



*** PUBLIC NOTICE ***

**NOTICE OF A CITY COUNCIL REGULAR SESSION IMMEDIATELY FOLLOWING
A WORKSHOP SESSION
OF THE CITY OF CORINTH
Thursday, June 1, 2017, 5:30 P.M.
CITY HALL - 3300 CORINTH PARKWAY**

CALL TO ORDER:

5:30 p.m. WORKSHOP BUSINESS AGENDA

1. Discuss Regular Meeting Items on Regular Session Agenda, including the consideration of closed session items as set forth in the Closed Session agenda items below.

ADJOURN WORKSHOP SESSION

***NOTICE IS HEREBY GIVEN** of a Regular Session of the Corinth City Council to be held at Corinth City Hall located at 3300 Corinth Parkway, Corinth, Texas. The agenda is as follows:

**7:00 p.m. CALL TO ORDER, INVOCATION, PLEDGE OF ALLEGIANCE AND TEXAS PLEDGE:
:Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible".**

CONSENT AGENDA

All matters listed under the Consent Agenda are considered to be routine and will be enacted in one motion. Should the Mayor, a Councilmember, or any citizen desire discussion of any Item that Item will be removed from the Consent Agenda and will be considered separately.

1. Consider and act on approval of the "Agreement for Construction, Maintenance and Operation of Safety Lighting Systems Within Municipalities (State Maintains and Contracts for Power)" Blanket Agreement.

CITIZENS COMMENTS

In accordance with the Open Meetings Act, Council is prohibited from acting on or discussing (other than factual responses to specific questions) any items brought before them at this time. Citizen's comments will be limited to 3 minutes. Comments about any of the Council agenda items are appreciated by the Council and may be taken into consideration at this time or during that agenda item. Please complete a Public Input form if you desire to address the City Council. All remarks and questions addressed to the Council shall be addressed to the Council as a whole and not to any individual member thereof. Section 30.041B Code of Ordinance of the City of Corinth.

BUSINESS AGENDA

2. Consider appointing a Representative to the North Central Texas Council of Governments (NCTCOG).
3. Consider and act on an Ordinance adopting Article VII, Right-of-Way Management, to Chapter 95, Streets and Sidewalks, of the City Code of Ordinances and amending the Master Fee Schedule.
4. Consider and act on the adoption of the Wireless Services (Small Cells) Design Manual.
5. Consider and act on a Professional Services Agreement with Level 3 for the replacement of sewer line near the southwest corner of the intersection of Lake Sharon Drive and Interstate 35.

COUNCIL COMMENTS & FUTURE AGENDA ITEMS

The purpose of this section is to allow each councilmember the opportunity to provide general updates and/or comments to fellow councilmembers, the public, and/or staff on any issues or future events. Also, in accordance with Section 30.085 of the Code of Ordinances, at this time, any Councilmember may direct that an item be added as a business item to any future agenda.

CLOSED SESSION

The City Council will convene in such executive or (closed session) to consider any matters regarding any of the above listed agenda items as well as the following matters pursuant to Chapter 551 of the Texas Government Code.:

Section 551.071. (1) Private consultation with its attorney to seek advice about pending or contemplated litigation; and/or settlement offer; and/or (2) a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State of Texas clearly conflicts with chapter 551.

a. Planned Development conditions and Land Use.

Section 551.072. To deliberate the purchase, exchange, lease or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

a. Lake Sharon Project - Right-of-Way acquisitions.

b. Hold a discussion and receive direction regarding easement acquisition for a development project located in the general vicinity of Tower Ridge, Lake Sharon, and IH-35E.”

Section 551.074. To deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee.

a. Consider evaluation of City Manager.

Section 551.087. To deliberate or discuss regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to a business prospect.

After discussion of any matters in closed session, any final action or vote taken will be in public by the City Council. City Council shall have the right at any time to seek legal advice in Closed Session from its Attorney on any agenda item, whether posted for Closed Session or not.

RECONVENE IN OPEN SESSION TO TAKE ACTION, IF NECESSARY, ON CLOSED SESSION ITEMS.

ADJOURN:

Posted this 26 day of May, 2017 at 11:30 a.m. on the bulletin board at Corinth City Hall.

Kimberly Pence, City Secretary
City of Corinth, Texas

CONSENT ITEM 1.

City Council Regular and Workshop Session

Meeting Date: 06/01/2017

Title: TXDOT I-35 Safety Lighting Agreement

Submitted For: Cody Collier, Director

Submitted By: Cody Collier, Director

City Manager Review: Approval: Bob Hart, City Manager

AGENDA ITEM

Consider and act on approval of the "Agreement for Construction, Maintenance and Operation of Safety Lighting Systems Within Municipalities (State Maintains and Contracts for Power)" Blanket Agreement.

AGENDA ITEM SUMMARY/BACKGROUND

The Texas Department of Transportation (TXDOT) has presented the City of Corinth with a standard letter of agreement authorizing TXDOT to install, maintain, and provide power for safety street lighting along the I-35 corridor within Corinth City Limits. upon completion of the current I-35 highway expansion project, TXDOT will add all necessary street lighting along I-35 at no cost to Corinth for installation, maintenance, power, or replacement.

RECOMMENDATION

Staff recommends Council's approval of the "Agreement for Construction, Maintenance and Operation of Safety Lighting Systems Within Municipalities (State Maintains and Contracts for Power)" with TXDOT and authorization for the City Manager to execute the agreement.

Attachments

TXDOT Lighting Agreement



Texas Department of Transportation

4777 E. HWY 80, MESQUITE, TEXAS 75150 | WWW.TXDOT.GOV

May 8, 2017

IH 35E Express
Safety Lighting
City of Corinth
Denton County

Cody Collier
Director of Public Works
City of Corinth
1200 North Corinth Street
Corinth, TX 76208

Dear Mr. Collier:

Please find attached, two (2) original *Agreements for Construction, Maintenance and Operation of Safety Highway Lighting Systems within Municipalities* for your review and approval. If all is satisfactory, please obtain authorized signatures and a City Council Resolution for both originals and return to me for further processing. A fully executed original will be returned for your files and use.

Feel free to contact Angela Green at 214-320-4432, if needed. If a set of plans is needed, please contact Alan McNeil, P.E. at 214-320-6151.

Sincerely,

Andrew R. Oberlander, P.E.
District Transportation Operations Engineer

Attachment

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT FOR CONSTRUCTION, MAINTENANCE
AND OPERATION OF SAFETY LIGHTING
SYSTEMS WITHIN MUNICIPALITIES
(State Maintains and Contracts for Power)
(Blanket Agreement)**

THIS AGREEMENT, dated this ____ day of _____, 20____, by and between the State of Texas, hereinafter referred to as the "State," party of the first part, acting by and through the Texas Department of Transportation, and the City of Corinth, Denton County, Texas, acting by and through its duly authorized officers under a resolution or ordinance passed the ____ day of _____, 20____, hereinafter called the "City," party of the second part.

WITNESSETH

WHEREAS, in order to provide a more adequate facility to the traveling public, the construction, maintenance, and operation of certain safety lighting systems is required within the corporate limits of the City. Within the City, said safety lighting system, hereinafter referred to as the "lighting system," is to consist of safety lighting to be built in sections as financed and designated by the Texas Transportation Commission; and

WHEREAS, the Executive Director, acting for and in behalf of the Texas Transportation Commission, has made it known to the City that the State will construct, maintain, and operate said lighting systems, subject to the conditions and provisions stated herein, as provided for in Section 25.11, Texas Administrative Code and Section 221, Transportation Code.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

A G R E E M E N T

Article 1. CONSTRUCTION AND MAINTENANCE RESPONSIBILITIES

a. The State will prepare or provide for the plans and specifications, advertise for bids, let the construction contract, or otherwise provide for the construction, and will supervise construction, reconstruction, or betterment work as required by said plans and specifications. As a project is developed to construction stage, either as a unit or in increments, the State will submit plans and specifications of the proposed work to the City and will secure the City's consent to construct the lighting system prior to awarding the contract, said City consent to be signified by the signatures of duly authorized City officers in the spaces provided on the title sheet of plans containing the following notation:

"Attachment No. _____ to special AGREEMENT FOR
CONSTRUCTION, MAINTENANCE, AND OPERATION OF
SAFETY LIGHTING SYSTEMS WITHIN MUNICIPALITIES,
dated _____. The City-State construction,
maintenance, and operation responsibilities shall be as heretofore

agreed to, accepted, and specified in the Agreement to which these plans are made a part.”

b. All costs of construction, maintenance, and operation of the lighting system will be borne by the State, and the lighting system will remain the property of the state.

Article 2. GENERAL

a. The State’s obligation for operation and maintenance of the lighting system shall cease should the route on which it is located be dropped from the State Highway System.

b. This Agreement will cease to apply to sections of the lighting system in the event that those sections are removed or become a part of a continuous illumination system.

c. This agreement shall remain in force for a period of two years from the date that it is signed by the State, and it is understood by both parties that at the end of the initial two-year period, the Agreement will be automatically renewed for two-year periods thereafter unless modified by mutual agreement of both parties. In the event that the lighting system installed in accordance with this Agreement becomes unnecessary or is removed for any reason, this agreement will terminate.

d. Changes in time frame, character, cost, or obligations authorized herein shall be enacted by written amendment. Any amendment to this Agreement must be executed by both parties within the contract period.

e. This Agreement constitutes the sole and only agreement for lighting at the location described herein of the parties hereto and supersedes any prior understandings or written or oral agreement between the parties respecting the within subject matter.

IN WITNESS WHEREOF, the parties have thereunto affixed their signature, the City of _____ on the ____ day of _____, 20__, and the Texas Department of Transportation on the ____ day of _____, 20__.

THE CITY OF CORINTH

Executed on behalf of the City by:

By _____ Date _____

Typed or Printed Name and Title _____

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____

James K. Selman, P.E.
Dallas District Engineer

BUSINESS ITEM 2.

City Council Regular and Workshop Session

Meeting Date: 06/01/2017

Title: North Central Texas Council of Government's

Submitted For: Bob Hart, City Manager

Submitted By: Kim Pence, City Secretary

City Manager Review: Approval: Bob Hart, City Manager

AGENDA ITEM

Consider appointing a Representative to the North Central Texas Council of Governments (NCTCOG).

AGENDA ITEM SUMMARY/BACKGROUND

The City of Corinth is a member of the North Central Texas Council of Governments. As a member organization, the city is entitled to appoint a representative that will represent the city in all official meetings of the general assembly. The appointee must be a member of the governing body.

RECOMMENDATION

N/A

City Council Regular and Workshop Session

Meeting Date: 06/01/2017
Title: Ordinance Right-of-Way Management
Submitted For: Mike Brownlee, City Engineer **Submitted By:** Kim Pence, City Secretary
Finance Review: N/A **Legal Review:** Yes
City Manager Review: Approval: Bob Hart, City Manager

AGENDA ITEM

Consider and act on an Ordinance adopting Article VII, Right-of-Way Management, to Chapter 95, Streets and Sidewalks, of the City Code of Ordinances and amending the Master Fee Schedule.

AGENDA ITEM SUMMARY/BACKGROUND

The City of Corinth is responsible to maintain and operate the roadways and provide access to the right of way on behalf of the citizens of Corinth. The ordinance establishes the authority of the city to regulate the right of way, provides a framework for a right of way permitting process and establishes the authority of the city to regulate the right of way. Without proper regulation, the placement of facilities within the right-of-way will conflict with the primary uses of the right-of-way and will reduce the efficient use of limited space for facilities.

The proposed Right of Management Ordinance will also address recent changes to the legislative landscape which inhibits cities from regulating small cell towers in the public right of way. These "micro" facilities are more numerous and targeted than traditional cell towers. The expansion of small cell networks is expected to continue to increase. The recently passed Chapter 284 is onerous to cities since it:

- Preempts local authority to regulate the ROW;
- Allows easy deployment from cell phone providers;
- Limits fees cities can collect;
- Allows attachments on any type of pole;
- Allows attachments on existing poles;
- Allows adding new poles to attach network nodes.

The legislation does allow Cities to adopt a design manual that includes additional installation and construction details. Staff has prepared a Wireless Services Design Manual that includes guidelines to assist wireless service providers with their design of facilities in Corinth public right of way. The manual provides additional guidance for providers and will supplement the ordinance.

