

ORDINANCE NO. 82

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**AN ORDINANCE REGULATING THE INSTALLATION, REPAIR AND MAINTENANCE OF UTILITY AND TELECOMMUNICATIONS FACILITIES WITHIN THE RIGHT-OF-WAY IN THE CITY OF ANNETTA, TEXAS; REQUIRING REGISTRATION AND A UTILITY CONSTRUCTION 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.**

18           **WHEREAS**, the City of Annetta, Texas is a Type A General Law municipality  
20 with all the rights and powers granted to it by law; and

22           **WHEREAS**, pursuant to law, the City of Annetta has the control and jurisdiction  
24 of the public streets and other right-of-way of the City, with the right to regulate or  
and prohibit the location of pipes, cables, lines, wires, or other facilities in the right-of-way;

26           **WHEREAS**, without proper regulation, the placement of such facilities within the  
28 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

30           **WHEREAS**, in accordance with applicable federal law, including but not limited  
32 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  
34 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;  
36 and

38           **WHEREAS**, the City Council of the City of Annetta deems it necessary to adopt  
40 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  
42 orderly use of the right-of-way by the many gas, electric, cable, and telecommunications  
providers so that the best interests of the public are served;

44           **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF ANNETTA, TEXAS:**

**SECTION 1.**

**Definitions.**

In this ordinance,

- (1) "City" means the City of Annetta, Texas.
- (2) "City Council" means the City Council of the City.
- (3) "Detour" means an alternate route used when the direct or regular route is closed to traffic, and which is clearly marked by signs directing traffic around the obstruction.
- (4) "Director of Finance" means the director of finance of the City or the Mayor's designated representative.
- (5) "Mayor" means the Mayor of the City or the director's designated representative.
- (6) "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.
- (7) "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.
- (8) "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.
- (9) "Person" means a natural person, corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, or other such entity.
- (10) "Registration" means the document giving consent to own and operate facilities within the right-of-way.
- (11) "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 municipality has an interest. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications.

2 (12) "Utility Construction Permit" means the document giving consent to construct,  
install, repair, relocate or remove particular facilities within the right-of-way.

4 (13) "Utility Provider" means a business that offers a public utility service, including  
6 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.

8 **SECTION 2.**  
10 **Scope of ordinance.**

12 (a) This ordinance governs the location, placement, installation, repair, maintenance  
and removal of all utility facilities within the right-of-way of the City.

14 (b) Any utility provider with a current, unexpired franchise, agreement or other  
16 authorization from the City to use the right-of-way that is in effect at the time this  
ordinance takes effect shall continue to operate under and comply with that grant until (i)  
18 the grant expires, or (ii) it is terminated by mutual agreement.

20 **SECTION 3.**  
**Findings and purpose.**

22 The purpose of this ordinance is to:

24 (a) assist in the management of facilities placed in, on or over the public rights-of-way  
26 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;

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

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

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

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

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

40 (g) prevent interference between the different entities using the rights-of-way; and

42 (h) protect the safety, security, appearance, and condition of the rights-of-way.

44 **SECTION 4.**

**Registration required.**

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4 (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 or having a contract or franchise with the City to operate facilities within the right-of-way.

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8 (b) A person who has a franchise or an agreement with the City to operate facilities within the right-of-way shall comply with the requirements of Section 5(b)(6) hereof.

10 **SECTION 5.**

12 **Application for registration.**

14 (a) To obtain registration, a person must submit an application on a form provided by the Mayor. The applicant must be the person who will own the facilities.

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

- 18 (1) Name and address of the applicant;
- 20 (2) Trade name under which the applicant does or proposes to do business;
- 22 (3) The name, address and telephone number of the person who will be the contact person for the user;
- 24 (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;
- 26 (5) The name(s) and telephone number of an emergency contact who shall be available 24 hours a day;
- 28 (6) Proof of insurance and bonds, as follows:
- 30 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.
- 32 b. Commercial general liability 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
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2 from perils of explosion, collapse or damage to underground utilities,  
3 commonly known as XCU coverage.

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

10 d. The coverage amounts set forth above may be met by a  
11 combination of underlying and umbrella policies so long as in combination  
12 the limits equal or exceed those stated, so long as the policy coverages  
13 provide for a minimum of One Million Dollars (\$1,000,000) as primary  
14 coverage for each occurrence of bodily injury and property damage and  
15 Two Million Dollars (\$2,000,000) for automobile liability insurance.

