

First Reading: January 23, 2018  
Second Reading: January 30, 2018

ORDINANCE NO. 13267

AN ORDINANCE TO AMEND THE CHATTANOOGA CITY CODE, PART II, CHAPTER 2, SECTIONS 2-65 THROUGH 2-66; CHAPTER 32, ARTICLE I, DEFINITIONS, SECTION 32-16; ARTICLE III, EXCAVATIONS AND RESTORATION OF PAVING, SECTIONS 32-62 THROUGH 32-68; AND ARTICLE XI, TELECOMMUNICATIONS SERVICES; FRANCHISES FOR TELECOMMUNICATIONS SERVICES, SECTIONS 32-224, AND 32-231 THROUGH 32-270.

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SECTION 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 2, at Sections 2-65 through 2-66, be amended by removing said section in its entirety and substituting in lieu thereof the following:

**Sec. 2-65. - Payment for publication of ordinances granting franchises.**

The cost of advertising ordinances granting franchises shall be paid by the grantees of the franchise rights as a condition precedent to the publication of the notice of such ordinances and before the passage thereof on the second and final reading. The clerk of the city council, before the publication by him or her of any ordinance granting any franchise, shall ascertain the cost of notice publication thereof in a daily newspaper published in the county and shall collect from the grantee of the franchise the cost of publication before delivering the ordinance to such newspaper for publication.

**Sec. 2-66. - Franchise book.**

The clerk of the city council shall keep in a separate book known as the "franchise book," a record of franchises granted by the city, the date of passage of the ordinance granting any franchise, the limitation as to time in which Rights-of-Way, as defined under Chattanooga City Code 32-231 or as amended, may be built upon, if any, and the motive power to be employed in the exercise of such franchise, if any.

SECTION 2. BE IT FURTHER ORDAINED That Chattanooga City Code, Part II, Chapter 32, Article I, Section 32-16, be amended by adding the following additional definitions:

**Sec. 32-16. – Definitions.**

“Street Segment” - The roadway length defined by the City’s micropaver software for a subset of an entire street. Roads may have one or more street segments, averaging 600 feet long.

“Work” - Any excavation or tunneling of any Right-of Way, as defined under Chattanooga City Code Section 32-231, as amended, or City property, including but not limited to excavation in, cutting of, or tunneling of any street, sidewalk, or curb for purposes of constructing or maintaining pipes, lines, driveways, private streets, poles, guy wires, signs, or other utilities, or private structures for erecting public access, within Rights-of-Way, public property, or publicly owned buildings.

“Work Zone” - Any area within which the general public does not have full access for a temporary period of time because of Work or other related construction activities.

SECTION 3. BE IT FURTHER ORDAINED That Chattanooga City Code, Part II, Chapter 32, Article III, Sections 32-62 through 32-68, Excavations and Restoration of Paving, be amended by substituting in lieu thereof the following:

**Sec. 32-62. – Permit required.**

It shall be unlawful for any person to make any excavation in or to tunnel under any street, curb, alley, or Right-of-Way as defined under Chattanooga City Code Section 32-231, as amended, in the City without first having obtained a street cut permit and complying with the provisions of this Article. It shall be unlawful to violate or to vary from the terms of any such permit; provided, however, any person maintaining pipes, lines, driveways, or other facilities including private structures for erecting public access in or under the surface of any Right-of-Way may proceed with an excavation without a permit when emergency circumstances demand the Work to be done immediately, and provided further that the person shall apply for a permit on the next working day.

**Sec. 32-63. – Applications.**

Applications for such permits shall be made to the Building Official and shall state thereon the location of the intended excavation or tunnel, the size thereof, the purpose thereof, the name of the person doing the actual excavating, and the name of the person for whom the Work is being done. The applicant shall disclose any foreseeable lane or sidewalk closures or detours during excavation. As a condition of issuing a permit, all applicants must agree in writing as part of the application to comply with all ordinances and laws relating to the Work to be done. The Building Official or his designee shall consider each application for a permit filed under this Article, under

all facts and circumstances, shall grant or refuse the permit within five (5) working days and shall endorse his action on the application. The Building Official shall refer such application to the Transportation Department for review and comment when a professional opinion on the propriety of issuing a permit or conditions to attach thereto is needed. The action of the Building Official in granting or refusing a permit shall be final, except as it may be subject to review at law. A permit may be refused for the following reasons:

- (a) The proposed work should be redesigned to mitigate a potential safety hazard;
- (b) The proposed work should be redesigned to mitigate damage within the right-of-way;
- (c) The proposed work cannot be safely made in the Right-of-Way;
- (d) The proposed restoration plan does not meet the minimum City standards for restoration;
- (e) The applicant has willfully failed to comply with conditions of prior permits issued to the applicant; provided that such disqualification shall be removed upon correction of any such defects; or
- (f) For other good cause in the discretion of the Building Official.

Provided that as to an excavation done in emergency circumstances the application shall be completed on the next working day; and the Building Official shall review the actual Work completed for conformity with the requirements hereof.

**Sec. 32-64. – Application and other fees; construction requirements.**

Each application shall be accompanied by a fee as follows:

- (a) A permit fee of Three Hundred Dollars (\$300.00) for all permits shall apply to no more than one cut or Work of the following type:
  - (1) Transverse cut in the roadway pavement;
  - (2) Longitudinal cut in the roadway pavement of up to three hundred (300) feet in length;
  - (3) Within an intersection;
  - (4) Concrete Curb or concrete gutter; or
  - (5) Concrete sidewalk.

(b) In addition to the fixed permit fee for all permits, applicants are responsible for additional fees as follows:

- (1) One Hundred Dollars (\$100.00) each for each additional transverse roadway cut;
- (2) One Hundred Dollars (\$100.00) each for each additional cut in the concrete sidewalk or concrete curb or gutter; and
- (3) One Dollar (\$1.00) for each additional foot of longitudinal cut in the roadway pavement beyond three hundred (300) feet.

(c) Street Cut Permit is not required for cuts outside the sidewalk and street pavement.

(d) Written notification of intent to Work in a Right-of-Way must be received at least twenty-four (24) hours prior to beginning Work, even if a permit is not required, except in emergencies. E-mail is considered a written notice. All applicants for any permits which require street or sidewalk closure should be submitted with enough written notice to comply with road closure policies administered by the Transportation Department.

(e) Additionally, Work Zone permits are required for Work that limits public access to the full Right-of-Way, such as those requiring closure of a street or sidewalk or the temporary use of a curb-side parking space. Additional Work Zone permit fees may apply based on impact to the general public.

(f) Permits for relocation or installation of fire hydrants will be required when requested by the City, but no fee (including administrative fees) will be required.

(g) No more than five (5) multiple cuts, each not exceeding twenty-five (25) square feet in area, when required in a single block or within a Work Zone distance of two hundred fifty (250) feet as part of a single project, are considered as one (1) cut. Permit and fee will be required for a single cut under these conditions. If the cut exceeds two hundred fifty (250) feet, or multiple cuts within a block or a Work Zone greater than two hundred fifty (250) feet, or the number of cuts within two hundred fifty (250) exceeds five (5), then all lanes that are disturbed by construction shall be repaved from intersection to intersection.

Cuts within any intersection of a City street require repavement of the entire intersection including marked crosswalks. For stamped or concrete crosswalks, replacement of the crosswalk is not required unless the cut includes the pavement of the crosswalk itself.

