

## **ORDINANCE NO. 413-2026**

AN ORDINANCE OF THE CITY OF THREE FORKS, MONTANA, ESTABLISHING CHAPTER 29 TO TITLE 11 ZONING REGULATIONS: ADOPTING REGULATIONS FOR THE USE OF THE RIGHT-OF-WAY BY PROVIDERS OF TELECOMMUNICATIONS SERVICES; PROVIDING FOR FEE PAYMENT REQUIREMENTS; PROVIDING FOR FEES AND PENALTIES FOR VIOLATIONS OF THE REGULATIONS; PROVIDING FOR THE SEVERABILITY OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City wishes to establish a local policy concerning the use of public ways by telecommunications infrastructure and service providers; establish clear local guidelines, standards and timeframes for the exercise of local authority with respect to the regulation of telecommunications providers; promote competition in telecommunications and encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the City.

**WHEREAS**, the City wants to permit and manage reasonable access to the public ways of the City for telecommunications purposes on a competitively neutral basis; assure that all telecommunications providers constructing, repairing or maintaining telecommunications facilities within the public ways comply with the ordinances, rules and regulations of the City; assure that the City can continue to fairly and responsibly protect the public health, safety and welfare.

**WHEREAS**, pursuant to §7-1-4127 and 7-1-4131, MCA notice of public hearings for the first and second readings of this ordinance amendment were published in the Bozeman Daily Chronicle on 1/23/2026 and 2/27/2026, in the Belgrade News on 1/8/2026 and 1/26/2026, and in the Three Forks Voice on 1/28/2026 and 2/25/2026, as well as posted on the City website, City Facebook page, and around town at various physical locations as is City policy.

**WHEREAS**, the Zoning & Planning Board held a public hearing on January 15, 2026, to hear and make a recommendation for the City Council to consider adopting this ordinance.

**NOW THEREFORE BE IT ORDAINED** by the Three Forks City Council, that Title 11 Zoning Regulations, Chapter 29 Use of the Right-of-Way by Telecommunications Providers, be added to the Three Forks City Code, which Chapter shall read as follows:

### **TITLE 11: ZONING REGULATIONS, CHAPTER 29: USE OF THE RIGHT-OF-WAY BY TELECOMMUNICATIONS PROVIDERS**

#### **11-29-1: PURPOSE AND INTENT:**

The purpose of this Chapter is to regulate and control the use of public Right-of-Way, and the intent of this Chapter is, to the extent consistent with Federal and State laws, as they may be amended from time to time, to:

- A. Establish a local policy concerning the use of public ways by telecommunications infrastructure and service providers;
- B. Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers;
- C. Promote competition in telecommunications;
- D. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;
- E. Permit and manage reasonable access to the public ways of the City for telecommunications purposes on a competitively neutral basis;
- F. Assure that all telecommunications providers constructing, repairing or maintaining telecommunications facilities within the public ways comply with the ordinances, rules and regulations of the City; and
- G. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare.

## **11-29-2: DEFINITIONS:**

For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning:

- A. **APPLICANT:** Any Person or entity that applies for any permit pursuant to this Chapter.
- B. **CITY:** The City of Three Forks, Montana.
- C. **CITY PROPERTY:** All real property owned in fee by the City or dedicated for a specific purpose, other than public ways and utility easements as those terms are defined herein. City property shall also include, for example, all City-owned poles, buildings and antenna support structures and infrastructure outside of the public ways, provided that additional Agreements, Pole Attachment Agreements or Leases with the City shall be required for their use.
- D. **PERMIT:** The authorization in whatever form provided by the City whereby the City may grant permission for construction to a provider to enter and use the specified public ways for the purpose of installing, maintaining, operating, repairing or removing facilities.

E. PERSON: Includes any natural person, sole proprietorship, joint venture, corporations, associations, partnerships, limited liability companies and any other form of entity. Person shall not include the City.

