

**ORDINANCE NO. 2000-6**

**AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, PROVIDING THE TERMS AND CONDITIONS FOR THE ERECTING, CONSTRUCTING, AND MAINTAINING OF A TELECOMMUNICATIONS FACILITY IN, ON, ACROSS, ABOVE OR IN ANY MANNER WHATSOEVER USING THE TOWN'S PUBLIC RIGHTS OF WAY FOR THE PROVISION OF TELECOMMUNICATIONS SERVICE; PROVIDING ASSURANCES THAT THE TOWN'S PUBLIC RIGHTS OF WAY ARE USED IN THE PUBLIC INTEREST; PROVIDING FOR CONFORMANCE WITH APPLICABLE LAW; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

WHEREAS, the Town Council of the Town of Southwest Ranches has received inquiries from Telecommunications Service Providers concerning the placement of their Telecommunications Facilities in the Public Rights-of-way of the Town and the payment of associated fees to the Town; and

WHEREAS, the Town Council of the Town of Southwest Ranches has determined it is in the public interest of the Town to permit the placement of one (1) or more Telecommunications Systems or Facilities in the Public Rights-of-Way of the Town; and

WHEREAS, Section 364.0361, Fla. Stat., requires that a local government treat Telecommunications Companies in a nondiscriminatory manner when exercising the authority to manage the Public Rights-of-Way; and

WHEREAS, the Public Rights-of-Way subject to the control of the Town (1) are critical to the travel of persons and the transport of goods and of other tangibles in the business and social life of the community by all citizens; (2) are a unique and physically limited resource and proper management by the Town is necessary to maximize efficiency, minimize the costs to the taxpayers of the foregoing uses, and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Public Rights-of-Way; (3) are intended for public uses and must be managed and controlled consistently with that intent; and

WHEREAS, it is the intent of the Town to exercise its authority to impose fees and adopt rules and regulations to the fullest extent allowed by Federal and State law.

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AS FOLLOWS:**

**SECTION 1. Creation.**

**Section 1. Title.**

This Ordinance shall be known and may be cited as the Town of Southwest Ranches Telecommunications Ordinance.

**Section 2. Intent and Purpose.**

It is the intent of the Town of Southwest Ranches to promote the public health, safety, and welfare by providing for the use of the Town's Public Rights-of-Way by Telecommunications Service Providers; to adopt and administer reasonable regulations concerning Telecommunications Service Providers consistent with Federal and State Law, including Section 337.401, Fla. Stat., and the Town's home-rule authority; to provide for the payment of compensation and other consideration by a Telecommunications Service Provider to the Town for the cost of maintaining the Public Rights-of-Way and for the privilege of using the Town's Public Rights-of-Way for constructing and maintaining Telecommunications Facilities; and to establish the reasonable regulations concerning the use of the Public Rights-of-Way by all Telecommunications Service Providers.

**Section 3. Definitions.**

For the purpose of this Ordinance, the following terms, phrases, words and derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future 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 otherwise defined herein or in any permit that might be

granted hereunder shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended (collectively the "Communications Act"), and, if not defined therein, as defined by Florida Statute; and, if not defined therein, be construed to mean the common and ordinary meaning.

A. **"Registrant"** shall mean a Telecommunications Company that has Registered with the Town in accordance with the provisions of this Ordinance.

B. **"Registration" and "Register"** shall mean the process described in Section 4 whereby a Telecommunications Service Provider provides certain information to the Town.

C. **"Gross Receipts"** shall mean all cash, credits or property of any kind or nature, with deductions for bad debt expense, reported as revenue items to the Registrant's audited income statements arising from, or attributable to Recurring Local Service Revenues, of Registrant within the Town. The Town reserves the right to amend the definition contained herein as permitted by applicable Law. The definition herein shall not be applicable as of October 1, 2001; or such other date as provided by law, provided that Section 337.401, Florida Statutes is amended effective October 1, 2001, as set forth in Ch. 2000-260, Laws of Florida.

D. **"Law"** means any local, State or Federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirements now in effect or subsequently enacted or issued.

