

CITY PUBLIC RIGHTS-OF-WAY MANAGEMENT ORDINANCE

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ARTICLE I. CITY PUBLIC RIGHTS-OF-WAY MANAGEMENT PREAMBLE

ARTICLE II. CITY PUBLIC RIGHTS-OF-WAY AGREEMENTS AND FRANCHISES

ARTICLE III. REGULATION OF CITY PUBLIC RIGHTS-OF-WAY AGREEMENTS

ARTICLE IV. BONDS, INSURANCE AND INDEMNIFICATION

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ARTICLE VII. REPORTS, CITY PUBLIC RIGHTS-OF-WAY AGREEMENT APPLICATIONS & MISCELLANEOUS

ARTICLE I. CITY PUBLIC RIGHTS-OF-WAY MANAGEMENT PREAMBLE

Sec. 38.1-1. Regulation of the City public rights-of-way or Streets or other rights-of-way.

This Chapter shall be known and may be cited as the "City Public Rights-of-Way Management Chapter," and it shall become a part of the Code of Ordinances of the City of Burlington.

Sec. 38.1-2. Purpose.

The City of Burlington finds that material management of the City's public rights-of-way or streets has benefit and impact upon the City in terms of the regulation and use of this valuable public property, which the City has the right and authority to manage under the laws of the State of North Carolina. The City finds that the public convenience, safety and general welfare can best be served by exercising those regulatory powers to control the City's public rights-of-way which are vested in the City or such persons as the City shall designate. It is the intent of this Chapter and any subsequent amendments thereto, to provide for and specify the means to ensure the protection of the public safety in the portions of the City's public rights-of-way or streets and any City public rights-of-way agreements issued pursuant to this Chapter shall be deemed to include this finding as an integral part thereof. It is the City's intent to treat companies that have been granted franchises the same as companies which are granted a City public rights-of-way use agreement. Franchises are hereby treated to the same operating standards per this Ordinance.

Sec. 38.1-3. Where this is Applicable:

The provisions of this ordinance shall apply to all the following but not limited to; public utilities as defined by GS 62-3 (23); cable service and video programming providers as defined by GS 105-164.3 and private entities as approved. Provisions shall also apply to all persons engaged by the Grantee to provide service to their infrastructure and shall be deemed, for purposes of the City public rights-of-way agreement, an employee or agent

of Grantee when engaged in such activity; and in no event shall such person be deemed to be an employee of the City.

Sec. 38.1-4. Definitions.

For the purpose of this Chapter the following terms, phrases, words and their derivations shall have the meaning given herein in accordance with the intention to ensure the protection of the right of the City to issue City public rights-of-way agreements with regulation and control of its City public rights-of-way or streets. 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. The word "shall" is mandatory and "may" is permissive. Words not defined herein shall be given their common and ordinary meaning.

Applicant means the specific Person applying for a City public rights-of-way agreement under this Chapter.

Application means that form approved by the City Attorney which an applicant must use to apply for consideration to receive a City public rights-of-way agreement and any permits.

City means the City of Burlington, North Carolina as represented by the City Council, or its designee, acting within the scope of its jurisdiction.

City Council means the governing body of the City of Burlington.

City Engineer means the Engineer of the City or designee.

City Manager means the Burlington City Manager or designee.

City public rights-of-way agreement means a contract entered into voluntarily by the Grantee, containing the specific provisions granted, including referenced specifications, applications and other related material. A City public rights-of-way agreement granted pursuant to this Chapter grants the Grantee the nonexclusive right to construct, operate and maintain the stated infrastructure for use as defined in the applicant's application form for construction that has been placed in the specified City public rights-of-way or streets. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the City as required by other ordinances and laws of the City.

City public rights-of-way agreement area means the entire City, or portions thereof, for which a City public rights-of-way agreement is granted under the authority of this Chapter.

City public rights-of-way or Streets or other rights-of-way means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, parkway or tunnel, now or hereafter held by the City in such a manner as to entitle the City to grant to Grantee the use thereof for the purpose of installing and maintaining the Grantee's infrastructure. No reference herein, or in any City public rights-of-way agreement of the "City owned rights-of-way or streets" shall be deemed to be a representation or guarantee by the City that its title to any property is sufficient to permit its use for such purpose, and the Grantee shall, by its use

of such terms, be deemed to gain only such rights to use property in the City to which the City may have the right and title.

Communications Act means the Communications Act of 1934, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as they may be amended or succeeded.

Downtown Area means the area considered also as the “Central Business District” and bound between Morehead Street, Church Street, Webb Avenue and Lexington Avenue.

Encroachment Agreement means an exclusive agreement between the City and an applicant for use of the City public right-of-way in instances where there are no intended users of the planned infrastructure other than for the use of the applicant or their affiliates, where the infrastructure is owned and managed by the applicant only and not subleased use.

Emergency Facilities Work shall mean Facilities Work made necessary by an unexpected emergency condition, including, but not limited to the following:

- (1) An unexpected or unplanned outage, cut, rupture, leak or any other failure of Facilities that prevents or significantly jeopardizes the ability of a City public rights-of-way agreement holder to provide service to customers;
- (2) An unexpected or unplanned outage, cut, rupture, leak or any other failure of Facilities that results or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak or other such failure is not immediately repaired, controlled, stabilized or rectified; or
- (3) Any occurrence involving a Facility that a reasonable person would conclude, under the circumstances, warrants immediate and undelayed action by the owner of the Facility, in order to protect the public, structures and City owned and held City public rights-of-way and or streets.

Enforcement Officer(s) shall mean the person or persons appointed by the City Manager to administer and enforce the provisions of this Chapter and shall include the City Engineer, and any person appointed by the City Manager. The Enforcement Officer(s) may be provided with agents to assist in administration and enforcement as directed by the City Council.

The Enforcement Officer(s) shall:

- (A) Establish application procedures for permits, appeals, and actions pursuant to this Chapter and make available forms implementing the same;
- (B) Review infrastructure development plans and permits to ensure that the requirements of this Chapter have been met;
- (C) Approve infrastructure development plans where such duty is assigned by this Chapter;
- (D) Issue permits and certificates pursuant to this Chapter;
- (E) Interpret the applicability of the provisions of this Chapter in matters where the text does not clearly provide guidance;
- (F) Maintain all records pertaining to the provisions of this Chapter;
- (G) When necessary, inspect properties and activities for which permits have been issued to determine whether the use(s) is/are being conducted in accordance with the provisions of this Chapter;

- (H) Investigate violations of this Chapter;
- (I) Enforce the provisions of this Chapter;
- (J) Issue Notice of Violations and/or corrective action(s) when required;
- (K) Use the remedies provided in this Chapter to gain compliance;
- (L) Receive appeals and forward same to the appropriate body;
- (M) Be authorized to gather evidence in conjunction with said duties; and
- (N) Perform other duties as may be assigned by the City Council or City Manager.

Excavation shall mean any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed or otherwise displaced by means of any tools, equipment or explosives; *provided*, that any *de minimis* displacement or movement of ground caused by pedestrian or vehicular traffic which does not materially disturb or displace surface conditions of the earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground shall not be deemed Excavation.

Excavation Permit: A permit granted by the City Engineer to do excavation work within the City of Burlington maintained City public rights-of-way. The permit will identify the type of construction and the location of work for record by the City.

Facilities or Infrastructure shall mean as well as, but not limited to any conduit, duct, line, pipe, wire, hose, cable, culvert, tube, pole, receiver, transmitter, satellite dish, repeater, amplifier or other device, material, apparatus or medium, for the transmission or distribution of any service or commodity, installed below or above ground within the City public rights-of-way or streets, whether used privately or made available to the public.

Facilities Work shall mean the installation of new Facilities or any change, replacement, removal, alteration or repair of existing Facilities that requires Excavation within, installation above, or otherwise within, the City public rights-of-way or streets governed by the City public rights-of-way agreement; further, (a) tree trimming/removal and (b) the replacement of utility poles and related equipment at an existing location, shall constitute Facilities Work.

Franchise agreement shall mean an agreement entered between the City and providers of electric, natural gas, and incumbent local exchange carrier (ILEC). These companies can be granted long term franchises to operate within the City boundaries per North Carolina G.S. 160A-319.

