES.

In addition to any other penalties set forth in this chapter and the remedy of specific performance, which may be enforced in a court of competent jurisdiction, the City may assess an additional penalty of civil forfeiture for failure to comply with any provision of this chapter. Such penalty shall be a monetary sum, payable to the City, in the amount of five hundred dollars (US\$500.00) per twenty-four (24) hour day of violation and any subsequent portion of a day less than twenty-four (24) hours in length. Prior to assessing said penalty, the City will provide written notice to the Provider detailing the failure to comply with a specific provision of this chapter. Such notice shall also indicate that said penalty shall be assessed in fifteen (15) calendar days subsequent to the date of receipt if compliance is not achieved. If a Provider desires to challenge such penalty, Provider must request a hearing before the Mayor within ten (10) days of service of the notice. Such hearing shall be held within thirty (30) days of the Provider's request. If Provider requests such hearing before the Mayor, such penalty shall be temporarily suspended. However, if, after the hearing, the Mayor determines that Provider failed to comply with the specific

provision(s) of this chapter referenced in the notice, such penalty shall be assessed starting with the fifteen (15) calendar days after receipt of the notice referenced in this section and continuing each day thereafter until compliance is achieved. The determination of the Mayor shall be final. The Provider may file an administrative appeal pursuant to O.R.C. Ch. 2506. The penalty shall continue to accrue during the appeal unless the Provider obtains a stay and posts a supersede as bond pursuant to O.R.C. § 2505.09 or the Provider comes into full compliance with this chapter.

§ M TERMINATION OF CERTIFICATE OF REGISTRATION.

(1) Default Notice Provided.

The City through its Department of Public Service shall give written notice of default to a Provider if the City, in its sole discretion, determines that a Provider has:

(a) violated any provision of this chapter or any law, ordinance, rule or regulation of the City and failed to cure; or

(b) evaded or attempted to evade any provision of the issuance of a Certificate of Registration or the acceptance of it, including failure to comply with the indemnification requirements in § K and § W of this chapter; or

(c) practiced any fraud or deceit upon the City; or

(d) made a misrepresentation of fact in the Application for a Certificate of Registration.

(2) Cure Required.

If a Provider fails to cure a default within thirty (30) calendar days after such notice is served by the City then the City may exercise any remedies or rights it has at law or in equity to terminate the Certificate of Registration. If the Service Director decides there is cause or reason to terminate the Certificate of Registration, the following procedure shall be followed:

(a) City shall serve a Provider with a written notice of the reason or cause for proposed termination of the Certificate of Registration and shall allow a Provider a minimum of ten (10) calendar days to cure.

(b) If the Provider fails to cure within ten (10) calendar days, the Service Director may declare the Certificate of Registration terminated.

(c) The Provider shall have ten (10) calendar days to appeal the termination to the Mayor. All such appeals shall be in writing. If the Mayor determines there was not cause or reason to terminate the Certificate of Registration, then the Mayor shall overturn the decision of the Service Director. Otherwise, the Mayor shall affirm the decision of the Service Director to terminate the Certificate of Registration. The determination of the Mayor shall be final.

(d) If a Certificate of Registration is terminated and the termination is affirmed by the Mayor if appealed, the City may, in its sole discretion, restrict future Certificates of Registration from being issued to the Provider.

§ N UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY.

(1) No Use Without Authorization.

No Person shall use the Rights-of-Way to operate a System that has not been authorized by the City in accordance with the terms of this chapter and been issued a Certificate of Registration.

(2) No Use Without Certificate of Registration.

No Person shall place or have placed any Facilities in, on, above, within, over, below, under, or through the Rights-of-Way, unless allowed under this chapter or having been issued a Certificate of Registration.

(3) Unauthorized Use a Violation.

Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of this chapter continues shall constitute a distinct and separate offense.

(4) Distinct and Separate Offense.

No Person shall fail to comply with the provisions of this chapter. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of this chapter continues shall constitute a distinct and separate offense.

(5) Penalty Assessed.

The violation of any provision of this chapter shall be unlawful and a misdemeanor offense. The penalty for any violation of this chapter shall be as provided in § Y.

§ O RIGHTS OF INDIVIDUALS.

(1) No Discrimination.

A Provider shall comply at all times with all applicable laws relating to nondiscrimination.

(2) Equal Employment.

A Provider shall adhere to the applicable equal employment opportunity requirements of law, as now written or as amended.

(3) Privacy.

A Provider shall adhere to subscriber privacy laws.

§ P ASSIGNMENT OR TRANSFER OF OWNERSHIP AND RENEWAL.

(1) Assignment or Transfer Approval Required.

A Certificate of Registration shall not be assigned or transferred, either in whole or in part, other than to an Affiliate, without the prior written consent of the City. This includes an assignment or transfer by means of a fundamental corporate change or fundamental partnership change.

(2) Procedure to Request Assignment or Transfer Approval.

The parties to the assignment or transfer of a Certificate of Registration shall make a written request to the City for its consent in the form of the Certificate of Registration Application.

(3) Review by City.

The City will review the qualifications (including, but not limited to legal, technical and financial where appropriate) of the proposed assignee or transferee and

terms of the existing Certificate of Registration. Within one hundred and twenty (120) days of actual receipt of the request for assignment or transfer, the City shall approve or deny such assignment or transfer request in writing, setting forth any conditions for assignment or transfer.

(4) Fundamental Corporate Change.

For purposes of this section, fundamental corporate change means the sale or transfer of a controlling interest in the stock of a corporation or the sale or transfer of all or a majority of a corporation's assets, merger (including a parent and its subsidiary corporation), consolidation or creation of a subsidiary corporation. For the purposes of this section, fundamental partnership change means the sale or transfer of all or a majority of a partnership's assets, change of a general partner in a limited partnership, change from a limited to a general partnership, incorporation of a partnership, or change in the control of a partnership.

(5) Certificate of Registration and Assignee/Transferee Replacement Issuance Required.

In no event shall a transfer or assignment of ownership or control be ultimately acceptable to the City without transferee or assignee requesting and being issued a replacement Certificate of Registration within ninety (90) days of transfer or assignment.

(6) Not a Transfer.

Notwithstanding anything to the contrary, no such consent or approval shall be required for a transfer or assignment to an Affiliate.