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

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

G. **"Public Rights-of-Way"** means the surface, the airspace above the surface and the area below the surface of any public street, highway road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead, wharf; pier, court, lane, path, alley, way, drive, circle, public easement public place, or any other property in which the Town holds any kind of property interest or over which the Town exercises any type of lawful control and may lawfully grant access to pursuant to applicable law. **"Public Rights-of-Way"** shall not include any real or personal Town property except as described above and shall not include Town buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

H. **"Recurring Local Service Revenues"** means revenues from the monthly recurring charges for local service including, but not limited to, (1) recurring basic area revenues derived from the provision of flat-rated basic area services; (2) recurring optional extended area revenues derived from the provision of optional extended area services; (3) local private line revenues derived from local services which provide communication between specific locations, either through dedicated circuits, private switching arrangements, predefined transmission paths, whether virtual or physical, or any other method of providing such services; (4) revenues from the sale of local services for resale; and (5) other local service revenues from the provision of secondary features that are integrated with a telecommunications network, including, without limitation, services such as call forwarding, call waiting, and touchtone line service. Except as provided herein, revenues from all recurring local services provided by a Registrant over a Telecommunications Facility in the Public Rights-of-Way shall constitute Recurring Local Service Revenues subject to this Ordinance. Recurring Local Service Revenues do not include revenues from (1) toll charges for the transmission of voice, data, video, or other information; (2) access charges paid by carriers for origination and/or termination of toll

telephone service as defined in Section 203.012(7), Fla. Stat.; (3) interstate service; (4) ancillary services such as directory advertising, directory assistance, detailed billing services, inside wire maintenance plans, bad check charges, and non-recurring charges for installation, move, changes or termination services; (5) cellular mobile telephone or telecommunications services; or specialized mobile telephone or telecommunications service; or specialized mobile radio, or pagers or paging service, or related ancillary services; (6) public telephone charges collected on site; (7) teletypewriter or computer exchange services as defined in Section 203.012(6), Fla. Stat.; or (8) local message rated (message, unit or time basis) and minutes of use charges in excess of the minimum flat-rated charges for similar services. This definition shall not be applicable as of October 1, 2001, or such other date as provided by law, provided that Section 337.401, Florida Statutes is amended effective October 1, 2001, as set forth in Ch. 2000-260, Laws of Florida.

I. **"Telecommunications Company"** has the meaning set forth in Section 364.02(12), Fla. Stat., as amended. The term **"Telecommunications Company"** does not include an open video system.

J. **"Telecommunications Service"** shall include, without limitation, local service, toll service as defined in Section 203.012(7), Fla. Stat., telegram or telegraph service, teletypewriter service, private communication service as defined in Section 203.012(4), Fla. Stat., or any other provision of two-way communications services to the public for hire. **"Telecommunications Service"** does not include the provision of service via an open video system, which shall require separate authorizations from the Town.

K. **"Telecommunications Service Provider"** shall refer to any person providing Telecommunications Services, as defined herein, through the use of a Telecommunications Facility.

L. **"Telecommunications Facility"** means cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface

location markers, appurtenances, and related facilities located, to be located, used, or to be used, by a Telecommunications Service Provider in the Public Rights-of-Way of the Town and used or useful for the transmission of Telecommunications Service.

M. **“Town”** means the Town of Southwest Ranches, Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

**Section 4. Registration.**

A. Each Telecommunications Service Provider that desires to erect, construct, install, maintain, repair, expand, or use any Telecommunications Facilities in, under, over or across any Public Rights-of-Way in the Town shall first Register with the Town in accordance with the terms of this Ordinance.

B. Any Telecommunications Service Provider desiring to use the Public Rights-of-Way shall file a Registration with the Town which shall include the following information:

(1) identity of the applicant and name, address and telephone number of applicant's primary contact person in connection with the Registration;

(2) general description of the services to be provided (in other words, if applicant is or expects to be a local service provider and/or a toll service provider);

(3) evidence of the insurance coverage required under this Ordinance and acknowledgment that Registrant has received and reviewed a copy of this Ordinance; provided that such acknowledgment shall not be deemed an agreement;

(4) a copy of Federal and/or State certification authorizing the applicant to provide Telecommunications Service.

