ORDINANCE NO. 1018-2

AN ORDINANCE REGULATING THE INSTALLATION, REPAIR AND MAINTENANCE OF UTILITY AND TELECOMMUNICATIONS FACILITIES WITHIN THE RIGHT-OF-WAY IN THE CITY OF LINDSAY, TEXAS; REQUIRING REGISTRATION AND AN EXCAVATION PERMIT; PROVIDING FOR REVOCATION AND APPEAL PROCEDURES; PROVIDING FOR THE FILING OF A MAP AND PLANS BY RIGHT-OF-WAY USERS; PROVIDING FOR THE PROTECTION OF THE SAFETY AND CONVENIENCE OF THE PUBLIC; PROVIDING FOR RESTORATION OF THE PUBLIC RIGHT-OF-WAY; PROVIDING A PENALTY; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lindsay, Texas, is a Type A general law municipality located in Cooke County, created in accordance with Chapter 6 of the Local Government Code, and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, pursuant to the Texas Utilities Code, the City of Lindsay has the control and jurisdiction of the public streets and other Right-of-Way of the City, with the right to regulate or prohibit the location of pipes, cables, lines, wires, or other Facilities in the Right-of-Way; and

WHEREAS, without proper regulation, the placement of such Facilities within the Right-of-Way will conflict with the primary uses of the Right-of-Way and will reduce the efficient use of limited space for Facilities; and

WHEREAS, in accordance with applicable federal law, including but not limited to, 47 U.S.C.§253(c) and state laws, including but not limited to Tex. Util. Code§14.008 and§54.205, and article 1175(2), V.T.C.S., the City seeks to exercise its historical rights to control and manage its rights-of-way; and implement certain police power regulations in the use of those rights-of-way, all in accordance with Local Government Code§283.056; and

WHEREAS, the City Council of the City of Lindsay deems it necessary to adopt this ordinance regulating the placement and maintenance of utility Facilities within the Right-of-Way to promote public safety and convenience and to assure the efficient and orderly use of the Right-of-Way by the many Utility Providers so that the best interests of the public are served.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LINDSAY, TEXAS:

SECTION 1.
Definitions.

In this ordinance:

(a) CITY means the City of Lindsay, Texas.

(b) CITY COUNCIL means the City Council of the City.

(c) CONSTRUCTION means any of the following activities performed by any person within a Right-of-Way:

(1) Installation, Excavation, laying, placement, repair, upgrade, maintenance, or relocation of Facilities or other improvements, whether temporary or permanent.

(2) Modification or alteration to any surface, subsurface, or aerial space within the public Right-of-Way.

(3) Performance, restoration, or repair of pavement cuts or Excavations.

(4) Other similar construction work.

(5) Reconstruction of any of the work described in Paragraphs (1) through (4) of this subsection.

(d) EMERGENCY CONDITIONS means a situation that could not be reasonably anticipated, and (a) where customer service has been interrupted, or (b) imminent harm to property or persons exists if repair is not immediately commenced.

(e) EXCAVATION means the removal of dirt, fill, or other material in the public Right-of-Way, including but not limited to the methods of open trenching, boring, tunneling, or jacking.

(f) EXCAVATION PERMIT means the document giving consent to construct, install, repair, relocate or remove particular Facilities within the Right-of-Way.

(g) FACILITIES means the plant, equipment, and property, including but not limited to lines, poles, mains, pipes, conduits, ducts, cables, and wires located under, on, or above the surface of the ground within the Right-of-Way of the City and valves, and related Facilities and equipment used or useful for the providing of utility services.

(h) INCIDENTAL IN NATURE means that work which can be completed, consistent with applicable federal or state laws or regulations, without: (i) obstructing the flow of vehicular traffic on a street, alley, or sidewalk; (ii) the open cutting of a paved area of a City street or easement; or (iii) underground boring or jacking within the paved area of a City street.

(i) MAYOR means the Mayor of the City or the Mayor's designated representative.

(j) PERMIT HOLDER means the person applying for or receiving a permit to perform construction within the City's Right-of-Way under the terms and conditions of this ordinance, and includes:

(1) any officer, director, partner, manager, superintendent, or other authorized person exercising control over or on behalf of the Permit Holder; and

(2) any contractor or subcontractor of the Permit Holder, for purposes of compliance with the traffic control, construction, and maintenance requirements of this ordinance.

(k) PERSON means a natural person, corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, or other such entity.

(l) REGISTRATION means the document giving consent to own and operate Facilities within the Right-of-Way.

(m) RIGHT-OF-WAY means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the City has an interest. The term does not include the airwaves above a Right-of-Way with regard to wireless telecommunications.