§ Q CONSTRUCTION PERMITS.

(1) Construction Permit Requirement.

Except as otherwise provided in the Code, no Person shall be permitted to Construct in any Rights-of-Way without first having obtained a Construction Permit as set forth below. This requirement shall be in addition to any requirement set forth in the Code.

(a) A Construction Permit allows the Permittee to Construct in that part of the Rights-of-Way described in such Construction Permit and to obstruct

travel over the specified portion of the Rights-of-Way by placing Facilities described therein, to the extent and for the duration specified therein.

(b) A Construction Permit is valid only for the dates and the area of Rights-of-Way specified in the Construction Permit and shall in no event be valid for more than one hundred eighty (180) days from the construction start date.

(c) No Permittee may Construct in the Rights-of-Way beyond the date or dates specified in the Construction Permit unless such Permittee:

(i) submits a Supplementary Application for another Construction Permit before the expiration of the initial Construction Permit; and

(ii) is granted a new Construction Permit or Construction Permit Extension.

(d) Original Construction Permits issued pursuant to § Q shall, when possible, be conspicuously displayed at all times at the indicated work site and shall be available for inspection by inspectors and authorized City personnel. If the original Construction Permit involves work conducted simultaneously at multiple locations, each location shall display a photocopy of the original Construction Permit. If the original Construction Permit is not conspicuously displayed at the indicated work site, then upon request, the original Construction Permit must be produced within twelve (12) hours or the first earliest Business Hour, whichever is later. For purposes of this Section, Business Hour shall mean the hours between 8 a.m. and 5 p.m. during a business day.

(2) Construction Permit Applications.

(a) Application for a Construction Permit, unless an Emergency, shall be made to the Service Director no less than fourteen (14) business days prior to the requested start of Construction.

(b) All Construction Permit Applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(i) Credible evidence that the Applicant (where required) has been issued a Certificate of Registration or proof that the Applicant has written authority to apply for a Construction Permit on behalf of a party that has been issued a Certificate of Registration; and



(ii) Submission of a completed Construction Permit

Application in the form required by the Service Director, including, but not limited to, all required attachments, and scaled, dated drawings showing the location and area of the proposed project, number and location of street crossings, and the location of all then known existing and proposed Facilities of the Applicant or Provider within the proposed project area. All drawings, plans and specifications submitted with the Application shall comply with applicable technical codes, Rules and Regulations, Design Guidelines, and be certified as to being in such compliance by trained technical personnel acceptable to the Service Director. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-Way. The City reserves the right, in circumstances that the Service Director considers unique, complex or unusual, to request that certain submitted drawings, plans and specifications be accompanied by the certification of a registered licensed professional engineer; and

(iii) A City-approved traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Ohio Manual of Uniform Traffic Control Devices, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and

(iv) If the Applicant wants to install new Facilities, evidence that the Right-of-Way is not full and evidence that the Applicant has received an appropriate Permit and is adhering to the City's laws and Rules and Regulations; and

(v) If Applicant is proposing an above ground installation on existing poles within the Rights-of-Way, the applicant shall provide credible information satisfactory to the City to sufficiently detail and identify:

A. the size and height of the existing poles; and

B. based on the Facilities currently on the existing poles, the excess capacity currently available on such poles before installation of Applicant's Facilities; and

C. based on the Facilities currently on the existing poles, the excess capacity for like or similar Facilities that will exist on such poles after installation of Applicant's Facilities; and

(vi) If the Applicant proposes to install new poles within the Rights-of-Way, the Applicant shall provide:

A. Credible evidence satisfactory to the City that there is no excess capacity on existing poles or in existing underground systems; and

B. Credible evidence to the City that it is not financially and/or technically practicable for the Applicant to make an underground installation or locate its facilities on existing poles; and

C. The location, size, height, color, and material of the proposed poles; and

D. Credible evidence satisfactory to the City that the Applicant will adhere to all the applicable laws concerning the installation of new poles.

(vii) If Applicant is proposing an underground installation in existing ducts or conduits within the Rights-of-Way, the Applicant shall provide credible information satisfactory to the City to sufficiently detail and identify:

A. based on the existing Facilities, the excess capacity for like or similar Facilities currently available in such ducts or conduits before installation of Applicant's Facilities; and

B. based on existing Facilities, the excess capacity for like or similar Facilities that will exist in such ducts or conduits after installation of Applicant's Facilities.

(viii) If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the Rights-of-Way, the Applicant must provide credible information satisfactory to the City to sufficiently detail and identify:

A. the location, depth, size, and quantity of proposed new ducts or conduits; and

B. the excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of Applicant's Facilities.

(ix) A preliminary Construction schedule and completion date; and

(x) Payment of all money due to the City for:

A. Permit Fees;

B. any loss, damage, or expense suffered by the City as a result of Applicant's prior Construction in the Rights-of-Way or any Emergency actions taken by the City;

C. any Certificate of Registration issued to the Applicant/Person whose Facilities are being Constructed; and

D. any other money due to the City from the Applicant/Person whose Facilities are being Constructed.

(xi) When a Construction Permit is requested for purposes of installing additional Systems or any part of a System, the posting of a Construction Bond and Removal Bond, acceptable to the City and subject to this chapter, for the additional Systems or any part of a System is required.

(xii) Upon request, the Service Director may modify or waive the information requirements if they are not necessary in evaluating the Construction Permit application. The Service Director may request applicable and pertinent additional information if it is necessary in evaluating the Construction Permit Application.

(3) Issuance of Permit; Conditions.

(a) If the City determines that the Applicant has satisfied the requirements of this chapter and the Construction Permit process, the Service Director shall issue a Construction Permit subject to the provisions of § Q(3)(b).

(b) The City may impose reasonable conditions upon the issuance of the Construction Permit and the performance of the Permittee thereunder in order to protect the City's investment in the Right-of-Way, protect the public health, safety and welfare, to insure the structural integrity of the Rights-of-Way, to protect the property and safety of other users of the Rights-of-Way, or to minimize the disruption and inconvenience to the traveling public.

(4) Construction Permit Fees.