Grantee means any natural person(s), partnership(s), domestic and foreign corporation(s), association(s), joint venture(s), or organization(s) of any kind which has been legally granted a City public rights-of-way agreement by the City, and shall include the lawful successor, transferee or assignee of such Grantee.

Hazardous Materials means without regards to amount and/or concentration, petroleum, petroleum distillates or products, polychlorinated biphenyls (PCBs), asbestos, formaldehyde, radioactive materials and any substances which have now been defined or may be defined in the future as, or otherwise included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” “toxic pollutants,” or “contaminant,” under any federal or state law, statute, rule, regulation, or code.

Information Services shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153 (20).

Minor Facilities Work means Facilities Work that will not disturb any sidewalk or street pavement, sanitary sewer, drainage system or other structure.

Normal Business Hours shall mean 8 a.m. to 5 p.m., Monday through Friday, except recognized holidays.

Notice shall be a written notice addressed to the Grantee at its principal office or such other office as the Grantee has designated to the City as the address to which notice shall be transmitted to it. In computing notice time, holidays recognized by the City and Saturdays and Sundays shall be excluded.

Notice of Violation shall mean written notice given by the Enforcement Officer when Grantee fails to take prompt corrective action (by certified or registered mail to his last known address, by personal service, or by posting notice conspicuously on the property) of the following:

- (A) Grantee is in violation of this Chapter;
- (B) The nature of the violation, and citation of the Section(s) of this Chapter violated; and
- (C) The measures necessary to remedy the violation.

Permit means any duly prescribed authorization by a designated City official to allow certain allowable activity in the publicly controlled areas.

Person shall mean an individual, partnership, association, joint stock company, trust, organization, limited liability company, corporation or other entity, or any lawful successor thereto or transferee thereof, but such term does not include the City.

Principal shall mean any officer or director of the applicant and any person, firm, corporation, partnership, joint venture or other entity, who or which owns or controls, directly or indirectly, any of the voting stock (or any equivalent voting interest of a partnership of joint venture) of the applicant.

Project shall mean a written plan of work and digital and hardcopy map prepared and presented by an Applicant that encompasses an outlined scope of Facilities Work to be conducted within the City public rights-of-way or streets as described in the City public rights-of-way agreement.

Public property shall mean any real property owned by the City or any other government entity other than City public rights-of-way or streets.

Request for information. A document which companies submit to the City which provides information pertaining to the specific company that applies for a City public rights-of-way agreement.

Right-of-Way Agreement shall mean a reference to all various agreements to allow occupancy in the City public rights-of-way for any allowable purpose as determined and approved by City Council and for purpose of this ordinance shall include Right-of-Way Use Agreements, Franchise Agreements, and Encroachment Agreements.

Right-of-Way Use Agreement shall mean an agreement between the Grantee and the City to install a public utility in the City maintained public right-of-way that does not meet the requirements of either a Franchise Agreement or Encroachment Agreement.

Telecommunication Services shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

Telecommunications System means the equipment and real and personal property used within the City to provide Telecommunication Services and or Information Services including as applicable and without limitation, the head-end, antenna, cables, fiber optics, wires, lines, towers, amplifiers, lasers, pedestals, subscriber terminals, modems, health and property security systems, equipment or facilities or any digital, laser light, microwave, light wave or any other improvement to the technology for telecommunication or information services reception, transmission, collection, amplification, origination, distribution or redistribution of electronic signals located in the City public rights-of-way or streets within the corporate limits of the City constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, and electronic or fiber optic signals to and/or from subscribers in the City and any other equipment or facilities located within the corporate limits of the City intended for the use of the telecommunications system.

Transfer means the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of five percent (5%) or more at one (1) time of the ownership or controlling interest in the system, or fifteen percent (15%) cumulatively over the term of the City public rights-of-way agreement of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.

Utility System for purposes of this ordinance means any above or below ground public utility, cable service, video programming and private system as approved by City Council to be in the City public right-of-way and shall include all equipment, devices and cabling installed in the public rights-of-way.

ARTICLE II. CITY PUBLIC RIGHTS-OF-WAY AGREEMENTS

Sec. 38.1-4. Grant of City public rights-of-way agreement.

(a) Grant. Pursuant to the authority of the City of Burlington Charter and general statutory laws under GS 160A-319 subject to the terms and conditions set forth herein, the City can grant revocable and non-exclusive City public rights-of-way agreements, acting pursuant to the real property laws, and the state enabling law and the City's applicable Charter provisions, ordinances, rules and regulations to manage its City-owned property and City public rights-of-way for any legal purpose in accordance with the laws of the City, the State of North Carolina, and the United States of America. In exercising the limited rights granted pursuant hereto, Grantee shall not endanger or interfere with the lives of persons, interfere with any installations of the City, any public utility serving the City, any structures or any other person permitted to use the streets and City public rights-of-way nor unnecessarily hinder or obstruct the free use of the streets and City public rights-of-way. The grant of one (1) City public rights-of-way use agreement, (2) franchise agreement, or (3) encroachment agreement does not establish priority for use over the other present or future permit or City public rights-of-way

agreement holders or the City's own use of the City's public rights-of-way or streets. The City shall at all times control the distribution of space in, over, under or across all City public rights-of-way or streets. No grant of any City public rights-of-way agreement shall affect the right of the City to grant to any other person a right to occupy or use the streets, or portions thereof, for the construction and operation of a utility system within the City or the right of the City to permit the use of the City public rights-of-way or streets of the City for any purpose whatever. No privilege or power of eminent domain is bestowed on Grantee by the City's agreement to enter into a City public rights-of-way agreement; however, no privilege or power of eminent domain conferred by state statute is waived by Grantee by its agreement to enter into a City public rights-of-way agreement with the City.

Any utility system located in the streets and City public rights-of-way on the effective date of this Chapter, pursuant to an existing right-of-way agreement, shall be grandfathered-in not required to secure a City public right-of-way agreement for those existing lines; however, all provisions of this ordinance shall apply to all existing and proposed lines in the public rights-of-way. Any future request for extension by any utility will be required to secure a Franchise agreement, Right-of-Way Use agreement or Encroachment agreement and applicable permits before any future installation may take place.

Any Right-of-Way agreement that is scheduled to expire, said Grantee shall be required to secure a new Right-of-way agreement prior to expiration as permits will be withheld until execution of a new agreement is completed.

All applications to the City for consideration to occupy City public rights-of-way are required to include complete maps of the proposed additional infrastructure within the City. The City Engineering Department will inform the applicant of the required hardcopy and electronic file format.

Prior to constructing a utility system in the City public rights-of-way or Streets, a City public rights-of-way use agreement, franchise agreement or encroachment agreement shall be applied for and entered into as set forth hereunder and a Request for Information shall be completed by the Applicant including the following information:

A) Applicant Information:

1. Applicant

Name: _____

Address: _____

2. Principal to whom inquiries should be made:

Name: _____

Title: _____

Address: _____

Telephone: _____

3. Representation:

This application is submitted to begin the process of obtaining a City public right-of-way agreement by the undersigned that has been duly authorized to make the representations within its behalf.

Applicant recognizes that all representations are truthful and that failure to adhere to any such representation may result in revocation of any City agreement that may be granted, in consequence of this application.

Consent is hereby given to the City and its representatives to make inquiry into Applicant's legal, character, technical, financial and other qualifications by contacting any persons or organizations named herein as references, or by any other appropriate means.

Name: _____

Applicant's Signature: _____

Official Position: _____

Date: _____

Applicant shall affix their corporate seal.

4. Business Structures.

- a. Check appropriate business format for applicant:
 - (i) Individually owned
 - (ii) Corporation serving one community
 - (iii) Corporation operating systems in more than one community, but these operations are not separate corporations
 - (iv) Partnership
 - (v) Other (specify)

- b. Attach a copy of applicant's corporate articles or organization, partnership agreement, or other organization documents.

B. Character Qualifications

- (a) Has the applicant or any principal ever been a party in a civil proceeding, relative to their business practices, in which they were held liable for any of the following or are now a party to such proceeding?