16 e. The City will accept certificates of self-insurance issued by the  
17 State of Texas or letters written by the applicant in those instances where  
18 the State does not issue such letters, which provide the same coverage as  
19 required herein, so long as the applicant demonstrates by written  
20 information to the director of finance that it has adequate financial  
21 resources to be a self-insured entity.

22 f. All policies other than those for Worker's Compensation shall be  
23 written on an occurrence and not on a claims made basis and shall name  
24 the City, its officers and employees as additional insureds.

25 g. Applicant shall submit certificates of insurance for each insurance  
26 policy applicant is required to obtain to comply with this subsection to the  
27 Mayor each year during the term of the registration.

28 h. All insurance policies shall contain the following endorsement:

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

33 i. All insurance shall be effected under valid and enforceable policies,  
34 insured by insurers licensed to do business by the State of Texas. All  
35 insurance carriers and surplus line carriers shall be rated A+ or better by  
36 A.M. Best Company.

2 j. The applicant, and thereafter, for renewal purposes, the registration  
holder, shall pay insurance premiums and assessments. A company which  
4 issues an insurance policy has no recourse against the City for payment of  
a premium or assessment. Insurance policies must provide that the issuing  
6 company waives all right to recovery by way of subrogation against the  
City in connection with damage covered by the policy.

8 k. The applicant, and thereafter, the registration holder, without cost to  
the City, shall file and maintain proof of insurance with the Mayor. An  
10 insurance certificate obtained in compliance with this section is subject to  
the City's approval, which shall not be unreasonably withheld. In the  
12 event the policy limits or other conditions are amended, the applicant or  
the registration holder shall file a certificate with the City which reflects  
14 the amended coverage.

16 l. The applicant, and thereafter, the registration holder, without cost  
to the City, surety bond which will be valid each year construction will  
18 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  
20 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  
22 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  
24 facilities existing in the City at the time of application, the Mayor may  
postpone the requirement for filing a surety until the applicant submits an  
26 application for a utility construction permit. The Mayor may waive the  
requirements of this paragraph (5.b.6.1) when an applicant has a history  
28 during the previous 12 months of satisfactorily restoring the right-of-way  
after completing its utility work in accordance with the policies of the City.

30 m. A utility provider with a franchise in effect on the date of this  
32 ordinance satisfies the requirements of this subsection if the provider's  
franchise adequately provides insurance and bonds.

- 34 (7) Such other information as the Mayor may determine is reasonably  
36 necessary.

## 38 SECTION 6.

### 40 Issuance or denial of registration.

42 The Mayor shall issue a registration to the applicant if the director, after review of the  
application, determines that the applicant:

- 44 (a) has complied with all requirements for issuance of the registration; and

- 2 (b) has not made a false or inaccurate statement as to a material matter on the  
application for registration; and
- 4 (c) has not failed to pay any fees owed the City as a result of work performed in the  
right-of-way; or
- 6 (d) has in effect an existing franchise or agreement with the City.
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12 **SECTION 7.**  
**Term of registration.**

14 A registration shall be valid for a period of five years. A person may renew a registration  
16 by making application as provided in Section 5 hereof. A registration is not transferrable.

18 **SECTION 8.**  
**Registration fee.**

20 Each registration holder shall pay to the City a fee for the use of the right-of-way in an  
22 amount as established by the City Council in accordance with applicable franchise  
provisions, or the provisions of Texas Local Government Code Chapter 283. To the extent  
24 that Chapter 283 does not apply or to the extent that there is no franchise agreement  
provision which is applicable, the fee is hereby established as \$500 for the initial year and  
26 thereafter the fee shall be \$100 plus an amount calculated at the number of excavations or  
alterations of the right of way during the previous calendar year times \$20.

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30 **SECTION 9.**  
**Revocation of registration.**

32 The Mayor shall revoke a registration if he determines that the registration holder has:

- 34 (a) given false or inaccurate information on the application for registration or in a  
hearing concerning the registration; or
- 36 (b) violated the provisions of this ordinance, or if the registration holder has a  
38 franchise with the City, violated the terms of the franchise.