C. The Town will review the information submitted by the applicant. Such review will be by the Town Administrator or his designee. If the applicant submits information in accordance with Section 4B above, the Registration shall

be effective and the Town shall notify the applicant of the effectiveness of Registration in writing. If the Town determines that the information has not been submitted in accordance with Section 4B above, the Town shall notify the applicant of the noneffectiveness of Registration, and reasons for the non-effectiveness, in writing, within thirty (30) days after receipt of registration information from the applicant. A Registrant may cancel a Registration upon written notice to the Town noticing that it will no longer provide Local Service or Toll Service using Public Rights-of-Way in the Town and will no longer need to pull permits to perform work in Public Rights-of Way.

D. A Registration shall not convey title, equitable or legal, in the Public Rights-of-Way. Registrants may only occupy Public Rights-of-Way for Telecommunications Facilities. Registration does not excuse a Telecommunications Service Provider from obtaining permission from a Person for access to another Person's facilities or utility pole. Registration does not excuse a Telecommunications Service Provider from complying with all applicable Town ordinances.

E. Each applicant for a Registration or renewal thereof shall submit a non-refundable application fee with the application in the amount of \$2,500; provided that the fee may be credited against fees due under Section 5 below. Fee amounts shall be established by Resolution of the Town Council in accordance with 166.221, Fla. Stat.

F. Registration with the Town shall be nonexclusive. Registration does not establish any priority for the use of the Public Rights-of-Way by a Registrant or any other Registrants. Registrations are expressly subject to any future amendment to or replacement of this Ordinance and further subject to any additional Town Ordinances, as well as any Federal, State or local laws that may be enacted during the term of the Registration.

#### **Section 5. Fees and Payments.**

A. In consideration for the rights, privileges and permission granted hereunder, a Registrant hereunder shall pay to the Town annually a sum equal to one percent (1%) of Gross Receipts of the Registrant on Recurring Local Service Revenues for services provided within the corporate limits of the Town. Included within such one percent (1%) maximum fee or consideration are all taxes, licenses, fees, in-kind contributions accepted pursuant to Florida Statute 337.401(5), and other impositions except *ad valorem* taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by the Town upon a Registrant. In the event that applicable law currently permits or is amended to permit the Town to collect a fee higher than one percent (1%), or permits the Town to calculate the fee on revenues not specified herein, the Registrant agrees to increase, following written notice from the Town, its fee payments to the Town to that higher amount on the effective date of such law. In the event applicable law is amended to require the Town to collect a fee lower than the current statutory limit, the Town shall take all necessary steps to conform the requirements to applicable law. All of the aforestated payments shall be made to the Town quarterly, with such payments made within twenty (20) days following the end of each calendar quarter. Payments received after the 31st day shall be subject to interest at the maximum allowed by law.

B. In the event a Registrant provides Telecommunications Services defined as toll services in Section 203.012 (7), Fla. Stat., as a condition for granting permission to occupy or use the Public Rights-of-Way of the Town, the Registrant shall pay to the Town annually no less than Five Hundred Dollars (\$500) per linear mile of any cable, fiber optic, or other pathway that makes physical use of the Public Rights-of-Way. Any fee or other consideration imposed by this subsection in excess of Five Hundred Dollars (\$500) per linear mile shall be applied in a nondiscriminatory manner and shall not exceed the sum of:



- (1) Costs directly related to the inconvenience or impairment solely caused by the disturbance of the Public Rights-of-Way;
- (2) The reasonable cost of the regulatory activity of the Town; and
- (3) The proportionate share of cost of land for such street, alley or other public way attributable to utilization of the Public Rights-of-Way by a Telecommunications Service Provider.

The fee or other consideration imposed pursuant to this subsection shall not apply in any manner to any Telecommunications Company which provides Telecommunications Services as defined in Section 203.012(3), Fla. Stat. for any services provided by such Telecommunications Company.

C. Notwithstanding anything herein to the contrary, the Town shall at all times hereby require the maximum compensation allowed under applicable Law.