(n) UTILITY PROVIDER means a business that offers a public utility service, including but not limited to gas, electricity, cable, or telecommunications services, and that owns, rents, or has an agreement which authorizes it to utilize Facilities within the Right-of-Way.

SECTION 2.
Purpose.

The purpose of this ordinance is to:

(a) assist in the management of Facilities placed in, on or over the public rights-of-way in order to minimize the congestion, inconvenience, visual impact and other adverse effects, and the costs to the citizens resulting from the placement of Facilities within the public rights-of-way;

(b) govern the use and occupancy of the public rights-of-way;

(c) assist the City in its efforts to protect the public health, safety and welfare;

(d) conserve the limited physical capacity of the public rights-of-way held in public trust by the City;

(e) preserve the physical integrity of the streets and highways;

(f) control the orderly flow of vehicles and pedestrians; and

(g) prevent interference between the different entities using the rights-of-way.

SECTION 3.
Registration.

(a) A person commits an offense if the person owns or operates Facilities within the Right-of-Way within the City without first having obtained a Registration from the City.

(b) To obtain Registration, a person must submit an application on a form provided by the City. The applicant must be the person who will own the Facilities.

(c) The applicant for Registration shall furnish the City the following information which shall be subscribed and sworn to before a notary public:

(1) Name and address of the applicant;

(2) Trade name under which the applicant does or proposes to do business;

(3) The name, address and telephone number of the person who will be the contact person for the user;

(4) The name, address and telephone number of any contractor or subcontractor, if known, who will be working in the Right-of-Way on behalf of the applicant;

(5) The name(s) and telephone number of an emergency contact who shall be available 24 hours a day;

(6) Proof of insurance and bonds, as follows:

a. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars ($100,000) for each accident.

b. Commercial general liability insurance, or any combination of general liability and umbrella or excess insurance, with minimum limits of Five Million Dollars ($5,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage. The insurance coverage must be written by a company or companies approved to conduct business in the State of Texas. The city must be named as an additional insured on the policy by using endorsement CG 20 26 or broader.

c. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by applicant, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of Two Million Dollars ($2,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

d. The City will accept certificates of self-insurance which provide the same coverages as required herein, so long as the applicant demonstrates by written information to the City that it has adequate financial resources to be a self-insured entity.

e. All policies other than those for Worker's Compensation shall be written on an occurrence and not on a claims made basis and shall name the City, its officers and employees as additional insureds by using endorsement CG 20 26 or broader. All insurance carriers and surplus line carriers shall be rated A+ or better by A.M. Best Company.

f. Insurance policies must provide that the issuing company waives all right to recovery by way of subrogation against the City in connection with damage covered by the policy.

g. All insurance policies shall contain the following endorsement:

> At least 30 days prior written notice shall be given to the City of Lindsay by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail.

h. The applicant, and thereafter, the Registration holder, without cost to the City, shall file a surety bond which will be valid each year construction will occur through two full years after the completion of the construction. The surety bond shall be issued by a surety company authorized to do business in the State of Texas. The amount of the bond shall be the estimated amount of the cost to restore the Right-of-Way for the work anticipated to be done in that year, in the event the Registration holder leaves a job site in the Right-of-Way unfinished, incomplete or unsafe. If the applicant has no Facilities existing in the City at the time of application, the City may postpone the requirement for filing a surety bond until the applicant submits an application for an Excavation Permit.

i. A Utility Provider with a franchise in effect on the date of this ordinance satisfies the requirements of this subsection if the provider's franchise adequately provides insurance and bonds.

(7) Such other information as the City may determine is reasonably necessary.

SECTION 4.
Issuance or denial of Registration.

(a) The City shall issue a Registration to the applicant if the City, after review of the application, determines that the applicant:

(1) has complied with all requirements for issuance of the Registration; and

(2) has not made a false or inaccurate statement as to a material matter on the application for Registration; and

(3) either:

(A) has reimbursed the City for any costs the City has incurred as a result of work performed in the Right-of-Way; or

(B) is covered by an existing franchise or agreement with the City.

(b) A Registration shall be valid for a period of 5 years. A person may renew a Registration by making application as provided in Section 3 hereof. A Registration is not transferrable.

(c) Each Registration holder shall pay to the City a fee for the use of the Right-of-Way in an amount as established by the City Council in accordance with applicable City ordinance provisions, franchise provisions, or the provisions of Texas Local Government Code Chapter 283.

(d) A Registration holder shall immediately advise the City of actual or potential litigation that may develop or may affect the Registration holder's obligation to defend and indemnify the City.