(a) Except as otherwise provided by Law, the City shall collect a Construction Permit Fee equal to the actual and direct cost incurred by the City that is associated with receiving, reviewing, processing and granting (or denying) the Construction Permit and any oversight of the Construction Permit or the Construction work associated therewith. Following completion of the Construction work for which a Construction Permit has been granted (or at the time of the denial of Construction Permit)

the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the Construction Permit and any oversight of the Construction Permit or Construction Work associated therewith. Quarterly, the City will cause the Director of Finance to issue a written invoice to a Provider that lists and summarizes the costs for each Construction Permit issued to and/or completed by the Provider over the previous ninety (90) days. The Provider shall remit payment to the City for the original quarterly invoice within thirty (30) days after the Director of Finance issues such invoice. Any Applicant who fails to timely remit such invoiced Construction Permit Fee amounts shall be subject to the penalties of this chapter, the imposition of any other legal or equitable remedies available to the City and the immediate revocation of any Certificate of Registration or Construction Permit having been issued.

(b) The City may in addition to these direct and actual costs listed in subsection (D)(1) may include in the Construction Permit Fee the cost of the value of degradation and reduction in the useful life of the Rights-of-Way that will result from Construction that has taken place therein. "Degradation and the reduction in the useful life" for the purpose of this Section means the accelerated depreciation of the Rights-of-Way caused by Construction in or disturbance of the Rights-of-Way, resulting in the need to reconstruct or repair such Rights-of-Way earlier than would be required if the Construction did not occur.

(c) Except as otherwise provided herein, no future Construction Permits shall be issued to an Applicant without payment of all outstanding Construction Permit Fee invoices. The City shall be exempt from payment of Construction Permit Fees. Construction Permit Fees that were paid for a Permit that the City has revoked pursuant to this Chapter are not refundable.

(5) Joint Applications.

Applicants are encouraged to submit joint Applications for Construction Permits to work in the Rights-of-Way at the same place and time. Joint Applicants shall have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable Construction Permit Fees.

(6) Exceptions to Permit Requirements.

(a) The following shall be excluded from the requirements of § Q:

(i) The repairing or improvement of streets or other public places under or by virtue of a contract with the City.

(ii) The maintenance, planting or removal of trees and shrubs from within the Right-of-Way.

(iii) The addition of an overhead customer service line for any Utility, which service line does not cross across the edge of pavement limits or extend over pavement at a height of less than fifteen (15) feet above the pavement.

§ R CONSTRUCTION, RELOCATION AND RESTORATION.

(1) Utility Engineering Study Required.

(a) Prior to commencement of any initial Construction, extension, or relocation of Facilities in the Rights-of-Way, except for repair, maintenance or replacement with like Facilities or relocations requested or caused by a third party (excluding the City) or another Permittee, a Permittee shall conduct a utility engineering study on the proposed route of Construction expansion or relocation if requested by the Service Director. Where such Construction and/or relocation is requested or caused by a third party, every Permittee located within the Rights-of-Way at issue or involved with the work shall use all Best Efforts to cooperate and assist any other Permittee or person who is directed by the City to perform the required utility engineering study. A utility engineering study consists of, but is not limited to, completion of the following tasks:

(i) Secure all available "as-built" plans, plats and other location data indicating the existence and approximate location of all Facilities along the proposed Construction route.

(ii) Visibly survey and record the location and dimensions of any Facilities along the proposed Construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts and visible street cut repairs.

(iii) Determine and record the presence and precise location of all underground facilities the Applicant or Person on whose behalf the Permit was applied for owns or controls in the Rights-of-Way along the proposed System route. Upon request of the Service Director, a Permittee shall also record and identify the general location of all other Facilities in the Rights-of-Way along the proposed System route. For the purposes of this Section, general location shall mean the alignment of other Facilities in the Rights-of-Way, but shall not necessarily mean the depth of other Facilities in the Rights-of-Way.

(iv) Plot and incorporate the data obtained from completion of the tasks described in §§ R(1)(a)(i)-(iii) on the Construction Permittee's proposed System route maps, Construction plans, plan sheets or computer aided drafting and design (CADD) files, or other data files in a format compatible with that used by the City.

(v) Where the proposed location of Facilities and the location of existing underground facilities appear to conflict on the plans drafted in accordance with § R(1)(a)(iv), Permittee has the option of either utilizing non-destructive digging methods, such as vacuum excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting underground facilities, or re-designing the Construction plans to eliminate the apparent conflict. A Permittee shall not excavate more than a three (3) feet by three (3) feet square hole in the Rights-of-Way to complete this task.

(vi) Based on all of the data collected upon completion of the tasks described in this section, adjust the proposed System design to avoid the need to relocate other Underground Facilities.

(b) The Service Director may modify the scope of the utility engineering study as necessary depending on the proposed Construction plans.

(2) Copy to City.

Upon completion of the tasks described in § R(1), the Construction Permittee shall submit the proposed System route maps and Construction Plans, with the results of the utility engineering study, in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-Way. The Provider shall supply the mapping data on paper if the Service Director determines that the format currently being used by the Provider is not capable of being read by the City.

(3) Qualified Firm.

All utility engineering studies conducted pursuant to this section shall be performed by the Permittee if in the discretion of the Service Director the Construction Permittee is qualified to complete the project itself; alternatively, utility engineering studies shall be performed by a firm specializing in utility engineering that is approved by the City.

(4) Cost of Study.

The Permittee shall bear the cost of compliance with § R(1)-(3).

(5) Construction Schedule.

Unless otherwise provided for in this chapter or in the Rules and Regulations, or unless the Service Director waives any of the requirements of this Section due to unique or unusual circumstances, a Permittee shall be required to submit a written Construction schedule to the City fourteen (14) business days before commencing any work in or about the Rights-of-Way, and shall further notify the City not less than two (2) business days in advance of any excavation in the Rights-of-Way. This Section shall apply to all situations with the exception of circumstances under § T(4) (Emergency Situations) and § S (Minor Maintenance).

(6) Location of Facilities.

(a) The placement of new Facilities and replacement of old Facilities, either above ground or underground, shall be completed in conformity with applicable laws and the City's Rules and Regulations.