	<u>Yes</u>	<u>No</u>
Unfair or anticompetitive business practices	___	___
Anti-trust violations (state and federal) including instances in which consent decrees were entered into	___	___
Violations of securities laws (state and federal)	___	___
False/misleading advertising	___	___
Violations of FCC regulations	___	___

If "yes," attach statement providing specifics.

- (b) Has applicant or any principal ever had a business license (defined to include FCC licenses, etc.) revoked, suspended or the renewal thereof denied or is a party to a proceeding that may result in same?

Yes__ No__

If "yes," attach statement providing specifics.

C. Experience

1. Please describe any right of way use constructed, in the City of Burlington, in the last four years in which applicant or any principal owns five percent or more of equity interest. (Please reproduce this form as needed.)

Location of project and contact person for local government

Date of most recent right of way use award or installation

Plant miles of project (specify fiber, coax)

a) Aerial

b) Underground

2. Please list any or all right of way use agreements held in North Carolina and indicate the number of customers, date of right of way use agreement award, and name, address and telephone number of local government official responsible for oversight of these operations.

D. Construction Practices

1. Please describe the safety practices which will be employed to protect the public during system construction.
2. Discuss availability of work crews and equipment to meet your construction schedule. Discuss commitments regarding projects of this nature.
3. Please indicate how supervision, administration, oversight and monitoring of any subcontractors will be handled.
4. Provide a description of practices for undertaking construction on or near private property and procedures for dealing with complaints of property owners.
5. Provide a description of the methods and practices for minimizing public and private property damage.

6. Do you have a manual of construction practices covering construction tasks to be followed by construction/work crews?

Yes _____ No _____

If "yes", attach a copy of the manual as an appendix to this application.

7. Please provide a plan for keeping the City informed of construction schedule and progress.

8. Do you have pole attachment and conduit lease agreements? If so, please provide copies.

The Project must be submitted by the Grantee and approved by the City before any work begins. Only the Grantee shall own, operate, manage, and maintain the Utility System in the City public rights-of-way or Streets. Under no circumstances shall the Grantee have the right to sublet the City public rights-of-way agreement or otherwise allow any third party to occupy or use the City public rights-of-way agreement area for any other purpose. The Grantee may enter into leases or subleases that do not affect matters regulated by this Chapter or the City public rights-of-way agreement, in the ordinary conduct of its business without City consent, including without limitation, agreements for the sale, lease, or other transfer of an interest in individual fibers within their utility system.

A Grantee pursuant to this Chapter shall not provide a Cable Television System or Cable Service or provide an Open Video System without obtaining a cable television franchise from the State of North Carolina per the Video Services Competition Act.

(b) General City Ordinances. Any City public rights-of-way agreement granted by the City, before or after the effective date of this Chapter, is hereby made subject to the general Chapter provisions set forth in this Chapter as amended from time to time. Nothing in the City public rights-of-way agreement shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, taxes, and fees to be paid, policies or manner of construction. Anything in conflict with the provisions of this Chapter is hereby repealed to the extent of such conflict. Provisions of this Chapter shall not be interpreted inconsistent with any applicable state or federal laws or rules, and the applicable state and federal laws and rules shall preempt any inconsistent provision of the Chapter.

Sec. 38.1-5. City public rights-of-way agreement area.

The City public rights-of-way agreement area shall be the portions of the streets and City public rights-of-way to be occupied by the Grantee's infrastructure.

Sec. 38.1-6. Use of City public rights-of-way or Streets or other rights-of-way.

For the purpose of operating and maintaining a utility system in the City, and after proper notification and obtaining of permits from the City Engineer, Enforcement Officer or designee, the Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the City public rights-of-way or streets within the City such Facilities or Infrastructure as are necessary to or appropriate for the operation of the utility, provided, however, that Grantee complies with all design, construction, safety, and performance provisions contained in this Chapter, the City public rights-of-way agreements, and other applicable local Ordinances, Rules or Regulations. The Grantee shall use its best efforts to also obtain pole attachment agreements for use of any utility poles or other utility facilities required in connection with the provision of services, provided such agreements are available upon reasonable terms and conditions.

In order to preserve the right-of-way for future use, all installations by the Grantee shall be viewed as an extension of their infrastructure for present and future uses to provide service along the intended utility route. Infrastructure shall be installed in a manner to which it may be utilized, upgraded or expanded to provide service for future customers.

Notwithstanding the Grantee's use of the City public rights-of-way or Streets, the City or its designee may at all times conduct Emergency Facilities Work on the City public rights-of-way or streets, or infrastructure as needed with or without prior notice to the Grantee. The City shall attempt to give the Grantee reasonable notice of non-emergency repairs and Emergency Facilities Work whenever possible. The requirement for applicable permits and applicable fees, post-construction, are not waived per this section.

Sec. 38.1-7. Use of Grantees Facilities or Infrastructure.

No multiple poles in successive alignment shall be erected by the Grantee without prior approval of the City with regard to location, height, type and any other pertinent aspect, which approval shall not be unreasonably withheld. However, the location of any pole of the Grantee shall not be a vested right with respect to the City and such poles shall be removed, relocated or modified by the Grantee at its own expense whenever the City, in its sole discretion, reasonably determines that the public convenience would be enhanced thereby. Grantee shall utilize existing poles and conduits, where practicable. The City shall have the right, during the life of the City public right-of-way agreement, to install communications facilities and maintain such facilities free of charge upon the poles or other above-ground facilities owned by the Grantee. Where the installation of such facilities by the City requires the adjustment of Grantee's facilities on any pole or other above-ground facility (whether owned by Grantee, another company, the City, or another person), such adjustment shall be made by Grantee at a reasonable charge to the City.

Sec. 38.1-8. Term of City public rights-of-way agreement.

The term of the City public rights-of-way agreement shall commence upon execution of the agreement by the City and the Grantee and shall continue for a period as shown below:

- a) *Right-of-Way Use Agreement* shall continue for a period of not greater than 10 years with possibility of (2) 5-year extensions granted at the discretion of the City Council.
- b) *Franchise Agreement* shall continue for a period of no greater than that allowed by state statute and as agreed upon by the City Council.
- c) *Encroachment Agreement* shall continue for a period of not greater than 20 years at which time the applicant will be required to re-apply for encroachment.

Each agreement shall continue for the period as specified unless sooner terminated as provided herein. Grantee shall have no property right upon the expiration of the City public rights-of-way agreement term, except as provided by applicable law.

Sec. 38.1-9. City public rights-of-way agreement required.

Except as provided with respect to the grandfathered systems, no Utility shall be allowed to occupy or use the City public rights-of-way or Streets in the City or be allowed to operate within the City without a City public rights-of-way use agreement; franchise agreement or encroachment agreement as allowed.

Sec. 38.1-10. City public rights-of-way agreement non-exclusive.

Any City public rights-of-way agreement granted pursuant to the City Public Rights-of-Way Management Chapter shall be nonexclusive. The City specifically reserves the right to (i) grant at any time such additional City public rights-of-way agreements for a utility system as it deems appropriate, and/or (ii) permit the use of the City rights-of-way or Streets for any purpose whatever (iii) build, operate, and own such utility system or systems as it deems appropriate.

Sec. 38.1-11. Police and regulatory powers reserved.

Grantee shall comply with all generally applicable laws, Chapters and regulations enacted by the City pursuant to its police powers. Any conflict between the terms of this Chapter or the City rights-of-way agreement and any present or future lawful exercise of the City's police powers shall be resolved in favor of the exercise of the City's police powers.

Sec. 38.1-12. City's right to perform public works.

Nothing in this Chapter shall be in hindrance to the right of the City or any governmental authority to perform or carry on, directly or indirectly, any public works or public improvements of any description. Should the utility system in any way interfere with the construction, maintenance or repair of such public works or public improvements, the Grantee shall, at its own cost and expense, protect or relocate its utility system, or part thereof, as reasonably directed by the City officials. In such instances, the City shall give the Grantee reasonable notice to the extent practicable. This provision shall not preclude the Grantee from being eligible for reimbursement from third parties or governmental authorities other than the City.

Sec. 38.1-13. Emergency removal of Grantee's infrastructure from City public rights-of-way agreement area.