(e) A Registration holder shall submit certificates of insurance for each insurance policy required by Section 3 to the City each year during the term of the Registration.

SECTION 5.
Revocation of Registration.

The City shall revoke a Registration if the City determines that the Registration holder has:

(a) given false or inaccurate information on the application for Registration or in a hearing concerning the Registration; or

(b) violated the provisions of this ordinance or violated the terms of the franchise if the Registration holder has a franchise with the City.

SECTION 6.

Appeal from denial or revocation of Registration.

If the City denies or revokes a Right-of-Way Registration, the City shall give notice by personal service or by certified mail, return receipt requested, to the applicant or Registration holder. The applicant or Registration holder may appeal the decision to deny or revoke by filing written notice with the Mayor, within five days after receipt of notice. The Mayor shall mail or cause to be personally delivered, written notice of the time and place of the hearing to the person appealing. The notice shall be mailed to the address specified in the notice of appeal form. The Mayor shall conduct a hearing and shall make a decision on the basis of a preponderance of the evidence presented at the hearing. The applicant or Registration holder may appeal the decision of the Mayor to deny or revoke by filing written notice with the City Council, within five days after receipt of the notice of the Mayor's decision. The City Council shall mail or cause to be personally delivered, written notice of the time and place of the hearing to the person appealing. The notice shall be mailed to the address specified in the notice of appeal form. The City Council shall conduct a hearing and shall make a decision on the basis of a preponderance of the evidence presented at the hearing. The decision of the City Council shall be final.

SECTION 7.
Plans of record.

(a) A Utility Provider which has Facilities in the Right-of-Way existing as of the effective date of adoption of this ordinance and has not provided the City "plans of record" plans shall provide such information to the City not later than one year after the effective date of this ordinance in the format specified by the City and with as much detail and accuracy as required by the City. The Registration holder shall submit "plans of record" in digital format as well as written. The Registration holder is not required to include in the submission matters such as capacity of lines, customers, or details which it demonstrates, to the reasonable satisfaction of the City, to be confidential information or a breach of security, so long as the plans show the location and physical dimensions of the Facilities.

(b) For Facilities constructed after the effective date of this ordinance, a Registration holder shall provide the City with "plans of record" within 90 days of completion of Facilities in the Right-of-Way. The plans shall be provided to the City in a format prescribed by the City, and in accordance with the provisions of subsection (a).

(c) The City, for good cause, may waive all, or portions of the requirements of subsections (a) and (b). The City may reassess waivers from time to time to determine whether the Utility Provider's ability to provide plans of record has changed.

(d) If a Utility Provider's plans of record include information expressly designated by the Utility Provider as a trade secret or other confidential information protected from disclosure by state law, the City may not disclose that information to the public without the consent of the Utility Provider, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a public service provider to designate all matters in its plans of record as confidential or as trade secrets.

SECTION 8.
Tree trimming; temporary removal of Facilities.

(a) A Registration holder or its contractor may trim trees in or over the rights-of-way for the safe and reliable operation, use and maintenance of its Facilities. The Registration holder shall trim the trees in such a manner to preserve as much vegetation and natural shape of trees as reasonably possible, and still accomplish a safe and effective tree trimming program. The Registration holder shall make reasonable efforts to contact affected property owners prior to necessary tree trimming operations, with standards promulgated by the City.

(b) Should the Registration holder or its contractor fail to remove the trimmings within 24hours of trimming, unless a longer period is required for extraordinary conditions and conditions beyond the control of the Registration holder, the City may remove the trimmings. Should the City remove the trimmings, the Registration holder shall reimburse the City for all costs incurred within 30 days of receipt of an invoice from the City.

(c) A Registration holder shall temporarily remove, raise or lower its aerial Facilities to permit the moving of houses or other bulky structures, if the City first gives written notice of not less than five days. Should the Registration holder or its contractor contact the City prior to the expiration of the five-day period and provide information indicating that the movement of the aerial Facilities will require additional time, the City may authorize an alternate schedule. The expense of the temporary rearrangements shall be paid by the party requesting and benefitting from the temporary rearrangement. The Registration holder may require prepayment or the posting of a bond from the party requesting the temporary rearrangement.

SECTION 9.
Excavation permit required; exceptions; fees.

(a) A person commits an offense if the person places or causes to be placed any Facilities within the Right-of-Way in any other manner than specified in this ordinance.

(b) A person shall obtain an Excavation Permit prior to performing any Excavation, construction, relocation, removal, installation, repair, or maintenance of Facilities within the Right-of-Way. An Excavation Permit is required for new construction and replacement or upgrading of a Utility Provider's network in the Right-of-Way, either aerial or underground.