Any cut that includes a concrete ADA curb ramp requires full replacement of the ramp in compliance with current laws and codes.

(h) Neither permits nor fees will be required when Work in the Right-of-Way is conducted as part of a City street improvement project, including resurfacing, where the utility is required to move their facilities as a result of the City project.

(i) Except as otherwise stated in this Chapter, fees shall not be waived under any

other conditions.

(j) When it is determined that non-emergency Work in the City Right-of-Way has proceeded without the purchase of a permit, the contractor or utility shall immediately purchase a street cut permit, and the fee for the permit shall be double the standard fee; and, no further permits shall be issued to the contractor or utility until such time as the improper Work is removed and replaced in accordance with this Code.

(k) Where Work in the City Right-of-Way is self-performed by one (1) of the following entities, or by one (1) of the entity's approved contractors, the fee for each permit shall be invoiced monthly:

- (1) Electric Power Board of Chattanooga;
- (2) Tennessee-American Water Company;
- (3) Chattanooga Gas Company;
- (4) AT&T;
- (5) Comcast Cable Company;
- (6) Hixson Utility District; and
- (7) Eastside Utility District.

(l) Fees set forth within this Section may be revised by the City in connection with the annual budget adopted each fiscal year.

**Sec. 32-65. – Manner of excavating; Barricades and lights.**

Any person making any excavation shall do so according to the specifications and standards issued by the Transportation Department. In accordance with the Manual on Uniform Traffic Control Devices (MUTCD), sufficient and proper barricades, lights and other traffic control devices shall be maintained to prevent accidents and injury to persons or property. If any sidewalk is blocked, a temporary sidewalk shall be provided which shall be safe for travel and accessible for all users. No work installing or maintaining such safety measures and/or temporary sidewalks shall be done which deviates from the approved plans and until a change of plans has been secured in writing from the Building Official. All expenses of such safety measures and temporary sidewalk shall be borne by the applicant or owner.

**Sec. 32-66. – Bond required.**

When permits are required to excavate or in any way obstruct any street in the City, the Building Official shall require from such applicant, before granting a permit, a bond with good and sufficient sureties, conditioned to secure the City against all loss, damage or injury of any kind which may result to the City by reason of such excavation or obstruction; provided, that persons engaged in the business of contracting shall be allowed to give an annual bond, instead of a bond for each obstruction such annual bond in every instance to be renewed at least once every twelve (12) months.

**Sec. 32-67. – Manner of excavating street.**

(a) In excavating any street, all material for paving or ballasting must be removed with the least possible injury or loss of the same, and together with the excavated materials from the trenches, must be placed where they will cause the least possible inconvenience to the public. All pavement where trench excavations are to be made shall be saw cut. Cutting the street with a jackhammer or a hoe-ram is strictly prohibited.

(b) The permittee shall carry on the Work as authorized by the permit in such manner as to cause a minimum interference with traffic. The permittee shall provide adequate warning signs and devices to warn and guide traffic, and shall place the signs and warning devices in a position of maximum effectiveness. The latest editions of the Manual on Uniform Traffic Control Devices, copies of which are on file in the Transportation Department Office, and are generally available online, may be used as a guideline for proper positioning of signs and devices.

(c) Where difficult or potentially hazardous conditions exist, the permittee shall provide competent flagmen to effect a safe and orderly movement of traffic. Where insufficient traffic lanes exist because of street openings, adequate bridging shall be supplied and maintained by the permittee. When traffic congestion occurs in spite of all precaution, the permittee shall be responsible for providing a flagman. In the event the Land Development Office or Transportation Department shall discover any hazardous excavation or unwarranted traffic congestion where flagmen have not been provided, it shall direct the permittee to immediately post flagmen. A failure to post flagmen following a directive shall be a violation of this Article, and shall subject the permittee to penalties and/or rescission of the permit.

(d) On main thoroughfares and in congested districts, sufficient traffic lanes shall be kept open at all times to permit substantially normal traffic flow. However, if this requirement is not possible, then Work shall be done only during the period between 9:00 a.m. and 4:00 p.m. or between 7:00 p.m. and 6:00 a.m., as the Transportation Department may designate.

(e) For backfill in roadway areas, the contractor shall provide six (6) inches of graded aggregate base above the utility's main line. From top of graded aggregate base backfill to within four (4) feet of the street surface, the contractor shall provide fine aggregate (crushed limestone dust no larger than one-sixteenth (1/16) inch. Each eight (8) inch lift of the fine aggregate base shall be moistened and compacted by means of a mechanical tamp. The contractor shall complete the backfill up to the bottom of the paving with flowable fill with a compressive strength of two hundred (200) to two hundred fifty (250) psi in forty-eight (48) hours. Flowable fill shall be placed a minimum of forty-eight (48) hours prior to the placing of the asphalt or concrete topping. Where it is impractical to use flowable fill because of terrain, slope, width of trench, or other situations, the material for the backfill in the roadway areas may be approved for cement treated aggregate base at the sole discretion of the Department of Transportation. Each eight (8) inch layer of backfill shall be thoroughly compacted by means of a mechanical tamp. Other backfill materials may be acceptable, but prior approval for the substitution shall be determined by the Land Development Office.

(f) Backfill for trenches within the sidewalk areas shall be compacted graded aggregate base instead of loose washed stone. Each eight (8) inch layer of graded aggregate base shall be thoroughly compacted by means of mechanical tamp.

(g) Any perpendicular cut in a roadway must be repaved no less than the full width of the travel lane(s) that it cuts, and a minimum of ten (10) feet on each side of the centerline of the excavation. Any longitudinal cut must be repaved no less than the full width of the travel lane(s) that it cuts extended no less than ten (10) feet beyond the beginning and end of the cuts being made.

(h) The proposed restoration plan shall require that permanent repairs or restoration of street cuts shall be made to match existing surfaces.

**Sec. 32-68. – Liability and responsibility for repair.**

(a) Subject to the provisions set forth within this Section, any person who shall properly make any excavation or other change to the Right-of-Way, and shall have same inspected by the Building Official or his designee, shall be relieved from any liability for any defects due to inadequate workmanship or defective materials provided the excavation shall remain free from defects for twelve (12) months following installation.

(b) If a contractor, utility, or other entity makes one (1) cut or excavation within one (1) Street Segment within the City Right-of-Way, causing disruption to any part of the pavement within one (1) year after said Right-of-Way has been resurfaced or constructed, said contractor, utility, or other entity shall repave the entire Street Segment. If a contractor, utility, or other entity makes two (2) cuts or excavations within one (1) Street Segment within the City Right-of-Way, causing disruption to any part of the pavement within two (2) years after said Right-of-Way has been resurfaced or constructed, said contractor, utility, or other entity shall repave the entire Street Segment. If a contractor, utility, or other entity makes three (3) or more cuts or excavations within one (1) Street Segment within the City Right-of-Way, causing disruption to any part of the pavement within five (5) years after said Right-of-Way has been resurfaced or constructed, said contractor, utility, or other entity shall repave the entire Street Segment.

(c) Said repaving specified in this Section shall be completed to the standards approved by the Transportation Department and shall be performed under the supervision and control and at the direction of the City. The contractor, utility, or other entity shall bear the entire cost of such repaving. The contractor, utility or other entity shall be prohibited from acquiring any permits for additional excavations in any City Right-of-Way until such time as the repaving required by this street segment section is completed and approved by the Transportation Department.

