

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A "**RIGHT-OF-WAY MANAGEMENT**" CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, RELATIVE TO THE MANAGEMENT OF PUBLIC RIGHTS-OF-WAY; PROVIDING FOR A FINE OF UP TO **\$2000** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER FIRST PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "**Right-of-Way Management**" Chapter of the Code of the City of Arlington, Texas, 1987, shall be and read as follows:

ARTICLE I

PURPOSE

Section 1.01 Purpose

The purposes and findings of this ordinance are as follows:

- A. To protect the health, safety, and welfare of the public during the installation, operation, and maintenance of facilities by public service providers;
- B. To govern and monitor the orderly use of the public right-of-way;
- C. To provide for enforcement;
- D. To provide a penalty for violation of any provisions of this ordinance;
- E. To provide for the registration of public service providers with facilities in the public right-of-way;
- F. To provide insurance requirements for construction in the public right-of-way;

- G. To provide permit requirements and procedures for construction in the public right-of-way;
- H. To provide for maintenance and repair of the public right-of-way and of facilities located in the public right-of-way;
- I. To provide for emergency activities in the public right-of-way;
- J. To provide for coordination with public improvements;
- K. To regulate the installation of utility structures; and
- L. To provide an effective date.

ARTICLE II

DEFINITIONS

Section 2.01 Definitions

"City" means the City of Arlington and the City's officers and employees.

"Conform" means to remove, alter, change, relocate, or adapt the underground or overhead facilities of a public service provider in the public right-of-way in advance of proposed public improvements financed by the City.

"Construction" means any of the following activities performed by any person within a public right-of-way:

- A. Installation, excavation, laying, placement, repair, upgrade, maintenance, or relocation of facilities or other improvements, whether temporary or permanent.
- B. Modification or alteration to any surface, subsurface, or aerial space within the public right-of-way.
- C. Performance, restoration, or repair of pavement cuts or excavations.
- D. Other similar construction work.

"Director" means the Director of the City of Arlington Department of Public Works or any designated representative.

"Emergency Activity" means circumstances requiring immediate construction or operations by a public service provider to:

- A. prevent imminent damage or injury to the health or safety of any person or to the public right-of-way;
- B. restore service; or
- C. prevent the immediate loss of service.

"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.

"Facilities" includes, but is not limited to, the plant, equipment, buildings, structures, poles, wires, cables, lines, conduit, mains, pipes, vaults, and appurtenances of a public service provider located within the public right-of-way and includes property owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the public service provider.

"Pavement Cut" means a cut made into the paved surface of the public right-of-way.

"Permittee" 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. The term includes any officer, director, partner, manager, superintendent, or other authorized person exercising control over or on behalf of the public service provider.

"Person" means a natural person, a corporation, a public service provider or its representative, a permittee, a governmental entity or agency (excluding the City or the City's contractor), a limited liability company, a joint venture, a business trust, an estate, a trust, a partnership, an association, or any other legal entity.

"Public 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.

"Public Right-Of-Way Permitting and Construction Manual" means the manual published by the City of Arlington that contains engineering, technical, and other special criteria and standards established by the Director for permitting and construction within the public right-of-way.

"Public Service Provider" means any energy delivery or transport company, telecommunications company, cable company, water utility, storm water utility, or wastewater utility. The City of Arlington, or any person working under contract with the City, is not included in this definition.

"Spoils or Excavated Material" means construction waste, construction supplies, or excavated dirt, fill, or other similar material that is stored or placed upon the surface of a public right-of-way.

"Utility Structure" means any above or below ground manhole, hand hole, vault, cabinet, or any other appurtenance other than a pole or device attached to a pole which is owned or used by a public service provider. The phrase does not include devices or structures used to control or direct pedestrian or vehicular traffic on an adjacent roadway.

ARTICLE III

AUTHORITY, ENFORCEMENT AND OFFENSES

Section 3.01 Authority

- A. The Director is authorized to administer and enforce the provisions of this ordinance, and the Public Right-of-Way Permitting and Construction Manual.
- B. The Director is authorized to enter a construction site for which a permit is granted under this ordinance for purposes of inspection to determine compliance with the permit and this ordinance.
- C. The Director is authorized to request from the public service provider plans of record that show its facilities existing in the public right-of-way as of the date of the request. The public service provider shall provide to the Director plans of record within 90 days of the request, or alternate schedule as agreed to by both parties, to the extent such records are available. Public release of such records shall be in accordance with the Public Information Act as found in V.T.C.A., Government Code, Chapter 552.