(b) The City shall have the power to prohibit or limit the placement of new or additional Facilities within the Rights-of-Way if the Right-of-Way is full, as determined in the sole discretion of the City. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Rights-of-Way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the Rights-of-Way, the time of year with respect to essential Utilities, the protection of existing Facilities in the Rights-of-Way, future City and County plans for public improvements, development projects which have been determined to be in the public interest and nondiscriminatory and competitively neutral treatment among Providers.

(7) Least Disruptive Technology.

All Construction or maintenance of Facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the Rights-of-Way. Specifically, every Permittee when performing underground Construction, if technically and/or technologically feasible and not economically unreasonable, shall utilize Trenchless Technology, including, but not limited to, horizontal directional drilling, directional boring, and microtunneling. In addition, all cable, wire or fiber optic cable installed in the subsurface Rights-of-Way pursuant to this chapter may be required to be

installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed pursuant to this chapter using "direct bury" techniques.

(8) Special Exceptions.

(a) The City may grant a special exception to the requirements of § R(6) and § R(7) if a Permittee, upon application, demonstrates with written evidence that:

(i) The exception will not create any threat to the City's investment or in the Rights-of-Way, the public health, safety or welfare.

(ii) Permittee demonstrates that the increased economic burden and the potential adverse impact on the Permittee's Construction schedule resulting from the strict enforcement of the requirement actually or effectively inhibits the ability of the Permittee to provide Services in the City.

(iii) The Permittee demonstrates that the requirement unreasonably discriminates against the Permittee in favor of another Person.

(iv) The requirements requested by the City herein create an unreasonable economic burden for the Permittee that outweighs any potential benefit to the City.

(9) Relocation of Facilities.

(a) A Provider shall as promptly as reasonably possible and at its own expense, permanently remove and relocate its Facilities in the Rights-of-Way whenever the City finds it necessary to request such removal and relocation. In instances where the City requests removal and/or relocation, the City shall waive all applicable Construction Permit Fees. Upon removal and/or relocation, the Provider shall restore the Rights-of-Way to the same or better condition it was in prior to said removal or relocation. If existing poles are required to be removed and/or relocated, then the existing poles will be replaced with poles of the same or substantially similar size, or smaller. In accordance with law, the Service Director may request relocation and/or removal in order to prevent unreasonable interference by the Provider's Facilities with:

(i) A public improvement undertaken or approved by the City.

(ii) The City's investment in the Right-of-Way.



(iii) When the public health, safety, and welfare requires it, or when necessary to prevent interference with the safety and convenience of ordinary travel over the Rights-of-Way.

(iv) The sale, conveyance, vacation, or narrowing of all or any part of a Right-of-Way.

(b) Notwithstanding the foregoing, a Provider who has Facilities in the Rights-of-Way subject to a vacation or narrowing that is not required for the purposes of the City, shall have a permanent easement in such vacated portion or excess portion in conformity with O.R.C. § 723.041.

(c) If, in the reasonable judgment of the City, a Provider fails to commence removal and/or relocation of its Facilities, as designated by the City, within thirty (30) days after the City's removal order, or if a Provider fails to substantially complete such removal, including all associated repair of the Rights-of-Way of the City, within twelve (12) months thereafter, then, to the extent consistent with applicable law, the City shall have the right to:

(i) Declare that all rights, title and interest to the Facilities belong to the City with all rights of ownership, including, but not limited to, the right to connect and use the Facilities or to effect a transfer of all right, title and interest in the Facilities to another Person for operation; or

(v) Authorize removal of the Facilities installed by the Provider in, on, over or under the Rights-of-Way of the City at Provider's cost and expense, by another Person; however, the City shall have no liability for any damage caused by such action and the Provider shall be liable to the City for all reasonable costs incurred by the City in such action; and

(iii) To the extent consistent with applicable Law, any portion of the Provider's Facilities in, on, over or under the Rights-of-Way of the City designated by the City for removal and not timely removed by the Provider shall belong to and become the property of the City without payment to the Provider, and the Provider shall execute and deliver such documents, as the City shall request, in form and substance acceptable to the City, to evidence such ownership by the City.

(10) Pre-Excavation Facilities Location.

(a) Before the start date of any Rights-of-Way excavation, each Provider who has Facilities located in the area to be excavated shall, to the best of its

ability, be responsible to mark the horizontal and approximate vertical placement of all its Facilities.

(b) All Providers shall notify and work closely with the excavation contractor in an effort to establish the exact location of its Facilities and the best procedure for excavation.

(11) Rights-of-Way Restoration.

(a) The work to be done under the Permit, and the Restoration of the Rights-of-Way as required herein, weather permitting, must be completed within the dates specified in the Permit. In addition to its own work, the Permittee must restore the general area of the work, and the surrounding areas, including trench backfill, paving and its foundations in accordance with the Code and City Rules and Regulations. If a Permittee is unable to timely complete the Restoration of Rights-of-Way due to unreasonable inclement weather conditions, the Permittee shall complete the Restoration of the Rights-of-Way as soon as weather conditions make it possible to do so and upon said completion notify the City.

(b) In approving an Application for a Construction Permit, the City may have the Permittee restore the Rights-of-Way, or alternatively the City may restore the Rights-of-Way at the Permittee's cost if the Permittee has in the past not abided by requirements of this chapter.

(c) If the City chooses to allow Permittee to restore the Rights-of-Way, the Permittee shall, at the time of Application for a Construction Permit, post a Construction Bond in an amount determined by the City to be sufficient to cover the cost of restoring the Rights-of-Way to its approximate pre-excavation condition. If, twelve (12) months after completion of the Restoration of the Rights-of-Way, the City determines that the Rights-of-Way have been properly restored, the surety on the Construction Bond shall be released.

(d) The Permittee shall perform the work according to the standards and with the materials specified by the City. The City shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis. The City in exercising this authority shall be guided by the following standards and considerations: the number, size, depth and duration of the excavations, disruptions or damage to the Rights-of-Way; the traffic volume carried by the Rights-of-Way; the character of the neighborhood surrounding the Rights-of-Way; the pre-excavation condition of the Rights-of-Way; the remaining life-expectancy of the Rights-of-Way affected by the excavation; whether the relative cost of the method of Restoration to the Permittee is in reasonable balance with the prevention of

an accelerated depreciation of the Rights-of-Way that would otherwise result from the excavation, disturbance or damage to the Rights-of-Way; and the likelihood that the particular method of Restoration would be effective in slowing the depreciation of the Rights-of-Way that would otherwise take place. Methods of Restoration may include, but are not limited to, patching the affected area, replacement of the Rights-of-Way base at the affected area, and in the most severe cases, milling, overlay and/or street reconstruction of the entire area of the Rights-of-Way affected by the work.