(c) The following work undertaken by a person does not require an Excavation Permit:

(1) work that is Incidental in Nature;

(2) work required by Emergency Conditions, if the Registration holder complies with subsection (d) hereof;

(3) work that obstructs the flow of vehicular traffic on a street, alley, or sidewalk for less than two hours, if the person has complied with the following requirements:

a. the Registration holder has submitted a traffic control plan to the City in a form approved by the City;

b. the City has approved the traffic control plan;

c. the work is performed in compliance with the traffic control plan; and

d. unless the work is performed under Emergency Conditions, the person has given the City four hours written notice of the proposed work; or

(4) work performed to initiate service to an individual customer's property as long as the requirements of subsection (3) are met, if applicable.

(d) When performing work required by Emergency Conditions, the Registration holder shall notify the City as promptly as possible. The City shall determine if any City employee shall be required to be present for on-site inspection during emergency repairs. A Registration holder who performs the emergency work shall submit to the City as soon as practicable, a reasonably detailed description of the work performed in the Right-of-Way and an updated map of the Facilities that were relocated, if any.

SECTION 10.
Permit application.

(a) The person requesting an Excavation Permit will provide the City with the following documentation in the format specified by the City:

(1) The proposed approximate location and route of all Facilities to be constructed or installed and the applicant's plan for Right-of-Way construction.

(2) Two sets of engineering plans, on a scale of one inch (1") equals fifty feet (50') unless otherwise approved by the City. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the State of Texas. The plans must include the horizontal alignment of all proposed Facilities in relation to all existing public and private Facilities in plain view. If the project is a major project, crosses street intersections, or involves crossing proposed Facilities over or under existing Facilities, the plans must also include a representation of the vertical alignment of the Facilities in profile view. Each sheet of plans must have a note instructing the contractor to verify the location of underground utilities at least 100 feet in advance of all proposed utility crossings, and also at locations where the proposed Facilities are shown to be running parallel to existing Facilities within five feet.

(3) Description of the location of all Right-of-Way and utility easements which applicant plans to use.

(4) Detail of the Facilities applicant proposes to install, such as pipe size, number of interducts, valves, etc.

(5) Detail of all existing City utilities in relationship to applicant's proposed route.

(6) Detail of plans to remove and replace asphalt or concrete in the street, using City standards and specifications.

(7) Drawings of any bores, trenches, handholes, manholes, switchgear, transformers, pedestals, etc., including depth.

(8) Handhole and/or manhole typical of type of manholes and/or handholes applicant plans to use or access.

(9) Complete legend of drawings, which may be provided by reference to documents previously submitted to the City.

(10) The name, address and telephone numbers of the contractor or subcontractor who will perform the actual construction, if known, including the name and telephone number of a representative of the contractor who may be reached 24 hours a day during construction.

(11) A statement that proof of insurance, bond or other required financial information as required by Section 3 of this ordinance is current and on file with the City.

(12) The construction and installation methods to be employed for the protection of existing structures, fixtures, and Facilities within or adjacent to the Right-of-Way, and the estimated dates and times work will occur, all of which are subject to the reasonable approval of the City.

(13) A copy of any permit or approval issued by federal or state authorities for work in federal or state Right-of-Way located in the City.

(14) Verification that the applicant has a valid Right-of-Way Registration from the City.

(15) Evidence that all other Utility Providers in the area have been given notice of the Excavation. Notice to utilities subject to Chapter 251 of the Tex. Utilities Code may be accomplished by providing the City with the reference number assigned by the notification center established pursuant to Chapter 251.

(16) A copy of the applicant's traffic control plan and policy for work performed within the Right-of-Way.

(17) A statement by the applicant that the applicant has collected all available plans for existing City underground Facilities and other public and private utilities and has

included those Facilities and utilities in the applicant's design, showing no apparent conflict. The statement must also affirm that the applicant will perform field verifications as necessary during construction to locate all City and other existing underground Facilities.

(b) An applicant shall submit an application for an Excavation Permit at least 10 working days before the commencement of work proposed in the application, unless waived by the City. If the applicant requests a permit for a major project, an applicant shall submit the application for an Excavation Permit at least 30 working days before the commencement of work proposed in the application.

(c) The City may require a pre-construction meeting with the Permit Holder and its construction contractor.

SECTION 11.
Permit issuance.

(a) The Excavation Permit application shall be completed and signed by an authorized representative of the owner of the Facilities to be constructed.

(b) The City shall accept the application and shall issue permit if the applicant is otherwise in compliance with the provisions of this ordinance.