Staff is also working on a ROW Permit Manual to guide and manage the use of the public right of way. This manual is intended to provide technical criteria and details necessary to implement the provisions of the permitting process contained in the Right-of-Way Ordinance. The permitting manual will be made available to network providers. The ROW permitting manual contains instructions to navigate the permitting process in accordance with the design manual and ordinance and is to be used by Providers in the permitting process including:

Registration with the City

Aerial Map and Street View

Sealed engineering plans for structural stability

Scaled drawings of proposed above ground and underground

Before and after image drawing

Interference analysis (traffic signals, public safety radio system, city communications, etc.)

Spacing at least 300' of another capable pole

Requires a building permit

RECOMMENDATION

Staff recommends that City Council approve the Right-of-Way Management Ordinance.

Attachments

Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORINTH, TEXAS, ADOPTING A RIGHT-OF-WAY MANAGEMENT ORDINANCE TO THE CITY CODE OF ORDINANCES; ESTABLISHING REGULATIONS FOR CONSTRUCTION, PLACEMENT, AND EXCAVATION IN RIGHTS-OF-WAY AND PUBLIC EASEMENTS; AMENDING THE MASTER FEE SCHEDULE TO ADOPT FEES FOR THE ADMINISTRATION OF THE RIGHT-OF-WAY MANAGEMENT ORDINANCE; AMENDING OR REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING FOR A PENALTY OF FINE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City of Corinth is a Home-Rule Municipality located in Denton County created in accordance with provisions of the Texas Local Government Code and operating pursuant to the legislation of the State of Texas (“City”); and

WHEREAS, the City is charged with maintaining control of and access to the right-of-way in order to protect the public health, safety, and welfare; and

WHEREAS, the City Council of the City (the “City Council”) has determined that excavations in city streets may significantly interfere with the public use of the streets and resulting in negative impact to public safety, air quality, level of service on streets and sidewalks, and aesthetics of the community; and

WHEREAS, the City Council finds excavations in paved streets significantly degrades and shortens the life of the surface of the streets, and increase the frequency and cost to the public of requisite resurfacing, maintenance, and repair; and

WHEREAS, the City Council has determined that substantial public funds have been invested to build, maintain and repair the City streets and utilities and the City holds these streets and utilities as an asset in trust for its citizens; and

WHEREAS, it is desirable to adopt regulations to protect the structural integrity of City streets and safeguard the value of the public investment of the benefit of City residents by providing incentives to reduce the number of excavations in City streets, which will also reduce the number of service disruptions and excavations; and

WHEREAS, the City Council has determined that adoption of a right-of-way ordinance will comply with and promote the regulations in Chapter 283 of the Texas Local Government Code pertaining to Certificated Telecommunications Providers as well as the Texas Utilities Code and Chapter 284 of the Texas Local Government Code; and

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated as if fully set forth herein.

SECTION 2: Addition of Chapter 95, Sections 221-402 (Right-of-Way Management) to Chapter 95 (Streets and Sidewalks) of the Code of Ordinances of the City of Corinth, Texas. The Code of Ordinances of the City of Corinth, Texas, is hereby amended by the addition of Sections 221-402 Right-of-Way Management to Chapter 95 Streets and Sidewalks to read in its entirety as follows:

CHAPTER 95 STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES

ARTICLE VII RIGHT-OF-WAY MANAGEMENT

DIVISION 1 STANDARDS

Sec. 95-221 Thoroughfare and circulation design standards

Ordinances concerning the establishment of engineering design standards and construction design requirements in effect at the time of adoption of this Code, as amended, are incorporated by reference as if set forth herein.

Sec. 95-222 Construction standards for paving and drainage facilities

Ordinances concerning general construction standards for paving and drainage facilities, in effect at the time of adoption of this Code, as amended, are incorporated by reference as if set forth herein.

Sec. 95-223 Exclusive control of streets

No entity, including other political subdivisions of the state, may extend a street into the city's corporate limits or connect a street to an existing city street without the prior written approval of the city council. This section shall not apply to any state or federal designated roadways or the city's construction of or improvements to the city's own roadways. This section also shall not apply to existing roads being rebuilt, expanded or realigned by another city with city financial participation as defined in a council approved interlocal agreement with that other city.

(a) Application to extend street or connect to existing city street. To be eligible for city council approval for the extension of a street into the city's corporate limits or connection to an existing city street (the "proposed street(s) and/or connection(s)") an application must first be filed with the City Manager. The following shall be attached to or incorporated within the application:

- (1) A schematic showing the proposed street(s) and/or connection(s);

- (2) A schematic showing at least one alternative route for the proposed street(s) and/or connection(s);
- (3) A summary explaining why the proposed street(s) and/or connection(s) is needed and will benefit the city and the region;
- (4) A statement of the method by which the applicant shall:
 - a. Coordinate public and private investment in the proposed street(s) and/or connection(s);
 - b. Minimize conflicts between land uses;
 - c. Influence and manage the development of property that would foreseeably use the proposed street(s) and/or connection(s);
 - d. Increase the benefits and cost-effectiveness of the public investments;
 - e. Predict infrastructure and service needs in advance of demand; and
 - f. Ensure that adequate community facilities and public infrastructure are available and located to best serve the needs of the city and the region.
- (5) Complete engineering plans for the design and construction of the proposed street(s) and/or connection(s), in accordance with the requirements of all city ordinances;
- (6) A study, which demonstrates, to city council's satisfaction, that the proposed street(s) and/or connection(s) will not adversely affect the health, safety and general welfare of the citizens of the city and will provide reasonable protection to properties within the city that will be impacted by the additional traffic projected to come into the city by virtue of the proposed street(s) and/or connection(s). This study shall consider and discuss the impact of the proposed street(s) and/or connection(s) at the date of application, through the construction phases, up until the ultimate build-out of both private and public development in the area;
- (7) A traffic impact study, prepared by a licensed professional engineer in the State of Texas, shall determine the effect that the of street(s) and/or connection(s) into the city's transportation system will have on the city's existing and planned streets, including, but not limited to, the projected level of service that will occur on city streets and intersections, the mobility and access of traffic on the city streets, any bottleneck considerations, whether the projected traffic is consistent with adjacent land uses through which traffic will

pass, and whether the projected traffic is consistent with the city's comprehensive plan. These impacts must be quantified. The traffic impact study shall also include an arterial and intersection analysis;

(8) Payment of the application fee, which shall be the same as the amount required for a planned development zoning change. The applicant shall also deposit with the city \$10,000.00 to be used for direct and indirect expenses in reviewing the application. Any of those deposited funds not expended for review shall be refunded to the applicant after city council has made a final decision relating to the application;

(9) Any other information that the City Manager or his/her designee deems necessary.

(b) Incomplete applications. Any application that does not provide all of the required information or documents as set forth in this section, shall be deemed incomplete and returned to the applicant. Rights under V.T.C.A., Local Government Code sec. 245 shall not vest for any incomplete application that is returned. If the applicant resubmits the application with/without additional information, that resubmitted application shall be treated as a completely new application.

(c) Staff review. Within 30 business days of receiving a complete application and before the application may be placed on any planning and zoning commission or city council agenda for consideration, the City Manager or his/her designee shall hold a staff review conference with the applicant, where the city may ask for additional information from the applicant regarding the proposed street(s) or connection(s). Within 30 additional business days of receiving all of the additional information requested at the staff review conference, the City Manager or his/her designee shall place the application on an agenda for the next planning and zoning commission meeting. The City Manager or his/her designee shall also prepare a written report that advises planning and zoning commission and city council about any concerns he/she may have regarding the application and the proposed street(s) and/or connection(s).

(d) Public hearing. The planning and zoning commission and the city council shall consider the application in a public hearing after publishing notice as required for zoning cases. The planning and zoning commission will recommend and the city council will determine whether the proposed street(s) and/or connection(s) promote the general health, safety, and welfare of the citizens of the City of Corinth. In making this determination, the planning and zoning commission and the city council may consider all of the information incorporated in or attached to the application as well as the impact that the proposed street(s) and/or connection(s) would have on traffic, mobility, land uses, property values, the city's transportation system, the city's budget, the comprehensive plan, the thoroughfare plan, and any other information the planning and zoning commission and/or the city council deems relevant. City council may approve or reject the application as submitted. The city shall not approve a proposed street or connection until sufficient remedial measures have been provided

for by the applicant to address the impacts that the proposed street(s) and/or connection(s) will have on the city's transportation system. Such remedial measures are listed in subsection (e)(3). Remedial measures shall not be required for city-sponsored or city-initiated projects relating to the construction or improvement of the city's own roads.

(e) Remedial payments and mitigation.

(1) Pursuant to the city's police powers existing under state law and consistent with the Texas Constitution, Article XI, sec. 5, the applicant shall provide sufficient funds or contributions to offset the impact directly attributable and roughly proportional to the proposed street(s) and/or connection(s).

(2) The city may require the execution of a development agreement setting forth any and all remedial measures by the city.

(3) Remedial measures may include, but are not limited to:

a. The applicant's payment of funds necessary for the city to upgrade its existing city streets to handle the adverse impacts caused by the proposed street(s) and/or connection(s) on the city's transportation system. This may include capacity improvements to existing roadways located within the city; and

b. The applicant's acquisition of right-of-way (at their own cost) on streets already existing in the city in order to accommodate the additional traffic generated by the proposed street(s) and/or connection(s); and

c. The applicant's installation (at their own cost) of traffic signals, signs, and other traffic control devices for movement and safety of traffic when such signals, signs, and traffic control devices are necessitated by and attributable to the proposed street(s) and/or connection(s).

(4) The applicant shall be required to reimburse the city for any and all costs and expenses relating to required dedications, capacity improvements, roadway improvements such as turn lanes and signal timings, when such costs and expenses are necessitated by and attributable to the proposed street(s) and/or connection(s).

(5) The applicant shall be responsible for the construction of any extension, modification, and/or completion of city streets shown on the thoroughfare plan, when such extension, modification, and/or completion are necessitated by and attributable to the proposed street(s) and/or connection(s). If such construction is deemed impractical by the city, then the applicant shall provide sufficient

escrow funds to the city in lieu of the construction, modification, and/or completion of such city streets.

(f) Engineering and permitting after approval. If city council approves the application, no proposed street(s) and/or connection(s) may be constructed unless the applicant gets approval of their engineering plans by the City Manager or his/her designee. The applicant shall schedule a preconstruction meeting with the City Manager or his/her designee. The City Manager or his/her designee shall approve the engineering plans if:

(1) The applicant submits to the city plans and schematics that show that the proposed street(s) and/or connection(s) shall be constructed in accordance with the City Design Manual, and all other applicable codes and ordinances of the city, from the point of touching the existing roadway to the city limits or the end of the radius of the curb return outside the city, whichever is further; and

(2) The applicant submits to the city plans and schematics that show that the proposed street(s) and/or connection(s) will include the required paving, curbs, and gutters, for the entire length and width of the proposed street(s) and/or connection(s); and

(3) The applicant pays an inspection deposit equal to 3% of construction cost to pay for the city's cost of inspecting the construction of the proposed street(s) and/or connection(s). Inspection of construction shall be at an hourly rate shown in the current professional engineering services contract. The inspection deposit shall be used to pay for inspection of construction. Any funds not expended shall be refunded to the applicant after the street and/or connection is approved and accepted by the city. Any additional fees shall be the responsibility of the applicant. Streets and connections that will have to be maintained by the city upon completion shall be subject to the same inspection fees as defined in the subdivision ordinance; and

(4) The applicant submits to the city a good and sufficient maintenance bond with a reputable and solvent corporate surety registered with the State of Texas, in favor of the city, to indemnify the city against any repairs, which may become necessary to any part of the construction work performed in connection with the proposed street(s) and connection(s), arising from defective workmanship or materials used therein. The maintenance bond shall cover a full period of two years from the date of final acceptance of the entire project relating to the proposed street(s) and/or connection(s). The bond shall cover 100 percent of the value of the work to be done in constructing the proposed street(s) and/or connection(s). Final acceptance by the city will be withheld until said maintenance bond is furnished to the city attorney for approval.

(g) Final approval rights. Upon completion of construction of the proposed street(s) and/or connection(s) ("the project"), the applicant shall submit as-built drawings to

the city. The city shall then inspect the project, and shall have the right to reject the project if the construction fails to meet the requirements set forth in this section and any related development agreements adopted pursuant to this section. The city shall not unreasonably withhold approval and acceptance of the project.

DIVISION 2 RIGHT-OF-WAY MANAGEMENT

Sec. 95-241 Administration

The City Manager, or his/her designee, shall appoint a right-of-way manager, who is the principal city official responsible for the administration of the right-of-way, right-of-way permits, the regulation of same and ordinances related thereto. The right-of-way manager may delegate any or all of the duties hereunder. The right-of-way manager shall have the duties, responsibilities and authority as specified for the right-of-way manager stated herein.