In addition to the City's rights to conduct Emergency Facilities Work in or near the City rights-of-way or Streets as set forth in Section 38.1-6, if at any time, in case of fire or disaster in the City or other emergency, it shall become necessary, in the sole reasonable judgment of the City, to cut or move any of the Facilities or Infrastructure of the Grantee, the City shall have the right to do so at the sole cost and expense of Grantee. The Grantee shall bear all costs of reinstallation, repair, and other costs resulting from or arising out of the emergency cutting or removal of its property from the City public rights-of-way agreement area. The City shall consider all other reasonable measures as fit the circumstances prior to removing or cutting the Grantee's property from the City public rights-of-way agreement area.

Sec. 38.1-14. Removal or abandonment.

Upon denial of renewal, revocation, surrender, or expiration of the City public rights-of-way agreement, Grantee, at the City's sole discretion, shall remove all or a part of its Facilities or Infrastructure from City public rights-of-way or streets and shall restore any property, public or private, to its original condition prior to the installation, erection, or construction of the Grantee's infrastructure. In the event of removal, restoration of Public property, including, but not limited to, the City public rights-of-way or streets, shall be in accordance with the directions and specifications of all affected departments and agencies of the City, and all applicable law. The Grantee shall accomplish such restoration at its expense. Such removal shall be made with the supervision of the City. If such removal and restoration is not completed within nine (9) months after the notice by the City, delivered in writing, to Grantee, all of the Grantee's property remaining in the affected City public rights-of-way or Streets or other Rights of way, at the sole option of the City, may be deemed abandoned and at the option of the City, become the property of the City. In the event the Grantee fails or refuses to remove its property or satisfactorily restore all areas to the condition in which they existed prior to the original construction of the system, the City, at its sole option, may perform such work and collect the actual, documented, and reasonable cost thereof from the Grantee. Grantee shall not remove or relocate any Facilities or Infrastructure used or owed by the City without the City's prior written approval.

Sec. 38.1-15. No waiver of rights.

No course of dealing, exchange of letters, e-mail communications or other correspondence, verbal or written, between the Grantee and the City nor any delay on the part of the City in exercising any rights hereunder shall operate as a waiver of any such rights of the City or acquiescence in the actions of the Grantee in contravention of rights.

Sec. 38.1-16. Transfer of City public rights-of-way agreement.

(a) Any City public rights-of-way agreement granted hereunder and its rights or privileges cannot in any event be sold, transferred, substituted, assigned or disposed of, in part or in whole, including but not limited to, by force or involuntary sale, merger, consolidation, receivership, bankruptcy or other means without the prior written consent

of the City and such consent shall not be unreasonably denied, withheld, or delayed and then only under such conditions as the City may in its sole discretion reasonably establish. Nor shall title to the Utility, legal or equitable, or any right, interest or property therein, pass to or vest in any Person without the prior written consent of the City and such consent shall not be unreasonably denied, withheld, or delayed and then only under such conditions as the City may in its sole discretion reasonably establish. Except that no consent shall be required for any sale, transfer, or assignment of ownership or control to an entity under common control with Grantee, or by merger or consolidation, provided that prior to such transfer, the Grantee provides to the City audited, verifiable information to establish that such transferee is under common control and has the financial, legal and technical ability to continue to fully perform all of the Grantee's obligations under the City public rights-of-way agreement.

(b) Transfer threshold. The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein means actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the Grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of ownership interest of Grantee to an unaffiliated party or person which results in a material change of the composition of its Board of Directors and Executive Level Management. Except that no consent shall be required for any sale, transfer, or assignment of ownership or control to an entity under common control with Grantee, provided that prior to such transfer, Grantee provides to the City audited, verifiable information to establish that such transferee under common control has the financial, legal and technical ability to continue to fully perform all of the Grantee's obligations under the City public rights-of-way agreement.

(c) City Approval. Every change, transfer, or acquisition of control of the Grantee shall make the City public rights-of-way agreement subject to cancellation unless and until the City in its reasonable discretion shall have consented in writing thereto; however, such written consent shall not be unreasonably denied, withheld or delayed. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective transferee or controlling party, and the Grantee shall provide the City with all required information. Failure to provide all information reasonably requested by the City as part of said inquiry shall be grounds for denial of the proposed change, transfer or acquisition of control.

(d) Assumption of control. The City agrees that any financial institution having a pledge of the City public rights-of-way agreement or its assets for the advancement of money for the construction and/or operation of the City public rights-of-way agreement shall have the right to notify the City that it will take control and operate the Grantee's system.

(e) No waiver of Public property rights. The consent or approval of the City or any other public entity to any transfer of the Grantee shall not constitute a waiver or release of the rights of the City in and to the Public property or City rights-of-way or streets, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Chapter.

(f) Signatory requirement. Any approval by the City of transfer of ownership or control shall be contingent upon the prospective transferee becoming a signatory to and agreement to be legally bound by the City public rights-of-way agreement.

Sec. 38.1-17. City public rights-of-way agreement renewal.

Upon completion of the term of any City public rights-of-way agreement granted under this Chapter, the City may in its reasonable discretion grant or deny renewal of the City public rights-of-way agreement of the Grantee.

Sec. 38.1-18. Forfeiture or revocation.

(a) Grounds for revocation. Subject to subsection (b) below, the City reserves the right to revoke any City public rights-of-way agreement granted hereunder and rescind all rights and privileges associated with the City public rights-of-way agreement in the any one of the following circumstances, each of which shall represent a default and breach under the Chapter and the City public rights-of-way agreement grant:

- (1) If the Grantee shall default in the performance of any of the material obligations under this Chapter, the City public rights-of-way agreement, or under such documents, contracts and other terms and provisions entered into by and between the City and the Grantee; or
- (2) If the Grantee attempts to evade any of the material provisions of this Chapter or the City public rights-of-way agreement or practices any fraud or deceit upon the City; or
- (3) Grantee is adjudicated as bankrupt, has filed a voluntary petition for bankruptcy or reorganization or for an order protecting its assets from the claims of creditors, or makes a general assignment for the benefit of creditors, or takes the benefit of any insolvency act, or a temporary receiver or trustee is appointed for the Grantee's property and such appointment is not vacated and set aside within ninety (90) days from the date of such appointment; or
- (4) If the Grantee ceases to provide services over the City public rights-of-way or streets for more than one year for any reason within the control of the Grantee; or
- (5) If the Grantee abandons any portion or all of its infrastructure at any time, the City may without notice claim title to any such abandoned infrastructure within the City public rights-of-way or streets; or
- (6) Grantee fails to comply with any Federal or State judgment arising directly from the Grantee's actions related to its Telecommunications System or Telecommunications Service or Information Services provided through use of the Telecommunications System.
- (7) Grantee violates any material orders or rulings of any regulatory body having jurisdiction over the Grantee which is related to Grantee's performance under this Chapter or the City public rights-of-way agreement, unless the Grantee is lawfully contesting the legality or the applicability of such order or ruling.
- (8) The Grantee's construction schedule is delayed later than the schedule contained in the City public rights-of-way agreement or beyond any extended date set by the City.
- (9) In the event that the Grantee shall suspend or discontinue its business.

(10) A persistent failure by the Grantee to comply with any of the provisions, terms or conditions of this Chapter or the City public rights-of-way agreement or with any rules, regulations, orders or other directives of the City after Grantee has received a Notice of Violation.

(b) Procedure prior to revocation.

(1) The City shall make written demand that the Grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the Grantee continues for a period of thirty (30) days following such written demand, the City may place its request for termination of the City public rights-of-way agreement upon a regular City Council meeting agenda.

(2) If such failure, refusal or neglect by the Grantee was with just cause, as defined in the reasonable discretion of the City, the City Council shall direct the Grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

(3) If the City Council shall determine such failure, refusal, or neglect by the Grantee was without just cause, then the City Council may, by City Council resolution, declare that the City public rights-of-way agreement of the Grantee is immediately terminated and all Grantee's infrastructure shall immediately become the property of the City.

Sec. 38.1-19. Equal opportunity policy.

Grantee shall be an equal opportunity employer/affirmative action employer adhering to all federal, state, or municipal laws or regulation. The Grantee shall take affirmative steps to ensure compliance with these regulations and the failure to do so shall be considered an event of default under the agreement and a violation of this Chapter.

Secs. 38.1-20 – 38.1-31. Reserved.