F. PROVIDER: Includes telecommunications service providers and telecommunications infrastructure providers.

G. PUBLIC WAYS or PUBLIC RIGHT-OF-WAY or RIGHT-OF-WAY: Any highway, street, alley, utility easement (unless its use is otherwise restricted), or other public Right-of-Way under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to or hereafter held by the City.

H. STATE: The State of Montana.

I. TELECOMMUNICATIONS: The term telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

J. TELECOMMUNICATIONS PROVIDER: A telecommunications service provider or a telecommunications infrastructure provider, or both, as applicable.

K. TELECOMMUNICATIONS SERVICE: The term telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

L. UTILITY EASEMENT: Any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

### **11-29-3: APPLICATION FEE AND COST REIMBURSEMENT:**

A. A person or entity seeking a telecommunications permit, Franchise, easement, lease or Agreement for the use of City Right-of-Way or other property for telecommunications facilities shall:

1. Pay to the City a non-refundable application fee as determined by the Three Forks City Council or by an engineer of the City and adopted by the City Council via resolution, to cover the cost of all direct and indirect administrative expenses and staff efforts devoted to developing, drafting, negotiating and finalizing a telecommunications permit, Franchise, easement or Agreement for the use of City Right-of-Way or other property for telecommunications facilities;

2. Reimburse the City for all out-of-pocket processing costs, including but not limited to the cost of publication of notices relating to the telecommunications permit, Franchise, easement, lease or Agreement for the use of City Right-of-Way or other property for telecommunications facilities;

3. Reimburse the City for the City's reasonable outside attorneys' fees, consultants' fees and expenses incurred in developing, drafting, negotiating and finalizing the telecommunications permit, Franchise, lease or easement or other Agreement for use of City Right-of-Way or other property for telecommunications facilities; and

4. Pay all franchise fees, pole attachment fees, permit fees, and other fees and taxes as permitted by Federal and State law.

B. The fees, taxes and costs paid shall not be offset against any franchise fees or other amounts payable to the City during the term of the Franchise or other Agreement.

#### **11-29-4: BUSINESS LICENSE REQUIRED:**

A City business license is required for all telecommunications providers.

#### **11-29-5: PERMIT REQUIRED:**

Prior to the construction, excavation, installation, maintenance or operation of any telecommunications facilities within the public ways or on City property, the provider shall, at its cost, obtain a telecommunications permit and all other requisite permits from the City. The provisions and requirements of this Chapter are in addition to all other provisions and requirements of the Three Forks City Code. If the applicant is requesting a permit under this Chapter and an excavation permit, the two permits may be processed simultaneously.

#### **11-29-6: APPLICATIONS:**

Applications for permits to install, maintain, operate, repair and remove telecommunications facilities shall be submitted to the City upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

A. That the installation, maintenance, operation, repair or removal of telecommunications facilities will be in accordance with all applicable codes, rules and regulations;

B. Preliminary engineering plans, specifications and a map showing where the telecommunications facilities are to be located within the City, all in sufficient detail to identify:

1. The precise location and route requested for the applicant's proposed telecommunications facilities.

2. The precise location of the applicant's overhead and underground telecommunications lines and equipment in the public ways along the proposed route.

3. The specific trees, structures, improvements, facilities, lines and equipment and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

4. All distances between any telecommunications facility and all existing utility facilities in the same cross-section of the right-of-way.

C. If the Applicant is proposing an underground installation with new ducts or conduits to be constructed within the public ways, the application shall state:

1. The precise location proposed for the new ducts or conduits;

2. Evidence that there is sufficient capacity within the public ways for the proposed telecommunications facilities with sufficient vertical and horizontal distance between telecommunications facilities, water, sewer, gas and electric and other telecommunications lines as required by the Department of Public Works.

3. All distances between any proposed ducts and conduits, and all existing utility facilities in the same cross-section of the right-of-way.

D. The construction methods to be employed for protection of existing structures, fixtures, lines and other facilities within or adjacent to the public ways.

E. The proposed construction schedule and work hours which may be limited by the City for public health, safety and welfare related issues.

#### **11-29-7: TRAFFIC CONTROL PLAN:**

A. All permit applications which involve work on, in, under, across, or along any public way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Manual on Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The traffic control plan must be approved prior to, or concurrently with, the approval of the permit.

