ORDINANCE G-

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO AMEND THE PHOENIX CITY CODE BY ADDING A NEW CHAPTER 5D TITLED NETWORK INFRASTRUCTURE SERVICES.

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BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX AS FOLLOWS:

SECTION 1. ARTICLE I. PURPOSE, FINDINGS AND DEFINITIONS

SEC. 5D-1. PURPOSE AND FINDINGS.

A. THE PURPOSE OF THIS CHAPTER IS TO ESTABLISH A POLICY GOVERNING THE MANAGEMENT OF PUBLIC HIGHWAYS FOR THE PROVISION OF NETWORK INFRASTRUCTURE SERVICES AND OPEN ACCESS WHOLESALE SERVICES. THE POLICY ENABLES THE CITY TO:

1. ISSUE LICENSES TO NETWORK INFRASTRUCTURE SERVICE PROVIDERS AND OPEN ACCESS WHOLESALE SERVICE PROVIDERS WHO USE THE PUBLIC HIGHWAYS TO PROVIDE SERVICES ON A COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY BASIS, EXCEPT IN CASES WHERE STATE LAW FORBIDS ESTABLISHMENT OF A LICENSE REQUIREMENT;

2. MANAGE THE PUBLIC HIGHWAYS IN ORDER TO MINIMIZE THE IMPACT AND COST TO PHOENIX CITIZENS FOR THE PLACEMENT OF FACILITIES WITHIN PUBLIC HIGHWAYS;

3. MANAGE THE HIGHWAYS TO MAXIMIZE THEIR EFFICIENT USE, THEREBY MINIMIZING THE FORECLOSURE OF FUTURE ADDITIONAL USES OF SUCH RIGHTS-OF-WAY; AND

4. PROVIDE FOR THE COMPENSATION FOR THE COMMERCIAL USE OF PUBLIC HIGHWAYS TO PROVIDE SERVICES.

B. THE PHOENIX CITY COUNCIL FINDS THAT THE PUBLIC HIGHWAYS CONSTITUTE A VALUABLE PUBLIC ASSET:

1. HAVING BEEN ACQUIRED AND MAINTAINED BY THE CITY OVER MANY YEARS AT GREAT TAXPAYER EXPENSE;

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2. PROVIDING UNIQUELY VALUABLE PROPERTY THAT NETWORK INFRASTRUCTURE SERVICE AND OPEN ACCESS WHOLESALE SERVICE LICENSEES MAY WISH TO USE FOR PROFIT-MAKING PURPOSES THAT MAY NOT NECESSARILY BENEFIT ALL THE RESIDENTS OF THE CITY; AND

3. REPRESENTING PUBLIC INVESTMENTS FOR WHICH THE TAXPAYERS ARE ENTITLED TO A FAIR MONETARY RETURN ON THE CITY'S PAST AND FUTURE INVESTMENT IN THE CITY'S INFRASTRUCTURE.

C. THEREFORE, IN THIS ARTICLE THE PHOENIX CITY COUNCIL INTENDS:

1. TO CONSERVE THE LIMITED PHYSICAL CAPACITY OF THE PUBLIC HIGHWAYS HELD IN PUBLIC TRUST BY THE CITY; AND

2. TO ENSURE THAT THE CITY'S CURRENT AND ONGOING COSTS OF GRANTING AND REGULATING PRIVATE ACCESS TO AND USE OF THE PUBLIC HIGHWAYS ARE FULLY PAID BY THE PERSONS SEEKING SUCH ACCESS AND CAUSING SUCH COSTS.

SEC. 5D-2. DEFINITIONS.

FOR THE PURPOSE OF THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES, THE FOLLOWING TERMS, PHRASES, WORDS, AND THEIR DERIVATIVES SHALL HAVE THE MEANINGS GIVEN HEREIN.

*ANNUAL MINIMUM FEE* (AMF) MEANS THE ANNUAL FEE THAT IS REQUIRED FOR USE OF THE PUBLIC HIGHWAYS FOR THE INSTALLATION AND OPERATION OF THE NETWORK FACILITIES TO PROVIDE FIBER-OPTIC SERVICES.