ARTICLE III. REGULATION OF CITY PUBLIC RIGHTS-OF-WAY AGREEMENTS

Sec. 38.1-32. Regulatory authority.

(a) Ongoing regulation. The City shall exercise appropriate regulatory authority over its real property under the provisions of this Chapter and applicable law. This authority shall be vested in the City Council and administered through the City Manager or his designee. The City Manager or his designee shall provide day-to-day administration and enforcement of the provisions of this Chapter and any City public rights-of-way agreement granted hereunder.

(b) Change in law or regulation. With the exception of the City's inalienable rights in its real property and the law of the land that private property cannot be taken for private purposes, the Grantee shall at all times comply with all other laws and regulations of the local, state and federal government and does not waive its right to eminent domain as applicable.

(c) The City does not intend to regulate the practices or content of services of the Utility provider only to regulate to the fullest extent protection of the City public right-of-way and the City's infrastructure interests in said right-of-way.

Sec. 38.1-33. Supervision of the City public rights-of-way agreements.

The City shall have the following regulatory authority:

- (1) Administration and enforcement of the provisions of this Chapter and any City public rights-of-way agreements granted hereunder.
- (2) Award, renewal, extension or termination of a City public rights-of-way agreement pursuant to the provisions of this Chapter, the City public rights-of-way agreement, and other applicable law.
- (3) Consent prior to the transfer of any City public rights-of-way agreement granted hereunder, pursuant to the provisions of this Chapter, the City public rights-of-way agreement and applicable law.
- (4) Such other regulatory authority as appropriate to carry out the intent of this Chapter or the City public rights-of-way agreement.

Sec. 38.1-34 Enforcement.

Any of the following shall be a violation of this Chapter and shall be subject to the enforcement remedies and penalties provided by this Chapter and by State law.

38.1-34.1. Violations.

Any violation of the terms and conditions of any City public right-of-way agreement shall be a violation of this Chapter including and not limited to any of the following enumerated violations and shall be subject to the enforcement remedies and penalties provided by this Article and by State law:

(a) Infrastructure installation without permit and City public right-of-way agreement.

To engage in any non-permitted infrastructure installation or use any infrastructure installation regardless of the party making the installation, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Chapter without all required permits, certificates, or other forms of authorization as set forth in this Chapter.

(b) Infrastructure installation inconsistent with permit.

To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved City public right-of-way agreement, plan, permit, certificate, or other form of authorization granted for such activity.

(c) Violation by act or omission.

To violate, by act or omission, any term, variance, modification, condition, or qualification placed by the City Council or its agent boards upon any required City public right-of-way agreement, permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

(d) Use in violation.

To erect, construct, reconstruct, alter, repair, convert, maintain, or use any infrastructure or to use any City public rights-of-way or streets in violation or contravention of this Chapter or any other regulation made under the authority conferred thereby.

(e) Continue a violation.

To continue any of the above violations is a separate and distinct offense.

38.1-38.2. Injunctive relief.

Whenever the City Council has reasonable cause to believe that any person is violating or threatening to violate this Chapter or any rule or order adopted or issued pursuant to this Chapter, or any term, condition, or provision of a City public right-of-way agreement, it may, either before or after the institution of any other action or proceeding authorized by this Chapter, institute a civil action in the name of the City, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Alamance County. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this Section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Chapter.

38.1-38.3. Other powers and actions.

38.1-38.3.1. State and common law remedies.

In addition to other enforcement provisions contained in this Chapter, the City Council may exercise any and all enforcement powers granted to it by State law or common law.

38.1-38-3.2. Previous enforcement.

Nothing in this Chapter shall prohibit the continuation of previous enforcement actions.

38.1-38-3.3. Theft or non-compliant use of City public rights-of-way or streets.

Any Person who after this Ordinance adoption knowingly, willfully and without authorization attaches, installs, buries, maintains, operates a Utility System or Facilities or Infrastructure or in any likewise manner trespasses upon the City public rights-of-way or streets of the City of Burlington, or fails to make any and all payments required pursuant to this Chapter, is thereby guilty of non-compliant use, trespass and/or theft of City rights-of-way or streets.

38.1-34.4. Remedies- Cumulative and continuous.

38.1-34.4.1. Cumulative violations.

All such remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

38.1-34.4.2. Repeat violations.

If an owner or occupant repeats the same violation within a five (5) year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies.

38.1-34-5. Remedies.

Any or all of the following procedures may be used to enforce the provisions of this Ordinance.

(a) Injunction. Any violation of this Chapter or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to State law.

(b) Civil penalties. Any person who violates any provision of this Chapter shall be subject to the assessment of a civil penalty under the procedures provided in Section 38.1-34.6. (Civil Penalties - assessments and procedures).

(c) Denial of permit or certificate. The Enforcement Officer shall withhold or deny any permit, certificate, or other authorization on any land, building, structure, sign, or use in which there is an uncorrected violation of a provision of this Chapter, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

(d) Conditional permit or temporary certificate. The Enforcement Officer may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by appropriate governmental authority.

(e) Stop work orders. Whenever there is a land disturbing activity and/or a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in association with a City public rights-of-way agreement in violation of this Chapter, the Enforcement Officer may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop work order shall state the specific work to be stopped the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with NCGS 160A-421 or the NC Building Code.

(f) Revocation of permits or certificates. The Enforcement Officer may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of an applicable State or local law may also be revoked.

38.1-34.6. Civil Penalties-assessments and procedures.

38.1-34.6.1. Responsible parties.

The Grantee and the owner or occupant of any land, building, structure, sign, use of land, or part thereof, and any architect, builder, contractor, agent, or other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this Chapter may be held responsible for the violation and subject to the civil penalties and remedies provided herein.

38.1-34.6.2. Notice.

No civil penalty shall be assessed until the person alleged to be in violation has been notified in accordance with Section 38.1-34.7.1 (Notice of Violation). If after receiving a notice of violation under Section 38.1-34.7.1, the owner or other violator fails to take corrective action, a civil penalty may be imposed under this Section in the form of a citation. The citation shall be served in the same manner as of a Notice of Violation. The citation shall state the nature of the violation, shall state the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within fifteen (15) days of the date of the citation.

38.1-34.6.3. Continuing violation.

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

38.1-34.6.4. Penalties.

Any person who violates any provision of this Chapter shall be subject to assessment of a civil penalty in the amount of \$50.00 for the first day of violation, \$100.00 for the second day of violation, \$200.00 for the third day of violation, and \$500.00 for the fourth day of violation and each succeeding day of violation.

38.1-34.6.5. Demand for payment.

The Enforcement Officer shall make written demand for payment upon the owner or the person in violation and shall set forth in detail a description of the violation for which the civil penalty has been imposed.

38.1-34.6.6. Nonpayment.

If payment is not received or equitable settlement reached within thirty (30) days after demand for payment is made, the matter shall be referred to legal counsel to institute a civil action for recovery of the civil penalty

38.1-34.7. Enforcement procedure.

When the Enforcement Officer or his agent finds a violation of this Chapter, it shall be his duty to notify the Grantee, and/or, the owner or occupant of the land, building, structure, sign, or use of the violation. The Grantee, and/or, the owner or occupant shall immediately remedy the violation.

38.1-34.7.1. Notice of violation.

If the Grantee, and/or, the owner or occupant of the land, building, structure, sign, or use in violation fails to take prompt corrective action, the Enforcement Officer shall give the Grantee, and/or, the owner or occupant written notice (by certified or registered mail to his last known address, by personal service, or by posting notice conspicuously on the property) of the following:

- (a) That the land, building, structure, sign, or use is in violation of this Chapter;
 - (b) The nature of the violation, and citation of the Section(s) of this Chapter violated;
- and
- (c) The measures necessary to remedy the violation.

38.1-34.7.2. Appeal.

Any Grantee, and/or, the owner or occupant who has received a Notice of Violation may appeal in writing the decision of the Enforcement Officer to the City Council (unless the City Council has specified that another board shall hear the appeal of the violation) within fifteen (15) days following the date of the Notice of Violation. The City Council, or other designated board, shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the decision of the Enforcement Officer shall be final and non-appealable.

38.1-34.7.3. Notice of decision.