(d) If a contractor, utility, or other entity damages any traffic control device, then said contractor, utility, or other entity shall immediately replace the device(s) per the standard of the Transportation Department. Damaged signal detection loops or sensors shall be replaced including connection to the signal cabinet with oversight by the Transportation Department. Damaged pavement markings (stop bar, crosswalk, lane line, turn arrow, bike symbol, colored pavement, or other) shall be replaced in 90 mil thermoplastic.

SECTION 4. BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 32, at Sections 32-224, be amended by removing said section in its entirety and substituting in lieu thereof the following:

**Sec. 32-224. - Sidewalk Clear Zone.**

It is required that a Clear Zone, as defined under Chattanooga City Code 38-568 (16) or as amended, be maintained for passage on the sidewalk surface of all City Rights-of-Ways, and that all sidewalk surface areas of all City Rights-of-Ways shall otherwise remain compliant with the Americans with Disabilities Act (ADA) and the zoning requirements applicable to any specific use or Historic Districts in the City.

SECTION 5. BE IT FURTHER ORDAINED That Chattanooga City Code, Part II, Chapter 32, Article XI, Telecommunications Services; Franchises for Telecommunications Services, at Sections 32-231 through 32-252, be amended by removing said sections and subsections in their entirety and substituting in lieu thereof the following:

**Sec. 32-231. - Definitions.**

For the purposes of this Article, all definitions set forth in Chattanooga City Code 38-568 (16) or as such terms may be amended within that section after the enactment of this Ordinance shall apply regarding Advanced Wireless Research Program Participant, Alternative Structure, Antenna, Base Station, Breakpoint Technology, Collocation, Cellular on Wheels, Distributed Antenna System, Eligible Facilities Request, Eligible Support Structure, Personal Wireless Service Facility (PWSF), Qualified Collocation Request, Smart Pole, Small Cell Facility, Small Cell Network, Stealth Design, Substantial Change, Support Structure, Tower, and Transmission Equipment, including the following new definitions which are referenced below:

“City of Chattanooga” and “City” shall mean the City of Chattanooga, Tennessee, but shall not include the Electric Power Board of the City of Chattanooga unless specifically so stated to the contrary.

“Clear Zone” shall mean that portion of the Right-of-Way that is intended for pedestrian traffic along the sidewalk. The minimum width and location of the Clear Zone shall be determined by the paved area of any sidewalk within the Right-of-Way, however, in all instances it must be a minimum of forty-eight (48) inches of width and otherwise compliant with the Americans with



Disabilities Act (ADA) for public sidewalk accessibility. In areas of congested pedestrian activity in the Form Based Code District, a wider minimum portion of the sidewalk may be required. The location of the Clear Zone shall be consistent for the entire block, and in most instances it shall be required to be located immediately adjacent to the facade of adjoining properties. The Clear Zone must at all times be free from any items, obstacles, or barriers so as to allow clear movement for pedestrians along the public Right-of-Way.

“FCC” means the Federal Communications Commission of the United States of America or any successor thereto.

“Franchisee” means the party subject to a Telecommunications Franchise, or its successors, assigns, or transferees.

“Franchise Fee” means the Telecommunications Franchise Fee unless the context clearly indicates otherwise.

“Provider” shall mean any person, other than an Advanced Wireless Research Program Participant, who owns, leases, operates, installs, purchases capacity in or maintains any network or equipment within the City of Chattanooga for Telecommunications Services containing communication cables, wires, lines, towers, waveguides, fiber, microwave, laser beams or conduit and any associated converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing, by audio, video or other forms of electronic signals to or from subscribers or locations within the City of Chattanooga, (hereinafter collectively referred to as “Provider’s System” or “System”) in, on, under or over the public Rights-of-Way of the City of Chattanooga, or its successors, assigns, or transferees. The term Provider does not include a cable service provider providing “Cable service” or “Video service” as those terms are defined under the Competitive Cable and Video Services Act, T.C.A. §§ 7-59-301, et seq., as amended, that has been granted a franchise by the City to provide Cable Service or Video Service or has been granted a state-issued certificate of franchise authority by the State of Tennessee for a service area that includes the City.

“Rights-of-Way” means the surface and space on, above and below every street, alley, road, highway, lane or other public Right-of-Way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. Rights-of-Way shall not include public property owned or leased by City and not intended for Rights-of-Way use, including, but not limited to, parks or public works facilities. Rights-of-Way does not include federally granted railroad rights of way or easements granted to third parties (which may be reflected in a real property deed, subdivision plat, or other real property record) with respect to which the City holds no property interest.

“Telecommunications” means the transmission via the facilities, in whole or in part, between or among points specified by the user, of information of the user’s choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject, but does not include “Cable service” or “Video service” as defined under the Competitive Cable and Video Services Act, T.C.A. §§ 7-59-201, et seq., as amended, as such services shall be subject to

separate franchising requirements and applications.

“Telecommunications Facility” means one or more Antenna, utility structures currently hosting either fiber, cable or wire, Tower, Base Station, mechanical and/or electronic equipment, conduit, cable, fiber, wire, and associated structures, enclosures, assemblages, devices and supporting elements that generate, transmit or produce a signal used for communication that is proposed by an entity other than the City Government, including but not limited to radio/tv/satellite and broadcast Towers, telephone service, including new microwave or cellular Towers, Personal Wireless Service Facilities (PWSF), Distributed Antenna System (DAS), small cell facilities and Cellular on Wheels (COW), or as such defined terms may be amended in Chattanooga City Code 38-568 (16).

“Telecommunications Franchise” means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by City and Franchisee.

“Telecommunications Franchise Fee” means the fee imposed by City on Franchisee for use of the Rights-of-Way pursuant to a Telecommunications Franchise granted under this Article.

“Telecommunications Service” means the transmission via facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any “telecommunications service,” “enhanced service,” “information service,” or “Internet service,” as such terms are now, or may in the future be, defined under federal law, and including all instrumentality, facilities, conduit, apparatus (“Telecommunications Facilities”), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include Telecommunications Service provided by a cable service provider providing “Cable service” or “Video service” as defined under the Competitive Cable and Video Services Act, T.C.A. §§ 7-59-301, et seq., as amended, as the rights of providers of Cable service or Video service to use the public Rights-of-Way of the City shall be subject to separate franchising requirements and applications. Along with the similar exclusion in the additional paragraph below defining, “Provider,” this term does not include over-the-air radio or television broadcasts to the public at large licensed by the FCC.

**Sec. 32-232. – Services prohibited without franchise or without authorization from State of Tennessee.**

No Provider shall use the public Rights-of-Way in the City for Telecommunications Services, including wireless transmission via a Telecommunications Facility, without first having received a Communications Franchise from the governing body of the City. No person shall use the public Rights-of-Way of the City to provide services directly regulated by the Tennessee Public Utility Commission (“TPUC”) (or any successor agency) under Tennessee law unless so authorized by the TPUC, if such authorization is required.

**Sec. 32-233. – Provider’s Compliance with Law and Maintenance of Clear Zone.**

- (a) Provider shall construct and maintain Provider’s System in accordance with all

applicable federal, state and local laws, including all City's permit requirements, Telecommunications Franchise Fee payment, cost, and fee obligations, and all other City codes and ordinances, including but not limited to applicable zoning laws and restrictions to adjoining or adjacent properties, and the terms and conditions set forth within Chattanooga City Code 38-568, in effect as of the date of the award of its franchise, or thereafter adopted or amended. Provider's compliance with any applicable provisions of the zoning laws and restrictions to adjoining or adjacent properties, and the terms and conditions set forth within Chattanooga City Code 38-568, as may be amended from time to time, shall be deemed a condition of any Telecommunications Franchise.