D. Except to the extent prohibited by applicable Law: (1) the fee payments to be made pursuant to this Section shall not be deemed to be in the nature of a tax; (2) such fee payments shall be in addition to any and all taxes of a general applicability; (3) a Registrant shall not have or make any claim for any deduction or other credit of all or any part of the amount of said fee payments from or against any of said Town taxes or other fees or charges of general applicability which the Registrant is required to pay to the Town, except as required by Law; and (4) the fee specified herein is the minimum consideration for use of the Public Rights-of-Way, including all public easements, for the purpose of installing and maintaining a Telecommunications Facility.

E. The payments required under this section shall not apply as of October 1, 2001, or such other date as provided by law, provided that Section 337.401, Fla. Stat., is amended effective October 1, 2001, as set forth in Ch. 2000-260, Laws of Florida.

## **Section 6. Reports and Records.**

A. The Town may, at its option, upon sixty (60) days notice to the Registrant, but in no event more often than once per year, examine the records and accounting files, and such other books and records, if such records relate to the calculation of fee payments or any other payments due to the Town under the terms of this Ordinance. The examination of such books, accounts, records or other materials necessary for determination of compliance with the terms, provisions, and requirements of this Ordinance shall be during regular hours of business of the Registrant at an office of the Registrant. In the event that the Town, pursuant to an audit, determines that there exists a discrepancy in the amount paid and the amount owed to the Town by the Registrant in excess of five percent (5%), Registrant shall pay all reasonable costs, fees and expenses of the audit. This Section shall not apply for periods after October 1, 2001 or such other date as provided by law, provided that Section 337.401, Fla. Stat. is amended effective October 1, 2001, as set forth in Ch. 2000-260, Laws of Florida.

B. Upon reasonable request, a Registrant shall provide the following documents to the Town as received or filed:

(1) Any pleadings, petitions, notices, applications, communications, reports and documents, and responses thereto, which may directly impact the obligations under this Ordinance.

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

C. In addition, the Town may, at its option, and upon reasonable notice to the Registrant, inspect the Telecommunications Facilities in the Public Rights-of-Way to ensure the safety of its residents.

D. The Town shall keep any documentation, books and records of the Registrant confidential to the extent required under state Law.

#### **Section 7. Underground Installation; Relocation.**

A. To the extent required by applicable FPSC rules and regulations, a Registrant shall install its Facilities underground.

B. On Public Rights-of-way where electrical and utility wiring is located underground, at the time of initial construction of a Telecommunications Facility, a Registrant should attempt, if feasible, to locate its Telecommunications Facilities underground.

C. The Town strongly encourages a Registrant to use, with the owner's permission, existing underground conduits and Telecommunications Facilities whenever feasible.

D. The Town strongly encourages, to the extent feasible, that Registrants cooperate with third parties in opening up trenches and making such trenches available to third parties in an effort to prevent extensive and unnecessary burdens to the Public Rights of Way.

E. Every Registrant which places or constructs Telecommunications Facilities underground shall comply with Ch. 556, Fla. Stat., the Underground Facility Damage Prevention and Safety Act.

F. Any Telecommunications Facilities heretofore or hereafter placed upon, under, over, or along any Public Rights-of-Way that is found by the Town to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such Public Rights-of-Way shall, upon thirty (30) days written notice to the Registrant or its agent, be removed or relocated by such Registrant at its own expense except as explicitly provided under Section 337.403, Fla. Stat. The Town Administrator may waive or extend the time within which a Registrant shall remove or relocate a Telecommunications Facility for good cause shown.

G. Subject to Section 337.403, Fla. Stat., whenever an order of the Town requires such removal or change in the location of any Telecommunications Facility from the Public Rights-of-Way, and the Facility owner fails to remove or charge the same at its own expense to conform to the

order within the time stated in the notice, the Town may proceed to cause the Telecommunications Facility to be removed. The expense thereby incurred except as provided in Section 337.403(1)(a)(c), Fla. Stat., shall be paid out of any money available therefor, and such expense shall be charged against the owner of the Telecommunications Facility and levied, collected and paid to the Town.

H. Subject to Section 337.403, Fla. Stat., whenever it shall be necessary for the Town to remove or relocate any Telecommunications Facility, the owner of the Telecommunications Facility, or its agent, shall be given notice of such removal or relocation and an order requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than twenty (20) nor more than thirty (30) days in which to appear before the Town Council to contest the reasonableness of the order. Should the owner or the owner's representative not appear, the determination of the cost to the owner shall be final, in accordance with Section 337.404, Fla. Stat.