(c) The City may refuse to issue a permit if:

(1) The proposed construction will substantially interfere with another activity for which a permit has been issued, or will conflict or interfere with existing Facilities already in the public Right-of-Way;

(2) the applicant:

a. failed to furnish all the information required by this ordinance;

b. knowingly or intentionally furnished false or incorrect information to the City;

c. failed to file the application on the approved form within the time limits prescribed by this section;

d. failed to submit plans of record;

e. failed to furnish or have on file with the City the insurance required by this ordinance;

f. is not in compliance with applicable requirements of an existing permit issued under this ordinance;

g. has failed to reimburse the City for any costs owed pursuant to this ordinance; or

h. was convicted of violating a provision of this ordinance twice within the two-year period immediately preceding the date of application.

(d) The Excavation Permit shall state to whom it is issued, location of work, location of Facilities, dates and times work is to take place and any other condition set out by the City.

(e) The Permit Holder shall:

(1) maintain a copy of the Excavation Permit and approved engineering plans at the construction site available for inspection by the City at all times when construction or installation work is occurring;

(2) complete all construction work authorized by the permit in the time specified in the permit, unless the Permit Holder has obtained an extension from the City; and

(3) provide the City access to the work and to such further information he or she may reasonably require to ensure compliance with the permit.

(f) The permit shall expire if the work authorized by the permit does not commence within 30 days from the date of issuance of the permit. The City may authorize renewal of the permit for two additional 30-day periods without resubmission of an application so long as the scope of work is not changed.

SECTION 12.
Revocation of Excavation Permit.

The City shall revoke an Excavation Permit if the City determines that the Permit Holder has:

(a) given false or inaccurate information on the application for an Excavation Permit or in a hearing concerning the permit; or

(b) has violated the provisions of this ordinance.

SECTION 13.
Appeal from denial or revocation of permit.

If the City denies or revokes an Excavation Permit, the City shall give notice by personal service or by certified mail, return receipt requested, to the applicant or Permit Holder. The applicant or Registration holder may appeal the decision to deny or revoke by filing written notice with the Mayor, within five days after receipt of notice. The Mayor shall mail or cause to be personally delivered, written notice of the time and place of the hearing to the person appealing. The notice shall be mailed to the address specified in the notice of appeal form. The Mayor shall conduct a hearing and shall make a decision on the basis of a preponderance of the evidence presented at the hearing. The decision of the Mayor shall be final.

SECTION 14.
Notification.

(a) An applicant for an Excavation Permit or its contractor shall notify a notification center established pursuant to Tex. Utility Code Chapter 251, prior to conducting any work in the Right-of-Way such as excavating, drilling, underground boring, jacking, or open cutting.

(b) A Permit Holder shall provide the City with the following information not less than 48 hours before beginning work under the utility construction permit:

(1) the reference number received from the notification center;

(2) the exact dates and time work will be performed under the permit; and

(3) the name, address and telephone number of the person who will perform the work, including a representative who will be available at all times during construction, and who may be contacted by the phone 24 hours per day.

(c) The notice of work must be in writing and may be sent by facsimile transmission.

SECTION 15.
Placement of Facilities.

(a) All Facilities constructed within the Right-of-Way after the effective date of this ordinance shall:

(1) conform to the all codes and ordinances;

(2) be installed in accordance with plans and at locations within the Right-of-Way approved by the City;

(3) be installed or constructed so as not to unreasonably interfere with:

a traffic over City streets;

b the health, safety or welfare of the owners of property adjoining the Right-of-Way: or

c. the operation of other Facilities or equipment situated within the Right-of-Way, whether owned or maintained by the City or other Utility Providers; and

4. be situated so as to minimize the space used.

(b) To the extent permitted by law, the City may require the location of Facilities underground.

SECTION 16.
Worksite regulations.

(a) In performing the work covered by the Excavation Permit, the Permit Holder shall:

(1) comply with trench safety requirements adopted by federal, state, and local law;

(2) follow the appropriate national safety code, as applicable, regarding design and construction procedures;

(3) compact the backfillings to a density of 95% standard proctor density, as determined by a testing laboratory so as to prevent settling when a trench lies under any City street, or within 18 inches of a City Street, and otherwise, to a density which meets the North Central Texas Council of Government specifications, as adopted by the City;

(4) install new Facilities located within the Right-of-Way at a minimum depth approved by the City with the following minimum clearances, except where the City finds an alternate clearance can safely accommodate existing utilities:

a all conduit that crosses an existing sanitary sewer, or water main shall be buried under the existing pipes and shall have a 2-foot minimum vertical clearance at the underside of the existing pipes;

b. all conduit that crosses an existing storm sewer shall have a 2-foot minimum vertical clearance from the exterior face of the existing storm sewer; and

c. All conduit that runs parallel to an existing storm sewer, sanitary sewer or water main shall have a 3-foot minimum horizontal clearance from the exterior face of the pipes or manholes;

(5) have the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligation on other similar users of the rights-of-way. The City may waive the requirement of trenchless technology if the City determines that the field conditions warrant the waiver, based upon information provided to the City by the Permit Holder.