(e) By restoring the Rights-of-Way itself, the Permittee guarantees its work and shall maintain it for twelve (12) months following its completion. During this twelve (12) month period, it shall, upon notification from the Department of Public Service, correct all Restoration work to the extent necessary using the method required by the Department of Public Service. Weather permitting, said work shall be completed within five (5) calendar days of the receipt of the notice from the Department of Public Service, unless otherwise extended by the Department of Public Service.

(f) If the Permittee fails to restore the Rights-of-Way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all repairs required by the City, the City, at its option, may do such work. In that event, the Permittee shall pay to the City, within thirty (30) days of invoicing, the Restoration cost of restoring the Rights-of-Way and any other costs incurred by the City. Upon failure to pay, the City may call upon any bond or letter of credit posted by Permittee and/or pursue any and all legal and equitable remedies.

(g) If the work to be done under the Permit is being done at the same location and the same period of time as work by the City and/or another Permittee(s), then the Service Director may reasonably apportion the Restoration responsibility among the City, Providers and/or other Persons.

(12) Damage to Other Facilities.

(a) In the case of an Emergency, and if possible after reasonable efforts to contact the Provider seeking a timely response, when the City performs work in the Rights-of-Way and finds it necessary to maintain, support, or move a Provider's Facilities to protect those Facilities, the costs associated therewith will be billed to that Provider and shall be paid within thirty (30) days from the date of billing. Upon failure to pay, the City may pursue all legal and equitable remedies or the City may call upon any bond or letter of credit posted by the Permittee and pursue any and all legal or equitable remedies. Each Provider shall be responsible for the cost of repairing any damage caused by its Facilities to the Facilities of another Provider during the City's response to an Emergency.

(b) Each Provider shall be responsible for the cost of repairing any City-owned Facilities in the Rights-of-Way that the Provider or its Facilities damage.

(13) Rights-of-Way Vacation.

(a) If the City sells or otherwise transfers a Right-of-Way that contains the Facilities of a Provider, such sale or transfer shall be subject to any existing easements of record and any easements required pursuant to O.R.C. § 723.041.

(14) Installation Requirements.

The excavation, backfilling, Restoration, and all other work performed in the Rights-of-Way shall be performed in conformance with all applicable laws, City Rules and Regulations, other standards as may be promulgated by the Service Director.

(15) Inspection.

When the Construction under any Permit hereunder is completed, the Permittee shall notify the Department of Public Service.

(a) The Permittee shall make the Construction site available to the Inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the Construction.

(b) At the time of inspection, the Inspector may order the immediate cessation of any work that poses a serious threat to the life, health, safety or well-being of the public, violates any law or that violates the term and conditions of the Permit and/or this chapter. The City may inspect the work; however, the failure of the City to inspect the work does not alleviate the responsibility of the Permittee to complete the work in accordance with the approved Permit and the requirements of this chapter.

(c) The Inspector may issue an order to the Permittee for any work that does not conform to the Permit and/or applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the Permit. The order may be served on the Permittee as provided in § W(5). An order may be appealed to the Service Director. The decision of the Service Director may be appealed to the Mayor whose decision shall be final. If not appealed, within ten (10) days after issuance of the order, the Provider shall present proof to the Service Director that the violation has been corrected. If such proof has not been presented within the required time, the Service Director may revoke the Permit.

(16) Other Obligations.

(a) Obtaining a Construction Permit does not relieve Permittee of its duty to obtain all other necessary Permits, licenses, and authority and to pay all fees required by any other City, county, state or federal laws.

(b) Permittee shall comply with all requirements of all Laws.

(c) Permittee shall perform all work in conformance with all applicable laws and standards, and is responsible for all work done in the Rights-of-Way pursuant to its Permit, regardless of who performs the work.

(d) No Rights-of-Way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an Emergency as outlined in § T(4).

(e) Permittee shall not obstruct a Right-of-Way so as to interfere with the natural free and clear passage of water through the gutters or other waterways. The Service Director may waive this requirement if it is technically or economically unreasonable in the circumstances.

(f) Private vehicles, other than necessary Construction vehicles, may not be parked within or adjacent to a Permit area. The loading or unloading of trucks adjacent to a Permit area is prohibited unless specifically authorized by the Permit.

(17) Undergrounding Required.

Any owner of property abutting a street or alley where Service Facilities are now located underground and where the Service connection is at the property line, shall install or cause others to install underground any Service delivery infrastructure from the property line to the buildings or other structures on such property to which such Service is supplied. Where not otherwise required to be placed underground by this chapter, a Provider shall locate Facilities underground at the request of an adjacent property owner, provided that such placement of Facilities underground is consistent with the Provider's normal construction and operating standards and that the additional costs of such undergrounding over the normal aerial or above ground placement costs of identical Facilities are borne directly by the property owner making the request. A Provider, under any circumstance shall, upon the reasonable request of the City, always use Best Efforts to place Facilities underground. Where technically possible and not economically unreasonable or unsafe (based upon the technology employed and Facilities installed), all Facilities to be installed by a Provider under the Right-of-Way shall be installed in conduit.

§ S MINOR MAINTENANCE PERMIT.

(1) Right-of-Way Minor Maintenance Permit Requirement.

No Person shall perform minor maintenance of Facilities in the Rights-of-Way without first having obtained a Right-of-Way Minor Maintenance Permit as set forth in this chapter. Minor Maintenance means: (i) the routine repair or replacement of Facilities with like Facilities not involving Construction and not requiring traffic control for more than two (2) hours at any one location; or (ii) the routine repair or replacement of Facilities with like Facilities not involving Construction and taking place on thoroughfares and arteries between the hours of 9:00 A.M. and 3:00 P.M.; or (iii) the routine repair or replacement of Facilities with like Facilities not involving construction on all Rights-of-Ways, other than thoroughfares and arterials, that does not impede traffic and is for a period of less than eight (8) contiguous hours; or (iv) Construction other than on thoroughfares and arterials that takes less than eight (8) contiguous hours to complete, does not impede traffic and does not involve a pavement cut. The Service Director may adopt Rules and Regulations pursuant to section H(5) that clarify the definition of minor maintenance and/or provide a process for a Provider to determine whether particular activity constitutes minor maintenance.