(b) Maintenance of Clear Zone. It is required that a Clear Zone, defined in Section 32-231(16), as amended, be maintained for passage on the sidewalk surface of the Rights-of-Way, and that all installations are otherwise compliant with the Americans with Disabilities Act (ADA) and any zoning requirements applicable to any specific use or Historic Districts in the City, unless a variance is approved by the Board of Appeals for Variances and Special Permits. No Provider shall block or restrict the Clear Zone or block ingress/egress to any property, including but not limited to any driveway, crosswalk, bus stop or in any manner that conflicts with the Americans with Disabilities Act.

(c) Any Telecommunications Franchise granted pursuant to this Article shall be subject to any present and future legislation or resolution, which may be enacted by the Chattanooga City Council or legislation or regulation by the state of Tennessee.

**Sec. 32-234. - Application for Telecommunications Franchise; application fee.**

(a) Any entity desiring to construct, own, operate, replace, lease, maintain, or purchase capacity (for resale) in a System within the Rights-of-Way of the City shall apply to the office of Land Development for a Telecommunications Franchise from the City on the form provided by the Building Official. The application shall be accompanied by a non-refundable application fee of Two Thousand Five Hundred Dollars (\$2,500.00). Said application fee defrays in whole or in part City's reasonable costs to process an application filed hereunder and negotiate, award and administer a franchise. Said application fee shall not be considered franchise fee payments.

(b) Applicants shall fully complete the franchise application process and submit all requested information. The application and information submitted must be certified as true and accurate by the applicant. Applicant shall be responsible to certify to City any material changes to the information provided in the completed application during the term of any franchise. City reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determination, and reserves the right to waive all formalities and/or technicalities, where the best interest of City may be served.

(c) All Telecommunications Franchises located within the Rights-of-Way are subject to the following conditions and approval by the Land Development Office and the Chattanooga Department of Transportation:

- (1) All requests for a Telecommunications Franchise which will be located within the Right-of-Way shall submit a completed and verified application, which shall contain:
  - a) The applicant's name, address, telephone number, and email address;
  - b) The applicant's affiliates, if any, operating or having operated within the State of Tennessee;
  - c) Information demonstrating the applicant's financial ability to comply with the requirements of this Article;
  - d) A statement of whether the applicant, or any affiliate, has had a franchise application suspended, revoked or terminated in any other jurisdiction and the details surrounding such suspension, revocation or termination;
  - e) A statement of whether the applicant or any director, principal officers have been charged or convicted of a crime involving fraud, misrepresentation, falsification of records, and/or improper business transactions or reporting.
  - f) A statement of whether the applicant, or any affiliate, has filed suit or administrative proceedings involving applicant's franchise or attempt to obtain a franchise, or applicant's access to the public rights-of-way in another jurisdiction;
  - g) A copy of the applicant's FCC license or registration, if any;
  - h) A copy of Tennessee Regulatory Authority authorization to conduct business as proposed, if any;
  - i) The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
  - j) A general description of the proposed Telecommunications Services that are or will be offered or provided by the applicant over and through its Telecommunication Facilities, and the purposes and intent of the Telecommunications Franchise;
  - k) Any other information which may be requested by the City; and

- I) All applications for permits filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the City.

**Sec. 32-235. - General provisions for Telecommunications Services.**

Provider shall comply with any conditions and/or requirements of the office of the City Engineer, Building Official in the office of Land Development and the Administrator of the Transportation Department with respect to the specific location and installation of Provider's System and with respect to any other matters which affect the construction, installation, repair, operation and maintenance of Provider's System. To the maximum extent technically feasible, Provider's System shall be installed underground within existing Rights-of-Way or property controlled by the Provider, provided that Provider's System may be installed above ground where either telephone, cable, or electric utility facilities are above ground at the time of installation, and as provided within Chattanooga City Code 38-568 (16). To the extent that any Provider installs its System in underground ducts, Provider shall, unless waived in writing by City, simultaneously install one (1) additional four (4) inch conduit for the use and benefit of the City. City shall reimburse Provider by way of future rent or fee abatement for any marginal or additional costs incurred by Provider in connection with installation of City conduit.

City conduit shall be installed in accordance with City's specifications and consistent with sound engineering practice. No franchise fee shall apply to any City conduit or fiber.

Provider, with the prior written approval of the City Building Official and the Transportation Department, may make minor deviations from the Provider's System as shown in the map attached to Provider's franchise agreement in the event unforeseen problems necessitate the rerouting of said Provider's System. Provider shall comply with all applicable city ordinances and state laws, including but not limited to obtaining building permits, street cut permits and any other permits required by applicable law.

**Sec. 32-236. - Engineering designs for Provider's System; "as built" drawings for System.**

Engineering designs for Provider's System will be prepared by a competent engineering group which shall be licensed by the state if required by state law and installation will be performed by a competent contractor which shall be licensed by the state if required by state law, and Provider will furnish said engineering designs to the Building Official not less than thirty (30) days prior to commencement of construction. Provider will provide to the Building Official and the Transportation Department "as built" drawings of its System within one hundred twenty (120) days of completion of said System; Provider shall update said drawings within one hundred twenty (120) days of the completion of any material change to Provider's System; said "as built" drawings shall include, at a minimum, the routing of Provider's System and the location of all amplifiers, power supplies and system monitor test points, provided that if Provider already has its System, or a portion thereof, in place as of the effective date of this Section, Provider shall provide such "as built" drawings to the Building Official within the time provided in such Provider's Franchise Agreement. City will protect and maintain all such documentation submitted by Provider to the extent required by State law.

**Sec. 32-237. - No adverse effect upon adjacent properties.**

Under no conditions shall the installation of Provider's System adversely affect any properties adjacent to the public Rights-of-Way without the prior express written permission of the owner of such properties.

**Sec. 32-238. - No adverse effect upon other utilities.**

Under no conditions shall the installation of Provider's System adversely affect any existing utilities without the prior express written permission of such utilities. Provider's system shall not physically interrupt or interfere with the facilities in the public Rights-of-Way of the Chattanooga Gas Company, BellSouth now known as AT&T, the Electric Power Board of Chattanooga, the water utility in whose area Provider's System is located, Comcast Cable TV Company, or any other utilities or companies holding a franchise in any Right-of-Way in which Provider's System is to be located. Provider is solely responsible for ensuring compliance with this section.

**Sec. 32-239. - Restoration of Rights-of-Way.**

Provider shall promptly restore to its original condition, in accordance with the City's standard specifications for, streets and sidewalks any street pavement, sidewalks or other portions of the Right-of-Way disrupted by construction of Provider's System. By acceptance of any franchise from the City to provide Telecommunications Services, Provider warrants the restoration of any disturbed Right-of-Way or part thereof. Provider shall, to the maximum extent possible, coordinate all System installation, repairs and maintenance with other utilities and Franchisees so as to minimize the number of street cuts and interruption of traffic within the City.