B. Applicant must give the Public Works Director or its designee forty-eight (48) hours notice before any lane or road closures are permitted, with closure information and time frames for closures.

#### **11-29-8: TERMS AND CONDITIONS:**

A. All work being performed within City Right-of-Way is subject to City inspection or inspection by a representative of the City who works for a third party. The telecommunications provider's contractor shall notify adjacent residents and businesses of the proposed work and make accommodations to maintain access to the properties affected by construction activities.

B. Contractor shall ensure that any open trenches are protected to prevent accidental ingress by people or vehicles. Trenches may not be left open without active work in them for more than three (3) consecutive days.

C. Contractor will provide the City with detailed compaction reports for all backfill activities.

D. Unless stated otherwise in the permit, the permit is granted for ninety (90) calendar days, and all work must be completed in that time. The applicant or permittee may apply for an extension. Any work, repairs, or remediation not completed in time shall be subject to a weekly inspection fee until work has been completed to the satisfaction of the City. Failure to timely complete the permitted work may also be a cause for revoking a permit.

E. Failure to abide by any of the terms and conditions of a permit or of any associated agreement is considered due cause for revoking a permit.

F. Permittee shall file, at least monthly, a statement of system construction and build-out to date, and as-built maps of underground and aerial build-out and per linear foot distances and locations in a GIS format acceptable to the City.

G. A telecommunications provider may have up to six (6) open permits in process at one time. Where the maximum number of City-approved permits are open, the City will not approve a new permit until complete restoration of the Right-of-Way, sidewalks, curbs and gutters occurs, and, to the extent applicable, work is done on affected private property.

H. The telecommunications provider will reimburse the City for the fees, costs and expenses incurred by the City for application reviews, plan reviews, review and administration of applicable permits, testing and inspection within City Rights-of-Way and project work on other City-owned property. This includes, by way of illustration and not limitation, correct plant mix; pavement placement; sidewalk replacement; landscaping repair including sod, irrigation lines, sprinklers, shrubs, and trees; traffic control set up; street restoration; graffiti removal; clean-up and public safety. A telecommunications provider shall reimburse such fees, costs and expenses within thirty (30) days after written demand from the City.

I. To the extent practicable and economically feasible, the construction and location of facilities shall be of minimal impact to private property including, but not limited to, yards and fences. All construction and maintenance of any and all facilities on private property shall, regardless of who performs the construction, be and remain the responsibility of the telecommunications provider. Prior to beginning any construction, permittee shall provide private property owners with a door hanger or other appropriate written notice at least five (5) calendar days before commencing work and a construction schedule for work on private property. The contractor shall not leave gates open, or hop fences, or leave yards in disarray.

J. When any opening is made in a yard on private property or fences are disturbed, such shall be promptly restored to as good or better condition than that existing before the work commenced. If the permittee fails to complete the work referred to herein within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the telecommunications provider. Payment shall be remitted to the City within ten (10) business days of receipt of an itemized list of those costs. All of the work shall be

done by a permittee in compliance with all laws, regulations and ordinances of the City and State of Montana.

K. The transmission and distribution system, wires and appurtenances of the telecommunications provider shall be located, installed and maintained so as not to endanger or interfere with the lives of persons, or to unnecessarily hinder or obstruct the free use of private property, Rights-of-Way, or other public property.

L. Unless a written exception is granted in the permit, all telecommunications facilities shall be located at least three (3) vertical and horizontal feet from all existing or planned water and sewer facilities.

#### **11-29-9: FRANCHISE OR OTHER AGREEMENT REQUIRED:**

In addition to obtaining any and all requisite permits from the City, a telecommunications provider desiring to place its telecommunications facilities in public ways must first obtain a Franchise or other Agreement from the City, unless a specific exception is clearly provided by Federal or State law, which may be recorded with the County of record.

#### **11-29-10: LEASE OR OTHER AGREEMENT REQUIRED:**

In addition to obtaining any and all requisite permits from the City, a telecommunications provider desiring to place its telecommunications facilities on City property (other than public ways) must first obtain a Lease, Easement or other Agreement from the City.