I. A final order of the Town shall constitute a lien on any property of the owner and may be enforced by filing an authenticated copy of the order in the office of the clerk of the circuit court of the county wherein the owner's property is located.

J. The Town retains the right and privilege to cut or move any Telecommunications Facilities located within the Public Rights-of-Way of the Town, as the Town Administrator in his/her reasonable discretion may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Town shall attempt to notify the owner of the Telecommunications Facility, if known, prior to cutting or removing a Telecommunications Facility and shall notify the owner of the Telecommunications Facility, if known, after cutting or removing a Facility.

K. Upon abandonment of a Telecommunications Facility within the Public Rights-of-Way of the Town, the owner of the Telecommunications Facility

shall notify the Town within ninety (90) days. Following receipt of such notice, the Town may direct the Telecommunications Facility owner to remove all or any portion of the Telecommunications Facility if the Town determines that such removal will be in the best interest of the public health, safety and welfare. In the event that the Town does not direct the removal of the abandoned Telecommunications Facility by the owner of the Telecommunications Facility, such owner, by its notice of abandonment to the Town, shall be deemed to consent to the alteration or removal of all or any portion of the Telecommunications Facility by another utility or Person.

L. Notwithstanding anything to the contrary, a Telecommunications Facility owner agrees to provide the Town, within thirty (30) days of filing or receipt of such, any document that may prevent compliance with the requirements of a permit in connection with the installation, construction or maintenance of its Telecommunications Facilities, or use of Telecommunications Facilities in the Public Right-of-Way. This obligation shall only extend to such work in the Public Rights-of-Way for which a Telecommunications Facility owner has applied for, or obtained a permit from the Town.

**Section 8. Use of Rights-of-Way.**

A. A Telecommunications Facility owner agrees at all times to comply with and abide by all applicable zoning regulations not inconsistent with Federal and State laws.

B. Except in the case of an emergency, which shall include without limitation an out of service condition affecting 911 service, and which shall require subsequent notification to the Town, no Telecommunications Service Provider shall construct any Facility on, over, above, along, upon, under, across, or within any Public Rights-of-Way which disrupts the Public Rights-of-Way without first obtaining any required permits from the Town therefor, pursuant to applicable permitting requirements of the Town. In case of the repair or maintenance of an existing Telecommunications Facility, the Town may impose

lesser requirements than those set forth herein. Unless otherwise required by the Town Code, no permit shall be required for installation and maintenance of service connections to customers' premises where there will be no disruption of the Public Rights-of-Way.

C. As part of any permit application, the Telecommunications Facility owner shall provide a proposal for construction of the Telecommunications Facility that sets forth at least the following:

(1) The location of the proposed Facility, including a description of the feet of plant to be installed, where it is to be located, and the approximate size of Facilities and equipment that will be located in, on, over, or above the Public Rights-Of-Way;

(2) A description of the manner in which the Telecommunications Facility will be installed (i.e. anticipated construction methods and/or techniques);

(3) The time required to construct the Telecommunications Facility;

(4) A maintenance of traffic plan for any disruption of the Public Rights-of-Way, including information on the ability of the Public Rights-of-Way to accommodate the proposed Telecommunications Facility, if available (such information shall be provided without certifications to correctness, to the extent obtained from other users of the Public Rights-of-Way);

(6) An estimate of the cost of restoration of the Public Rights-of-Way; and

(7) A timetable for construction for each phase of the project, and the areas of the Town which will be affected.

D. The Town may request such additional information as it finds reasonably necessary to review an application for a permit to perform work in the Public Rights-of-Way. The Town shall have the power to prohibit or limit the placement of new or additional facilities within the Public Rights-of-Way if there

is insufficient space to accommodate all of the requests of permittees to occupy and use the Public Rights-of-Way. The Town shall strive to the extent possible to accommodate all existing and potential users of the Public Rights-of-Way, but may prohibit or limit placement of new or additional facilities in any Public Rights-of-Way as required because of condition of the Public Rights-of-Way, the protection of existing facilities in the Public Rights-of Way, and future Town plans for public improvements and development projects which have been determined by the Town to be in the public interest.