**Sec. 32-240. - Standards for maintenance of Telecommunications Services and right to inspect.**

Any work required or performed pursuant to this Article shall be done in accordance with federal, state and local law, including NFPA 70, the National Electrical Code, National Electrical Safety Code or such other applicable codes and standards covering regulated utility installation activities which are regulated under governmental laws or regulations including state regulatory commissions, the Federal Energy Regulatory Commission, and the Federal Communications Commission. In the event that any Provider leases space on the poles or in the conduits of an electric or other utility, Provider shall abide by the construction and other requirements of said utility, and the granting of a franchise by City hereunder shall not be construed or interpreted in any way to alleviate Provider's responsibilities and obligations to the pole or conduit owner.

Provider, its contractors, subcontractors and anyone directly or indirectly employed by Provider, shall conduct such operations so as to promote and preserve the public health, safety and general welfare of the citizens of Chattanooga. All construction, installation and maintenance by Provider shall be completed with diligence and with respect to all property, contracts, person's, rights and the interests and rights of the public. During any phase of construction, installation, maintenance, and repair of Provider's System, Provider shall use materials of good and durable quality and all such work shall be performed in a safe, thorough, and reliable manner.

Provider's System shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the life or property of any person.

Provider shall promptly remove any graffiti on its Telecommunications Facilities at Provider's sole expense.

The City is authorized to make requests and to issue orders regarding Telecommunications Facilities in the Rights-of-Way and further is authorized and shall have the right to inspect the construction, installation, maintenance, repair and operation of Telecommunications Systems to: 1) ensure continued compliance with this Article and with all permits received; and 2) protect the health, safety and welfare of the public. The City is also authorized to conduct visual and external inspections of Telecommunications Facilities in the Rights-of-Way at any time and shall make efforts to coordinate with the Provider responsible for a Telecommunications Facility for any internal inspection of the relevant structure or equipment. Should such periodic inspection reveal the need for a formal inspection program, the City retains the right to implement an annual inspections program, with costs to be borne by Providers.

**Sec. 32-241. - Notification of execution of any security agreement or similar agreement concerning Provider's System.**

Provider shall notify the City within ten (10) business days of the execution of any security agreement or similar agreement concerning Provider's System or any of the Telecommunications Facilities and property, real or personal, of the Provider located in the City of Chattanooga and will, upon three (3) business days' notice, allow the City to inspect any such agreements in Chattanooga, Tennessee.

**Sec. 32-242. - Indemnification of City by Providers.**

Provider shall, at its sole cost and expense, indemnify, hold harmless and defend the City, its elected and appointed officials, officers, boards, commissions, commissioners, agents and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of or related to Provider's operation, installation or maintenance of Provider's System. The indemnity provisions of this section shall include, but are not limited to, the City's reasonable and necessary attorneys' fees incurred in defending against any claims, suits, actions or proceedings arising out of or related to the operation, installation or maintenance of Provider's System and these indemnity provisions shall survive the term of any Franchise granted to Provider for any acts committed by Provider for any claims, suits, actions or proceedings arising out of or related to Provider's operation, installation or maintenance of Provider's System during the term of a franchise.

**Sec. 32-243. - Insurance and bonds to be maintained by Providers.**

(a) During the term of any franchise, Provider shall obtain and maintain at its sole expense, all insurance and bonds required by this Article. Nothing contained in this Article shall limit a Provider's liability to City to the limits of insurance certified or carried or the amount of any bond.

- (1) Upon being awarded a franchise, Provider shall immediately obtain and maintain, for the benefit of and filed with the City Attorney's Office, two (2) corporate surety bonds, each written with a surety company authorized to do business in the State of Tennessee and found acceptable by the City Attorney, in an amount to be determined by the Land Development Office depending upon the nature of the work to be performed and the permit fee. In no event shall the amount required by the Land Development Office exceed the reasonable costs of repairing the Rights-of-Way and any structures damaged by the installation in the event of nonperformance by the Provider.
- a) Construction Bond. The first corporate surety bond, as described in subsection (1) above, shall guarantee the timely and safe construction of the Provider's network routes (the "Construction Bond").
- i. The Construction Bond shall provide for the faithful performance of construction and installation of Provider's System. One year after demonstration of the completion of the construction of Provider's System to the Building Official, and approval by the City, City shall release the performance bond in writing. The City may reserve the right to reevaluate the bond amount after the first year of the initial term and to adjust the bond requirement or bond amount, if deemed necessary or prudent by the City Attorney.
- ii. The Construction Bond shall provide, but shall not be limited to, the following condition: there shall be recoverable by the City, jointly and severally, from the principal and surety, any and all damages, losses or costs, including attorneys' fees, suffered by the City arising out of the failure of Provider to faithfully perform and satisfactorily complete construction of Provider's System in accordance with this Article, and to complete its applicable Work within eighteen (18) months after the commencement of construction, unless the failure is due to conditions outside the reasonable control of Provider.
- b) License Agreement Bond. The second corporate surety bond, as described in subsection (1) above, shall secure Provider's performance of its obligations and faithful adherence to all requirements of this Agreement (the "License Agreement Bond").



- i. Said License Agreement Bond shall not exceed the amount of \$75,000 and shall be maintained throughout the term of this Agreement.
  - ii. The initial License Agreement Bond shall be written to run concurrently with the Master Franchise Agreement's initial term.
  - iii. Additional extensions to the term of the Agreement shall be bonded with a continuation certificate to the original License Agreement Bond (or on a subsequent original License Agreement Bond written by a different surety company, acceptable to the City Attorney, if necessary), executed by the surety company and by Provider.
  - iv. The License Agreement Bond shall provide, but shall not be limited to, the following conditions: there shall be recoverable by the City, jointly and severally, from the principal and surety, any and all damages, losses or costs, including attorneys' fees, suffered by the City resulting from Provider's installation, operation or maintenance of its Telecommunications Facilities, or from its breach of the terms any agreements related to the Work with the City.
- (2) Provider shall provide both of these corporate surety bonds at or before execution of the Franchise Agreement.
- (3) Any extension to the prescribed time limit in subsection 32-243(1)(a)(2) for completion of the applicable Work within eighteen (18) months due to causes beyond the reasonable control of Provider shall be authorized by the City Attorney, and the City Attorney's authorization may not be unreasonably withheld, conditioned, or delayed.
- (4) The rights reserved to City with respect to the performance and franchise bonds required hereunder are in addition to all other rights of City, whether reserved by this Article or authorized by law, and no action, proceeding or exercise of a right with respect to such performance or franchise bonds shall affect any other rights City may have.
- (5) The Construction Bond and License Agreement Bond shall not expire or be materially altered without thirty (30) days' prior written notice to City and without securing and delivering to City a substitute, renewal and replacement bond in conformance with this Article. In the event City does draw monies against the cobonds required hereunder, within ten (10) days thereafter, Provider shall pay such funds to the bonding company as necessary to bring said bonds back to the applicable principal, where it shall

continue to be maintained. The Construction Bond and the License Agreement Bond shall contain the following endorsement: "It is hereby understood and agreed that this bond will not be cancelled or non-renewed by the surety until sixty (60) days after receipt by the City Attorney, by registered mail, of written notice of intent to cancel or not to renew the bond."