40 **SECTION 10.**  
**Appeal from denial or revocation of registration.**

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44 If the Mayor 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

2 registration holder. The applicant or registration holder may appeal the decision to deny  
3 or revoke by filing written notice with the Mayor, within five days after receipt of notice.  
4 The Mayor shall mail or cause to be personally delivered, written notice of the time and  
5 place of the hearing to the person appealing. The notice shall be mailed to the address  
6 specified in the notice of appeal form. The Mayor shall conduct a hearing and shall make  
7 a decision on the basis of a preponderance of the evidence presented at the hearing. The  
8 decision of the Mayor shall be final.

10 **SECTION 11.**  
**Plans of record.**

12 (a) A utility provider which has facilities in the right-of-way existing as of the  
13 effective date of adoption of this ordinance and has not provided the City "plans of record"  
14 plans shall provide such information to the Mayor not later than one year after the  
15 effective date of this ordinance in the format specified by the director and with as much  
16 detail and accuracy as required by the director. The registration holder shall submit  
17 "plans of record" in digital format (AutoCAD) as well as written or in any other format  
18 requested by the director. The registration holder is not required to include in the  
19 submission matters such as capacity of lines, customers, or details which it demonstrates,  
20 to the reasonable satisfaction of the Mayor, to be confidential information or a breach of  
21 security, so long as the plans show the location and physical dimensions of the facilities.

22 (b) For facilities constructed after the effective date of this ordinance, a registration  
23 holder shall provide the Mayor with "plans of record" within 90 days of completion of  
24 facilities in the right-of-way. The plans shall be provided to the City in a format  
25 prescribed by the City, and in accordance with the provisions of subsection (a).

26 (c) The Mayor, for good cause, may waive all, or portions of the requirements of  
27 subsections (a) and (b). Determination of good cause shall include an assessment of 1) the  
28 utility provider's ability to feasibly and economically remove customer specific,  
29 proprietary or confidential information from its plans and 2) the utility provider's standard  
30 business practice relative to the preparation of construction and plans of record. The  
31 director may impose conditions on the waiver. The director may reassess waivers from  
32 time to time to determine whether the utility provider's ability to provide plans of record  
33 has changed.

34 **SECTION 12.**  
**Tree trimming; temporary removal of facilities.**

36 (a) A registration holder or its contractor may trim trees in or over the rights-of-way  
37 for the safe and reliable operation, use and maintenance of its facilities. All tree trimming  
38 in rights-of-way and easements shall be performed in accordance with guidelines  
39 established by the National Arborist Association and International Society of  
40 Arboriculture. The registration holder shall trim the trees in such a manner to preserve as  
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2 much vegetation and natural shape of trees as reasonably possible, and still accomplish  
4 a safe and effective tree trimming program. The registration holder shall make reasonable  
6 efforts to contact affected property owners prior to necessary tree trimming operations  
8 with standards promulgated by the City. Should the registration holder or its contractor  
10 fail to remove the trimmings within 24 hours of trimming, unless a longer period is  
12 required for extraordinary conditions and conditions beyond the control of the registration  
14 holder, the City may remove the trimmings. Should the City remove the trimmings, the  
16 registration holder shall reimburse the City for all costs incurred within 30 days of receipt  
18 of an invoice from the City.

20 (b) A registration holder shall temporarily remove, raise or lower its aerial facilities  
22 to permit the moving of houses or other bulky structures, if the City first gives written  
24 notice of not less than five days. The expense of the temporary rearrangements shall be  
26 paid by the party requesting and benefitting from the temporary rearrangement. The  
28 registration holder may require prepayment or the posting of a bond from the party  
30 requesting the temporary rearrangement.

32 **SECTION 13.**  
34 **Other facilities; notification.**

36 (a) A person commits an offense if the person places or causes to be placed any  
38 facilities within the right-of-way in any other manner than specified in this ordinance.

40 (b) A registration holder shall immediately advise the Mayor of actual or potential  
42 litigation that may develop or may affect the registration holder's obligation to defend and  
44 indemnify the City.

46 **SECTION 14.**  
48 **Utility construction permit required; exceptions; fees.**

50 (a) A person shall obtain a utility construction permit prior to performing any  
52 excavation, construction, relocation, removal, installation, repair, or maintenance of  
54 facilities within the right-of-way. A utility construction permit is required for new  
56 construction and replacement or upgrading of a utility provider's network in the  
58 right-of-way, either aerial or underground.