(a) A Right-of-Way Minor Maintenance Permit allows the Permittee to perform all minor maintenance in any part of the Rights-of-Way as required.

(b) A Right-of-Way Minor Maintenance Permit is valid from the date of issuance until revoked by the Service Director.

(c) A Right-of-Way Minor Maintenance Permit must be displayed or upon request produced within twelve (12) business hours.

(d) A Right-of-Way Minor Maintenance Permit by itself shall under no circumstances provide a Permittee with the ability to cut pavement without seeking additional authority from the Service Director.

(2) Minor Maintenance Permit Applications.

Applications for a Right-of-Way Minor Maintenance Permit shall be made to the Service Director. In addition to any information required by the Service Director, all Right-of-Way Minor Maintenance Permit Applications shall contain, and will only be considered complete upon compliance with the following provisions:

(a) Credible evidence that the Applicant has obtained a Certificate of Registration or proof that the Applicant has written authority to apply for a Right-of-Way Minor Maintenance Permit on behalf of a party that has been issued a Certificate of Registration.

(b) Submission of a completed Right-of-Way Minor Maintenance Permit Application in the form required by the Service Director.

(c) A statement that the Applicant will employ protective measures and devices that, consistent with the Ohio Manual of Uniform Traffic Control Devices, will prevent injury or damage to Persons or property and minimize disruptions to the efficient movement of pedestrian and vehicular traffic.

(3) Issuance of Minor Maintenance Permits; Conditions.

(a) If the Service Director determines that the Applicant has satisfied the requirements of this chapter and the Right-of-Way Minor Maintenance Permit process, the Service Director shall issue a Minor Maintenance Permit subject to the provisions of this chapter.

(b) The City may impose reasonable conditions, in addition to Rules and Regulations enacted by the Service Director, upon the issuance of the Right-of-Way Minor Maintenance Permit and the performance of the Permittee thereunder in order to protect the public health, safety and welfare, to insure the structural integrity of the Rights-of-Way, to protect the property and safety of other users of the Rights-of-Way, and to minimize the disruption and inconvenience to the traveling public.

(4) Minor Maintenance Permit Fees.

The Service Director shall not charge a fee for the issuance of the Right-of-Way Minor Maintenance Permit but may revoke the Right-of-Way Minor Maintenance Permit as any other Permit may be revoked under this chapter.

§ T ENFORCEMENT OF PERMIT OBLIGATION.

(1) Mandatory Denial of Permit.

Except in the case of an Emergency, as determined by the Service Director or his/ her designee, no Permit will be granted:

(a) To any Person who has not yet made an Application or who is occupying any Right-of-Way without a valid Certificate of Registration; or

(b) To any Person who has outstanding debt owed to the City unless payment in full has been placed in an escrow account approved by the City Director of Finance and the Law Director; or

(c) To any Person as to whom there exists grounds for the revocation of a Permit; or

(d) If, in the discretion of the Service Director, the issuance of a Permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The Service Director, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the Rights-of-Way, and by considerations relating to the public health, safety and welfare and/or the City's investment in the Right-of-Way.

(2) Permissive Denial of Permit.

The Service Director may deny a Permit in order to protect the public health, safety and welfare, and/or protect the City's investment in the Right-of-Way to prevent interference with the safety and convenience of ordinary travel over the Rights-of-Way, or when necessary to protect the Rights-of-Way and its users.

(a) The Service Director, in his/her discretion, may consider one or more of the following factors:

(i) the extent to which Rights-of-Way space where the Permit is sought is available; and/or

(ii) the competing demands for the particular space in the Rights-of-Way; and/or

(iii) the availability of other locations in the Rights-of-Way or in other Rights-of-Way for the proposed Facilities; and/or

(iv) the applicability of this chapter or other regulations of the Rights-of-Way that affect location of Facilities in the Rights-of-Way; and/or

(v) the degree of compliance of the Provider with the terms and conditions of its Certificate of Registration, this chapter, and other applicable ordinances and regulations; and/or



(vi) the degree of disruption to surrounding communities and businesses that will result from the use of that part of the Rights-of-Way; and/or

(vii) the condition and age of the Rights-of-Way, and whether and when it is scheduled for total or partial re-construction; and/or

(viii) the balancing of the costs of disruption to the public and damage to the Rights-of-Way, against the benefits to that part of the public served by the expansion into additional parts of the Rights-of-Way; and/or

(ix) whether such Applicant or its agent has failed within the past three (3) years to comply, or is presently not in full compliance with, the requirements of this chapter, or, if applicable, any other law.

(b) Under no circumstances will open cutting take place on any street except where:

(i) An Emergency situation constitutes that an open cut is necessary; and/or

(ii) Vital services to resident(s) or business(es) are needed or have been cut off and there is no reasonable alternative (such as jacking or boring) in supplying or restoring such services; and/or

(iii) The Service Director determines it is in the best interests of the City that such an open cut take place.

(3) Discretionary Issuance of Permit.

(a) Notwithstanding the provisions of §§ T(1)(a) and T(1)(b), the Service Director may issue a Permit in any case in which the Permit is necessary;

(i) to prevent substantial economic hardship to a customer of the Permit Applicant, if established by credible evidence satisfactory to the City; or

(ii) to allow such customer to improve its Service; or

(iii) to allow a new economic development project to be granted a Permit under this section.

(b) To be granted a Permit under this section, the Permit Applicant must not have had knowledge of the hardship, the plans for improvement of Service, or the development project when it was required to submit its list of next year projects.

(4) Work Done Without a Permit in Emergency Situations.

(a) Each Provider shall, as soon as is practicable, immediately notify the Service Director of any event regarding its Facilities which it considers to be an Emergency. The Provider may proceed to take whatever actions are necessary in order to respond to the Emergency. Within five (5) business days, unless otherwise extended by the Service Director, after the occurrence or discovery of the Emergency (whichever is later), the Provider shall apply for the necessary Permits, pay the fees associated therewith or have those fees attributed to its quarterly invoice balance in accordance with section Q(4) and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for any and all actions taken in response to the Emergency. In the event that the City becomes aware of an Emergency regarding a Provider's Facilities, the City may use Best Efforts to contact the Provider or the System Representative of each Provider affected, or potentially affected, by the Emergency. In any event, the City may take whatever action it deems necessary in order to respond to the Emergency, the cost of which shall be borne by the Provider whose Facilities caused the Emergency.

