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SPONSORED BY: Dan Champine

REGULATING PUBLIC RIGHTS OF WAY EXCAVATION AND BARRICADING FOR FIBER INFRASTRUCTURE PURPOSES.

SECTION 1. A new Section 30, of Chapter 6, Article 5, Part 2, being § 6-5-2-30, of the revised Ordinances of Albuquerque 1994, the Street Excavation and Barricading Ordinance of the City of Albuquerque, New Mexico, is hereby created as follows:

(A) DEFINITIONS.

(2) “Licensee” is any entity or person who has entered into an agreement with the City of Albuquerque, where the agreement gives license to complete work or occupy any City ROW for fiber infrastructure purposes, but does not include persons or entities have the right to work within or occupy City right of way through an easement or franchise agreement. “Licensee” includes Licensee’s agents, including but not limited to contractors, subcontractors, and any other person or entity authorized to act in any way on the Licensee’s behalf.

(B) SIGNAGE AND IDENTIFICATION.

1 (1) All vehicles conducting work for a Licensee within City ROW under a
2 City work order, permit or other agreement shall conspicuously display
3 signage with the name and address of the Licensee. Such signage shall also
4 include a contact phone number, monitored and answered from 7 A.M. to 7
5 P.M. Mountain Standard Time seven (7) days a week to allow the public to
6 contact the Licensee with any questions or concerns. This contact phone
7 number shall also provide multilingual services as requested.

8 (2) All contractors conducting work for a Licensee within a City ROW
9 under a City work order, permit or other agreement shall clearly display the
10 name of the Licensee on their outer clothing. Alternatively, all contractors
11 must carry and display identification badges.

12 (3) All contractors conducting work for a Licensee and operating in the
13 City ROW shall have written materials available in Spanish and English that
14 include the Licensee's contact information and information about the work
15 being performed.

16 ***(C) NOTICE AND TIMING OF FIBER OPTIC CONSTRUCTION, WORKING***
17 ***HOURS.***

18 (1) Licensees and their agents are required to deliver two written notices
19 of upcoming work to affected residents. The first notice shall be delivered at
20 least thirty (30) days before construction and a second notice at least 48 hours
21 before construction. Notice shall not include any advertisement for services.
22 The first notice shall include a general description of the work to be performed
23 and the approximate construction date. The second notice shall describe the
24 work to be performed, traffic control set-up, dates and times of activities, and
25 the name and telephone number of the Licensee's local representative.
26 Licensee will not receive a Barricade or Excavation Permit, or combination
27 thereof, until it has provided the City with documentation showing that the
28 first required written notice has been delivered. Proof of delivery of the second
29 notice shall be required prior to the first field meeting scheduled by the City's
30 Design Review and Construction section and/or prior to the start of
31 construction. Documentation may include, but is not limited to, photographic
32 or video evidence that the written notice was provided to affected residents or
33 set via certified mail.

(2) In addition to the notice requirements in Section 6-5-2-30(C)(1), Licensees and their agents are required to post yellow high-visibility signs at the perimeter of the City ROW work areas containing the same information as required by Section 6-5-2-30(C)(1). Such notices must be placed at 48 hours before construction at the City ROW work area.

(3) In the event a Licensee is placing fiber within City ROW, fiber micro trenching, boring, and excavating within residential neighborhoods and streets shall only be allowed Monday through Saturday between the hours of 7:00 A.M. and 6:00 P.M., unless otherwise limited by permit-specific conditions for safety or traffic control. In no event shall a Licensee continue any construction or perform any duties at a specified site, including clean up, within the scope of their license past 8:00 PM. Nothing in this section shall be construed to permit unsafe or unduly disruptive work practices.

(4) The above provisions shall not limit timeframes or require advance notice for conducting emergency repairs or restoration.

(D) COORDINATION AND JOINT TRENCHING.

(1) To minimize repeat excavations and neighborhood impacts, Licensees performing work within the same City ROW are encouraged to coordinate schedules, traffic control plans, and staging with one another and with the City. Joint trenching or conduit sharing may be pursued where technically feasible, lawful, and commercially reasonable; nothing in these Regulations shall require conduit sharing or waive separation or safety requirements under applicable law and standards. When the City identifies City ROW work areas that are being applied for by various Licensees, the City may facilitate coordination meetings among interested Licensees during planning and permitting. Drop installations to individual customers are permitted at any time in accordance with applicable permits and standards.

(2) The City shall not impose a moratorium on Fiber Infrastructure construction due to the concentration of Licensees in a work area unless Licensees fail to coordinate schedules, traffic control plans, and staging with one another and the City. In such circumstances, the City may impose a 44-day deployment delay on further fiber construction within that ROW once construction has been completed.