60 (b) The following work undertaken by a person does not require a utility construction  
62 permit:

64 (1) work that is incidental in nature;

66 (2) work required by emergency conditions, if the registration holder complies  
68 with subsection (c) hereof;

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

8 (i) the registration holder has submitted a traffic control plan to the  
10 Mayor in a form approved by the director;

12 (ii) the director has approved the traffic control plan;

14 (iii) the work is performed in compliance with the traffic control plan;  
16 and

18 (iv) unless the work is performed under emergency conditions, the  
20 person has given the Mayor four hours written notice of the  
22 proposed work; or

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

28 (c) When performing work required by emergency conditions, the registration holder  
30 shall notify the Mayor as promptly as possible. The Mayor shall determine if any City  
32 employee shall be required to be present for on-site inspection during emergency repairs.  
34 A registration holder who performs the emergency work shall submit to the City as soon  
36 as practicable, a reasonably detailed description of the work performed in the right-of-way  
38 and an updated map of the facilities that were relocated, if any.

### SECTION 15.

#### Utility construction permit application.

40 (a) The person requesting a utility construction permit will provide the Mayor with the  
42 following documentation in the format specified by the director:

44 (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 Mayor.

(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.

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- (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 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, and even if the identity of the contractor is unknown, the name and telephone number of a representative of the utility provider 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 5 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 Mayor.
- (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. If this reference number is not known at time of application, the reference number shall be provided within 48 hours prior to commencement of construction.

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

4 (b) An applicant shall submit an application for a utility construction permit at least  
10 working days before the commencement of work proposed in the application, unless  
6 waived by the Mayor. Upon request of the utility provider, the director may approve a  
shorter time period.

8 (c) The Mayor may require a pre-construction meeting with the permit holder and its  
10 construction contractor.

12 **SECTION 16.**  
14 **Permit issuance.**

16 (a) The utility construction permit application shall be completed and signed by an  
authorized representative of the owner of the facilities to be constructed.

18 (b) The Mayor shall promptly process each valid and administratively complete  
20 application and shall issue or deny a utility construction permit, provided that the applicant  
is otherwise in compliance with the provisions of this ordinance.

22 (c) The utility construction permit shall state to whom it is issued, location of work,  
24 location of facilities, dates and times work is to take place and any other condition set out  
by the Mayor.

26 (d) The permit holder shall:

28 (1) maintain a copy of the utility construction permit and approved  
30 engineering plans at the construction site available for inspection by the  
Mayor at all times when construction or installation work is occurring;

32 (2) complete all construction work authorized by the utility construction  
34 permit in the time specified in the utility construction permit, unless the  
permit holder has obtained an extension from the Mayor; and

36 (3) provide the Mayor access to the work and to such further information he  
38 or she may reasonably require to ensure compliance with the utility  
construction permit.

40 (e) The permit shall expire if the work authorized by the permit does not commence  
42 within 30 days from the date of issuance of the permit. The director may authorize  
renewal of the permit for two additional 30-day periods without resubmission of  
44 an application so long as the scope of work set forth in the original application is  
not changed.

**SECTION 17.**  
**Revocation of utility construction permit.**

The Mayor shall revoke a utility construction permit if the director determines that the permit holder has:

- (a) given false or inaccurate information on the application for a utility construction permit or in a hearing concerning the utility construction permit; or
- (b) has violated the provisions of this ordinance.

**SECTION 18.**  
**Appeal from denial or revocation of utility construction permit.**

If the director denies or revokes a utility construction 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 19.**  
**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 Mayor 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 utility construction 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 24 hours per day.

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

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**SECTION 20.**

**Placement of facilities.**

6 (a) All facilities constructed within the right-of-way after the effective date of this ordinance shall:

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- 10 (1) conform to the City's Design Standards (Standard Details of Construction), which provide a guideline for right-of-way use and all codes and ordinances in effect at the time of submittal of the application;
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- 14 (2) be installed in accordance with plans and at locations within the right-of-way approved by the City;
- 16 (3) be installed or constructed so as not to unreasonably interfere with:
- 18 (i) traffic over City streets;
- 20 (ii) the health, safety or welfare of the owners of property adjoining the right-of-way: or
- 22 (iii) 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
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- 26 (4) be situated so as to minimize the space used.
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30 (b) To the extent permitted by law, the Mayor may require the location of facilities underground.