If the release of the location of any utility, including water and sewer, or of plans of record submitted under this subsection would jeopardize public safety, the information shall be considered confidential. In addition, if plans of record submitted under this subsection include information expressly designated by the public service provider as a trade secret or other confidential information protected from disclosure by state law, the Director may not disclose that information to the public without the consent of the public service 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 3.02 Enforcement and Offenses

- A. A person commits an offense if they:
1. perform, authorize, direct, or supervise construction without a valid permit issued under this ordinance;
 2. fail to comply with restrictions or requirements of a permit issued under this ordinance;
 3. fail to comply with a lawful order or regulation of the Director issued pursuant to this ordinance; or
 4. violate any other provision of this ordinance.
- B. A person commits an offense if, in connection with the performance of construction in the public right-of-way, they:
1. damage the public right-of-way beyond what is incidental or necessary to the performance of the construction;
 2. damage public or private facilities within the public right-of-way;
 3. fail to immediately clear debris associated with the construction from a public right-of-way after construction is completed; or
 4. fail to stabilize any disturbed area from erosion within 14 days after construction is completed, unless an alternative timeframe is approved by the Director.
- 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 or directed. An offense under Section 3.02(B)(3) is punishable by a fine of not less than \$500 or more than \$2000. Any other offense under this ordinance is punishable by a fine of \$500.

- D. This ordinance may be enforced by a civil court action in accordance with state or federal law, in addition to any other remedies, civil or criminal, the City has for a violation of this ordinance.
- E. Prior to initiation of civil enforcement litigation, the permittee, or any other person who has violated a provision of this ordinance, shall be given the opportunity to correct the violation within a timeframe specified by the Director. This subsection does not prohibit the Director or the City from taking enforcement action as to past or present violations of this ordinance, notwithstanding their correction.
- F. If a permittee has been convicted of an offense under this ordinance in municipal court, no additional permits will be granted to the public service provider and/or the permittee until the offense has been corrected and any direct or indirect costs incurred by the City have been reimbursed.

ARTICLE IV

PUBLIC SERVICE PROVIDER REGISTRATION REQUIREMENTS

Section 4.01 Public Service Provider Registration Requirements

All public service providers with existing facilities within the public right-of-way must register with the City within 60 days of the effective date of this Ordinance. Any public service provider who does not have existing facilities within the public right-of-way and who wishes to install new facilities must first register with the City. Registration shall be in accordance with the following requirements:

- A. Prior to registration, a public service provider must be either a Certificated Telecommunications Provider under Chapter 283 of the Texas Local Government Code or have a franchise or license agreement with the City. Registration shall otherwise be denied.
- B. The registration must be on a form furnished by the Budget Office and made in the name of the public service provider that owns the facilities. The form must be filled out completely and accurately. Any omissions or inaccuracies on the form may be cause for denial of the registration at the City's discretion.
- C. Registration must be renewed every 5 years. The City shall provide written notification to the public

service provider that the registration has expired and must be renewed within 60 days or permits will cease to be issued. If registration is not renewed within 60 days of notification, the City shall cease to issue permits until the registration is renewed. If the public service provider fails to renew registration within 180 days of the above referenced notification, the facilities of the public service provider may be deemed to have been legally abandoned. The City will provide an additional notification to the public service provider prior to any abandonment actions. The public service provider shall apply for registration renewal within 30 days of the date of the written notice of abandonment. The City, and any person working under contract with the City, will not be liable for any damage to or destruction or removal of the facilities, or for any interruption or termination of service through the facilities, subsequent to the 30 day period.

- D. If information provided as part of the registration changes, the public service provider must inform the Budget Office in writing not more than 30 days after the date the change occurs.
- E. The public service provider shall include the following with the registration:
 - 1. The name of the public service provider using the public right-of-way, including any business name, assumed name, or trade name the public service provider operates under, or has operated under within the past 5 years.
 - 2. If the public service provider is a Certificated Telecommunications Provider, a copy of the certification issued by the Texas Public Utility Commission to provide local exchange telephone service.
 - 3. A copy of any franchise or license issued by the City of Arlington authorizing the public service provider to use the public right-of-way.
 - 4. The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the public service provider.
- F. The public service provider must provide proof of insurance and appropriate bonds. The requirements for insurance and bonds are provided in Section 4.02 and 4.03 below.

Section 4.02 Insurance Requirements

A. A public service provider shall obtain and maintain insurance throughout the time it has facilities in public rights-of-way. The City reserves the right to review the insurance requirements, and to reasonably adjust insurance coverage and limits when the City's Risk Manager determines that changes in statutory law, court decisions, or the claims history of the industry or the public service provider require adjustment of the coverage. Pursuant to Section 53.064 of the Texas Utilities Code and for purposes of this subsection, the City will accept certificates of self-insurance issued by the State of Texas or letters written by the public service provider in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, certificates of self-insurance must be approved in advance by the City's Risk Manager. For the City to accept such letters, the public service provider must demonstrate by written information that it has adequate financial resources to be a self-insured entity as reasonably determined by the City, based on financial information requested by and furnished to the City. Proof of existing insurance shall comply with the following requirements:

Workers' Compensation and Employer's Liability Insurance

Workers' Compensation	Statutory Limit
Employer's Liability	\$100,000 Each Accident
	\$100,000 Disease-Each Employee
	\$500,000 Disease-Policy Limit

Liability Insurance

Commercial General Liability \$1,000,000 Per Occurrence
(No standard coverages are to be excluded by endorsement)

Automobile Liability Insurance

Commercial Auto Liability \$500,000 Combined Single Limit
(including coverage for owned, hired, and non-owned autos)

Umbrella Liability

(Following Form and Drop \$5,000,000 Each Occurrence
Down Provisions Included)

Any combination of underlying coverages providing equal or better liability limits is acceptable.