*CITY* MEANS THE CITY OF PHOENIX, A MUNICIPAL CORPORATION OF THE STATE OF ARIZONA, AND ALL OF THE TERRITORY WITHIN ITS PRESENT AND FUTURE CORPORATE BOUNDARIES.

*CITY CODE* OR *CODE* MEANS PHOENIX CITY CODE.

*COLLECTOR STREET* MEANS ALL STREETS THAT PROVIDE DIRECT ACCESS TO RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR OTHER ABUTTING LAND, AND FOR TRAFFIC MOVEMENTS THAT CONNECT TO LOCAL OR ARTERIAL STREETS OR BOTH.

*END-USER CUSTOMER* MEANS A PERSON OR BUSINESS THAT IS A FEE-PAYING CUSTOMER OF THE NETWORK INFRASTRUCTURE SERVICE LICENSEE OR, IF

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THE CUSTOMER'S INTERNET ACCESS IS PROVIDED THROUGH AN OPEN ACCESS WHOLESALE SERVICE, THE FEE-PAYING CUSTOMER OF THE INTERNET SERVICE PROVIDER.

*FACILITIES* MEANS THE PLANT, EQUIPMENT, AND PROPERTY USED IN THE PROVISION OF NETWORK INFRASTRUCTURE SERVICES AND OPEN ACCESS WHOLESALE SERVICES THAT ARE NOT OWNED BY THE CITY, INCLUDING BUT NOT LIMITED TO WIRES, PIPES, CONDUITS, PEDESTALS, AND OTHER APPURTENANCES PLACED IN, ON, ABOVE, OR UNDER PUBLIC HIGHWAYS.

*GROSS REVENUES* INCLUDES ALL REVENUES COLLECTED BY THE LICENSEE IN THE DELIVERY OF INTERNET ACCESS TO END-USER CUSTOMERS OR REVENUES COLLECTED IN THE FORM OF RENT OR LEASE PAYMENTS, INCLUDING THE FEE FOR SERVICE INSTALLATION AND ACTIVATION, MONTHLY FEE FOR INTERNET ACCESS, THE RENT OR LEASE PAYMENTS FROM THIRD-PARTY USE OF LICENSEE'S FIBER-OPTIC CIRCUITS, THE RENT OR LEASE PAYMENTS FOR CUSTOMER-PREMISE EQUIPMENT, AND ANY PROPERTY OR IN-KIND CONTRIBUTIONS (SERVICES OR GOODS) RECEIVED BY LICENSEE FROM ITS CUSTOMERS WITHIN THE CITY. GROSS REVENUES DOES NOT INCLUDE LICENSE FEES COLLECTED FROM CUSTOMERS PURSUANT TO SECTION 5D-5(A)(6).

*LICENSE* MEANS THE NON-EXCLUSIVE AUTHORIZATION GRANTED BY THE CITY TO CONSTRUCT, OPERATE, AND MAINTAIN FACILITIES WITHIN ALL OR PART OF THE CITY AND TO OCCUPY OR USE THE PUBLIC HIGHWAYS WITHIN THE CITY. THE LICENSE SHALL BE EVIDENCED BY A SEPARATE GRANTING ORDINANCE AND LICENSE DOCUMENT THAT ARE SUBJECT TO THE TERMS OF THIS CHAPTER.

*LICENSEE* MEANS THE PERSON OR ENTITY TO WHICH LICENSE IS GRANTED FOR THE CONSTRUCTION, OPERATION, MAINTENANCE, AND RECONSTRUCTION OF FACILITIES TO PROVIDE SERVICES TO END-USER CUSTOMERS.

*LICENSE FEE* MEANS EITHER THREE PERCENT (3%) OF GROSS REVENUES OR THE AMF, WHICHEVER IS HIGHER. THE LICENSE FEE FOR OPEN ACCESS WHOLESALE SERVICE MEANS (6%) OF GROSS REVENUES, OR THE AMF, WHICHEVER IS HIGHER.

*LOCAL STREET* MEANS ALL STREETS THAT PROVIDE DIRECT ACCESS TO RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR OTHER ABUTTING LAND AND FOR LOCAL TRAFFIC MOVEMENTS, AND THAT CONNECT TO COLLECTOR OR ARTERIAL STREETS OR BOTH.