(6) ensure that the portion of the Right-of-Way in which repair work is conducted is, at all times and to the extent practicable, kept free of accumulating water;

(7) promptly remove from the Right-of-Way all earth, gravel, stone or other material excavated from the area of such repair work, which is not needed for fill material at that location;

(8) erect and maintain information signs of a size of three feet by three feet which state the identity of the person doing the work, telephone number and the Permit Holder's identity and telephone number at the location where construction is to occur 48 hours prior to the beginning of work in the Right-of-Way and shall continue to be posted at the location during the entire time the work is occurring;

(9) notify the City immediately of any damage to other Facilities, either City or privately owned;

(10) ensure that newly installed Facilities will not interfere with other Facilities, in particular gravity dependent Facilities;

(11) comply with City, state and federal regulations and guidelines for storm water management erosion control;

(12) submit to the City a stormwater pollution prevention plan (SWPPP) that has been submitted to the Environmental Protection Agency or Texas Natural Resources Conservation Commission or submit a copy of a letter to the EPA stating that the Permit Holder is not required to obtain such approval; and

(13) maintain a 4-foot vertical clearance below the bottom of the proposed stream bed or drainage Facilities, if applicable. The applicant shall contact the City to determine whether future improvements to the channel may impact the cable alignment.

(b) In performing work on Facilities within the Right-of-Way, a Permit Holder shall not:

(1) unreasonably interfere with the operation of other Facilities or equipment situated within the Right-of-Way, whether owned or maintained by the City or other Utility Providers;

(2) use dynamite or other explosives during the Excavation without the prior written approval of the City; or

(3) remove locate flags from a location while Facilities are being constructed.

(c) A Permit Holder is responsible for the workmanship and any damages by a contractor or subcontractor. The Permit Holder shall make available a representative of the Permit Holder to the City at all times during construction.

(d) Except in an emergency, the working hours in the rights-of-way are 8:00 a.m. to 6:00 p.m., Monday through Friday. Work that needs to be performed after 6:00 p.m. Monday through Friday must be approved in advance. Any work performed outside these times must be approved 24 hours in advance by the City. Directional boring is permitted only Monday through Friday 8:00 a.m. to 6:00 p.m., unless approved in advance. No work will be done, except for emergencies, on City holidays.

(e) A Permit Holder is responsible for:

(1) physically verifying the location both horizontal and vertical of all affected Facilities, or, if required by the City, hand digging or potholing, prior to any Excavation or boring, with the exception of work involving only lane closures; and

(2) obtaining line locaters from all affected utilities prior to any Excavation. Use of the Geographic Information System or the plans of record does not satisfy this requirement.

(f) The City must approve in advance the placement of all manholes and/or handholes. Handholes or manholes shall not be located in sidewalks, unless approved by the City.

(g) The City may stop work under the permit at any time upon finding that conditions at the worksite exist that pose an immediate risk of harm to persons and/or property.

SECTION 17.
Traffic, detours, barricades.

(a) Except in Emergency Conditions, a person shall obtain prior approval of the City when a street or sidewalk cut is required and comply with all requirements of the public works department for street cuts.

(b) A Permit Holder or person shall not cut or open more than one-half of the roadway at any time in order to maintain the flow of traffic at all times. However, in an emergency or with the permission of the City, the total width of the roadway may be cut or opened provided barricades are placed at the first intersection each way from the cut and detour signs are erected.

(c) Except in an emergency, all street closures or detours that will exceed 24 hours in duration shall be posted by a sign at least two days prior to the closure or detour. If a cut or opening in a street is left open after 6:00 p.m., a barricade or temporary fencing must be placed

on both sides of the cut and flares or red or amber lights shall be placed in front of each barricade. In the alternative, the Permit Holder may cover the cut with steel plates.

(d) In performing the work, a Permit Holder shall furnish and install the barricades, flares, and lights as necessary, and in compliance with the Texas Manual for Uniform Traffic Control Devices, as amended from time to time. In the event there is a conflict between the provisions of this ordinance and the provisions of the 1980 Texas Manual for Uniform Traffic Control Devices, as amended, the latter shall be controlling.