#### **11-29-11: RELIEF:**

The City may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this Chapter. Violation of the terms of this Chapter may also result in the revocation of any permit or Franchise or other Agreement granted hereunder. The rights and remedies provided by this Chapter are cumulative and the use of any one right or remedy shall not preclude or waive the City's right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the City may have by law, statute, ordinance or otherwise.

#### **11-29-12: TAXES:**

The franchise fees, pole attachment fees, permit fees, and other charges provided for in a Franchise or other Agreement, and any compensation charged and paid for the use of public ways provided for herein, whether monetary or in-kind (to the extent permitted by law), are separate from, and additional to, any and all Federal, State, local, and City taxes as may be lawfully levied, imposed or be due from a telecommunications provider, its customers or subscribers or on account of the sale, delivery or transmission of telecommunications services.

**11-29-13: NONEXCLUSIVE GRANT:**

No permit issued hereunder shall confer any exclusive right or privilege to occupy or use the public ways for delivery of telecommunications services or any other purposes.

**11-29-14: POLICE POWER:**

In accepting any permits issued hereunder, the telecommunications provider acknowledges that its rights thereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety, health and welfare of the public, it being understood that such exercise must be done in accordance with applicable law and be related to use and management of the public ways.

**11-29-15: REGULATION BY THE CITY:**

In addition to the inherent powers of the City to regulate and control any permit it issues, and those powers expressly reserved by the City, or agreed to and provided for in any permit, the right and power is hereby reserved by the City to adopt such additional regulations as it may find necessary in the exercise of its lawful powers to manage the public ways.

**11-29-16: CODES:**

Construction of telecommunications facilities with respect to public ways shall be done in accordance with all applicable Federal, State and Local laws, codes, rules and regulations.

**11-29-17: COMPLIANCE WITH ONE-NUMBER LOCATOR SERVICE:**

All telecommunications providers shall, before commencing any construction in the public ways, comply with the Montana Digline/ "One-Call Center"("Montana 811"). Underground utilities must be located and marked prior to any trenching or boring work.

**11-29-18: MINIMIZE INTERFERENCE WITH THE PUBLIC WAYS:**

No Person may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the City, the general public or other Persons authorized to use or be present in or upon the public ways. All such telecommunications facilities shall be moved by the telecommunications provider or other Person at its own cost, temporarily or permanently, as determined by the City.

**11-29-19: DAMAGE TO PROPERTY:**

No telecommunications provider or other Person shall take any action or allow any action to be done which may impair or damage any public ways, any City property or other property (whether public or private). The City may, without advance notice, perform construction and maintenance activities within the Right-of-Way.



### **11-29-20: NOTICE OF WORK – EMERGENCIES:**

In the event of an unexpected repair or emergency, a telecommunications provider may commence such repair and emergency response work as required under the circumstances, provided the telecommunications provider shall notify the City as promptly as possible, before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable. Further, the telecommunications provider shall apply for a permit and pay all associated fees as soon as the emergency is abated.

### **11-29-21: MAINTENANCE OF TELECOMMUNICATIONS FACILITIES:**

Each telecommunications provider shall maintain its telecommunications facilities in good and safe condition and in a manner that complies with all applicable Federal, State, local and City requirements.

### **11-29-22: RELOCATION OR REMOVAL OF TELECOMMUNICATIONS FACILITIES:**

A. A telecommunications provider shall temporarily or permanently remove, relocate, change, or alter the position of any telecommunications facilities within the public ways whenever the City has determined that such removal, relocation, change, or alteration is reasonably necessary for the construction, maintenance, alteration, repair or improvement of the public ways for purposes of public welfare, health or safety. Such action shall be performed at the cost and expense of the telecommunications provider.

B. When the City orders relocations under this section, the telecommunications provider shall be given reasonable advance notice thereof, which period of time shall be no less than sixty (60) calendar days except for emergency situations.