The decision of the City Council, or other designated board, may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

38.1-34.7.4. Failure to comply with notice.

If the Grantee or owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or a final decision by the City Council following an appeal, the Grantee or owner or occupant shall be subject to such remedies and penalties as may be provided for by State law or by Section 38.1-34.6 (Remedies).

Secs. 38.1-35--38.1-45. Reserved.

ARTICLE IV. BONDS, INSURANCE AND INDEMNIFICATION

Sec. 38.1-46. Liability and insurance.

- (a) Certificate of insurance. Prior to commencement of construction, and thereafter continuously throughout the duration of the City public rights-of-way agreement and any extensions or renewals thereof, the Grantee shall furnish to the City, certificates of insurance, approved by the City, for all types of insurance required under this section. Failure to furnish said certificates of insurance in a timely manner shall constitute a violation of this Chapter.
- (b) Filing. A certificate of insurance obtained by the Grantee in compliance with this section shall be filed and maintained with the City office of Risk Management during the term of the City public rights-of-way agreement.
- (c) Should any of the required insurance policies maintained pursuant to this Chapter be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

- (d) State institution. All insurance policies provided under the provisions of this Chapter or the City public rights-of-way agreement shall be written by companies authorized to do business in the state and approved by the state.
- (e) Names insured. The City of Burlington must be named as an additional named insured. A blanket waiver of subrogation shall apply in favor of the City of Burlington and all additional insured's as required by contract for General Liability and Workers Compensation.
- (f) Commercial general liability insurance. The Grantee shall maintain, and by its acceptance of any City public rights-of-way agreement granted hereunder specifically agrees that it will maintain throughout the term of the City public rights-of-way agreement, general liability insurance insuring the Grantee in the minimum of:
- (1) One million dollars (\$1,000,000.00) for property damage/bodily injury per occurrence;
 - (2) Three million dollars (\$3,000,000.00) for property damage/bodily injury aggregate;
- (g) Policy inclusions. Such general liability insurance must include coverage for all of the following: occurrence form, premises operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.
- (h) Automobile liability insurance. The Grantee shall maintain, and by its acceptance of any City rights-of-way agreement granted hereunder specifically agrees that it will maintain throughout the term of the City rights-of-way agreement, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of:
- (1) One million dollars (\$1,000,000.00) for bodily injury/property;
- (i) Worker's compensation and employer's liability insurance. The Grantee shall maintain and by its acceptance of any City rights-of-way agreement granted hereunder specifically agrees that it will maintain throughout the term of the City rights-of-way agreement, worker's compensation and employer's liability, valid in the state, in the minimum amount of:
- (1) Five hundred thousand dollars (\$500,000.00) for employer's liability.
- (j) Owners Protective Liability. The Grantee shall maintain, and by its acceptance of any City rights-of-way agreement granted hereunder specifically agrees that it will maintain throughout the term of the City rights-of-way agreement, owners protective liability, in the minimum amount of:
- (1) One million dollars (\$1,000,000.00) for property damage/bodily injury per occurrence;
 - (2) Three million dollars (\$3,000,000.00) for property damage/bodily injury aggregate;
- Or provide a per project aggregate limit for the General Liability and Umbrella.
- (k) Excess Liability. The Grantee shall maintain and by its acceptance of any City rights-of-way agreement granted hereunder specifically agrees that it will maintain throughout the term of the City rights-of-way agreement, excess liability, valid in the state, in the minimum amount of:
- (1) Five million dollars (\$5,000,000) each occurrence.
 - (2) Five million dollars (\$5,000,000) aggregate

Sec. 38.1-47. Indemnification.

- (a) Indemnity. The Grantee shall at its sole cost and expense agree to indemnify, defend (with counsel acceptable to the City) and hold harmless to the City, its officers, Boards and Commissions and City employees, elected officials, agents, consultants and

independent contractors, commissions and any successors to City's interest, from and against any and all claims, demands, losses, damages (including personal injury resulting in death), liabilities (including those arising from releases of Hazardous Materials), suits, fines, penalties, charges, administrative and judicial proceedings and orders, judgments and all reasonable costs and expenses incurred in connection therewith, including without limitation reasonable attorney's fees and costs of defense (collectively, the "Losses") arising from acts or omissions of the Grantee or its successors, agents, contractors, or employees in connection with its Utility System or otherwise arising out of or related to the City public rights-of-way agreement, except to the extent any Losses arise from the willful misconduct of the City, its officers, employees, elected officials, agents, boards, consultants and independent contractors, commissions, and any successors to the City's interests. The foregoing includes, but is not limited to, the following liabilities:

i) To persons or property arising out of or through the acts or omissions of the Grantee, its successors, servants, agents, contractors or employees.

ii) Arising out of the Grantee's failure to comply with the provisions of any Federal, State, or local statute, ordinance or regulation applicable to the Grantee in its business hereunder.

iii) Arising out of the construction, installation, operation or maintenance of Grantee's Utility System, whether or not any such act or omission is authorized, allowed or prohibited by this Chapter or the City public rights-of-way agreement granted hereunder.

(b) Condition. The foregoing indemnity is conditioned upon the following: The City shall give Grantee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the City from cooperating with the Grantee and participating in the defense of any litigation by its own counsel at its own costs and expense. Any sum received by the City as liquidated damages shall be deducted from any recovery which the City might have against the Grantee under the terms of this section.

(c) Non-Waiver of Immunity. This indemnity shall not be considered a waiver of any governmental immunity by the City.

Sec, 38.1-48 Bonds.

(a) As a condition of the issuance of any permit for any utility or person making an excavation in the City public right-of-way, under this article the City Engineer will require the applicant to file with the City a minimum of a \$50,000 performance bond to cover the cost of replacing or repairing any street, sidewalk or public facilities in as good or better condition, in all respect, as before the excavation

(b) The City Engineer, at his discretion, may request a larger bond based on the size and complexity of the excavation, the applicant's past compliance with the provisions of this article and the need to protect public assets and the public health and safety.

(c) The applicant may request and maintain during the term of their right-of-way use agreement with the City a minimum \$50,000 performance bond to be filed with the City and renewed at the beginning of each calendar year. Provision of subsection (b) will remain in effect. Said bond shall be written to apply to multiple events during the bond period.

(d) For any person doing or performing any work or excavation under any contract with the City will not be required to post a bond under these provisions, but are not exempted under the specific contract provisions with the City.

Secs. 38.1-49--38.1-58. Reserved

ARTICLE V. DESIGN, CONSTRUCTION PROVISIONS

Sec. 38.1-59. Construction and technical standards.

(a) Minimum interference. The Grantee's system and associated equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other City public rights-of-way or streets, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other City public rights-of-way or streets, and with other utility providers existing in the City public right-of-way. No pole or other fixtures placed in any City public rights-of-way or streets by the Grantee shall be placed in such a manner as to interfere with normal travel on such City public rights-of-way or streets.

(b) City maps. The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In City public rights-of-way or streets, where necessary, the location shall be verified by subsurface location and excavation, as approved by the City Inspector.

(c) Quality of construction. Construction, installation, operation, and maintenance of the Grantee's property shall be performed in an orderly and workmanlike manner, in accordance with then current technological standards. All conduit pipes, cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for aesthetic and engineering considerations.

(d) All work in the public right of way will comply with the City of Burlington "Utility Pavement Cut Policy" and all fees associated within this policy shall apply.

(e) Construction standards. The construction, installation, operation, maintenance, and/or removal of the Grantee's property shall meet all of the following safety, construction, and technical specifications and codes and standards, as applicable:

- (1) Occupational Safety and Health Administration regulations (OSHA);
- (2) National Electrical Code National Electrical Safety Code (NESEC);
- (3) Appropriate manual of construction procedures and standards as determined by City typical standards and Utility Pavement Cut Policy;
- (4) All federal, state and municipal construction requirements;
- (5) All building and zoning codes, and all land use restrictions as the same exist or may be amended hereafter;
- (6) Appropriate tagging to City standards.