E. All Telecommunications Facilities shall be installed, located and maintained so as not to unreasonably interfere with the use of the Public Rights-of-Way by the traveling public and to cause minimum interference with the rights and convenience of propriety owners who adjoin any of the Public Rights-of-Way. The use of trenchless technology (i.e., directional bore method) for the installation of Facilities in the Public Rights-of-Way is strongly encouraged, and should be employed wherever possible. The Town may issue such rules and regulations concerning the installation and maintenance of a Telecommunications Facility in the Public Rights-of-Way, as may be consistent with applicable Law.

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

G. In the event that at any time during the term of the rights granted herein the Town shall lawfully elect to alter, or change the grade of, any Public Rights-of-Way, upon reasonable notice by the Town, a Telecommunications Facility owner shall make any necessary removals, relaying and relocations of its Telecommunications Facilities at its own expense, in accordance with applicable Law.

H. A Telecommunications Facility owner shall obtain any and all required permits and pay any and all required fees before commencing any

construction on or otherwise disturbing any Public Rights-of-Way as a result of its construction, except as provided herein. The Telecommunications Facility owner shall, at its own expense, restore such property to as good a condition as existed prior to commencement of work. If such restoration is not performed in a reasonable and satisfactory manner within thirty (30) calendar days after the completion of construction, the Town may, after prior written notice to the Telecommunications Facilities owner, cause the repairs to be made at the Telecommunications Facility owner's expense. A permit from the Town constitutes authorization to undertake only certain activities in the Public Rights-of-Way in accordance with this Ordinance, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the Public Rights-of-Way. Nothing herein shall prohibit the Town from negotiating with a Telecommunications Facility owner for the installation of a Town conduit in any open trench that may be permitted; or prohibit a Telecommunications Facility owner from exercising its rights under 47 U.S.C. Section 224.

I. All ongoing installation, construction and maintenance of a Telecommunications Facility located in the Public Rights-of-Way shall be subject to the Town's periodic inspection, upon no less than three (3) days written notice to the Telecommunications Facility owner, for compliance with this Ordinance, or any applicable provisions of the Town Code.

J. A Telecommunications Facility owner shall not place its Telecommunications Facilities so as to interfere unreasonably with any other person lawfully using the Public Rights-of-Way of the Town.

K. To the extent the installation of new facilities differs in any material respect from the plans delivered to the Town during the permitting process, a Registrant shall deliver to the Town, upon completion of any installation or construction of new facilities, as-built plans showing the location of such facilities, or other such plans acceptable to the Town Administrator. Such plans



may be provided in digitized format or other format acceptable to the Town Administrator. The Town will provide advance written notice to Registrants indicating the format desired.

L. Suspension of Permits. Subject to subsection M below, the Town may suspend a permit for work in the Public Rights-of-Way for one or more of the following reasons:

(1) violation of permit conditions, including conditions set forth in this Ordinance or other applicable provisions of the Town Code or regulations governing use of Public Rights-of-Way; or

(2) misrepresentation or fraud by Registrant in a Registration or permit application to the Town; or

(3) failure to relocate or remove facilities as may be lawfully required by the Town.

M. Final, written decisions of the Town suspending a permit or denying an application for a Registration are subject to appeal. An appeal must be filed with the Town within thirty (30) days from the date of the final, written decision to be appealed. Should the Registrant fail to appeal within thirty (30) days, the decision of the Town shall be final and the right to appeal shall be waived.

**Section 9. Compliance with Other Law; Police Power.**

A Telecommunications Facility owner shall at all times be subject to and shall comply with all applicable Federal, State and local Laws. A Telecommunications Facility owner shall at all times be subject to all lawful exercises of the police power of the Town, to the extent not inconsistent with applicable Laws.

**Section 10. Transfer of Control; Sale of Assignment.**

A. If the Registrant transfers or assigns its Registration incident to a sale or other transfer of the Registrant's assets, the transferee or assignee shall be obligated to comply with the terms of this Ordinance. Written notice of any such prospective transfer or assignment shall be provided to the Town at least twenty

(20) days in advance of the date of such transfer. In order for the transfer of Registration to be effective, such written notice must include the identity of the prospective transferee or assignee, evidence of insurance coverage and acknowledgment as required in Section 4 of this Ordinance.