Sec. 95-242 Definitions

The following definitions apply in this article. The terms, phrases, words, abbreviations and their derivations shall have the same meanings herein. When not inconsistent with the context words used in the present tense include the future; words in plural number include the singular number, and words in the singular include the plural. The word “shall” is mandatory and not merely permissive.

Abandoned facilities means facilities no longer in service or physically disconnected from the operating facilities, or from any other facilities, or from any other facilities that are in use or that still carry service.

Administration fee means the fee charged by the city to recover its costs incurred for right-of-way management; including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration improvements; determining the adequacy of the right-of-way restoration; revoking right-of-way permits and other costs the city may incur in implementing the provisions of this article.

Applicant means an owner or authorized agent of an owner, who submits an application for a permit under the provisions of this article.

Area of influence means that area around a utility excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration due to the trench excavation.

Backfill means the following:

- (1) The placement of new dirt, fill, or other material to refill an excavation; or
- (2) The return of excavated dirt, fill or other material to an excavation.

Certificated Telecommunications Provider or “CTP” means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Texas Public Utility Commission or “PUC” to offer local exchange telephone service or a person who provides voice service as defined by V.T.C.A., Local Government Code ch. 283 or “the Act”.

City means the City of Corinth, Texas and the city’s officers and employees.

City project means the construction, location, maintenance, relocation, alteration, improvement, repair, removal or other work performed by the city, or its designee, in the public right-of-way or on any city utilities or city facilities.

City utilities means any water, sewer or drainage line or services owned and operated by the city.

Compaction refers to consolidating backfill material in a trench to prevent future settlement.

Comprehensive plan means the city’s comprehensive plan, as it exists or may be amended.

Construction means boring, the breaking of pavement, or the installation, modification, upgrade, maintenance, removal, or similar activities, within the right-of-way. The definition includes, but is not limited to, providing primary service, restoration, or maintenance of existing facilities within the right-of-way.

Contractor means any public or private person, subcontractor or organization, other than the city.

Day means business day unless otherwise specified.

Department means the city department of public works or a successor department that is responsible for management of the right-of-way and roadway infrastructure.

Emergency operations are defined as those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address or prevent an immediate service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergency operations.

Excavation means any activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the right-of-way and does not include landscaping activity unless the activity removes or disturbs the paved portion of the right-of-way.

Facilities means the equipment, and property, including but not limited to, lines, poles, mains, pipes, conduits, ducts, cables, valves, manholes, handholes and wires located under, on, or above the surface of the ground within the right-of-way, and related facilities and equipment used or useful for the provision of utility services.

FCC means the Federal Communications Commission.

Governing body means the mayor and the city council of the City of Corinth, Texas.

Governmental entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the state or of any other state of the United States and any agency or instrumentality of the state or of any other state of the United States.

Holiday shall refer to days in which city offices are closed in observance of a holiday.

Main line shall refer to lines other than service connections used to convey the right-of-way user's product.

Major project means any project, which includes 300 or more linear feet of excavation or any excavation under pavement.

Pavement shall refer to streets containing Portland cement, asphalt, brick or other rigid or semi-rigid material that covers the surface of a street and their underlying subgrade and base.

Permit means a permit issued under this article authorizing excavation in the right-of-way.

Permittee means any person or right-of-way user to whom a permit is issued to excavate a right-of-way.

Perpendicular excavations means any trench with a centerline that when projected toward the centerline of the street, the two lines intersect at an angle of 90 degrees.

Person means any person, company, partnership, contractor, subcontractor, agency or other public or private entity, excepting the city.

Public inconvenience penalty shall refer to a penalty assessed to the right-of-way user who denies the public the use of public property for a time period greater than allowed by this article.

PUCT means the Public Utility Commission of Texas.

Registration means the annual application process of the right-of-way user to use any portion of the right-of-way.

Registration certificate shall refer to the document provided by the city, annually, upon approval of the application for registration.

Repair means the temporary or permanent construction work necessary to make the right-of-way useable.

Repair area means that area around excavation where the pavement and subgrade is impacted by an excavation.

Restoration means the process by which an excavated right-of-way and surrounding area, including, but not limited to, pavement and foundation structures, ground cover, landscaping, and monuments are returned to the same condition, or better than that which existed before the commencement of the work.

Resurfacing means any repaving, overlay, seal or reconstruction which creates a new pavement surface over the entire width of the street, excluding crack seals and localized base and pavement repairs.

Right-of-way or public right-of-way means the surface of, and the space above and below, any street, road, highway, freeway, tollway, lane, path, drainageway, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, fire lane or other easement now or hereafter held by the city or over which the city exercises any rights of management or control and shall include, but not be limited to, all easements now held, or hereafter held, by the city, but shall specifically excludes private property.

Right-of-way manager means the right-of-way manager of the city, or his designee.

Right-of-way user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or installing, constructing, maintaining, or repairing facilities thereon, including, but not limited to, landowners and service providers.

Routine service operation means a work activity that makes no material change to the facilities and does not disrupt traffic.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

Service connection shall refer to the line that serves no more than two individual customers or two meter banks.

Street means the paved portion of the right-of-way, whether fee or easement, that has been constructed, reconstructed, or resurfaced with concrete or asphalt or some other surface.

Surface mounted markers refers to any sign, post or other marker, which rises above the surface of the ground to show the location of an underground utility.

Thoroughfare means all roadways and streets classified on the city's comprehensive plan, as it exists or may be amended, including but not limited to as a highway, tollway, major thoroughfare, minor thoroughfare, major collector, minor collector or local collector.

TMUTCD means the Texas Manual on Uniform Traffic Control Devices, as it exists or may be amended.

Traffic control representative shall refer to the designated representative of the right-of-way user who is responsible for work zone safety and compliance with TMUTCD. The right-of-way user shall ensure such person has adequate training, knowledge and authority to perform the responsibilities listed above.

Trench shall refer to excavation deeper than 12 inches. This shall include linear trenches, holes, pits and etc.

Underground Facility Damage Protection Safety Act shall refer to the V.T.C.A., Utilities Code sec. 251.001 et seq. as it exists or may be amended.

Utility means any privately or publicly owned entity which uses right-of-way to furnish the public any general public service, including, without limitation, sanitary sewer, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the right-of-way. Poles are regulated herein only as specifically set forth in this article.

White lining means marking the excavation site with white washable marking paint or flags prior to requesting a utility location in order to further identify the site.

Sec. 95-243 Utility coordinator

Each utility and right-of-way user shall name a utility coordinator who shall be the representative and point of contact for all communications from the city and who shall meet with the right-of-way manager when so requested.

Sec. 95-244 Field utility coordination

(a) The right-of-way user shall notify the department at each of the following times during a project:

- (1) Forty-eight hours before the start of construction;
- (2) Upon completion of the initial backfill; and
- (3) Upon completion of the project.

The right-of-way user shall make a request for a utility locate in compliance with the Underground Facility Damage Prevention and Safety Act.

(b) The use of markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of “nonwashable” markers is prohibited.

(c) Compliance with the Texas Utilities Code, as amended, is required at all times.

(d) All barricades, plates, cones, traffic directional equipment and all other traffic control devices owned, leased or used by the right-of-way user and used on or near any excavation shall be clearly and visibly marked with the name of the permittee and/or right-of-way user or subcontractor, as applicable, at all times such equipment is used on or near the right-of-way. An exception to the marking requirement may be made in the sole discretion of the right-of-way manager in the event the traffic control equipment is not owned by the permittee or right-of-way user.

Sec. 95-245 Maps and records of registrants

(a) Within 30 days of passage of this article, each right-of-way user shall provide the city an accurate map of their service area. The map shall be in electronic format overlaid over the Denton County and North Central Texas Council of Governments digital map, as applicable. In dual coverage areas, the city may request additional information to enable identification of right-of-way users.

(b) Each right-of-way user must maintain accurate maps and records of its facilities. If available, the city's road network may be provided in digital format upon request. The right-of-way user is encouraged to maintain their system maps geo-referenced to the city's geodetic network, which is on the Denton County digital map or the North Central Texas Council of Governments digital map, as applicable. The map should include true bearings and distances to the nearest established street lines and official monuments, which shall be accurately described on the map. The right-of-way user will provide the city with digital information within 90 days of a request for maps from the city for any user with less than 50 miles of utilities within the city. All other right-of-way users shall provide the digital information within one year of the request. Thereafter, the data is to be provided to the city on an annual basis by January 1.

(c) If the maps and records submitted in response to any request by or requirement of the city include information expressly designated by the right-of-way user as a trade secret or other confidential information protected from disclosure by state law, the city and its agents, employees, or other representatives may not disclose that information to the public without the consent of the right-of-way user, 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 right-of-way user to designate all matters in its maps and records as confidential or as trade secrets.

Sec. 95-246 Notice

Notice for purposes of this article shall be made to the city via electronic message (e-mail), overnight courier (generally used carrier with tracing available) or hand delivery with signed receipt, facsimile to the department, or United States mail return receipt required.

Sec. 95-247 Registration

(a) Nothing in this section relieves a right-of-way user and/or utility from obtaining a permit under this article to perform work in the right-of-way.

(b) In order to protect the public health, safety, and welfare, a utility maintaining or operating existing facilities in the right-of-way must register with the right-of-way manager in accordance with the following requirements:

(1) The registration must be on a form furnished by the right-of-way manager and made in the name of the right-of-way user that owns the facilities.

(2) Registration expires December 31 of the following year after the first registration occurs. If the utility fails to renew registration by that date, the city will send by certified mail a notice of noncompliance to the address listed on the registration. If the utility fails to renew registration within 30 calendar days after the date of sending the notification, the facilities of the utility will be deemed to have been legally abandoned.

(3) If information provided as part of the registration changes, the utility must inform the right-of-way manager, in writing, not more than 30 days after the date the change occurs.

(4) The utility shall also include the following registration:

a. The name of the utility using the right-of-way, including any business name, assumed name, or trade name the utility operates under or has operated under in the city within the past five years.

b. If the utility is a CTP, the certificate number issued by the Texas Public Utility Commission.

c. The ordinance number of any franchise or license issued by the city that authorizes the utility to use the right-of-way.

d. The names, addresses and telephone numbers of at least two persons who will be general, day-to-day contacts for the utility. At least one of the addresses must be within the Dallas/Fort Worth or Sherman/Denison metropolitan areas.

e. The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the utility.

f. The name, address and telephone number of any contractor or subcontractor, who will be working in the right-of-way on behalf of the utility. This list may be amended as needed by the utility; however, no work shall be performed in the right-of-way by a contractor or subcontractor that is not on the list, regardless of whether a permit is required.

g. The names and telephone numbers of at least two persons serving as emergency contacts who can be reached by telephone 24 hours a day, seven days a week. The telephone numbers should be accessible without the city having to pay long distance telephone or toll charge.

h. Proof of existing insurance that complies with Division 4.

(c) Upon completion of registration, the city will provide the right-of-way user a registration certificate valid until the end of the calendar year during which the registration was completed. The right-of-way user may make as many photocopies of the registration certificate as necessary. The right-of-way user is responsible for ensuring that all contractors, listed in accordance with subsection (b)(4)(f) above have a copy of the registration certificate on site when work is being conducted under the provisions of the registration certificate.

Sec. 95-248 Traffic handling training

The right-of-way user is responsible for work zone safety including, but not limited to, traffic control through the designated traffic control representative. The representative is responsible for compliance with the TMUTCD and the traffic control plan (if required) at all work zone sites. The traffic control representative shall ensure employees on the job site have adequate training.

Sec. 95-249 Reporting obligations

All right-of-way users shall, upon request, provide proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any governmental entity, including, but not limited to, the city, state, or federal government, or railroad or pipeline company, including a description of the right-of-way user's intended use of the right-of-way, information sufficient to determine whether the right-of-way user is subject to franchising or licensing by the city, and information to determine whether the right-of-way user has applied for and received any certificate of authority required by the PUCT. The information provided shall be sufficient enough to determine whether the right-of-way user has applied for and received any permit or other approvals required by the FCC. Right-of-way user shall provide all such other information as may be reasonably required by the city to complete the registration statement.

Sec. 95-250 Surface mounted markers

Where surface mounted markers are needed, curb mounted medallions shall be used whenever possible.

Sec. 95-251 Relocation of facilities for city projects and public improvements

(a) In the exercise of governmental functions, the city has first priority over all uses of the right-of-way. The city reserves the right to, among other things, lay water, sewer, drainage, and other pipelines or cables and conduits, and to do underground and overhead work, and attachments, restructuring, or changes in street facilities in across, along, over, or under a public

street, alley or right-of-way occupied by an agency or right-of-way user, and to change the curb, sidewalks, or the grade of streets.