C. In the event of an unforeseen emergency which creates a threat to the public health, safety, or welfare, the City may require a telecommunications provider to relocate its telecommunications facilities at the telecommunications provider's own expense.

D. If payment of the costs of relocation is in dispute, the telecommunications provider shall still commence and complete the relocation as provided herein on a timely basis for public works projects undertaken by the City. Telecommunications providers shall indemnify, hold harmless, and defend the City, its City Council, officers, officials, employees, agents and representatives from any and all any damages, claims, liabilities, actions, causes of action, suits, costs, expenses and attorneys' fees for delay or delays on public improvement projects caused by the telecommunications providers, or their contractors or subcontractors of any tier, to relocate the telecommunications facilities in a timely manner.

### **11-29-23: MOVING A BUILDING:**

Whenever any Person shall have obtained permission from the City to use any public ways for the purpose of moving any building, a telecommunications provider upon seven (7) business days' written notice from the City shall raise or remove, at the expense of the Person desiring to move the building, any of the telecommunications provider's telecommunications facilities which may obstruct the removal of such building; provided, that the Person desiring to move the building shall comply with all requirements of the City for the movement of buildings and remit the applicable cost of raising or removing the telecommunications provider's telecommunications facilities prior to the telecommunications provider's commencement of such work.

#### **11-29-24: REMOVAL OF UNAUTHORIZED TELECOMMUNICATIONS FACILITIES:**

Within thirty (30) calendar days following written notice from the City, any telecommunications provider or other Person who owns, controls, or maintains any unauthorized telecommunications facilities or related appurtenances within the public ways shall, at its own expense, provide written confirmation acknowledging the City's notice. Within thirty (30) calendar days of receipt of notice, the telecommunications provider or other Person must provide a corrective action plan to either remove such telecommunications facilities or bring such telecommunications facilities into compliance. Telecommunications facilities are unauthorized and subject to removal in the following circumstances:

- A. Upon abandonment of the telecommunications facilities within the public ways of the City, or if a telecommunications provider does not respond within thirty (30) calendar days after notice from the City, such property shall also then be deemed abandoned.
- B. If the telecommunications facilities were constructed or installed without a valid permit.
- C. If the telecommunications facilities were constructed or installed at a location not allowed by a permit.

#### **11-29-25: EMERGENCY REMOVAL OF TELECOMMUNICATIONS FACILITIES:**

The City retains the right and privilege to remove or relocate any telecommunications facilities located within the public ways, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to any telecommunications provider, or any other Person for any direct, indirect, or any other such damages suffered by any Person or entity of any type as a direct or indirect result of the City's actions under this subsection. The City shall attempt to contact the telecommunications provider and provide an opportunity for the telecommunications provider to perform the necessary cutting or moving unless the emergency necessitates City action prior to such contact.

#### **11-29-26. DAMAGE TO TELECOMMUNICATIONS FACILITIES:**

Unless directly and proximately caused by the sole negligence or willful misconduct of the City, the City shall not be liable for any damage to any telecommunications facilities within the public ways as a result of or in connection with any public works, public improvements, construction,

excavation, grading, filling, or work of any kind within the public ways by or on behalf of the City.

#### **11-29-27: RESTORATION OF PUBLIC WAYS:**

A. When a telecommunications provider or other Person does any work in or affecting any public ways, it shall, at its own expense, promptly remove any obstructions therefrom and restore such public ways to the condition as existed before the work was undertaken.

B. If weather or other conditions do not permit the complete restoration required by this subsection, the telecommunications provider shall temporarily restore the affected public ways. Such temporary restoration shall be at the telecommunications provider's sole expense and the telecommunications provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. A telecommunications provider or other person acting on its behalf shall use suitable barricades, flags, flaggers, lights, flares, and other measures as required for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle, or property by reason of such work in or affecting such public ways.

D. The Public Works Director or its designee shall be responsible for inspection and final approval of the condition of the public ways following any construction and restoration activities.