B. In addition to the above requirements, the insurance shall:

1. be written with the City of Arlington as an additional insured except on Workers Compensation and Employer's Liability Insurance.
 2. provide for 30 days notice of cancellation to the City, for nonpayment of premium, material change, or any other cause.
 3. be written through companies duly authorized to transact that class of insurance in the State of Texas. Insurance is to be placed with insurers with a Best Rating of no less than A-VII.
 4. waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against the City of Arlington. It being the intention that the required insurance policies shall protect all parties and be primary coverage for all losses covered by the policies.
 5. provide that notice of claims shall be provided to Risk Management by certified mail.
- C. The policy clause "Other Insurance" shall not apply to the City if the City is an additional insured under the policy.
- D. A certificate of insurance providing proof of coverage shall be provided to the Budget Office with the registration form.

Section 4.03 Bonding Requirements

- A. Bonds. Each year, the public service provider shall, without cost to the City, provide Performance, Payment and Maintenance Bonds for the construction work anticipated to be performed in the public rights-of-way in the upcoming year. Each bond shall be in the amount of the estimated costs to restore the public rights-of-way for the work anticipated to be done in that year. The Performance Bond shall be conditioned upon the faithful performance of the work in the public rights-of-way. The Payment Bond shall be conditioned upon payment of all persons supplying labor or furnishing materials for said work. The Maintenance Bond shall guarantee the work for two years from the date of its completion. Each bond shall be executed by a surety company authorized to do business in the State of Texas and acceptable to the City.
- B. Request for Annual Waiver. A public service provider that has assets in excess of \$20,000,000 may annually

submit a written request for a waiver from the above-referenced bonding requirements.

1. The request shall set forth in detail the basis for the request including but not limited to:
 - a. The public service provider's performance history in the City;
 - b. Documentation, in a form acceptable to the City, that demonstrates that the public service provider has assets in excess of \$20,000,000; and
 - c. Documentation, in a form acceptable to the City, that demonstrates that the public service provider has assets or reserves sufficient to cover the amount of the bonds.
2. Within 30 calendar days of receipt of a written request for a waiver, the Director, with sole discretion, may grant a waiver to the bonding requirements for good cause. In making this decision, the Director shall take into account among other things:
 - a. the public service provider's record of performance in the City's rights-of-way;
 - b. the public service provider's record of compliance with this ordinance;
 - c. a showing of financial responsibility by the public service provider to complete the proposed project; and
 - d. any other factors deemed relevant to management of the City's rights-of-way.
3. A public service provider shall make an annual application for a waiver for work to be performed in the City's rights-of-way within that calendar year.

Section 4.04 Existing Franchise or License

The above requirements may be met by public service providers with a current franchise or license if their current franchise or license adequately provides for insurance and bonds and provides an indemnity in favor of the City.

Section 4.05 Construction Permit Required

After registration has been completed, a separate construction permit for each work location must be obtained from the City's Department of Public Works. Nothing in this Article relieves a public service provider from obtaining a construction permit under this ordinance to perform work in the public right-of-way.

ARTICLE V

CONSTRUCTION PERMIT REQUIREMENTS

Section 5.01 Construction Permit

A person shall not perform any construction, except for an emergency activity, within a public right-of-way without first obtaining a permit from the Department of Public Works prior to the start of construction. A person who undertakes any work outside of the public right-of-way that will cut, break, or otherwise damage the public right-of-way shall also obtain a permit.

Section 5.02 Registration Required

Prior to obtaining a permit, the public service provider must be registered with the City's Budget Office in accordance with Article IV.

Section 5.03 Exception

A permit is not required under Section 5.01 if the activity in the public right-of-way consists exclusively of:

- A. routine maintenance or repair of facilities that does not involve any of the following: the cutting or breaking of pavement; the closure of a traffic lane for longer than 24 hours; boring; or excavation greater than 100 cubic feet; or
- B. a connection of real property to a utility service on the same side of the public right-of-way, if the connection does not require a pavement cut in the right-of-way; or
- C. the replacement of a single damaged pole within a ten foot radius of the damaged pole; or

- D. installation of aerial lines on existing poles, or installation of aerial lines on not more than 10 new poles.