(b) The right-of-way user must relocate its facilities, at its own expense and in accordance with Section 95-295, prior to the start of construction of a city project. Failure to comply with this provision shall subject the right-of-way user to the enforcement provisions contained herein.

(c) A permit will be required when making facility adjustments in preparation for city projects.

Sec. 95-252 Permit required

It is unlawful for any person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, tunnel, excavate or close lanes on a thoroughfare without first having made application and obtained a permit therefor in compliance with the Public Right-of-Way Permitting and Construction Manual, promulgated and amended by the right-of-way manager, except for as allowed by this section. It is unlawful for any person, its agents, servants or employees to make or cause to be made any excavation in or under the surface of any right-of-way for the installation, repair or removal of any facilities, or for any other purpose without first obtaining from the right-of-way manager a permit in compliance with this article.

(1) Before issuing a permit, the right-of-way manager shall have been provided a written application, on a form furnished by the right-of-way manager, setting forth the name and residence or business address of the applicant; the location and approximate area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the excavation. The application form shall include plans prepared in accordance with city specifications. Plans shall be drawn at a reasonable scale that legibly and accurately show all existing improvements and proposed work. All proposed work must be shown in heavy or bold type lines and fonts. If proposed work is in phases or part of another overall drawing, show all existing and future work in lighter or faded out lines and fonts. If right-of-way user cannot show distinctive line weights, the plans shall clearly label the above information using text. 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.

(2) At the time the permit is issued, the applicant shall pay a nonrefundable permit application fee in an amount as provided for in the master fee schedule of the city.

(3) The proposed location, depth and other characteristics of any facilities for which the permit is issued shall be subject to approval of the right-of-way manager, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this article.

(4) No fee or requirement authorized or imposed pursuant to this article shall be construed to affect or alter in any way any obligation of public and/or private utilities

with facilities installed in any right-of-way to relocate the facilities, at no cost to the city, subject to state law, if applicable, in the event that relocation is required by the city to accommodate a proper governmental use of the right-of-way.

(5) Combinations of permits shall be permitted at the sole discretion of the right-of-way manager. Fees shall be assessed based on the excavations permitted.

(6) Subdivision monuments, historical markers, and any other signs or structures with foundations in the right-of-way, excluding billboards, are subject to this article.

Sec. 95-253 Exceptions to required permit

(a) The right-of-way manager reserves the right in his discretion to require a right-of-way permit on service connections. Unless otherwise required by the right-of-way manager, service connections do not require a permit if all of the following conditions are met:

(1) The service connection excavation shall not exceed four feet inside the right-of-way to property line;

(2) All excavation shall be in accordance with service connection drawings;

(3) The address for the service connection is on the city provided form, which is submitted to the right-of-way manager via e-mail. Work shall not begin until the electronic form is transmitted to the right-of-way manager;

(4) The excavation required is less than 12 inches in depth;

(5) The excavation is no wider than two inches or is hand dug; and

(6) The service connection does not require boring.

(b) Irrigation system installation requires a permit per existing city codes.

Sec. 95-254 Permit application

(a) Application for a permit shall be addressed to the right-of-way manager and made on a form furnished for that purpose, stating the extent, dimensions, character and purpose of the cut or excavation to be made, the location, by street and number if possible, where the work is to be done, and the time in which it is to be completed. The application form shall be accompanied by maps of the existing facilities in the area, to the extent available, and the location of the proposed facilities, methodology of construction, and proposed start and completion dates. When the work includes excavating, which will exceed five feet in depth, a trench safety design sealed by a licensed professional engineer shall also accompany the application, unless otherwise provided by law.

(b) A permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that which is specified in the permit must apply for and receive a new right-of-way permit.

(c) Fees shall apply to all right-of-way users unless governed by an existing agreement with the City. Applicants may apply jointly for permits to excavate the right-of-way at the same time and place. Applicants who apply jointly for a right-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay. The city will recognize only one point of contact.

(d) Permits will be issued or denied within ten (10) days of the city receiving a complete application. Permits shall be valid for the dates specified in the permit. The applicant may request but is not guaranteed the permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. The city may approve or deny the application for such extended permit period. No permittee may commence work before the permit start date and, except as provided herein, no permittee may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and may receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the city prior to the permit end date. Applicants are encouraged to request a pre-submission meeting for large projects.

(e) An expedited permit may be requested, and shall be issued or denied within five (5) days of application upon a showing of good cause, as solely determined by the right-of-way manager.

Sec. 95-255 Issuance of permit

Every person making application for a permit in accordance with the provisions of this article, and having complied with such provisions, shall be entitled thereto, and, upon filing such application with the right-of-way manager, it shall be his duty to issue the permit, when the provisions of this article have been complied with.

(1) Upon receiving a written application for a permit and a plan prepared in accordance with the city specifications, the right-of-way manager's designee shall set forth all requirements, approve or disapprove the application, sign and return it to applicant. Excepting only emergency excavations, at least forty-eight (48) hours prior to the start of work, the applicant shall notify the right-of-way manager the date the work will commence when traffic control devices are necessary on a thoroughfare.

(2) No permit shall be transferable. A permit shall be void unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.

(3) Each permit shall state a time period for completion of all the work to be done hereunder. The right-of-way manager may in his sole discretion, grant extensions of time.

(4) No person in violation of any requirement of this article shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued a permit on the person's behalf, until the outstanding violation is/are corrected or a plan for correction is approved by the right-of-way manager. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the city at law or equity.

(5) No work shall be done under any permit issued under this article except as stated in the permit. If the permit is allowed to expire, the right-of-way user shall procure a new permit, paying the applicable fee, prior to proceeding with any such work.

Sec. 95-256 Posting of signs

The right-of-way user and contractor (if used) shall be identified by three feet by three feet information signs on all work requiring a permit. The signs shall state the name and phone number of the right-of-way user and contractor (if used). The signs shall be placed in the right-of-way on each approach to the location where construction is occurring from the time of 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.

Sec. 95-257 Excavation to be under supervision of the right-of-way manager

(a) Any right-of-way user engaged in making or backfilling any excavation in any right-of-way shall, at all times while such work is in progress, keep at the job location the permit, or a copy thereof, and shall provide of the same, when requested by any authorized city employee. At all times while the work is in progress, the right-of-way user shall also maintain, at the job location, a sign, barricade or other device bearing the right-of-way user's name.

(b) The right-of-way user shall protect from damage, utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, irrigation, sidewalks, streets, signs, street lights, or other property at, near or encountered in its work. The right-of-way user shall determine the boundary of the right-of-way.

(c) All excavations and other construction in the streets shall be conducted so as to interfere as little as practicable with the use of right-of-way and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the city pursuant to the policy and regulatory powers of the city necessary to provide for public convenience. The right-of-way user shall not trespass upon private property. The right-of-way user shall determine the boundary between right-of-way and private property and place stakes/markers indicating the boundary to remain in place for the duration of the work.

(d) The city reserves the right to among others, lay, and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and facilities, as well as drainage pipes, and channels and streets, and to perform, and allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of

the city, in, across, along, over or under any right-of-way or public place occupied by a right-of-way user and to change any curb or sidewalk or the grade of any street and to maintain all of the city's facilities. In allowing such work to be performed by others, the city shall not be liable to a right-of-way user for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a right-of-way user by such third party.

(e) All transmission and distribution structures, lines, equipment and facilities erected by a right-of-way user within the city shall be so located as to cause minimum interference with the proper use of the right-of-way, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets. No pole may be placed in an area prohibited by another section of this article or which interferes with the public's unimpeded use of the right-of-way.

(f) If the city requires a right-of-way user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the city, to use, or to use with greater convenience, any right-of-way or public place, the right-of-way user shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a right-of-way user for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of a right-of-way user's facilities; provided, however, that the city shall never be liable for such reimbursement.

Sec. 95-258 Registration certificate required

It is unlawful for any person, its agents, servants or employees to perform construction in the right-of-way without first having made either application and obtained a permit therefor or have in possession a valid registration certificate. A registration certificate may only be used for construction activities not requiring a permit in accordance with this article. These activities include tree trimming, general maintenance, line work and providing a service connection from the property line to a customer provided that no excavation is required in the right-of-way.

Sec. 95-259 Hours of operation for nonemergency work

(a) Excavation and boring shall be conducted between 7:00 a.m. and thirty (30) minutes before sundown on Monday through Friday, except on holidays. No excavation or boring shall be performed on holidays.

(b) All other work requiring an inspection shall be done between 7:00 a.m. and thirty (30) minutes before sundown on Monday through Friday, except on holidays. No work shall be performed on holidays. A right-of-way user may work on Saturday subject to the approval of the right-of-way manager and a notification no later than noon on Thursday before the Saturday in which the work is to be performed. The Saturday inspection fee must be paid prior to noon on Thursday prior to the Saturday in which the work is to be performed.

Sec. 95-260 Denial of permit

A permit may be denied or suspended for any of the following reasons:

- (1) Failure to provide proof of a surety bond or liability insurance acceptable to the city or notice of termination of the same.
- (2) Failure to secure a contractor's license or other required license.
- (3) Failure to perform in accordance with the requirements of this article.
- (4) The excavation would be in a street and not otherwise permitted by this article.
- (5) The proposed warning or other traffic control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the right-of-way manager.
- (6) The proposed activity would violate any city ordinance or state or federal law, rule, regulation or statute.
- (7) The permit application contains false or misleading information.
- (8) The activity would cause a public health or safety hazard.
- (9) The right-of-way user is not authorized within the city.
- (10) The right-of-way user is in violation of this article relative to work in progress.
- (11) The right-of-way user has not compensated the city, or is not legally obligated to compensate the city by contract, by agreement or by law, for using the public property; or the right-of-way user has failed to timely make required payments.

Sec. 95-261 Appeal

A right-of-way user that: (i) has been denied registration; (ii) has been denied a permit; (iii) has had a permit revoked; or (iv) believes that fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request as follows:

- (1) If an applicant desires to appeal a decision, the applicant may file a written notice of appeal with the right-of-way manager within five business days of the date the decision was rendered. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The right-of-way manager shall provide a written decision within five business days. Failure to render a decision within five business days shall constitute a denial.
- (2) If a further denial is given, the appellant may thereafter file a written notice of appeal to the City Manager within five business days of receipt of the right-of-way

manager's written decision. The City Manager shall provide a written decision within five business days of receipt of an appeal in accordance with this section. Failure to render a decision within five business days shall constitute a denial.

DIVISION 3 TECHNICAL SPECIFICATIONS

Sec. 95-281 Lawful use of right-of-way

(a) The use of the right-of-way in any manner which violates federal, state, or local laws, or city codes, ordinances and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All permittees shall provide satisfactory evidence of compliance with the foregoing upon request of the city.

(b) The permittee shall dispose of all material removed from the right-of-way and any waste created by permittee in compliance with all state, federal and local laws and requirements. Temporary storage of material may be placed in a pile no higher than 30 inches.

(c) If a permittee excavates any contaminated, regulated or hazardous materials in the right-of-way, such permittee shall be responsible for environmental assessment, excavation, testing, transportation and disposal of that material in accordance with applicable law. The permittee shall promptly notify the city, orally, of the condition within two hours of discovery of any contaminated, regulated or hazardous materials in the right-of-way, and within eight hours provide the aforementioned information to the city in writing. The permittee must consult with and receive written authorization from the city before undertaking any of the steps/actions set forth in this subsection.

Sec. 95-282 Compliance with safety regulations

The permittee and right-of-way user shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not limitation, the occupational safety and health standards for the construction industry.

Sec. 95-283 Conformance with the thoroughfare plan

A right-of-way user should consult the city's thoroughfare plan prior to the acquisition of any interest in real property in the city for the installation or relocation of service lines or other equipment or facilities along or adjacent to any street, right-of-way, thoroughfare, highway, or any proposed street, right-of-way, highway or thoroughfare to attempt to minimize any future conflict regarding the location of such facilities. All right-of-way users are charged at all times with constructive notice of the thoroughfare plan. The city shall, at a minimum, have no liability for the value of or loss by a right-of-way user of any improvements constructed in the area

shown on the thoroughfare plan, except as provided herein. Typical locations of city facilities are depicted in in the city standard details.