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*NETWORK INFRASTRUCTURE SERVICE* MEANS WIRED TRANSMISSION TECHNOLOGY THAT PROVIDES AN END-USER CUSTOMER CONNECTIVITY TO THE INTERNET FOR A FEE. THE SERVICES SHALL NOT INCLUDE CABLE SERVICES (AS DEFINED BY A.R.S. §9-505), VIDEO SERVICES (AS DEFINED BY A.R.S. §9-1401), COMMERCIAL MOBILE RADIO SERVICE (AS DEFINED IN A.R.S. §9-581), OR TELECOMMUNICATIONS SERVICES (AS DEFINED IN A.R.S. §9-581).

*NETWORK INFRASTRUCTURE SERVICE PROVIDER* MEANS THE PERSON OR COMPANY OFFERING NETWORK INFRASTRUCTURE SERVICES.

*OPEN ACCESS WHOLESALE SERVICE* MEANS A TYPE OF NETWORK INFRASTRUCTURE SERVICE WHERE THE FIBER-OPTIC CONNECTION TO THE END-USER CUSTOMER IS LEASED, RENTED, OR MADE AVAILABLE TO AN INTERNET SERVICE PROVIDER THAT OFFERS INTERNET ACCESS SERVICES DIRECTLY TO THE END-USER CUSTOMER.

*OPEN ACCESS WHOLESALE SERVICE PROVIDER* MEANS THE PERSON OR COMPANY THAT HAS A LICENSE TO OFFER NETWORK INFRASTRUCTURE SERVICES WITHIN THE CITY LIMITS WITH THE PRIMARY PURPOSE OF OFFERING WHOLESALE SERVICES.

*PUBLIC HIGHWAY* OR *HIGHWAY* MEANS ALL ROADS, STREETS AND ALLEYS AND ALL OTHER DEDICATED PUBLIC RIGHTS-OF-WAY AND PUBLIC UTILITY EASEMENTS OF THE CITY. A BRIDGE OWNED BY THE CITY OR OTHER PARTIES IS NOT A PUBLIC HIGHWAY OR A HIGHWAY; USE OF A CITY BRIDGE MAY REQUIRE A BRIDGE MASTER LICENSE AGREEMENT OR A REVOCABLE PERMIT.

*RESIDENTIAL UNIT* AS USED TO CALCULATE THE AMF MEANS ANY PROPERTY USED AS A RESIDENCE, REGARDLESS OF ZONING CLASSIFICATION. IF LICENSEE HAS A CONTRACT TO PROVIDE FIBER-OPTIC SERVICES TO A MULTIPLE DWELLING UNIT COMPLEX, INCLUDING CONDOMINIUMS OR APARTMENTS, LICENSEE SHALL INCLUDE THE TOTAL NUMBER OF RESIDENTIAL UNITS AVAILABLE WITHIN THE PROPERTY FOR CALCULATION OF THE AMF.

*RIGHTS-OF-WAY* OR *ROW* SHALL HAVE THE SAME MEANING AS PUBLIC HIGHWAY OR HIGHWAY.

*TELECOMMUNICATIONS CORPORATION* MEANS A CORPORATION WITH A VALID CITY TELECOMMUNICATIONS LICENSE TO OFFER TELECOMMUNICATIONS SERVICES THAT MAY PROVIDE END-USER CUSTOMERS CONNECTIVITY TO THE INTERNET FOR A FEE UNDER THE TERMS OF ITS TELECOMMUNICATIONS LICENSE.

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ARTICLE II. LICENSE TO OCCUPY RIGHTS-OF-WAY

SEC. 5D-3. LICENSE REQUIRED.

A NETWORK INFRASTRUCTURE SERVICE PROVIDER OR AN OPEN ACCESS WHOLESALE SERVICE PROVIDER SHALL NOT INSTALL, MAINTAIN, CONSTRUCT, REPAIR, OR OPERATE FACILITIES IN ANY PUBLIC HIGHWAY IN THE CITY, OR PROVIDE SERVICES BY MEANS OF SUCH FACILITIES, UNLESS A LICENSE TO USE THE HIGHWAYS TO PROVIDE SERVICES HAS FIRST BEEN GRANTED BY THE PHOENIX CITY COUNCIL UNDER THIS CHAPTER.