E. Whenever a telecommunications provider intends to discontinue using any facility within the Right-of-Way, it shall submit for the City's approval a complete description of the facility and the date on which it intends to discontinue using the facility. The telecommunications provider may remove the facility or request that the City permit it to remain in place. Notwithstanding a request that any such facility remain in place, the City may require removal of the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest at no cost to the City. The City may require a combination of modification and removal of the facility. The telecommunications provider shall complete such removal or modification in accordance with a schedule set by the City. Until such time as removal or modification of the facility occurs as directed by the City, or until the rights to and responsibility for the facility are accepted by another person having authority to construct and maintain such facility, the telecommunications provider shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and shall retain all liability for such facility. If the telecommunications provider abandons its facilities, the City may terminate the Franchise, easement, lease or similar Agreement and choose to use such facilities for any purpose whatsoever. (If agreement was recorded pursuant to 11-29-9 above, it will need amended or rescinded with the County of record.)

F. If, after giving ten (10) calendar days prior written notice by the City, the telecommunications provider fails to complete any required work to the satisfaction of the City,

the City may cause the work to be done, and the telecommunications provider shall reimburse the City for the reasonable costs and expenses incurred within thirty (30) calendar days after receipt of an itemized list of the City's expenses and costs, or the City may recover its expenses and costs from the bonds or pursue any other judicial remedies for the collection thereof. Any expenses incurred in the collection by the City of such obligation shall be included in the monies due the City including reasonable attorneys' fees, court costs and expenses for work conducted by the City's staff or its agents and outside counsel.

#### **11-29-28: DUTY TO PROVIDE INFORMATION:**

Within ten (10) calendar days of a written request from the City, each telecommunications provider shall furnish the City with information sufficient to demonstrate:

A. That the telecommunications provider has complied with all of the requirements of this Chapter; and

B. All books, records, maps and other documents maintained by the telecommunications provider with respect to the location of its telecommunications facilities within the public ways shall be made available for inspection by the City at reasonable times and intervals.

#### **11-29-29: FIBER CAPACITY:**

A telecommunications provider shall have the right, without prior City approval, to offer or provide fiber capacity or bandwidth to other carriers, resellers, customers, or subscribers consistent with such permit; provided, however, that the telecommunications provider shall remain responsible for compliance with this Chapter and such permit, and provided that the other carrier or reseller must obtain any necessary Franchise or other Agreement required by the City as defined in 11-29-9.

#### **11-29-30: INSURANCE:**

A. Each telecommunications provider shall secure and maintain the following insurance policies insuring both the telecommunications provider and the City against claims for death or injuries to Persons, or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the telecommunications provider:

1. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

a. \$3,000,000 for bodily injury or death to each Person; and

b. \$3,000,000 for property damage resulting from any one accident.

2. Automobile liability insurance for owned, non-owned and hired vehicles with a combined single limit of \$3,000,000 for each accident;

3. Worker's compensation within statutory limits and Employer's liability insurance with limits of not less than \$1,000,000;

4. Excess umbrella liability with limits of no less than \$5,000,000 per occurrence and in the aggregate.

B. Insurance shall be placed with insurers licensed to do business in the State with an A.M. Best's rating of A-VII or better. The liability insurance policies required by this subsection shall be maintained by the telecommunications provider throughout the term of the permit, and such other period of time during which the telecommunications provider has telecommunications facilities in the public ways or is engaged in the removal of its telecommunications facilities. Failure to maintain such insurance shall be grounds for cancellation of the permit, Franchise, easement, lease or Agreement. The telecommunications provider shall furnish acceptable certificates of insurance, together with an endorsement naming the City, its elected and appointed officers, officials, agents, employees, representatives, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any telecommunications facilities pursuant to said permit(s).

C. The telecommunications provider's insurance shall be primary and noncontributory insurance with respect to the City. Any insurance maintained by the City shall be in excess of the telecommunications provider's insurance and shall not contribute with it. Maintenance of insurance shall not be construed to limit the liability of the telecommunications provider to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity.