- (6) The failure of Provider to comply with its obligations under this Article or the franchise agreement, including but not limited to, the cost of removal of Provider's System from the public Rights-of-Way in the event Provider's franchise is terminated or abandoned and the cost of repairing any damage to the City Rights-of-Way in the event Provider fails to repair same, as determined by Chattanooga City Council, shall entitle City to draw against either or both of Provider's corporate surety bonds.
- (b) Immediately upon the effective date of the resolution or ordinance granting a franchise under this Article, Provider shall file with the Office of the City Attorney the following proof of insurance issued by a company(ies) authorized to do business in Tennessee with an AM Best Rating of A- or better:
  - (1) *Commercial General and Umbrella Liability Insurance*; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than \$2,000,000 each occurrence for bodily injury, personal injury, property damage, and including, products, completed operations, contractual liability, independent contractor's protective liability and personal injury liability protection.. If such insurance contains a general aggregate limit, it shall apply separately to the work/location or be no less than \$3,000,000.
    - a) Such insurance shall:
      - i. Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Provider including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of protection afforded to the additional insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required.

- ii. For any claims related to this project, Provider's insurance coverage shall be primary with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of Provider's insurance and shall not contribute with it.
  - iii. This policy must cover City for damages resulting from the transmission of any Telecommunications Services over the Provider's System.
  - iv. The City reserves the right to make reasonable increases in the required amount of insurance coverage herein at any time. Nothing herein is intended as a limitation on the extent of any legal liability of the Provider.
- (2) *Automobile Liability Insurance*; including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Provider.
- (3) *Workers' Compensation Insurance*. Provider shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than \$500,000. Provider shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by Provider's workers' compensation insurance coverage.
- (4) *Environmental Impairment Liability*. Provider shall maintain environmental impairment liability insurance with limits of not less than \$1,000,000 per occurrence.
- (5) *Pollution Liability Insurance*. Provider shall procure pollution liability coverage, ISO CG 0039, or equivalent. If the coverage is written on a claims-made form:

- a) The "Retro Date" must be shown and must be before the date of the contract or the beginning of contract work.
  - b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work and acceptance by the City.
  - c) If coverage is cancelled or non-renewed and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, Provider must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
  - d) A copy of the claims reporting requirements must be submitted to the City for review.
- (6) *Excess Liability Insurance.* Provider shall maintain excess liability insurance in addition to the insurance specified above, excluding environmental and pollution liability, with a limit of not less than \$10,000,000 each occurrence. This coverage shall be on a follow form basis, or be at least as comprehensive as the underlying insurance.
- (7) *Other Insurance Requirements.* Provider shall:
- a) Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section. The Provider must provide written notice of cancellation by its insurer for any reason other than non-payment of premium to the City of Chattanooga, Office of the City Attorney, 100 East 11th Street, Suite 200, Chattanooga, Tennessee 37402 within thirty (30) days after the cancellation.
  - b) Upon the City's written request, provide copies of endorsements in lieu of, or in addition to, certificates of insurance. Franchisee will make copies of the policies available at its most proximate place of business upon the City's written request. Copies of policies will only be requested when contracts are deemed to be extremely or uniquely hazardous, include a dollar amount that is significant to the overall budget of the City or a City Department, or the coverage(s) may not follow standard insurance forms. A policy will only be requested after the City's Risk Manager has reviewed the contract and proof of coverage has been provided. Should the certificate of insurance refer to specific coverage wording or endorsement(s), proof of such policy wording or endorsement(s) will be required.

- c) Replace certificates and endorsements for any such insurance expiring prior to completion of services.
  - d) Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.
  - e) If Provider cannot procure insurance through an insurer having an A.M. Best rating of A-VIII, Provider may, in the alternative, place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered only upon appeal to the City Attorney.
- (8) Any deductibles and/or self-insured retentions greater than \$250,000 must be disclosed to and approved by the City Attorney's Office prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as set forth in subsection (c) below.
  - (9) The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by Provider for or with regard to the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.
  - (10) All general liability policies must be written on an occurrence basis unless the City Attorney determines that a claims-made basis is reasonable in the specific circumstance. Use of policies written on a claims-made basis must be approved by the City Attorney and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed. Professional Liability and Environmental Liability (Pollution Coverage) are most commonly written on a claims made basis and are generally acceptable in that form.
  - (11) Failure to maintain adequate insurance as required under this section shall be grounds to terminate the franchise.

(c) Notwithstanding the foregoing requirements for bonds required in (a) and general liability insurance policies in (b) above, a Provider may be allowed to provide a valid Certificate of Self-Insurance showing that it is self-insured in an amount equal to the bond and insurance coverage amounts required in (a) and (b) above, supplying proof of its most recent public financial report or statement, and confirming that any breach of the franchise shall require payment in full to the City upon demand to the fullest extent of any bond and insurance coverage amount required in (a) and (b) above, which shall be secured by real and/or personal property located within the

City and sufficient to cover the required bonds and insurance amounts herein. Certificates of Self-Insurance, and accompanying documentation, shall be submitted initially, and annually thereafter, to the satisfaction of the City Attorney.

**Sec. 32-244. - Removal or relocation of systems; and emergency removal or relocation.**

In the event the City determines it to be necessary, appropriate or useful to protect the health, safety and welfare of the public; or if it shall need the Right-of-Way for the purpose of providing public improvements either to the street or the public Right-of-Way; or for the best interest of the public; or in the event the City abandons a public Right-of-Way and does not reserve an easement for Provider, and Provider's System or any part thereof should need to be relocated or removed, such relocation or removal shall be done at the sole expense of the Provider. In the event Provider fails or refuses to complete such relocation or removal after one hundred eighty (180) days' prior written notice from the City, the City shall have the right to perform such relocation or removal, and Provider shall promptly reimburse the City for all costs incurred in such relocation or removal.

The City retains the right and privilege to cut or move any Telecommunications Facility located within the Right-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the Provider affording Provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the Provider after cutting or removing a Telecommunications Facility.

**Sec. 32-245. - Assignment of franchise; lease or sale of capacity.**

No Provider shall assign or transfer any Telecommunications Franchise (or any of the rights or privileges granted by such franchise) from the City without the prior approval of the Chattanooga City Council by ordinance or resolution, which approval shall not be unreasonably withheld if the entity would have qualified for an original franchise had it applied and if the entity demonstrates it has the same insurance policies and bonds in place as is required of the original Provider.

A mortgage, lien, deed to secure debt, deed of trust, security interest or other encumbrance of Provider's Telecommunications Franchise as a part of acquiring, constructing, equipping or maintaining Provider's System shall not be considered a violation of this section; any such creditor shall be entitled to all the rights and remedies granted to same in any documents relating to any such transaction, provided that any sale or transfer of Provider's System or any portion thereof following a foreclosure sale shall be subject to the prior approval of the Chattanooga City Council by ordinance or resolution, which approval shall not be unreasonably withheld.

Nothing in any approval by the Chattanooga City Council of any transfer pursuant to this section shall be construed to waive, release or delegate any rights or powers of City to hold the original Provider liable for any violation of its Telecommunications Franchise.