1 **(E) COMPLAINTS AND RESTORATION.**

2 (1) Licensees shall respond to complaints within 24 hours of receipt, by
3 either notifying the complainant that the issue has been resolved or by
4 providing an explicit timeframe in which the issue will be resolved. Licensees
5 shall also provide the name and contact information of a person to whom the
6 complainant can address any follow-up questions.

7 (2) If the City determines that there have been an excessive number of
8 complaints or excessive damage related to the Licensee's activity, the City
9 may- at its sole discretion – order the Licensee to immediately stop work until
10 such time as the Licensee has addressed and remediated all outstanding
11 complaints to the satisfaction of the City. Work stoppage under this section
12 shall occur only after notifying the Licensee of the number and type of
13 complaints alleged and providing the Licensee the opportunity to address,
14 remediate, or cure these complaints within a reasonable time after notice of
15 these complaints. This does not limit the City's authority to stop work
16 pursuant to the license or applicable law.

17 (3) Licensee shall implement and document an internal quality-
18 assurance/quality-control (QA/QC) program to confirm compliance with
19 License requirements, City ordinances, rules, construction standards, and
20 permit conditions. The City shall avoid duplicative requirements where
21 substantially similar review or inspection has already occurred under the
22 Design Review and Construction (DRC) process or other City standards.
23 However, the City may require Licensees to engage a third-party professional
24 services firm if the City receives a complaint that work completed within the
25 City ROW does not comply with license requirements, city ordinances, rules,
26 or construction standards, including requirements under any permits or work
27 orders issued by the City.

28 (4) Soft-scape and asphalt areas shall be temporarily stabilized within 72
29 hours where practicable, subject to weather, inspection scheduling, and
30 materials availability, and restored to permanent condition as promptly as
31 practicable consistent with applicable City standards. Cement restoration
32 shall be temporarily completed within 72 hours where practicable and
33 permanently completed within sixteen (16) calendar days where feasible. If

1 permanent restoration within sixteen (16) days is not feasible due to weather,
2 inspection scheduling, or material availability, the Licensee shall coordinate
3 with the City to establish a mutually acceptable restoration schedule.

4 (5) Upon request from a property owner or the City, the Licensee shall
5 within 3 business days remove temporary utility markings (spray-paint,
6 whiskers, etc.) using non-destructive methods where practicable and where
7 removal will not damage or discolor the underlying surface or unreasonably
8 increase costs. Nothing in this section shall obligate removal where doing so
9 would damage the surface, violate safety/locate requirements, or conflict with
10 other applicable laws or standards.

11 (F) **ENFORCEMENT.**

12 (1) Violation of this Ordinance, any rule promulgated regarding fiber
13 infrastructure, or any provisions of ROA 1994, §§6-5-2-1 to -30, or any
14 applicable law, regulation, rule, or agreement with the City, shall result in
15 enforcement or abatement actions, as determined at the discretion of the
16 Mayor or designee, up to and including termination of applicable work order(s)
17 or permit(s), suspension of the privilege of acquiring new work order or
18 permits, or termination of the license agreement.

19 (2) Nothing in this Ordinance shall be construed as to limit in any
20 enforcement and abatement actions the City may have available as a matter of
21 law, rule, or regulation against Licensees working in or occupying City ROW.
22 Any rule promulgated pursuant to the Street Excavation and Barricading
23 Ordinance of the City of Albuquerque concerning the subject matter of this
24 Ordinance must be consistent with this Ordinance.

25 (3) In the event of a conflict between any administrative rules
26 promulgated pursuant to the Street Excavation and Barricading Ordinance and
27 this Ordinance, the provisions of this Ordinance shall prevail.

28 **SECTION 2. SEVERABILITY.** If any section, paragraph, sentence, clause,
29 word or phrase of this Ordinance is for any reason held to be invalid or
30 unenforceable by any court of competent jurisdiction, such decision shall not
31 affect the validity of the remaining provisions of this Ordinance. The Council
32 hereby declares that it would have passed this Ordinance and each section,

1 paragraph, sentence, clause, word or phrase thereof irrespective of any
2 provision being declared unconstitutional or otherwise invalid.

3 SECTION 3. COMPILATION. SECTION 1 of this Ordinance is to be compiled
4 as a new Section 30 of Chapter 6, Article 5, Part 2, being §6-5-2-30, of the
5 Revised Ordinances of Albuquerque, New Mexico, 1994, titled “Fiber Optic
6 Infrastructure Specific Excavation and Barricading Provisions.”

7 SECTION 4. EFFECTIVE DATE. This Ordinance takes effect five days after
8 publication by title and general summary.

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