D. In addition to the coverage requirements set forth in this subsection, the telecommunications provider must notify the City of any cancellation or reduction in said coverage at least forty-five (45) calendar days in advance in writing. At least fifteen (15) calendar days prior to said cancellation or reduction in coverage, the telecommunications provider shall obtain and furnish to the City replacement insurance and certificates of insurance meeting the requirements of this subsection.

E. All insurance coverage shall be kept in force while the telecommunications provider has any facilities in the City, and for one (1) year thereafter. Certificates of Insurance and Endorsements shall be provided to the City in writing.

F. All insurance policies shall contain a waiver of subrogation against the City for any claims arising out of the telecommunications provider's work or service. The telecommunications provider shall be responsible for all deductibles under the policies.

#### **11-29-31: INDEMNIFICATION:**

A. A telecommunications provider shall indemnify, protect, defend and hold harmless the City, its City Council, boards, officers, officials, employees, agents and representatives from any and all actions, causes of action, suits, claims, costs, damages, expenses, attorneys' fees, judgments, settlements, awards or liability to any Person arising from injury, sickness, or death

of any Person or damage to property arising out of the acts or omissions of the telecommunications provider, its contractors of any tier, agents, servants, officers or employees with regard to a permit, Franchise, easement, lease or Agreement, and its operations thereunder.

B. Inspection or acceptance by the City of any work performed by the telecommunications provider at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that the telecommunications provider must be given written notice by the City of any such claim, and said indemnification obligations shall also extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the initiation of any litigation. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim.

C. In the event that the telecommunications provider refuses the tender of defense in any suit or claim, said tender having been made pursuant to this subsection, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties agree to decide the matter), to have been a wrongful refusal on the part of the telecommunications provider, then the telecommunications provider shall pay all of the City's costs for defense of the action, including all expert witness fees, attorneys' fees, and expenses.

D. The obligations of the telecommunications provider under the indemnification provisions of this subsection shall apply regardless of whether liability for damages arising out of bodily injury or death to Persons or damages to property were caused or contributed to by the negligence of the City, its officers, agents, employees or contractors unless they were due to the sole negligence or willful misconduct of the City. The court shall apportion liability accordingly.

#### **11-29-32: LIMITATION ON DAMAGES:**

In no event shall the City be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with the City's performance or failure to perform. The telecommunications provider releases and waives any and all such claims against the City, its City Council, boards, officers, officials, agents, employees and representatives.

#### **11-29-33: SECURITY FUND:**

A. Prior to issuance of a permit pursuant to this Chapter, each telecommunications provider shall establish a security fund with the City by depositing the amount of \$50,000, or such other amount as deemed necessary by the Mayor, with the City in the form of a performance bond or an irrevocable letter of credit, based upon operating history in the public ways and the cost of removal of the telecommunications provider's facilities; which fund shall be maintained at the sole expense of the telecommunications provider so long as any of the telecommunications provider's telecommunications facilities are located within the public ways. The performance bond shall be issued by a corporate surety authorized to do surety business in Montana.

B. Telecommunications providers shall replenish the security fund within fourteen (14) calendar days after written notice from the City that there has been a draw against the security fund and that there is a deficiency in the amount of the fund.

#### **11-29-34: CONSTRUCTION BOND:**

Telecommunications providers performing work in the public ways must also provide a construction bond written by a corporate surety acceptable to the City equal to at least 150% of the estimated cost of each phase of construction and restoring the public ways to their pre-construction condition.

#### **11-29-35: COORDINATION OF CONSTRUCTION ACTIVITIES:**

All telecommunications providers are required to cooperate with the City and with each other in coordination of construction activities. The Public Works Director shall coordinate all construction locations, activities, and schedules to minimize public inconvenience, disruption, or damage to the public ways.

#### **11-29-36: UNDERGROUND CONSTRUCTION AND BORING TECHNIQUES:**

All underground construction and boring techniques are subject to the written pre-approval of the Public Works Director, which must be obtained by the excavator or permittee prior to such construction or boring. In the event of non-compliance by a telecommunications provider, the Public Works Director shall give written notice and the provider shall have ten (10) days to cure the deficiency. If the deficiency is not cured to the satisfaction of the Public Works Director, a written stop work order will be sent to the provider and no new permits will be issued until the deficiency or default is cured to the satisfaction of the City. Unless a written exception is granted in the permit, all boring shall be performed using bentonite or boring gel and in compliance with the latest version of Montana State standards.