**Sec. 32-246. - Removal of Telecommunications Facilities.**

When Provider opens a trench, accesses a conduit or boring, or is working on aerial locations, or when Provider becomes aware either by notice from the City or otherwise that any other Telecommunications Franchisee or public utility is opening a trench, accessing a conduit or boring, or is working on aerial locations with access to Provider's System, whether pursuant to Chattanooga City Code Section 32-256, as amended, or otherwise, Provider shall remove all of its obsolete communication cables, wires, lines, towers, waveguides, fiber, microwave, laser beams, conduit and all of its obsolete associated converters, equipment or facilities while they are open without interfering with the efficient operation of other public utilities. In the event Provider's Telecommunications Franchise is terminated, forfeited or abandoned, the City may require Provider to remove Provider's System or any portion thereof from the public Right-of-Way within a reasonable period of time, not to exceed ninety (90) days. In the event Provider fails to do so the City may, at its option, remove Provider's System or any portion thereof from the public Right-of-Way and seek reimbursement therefor from Provider or from any bond posted by Provider in favor of the City. Notwithstanding the foregoing, the City may allow Provider's System or any portion thereof to be left in place when the City determines that it is not practical or desirable to require removal. It shall be the duty of the Provider immediately upon such removal to restore the Rights-of-Way from which Provider's System or any portion thereof is removed to as good condition as the same was before the removal was effected and as required by City.

**Sec. 32-247. - No cost to City arising out of franchise.**

The City shall incur no costs or expenses as a result of granting any Telecommunications Franchise to Provider or as a result of connecting to Provider's System (other than usual and customary fees for the use of Provider's System in the event the City utilizes same).

**Sec. 32-248. – Telecommunications Franchise Fee from Providers; Franchise Fee Statement; no accord and satisfaction.**

Provider shall pay on an annual basis to the City as compensation for the use of Rights-of-Way an annual Telecommunications Franchise Fee for use of Rights-of-Way in or on which its System is placed or over which it is suspended. The Telecommunications Franchise Fee shall be in an amount established by the annual budget ordinance adopted in each fiscal year by the City. The Telecommunications Franchise Fee shall be subject to the City Council's ability to revisit this amount, pending a further analysis of the costs to the City for use of its public Rights of Way. Telecommunications Franchise Fees shall be due and payable on or before the fifteenth day of January of each year during the term of the Franchise. City shall dedicate and use all franchise fees received under this section for maintenance of the Rights-of-Way.

In the event any franchise fee payment due under this section is paid late, Provider shall also pay interest thereon at the rate of eighteen percent (18%) per annum, or the maximum percentage rate allowed by State law, for any period such payment is late. No portion of the franchise fee shall be noted separately on bills to customers except as required by law.

The annual Telecommunications Franchise Fee payment shall be accompanied by a statement ("Franchise Fee Statement") showing the manner in which the franchise fee was

calculated. At the same time the annual Telecommunications Franchise Fee is paid to the City, Provider shall submit a Franchise Fee Statement, certified as true and accurate, setting forth the amount of linear feet for the facilities provided, however, that in the event that a Provider ceases to provide service for any reason (including as a result of a transfer), such Provider shall provide such a statement within thirty (30) days after the date on which its operations in Chattanooga cease. In addition to the Franchise Fee Statement, Provider shall provide City with a description of any material changes to the types of Telecommunications Services offered in the City during the prior year, certified as true and accurate.

In addition to the Telecommunications Franchise Fee charged pursuant to this Chapter, Franchisee and all Providers shall pay all use or other attachment fees on any City-owned property as may be established pursuant to the annual budget ordinance adopted in each fiscal year by the City.

No acceptance by City of any Telecommunications Franchise Fee or any other payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Telecommunications Franchise Fee or any other payment be construed as a release of any claim of City.

**Sec. 32-249. – Default of Providers.**

(a) The occurrence of any one (1) or more of the following events, at the City's discretion, shall constitute an Event of Default by the Provider under any franchise from the City for Telecommunications Services:

- (1) The Provider shall fail to pay when due any franchise fee as and when such fee becomes due or any lessee, sublessee or assignee of Provider's System shall fail to pay any franchise fee as and when such fee becomes due as set forth in Section 32-248 above.
- (2) The Provider shall fail to observe or perform any other obligation to be observed or performed by it under this Article, the franchise agreement, or any other permits and/or agreements required under this Article.
- (3) The Provider shall dissolve or discontinue the Provider's business, or transfer all or substantially all of the property of the Provider without the prior consent of the Chattanooga City Council by ordinance or resolution.
- (4) A judgment creditor of the Provider other than the holder of a valid security interest in Provider's System shall obtain possession of any portion of the Provider's System in the public Rights-of-Way of the City by any means.
- (5) That Provider fails to begin actual construction on Provider's System within sixty (60) days of the date Provider obtains a Telecommunications Franchise from the City, or Provider has not substantially completed Provider's system as set forth in the franchise from the City to Provider



within one (1) year of the date Provider obtains a Telecommunications Franchise from the City.

(b) The terms and conditions of this Article and the franchise agreement, and each of them, are hereby deemed to be substantial and material. Upon the occurrence of an Event of Default specified in this section, the City shall notify Provider in writing of such Event of Default and identify the Event of Default; such notice shall also notify Provider that the Telecommunications Franchise is considered forfeited by Provider and canceled not less than thirty (30) days from the date of receipt of such notice by Provider unless such default, violation, non-compliance or other event causing forfeiture of said franchise specified in the notice has been cured to the sole satisfaction of the City within said thirty (30) days.

(c) Before any Telecommunications Franchise may be terminated and canceled, Provider shall be provided with an opportunity to be heard before the governing body of the City. In the event Provider desires to have a hearing before the City Council, Provider shall, within twenty (20) days of its receipt of the aforementioned notice, notify in writing the Clerk of the City Council of its desire for such a hearing. Upon receipt of such a request for a hearing, the Clerk shall notify the Council at or before its next meeting of such request, and the Council shall schedule a hearing upon such request. The termination of Provider's franchise shall be stayed until the conclusion of such hearing before the City Council. In the event the City Council determines that no Event of Default has occurred or that such default has been timely cured, Provider's franchise shall continue in full force and effect.

(d) In the event the City Council determines that a specific default cannot be cured after a hearing as set forth in provision (c) above and the Provider has timely instituted action necessary to cure such default, Provider shall be permitted to diligently pursue such cure to completion. The City Council may specify a time period within which Provider must cure such default, and in the event Provider fails to cure within such time period, Provider's Telecommunications Franchise shall be considered forfeited and canceled without further hearing of the City Council. The action of the City Council shall be final provided that any appeal of the action of the City Council may be taken to a court of competent jurisdiction within sixty (60) days pursuant to Tennessee Code Annotated 27-9-102.

**Sec. 32-250. - Notices.**

Any notices or communication required in the administration of Provider's Telecommunications Franchise from the City shall be sent by hand delivery or by any method that assures overnight delivery and shall be addressed as follows:

If to the City:	Office of the Mayor Chattanooga City Hall 101 East 11 <sup>th</sup> Street Chattanooga, TN 37402
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With a copy to:	Office of the City Attorney 100 East 11th Street, Suite 200 Chattanooga, TN 37402
If to the Provider:	To the address of Provider listed on the franchise agreement with the City.