(f) Right to inspection of construction. The City or its designee shall have the right to inspect at any time the Utility System and or Facilities or Infrastructure of Grantee, together with any appurtenant property of Grantee site and within the City. Grantee shall cooperate fully with the City during all inspections, and shall provide access to all equipment, records, and other materials and information necessary for such inspections. Except as otherwise provided by this Chapter, the City public rights-of-way agreement, law, regulation or Chapter, all inspections performed by the City shall be initially at the City's sole cost and expense. If the Grantee is found not to be in compliance with the terms of the Chapter and all other applicable law, then the Grantee must reimburse the City for the costs of such inspections.

(g) OSHA. All worker facilities, conditions, and procedures that are used during construction, installation, operation, and maintenance of the Grantee's property shall comply with the standards of the Occupational Safety and Health Administration.

(h) Coordination of Construction Activities. All Grantees are required to cooperate with the City and with each other regarding their construction activities in the City public

rights-of-way. Each Grantee shall meet with the City, other Grantees and users of the City public rights-of-way as determined by the City to schedule and coordinate construction in the City public rights-of-way.

(i) Contractor Qualifications. Any contractor proposed by a Grantee to perform construction, installation, operation, maintenance, or repair of the Utility System and/or Facilities or Infrastructure must be properly licensed and bonded to the extent such licensing and/or bonding is required under the laws of the State and local ordinances.

(j) Preliminary Plat Approval. In cases of new construction or property development where utilities are to be placed underground in common trenches, the Grantee agrees to coordinate with the developer or property owner of the particular date on which construction meetings are held to set and manage work schedules and the date on which open trenching will be available for the Grantee's installation of Facilities or Infrastructure and laterals.

(k) Traffic Safety. Grantee shall comply with all local and State traffic requirements and Uniform Traffic Safety Code regulations. Barricades or other barriers such as signs, traffic cones, red flags, and warning lights, shall be utilized when necessary at all work sites frequented by the public until an area is cleared for normal public use. Local law enforcement shall be contacted, when necessary, to direct traffic. Before leaving a job site each day, Grantee's employees and contractors shall be required to pick up all scrap materials and ensure that any construction materials and tools are properly stored and covered and that derricks, planks, and ladders are removed from or piled at the roadside in such a manner as not to intrude upon traffic safety.

(l) Work within the City public rights-of-way. The work in any part of the City public rights-of-way must be approved by excavation permit issued by the City, and the Grantee must obtain street occupancy or street closing permits or other permits, as required by City policy, and comply with all other applicable City requirements. During repairs or improvements, traffic on streets must be maintained in accordance with MUTCD requirements, with the City's local regulation and policy and State requirements. Where full closing of the street is required, the request for approval must be submitted to the City at least ten (10) days in advance. Where emergency closings are necessary, the City is to be notified as soon as possible. All closings are to be in accordance with the City's local regulation and policy and State requirements.

(m) Soil Erosion. All construction in the City public rights-of-way shall be in accordance with State or local laws and regulation regarding soil erosion. Grantee shall correct any violations or comply with any notices of violations in accordance with local, State, and Federal law and regulation.

(n) Construction Oversight. Grantee shall respond to citizen complaints on a daily basis during any construction or repair to the Facilities or Infrastructure in the City public rights-of-way. The Grantee will notify the permitting officer of all such complaints.

(o) Emergency Notification. Grantee shall provide the City with a twenty-four (24) hour emergency telephone number at which a named responsible adult representative of Grantee (not voicemail or a recording) can be contacted in the event of an emergency.

Sec. 38.1-60. System construction schedule.

The City public rights-of-way application shall specify the Grantee's construction timetable. The timetable shall be a monthly schedule.

Sec. 38.1-61. Extension of City public rights-of-way agreement area.

The Grantee may request City authorization to extend the City public rights-of-way agreement area within the City and any areas annexed to the City under such extension provisions as provided for in the City public rights-of-way agreement.

Sec. 38.1-62. Use of streets.

(a) Underground installation. All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, Grantee may install its service above ground, provided that at such time as those facilities are required to be placed underground by the City or are placed underground, the Grantee shall likewise place its services underground without cost to the City. All cable passing under the roadway shall be installed in conduit.

(b) Pedestals. In any case where enclosures housing mini-hubs, switching, or other such equipment are to be utilized along streets and sidewalks, such equipment must be vaulted or otherwise contained in an underground enclosure so as to conform to existing City and utility equipment installation requirements. Pedestals, or above ground hubs, will only be allowed in cases of last case and as only viable method of installation by the utility. A permit from the City, which approval will not be unreasonably withheld, shall be required for the location of any pedestal in a City public rights-of-way or streets.

(c) Permits. Prior to construction of new utility pole alignments or underground construction in the City public rights-of-way or streets, the Grantee shall in each case file application and plans with the appropriate City Engineer, complete use agreements with the utility companies if necessary, obtain all construction permits, and receive written approval of the City before proceeding and if applicable, a certificate of appropriateness in the historic district. Direction can be given by the Engineering Department for permitting.

(d) Construction notice. Grantee shall give appropriate notice to the City prior to the commencement of any work within the City public rights-of-way. All underground utilities shall be located and proper notice given to potentially affected utilities prior to construction.

(e) Interference with persons, improvements, public and private property and utilities. The Grantee's Utility System and Facilities or Infrastructure, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the City, County or State may deem proper to make;
- (3) Not interfere with the free and proper use of City streets, alleys, bridges, easements or other City public rights-of-way or streets, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and
- (5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the City.

(f) Restoration to prior condition. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all paving, sidewalk,

driveway, lawns, shrubbery, landscaping, or surface of any street or alley disturbed, in as good a condition as, or better than, before said work was commenced and in a good workmanlike, timely manner in accordance with standards for such work set by the City. Such restoration shall be completed within a reasonable time, as agreed in the application to the City, after the damage has occurred. In cases where restoration has not occurred as stated in the application, the City may take action to restore damaged infrastructure and charge back to the utility the cost of material and labor to make the restoration. In such instances, the City shall give the Grantee notice to the extent practicable.

(g) Disconnection and relocation. Upon request of the City, Grantee shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate in the same street, or other streets and City public rights-of-way or streets, or remove from any street or any other City public rights-of-way or streets, any of its property as reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure.

(h) Private property. Grantee shall be subject to all laws, ordinances or regulations regarding private property in the course of constructing, installing, operating or maintaining the utility system in the City. Grantee shall promptly repair or replace all private property, both real and personal, damaged or destroyed as a result of the construction, installation, operating or maintenance of the utility system at its sole cost and expense.

(i) Cooperation with building movers. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wire to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than fifteen (15) working days' advance notice to arrange for such temporary wire changes.

(j) Tree trimming. Grantee may trim trees or other vegetation owned by the City to prevent branches, leaves or roots from touching or otherwise interfering with its wires, cables, or other structures as approved by the City.

(1) All tree/root trimming or pruning provided for herewith shall be done under the supervision and direction of the Public Works Director and only with prior written approval.

(2) All trimming or pruning shall be at the expense of the Grantee.

(3) The Grantee may contract for such trimming or pruning services with any person approved by the City prior to rendering of such services.

(4) Any and all persons engaged by the Grantee to provide tree trimming or pruning services shall be deemed, for purposes of the City public rights-of-way agreement, an employee or agent of Grantee when engaged in such activity; and in no event shall such person be deemed to be an employee of the City. If applicable, specific approval shall be received in writing in advance for tree trimming or pruning services in the historic district.

(5) Grantee shall give appropriate notice to the City and residents within a reasonable time of proposed tree/root trimming and pruning, but in no event shall such prior written notice be given less than seven (7) days before such commencement of such trimming or pruning.

(k) Public property. Where any damages or alterations occur to the City's water, sewage or drainage lines, public property or to any other municipal structures during the construction due to the presence, negligence, operation or maintenance of the Grantee's system, the sole cost of such repairs including all services and materials will be billed

against the Grantee and these charges shall be paid immediately or the City may foreclose on performance bonds, or invoke other appropriate sanctions provided for in this Chapter.

(l) Encroachments. All necessary encroachments over and under private property shall be arranged for by the Grantee. Any encroachment over or under Public property, outside of the public rights-of-way, shall be separately negotiated with the City and may be subject to terms and conditions that are different from those set forth in this Chapter.