(b) Except in the case of an Emergency, any Provider who Constructs in, on, above, within, over, below or through a Rights-of-Way without a valid Permit must subsequently obtain a Permit, pay double the calculated fee for said Permit, pay double all the other fees required by the Code, deposit with the City the fees necessary to correct any damage to the Rights-of-Way and comply with all of the requirements of this chapter.

(5) Revocation of Permits.

(a) Permittees hold Permits issued pursuant to this chapter as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any Permit, without refunding any fees, in the event of a failure of the Permittee to comply with the terms and conditions of any Law, ordinance, rule or regulation, Design Guidelines or any provision or condition of the Permit, including, but not limited to the following:

(i) The violation of any provision or condition of the Permit;

or

(ii) An evasion or attempt to evade any provision or condition of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens; or

- (iii) Any misrepresentation of fact in the Application for a Permit; or
- (iv) The failure to maintain the required Construction or Removal Bonds and/or insurance; or
- (v) The failure to obtain and/or maintain, when required, a Certificate of Registration; or
- (vi) The failure to complete the Construction in a timely manner; or
- (vii) The failure to correct a condition of an order issued.

(b) If the Service Director determines that the Permittee has not complied with a term or condition of any law, ordinance, rule or regulation, or any condition of the Permit, the Service Director shall serve a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the Permit. The Service Director may also, in his/ her discretion, place additional or revised conditions on the Permit.

(c) By the close of the next business day following receipt of notification of the violation, Permittee shall contact the Service Director with a plan, acceptable to the Service Director, for its correction. Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the Permit.

(d) If a Permittee commits a second substantial default as outlined above, Permittee's Permit will automatically be revoked and the Permittee will not be allowed further Permits for up to and including one (1) full year from the date that the Permit was revoked, except for Emergency repairs.

(e) If a Permit is revoked, the Permittee shall also reimburse the City for the City's reasonable costs, including Restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

#### § U PERFORMANCE SECURITY.

##### (1) Required Bond.

Upon issuance of a Certificate of Registration, and prior to the commencement of any Construction, and continuously thereafter, a Provider shall deposit with the Service

Director and maintain an irrevocable, unconditional letter of credit or surety bond in an amount determined by the Service Director to be appropriate based upon fair and reasonable criteria. The full amount of the letter of credit or surety bond shall remain in full force and effect throughout the terms and conditions of this chapter and/or until any necessary site restoration is completed to restore the site to a condition comparable or better to that which existed prior to the issuance of Certificate of Registration. Unless a Construction default, problem, or deficiency involves an Emergency or endangers the safety of the general public, the Service Director shall make all reasonable efforts to allow a Provider a period of five (5) calendar days after sending notification in writing to correct or repair any default, problem or deficiency prior to the Service Director's attachment of the letter of credit or surety bond. Upon attachment, written notice shall be provided to the Provider by the Service Director.

(2) Purposes.

(a) The letter of credit or surety bond required by this section shall serve as security for:

(i) The faithful performance by the Permittee or Provider of all terms, conditions and obligations of this chapter; and

(ii) Any expenditure, damage, or loss incurred by the City occasioned by the Permittee or Provider's violation of this chapter or its failure to comply with all rules, regulations, orders, Permits and other directives of the City issued pursuant to this chapter; and

(vi) The payment of all compensation due to the City, including Permit Fees; and

(vii) The payment of premiums (if any) for the liability insurance required pursuant to this chapter; and

(viii) The removal of Facilities from the Rights-of-Way pursuant to this chapter; and

(vi) The payment to the City of any amounts for which the Permittee or Provider is liable that are not paid by its insurance or other surety; and

(vii) The payment of any other amounts which become due to the City pursuant to this chapter or law.

§ V INDEMNIFICATION AND LIABILITY.

(1) City Does Not Accept Liability.

(a) By reason of the acceptance of an Application, the grant of a Permit or the issuance of a Certificate of Registration, the City does not assume any liability:

(i) For injuries to Persons, damage to property, or loss of Service claims; or

(ii) For claims or penalties of any sort resulting from the installation, presence, maintenance or operation of Facilities.

(2) Indemnification.

(a) By applying for and being issued a Certificate of Registration with the City a Provider is required, or by accepting a Permit a Permittee is required to defend, indemnify, and hold harmless the City's agents, elected officials, officers, employees, volunteers and subcontractors from all costs, liabilities, claims, and suits for damages of any kind arising out of the Construction, presence, installation, maintenance, repair or operation of its Facilities, or out of any activity undertaken in or near a Right-of-Way, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit. A Provider or Permittee shall not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City's agents, elected officials, officers, employees, volunteers, and subcontractors for any claim nor for any award arising out of the presence, installation, maintenance or operation of its Facilities, or any activity undertaken in or near a Right-of-Way, whether the act or omission complained of is authorized, allowed or prohibited by a Permit. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Provider, Permittee or to the City; and the Provider or Permittee, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. Any and all exercise of the above shall be consistent with, but not limited to, the following:

(i) To the fullest extent permitted by law, all Providers and Permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the City, its elected officials, agents, officers, employees, volunteers and subcontractors from and against any and all lawsuits, claims (including without limitation workers' compensation claims against the City or others), causes of actions, actions, liability, and judgments for injury or damages (including, but not limited to, expenses for reasonable legal fees and disbursements assumed by the City in connection therewith); and

A. Persons or property, in any way arising out of or through the acts or omissions of Provider or Permittee, its subcontractors, agents or employees attributable to the occupation by the Provider or Permittee of the Rights-of-Way, to which Provider's or Permittee's negligence shall in any way contribute, and regardless of whether the City's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage; and

B. Arising out of any claim for invasion of the right of privacy, for defamation of person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm and corporation by the Provider, but excluding claims arising out of or related to the City's actions; and

C. Arising out of Provider or Permittee's failure to comply with the provisions of law applicable to Provider or Permittee in its business hereunder.