**Sec. 32-251. - Non-discrimination by Providers.**

Provider will provide fair and equal opportunity to all qualified individuals based on merit and fitness and will not discriminate against any employee or applicant for employment because of age, sex, race, color, religion, disability, national origin, protected veteran or military status, sexual orientation, gender identity, ethnic origin, political affiliations, genetic information, marital status, or any other protected basis in accordance with applicable City ordinances and resolutions, State and Federal laws except where such category or class constitutes a bona fide occupational qualification. Provider will comply with all applicable City ordinances and resolutions, State and Federal laws regarding treatment of applicants and employees, including, to ensure that applicants are lawfully hired, and that employees are treated during employment, without regard to their age, sex, race, color, religion, disability, national origin, protected veteran or military status, sexual orientation, gender identity, ethnic origin, political affiliations, genetic information, marital status, or any other protected basis in accordance with applicable City ordinances and resolutions, State and Federal laws except where such category or class constitutes a bona fide occupational qualification. Such action shall include employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Provider shall post in conspicuous places, available to employees and applicants for employment, required notices under State and Federal laws regarding nondiscrimination in employment.

**Sec. 32-252. - No grant of use of other property.**

Nothing in this Article or in a Provider's franchise shall be deemed to grant to any Provider any rights to work in, use or attach to any Alternative Structure, Base Station, Distributed Antenna System, Eligible Support Structure, Personal Wireless Service Facility, Small Cell Facility or Network, Support Structure, Telecommunications Facility, Tower, Transmission Equipment, or other facilities of the City, including Smart Poles, the Electric Power Board of the City of Chattanooga, AT&T formerly known as BellSouth or any other utility or entity occupying space in the public Rights-of-Way without the prior express written permission of any such entity. Such express written permission may take the form of, and include but not be limited to, a pole attachment agreement and/or a license or use agreement.

**Sec. 32-253. - Severance clause.**

If any material provision of this Article or of any franchise agreement for Telecommunications Services granted pursuant to it is held by a governmental authority of competent jurisdiction to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court of competent jurisdiction or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of this Article or the franchise agreement for Telecommunications Services, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions herein or therein.

Notwithstanding the foregoing, should the Telecommunications Franchise Fee in Section 32-248 be declared invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court of competent jurisdiction or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such holding shall render any franchises for Telecommunications Services void in its entirety and of no further force or effect but shall not affect the validity or enforceability of any other provisions in this Ordinance. Provider and the City thereafter shall undertake to negotiate a new franchise agreement compatible with any order of either a court of competent jurisdiction or a competent governmental authority.

**Sec. 32-254. – Liabilities; penalties and other rights and remedies.**

Except as expressly stated in this Article, the express or implied repeal or amendment by this Article of any ordinance or part thereof shall not affect any liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this Article. Those liabilities and penalties are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this Article had not been adopted. The rights and remedies of City and the Provider as set forth in the franchise agreement, or in this Article, shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity.

**Sec. 32-255. -- Compliance with applicable laws and ordinances.**

Franchisee shall, at all times during the term of its franchise, be subject to the provisions of the present Charter of the City, the present ordinances, resolutions, rules, regulations and laws of the City and the State of Tennessee, and to the provisions of any further charter, ordinance, resolution, rule, regulation or law of the City or of the State of Tennessee, so far as they may be applicable.

**Sec. 32-256. - Joint planning and construction; coordination of planned excavations.**

(a) Excavations in the City's Rights-of-Way interrupt, impede, and interfere with the public use of those Rights-of-Way and can damage the pavement and landscaping. The purpose of this Section 32-256 is to reduce this disruption, interference and damage by promoting better coordination among applicants for Telecommunications Franchises and Franchisees under this Article making Excavations in the City Rights-of-Way and the City. Better coordination will assist in minimizing the number of Excavations being made wherever feasible, and will ensure the

Excavations in City Rights-of-Way are, to the maximum extent possible, performed before, rather than after, the resurfacing of the Rights-of-Way by the City. Better coordination will also benefit all users of the City's Rights-of-Way through cost sharing in excavation and restoration activities.

(b) Any Franchisee owning, operating or installing Telecommunications Facilities in the City Right-of-Way, shall meet annually with the Administrator of Chattanooga Department of Transportation ("Administrator"), at the Administrator's request to discuss Franchisee's master plan. At such meeting, to the extent not already in possession of the City, Franchisee shall submit documentation, in a form required by the Administrator, showing a location of Franchisee's existing Facilities in the City Rights-of-Way. Franchisee shall discuss with the City any major Work anticipated in the City and work to prepare a Master Excavation Plan. As used in this subsection, the requirement to identify planned major Work refers to any major Work planned to occur in the ensuing three (3) years. Between the annual meetings, Franchisee shall use its best efforts to timely inform the Administrator of any substantial changes in the planned major Work discussed at the annual meeting.

(c) The Administrator shall review the Master Excavation Plan and identify conflicts and opportunities for coordination of Excavations. The Administrator shall notify applicants for Telecommunications Franchises under this Article and Franchisees of such conflicts and opportunities to the extent necessary to maximize coordination of Excavation. Each applicant and Franchisee shall coordinate, to the extent practicable, with each potentially affected applicant and Franchisee to minimize disruption in the Rights-of-Way.

(d) To the extent permissible under State law, the City shall not disclose to the public any confidential information contained in a Master Excavation Plan submitted by an applicant or Franchisee as set forth herein.

(e) The Administrator shall prepare a Repaving Plan showing the Rights-of-Way resurfacing Work planned by the City along with a Sidewalk Improvement Plan for sidewalk Work planned by the City. The Repaving Plan and Sidewalk Plan shall be revised and updated on an annual basis. The Administrator shall make the City's Repaving Plan and Sidewalk Plan available for public inspection. In addition, after determining the City's Rights-of-Way resurfacing Work and sidewalk Work that are proposed for each year, the Administrator shall send a notice of the proposed Work to all Franchisees and all pending applicants.

**Sec. 32-257. – Wireless telecommunication advancement exception.**

In keeping with the City's desires to continue to be on the forefront of technological advancement, the City may pursue, jointly, research grants and funding opportunities connected with research and the advancement of wireless telecommunication. Solely for purposes of this Chapter 32, the construction, installation, deployment, operation and maintenance of Telecommunications Facilities in the Rights-of-Way for non-commercial applications in the pursuit of the public good, shall require a combined annual application and franchise fee of only One Dollar (\$1.00), notwithstanding the provisions of Sections 32-234 and 32-248.

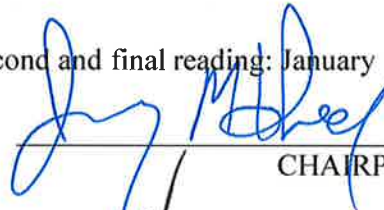
**Sec. 32-258. – Protection of trees.**

Trimming of trees and shrubbery within the public Right-of-Way to prevent contact with Provider's Telecommunication Facilities shall be done only in accordance with the standards approved by the urban forester in accordance with the ordinances of City. Removal or pruning of any tree or shrub shall only be done upon issuance of a permit by the urban forester. When trees or shrubs in the public Right-of-Way are damaged as a result of work undertaken by or on behalf of Provider, Provider shall pay the City within thirty (30) days of submission of a statement by the City, the cost of any treatment required to preserve the tree or shrub and/or cost for removal and replacement of the tree or shrub with landscaping of equal value and/or the value of the tree or shrub prior to the damage or removal, as determined by the urban forester or other authorized agent of the City.


**Secs. 32-259—32-270. - Reserved.**

SECTION 6. BE IT FURTHER ORDAINED, that this Ordinance shall take effect two (2) weeks from and after its passage.

Passed on second and final reading: January 30, 2018

  
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CHAIRPERSON

APPROVED:  DISAPPROVED:

  
\_\_\_\_\_  
MAYOR

WAH/vmm/mem/FINAL/01-09-2018