32 **SECTION 21.**

**Worksite regulations.**

34 (a) In performing the work covered by the utility construction permit, the permit holder shall:

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- 38 (1) comply with trench safety requirements adopted by federal, state, and local law;
- 40 (2) follow the appropriate national safety code, as applicable, regarding design and construction procedures;
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- (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 Texas Council of Government specifications, as adopted by the City;
  - (4) install new facilities located within the right-of-way at a minimum of 24 inches, or at a minimum depth approved by the Mayor, with the following minimum clearances, except where the director finds an alternate clearance can safely accommodate existing utilities:
    - a. All conduit that crosses an existing sanitary sewer, or water main shall have a two foot minimum vertical clearance from any existing pipes;
    - b. All conduit that crosses an existing storm sewer shall have a two 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 three 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 Mayor may waive the requirement of trenchless technology if the director 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;

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- (9) notify the Mayor 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 guidelines for storm water management erosion control;
  - (12) submit to the Mayor 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 vertical clearance of at least four feet below the bottom of the proposed stream bed or drainage facilities, if applicable. The applicant shall contact the Mayor to determine whether future improvements to the channel may impact the cable alignment.

22 (b) In performing work on facilities within the right-of-way, a permit holder shall not:

- 24
- 26
- 28
- 30
- (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 Mayor; or
  - (3) remove locate flags from a location while facilities are being constructed.

32 (c) A permit holder is responsible for the workmanship and any damages by a contractor or subcontractor. This provision is not intended to affect any legal relationship between a permit holder and its contractors. A responsible representative of the permit holder will be available to the Mayor at all times during construction.

38 (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 Mayor. 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.

44 (e) A permit holder is responsible for:



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

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

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

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

18 **SECTION 22.**  
20 **Traffic, Detours, Barricades.**

22 (a) Except in emergency conditions, a person shall obtain prior approval of the Mayor  
when a street or sidewalk cut is required, and comply with all requirements of the Mayor  
for street cuts.

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

30 (c) Except in an emergency, all street closures or detours that will exceed 24 hours in  
32 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  
34 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.

36 (d) In performing the work, a permit holder shall furnish and install the barricades,  
38 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  
40 between the provisions of this ordinance and the provisions of the Texas Manual for  
Uniform Traffic Control Devices, the latter shall be controlling.  
42

2 (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 or when required by a city inspector.

4 (f) A permit holder may close a traffic lane on a major thoroughfare only between  
6 8:30 a.m. and 4:00 p.m. unless the Mayor grants prior approval. Arrow board is required  
8 on lane closures, with all barricades, advanced warning signs and 36-inch reflector cones  
placed in accordance with the Texas Manual for Uniform Traffic Control Devices.

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

14 **SECTION 23.**  
16 **Restoration of right-of-way.**

18 (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  
20 restoration, which shall include, but not be limited to:

- 22 (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  
24 by the Mayor.
- 26 (2) Installing of all manholes and handholes, as required.
- 28 (3) Backfilling all bore pits, potholes, trenches or any other holes, unless other  
safety requirements are approved by the Mayor.
- 30 (4) Leveling of all trenches and backhoe lines.
- 32 (5) Restoring excavation site to City specifications.
- 34 (6) Restoring of all landscaping, ground cover, and sprinkler systems.
- 36 (7) Removing all locate flags during the clean up process.

38 (b) The permit holder shall be responsible for any damage caused by its work in the  
40 right-of-way, whether to public or private property, and shall immediately repair or replace  
said property or compensate the owner for damage to said property. Until such repair,  
42 replacement or compensation has been made, the permit holder's work shall not be  
deemed completed.

2 (c) A permit holder shall complete restoration to the reasonable satisfaction of the City  
4 within 30 calendar days after completion of the work, unless otherwise extended by the  
6 Mayor.

8 (d) Should the City reasonably determine, within one year from the date of the  
10 completion of the repair work, that the surface, base, irrigation systems or landscape  
12 treatment requires additional restoration work to meet pre-construction conditions or  
14 existing standards of the City, the permit holder responsible for the original or any  
16 subsequent restoration shall perform such restoration work to the reasonable satisfaction  
18 of the City.

20 (e) Notwithstanding subsection (d) above, if the City determines that the failure of a  
22 permit holder to properly repair or restore the right-of-way constitutes a safety hazard to  
24 the public, the City may, after providing notice to the permit holder, undertake emergency  
26 repairs and restoration efforts. A permit holder shall promptly reimburse the City for all  
28 costs incurred by the City within 30 calendar days from the date of the City's invoice.

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

38 **SECTION 24.**  
40 **Failure to complete work.**

42 If the permit holder fails to diligently perform the work described in the permit, abandons  
44 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. Under these circumstances, 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.