B. Any mortgage, pledge, lease or other encumbrance of the Telecommunications Facilities shall be subject and subordinate to the rights of the Town by virtue of this Ordinance or other applicable law.

**Section 11. Insurance; Surety; Indemnification.**

A. A Telecommunications Facility owner shall at all times maintain the following liability insurance coverage insuring the Registrant and naming the Town, its officers, boards, Council, Council members, agents and employees as an additional insured: worker's compensation and employer liability insurance to meet all requirements of Florida law and general comprehensive liability insurance with respect to the construction, operation and maintenance of the Telecommunications Facilities, and the conduct of Registrant's business in the Town, in the minimum amounts of

- (1) \$250,000 for property damage in any one accident:
- (2) \$500,000 for personal bodily injury to any one person: and
- (3) \$1,000,000 for personal bodily injury in any one accident.

B. All insurance policies shall be with sureties qualified to do business in the State of Florida; shall be with sureties with a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition except as provided in (E) below. The Town may require coverage and amounts in excess of the above minimums where necessary to reflect changing liability exposure and limits or where required by law.

C. A Registrant may provide a portion of the insurance coverage required by Section 11(A) through excess or umbrella policies of insurance where such policies are in a form acceptable to the Town's Risk Manager.

D. A Registrant shall keep on file with the Town certificates of insurance which certificates shall indicate evidence of payment of the required premiums and shall indicate that the Town, its officers, boards, Council, Council members, agents and employees are listed as additional insureds. In the event of a potential claim such that the Town claims insurance coverage, the Telecommunications Facility owner shall immediately respond to all reasonable requests by the Town for information with respect to the scope of the insurance coverage.

E. All insurance policies shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days prior written notice thereof has been given to the Town. A Registrant shall not cancel any required insurance policy without submission of proof that the Registrant has obtained alternative insurance satisfactory to the Town which complies with this Ordinance. A Registrant that elects to self-insure all or a portion of the insurance coverage and limit requirements required by this Section is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under this Section. A Registrant that elects to self-insure shall provide to the Town evidence sufficient to demonstrate its financial ability to self insure the insurance coverage and limit requirements that are required under this Section, such as evidence that the Registrant is a "private self insurer" under the Workers Compensation Act. For purposes of this Section, "self-insure" shall also include a Registrant which insures through a "captive insurer" as defined in Section 628.941, Fla. Stat.

F. A Registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the Town, its officials, boards, Council, Council members, agents, and employees, against any and all claims, suits, causes of action, proceedings judgments for damages or equitable relief, and costs and expenses arising out of the construction, maintenance or operation of its Telecommunications Facility, regardless of whether the act or omission

complained of is authorized, allowed or prohibited by this Ordinance, provided, however, that a Telecommunications Facility owner's obligation hereunder shall not extend to any claim, caused by the misconduct or negligence of the Town, its officials, boards, Council, Council members, agents or employees. In addition, and notwithstanding anything to the contrary, any Telecommunications Service Provider seeking initial or renewal registration on or after the effective date of this Ordinance shall indemnify and hold harmless the Town, its officials, boards, Council, Council members, agents or employees from any claims arising by a third party as set forth below, provided, however, that Registrant's obligation hereunder shall not extend to any claim caused by the misconduct or negligence of the Town, its officials, boards, Council, Council members, agents or employees. Claims arising by a third party, as referenced in the previous sentence, include, but are not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings, claims arising out of copyright infringements or a failure by the Registrant to secure consents from the owners authorized distributors, or providers of Telecommunications Services, and claims against the Registrant for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of an other right of any person, firm, of corporation. The Town agrees to notify the Registrant, in writing, within a reasonable time of the Town receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the Town from participating in the defense of any litigation by its own counsel and at its own cost if in the Town's reasonable belief there exists or may exist conflict, potential conflict or appearance of a conflict.