Sec. 95-284 Tree trimming and graffiti abatement

Permission is granted to a right-of-way user, subject to the requirements of this code, as it exists or may be amended from time to time, to trim trees upon and overhanging the right-of-way, so as to prevent the branches of such trees from coming in contact with a right-of-way user's facilities. When so directed by the city, the tree trimming shall be done under the supervision and direction of the city. The right-of-way user shall make the necessary repairs or restoration, including, but not limited to, cleaning of graffiti, as soon as practicable but not to exceed seven days after the right-of-way user discovers or learns of any misuse, destruction, damage or vandalism to its facilities.

Sec. 95-285 Employee communication

The right-of-way user shall ensure that there is at least one employee on the job site, during any type of work activity, who can read, write and speak English fluently.

Sec. 95-286 Routing and spatial assignment

The city reserves the right, in the permit or otherwise, to restrict or determine the route (pathway) and/or spatial location, whether horizontal, vertical or depth, of any facility and/or structure or improvement in the right-of-way. The city reserves the right to reserve space for future utilities.

Sec. 95-287 Commencement and completion

After obtaining the permit and prior to commencing the work, the permittee shall notify the right-of-way manager, and shall commence and complete all work within the time specified in the permit, unless an extension of time is granted by the right-of-way manager. No work shall commence until erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades are in place.

Sec. 95-288 Notification of affected property owners

Except in the case of an emergency, whenever excavation is required in the right-of-way adjacent to an occupied property, the right-of-way user shall notify the property owner of the activity through use of a door hanger, which shall include the following information:

- (1) Permit number;
- (2) Identify of the contractor and the right-of-way user, including a contact name and phone number by which more information regarding the project could be obtained and a 24-hour a day emergency phone number; and
- (3) The anticipated duration of the construction work.

Sec. 95-289 Safe conduct of work

Every permittee and right-of-way user shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public, using the street or right-of-way where the work is being performed, from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings and excavation, in accordance with TMUTCD. All material, implements and tools stored upon the premises and used in connection with the excavation shall be stored in a safe and nonhazardous manner.

Sec. 95-290 Revocation or suspension of permit

The city reserves its right, as provided herein, to revoke or suspend any permit, without refund of the permit fee, in the event of a breach by the permittee of the terms and/or conditions of the permit, this article and/or any other city ordinance. A breach of the terms of the permit shall include, but not be limited to any of the following:

- (1) The violation of any provision of the permit.
- (2) An evasion or attempt to evade any provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens.
- (3) Any material misrepresentation of any fact in the permit application.
- (4) The failure to meet insurance, surety bond or indemnification requirements.
- (5) The failure to complete the work as specified in the permit.
- (6) The failure to correct a condition indicated on an order issued pursuant to this article.
- (7) Repeated traffic control violation(s).
- (8) Failure to protect facilities or repair facilities damaged in the right-of-way.
- (9) Violation of any part of this article.
- (10) Recognition by the right-of-way manager that a permit was issued in error.
- (11) Failing to comply with an order of the right-of-way manager on the permit and any other valid permit held by the right-of-way user.
- (12) Any safety violation or other action that threatens the health, welfare and/or safety of the public as solely determined by the right-of-way manager.

If the right-of-way manager determines that the permittee has committed a breach of any law or condition of the right-of-way permit, the right-of-way manager shall make a written demand

upon the permittee to remedy such violation. Continued violation may be cause for revocation of the permit or legal action, or both. The right-of-way manager may, in his discretion, revoke the permit, provide specifications to cure the breach, or both. Within two business days of receiving notification of the breach, permittee shall contact the right-of-way manager with a plan, acceptable to the right-of-way manager, for correction of the breach. Permittee's failure to do so or permittee's failure to timely implement the approved plan shall be cause for revocation of the permit.

Sec. 95-291 Work not in accordance with permit declared unlawful

(a) It shall be unlawful for any person to make, cause or allow to be made, any excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, utility pole or other utility or appliance in or under the surface of any street, alley, sidewalk, right-of-way or other public place, at any location, other than that described in the application for the permit and as shown on the plans filed with the right-of-way manager, and in accordance with the requirements of the permit. If the circumstances appearing after the excavation is commenced make it impossible to comply with the permit, the right-of-way manager may, in his sole discretion, grant a waiver to take the circumstances into account.

(b) Failure to comply with requirements set forth in this article or on any permit shall be cause for revocation of the subject permit and of any other permits held by the same permittee until the violations have been corrected or the right-of-way manager has approved alternative requirements.

Sec. 95-292 Work done without a permit

No cut, excavation, grading or disturbing of the right-of-way or wires on poles, in any way, shall be made, other than excavations necessary for emergency work, without first securing a permit. No person or right-of-way user shall, at any time, open or encumber more of the right-of-way than shall be reasonably necessary to complete a project in the most expeditious manner.

Sec. 95-293 Cessation of work

At any time, the right-of-way manager may order the immediate cessation of any work that poses a threat to the health, safety or well-being of the public. The right-of-way manager may revoke the permit of any permittee in any instance where there is a threat to the health, safety or wellbeing of the public.

Sec. 95-294 Violations of standards; notice

The right-of-way manager may issue a written notice to the permittee indicating work that does not conform to the terms of the permit, applicable standards, conditions, codes or other applicable regulation. Within five days after issuance of written notice, the permittee shall present proof to the right-of-way manager that the violation has been corrected. If such proof has not been presented within the required time, the right-of-way manager may revoke the permit.

Sec. 95-295 Location and relocation of facilities

Subject to applicable federal, state, and local laws, the right-of-way user shall, upon the request of the city, which shall be in writing, locate and/or relocate its facilities situated within any right-of-way, at no expense to the city, where reasonable and necessary to accommodate any city project. The written request provided by the city shall state the date by which the relocation by the right-of-way user shall be completed and a reasonable amount of time shall be provided by the city. When relocation is necessitated by federal government requirements, which includes reimbursements of costs, the city will reimburse applicant for its proportionate share from funds provided to the city in such reimbursements.

Sec. 95-296 Relocation facilities for the city

In the event the city finds it necessary to move a right-of-way user's facilities to protect the right-of-way, any city utilities and/or street, the city shall notify the local representative of the right-of-way user. Right-of-way user shall promptly move or facilitate the relocation of the subject facilities at right-of-way user's sole expense.

Sec. 95-297 Abandoned facilities

(a) A right-of-way user owning abandoned facilities in the right-of-way shall:

(1) Remove its facilities and repair, at its sole expense, any damage caused by the removal. The right-of-way manager may allow some or all facilities to remain if the right-of-way manager determines same is in the best interest of the public to do so; or

(2) Provide information satisfactory to the city that the right-of-way user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized right-of-way user.

(b) The facilities of the right-of-way user who fails to comply with this section, and those facilities which remain unused for two years, shall be deemed to be abandoned unless, within the aforesaid two-year period, the city receives written confirmation and reasonable evidence, as solely determined by city, that the right-of-way user intends to use the facilities. The city may exercise any remedies and/or rights it has at law or in equity, including, but not limited to, taking possession of the abandoned facilities or requiring the removal of the facilities by the right-of-way user at the right-of-way user's sole expense.

Sec. 95-298 Underground service requirements

Placement of new utility support structures (poles) shall be prohibited for electrical distribution lines with 60,000 volts and less and all communication utilities, unless otherwise allowed by other law or an existing franchise agreement between the right-of-way user and the city or a PUCT tariff. This does not prohibit replacing existing poles for maintenance purposes.

Sec. 95-299 Location of poles and conduits

All poles in the right-of-way shall be of sound material and straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to interfere with vehicular and pedestrian travel. The location and route of all conduits, fiber, cables, utilities and facilities placed and constructed by a right-of-way user in the construction and maintenance of its system in the city shall be subject to the reasonable and proper control, direction and approval of the city. Placement of poles and anchor guys along curvilinear streets shall comply with city ordinances and regulations.

Sec. 95-300 Size and location of aboveground facilities

The maximum dimensions for ground mounted utility structures above the ground in the right-of-way adjacent to streets are seven feet long (parallel to the road), two feet wide (perpendicular to the road) and six feet in height. For structures three feet or less in height, the width may be 44 inches. This does not include poles. The height of utility structures shall be measured from the lowest grade at any point 18 inches or less from the side of the structure that faces the street to the highest point of the structure. Utility structures exceeding those dimensions shall not be located in the right-of-way adjacent to streets, unless otherwise approved in writing by the right-of-way manager. All aboveground facilities shall be located outside of the corner visibility triangle at all intersections, future intersections and all driveways. No aboveground facilities may be placed in a parkway that is across from a median opening.

Sec. 95-301 Height of overhead line

The user shall ensure all overhead lines are constructed and maintained so that the minimum clearances are in compliance with the National Electrical Code as it exists or may be amended.

Sec. 95-302 Attachments to poles

- (a) Nothing shall obligate or restrict a right-of-way user from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies authorized to operate within the city.
- (b) A right-of-way user shall utilize existing pole space, conduit, and other facilities whenever reasonably and/or economically possible.
- (c) Antennas must be mounted to the top of the pole, or flush to the pole near the top, in a screen that is coated or painted an approved color to match the pole to camouflage the installation.
- (d) Equipment, other than antennas, must be in an underground vault. Vaults must be flush to the ground.
- (e) If the existing pole already has more than two existing risers/drops, the pole must be replaced with a metal pole and all wires and cables must be run in conduit inside the pole. The existing drops will also be relocated inside the new pole and underground entry into the pole

through the foundation is required. When installation will result in two or fewer risers/drops on the pole, the wires and cable may be installed as a riser/drop in conduit painted an approved color.

Sec. 95-303 Temporary rearrangement of aerial wires

The right-of-way user shall rearrange its transmission media temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall, pay the reasonable and necessary expense of such temporary rearrangements. The right-of-way user shall in a reasonable time frame and reasonable cost, remove its transmission media in connection with the demolition of unsafe structures, including emergency or ordered demolitions at no cost to the city. The right-of-way user may invoice the requesting parties for the cost of this work, where applicable.

Sec. 95-304 Street closures

(a) All lane closures on any thoroughfare shall comply with TMUTCD, and shall include a lane closure exhibit to be submitted with the permit to the right-of-way manager. The right-of-way manager may require a traffic control plan. Arrow boards and message boards may be required for lane closures on thoroughfares.

(b) Except in an emergency, no thoroughfare shall be closed on weekdays during the hours of 6:30 a.m. to 9:00 a.m. and 3:30 p.m. to 7:00 p.m. or outside normal working hours of the city. Every day of the week, all roadways shall be open to traffic by sunset on the same day as the construction.

(c) All lane closures require 24-hour notification of the police and fire departments prior to closing

Sec. 95-305 Site maintenance during construction and prior to full restoration

(a) Erosion control and stormwater management. The right-of-way user shall be responsible for stormwater management, erosion control and excavation safety measures that comply with city, state and federal guidelines. Requirements shall include, but not limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request of right-of-way manager, the right-of-way user may be required to furnish documentation submitted or received from the federal or state government.

(b) Dust control. The right-of-way user shall ensure that the work is conducted and site maintained to minimize blowing dust. At any time dust leaves the job site so that it is a nuisance, the work will stop until measures can be taken to eliminate the dust.

(c) Traffic control safety. In the event of noncompliance with the TMUTCD, the right-of-way user shall be notified of the violation. In the event of continued noncompliance, the right-of-way

manager may revoke the permit, in addition to any other remedies available to the city. At any time the right-of-way manager determines the work threatens public safety, he may take immediate action as necessary including but not limited to, stopping all work, or have a third party make the repairs at the expense of the applicant.

(d) Responsibility for signs, barricades and warning devices. The right-of-way user working in any right-of-way is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The right-of-way user shall meet all requirements for barricading and traffic control as specified in the TMUTCD.

(1) Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including without limitation, those in TMUTCD, may place and maintain the traffic control devices in a construction area.

(2) The right-of-way user must either: (i) subcontract the barricading to a firm specializing in traffic control; or (ii) submit the qualifications and name of employees to the right-of-way user manager for approval prior to the work commencing. The right-of-way user must also submit a traffic control plan for review when required by this article. All signs and barricades must conform to the requirements of the TMUTCD.

(3) All barricades, plates, and other traffic control equipment must conform to TMUTCD specifications and must be inspected and maintained by the traffic control representative.

(4) All barricades, plates and other traffic control equipment must display accurate and sufficient information including without limitation, the name of the right-of-way user.

(5) Noncompliance with the TMUTCD shall be cited in writing. In the event of noncompliance after citation, the right-of-way manager may place the necessary devices as required, and the right-of-way user shall reimburse the city for all such expenses as well as \$500.00 for noncompliance. Failure to comply with this provision may result in denial of application for future permits.

(6) All traffic control devices must be removed immediately upon completion of work.