Section 5.04 Construction Permit Procedures

The following procedures and requirements govern the application for and issuance of a permit to perform construction within the public right-of-way:

A. Permit Application

1. A permit application must be made in writing on a form obtained from the Department of Public Works. The application must be signed and submitted by the permittee on behalf of the owner of the facility for which the permit is requested. The application for permit must be filled out completely and accurately. Any omissions or inaccuracies on the form may be cause for denial of the permit at the City's discretion.
2. A permit application must be submitted to the Director in accordance with the timeframes specified in the Public Right-of-Way Permitting and Construction Manual.
3. The Director shall state on the permit any reasonable additional restrictions or requirements determined necessary. These additional restrictions or requirements shall be considered a part of the permitted activity.
4. A separate Utility Structure Permit in accordance with Article XII shall be required for utility structures greater than 20 cubic feet proposed within the public right-of-way. This additional permit shall be considered a part of the construction permit.
5. The permittee shall, as an express condition of the permit, comply in all respects with the requirements prescribed for the permitted activity in the Public Right-of-Way Permitting and Construction Manual and with all other City ordinances and state or federal laws or regulations affecting the permitted activity.

B. Construction Plan

The permit application on any project must include submittal of construction plans to the Department of Public Works. The plans must conform to the standards

set forth in the Public Right-of-Way Permitting and Construction Manual. 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.

C. Storm Water Pollution Prevention Plan

The permittee shall submit with the permit application two sets of a Storm Water Pollution Prevention Plan to the Department of Public Works in cases where stream crossings are open cut. In all other cases, the permittee is required to implement erosion control measures for construction activities in accordance with the City's Storm Water Pollution Control Ordinance No. 96-163, as amended, and other City ordinances and state or federal laws and regulations.

D. Traffic Control Plan

Any work that may impact traffic flow or result in lane closures in any street will require an approved site specific traffic control plan and the closures shall comply with the most current edition of The Texas Manual on Uniform Traffic Control Devices and the City's Work Area Traffic Control Manual as adopted by Ordinance No. 93-74, as amended. The permittee shall submit a site specific traffic control plan, when applicable, to the Department of Public Works and obtain approval prior to the lane closure.

E. Trench Safety Plan

Trench safety systems shall meet U.S. Occupational Safety and Health Administration Standards.

Section 5.05 Construction Permit Expiration

If no construction has commenced under a permit within 90 calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in the public right-of-way. An extension to a permit may be granted by the Director only before the permit expires.

Section 5.06 Trenchless Technology or Boring

A. The Director may require the use of trenchless technology or boring based on the following criteria:

1. It is in the best interest of the City; and

2. It is technically, commercially, and economically feasible; and
 3. It is not in violation of federal or state regulations or industry safety standards.
- B. All concrete driveways and streets shall be bored rather than open cut. The length of the bore must be sufficient for meeting the fully improved (ultimate) roadway width as specified in the Thoroughfare Development Plan if sufficient right-of-way exists. If the concrete street is subject to reconstruction within 2 years, or for other good cause, the Director may grant an exception upon request.
- C. No pavement cuts in newly constructed, reconstructed, or resurfaced (greater than one inch) asphalt streets may be made for 60 months after the substantial completion of the street work. With sole discretion, the Director may grant an exception based on the public service provider's written demonstration that the following criteria have been met:
1. Boring or jacking without disturbing the pavement is not practical due to physical characteristics of the street or alley or other utility conflicts; and
 2. Alternative utility alignments that do not involve excavating the street or alley are found to be impracticable; and
 3. The proposed excavation cannot reasonably be delayed until the five year deferment period has lapsed.

Section 5.07 Excavated Materials

The permittee and any person responsible for construction shall protect the public right-of-way surface, and all existing facilities and improvements both above and below ground from excavated materials, equipment operations, and other construction activities. Particular attention must be paid to ensure that no excavated material or contamination of any type is allowed to enter or remain in a water or wastewater main or access structure, drainage facility, or natural drainage feature.

Section 5.08 Emergency Activity

Construction in the public right-of-way may commence prior to obtaining a permit if the public service provider

determines a valid need to perform emergency activity. Immediate notice, including the reasons for the emergency activity, must be given to the Director. The public service provider shall provide a written description of the emergency activity required not later than the second business day following commencement of the emergency activity, and application for a permit must be made as soon as possible.