(m) Maps. Upon completion of the construction of the utility system, or if the system has been completed, the Grantee shall submit to the City a complete and accurate set of "as built" maps. Such maps shall be compatible with any geographic information system utilized by the City. (See Sec. 38.1-89)

(n) Street closure. If any City public rights-of-way is vacated, discontinued, or closed, all rights of Grantee under this Chapter to use same shall terminate and Grantee at its expense shall immediately remove the Facilities from such City public rights-of-way unless Grantee obtains any necessary easements from the affected property owners to use the former City public rights-of-way.

(o) Acquisition of new City public rights-of-way. In acquiring or widening City public rights-of-way, the City shall determine the minimum City public rights-of-way necessary to accommodate paved streets, pedestrian walkways, landscaping, traffic signals, drainage, water and sewer lines and other governmental facilities.

(p) Identification. Grantee shall identify its Facilities or Infrastructure and cable drops in the City public rights-of-way (by color code, stamping, engraving, tags, stickers, or other appropriate method selected by Grantee) so as to distinguish Grantee's cables from that of all other cable and utility operator and service providers in the authorized area.

(q) Marking of underground construction. All underground construction in the City public rights-of-way shall be marked for identification with warning tapes consistent with industry standards. In all events, the tape shall be the type specifically manufactured for marking and locating underground utilities. Tape color shall be a bright color and shall bear a continuous printed inscription stating fiber cable, and the Grantee shall ensure that cable is buried at the appropriate depth as consistent with industry and City standards. All new manholes and handholds, and existing handholds and manholes that involve new work must have all lines in the holes labeled with the Grantee's identification as well as all manhole and handhold tops. Each Grantee must maintain membership in North Carolina 811 (NC811) and will mark there utilities upon request as according to the North Carolina Damage Prevention Act.

(r) Emergency work. No permit will be required prior to any work of an emergency nature. A situation may be classified as an emergency if there is immediate and clear danger to life or property. In emergency situations, the involved utility company will be expected to take whatever appropriate action is necessary to address the emergency. The contractor should attempt to contact the Engineering Department prior to work. If no other direction is given, the contractor shall follow the MUTCD traffic control guidelines. A permit should be obtained within 24 hours after the work is completed so the City may have a record of the work. The standard permit fee would be collected at that time.

Sec. 38.1-63. Erection, removal and common use of poles.

(a) Requirements to use existing poles. Where poles already exist for use in serving the City and are available for use by the Grantee, but it does not make arrangements for such use, the City may require the Grantee to investigate use such poles and structures if

the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable. If the applicant shows just cause why they may not reside on the existing poles then the City approval for underground installation may not be unreasonably withheld.

(b) New poles. No multiple poles in successive alignment in the City right-of-way shall be erected by the Grantee without prior approval of the City with regard to location, height, type and any other pertinent aspect, which approval shall not be unreasonably withheld.

Sec. 38.1-64. Conduit in Downtown area.

(a) Approval for conduit. No conduit shall be installed by the Grantee in the downtown area without prior written approval of the City with regard to location and any other pertinent aspect. However, no location of any conduit of the Grantee shall give rise to a vested interest and such conduit or structures shall be removed or modified by the Grantee at its own expense whenever the public convenience would be enhanced thereby, as determined in the sole discretion of the City Manager or his designee.

(b) Use of existing conduit. Where conduit already exists for use in serving the downtown area and is available for use by the Grantee, but it does not make arrangements for such use, the City may require the Grantee to use such conduit if the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

Sec. 38.1- 65. Infrastructure Information Security Policy of the City of Burlington.

The Grantee shall comply with the Infrastructure Information Security Policy of the City and if in continuing compliance therewith, no information regarding the location, type of infrastructure, plans, drawings or other similar types of information shall be divulged except in strict accordance with the Infrastructure Information Security Policy.

Secs. 38.1-66– 38.1-75. Reserved.

ARTICLE VI. SERVICE PROVISIONS

Sec. 38.1-76. Rights of individuals.

(a) Nondiscrimination required. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex, or physical or mental handicaps, provided the subscriber shall pay all applicable fees for the service desired. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders and rates relating to nondiscrimination which are hereby incorporated and made part of this chapter by reference.

(b) Protection of subscriber privacy mandatory. Grantee shall at all times protect the privacy of subscribers, as provided in this chapter and other applicable federal, state, and local laws.

(c) Service standards. Grantee shall maintain and operate its utility system and business in an efficient manner and shall provide adequate, efficient and reasonable service to its customers in the City. Grantee shall comply with all applicable federal, state, and local laws, rules and regulations, including but not limited to this Chapter.

Secs. 38.1-77 – 38.1-88 Reserved.

ARTICLE VII. REPORTS, CITY PUBLIC RIGHTS-OF-WAY AGREEMENT APPLICATIONS & MISCELLANEOUS

Sec. 38.1-89. Reports required.

The Grantee shall file the following reports with the City:

(a) Facilities report. An initial report setting forth the “as-built” linear footage in City public rights-of-way or streets governed by the City public rights-of-way agreement.

(b) Alternate record keeping. In lieu of submittal of these as-built plans to the City for record keeping, the Grantee may keep on file maps showing the location of all infrastructure for viewing by the City if the file location is within the County where the City limits reside.

(c) Reports on file with the City shall be updated in an annual report to the City and shall contain any revisions to the system "as built" maps filed with the City. The annual report shall be provided by February of each year.

(d) Proof of bonds and insurance. Grantee shall be submitted to the City the required performance bond, or a certified copy thereof, and written evidence of payment of required premium, and all policies of insurance required by this Chapter, or certified copies thereof, and written notice of payment of required premium before February of each year.

(e) Annual reports. The Grantee shall prepare and furnish to the City before February of each year and in the form prescribed, such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the City in connection with this Chapter or the City public rights-of-way agreement. Such reports shall include but not be limited to: annual contact information (name, mailing address, fax number, telephone number, e-mail address) for contractual contact, field representative (fiber technician), and accounts payable.

Sec. 38.1-90. City public rights-of-way use Application.

(a) Application for City public rights-of-way use. Any person or corporation seeking a permit to excavate in the City public rights-of-way shall meet the requirements established by the City and submit an application which meets all requirements of this Chapter. Such application shall, at a minimum, contain the following:

(1) A description of the system and services desired by the applicant including any system specifications established by the City.

(2) A description of the technical qualifications of the applicant and the applicant's ability to construct the system as proposed.

- (3) The identity of the City rights-of-way agreement Applicant.
 - (4) The name, address, and telephone number of the Applicant who may be contacted for further information.
 - (5) The company name and 24 hour contact for a responsible person performing the work.
 - (6) Preliminary engineering plans, specifications that clearly define the scope of work and method of installation. All plans should clearly define the public right-of-way and distances to paved surfaces including sidewalks.
 - (7) If the method and location of installation differs from that authorized by original permit, the applicant must re-apply and resubmit application fee.
 - (8) Appropriate fees per the “Utility Pavement Cut Policy” must be submitted at the time of application.
 - (9) A schedule for build-out.
- (b) Requirement for formal action on reasonable notice. The City shall give notice to any applicant prior to acting on any City public rights-of-way agreement. The meeting shall be conducted by the City Council in accordance with the following procedures:
- (1) There shall be an agenda for the meeting which shall specify the proposal(s) to be considered at the meeting.
 - (2) Any person who has applied for a City public rights-of-way agreement may appear at the meeting either in person or by authorized representative.
 - (3) All persons shall be given opportunity to participate in the meeting, but nothing contained herein shall limit the power of the mayor to establish reasonable time limits and otherwise limit repetitive statements or questions.
 - (4) Copies of all City public rights-of-way applications are available for public inspection during normal business hours in the office of the City Clerk.
- (c) City discretion. Subject to the applicable law, the City, at its reasonable discretion, may reject any application for a City public rights-of-way agreement.

Sec. 38.1-91 Annexation triggers report from Grantee

Within sixty (60) days following the latter of a) notice to Grantee or b) effective date of any ordinance of annexation of territory into the municipal corporate limits, whether the area annexed be contiguous or non-contiguous to the existing municipal corporate limits, the Grantee shall provide the City with an audited report setting forth the linear feet of the Grantee’s infrastructure located within the City public right-of-way within the annexed area and other information as required or requested.

Secs. 38.1-92 – 38.1-102. Reserved.