(e) Duty to barricade. At all times during construction activity, the contractor and/or right-of-way user, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including without limitation, watchmen certified in accordance with the safety training described in this article, if necessary, upon and around the work and for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

Sec. 95-306 Inspection

The permittee shall make the work site accessible to the city, and others as authorized by law, for inspection at all reasonable times during performance of the work.

Sec. 95-307 Materials testing

The City will require testing of materials used in construction in or near the right-of-way to determine conformance with city construction specifications, including, but not limited to, compaction tests on backfill materials, subgrade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary by the City. The right-of-way user shall, at his expense, hire a testing laboratory with current accreditation by the American Association for Laboratory Accreditation, American Association of State Highway and Transportation Officials (AASHTO) or another nationally recognized accreditation agency that verifies compliance with ASTM E 329 and that demonstrates the laboratory's capabilities to perform applicable ASTM or AASHTO test procedures, as may be required.

Sec. 95-308 Duties of persons making excavations or creating obstructions

Any person who shall cause to be made any excavation or obstruction in any street or right-of-way shall not allow the same to remain there beyond a time reasonably sufficient for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of such street and/or right-of-way so as to restore the same to its condition previous to the making of such excavation or obstruction. It shall be the duty of such excavators to protect the area while such condition exists and promptly to repair the same so as to leave the street or right-of-way in as good condition as before the excavation.

Sec. 95-309 Emergency excavations

Nothing in this article shall be construed to prevent any person maintaining any pipe, conduit or duct in or under any street, or right-of-way by virtue of any law, article or permit, from making such excavation as may be necessary for compliance with law or for the preservation of life or property when the necessity arises, provided that the person making the excavation shall notify the right-of-way manager within 24 hours. Except as specifically provided otherwise in this article for excavations authorized by this section, permittee shall be subject to all fees and requirements of this article.

Sec. 95-310 Excavation in streets

Except in case of an emergency there shall be no excavation in any street without the prior written approval of the right-of-way manager. Any request for a permit to excavate a street shall include a description of the proposed work and proposed restoration of the area, as well as a statement of clear and convincing evidence is provided to the right-of-way manager as to why alternate procedures cannot or should not be used in lieu of excavating a street. All pavement cuts and repairs shall be performed by a contractor with experience in street repair work. Any

damage to pavement outside the removal area shall also be repaired subject to approval of the right-of-way manager.

- (1) Excavation in Portland cement concrete (PCC) pavement surface. If the existing pavement is PCC, the concrete shall be cut first with a saw to a depth of the full the thickness of the concrete or 6", whichever is greater, and the full width of the trench, which shall also cut any reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the concrete and excavated to undisturbed soil. Further criteria is set forth in the city's standard details.
- (2) Excavation in hot mix asphalt concrete (HMAC) pavement surface. If the existing pavement is HMAC, the HMAC shall be cut first with a saw to a depth of the full thickness of the pavement or 6", whichever is greater, and the full width of the trench, which shall also cut any reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the pavement and excavated to undisturbed soil. Further criteria is set forth in the city's standard details.
- (3) Jacking and boring. A permittee or right-of-way user shall perform all work in conformance with methods approved by the city and in such a manner as to not interfere or disturb existing or planned infrastructure.
- (4) Responsibility of excavated area maintenance. A permittee or right-of-way user shall warrant and be responsible for its repairs in the right-of-way for two years from the completion date of any repair.

Sec. 95-311 Backfill of excavated area

- (a) Open trenches may be temporarily backfilled for the convenience of the permittee or the public safety. Traffic bearing plates can be used temporarily in conformance with city requirements. At least one hour prior to beginning permanent backfill operations, the permittee shall notify the right-of-way manager of the time the backfill will begin.
- (b) All excess water and mud shall be removed from the trench prior to backfilling. Any backfill placed during a rainy period or at other times, where excess water cannot be prevented from entering the trench, will be considered temporary and shall be removed as soon as weather permits. All disturbed base material or any base that has been undermined shall be removed and discarded. Compaction of all backfill shall be 95 percent of maximum density with a moisture content of minus two percent to plus four percent of optimum moisture content as determined by ASTM D698 under or near paved surfaces, future paved surfaces or otherwise as determined by right-of-way manager. Outside of pavement surfaces, compaction of all backfill shall be 95 percent of maximum density with a moisture content of minus two percent to plus four percent of optimum moisture content as determined by ASTM D698, and be smoothed, raked, and topsoil and grass or other landscaping installed to match the surrounding conditions.

Sec. 95-312 Right-of-way restoration requirements

(a) The work to be done pursuant to the permit and any repair and/or subsequent restoration of the right-of-way must be completed within the dates specified in the permit. In the event of circumstances beyond the control of the permittee or when work is prohibited by unseasonable or unreasonable conditions, the right-of-way manager may, in his sole discretion, extend the dates on receipt of a substantiated supplementary application for a permit extension.

(b) All earth, materials, sidewalk, pavement, utilities, conduits, crossing, irrigation, landscaping, monuments, manhole covers, valve covers, meter box lids or improvements of any kind, which are owned or possessed by the city, and damaged, disturbed, or removed by a right-of-way user shall be fully repaired promptly by the right-of-way user, at its sole expense, to the reasonable satisfaction of the right-of-way manager with material approved by the City.

(c) After any excavation, the right-of-way user shall, at its expense, restore the right-of-way, trench envelope, pavement structure and the surrounding area, to the same or better condition than it was prior to the excavation. The restoration shall be made in accordance with specifications set forth herein, and the repair shall be covered by a maintenance bond for two years from the completion date of any repair.

(d) In the event the right-of-way user fails to restore the right-of-way in the manner and to the condition required herein, or fails to satisfactorily and/or timely complete all restoration, the city may, at its option, serve written notice upon the right-of-way user that, unless within five days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the right-of-way by the right-of-way user, the city may take over the work and prosecute same to completion, by contract or otherwise, at the sole expense of the right-of-way user, and right-of-way user, and its surety, shall be liable to the city for any and all cost incurred by the city by reason of such prosecution an completion including, without limitation, the applicable public inconvenience penalty. Nothing contained herein shall limit any other remedies available to the city.

(e) If any excavation cannot be backfilled immediately, the right-of-way user shall securely and adequately cover the excavation and maintain proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

(f) In all right-of-way restoration, the right-of-way user guarantees its work and shall maintain it two years from the date of completion of any restoration. During the period following completion, the right-of-way user shall, in the event of any failure of the restoration, and upon notification from the right-of-way manager, reimburse the city for pavement restoration costs as provided for in this article. Additionally, the right-of-way user, in the event of such failure, shall within 48 hours of notice from the city, repair the subject trench envelope.

(g) The two-year guarantee period shall be applicable to, among others, failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by the city, the right-of-way user retains repair responsibility at all times during the guarantee period for the trench envelope. In locations where two or more right-of-way users have made repairs in the exact same location, the last right-of-way user to excavate shall be

responsible for the two-year guarantee in that location, unless the right-of-way manager determines, in his sole discretion, that a failure was most likely a result of work performed by another right-of-way user. That right-of-way user shall be responsible for the two-year maintenance period.

(h) All street excavations shall be perpendicular excavations, as possible, unless otherwise approved by the right-of-way manager. Excavations in streets, which are not perpendicular excavations require block-to-block and curb-to-curb pavement reconstruction, or other method of repair approved by the right-of-way manager. All repairs shall be equal or better than that which existed prior to the commencement of any work.

(i) No trench shall be opened for the purpose of laying pipes, conduits or ducts for a distance greater than can be backfilled on the same workday before sunset. Any variance from this requirement must be granted in writing from the right-of-way manager prior to work beginning.

Sec. 95-313 Restoration of pavement

Unless otherwise specified in the permit, restoration of the pavement of any street, alley, right-of-way or other public place shall be performed by the permittee.

(1) No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than 200 feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the right-of-way manager.

(2) All excavations shall comply with the city construction standards, as amended, and requirements of this article. Unless otherwise required by city standards, as amended, or if unusual conditions are encountered, the right-of-way manager may require new standards for compaction, backfill and pavement restoration.

(3) Any excavated pavement, debris and/or other rubble shall be removed, together with any surplus material, within one working day from the time such material is placed upon the street. After backfilling is completed, and prior to repaving the cut, the right-of-way user shall remove all loose paving material and trim the edges of the excavation at the street surface to the satisfaction of the right-of-way manager.

(4) Whenever any caving occurs in the sidewalks of any excavation, the pavements above such caving shall be cut away, trench backfilled, compacted and sidewalk pavement restored. In no case shall any side or lateral tamping fill any void under a pavement.

Sec. 95-314 Permanent pavement repairs

The right-of-way user will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The right-of-way user shall make the final repairs within seven days on thoroughfares that are classified as major and within 30 days on residential, local and

alley streets after the right-of-way manager makes final inspection. Backfill failures shall remain the responsibility of the right-of-way user.

Sec. 95-315 Substandard repair of pavement of right-of-way

In case the pavement or the surface of the street, alley, or right-of-way in, over or near any excavation should become depressed, cracked or broken at any time or fails in any way at any time after the excavation has been made and during the two-year warranty, the right-of-way user shall comply with any applicable obligations of this article, including, without limitation, reimbursement to the city of the cost to restore the street and/or right-of-way.

Sec. 95-316 Failure to complete work within specified time

In the event any work governed by this article is not completed by the right-of-way user within the time required or in accordance with the specifications required herein or by the right-of-way manager, the right-of-way manager may cause such work to be performed as is necessary to secure the work area to a safe and passable condition. The right-of-way user shall reimburse the city for the costs of securing the site.

Sec. 95-317 Removal and reconstruction where work is defective

All construction work in the streets, right-of-ways, sidewalks and public places of the city is declared to be subject to the exclusive control of the city, and whenever, in the sole opinion of the right-of-way manager, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or materials or because not true to the lines or grades or specification therefor given to him by the right-of-way manager, then upon written demand or notice from the right-of-way manager, such right-of-way user or contractor shall promptly remedy, complete and/or remove and reconstruct such incomplete or defective work all as the right-of-way manager may require, and these provisions shall also apply to all repair and maintenance work. If the contractor or right-of-way user shall fail or refuse to do so within a reasonable time to be specified by the right-of-way manager, then, if required by the right-of-way manager, such work shall be completed or corrected or removed and wholly or partially reconstructed by the city, in such a manner as in the opinion of the right-of-way manager may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the direction of the right-of-way manager, and the contractor or right-of-way user shall reimburse city for any and all cost incurred by the city performing the work described in this subsection.

Sec. 95-318 Cleanup of right-of-way

In every case, and at all times, the work of removing from the right-of-way all obstructions, surplus materials, debris and waste matter of every description caused by and/or accumulated from the excavation shall be the sole responsibility of the right-of-way user. The right-of-way user shall maintain the area on and around the excavation and related work in a clean, safe and orderly fashion at all times during conduct of the excavation and shall clean the same area upon completion of work. Streets shall be cleaned by use of a vacuum street sweeper. The right-of-

way user shall clean the surrounding area, as outlined above, within one day upon completion and approval of all trench work and pavement restoration unless the right-of-way manager, sufficient reason therefore having been given to his satisfaction, grants a written extension of time.

Sec. 95-319 Reporting Completion of Work

When the work under permit hereunder is completed, the permittee shall notify the city in accordance with the requirements placed on the permit. The City will schedule a final walk-through with the contractor to develop a final punch list of items to be remedied.

Sec. 95-320 Effect of article on persons engaged in construction

Any permit issued prior to the adoption of this article will remain subject to the terms and conditions of city ordinances and requirements in effect at the time of issuance of the permit and is not affected by this article, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this article.

DIVISION 4. INDEMNIFICATION, INSURANCE, BONDING AND LIABILITY

Sec. 95-341 Liability of right-of-way user

To the extent allowed by law, the right-of-way user shall be liable to the city for any damage or loss occasioned by any act and/or omission occurring in connection with its excavation, and subject to state law, the right-of-way user shall fully indemnify, hold harmless and defend the city, its councilmembers, officers, employees, agents, representatives and volunteers from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the city, its councilmembers, officers, employees, agents, representatives and volunteers may be subjected for injury of any type, death or property damage arising from or connected with any such act and/or omission. The city shall promptly notify a permittee, or right-of-way user, at the address set forth in the permit, or last known address, of any claim, suit or demand served upon the city and alleging negligent or wrongful conduct by the permittee or right-of-way user in connection with an excavation.