ARTICLE VI

PERMIT DENIAL AND REVOCATION

Section 6.01 Permit Denial

The Director may refuse to issue a permit if:

- A. the public service provider does not have a valid registration on file with the Budget Office;
- B. the proposed construction will substantially interfere with vehicles or pedestrians and no procedures, or procedures inconsistent with this ordinance, have been identified to minimize the interference;
- C. 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, or will conflict with proposed public facilities;
- D. the proposed barricading, channelizing, signing, warning, or other traffic control procedures or equipment do not comply with the requirements of the most current edition of the Texas Manual on Uniform Traffic Control Devices, and the City's Work Area Traffic Control Manual as adopted by Ordinance 93-74, as amended;
- E. the proposed construction, incidental traffic control, or other permitted activity, or the manner in which it is to be performed, will violate a City ordinance or regulation or a state or federal statute or regulation;
- F. the permittee:
 1. fails to furnish all the information required by this ordinance;
 2. knowingly or intentionally furnishes false or incorrect information to the Director;

3. fails, except for good cause shown, to file the application on the approved form within the time limits prescribed by the Public Right-of-Way Permitting and Construction Manual;
4. has violated a provision of this ordinance twice within the two year period immediately preceding the date of application and has failed to cure the violation in accordance with this ordinance; or
5. is not in compliance with applicable requirements of an existing permit issued under this ordinance.

Section 6.02 Permit Revocation

The Director may suspend construction or revoke an issued permit on the same grounds on which a permit may be denied under Section 6.01 or if the permittee:

- A. commences or performs construction in violation of an applicable requirement of this ordinance or the permit;
- B. creates or is likely to create a public health or safety hazard by performance of the construction in question;
- C. fails to comply with an order or regulation of the Director applicable to the construction;
- D. fails to comply with the restrictions or requirements of other City ordinances or state or federal laws or regulations applicable to the construction; or
- E. commences or performs work without having prior knowledge and understanding of the applicable repair standards as specified in the Public Right-of-Way Permitting and Construction Manual.

Section 6.03 Notice

The Director shall provide immediate verbal notice of a suspension or revocation to the permittee. Written notice of a suspension or revocation shall be provided within one business day of the verbal notice. Construction that is suspended may not resume until the Director determines that the permittee has corrected the violation, noncompliance, or hazard that caused the suspension. A permit that has been revoked may be reinstated by the Director if the Director determines that:

- A. the permittee has corrected the violation, noncompliance, or hazard that caused the revocation; and
- B. the health or safety of the public is not jeopardized by reinstating the permit.

Section 6.04 Variance

Any variance from the requirements of this ordinance must be approved in advance by the Director. The Director may grant a variance only if an extreme hardship exists and the public health, safety, welfare, and convenience is not adversely affected by granting the variance. The Director may not approve any variance that would give a competitive advantage to one public service provider over another public service provider providing the same or similar service. The Director may not grant a variance from the indemnity requirements.

ARTICLE VII

CONSTRUCTION REQUIREMENTS

Section 7.01 Construction Requirements

All construction must be done in a good and workmanlike manner and in faithful and strict compliance with the permit, this ordinance, other City ordinances, and regulations promulgated by the Director relating to construction within the public right-of-way. The permittee shall maintain the construction area in a manner that avoids health hazards, and hazards to vehicular and pedestrian traffic until the public right-of-way is permanently restored. Specific construction requirements are contained in the Public Right-of-Way Permitting and Construction Manual, as amended.

Section 7.02 Restoration of Right-of-Way

A permittee performing construction in the public right-of-way shall restore the public right-of-way to a condition that is equal to or better than the condition prescribed by the Public Right-of-Way Permitting and Construction Manual, as amended.

Section 7.03 Coordination

The permittee has the exclusive responsibility to coordinate with other public service providers to protect all existing facilities in the public right-of-way in which the construction occurs. Acceptance of the plans and issuance of a permit does not constitute liability on the City's part for any damage to existing facilities.

Section 7.04 Locate Extent of Right-of-Way

The permittee has the exclusive responsibility to locate the extent of the public right-of-way. Acceptance of the plans and issuance of a permit does not constitute liability on the City's part for any facilities placed on private property. If facilities are placed on private property, it is the public service provider's responsibility to contact property owners and acquire easements.

Section 7.05 Barricades and Warning Signs

When making a pavement cut or excavation, or placing soils or excavated material in or along a public right-of-way, the permittee shall place barricades, warning signs, and warning lights at the location sufficient to warn the public of the hazard of the open cut, excavation, spoils, or excavated material.

Section 7.06 Alternate Access for Blocked Sites

If a street or alley must be totally closed for any duration, the permittee shall provide for reasonable alternative access to the adjacent properties at all times. If a sidewalk is to be closed or blocked for longer than one day, the permittee shall provide a reasonable alternative for pedestrian access. Sidewalks designated as school routes shall be open at all times, or a reasonable alternative shall be provided before work commences. Reasonable alternatives for sidewalks shall provide 36 inches minimum surface width.

Section 7.07 Alteration to Landscape Material

Any alteration to landscape material located within any public right-of-way requires prior notification to the adjacent property owner. No person shall cut, deface or in any way injure any landscape material located within a public median without prior approval from the Parks and Recreation Department. Landscape material shall include, but is not limited to, canopy and ornamental trees, shrubs,

ground cover, lawn, earthwork, and irrigation systems. Topping of trees for overhead utility service is excluded from this subsection.