(b) The foregoing indemnification is conditioned upon the City:

(i) Giving Provider or Permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought; and

(ii) Affording the Provider or Permittee the opportunity to participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and

(iii) Cooperate in the defense of such claim and making available to the Provider or Permittee all pertinent information under the City's control.

(c) The City shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the Provider or Permittee shall pay all reasonable fees and expenses of such separate counsel if employed.

#### § W GENERAL PROVISIONS.

(1) Non-exclusive Remedy.

The remedies provided in this chapter are not exclusive or in lieu of other rights and remedies that the City may have at law or in equity. The City is hereby authorized at any time to seek legal and equitable relief for actual or threatened injury to

the Rights-of-Way, including damages to the Rights-of-Way, whether caused by a violation of any of the provisions of this chapter or other provisions of the City Code of Ordinances.

(2) Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(3) Revocability

If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any Permit, right or any portions of this section are illegal or unenforceable, then any such Permit or right granted or deemed to exist hereunder shall be considered as a revocable Permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable Permit shall be the same requirements and conditions as set forth in the Permit, right or registration, respectively, except for conditions relating to the term of the Permit and the right of termination. If a Permit or right shall be considered a revocable Permit as provided herein, the Permittee must acknowledge the authority of the City to issue such revocable Permit and the power to revoke it.

(4) Reservation of Regulatory and Police Powers.

The City, by the granting of a Permit or by issuing a Certificate of Registration pursuant to this chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and laws of the United States, State of Ohio and under the Charter of the City to regulate the use of the Rights-of-Way. The Permittee by its acceptance of a Permit, or Provider by applying for and being issued a Certificate of Registration, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as now are or the same as may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Permittee or Provider is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the City pursuant to such powers.

(5) Method of Service.

Any notice or order of the Service Director or Mayor shall be deemed to be properly served if a copy thereof is:

- (a) Delivered personally; or
  - (b) Successfully transmitted via facsimile transmission to the last known fax number of the person to be served; or
  - (c) Successfully transmitted via electronic mail to the last known e-mail address of the person to be served; or
  - (d) Left at the usual place of business of the person to whom it is to be served upon and with someone who is eighteen (18) years of age or older; or
  - (e) Sent by certified, pre-posted U.S. Mail to the last known address;
- or
- (f) If the notice is attempted to be served by certified, pre-posted U.S. Mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular, pre-posted, first-class U.S. Mail; or
  - (g) If the notice is attempted to be served by regular, first class U.S. Mail, postage prepaid, and the letter is then returned showing that the letter was not delivered, or is not returned within fourteen (14) days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property affected by such notice.

(6) Applies to All Providers.

This chapter shall apply to all Providers and all Permittees unless expressly exempted.

(7) Police Powers.

All Persons' rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All persons shall comply with all applicable laws enacted by the City pursuant to its police powers. In particular, all persons shall comply with City zoning and other land use requirements pertaining to the placement and specifications of Facilities.



(8) Compliance.

No Person shall be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the City to enforce prompt compliance.

(9) Foreclosure and Receivership.

(a) Upon the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against any Provider and/or Permittee, or any action for foreclosure or other judicial sale of the Provider and/or Permittee Facilities located within the Rights-of-Way, the Provider and/or Permittee shall so notify the Service Director within fourteen (14) calendar days thereof and the Provider and/or Permittee's Certificate of Registration or Permit (as applicable) shall be deemed void and of no further force and effect.

(b) The City shall have the right to revoke any Certificate of Registration or Permit granted pursuant to this chapter, subject to any applicable provisions of law, including the Bankruptcy Code, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Provider and/or Permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days or unless:

(i) Within one hundred and twenty (120) days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant Certificate of Registration, any outstanding Permit, this chapter, and remedied all defaults thereunder; and

(ii) Said receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by a court having jurisdiction over the Facilities, whereby such receiver or trustee assumes and agrees to be bound by each and every provisions of the relevant Certificate of Registration, Permit and this chapter.

(10) Choice of Law and Forum.

This chapter and the terms and conditions of any Certificate of Registration or Permit shall be construed and enforced in accordance with the substantive laws of the City, State of Ohio and United States, in that order. As a condition of the grant of any

Permit or issuance of any Certificate of Registration all disputes shall be resolved in a court of competent jurisdiction in Summit County, Ohio.

(11) Force Majeure.

In the event any Person's performance of any of the terms, conditions or obligations required by this chapter is prevented by a cause or event not within such Person's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Person shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(12) No Warranty.

The City makes no representation or warranty regarding its right to authorize the Construction of Facilities on any particular Rights-of-Way. The burden and responsibility for making such determination shall be upon the Person installing Facilities in the Rights-of-Way.

(13) Continuing Obligation and Holdover.

In the event a Provider or Permittee continues to operate all or any part of the Facilities after the termination, lapse, or revocation of a Certificate of Registration, such Provider or Permittee shall continue to comply with all applicable provisions of this chapter and other laws throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Certificate of Registration, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution. Any conflict between the issuance of a Certificate of Registration or of a Permit and any other present or future lawful exercise of the City's regulatory or police powers shall be resolved in favor of the latter.

(14) Appeals.

All appeals provided for by this chapter and any notification to the City required by this chapter shall be in writing and sent via certified U.S. Mail to the Mayor or Service Director as specified in this chapter.

(15) City Facilities.

As part of City required standards, wherever Rights-of-Way are under Construction, if deemed advisable and practicable by the Service Director, the City may install all such Facilities deemed necessary to accommodate future Provider needs. Any such installed Facilities shall be City property and may be conveyed to any Person under such terms and conditions as are deemed advisable by the Mayor.

(16) Section Headings.

Section headings are for convenience only and shall not be used to interpret any portion of this chapter.

§ X PENALTIES.

(1) In addition to any other penalties set forth in this chapter and the remedy of specific performance which may be enforced in a court of competent jurisdiction, the following penalties shall apply:

(a) Any Person who fails to pay any forfeiture imposed pursuant to § X(1)(a) of this chapter shall be guilty of a misdemeanor of the fourth (4<sup>th</sup>) degree. Each day such violation continues shall be deemed a separate offense.