SEC. 5D-4. LICENSE TERM.

LENGTH OF LICENSE. ANY LICENSE GRANTED BY THE CITY PURSUANT TO THIS CHAPTER SHALL COMMENCE UPON APPROVAL. THE LICENSE SHALL BE EFFECTIVE FOR A PERIOD OF FIVE (5) YEARS, AND SUBJECT TO THE CONDITIONS AND RESTRICTIONS PROVIDED IN THE LICENSE AND THIS CHAPTER.

5D-5. COMPENSATION.

A. LICENSEE SHALL:

1. PAY ANY APPLICABLE TRANSACTION PRIVILEGE TAX OR APPLICABLE USE TAX, AS MAY BE SPECIFIED FROM TIME TO TIME IN CHAPTER 14 OF THE PHOENIX CITY CODE.

2. PAY ALL FEES RELATED TO THE PLAN REVIEW AND ISSUANCE OF CONSTRUCTION PERMITS, INSPECTIONS FEES, RIGHT-OF-WAY AND TEMPORARY RESTRICTION AND CLOSURE SYSTEM (TRACS) PERMITS, AND PRE-CONSTRUCTION MEETING FEES. ALSO PAY ALL FEES RELATED TO PERMITS AND INSPECTIONS THAT MAY BE REQUIRED BY THE PLANNING & DEVELOPMENT DEPARTMENT.

3. REIMBURSE THE CITY FOR ITS ACTUAL AND DOCUMENTED COSTS IF THE CITY REASONABLY REQUIRES RETAINING OUTSIDE PERSONS TO REVIEW PLANS, OUTSIDE INSPECTORS TO MONITOR THE INSTALLATION OF FACILITIES, AND ANY OTHER CONSTRUCTION RELATED WORKERS TO MEET TIMEFRAMES DESIRED BY THE LICENSEE.

4. PAY ALL REASONABLE COSTS ASSOCIATED WITH THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF ITS FACILITIES IN THE PUBLIC HIGHWAYS USED TO PROVIDE

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SERVICES, INCLUDING REASONABLE COSTS ASSOCIATED WITH DAMAGE CAUSED TO THE PUBLIC HIGHWAYS.

5. MAKE ALL PAYMENTS FOR PERMITS, INSPECTIONS, AND RIGHT-OF-WAY MANAGEMENT (ROWM) FEES WITHIN THIRTY (30) DAYS OF THE DATE ON THE INVOICE. ANY FEES NOT PAID ON A TIMELY BASIS ARE SUBJECT TO COLLECTIONS ACTION AND FEES AFTER 120 DAYS PAST DUE. THE COLLECTIONS FEE WILL BE ADDED TO THE PAST DUE AMOUNT AND MUST BE PAID TO HAVE THE ACCOUNT CURRENT. WHILE IN COLLECTIONS STATUS FOR ANY PAYMENTS, THE LICENSEE WILL NOT BE ABLE TO SUBMIT PERMITS, PERFORM CONSTRUCTION WORK IN THE ROW, OR REQUEST TRACS PERMITS.

6. ACKNOWLEDGE THAT THE CITY'S RIGHT-OF-WAY IS HELD IN PUBLIC TRUST AND IS A VALUABLE ASSET THAT REQUIRES FAIR AND REASONABLE COMPENSATION FOR ITS USE BY LICENSEE.

a. IF LICENSEE IS OFFERING INTERNET SERVICES DIRECTLY TO THE END-USER CUSTOMER AND IS THE INTERNET SERVICE PROVIDER (ISP), THE LICENSE FEE SHALL BE THE GREATER OF THE TWO OPTIONS: EITHER THREE (3%) PERCENT OF GROSS REVENUES, OR THE ANNUAL MINIMUM FEE.

b. IF LICENSEE IS PROVIDING OPEN ACCESS WHOLESALE SERVICE THAT LEASES, RENTS, OR OTHERWISE PROVIDES ITS FACILTIES TO AN ISP TO OFFER INTERNET ACCESS TO END-USER CUSTOMERS, THE LICENSE FEE SHALL BE THE GREATER OF THE TWO OPTIONS: EITHER SIX (6%) PERCENT OF GROSS REVENUES DERIVED FROM THE LEASE, RENT, OR AVAILABILITY OF ITS FACILITIES TO AN ISP, OR THE ANNUAL MINIMUM FEE.