Section 7.08 Temporary Restoration of Right-of-Way

Temporary restoration of the public right-of-way may not remain for more than 10 business days after the completion of a repair or installation of an underground structure or facility, unless a time extension has been granted by the Director. The City may, at the expense of the permittee or other responsible person, remove any temporary restoration remaining in the public right-of-way beyond the 10 day time limit and make permanent repairs. Any exception to the 10 day time limit, other than a relocation of a facility in advance of a City construction project in the public right-of-way, must be approved by the Director prior to expiration of the time limit.

Section 7.09 Notification for Weekend Work

Except in an emergency, the permittee shall notify the Director in writing 48 hours prior to any work requiring a permit proposed for a weekend.

Section 7.10 Contractor's Agent on Site

The contractor will maintain at all times on the job site a responsible person authorized to receive and relay instructions from the City.

ARTICLE VIII

IMPROPERLY CONSTRUCTED FACILITIES

Section 8.01 Permittee's Responsibilities

A permittee shall:

- A. properly construct, install, repair, relocate, and/or upgrade its existing facilities within the public right-of-way; and
- B. repair or restore any damage to other facilities, the public right-of-way, or private property that occurs as a result of improper construction, installation, repair, relocation, or upgrade of the permittee's facilities.

Section 8.02 Improperly Constructed Facilities

Facilities will be considered to be improperly constructed, installed, repaired, relocated, or upgraded if:

- A. the construction, installation, repair, relocation, or upgrade endangers public health or safety or creates a public inconvenience;
- B. the facilities encroach upon private property or extend outside the right-of-way location designated in the permit without authorization;
- C. the construction, design, or configuration of the facilities does not comply with applicable local, state, or federal laws or regulations;
- D. the construction, installation, repair, relocation, or upgrade is conducted in a manner that damages private or public property or another public service provider's facilities;
- E. the facilities are not capable of being located or maintained using standard practices; or
- F. the facilities are placed in an area that interferes with another public service provider's existing facilities.

ARTICLE IX

TWO-YEAR MAINTENANCE PERIOD

Section 9.01 Two-Year Maintenance Period

All construction performed under any permit granted to a permittee by the City under this ordinance must be maintained to the satisfaction of the Director for two years after substantial completion of construction or repair.

Section 9.02 Restoration Work

Work performed within the public right-of-way and outside the limits of the pavement, that includes, but is not limited to, the surface, underground infrastructure, irrigation system, landscaping, signage, and/or sidewalks is subject to the two-year maintenance period. Should the City reasonably determine, within two years from the date of the completion of work, that additional restoration work is required, the permittee shall perform such additional restoration work to the satisfaction of the City within 30

days after the Director gives written notice to the permittee to correct the damage, defect, or other problem. If the restoration work is not completed within 30 days, the work may be performed by the City. The permittee shall notify the Director at least 24 hours before commencing any repair operations. If a construction or excavation site is subsequently disturbed by another party, including another permittee or the City, any continuing obligation to maintain the overlapping area shall cease. If the site is disturbed by another permittee, then that permittee shall be subject to the maintenance period for the overlapping area.

Section 9.03 Settling of Backfill

The Director shall notify the permittee in writing if the backfill on a permitted pavement cut or excavation settles at any time during the two year maintenance period, causing subsidence in the pavement of one-half inch or more, vertically measured in any three foot horizontal direction. Upon notification, the permittee shall commence repair work within 10 days and notify the Director 24 hours in advance of commencement of the repair work. If the repair work is not commenced within 10 days, the repair work may be performed by the City.

Section 9.04 Director's Decision Binding

The decision of the Director as to the necessity of correcting any damage, defect or other problem is binding on all parties.

Section 9.05 Coverage Area

All damage caused directly or indirectly to the public right-of-way surface or subsurface outside the construction area will be regarded as part of the construction and must be included in the total area repaired.

Section 9.06 Failure to Repair or Restore

Upon failure of the permittee to perform any such repair or restoration work described in this Article, the City may repair such portion of the public right-of-way as may be required. The permittee or public service provider shall reimburse the City for the actual direct and indirect costs of the repair work.

ARTICLE X

EMERGENCY REPAIRS

Section 10.01 Emergency Repair During Construction in Right-of-Way

If the Director determines during construction that an emergency repair to a public right-of-way is necessary to correct a situation that is hazardous to the public, the Director shall immediately notify the permittee. If the permittee does not commence the emergency repair within 24 hours, the Director may, with sole discretion, cause performance of such emergency repair work as is necessary to correct the hazardous situation. The permittee, or public service provider, shall reimburse the City for the actual direct and indirect cost of the work necessary to correct the hazardous situation. The permittee shall maintain the emergency repair until the permittee completes construction and final repairs.