40 **SECTION 25.**  
42 **Removal of utility facilities.**

44 (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 Mayor 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

2 liability for damages. The registration holder shall reimburse the City for all costs  
3 incurred.

4 (b) When required by the City for reasons of public safety, widening, reconstruction,  
5 relocation or regrading, or installation, repair or maintenance of streets, drainage ways,  
6 sewer mains, water pipes, power lines, signal lights, or any other type of structures or  
7 improvements installed by the City on behalf of the public, the registration holder shall,  
8 at its own expense, disconnect, remove, and relocate from the right-of-way, any lines,  
9 facilities, or other improvements within 60 days of the date when ordered in writing by the  
10 Mayor, and the registration holder shall have no claim for reimbursement of costs or  
11 damages against the City, unless otherwise provided by State law. The 60 day limit shall  
12 not apply if the Mayor has approved a different schedule.

14 (c) If the City gives written notice to a registration holder that some of its facilities  
15 must be relocated in accordance with the provisions of this subsection, the registration  
16 holder shall, within 20 business days of the notice, provide the City assurance that the  
17 registration holder shall comply with the requirements of this subsection. The Mayor may  
18 waive this requirement at the request of the registration holder if the registration holder  
19 submits proof that for the preceding three years, it has completed relocation in a  
20 workmanlike manner within 60 days or, if authorized, a different time limit. The  
21 assurance may be in the form of a surety bond, escrow agreement, or letter of credit, which  
22 is subject to the approval of the city attorney, which approval shall not be unreasonably  
23 withheld.

24 (d) Facilities not moved after 60 days shall be deemed abandoned after the City gives  
25 the registration holder 30 days' notice. In such event, the City shall cause the Facilities  
26 to be removed and the registration holder shall pay the costs for such removal, together  
27 with any other costs the City incurs by reason of the registration holder's failure to remove  
28 the Facilities, including any other costs that arise from the delay in the relocation of the  
29 facilities. The registration holder shall pay such costs within 30 days of the date of the  
30 invoice from the City. Failure to pay such fees shall be cause for revocation of registration  
31 and any existing utility construction permits, until such time that the City receives  
32 payment for the invoice.

34  
36 **SECTION 26.**  
37 **Enforcement.**

38  
39 The City may refuse to issue a utility construction permit or may revoke any such permit  
40 or franchise already issued, and may terminate work in progress by any utility provider  
41 which is not in compliance with this ordinance. If a person or utility provider has not  
42 complied with the provisions of this ordinance in work performed pursuant to a utility  
construction permit, the City may deny a subsequent application for such a permit or may

2 impose modifications. Further, the City may deny issuance of a permit in the event the  
3 applicant has not paid any fees owed.

4 **SECTION 27.**

5 **Penalty.**

6 Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to  
7 comply with or who resists the enforcement of any of the provisions of this ordinance shall  
8 be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that  
9 a violation is permitted to exist shall constitute a separate offense.

12 **SECTION 28.**

13 **General Provisions.**

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

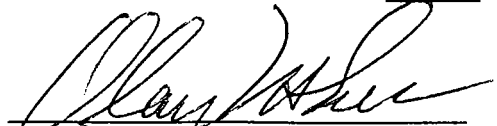
18 (b) It is hereby declared to be the intention of the City Council that the phrases,  
19 clauses, sentences, paragraphs and sections of this ordinance are severable, and if any  
20 phrase, clause, sentence, paragraph or section of this ordinance shall be declared  
21 unconstitutional by the valid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

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

32 (d) The City Secretary of the City of Annetta is hereby directed to publish in the  
33 official newspaper of the City of Annetta, the caption and penalty clause of this ordinance  
34 one (1) time within ten (10) days after the passage of this ordinance as required by law..

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

2 PASSED AND APPROVED ON FIRST READING THIS THE \_\_\_\_\_ DAY  
4 OF \_\_\_\_\_, 2001.

  
MAYOR

8 ATTEST:

10 \_\_\_\_\_  
12 CITY SECRETARY

14 PASSED AND APPROVED ON SECOND READING THIS THE \_\_\_\_\_  
16 DAY OF \_\_\_\_\_, 2001.

18 \_\_\_\_\_  
MAYOR

20 ATTEST:

22 \_\_\_\_\_  
24 CITY SECRETARY

26 APPROVED AS TO FORM AND LEGALITY:

28 \_\_\_\_\_  
ATTORNEY