(e) During the time the work is actually being conducted, the Permit Holder shall provide a flagger to alert the public to the work, when required by the Texas Manual of Uniform Traffic Control Devices, as amended, or when required by a City inspector.

(f) A Permit Holder may close a traffic lane on a major thoroughfare only between 8:30 a.m. and 4:00 p.m. unless the City grants prior approval. Arrow board is required on lane closures, with all barricades, advanced warning signs and 36-inch reflector cones placed in accordance with the 1980 Texas Manual for Uniform Traffic Control Devices, as amended.

(g) Any work that may involve construction within the Right-of-Way adjoining a school within the City must be coordinated with the City so as to minimize traffic conflicts and street closures during school days.

SECTION 18.
Restoration of Right-of-Way.

(a) After completion of any work within the Right-of-Way, a Permit Holder shall return all flowlines and grades in the Right-of-Way to their original condition and shall complete restoration, which shall include, but not be limited to:

(1) Replacing all ground cover with equal to the type of ground cover damaged during work, or better either by sodding or seeding, as directed by the City.

(2) Installing of all manholes and handholes, as required.

(3) Backfilling all bore pits, potholes, trenches or any other holes, unless other safety requirements are approved by the City.

(4) Leveling of all trenches and backhoe lines.

(5) Restoring the Excavation site to City specifications.

(6) Restoring of all landscaping, ground cover, and sprinkler systems.

(7) Removing all locate flags during the cleanup process.

(b) A Permit Holder shall complete restoration to the satisfaction of the City within 30 calendar days after completion of the work, unless otherwise extended by the City. All damage caused directly or indirectly to the public Right-of-Way surface or subsurface outside the pavement cut or Excavation area will be regarded as a part of the pavement cut or Excavation and must be included in the total area repaired. If repaired by the City, the Permit Holder shall reimburse the City for the actual direct and indirect costs of the repair.

(c) Should the City determine, within two years from the date of the completion of the repair work, that there is a defect or damage in the permitted construction, the Permit Holder responsible for the original or any subsequent restoration shall perform such restoration work to the reasonable satisfaction of the City. The damage or defect must be corrected to the satisfaction of the City within 10 days after the City gives notice to the Permit Holder to correct the damage, defect, or other problem.

(d) Notwithstanding subsection (c) above, if the City determines that the failure of a Permit Holder to properly repair or restore the Right-of-Way constitutes a safety hazard to the public, the City may, after providing notice to the Permit Holder, undertake emergency repairs and restoration efforts. A Permit Holder shall promptly reimburse the City for all costs incurred by the City within 30 calendar days from the date of the City's invoice.

(e) If a Permit Holder fails to perform necessary restoration in accordance with the requirements of this section, all work in progress, except that related to the problem, which has been permitted but not complete may be halted and the City may place a hold on any permits not approved until all restoration is complete.

(f) The City shall notify the Permit Holder if the backfill on a permitted construction settles at any time during the two-year maintenance period required in Subsection (c) of this section, causing subsidence in the pavement of one-half inch or more, vertically measured in any three-foot horizontal direction. Upon notification, the Permit Holder shall schedule appropriate repair work and promptly notify the City of the anticipated dates of commencement and completion of the repair work. If the repair work is not commenced or completed within the agreed-upon time schedule, or if no response is received by the City within 24 hours after notification to the Permit Holder, the repair work may be performed by the City. The Permit Holder shall reimburse the City for the actual direct and indirect costs of any repair work performed by the City.

SECTION 19.
Failure to complete work.

If the Permit Holder fails to diligently perform the work described in the permit, abandons the job, or for other reasons does not complete the work within a timely manner, the City, after giving notice to the Registration holder, shall have the authority to take such action as is necessary to restore the Right-of-Way to a good and safe condition for the benefit and convenience of the public. If the failure to complete the work causes a safety hazard, the City shall commence restoration and shall notify the Registration holder as promptly as possible after commencing work. The Permit Holder shall be responsible for all costs incurred by the City in restoring the Right-of-Way and shall make no claim against the City for any excess costs or

expenses or damage incurred by the Permit Holder or Utility Provider on account of the City's action.

SECTION 20.
Removal of utility Facilities.

(a) The City shall have the right and may at any time order and require any Registration holder to remove and abate any facility that the City determines is necessary to address a public health or safety emergency. If the Registration holder or Permit Holder, after notice, fails or refuses to act, the City shall have the power to cause the removal or abatement of the dangerous Facilities at the expense of the Registration holder without liability for damages. The Registration holder shall reimburse the City for all costs incurred.