Section 10.02 Emergency Repair for Existing Facility in Right-of-Way

If the Director determines that a problem with a public service provider's existing facility in a public right-of-way requires an emergency repair to correct a situation that is hazardous to the public, the Director shall immediately notify the public service provider. If the public service provider does not commence the emergency repair within 24 hours, the Director may, with sole discretion, cause performance of such emergency repair work as is necessary to correct the hazardous situation. The public service provider shall reimburse the City for the actual direct and indirect cost of the work necessary to correct the hazardous situation. The public service provider shall maintain the emergency repair until the public service provider completes construction and final repairs.

ARTICLE XI

PUBLIC IMPROVEMENT COORDINATION

Section 11.01 Public Improvement Coordination

Whenever the Director deems it necessary to remove, alter, change, relocate, or adapt the underground or overhead facilities of a public service provider in the public right-of-way due to the City's reconstruction, widening, or straightening of streets; placement or

replacement of water, wastewater, or storm water facilities; installation of traffic signals, traffic signs, and streetlights; or construction of any other City public improvement project, the public service provider that owns the facilities shall conform its facilities to the City's project.

Section 11.02 Relocation

The facilities must be conformed, at the public service provider's expense, within 120 days after the Director issues notice to the public service provider, unless a different conformance schedule for the work is approved by the Director.

Section 11.03 Abandonment

Facilities of a public service provider that are not conformed within the 120-day notice period or within the approved schedule will be deemed abandoned, and the City, and any person working under contract with the City, will not be liable for any damage to or destruction or removal of the facilities, or for any interruption or termination of service through the facilities, caused by the activity of the City, or its contractors, described in this Article.

Section 11.04 Permit Required

A person performing construction within the public right-of-way for the purpose of conforming facilities at the request of the City in advance preparation for a public improvement project shall obtain a permit under this ordinance.

Section 11.05 Maintenance of Construction Area

The permittee shall maintain the construction area in accordance with Article IX or until the work order authorizing the construction of the public improvement project is issued by the City, whichever comes first.

Section 11.06 Existing Franchise or License

To the extent that any provision of this Article might be inconsistent or in conflict with the specific provisions of any public service provider's current franchise or license, the franchise or license shall control with regard to the conflict. The franchisee or licensee shall comply

with all other provisions of this Article not inconsistent or not in conflict with the franchise or license.

ARTICLE XII

UTILITY STRUCTURES

Section 12.01 Permits Required

No person shall place or install a utility structure within the public right-of-way without a construction permit pursuant to Article V. In addition, a separate Utility Structures Permit shall be required for structures greater than 20 cubic feet in volume. The Utility Structure Permit shall be considered a part of the construction permit.

Section 12.02 Above Ground Utility Structures

Above ground utility structures shall be permitted in accordance with Section 12.01 and shall meet the following requirements:

- A. Above ground utility structures exceeding two feet in height shall not be placed within any intersection visibility triangle.
- B. Above ground utility structures less than 60 cubic feet in volume, with no dimension greater than six feet, may be placed within the public right-of-way without screening.
- C. Above ground utility structures greater than 60 cubic feet in volume, and less than 240 cubic feet in volume, and less than seven feet in height shall:
 1. be placed within a public or private utility easement outside the street right-of-way; and
 2. be screened on all sides except for the sides containing openings for access to the structure.
- D. Above ground utility structures greater than 240 cubic feet in volume or more than seven feet in height shall be located in a private utility easement or other private property.
- E. The dimensions of the supporting foundation or pad shall not measure more than one foot larger than the footprint of the structure in any direction. The placement of the pad shall allow for existing and proposed sidewalks.

- F. Above ground utility structures shall comply with all requirements of other City ordinances and other state and federal laws and regulations. Public Service Provider shall be responsible for obtaining other permits, as required.
- G. Screening as required in this Section shall consist of a barrier of stone, brick, pierced brick or block, uniformly colored wood or other permanent material of equal character, density and design, at least 6' in height, or combination of two or more. Screening shall not exceed six feet in height. No separate permit will be required for any approved screening wall. Screening shall be placed so that it does not interfere with sight easements or create other traffic-related visibility obstructions.
- H. To the extent reasonably possible, the exterior surfaces of all utility structures and screening shall be maintained free of graffiti and other defacements such as posters, stickers, decals, and signs, except those placed on the structure by the utility company for identification. The exterior finish shall be maintained free of visible deterioration.
- I. The utility structure shall be clearly marked with the owner's name.

Section 12.03 Below Ground Utility Structures

Below ground utility structures shall be permitted in accordance with Section 12.01.

Section 12.04 Utility Structure Permit

In reviewing the Utility Structure Permit the City will consider the following:

- A. Size, location and impact of the proposed structure;
- B. The structure's coordination with existing and proposed public facilities; and
- C. Availability of remaining right-of-way.