#### **11-29-37: ASSIGNMENT OR TRANSFER:**

A change in ownership or control of a permit, Franchise, easement, lease or Agreement granted hereunder may not occur, directly or indirectly, or be transferred, assigned or disposed of by sale, merger, consolidation or other act of a telecommunications provider, without the prior written consent of the City, which consent shall not be unreasonably withheld.

#### **11-29-38: SAFETY REQUIREMENTS:**

A telecommunications provider in accordance with applicable Federal, State, and local safety requirements shall, at all times, employ reasonable and ordinary care. All structures and lines, equipment and connections in, over, under, and upon the public ways permitted by a permit shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

#### **11-29-39: ADDITIONAL DUCTS OR CONDUITS:**

The City may require that a telecommunications provider that is constructing, relocating, or placing ducts or conduits in the public ways provide the City with additional ducts or conduits and related structures necessary to access the same. The terms and conditions under which such additional ducts and conduits shall be provided shall be subject to the mutual written agreement of the telecommunications provider and the City.

#### **11-29-40: NON-COMPLYING WORK:**

Whenever the City determines that any condition of any public way is in violation of, or public ways are being used contrary to, any provision of this Chapter or permit, the Public Works Director may order the correction and/or discontinuance of such condition or any activity causing such condition. Failure to comply will result in work stoppage or revocation of the permit(s).

#### **11-29-41: RESTORATION:**

Upon completion of any construction, installation, maintenance, repair or replacement work, the permittee shall promptly repair and restore any and all public ways and private property including improvements, fixtures, structures, and other facilities in the public ways damaged during the course of construction, installation, maintenance, repair or replacement, restoring the same as nearly as practicable to their condition before the start of construction, installation, maintenance, repair or replacement. The Public Works Director shall have final approval of the completeness of all restoration and repair work and all telecommunications providers shall warrant said restoration and repair work and the condition of the public ways for a period of at least two (2) years.

#### **11-29-42: TREES AND LANDSCAPING:**

A. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair, or replacement of telecommunications facilities, shall be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of the work.

B. All landscape restoration work within the public ways shall be done in accordance with landscape plans approved by the Public Works Director.

#### **11-29-43: ABOVE-GROUND TELECOMMUNICATIONS FACILITIES:**

Installation in the public ways of above-ground telecommunications wires and facilities by telecommunications providers may create safety hazards and adverse visual impacts. Consequently, the City is authorized to impose reasonable conditions in order to mitigate those potential adverse impacts.



**11-29-44: FINES AND PENALTIES:**

In addition to the other remedies provided for in this Chapter, in the event of non-compliance by a telecommunications provider, after the giving of written notice by the City and a ten (10) calendar day opportunity to cure, the City may impose fines and penalties in accordance with a published schedule adopted by the City Council. The City may also seek all remedies, both civil and criminal, available at law, in addition to those provided in this Chapter or in this Code. In addition to all other remedies, fines and penalties, any person found to have violated any of the provisions of this Chapter shall be guilty of an infraction for each day that the person is in violation after having been given or sent, by United States mail, ten (10) calendar days written notice of said violation.

**11-29-45: SEVERABILITY:**

If any section, subsection, clause, or phrase of this Chapter, or its application to any Person or circumstance, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions of this Chapter or of this City Code.

**11-29-46: CONFLICT:**

In the event of a conflict between the regulations in this Chapter and any other provision of the City Code, the regulations in this Chapter shall prevail.

**1<sup>st</sup> Reading and Approval:** DATED this 10<sup>th</sup> day of February 2026.

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Mayor Randy Johnston

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Attest: Crystal Turner, City Clerk

**2<sup>nd</sup> Reading and Approval:** DATED this 10<sup>th</sup> day of March 2026.

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Mayor Randy Johnston

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Attest: Crystal Turner, City Clerk