#### **Section 12. Construction Bond.**

A. Except in the case of an emergency, which shall include without limitation an out of service condition affecting 911 service, or as otherwise set forth in the Town Code where a permit may not be required, prior to performing

any work in the Public Rights-of-Way, a Registrant shall establish in the Town's favor a construction bond in an amount specified in an engineering permit or other authorization as necessary to ensure the Registrant's faithful performance of the construction or other work in the Public Rights-of-Way. The amount of the construction bond, if required, shall be as set forth in the engineering permit, and may be modified, in the Town Administrator's reasonable discretion, based on the cost of the construction to take place in the Public Rights-Of-Way, and any previous history of the Registrant concerning construction within the Public Rights-of-Way of the Town.

B. In the event a Registrant subject to such a construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Registrant, or the cost of completing the work, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

C. No less than six (6) months after the completion of the construction of the Telecommunications Facility and payment of all construction obligations to the satisfaction of the Town, the Town may eliminate the bond. However, the Town may subsequently require a new bond for any subsequent work in the Public Rights-of-Way.

D. The construction bond shall be issued by a surety having a minimum rating of A1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Town Attorney; and shall provide that:

"This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the Town, by certified mail, return receipt requested,

of a written notice from the issuer of the bond of intent to cancel or not to renew".

E. The rights reserved by the Town with respect to any construction bond established pursuant to this Section are in addition to all other rights and remedies the Town may have under this Ordinance, and at law or equity.

F. The rights reserved to the Town under this Section are in addition to all other rights of the Town, whether reserved in this Ordinance, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction will affect any other right the Town may have.

### **Section 13. Enforcement Remedies.**

A. In addition to any other remedies available at law or equity or provided in this Ordinance, failure to comply with the provisions of this Ordinance or other law applicable to users and/or occupants of the Public Rights-Of-Way, may result in imposition of penalties to be paid by the Registrant to the Town in accordance with Chapter 162, Fla. Stat.

B. Failure of the Town to enforce any requirements of this Ordinance shall not constitute a waiver of the Town's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

C. The Town Administrator or his/her designee shall be responsible for administration and enforcement of this Ordinance, and is authorized to give any notice required by Law.

### **Section 14. Force Majeure.**

In the event a Registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a cause or event not within the Telecommunications Facility owner's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof, provided, however, that such owner shall use all practicable

means to expeditiously cure or correct any such inability to perform or comply. For purposes of this Ordinance, causes or events not within a Telecommunications Facility owner's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes, and restraints imposed by order of a governmental agency or court. Causes or events within Registrant's control, and thus not falling within this Section, shall include, without limitation, Registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Registrant's directors, officers, employees, contractors or agents.

#### **Section 15. Reservation of Rights.**

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

B. This Ordinance shall be applicable to all Telecommunications Facilities permitted to be placed in the Public Rights-of-Way, on or after the effective date of this Ordinance, and shall apply to all existing Telecommunications Facilities in the Public Rights-of-Way prior to the effective date of this Ordinance, to the full extent permitted by Federal and State Law. Providers with existing lines and cables have thirty (30) days from the Effective Date of this Ordinance to comply with the terms of this Ordinance, or be in violation thereof.

#### **SECTION 2. Repeal of Conflicting Ordinance.**

All ordinances or part of ordinances, and all resolutions or part of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

#### **SECTION 3. Savings.**

All fees, charges and financial obligations previously accrued pursuant to any ordinances and resolutions repealed pursuant to Section 2 above shall continue to be due and owing until paid.

**SECTION 4. Severability.**

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

**SECTION 5. Codification.**

It is the intention of the Town Council of the Town of Southwest Ranches, Florida, that the provisions of this Ordinance shall become and be made a part of the Town of Southwest Ranches Code of Ordinances and that the sections of this Ordinance may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section," "Article," or such other appropriate word or phrase in order to accomplish such intentions.

**SECTION 6. Effective Date.**

This Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this 24th day of August, 2000.

PASSED AND ADOPTED on second reading this 7th day September, 2000.

TOWN OF SOUTHWEST RANCHES,  
BROWARD COUNTY, FLORIDA



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Mecca Fink, Mayor

Attest:

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Interim Town Clerk

Approved as to Form and Correctness:

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Gary A. Poliakoff, J.D., Town Attorney