c. ANNUAL MINIMUM FEE. AFTER 12-MONTHS FROM THE DATE THAT THE LICENSE IS EXECUTED, AND ON EACH SUCCESSIVE ANNIVERSARY OF THAT DATE, THE LICENSEE SHALL CALCULATE THE ANNUAL MINIMUM FEE (AMF) PAYABLE TO THE CITY.

i) THE AMF FOR JANUARY 1, 2025 THROUGH DECEMBER 31, 2029 IS $6.00 (SIX DOLLARS) MULTIPLIED BY THE NUMBER OF RESIDENTIAL UNITS THAT LICENSEE HAS PASSED ON A LOCAL STREET AND A COLLECTOR STREET WITH ITS FACILITIES. THE AMF RATE FOR RESIDENTIAL UNITS PASSED SHALL

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INCREASE AT EACH FIVE-YEAR RENEWAL BASED ON THE CUMULATIVE CONSUMER PRICES INDEX ALL URBAN CONSUMERS (CPI-U) U.S. CITY AVERAGE FOR THE MONTH OF JUNE DURING EACH YEAR OF THE LICENSE, PROVIDED THAT THE ANNUAL FEE FOR EACH RESIDENTIAL UNIT PASSED SHALL NOT BE LESS THAN THE FEE FROM THE PREVIOUS FIVE-YEAR LICENSE TERM.

d. IF LICENSEE IS PROVIDING INTERNET SERVICES DIRECTLY TO THE END-USER CUSTOMER AND THE THREE PERCENT (3%) OF GROSS REVENUES EXCEEDS THE AMF, THEN THE LICENSEE SHALL ONLY REMIT THE 3% OF GROSS REVENUES TO CITY.

i) IF 3% OF GROSS REVENUES DOES NOT EXCEED THE AMF, THEN LICENSEE SHALL REMIT ONLY THE AMF TO CITY.

e. IF LICENSEE IS PROVIDING ITS FACILITIES AS OPEN ACCESS WHOLESALE SERVICES TO INTERNET SERVICE PROVIDERS AND THE SIX PERCENT (6%) OF GROSS REVENUES EXCEEDS THE AMF, THEN THE LICENSEE SHALL ONLY REMIT THE 6% OF GROSS REVENUES TO CITY.

i) IF 6% OF GROSS REVENUES DOES NOT EXCEED THE AMF, THEN LICENSEE SHALL REMIT ONLY THE AMF TO CITY.

B. NEW RESIDENTIAL SUBDIVISIONS

1. LICENSEE MAY COORDINATE WITH THE DEVELOPER TO INSTALL NETWORK INFRASTRUCTURE FACILTIES WITHIN THE RIGHT-OF-WAY OF A RESIDENTIAL SUBDIVISION PRIOR TO COMPLETION OF THE STREET ASPHALT LAYER.

2. IF LICENSEE INSTALLS ITS FACILTIES IN THE RIGHT-OF-WAY CONCURRENT WITH NEW STREET CONSTRUCTION THAT DOES NOT DISTURB THE ASPHALT SURFACE, LICENSEE WILL NOT BE SUBJECT TO THE STREET RESTORATION REQUIREMENTS IN CITY CODE §31-49.1.

3. FACILITIES INSTALLED UNDER THIS SECTION WILL NOT BE SUBJECT TO THE MONTHLY LICENSE FEE AND ANY RESIDENTIAL UNITS PASSED WILL NOT BE INCLUDED IN THE CALCULATION OF AMF UNTIL THE DEVELOPER HAS CLOSED

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ESCROW ON FIFTY-ONE PERCENT (51%) OF THE RESIDENTIAL UNITS.

a. IF THE SUBDIVISION IS DEVELOPED IN PHASES, THEN THE MONTHLY LICENSE FEE OR AMF SHALL BE IMPLEMENTED WHEN THE DEVELOPER HAS CLOSED ESCROW ON FIFTY-ONE PERCENT (51%) OF THE RESIDENTIAL UNITS IN THAT PHASE OF THE SUBDIVISION.