(b) When required by the City for reasons of public safety, street vacation, widening, reconstruction, relocation or regrading, or installation, repair or maintenance of streets, drainage ways, sewer mains, water pipes, power lines, signal lights, or any other type of structures or improvements installed by the City on behalf of the public, the Registration holder shall, at its own expense, disconnect, remove, and relocate from the Right-of-Way, any lines, Facilities, or other improvements within 60 days of the date when ordered in writing by the City, and the Registration holder shall have no claim for reimbursement of costs or damages against the City, unless otherwise provided by State law. The 60 day limit shall not apply if the City has approved a different schedule. A person making a pavement cut or Excavation for the purpose of adjusting Facilities at the City's request in advance preparation for a City street paving or storm drainage project shall obtain an Excavation Permit.

(c) If the City gives written notice to a Registration holder that some of its Facilities must be relocated in accordance with the provisions of this subsection, the Registration holder shall, within 20 business days of the notice, provide the City assurance that the Registration holder shall comply with the requirements of this subsection. The City may waive this requirement at the request of the Registration holder if the Registration holder submits proof that for the preceding three years, it has completed relocation in a workmanlike manner within 60 days or, if authorized by the City, a different time limit. The assurance may be in the form of a surety bond, escrow agreement, or letter of credit, which is subject to the approval of the City attorney.

(d) Facilities not moved after 60 days shall be deemed abandoned after the City gives the Registration holder 30 days' notice. In such event, the City shall cause the Facilities to be removed and the Registration holder shall pay the costs for such removal, together with any other costs the City incurs by reason of the Registration holder's failure to remove the Facilities, including any other costs that arise from the delay in the relocation of the Facilities. The Registration holder shall pay such costs within 30 days of the date of the invoice from the City. Failure to pay such costs shall be cause for revocation of Registration and any Excavation Permits.

(e) The Permit Holder shall maintain the pavement cut or Excavation until the work under authorizing the construction of the street paving or storm drainage project is issued by the City. Upon notification by the City of any problem with the maintenance of the cut or Excavation, the

Permit Holder shall promptly correct the problem. The Permit Holder shall notify the City of the anticipated date of correction. If the correction is not made by the anticipated date, or if no response is received by the City within 24 hours after the City gives notice to the Permit Holder, the City may make the correction, and the Permit Holder shall reimburse the City for the actual direct and indirect costs of the correction.

SECTION 21.
Enforcement and penalty.

(a) A person commits an offense if, in connection with the performance of construction in the Right-of-Way, the person:

(1) performs, authorizes, directs, or supervises construction without a valid Excavation Permit;

(2) violates any other provision of this ordinance;

(3) fails to comply with restrictions or requirements of a permit issued under this ordinance; or

(4) fails to comply with an order or regulation of the City issued pursuant to this ordinance;

(5) damages the public Right-of-Way beyond what is incidental or necessary to the performance of the construction;

(6) damages public or private Facilities within the public Right-of-Way; or

(7) fails to clear debris associated with the construction from a public Right-of-Way after construction is completed.

(b) It is a defense to prosecution under Subsection (a)(6) if the person complied with all of the requirements of this ordinance and state law and caused the damage because the Facilities in question:

(1) were not shown or indicated in a plan document, plan of record, record construction drawing, or field survey, staking, or marking; and

(2) could not otherwise be discovered in the public Right-of-Way through the use of due diligence.

(c) A culpable mental state is not required to prove an offense under this ordinance. A person who violates a provision of this ordinance is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, authorized, directed, or permitted. An offense under Subsection (a)(7) is punishable by a fine of not less than $500 or

more than $2,000. Any other offense under this ordinance is punishable by a fine of $500. Each day that a violation is permitted to exist shall constitute a separate offense Utility's.

SECTION 22.
General Provisions.

(a) This ordinance shall be cumulative of all provisions of ordinances of the City of Lindsay, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

(b) It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

(c) All rights and remedies of the City of Lindsay are expressly saved as to any and all violations that have accrued at the time of the effective date of this ordinance of the provisions of the Code of Ordinances of the City of Lindsay, as amended, or any other ordinances affecting the Right-of-Way and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

(d) The City Secretary of the City of Lindsay is hereby directed to publish in the official newspaper of the City of Lindsay, the caption, penalty clause, publication clause, and effective date clause of this ordinance two (2) days as authorized by Section 52.013 of the Local Government Code.

(e) This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS 11 DAY OF February, 2019.

Scott Neu, Mayor

ATTEST:

Betsy Fleitman, City Secretary