Sec. 95-342 Insurance

- (a) It shall be unlawful for any person, unless exempt under this Chapter, to construct, reconstruct or repair any sidewalk, driveway, curb or curb and gutter in any street, alley, easement or right-of-way of the city without having first executed and delivered to the city a current policy of liability insurance in an amount determined by the city, and such insurance must be conditioned as follows: that the principal shall fully indemnify and hold the city harmless from any and all cost, expense or damage, whether real or asserted, on account of any injury done to any person or property in the prosecution of the work, or that may arise out of or be occasioned by the performance of such work. The city shall have no duty to perform under this article until such certificate has been delivered to the department.

- (b) The city shall be entitled, upon request and without expense before issuing a permit, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the city, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon any party to the policy or the underwriter of such policy). Upon such request by the city, the right-of-way user shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
- (c) Right-of-way user shall notify the city in the event of any notice of cancellation, nonrenewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or ten days notice for cancellation due to nonpayment of premiums, which notice must be accompanied by a replacement certificate of insurance.
- (d) Nothing herein contained shall be construed as limiting in any way the extent to which the right-of-way user may be held responsible for payments of damages to persons (including death) or property resulting from the right-of-way user's, or its subcontractors', performance of the work performed in the public right-of-way.
- (e) The city owned utilities shall not be required to provide the insurance specified herein.
- (f) With respect to the right-of-way user's obligation to comply with the requirements for commercial general (public) liability insurance coverage, the city right-of-way manager may, in his discretion, allow the right-of-way user to self-insure upon annual production of evidence that is satisfactory to show the user has sufficient assets and history of performance to justify the user to self-insure.

Sec. 95-343 Performance/assurance bond

Before a permit shall be issued, the right-of-way manager may, in his discretion, may require the applicant and/or the person or entity for which the applicant is performing, to execute and deliver to the city, to be kept on file with the city, a good and sufficient bond of performance or assurance, in the sum to be determined by the city and conditioned that the person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of carelessness or negligence in the manner of performing such work or by reason of any defects therein caused or arising from careless, negligent or imperfect construction thereof, and to hold the city, its councilmembers, officers, employees, volunteers, agents, and representatives, free and harmless from liability on all such claims for damages to the performance or assurance bond which shall cover the cost of repairs in or upon the street, sidewalk or other public place where the work is to be done that may become necessary by reason of such cut or excavation having been made. The bond shall be maintained until the work is accepted by the city.

Sec. 95-344 Liability of contractor and sureties for maintenance and repair work

Any defects of workmanship or material relating to work done by an excavator during the initial project or becoming known, or which should have been known, during the guarantee period (the two years) shall be known as maintenance or repair work, and both the excavator and the sureties and/or the contractor's bond shall be fully liable for any default of such contractor under this section. In the event of a failure in the restoration of an excavation, the right-of-way user shall, at its sole expense, have one opportunity to repair, in a timely manner, the section of the restoration that has failed, which repair shall be in accordance with the standards set forth in this article. In the event of any subsequent failure of that section of the restoration, the city retains the right and option to terminate the right-of-way user's guaranty, upon written notice to the right-of-way user. In such event, the right-of-way user shall reimburse the city for its direct costs associated with the repair of the failure of the restoration work.

Sec. 95-345 When additional security required

In the event the right-of-way manager reasonably believes the contractor's or right-of-way user's solvency is threatened, the right-of-way manager may, at any time, make written demand on a contractor and/or right-of-way user for bonds, and the contractor and/or right-of-way user shall immediately furnish such additional bond or bonds to the city.

Sec. 95-346 Decision of right-of-way manager binding on contractor, right-of-way user and sureties

If any question arises as to when any work was actually begun or other specific dates, the decision of the right-of-way manager shall be conclusive on the contractor, right-of-way user, and the sureties on all such bonds.

DIVISION 5. VARIANCES AND EXEMPTIONS

Sec. 95-351 Variance/exemptions

A permittee or right-of-way user may request a variance from any of the requirements of this article by filing a written request with the right-of-way manager stating the requirement and the basis for the variance. The right-of-way manager may reject incomplete variance requests. The applicant shall bear its own expenses of the application process.

(1) Any request for a variance from any right-of-way restoration requirement shall be made in writing, in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted reconstruction and/or repair of the excavated area, if applicable.

(2) Any request for an exemption and/or variance from any penalty and/or fee, other than as provided in this article, shall be made in writing, and shall be accompanied by a written detailed request stating the reasons therefore.

(3) Any request for an exemption and/or variance from any permit, or any other requirement of this article shall be made in writing, stating in detail all reasons for the requested exemption and/or variance.

(4) The department shall grant or deny an application for a variance and/or exemption within ten days of receipt of the application for variance and/or exemption.

(5) Denial of the variance may be appealed in accordance with Section 95-261.

DIVISION 6. CERTIFIED TELECOMMUNICATION PROVIDERS

Sec. 95-381 Certified telecommunications providers authority required/nonexclusive use

A CTP must provide evidence that the CTP has acquired authorization from the PUCT pursuant to state law, prior to obtaining a permit to use public right-of-way. The CTP's right to use and occupy the public right-of-way shall not be exclusive, and the city shall have the right to exercise its police powers and manage its public right-of-way, based on the Act and all other state or federal laws.

Sec. 95-382 Transfer and notice

A CTP shall notify the right-of-way manager of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within 30 days of such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the right-of-way manager at all times during which the CTP uses the right-of-way.

Sec. 95-383 Exemption from fees

CTPs are exempted from the following fees provided for in this article:

- (1) Permit application fee, including expedited application fee and permit expiration fee;
- (2) Additional permit fee;
- (3) Saturday inspection fee;
- (4) Registration fee.

Sec. 95-384 Waiver bonds

Unless determined otherwise by the right-of-way manager a CTP will be exempt from the bonding requirements of this chapter, however, in the event that the right-of-way manager determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, and/or the health and safety of the public, then the right-of-way manager may require that a CTP

post a reasonable bond not to exceed \$100,000.00. Factors to be considered in determining reasonable grounds may include, but are not limited to, a conviction for violation of this article, a general pattern of substandard adherence to the provisions of this article or the failure to comply with this article. If three years pass from the date that the right-of-way manager requires a bond of a CTP and it has not been necessary for the city to seek performance under the bond, then a bond will no longer be required pursuant to this section.

Sec. 95-385 CTP indemnity

A CTP shall indemnify the city as specified by V.T.C.A., Local Government Code sec. 283.057, as may be amended. A CTP shall be exempt from all indemnity requirements of this article that are inconsistent with V.T.C.A., Local Government Code sec. 283.057, as amended.

DIVISION 8. NETWORK PROVIDERS

Sec. 95-391 Network providers authority required/nonexclusive use

A network provider must provide evidence that the network provider has acquired all required authorization pursuant to state law, prior to obtaining a permit to use public right-of-way. The network provider's right to use and occupy the public right-of-way shall not be exclusive, and the city shall have the right to exercise its police powers and manage its public right-of-way, based on the Texas Local Gov't Code §284 and all other state or federal laws.

Sec. 95-392 Transfer and notice

A network provider shall notify the right-of-way manager of any sale, transfer, merger or assignment of the ownership or control of a network provider's business within 30 days of such sale, transfer, merger or assignment. A network provider shall also maintain and provide current point-of-contact information with the right-of-way manager at all times during which the network uses the right-of-way.

Sec. 95-393 CTP indemnity

A network provider shall indemnify the city as specified by Texas Local Government Code, as may be amended.

Sec. 95-394 Compliance with Design Manual

A network provider shall comply with the city Wireless Services (Small Cells) Design Manual, as amended by the right-of-way manager.

DIVISION 8. MISCELLANEOUS

Sec. 95-401 Bridge weight limit violation

It shall be unlawful for the operator of any vehicle to drive, haul, push or tow, wholly or partially, any load upon a posted weight limited bridge, which collectively exceeds the officially designated and posted maximum bridge weight, whether or not all load bearing wheels travel on the bridge.

Sec. 95-402 Penalty provision

Any person, firm, corporation or business entity violating this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this Chapter shall not preclude the city from filing suit to enjoin the violation. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 3: Addition of _____ (Right-of-Way) to Article _____ (Master Fee Schedule) of _____ (_____) of the Code of Ordinances.

_____ is hereby amended by the addition of Section 1.13.009 Right-of-Way of the Code of Ordinances (and the renumbering of the other Sections of _____ Master Fee Schedule of the Code of Ordinances of the City of Corinth, Texas) to read in its entirety as follows:

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES		
Right-of-way Management		
Permit application fee		100.00
Expedited application fee		250.00
Saturday inspection fee; each Saturday		200.00
Permit expiration fee; each permit for incomplete work on expiration date if not extended		30.00
Electronic maps submittal fee; per hour of labor necessitated by hard copy submittal in lieu of electronic format (minimum fee of 2 hours)		80.00
Registration per right-of-way user per year		50.00
Inspection fee		\$1.00/LF or \$150/day of anticipated construction time, whichever is greater
Small cell application fee (This penalty shall not exceed and is capped by statutory limits)		\$500.00 (1-5 network nodes); \$250.00 (each additional network node); \$1,000.00 per pole
Small cell user fees (this penalty shall not exceed and is capped by statutory limits)		\$250.00 annually for each network node; \$20.00 per year for city pole attachment
Public inconvenience penalty		
Type	of	Unit of Cost
Penalty (Per day)		

Facility					
		31-75 days	79-90 days	90-100 days	>>100 days
Sidewalk	Per square foot	\$0.0026	\$0.0052	\$0.0078	\$0.0104
Driveway	Per each	\$39.00	\$78.00	\$117.00	\$156.00

Public inconvenience penalties are assessed and calculated from the date of expiration of the permit until date of completion of work or repair or of final backfill if turned over to the department for repair. This penalty shall not exceed and is capped by statutory limits.

SECTION 4: SEVERABILITY. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Corinth hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 5: SAVINGS/REPEALINGS. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6: PENALTY. It is the intent of the City Council of the City of Corinth in adopting this Ordinance that an offense under this Ordinance be a strict liability offense; in the prosecution of an offense under this Ordinance, no pleading or proof of intent shall be required to establish the guilt of an accused. Any person, firm, corporation or business entity violating this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this Chapter shall not preclude the city from filing suit to enjoin the violation.

SECTION 24: EFFECTIVE DATE. This Ordinance shall take effect immediately upon and after its passage and publication as provided by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF CORINTH, TEXAS this ____ day of _____, 2017.

Bill Heidemann, Mayor

ATTEST:

Kimberly Pence, City Secretary

APPROVED AS TO FORM

Mack Reinwand, City Attorney

City Council Regular and Workshop Session

Meeting Date: 06/01/2017
Title: Wireless Service (Small Cells) Design Manual
Submitted For: Mike Brownlee, City Engineer **Submitted By:** Kim Pence, City Secretary
Finance Review: N/A **Legal Review:** Yes
City Manager Review: Approval: Bob Hart, City Manager

AGENDA ITEM

Consider and act on the adoption of the Wireless Services (Small Cells) Design Manual.

AGENDA ITEM SUMMARY/BACKGROUND

Recently passed legislation (Chapter 284) provides allows certain types of providers to install and operate small cell towers in public right of way. The City of Corinth Wireless Services (Small Cell) Design Manual includes guidelines to assist wireless service providers with their design of facilities in Corinth public right of way. The manual provides additional guidance for providers who desire to install small cell towers in the public right of way. The design manual is intended to supplement the proposed Right of Way Ordinance.

In addition to the requirements of Chapter 284, the bill allows Cities to adopt a design manual that includes additional installation and construction details. The guidelines in the manual are intended to provide a uniform and aesthetically pleasing landscape which enhance the use of the right of way, and also provides a functional platform for wireless services.

Staff has prepared a Wireless Services Design Manual that includes guidelines to assist wireless service providers with their design of facilities in Corinth public right of way. The manual provides additional detail and requirements for providers:

- Wooden poles prohibited for new poles;
- Require break away poles, black, powder coated;
- Above ground facilities concealed/enclosed as much as possible
- No aerial wires
- Electric meter not mounted on pole
- Comply with visibility and accessibility standards
- Not obstruct sidewalks
- Provide vertical clearance
- Color to match pole
- New poles encouraged to be shrouded
- Decorative poles to be concealed/stealth
- Spacing requirements
- Abandonment of network nodes and poles shall be at provider's expense
- Restoration of ROW and damages to infrastructure
- Repairs
- Graffiti abatement
- Inventory of network nodes
- No further than 2' from the ROW line.

RECOMMENDATION

Staff recommends that City Council approve the Wireless Service (Small Cells) Design Manual.