C. LICENSEE SHALL REMIT QUARTERLY LICENSE FEE PAYMENTS.

1. AT THE END OF EACH CALENDAR QUARTER, LICENSEE SHALL CALCULATE AND REMIT TO CITY A LICENSE FEE PAYMENT.

2. THE LICENSEE SHALL SEND THE QUARTERLY LICENSE FEE PAYMENT SO THAT THE PAYMENT IS RECEIVED BY THE CITY ON OR BEFORE:

a. 1Q (JANUARY 1 - MARCH 31) PAYMENT TO CITY BY MAY 31;

b. 2Q (APRIL 1 – JUNE 30) PAYMENT TO CITY BY AUGUST 31;

c. 3Q (JULY 1 – SEPTEMBER 30) PAYMENT TO CITY BY NOVEMBER 30;

d. 4Q (OCTOBER 1 – DECEMBER 31) PAYMENT TO CITY BY FEBRUARY 28.

3. THE FIRST QUARTERLY FEE PAYMENT SHALL BE MADE AFTER CLOSE OF THE QUARTER DURING WHICH THE LICENSEE BEGINS PROVIDING SERVICE TO ANY END-USER CUSTOMERS.

4. THE LICENSEE MAY IDENTIFY AND COLLECT, AS A SEPARATE ITEM ON THE REGULAR BILL OF ANY END-USER CUSTOMER, THE AMOUNT OF THE LICENSE FEE ON GROSS REVENUES.

5. THE LICENSE FEE WILL NOT BE AN OFFSET TO THE TRANSACTION PRIVILEGE TAX OR ANY OTHER FEDERAL, STATE OR LOCAL TAX THAT MAY BE ASSESSED. LICENSEE ACKNOWLEDGES THAT CITY WILL PASS ON ITS TRANSACTION PRIVILEGE TAX LIABILITY AS A LICENSOR OF REAL PROPERTY TO LICENSEE AND LICENSEE SHALL PAY SUCH AMOUNT. LICENSEE MAY IDENTIFY AND COLLECT, AS A SEPARATE ITEM ON THE REGULAR BILL OF ANY END-USER CUSTOMER, THE AMOUNT SO PASSED ON.

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6. LATE PAYMENT PENALTY FOR ALL FEES. ANY FEE PAYMENT DUE TO THE CITY THAT IS NOT RECEIVED BY THE DATE SPECIFIED IN SECTION 5D-5(C)(2) SHALL BE SUBJECT TO A LATE PAYMENT FEE OF ONE PERCENT (1%) PER MONTH.

SEC. 5D-6. CITY POLICE POWER; CONTINUING JURISDICTION.

A. THE LICENSEE SHALL AT ALL TIMES BE SUBJECT TO ALL LAWFUL EXERCISE OF THE POLICE POWER BY THE CITY, INCLUDING ANY AND ALL CHAPTERS, RULES, OR REGULATIONS WHICH THE CITY HAS ADOPTED OR MAY ADOPT, AND ALL LAWS, RULES, REGULATIONS, ORDERS, AND POLICIES OF THE STATE AND THE UNITED STATES GOVERNMENT. IN THE EVENT OF A CONFLICT BETWEEN THIS CHAPTER AND OTHER PROVISIONS OF THE CITY CODE, THE STRICTER REQUIREMENT SHALL APPLY.

B. THE CITY SHALL HAVE CONTINUING JURISDICTION AND SUPERVISION OVER ANY FACILITIES LOCATED WITHIN OR ON RIGHTS-OF-WAY. IT IS RECOGNIZED THAT THE DAILY ADMINISTRATIVE, SUPERVISORY, AND ENFORCEMENT RESPONSIBILITIES OF THE PROVISIONS OF THIS CHAPTER SHALL BE DELEGATED AND ENTRUSTED TO THE CITY MANAGER OR DESIGNEE TO INTERPRET, ADMINISTER, AND ENFORCE THE PROVISIONS OF THIS CHAPTER, AND TO PROMULGATE STANDARDS REGARDING THE CONSTRUCTION, RECONSTRUCTION, RELOCATION, MAINTENANCE, REPAIR, DISMANTLING, ABANDONMENT, OR USE OF THE FACILITIES WITHIN THE RIGHTS-OF-WAY.

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