If the City determines that the proposed utility structure cannot be placed within the right-of-way without adversely affecting the integrity of an existing or future facility owned by the City, the City shall have the right to deny the location of a new or replacement utility structure within the said right-of-way and may provide assistance in

identifying alternative locations for the said utility structure.

Section 12.05 Request for Waiver

A request for a waiver of the location and size requirements may be made to the Director with respect to a particular site for a proposed utility structure.

- A. The request for a waiver must include a detailed justification for the waiver, including the lack of existing sites not within the public right-of-way; alternative sites sought and reviewed; proof that compliance with the requirement is impracticable; and the necessity of the utility structure and its size at the proposed site to provide service.
- B. Within 30 calendar days of receipt of a written request for a waiver, the Director may, with sole discretion, grant a waiver for good cause.
- C. In making this decision, the Director shall consider:
 - 1. the availability of other sites not located in the public right-of-way and person's efforts to secure those sites;
 - 2. the size, location and impact of the proposed utility structure in the right-of-way at the proposed site;
 - 3. person's need to provide services to a property or area to be served by the proposed site;
 - 4. person's need for the proposed size of the utility structure to provide services to a property or area to be served by the proposed site; and
 - 5. the public health, safety, welfare and convenience.
- D. The Director shall indicate in written communication the basis for granting or not granting any waiver pursuant to this subsection.
- E. The Director's decision regarding the waiver shall be final.

Section 12.06 Utility Structures on City Property Other Than Right-of-Way

In cases where utility structures will be located on City property other than public right-of-way, the following requirements apply:

- A. The application shall be made to the Director for execution of a Use Privilege Agreement.
- B. Nothing contained herein, however, shall ever be held or construed to confer upon any person the right to place a utility structure upon City property. The City reserves the right, at its sole discretion, to enter into a Use Privilege Agreement to allow the placement of a utility structure on City property.
- C. The City shall not be liable for damages or losses of any kind whatsoever by reason of injury to property or person occasioned by the use of any City property. The City shall have no obligations in regard to the maintenance of any improvements within such City property. The City shall be defended at the cost and expense of the person placing improvements on City property from all claims and demands.
- D. The use of City property shall be discontinued and improvements removed within 90 days of notification by the City and the cost of the discontinuation and removal of improvements shall be borne by the owner of the improvement.
- E. The public service provider shall pay City a use fee for use of the property based upon the fair market value as determined by the City's Real Estate Services Division. In addition to a use fee, the City may request the public service provider to provide network connectivity and/or conduit to the City.
- F. The public service provider shall cooperate with other providers in connection with allowing collocation of facilities within the utility structure.

ARTICLE XIII

EFFECTIVE DATE

Section 13.01 Effective Date

- A. The effective date of this ordinance shall be ten days after enactment and publication.

- B. Any permit issued prior to the effective date will remain subject to the terms and conditions of City procedures in effect at the time of issuance of the permit and is not affected by this ordinance, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this ordinance.

ARTICLE XIV

INDEMNITY

Section 14.01 Indemnity

- A. Except as to Certificated Telecommunication Providers, each person placing facilities in the public right-of-way shall promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses:
1. for the repair, replacement, or restoration of City's property, equipment, materials, structures, and facilities which are damaged, destroyed or found to be defective as a result of the person's acts or omissions; and
 2. from and against any and all claims, damages, suits, causes of action, and judgments for:
 - a. damage to or loss of the property of any person (including, but not limited to, the person, its agents, officers, employees and subcontractors, City's agents, officers and employees, and third parties); and/or
 - b. death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (including, but not limited to, the agents, officers and employees of the person, person's subcontractors and City, and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the person, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this ordinance.
- B. This indemnity provision shall not apply to any liability resulting from the negligence of the City, its officers, employees, agents, contractors, or subcontractors.

- C. The provisions of this indemnity are solely for the benefit of the City and are not intended to create any rights, contractual or otherwise, to any person or entity.
- D. A permittee who is a Certificated Telecommunication Provider as defined in Chapter 283, Texas Local Government Code, as amended, shall give the City the indemnity provided in Section 283.057, Texas Local Government Code, as amended.

ARTICLE XV

SEVERABILITY

Section 15.01 Severability

The provisions of this ordinance are severable. However, in the event this Ordinance or any procedure provided in this Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, the remaining and lawful provisions shall be of full force and effect and the City shall promptly promulgate new or revised provisions in compliance with the authority's decision or enactment.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars (\$2,000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the _____ day of _____, 2003, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the _____ day of _____, 2003, by a vote of ____ ayes and ____ nays

at a regular meeting of the City Council of the City of
Arlington, Texas.

ATTEST:

ROBERT N. CLUCK, Mayor

BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY _____/s/_____