City of Corinth, Texas
Wireless Services (Small Cells) Design Manual

I. Purpose

1.1. Purpose.

- A. The City of Corinth encourages the deployment of state-of-the-art small cell wireless technology within the City for the many benefits it promises the citizens of Corinth including increased connectivity and reliable networks and services.
- B. The standards and procedures provided in this *Wireless Services Design Manual* are adopted to protect the health, safety, and welfare of the public by minimizing and reducing impacts to public safety within the City's Right-of-Way and to minimize and reduce impacts to the City, its residents and visitors; and for the general health and welfare of the public.
- C. Due to the increasing number of facilities in the City's Right-of-Way, the City has amended Chapter 95 Streets, Sidewalks and Other Public Places to include Article VII, "Right-of-Way Management", which is applicable to all public service providers including Wireless Service Providers or Network Providers (collectively, "Providers") as defined by Chapter 284 of the Texas Local Government Code.
- D. In addition, the City has adopted this *Wireless Services Design Manual* to provide technical criteria and details necessary for Providers seeking to install and construct network nodes and node support poles in the City's Right-of-Way.
- E. Providers shall adhere to the requirements found in Article VII, "Right-of-Way Management" of Chapter 95 Streets and Sidewalks, the Public Right-of-Way Permitting and Construction Manual and this *Wireless Services Design Manual* for the placement of their facilities within the City's Right-of-Way.
- F. To the extent of any conflict with the Public Right-of-Way Permitting and Construction Manual, this *Wireless Services Design Manual* shall control with regard to a Provider.

II. Definitions

For purposes of this *Wireless Services Design Manual* the following terms shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

- A. "Abandon" and its derivatives means the network nodes and node support poles, or

portion thereof, that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the network nodes and node support poles, or portion thereof, has the ability to provide communications.

- B. “City” means the City of Corinth, Texas and the City’s officers and employees.
- C. “Network node” means Provider’s equipment as defined by Chapter 284 of the Texas Local Government Code.
- D. “Node support pole” means a pole as defined by Chapter 284 of the Texas Local Government Code.
- E. “Park” means the various properties under the direction, control and supervision of the City’s Director of Parks and Recreation Department pursuant to the authority granted by City Council and the City Code of Ordinances.
- F. “Permit” means a document issued by the City authorizing installation, removal, modification and other work for Provider’s network nodes or node support poles in accordance with the approved plans and specifications.
- G. “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 a private easement or the airwaves above a public right-of-way with regard to wireless telecommunications.
- H. “Traffic Signal” means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.
- I. “Underground Utility District” means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground.

III. Permitting

3.1 Attachment to Existing Poles.

Prior to installation or modification of a network node or node support pole, Provider shall complete and submit to the City a Right-of-Way Permit application, along with standard required documents and the following items:

- A. Permit fee.
- B. Aerial Map showing the location of the existing pole to which the network node is proposed to be attached, and a street view image.

- C. Plans and drawings prepared by a professional engineer licensed in the State of Texas that has evaluated the existing pole or infrastructure for structural stability to carry proposed network nodes and can bear the wind load without pole modification or whether the installation will require pole re-enforcement. If pole re-enforcement is necessary, Provider shall provide engineering design and specification drawings for the proposed alteration to the existing pole. Any pole re-enforcement or replacement shall be at Provider's sole cost. All re-enforcement or replacement poles shall match the character of the pre-existing pole in order to blend into the surrounding environment and be visually unobtrusive. City reserves the right to deny a certain type of pole due to its differences.
- D. Scaled dimensioned drawings or pictures of the proposed attachments of the network node to the existing poles or structures as well as any other proposed equipment associated with the proposal, indicating the spacing from existing curb, driveways, sidewalk, and other existing light poles and any other poles or appurtenances. This shall include a before-and-after image of the pole and all proposed attachments and associated standalone equipment.
- E. Scaled dimensioned construction plans indicating the current Right-of-Way line and showing the proposed underground conduit and equipment, and its spacing from existing utilities. The drawings shall also show a sectional profile of the Right-of-Way and identify all existing utilities and existing utility conflicts.
- F. If a City pole is proposed, the City pole ID number shall be provided.
- G. The applicant needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, or other communications components. It shall be the responsibility of the Provider to evaluate, prior to making the application for the permit, the compatibility between the existing City infrastructure and the Provider's proposed infrastructure. A network node shall not be installed in a location that causes any interference. Network nodes shall not be allowed on City's public safety radio infrastructure.
- H. A traffic control plan, SWPPP, and trench safety plan may also be required based on the proposed scope of work.
- I. The City issued Right-of-Way permit authorizes use of its Right-of-Way. Providers/applicants are responsible for obtaining permission on non-city-owned infrastructure. If the project lies within the State Right-of-Way, the applicant must provide evidence of a permit from the State.

- J. Notification to adjacent residential developments/neighborhoods within 300 feet is required on all node attachments on City infrastructure.

The proposal shall comply with the following standards:

- A. Any facilities located off pole must remain in cabinetry or enclosed structure underground, except for the electric meter pedestal. Facilities on pole shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. There shall be no external cables or electric wire/cables on pole or structures or aerial wires or cables extending from the pole or structure.
- B. The electrical meter **shall not** be mounted on a City's metal pole or structure. Provider shall use 240 voltage when connecting to any City infrastructure and provide key to meter upon inspection.
- C. All attachments to a pole that are projecting, or any equipment or appurtenance mounted on the ground, shall comply with TAS, ADA and shall not obstruct an existing or planned sidewalk or walkway.
- D. All proposed projecting attachments to the pole shall provide a minimum vertical clearance of eight (8) feet. If any attachments are projecting towards the street side, it shall provide a minimum vertical clearance of 16 feet.
- E. The color of the network nodes shall match the existing pole color such that the network nodes blend with the color of the pole to the extent possible. City reserves the right to deny a certain style of node due to its difference in color to pole.
- F. There shall be no other pole, with small cell attachments permitted/under application review, within 300 feet of the subject pole.

3.2 **Installation of New Poles.**

Prior to installation or modification of a node support pole, Provider shall complete and submit to the City a Commercial Building Permit application for the new pole, as well as a Right-of-Way Permit application. Along with standard required documents, the following items will also be required for the ROW Permit application:

- A. Permit fee.
- B. Map showing intended location of the node support pole. Aerial Map showing the location of the proposed new pole, and a street view image.
- C. The applicant will need to provide analysis showing that the proposed new node Support pole is spaced at least three hundred (300) linear feet from

another existing pole that is capable of supporting network nodes along the proposed location, unless otherwise approved by the City in writing.

- D. Scaled dimensioned drawings or pictures of the proposed node support pole as well as any other proposed equipment associated with the proposal, indicating the spacing from existing curb, driveways, sidewalk, light poles, and any other poles or appurtenances. This shall include a before-and-after street view image. The after-image needs to include the proposed pole and all proposed attachments and associated standalone equipment.
- E. Scaled dimensioned construction plans indicating the current Right-of-Way line and showing the proposed underground conduit and equipment, its spacing from existing lines. The drawings shall also show a sectional profile of the Right-of- Way and identify all existing utilities and existing utility conflicts.
- F. A traffic control plan, SWPPP, and trench safety plan may also be required based on the proposed scope of work.
- G. The applicant needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, or other communications components. It shall be the responsibility of Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed infrastructure. A network node shall not be installed in a location that causes any interference. Network nodes shall not be allowed on City's public safety radio infrastructure.
- H. If the project lies within the State Right-of-Way, the applicant must provide evidence of a permit from the State.
- I. Notification to adjacent residential developments/neighborhoods within 300 feet is required on all node support poles owned by provider.

The proposal shall comply with the following standards:

- A. Any facilities located off pole must remain in cabinetry or enclosed structure underground. Facilities on pole shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. There shall be no external cables or electric wire/cables on pole or structures or aerial wires or cables extending from the pole or structure. Shrouded poles, as shown in the image, are encouraged.
- B. The electrical meter shall not be mounted on City's poles



or structures. Provider shall coordinate voltage and provide electrical wiring diagrams along with the Building Permit or Electrical Permit when connecting to any City infrastructure and provide key to meter upon inspection.

- C. The pole and all attachments to the pole that are projecting, or any equipment or appurtenance mounted on the ground shall comply with TAS, ADA and shall not obstruct an existing or planned sidewalk or walkway.
- D. Wooden poles are prohibited. All new poles are required to be break-away and black powder-coated. All attachments for the network nodes shall also match the color of the network support pole. All network support poles shall match the existing poles in the surrounding block or district in which the network support pole is located in order to blend into the surrounding environment and be visually unobtrusive. City reserves the right to deny a certain type of pole due to its differences.
- E. Upon approval of the permit, the Provider shall call for locates. If City of Corinth Water Utility locates are needed, Provider is required to contact Corinth Water Utilities at 940-498-3249.

3.3. **Electrical Permit.**

- A. Provider shall be responsible for obtaining any required electrical power service to the network nodes and node support poles or structures. Provider's electrical supply shall be separately metered from the City and must match City infrastructure voltage.
- B. Provider shall provide City with the electrical permit and provide sealed engineered drawings for conduit size, circuit size, calculations for Amp, distances running, etc.

IV. Network Node and Node Support Pole Requirements

4.1. **Installation.**

Provider shall, at its own cost and expense, install the network nodes and node support poles in a good and workmanlike manner and in accordance with the requirements promulgated by the *Wireless Services Design Manual*, "Right-of-Way Management" Ordinance, the Public Right-of-Way Permitting and Construction Manual and all other applicable laws, ordinances, codes, rules and regulations of the City, the state, and the United States ("Laws"), as such may be amended from time to time. Provider's work shall be subject to the regulation, control and direction of the City. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the network nodes and node support poles shall be in compliance with all

applicable Laws.

4.2 **Inspections.**

The City may perform visual inspections of any network nodes and node support poles located in the Right-of-Way as the City deems appropriate without notice. If the inspection requires physical contact with the network nodes or node support poles, the City shall provide written notice to the Provider within five business days of the planned inspection. Provider may have a representative present during such inspection.

In the event of an emergency situation, the City may, but is not required to, notify Provider of an inspection. The City may take action necessary to remediate the emergency situation and the City shall notify Provider as soon as practically possible after remediation is complete.

4.3. **Placement.**

- A. *Parks.* Placement of network nodes and node support poles in any Parks, Park roads, sidewalk, or property is prohibited unless such falls within the definition of Public right-of-way in Chapter 284 of the Texas Local Government Code and the placement complies with applicable Laws, private deed restrictions, and other public or private restrictions on the use of the Park.
- B. *City Infrastructure.* Provider shall neither allow nor install network nodes or node support poles on any City property that falls outside the definition of Public Right-of-Way in Chapter 284 of the Texas Local Government Code.
- C. *Residential Streets.* Provider shall neither allow nor install network nodes or node support poles in Right-of-Way that is adjacent to a street or thoroughfare that is not more than 50 feet wide and adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
- D. *Historic District.* Provider shall neither allow nor install network nodes or node support poles in Right-of-Way that is within a Historic District as defined by Chapter 284 of the Texas Local Government Code, unless approved by the City in writing.
- E. *Decorative Poles.* Provider shall neither allow nor install network nodes on a Decorative Pole as defined by Chapter 284 of the Texas Local Government Code, unless approved by the City in writing. This standard shall be applicable to all the new decorative poles in the Entertainment and the Downtown Overlay District currently, as well as any others citywide in the future. The City may only entertain proposals, if they are stealth. See examples below.

F. *Poles.* Wireless Facilities on a node support poles shall be installed at least eight (8) feet above the ground. If any attachments are projecting towards the street side, it shall provide a minimum vertical clearance of 16 feet.

G. *Right-of-Way.* Node support poles and ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line. Node support poles and ground equipment or network nodes shall not impede pedestrian or vehicular traffic in the Right-of-Way. If a node support pole and ground equipment or network node is installed in a location that is not in accordance with the plans approved by the City and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Provider shall remove the node support poles, ground equipment or network nodes.



4.4 **Fiber Connection.**

Provider shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its node support poles or network nodes.

4.5 **Generators.**

Provider shall not allow or install generators or back-up generators in the Right-of-Way.

4.6 **Equipment Dimensions.**

Provider's node support poles and network nodes shall comply with the dimensions set forth in Chapter 284 of the Texas Local Government Code.

4.7 **Tree Maintenance.**

Provider, its contractors, and agents shall obtain written permission from the City before trimming trees hanging over its node support poles and network nodes to prevent branches of such trees from contacting node support poles and network nodes. When directed by the City, Provider shall trim under the supervision and direction of

the Public Works Director. The City shall not be liable for any damages, injuries, or claims arising from Provider's actions under this section.

4.8 **Signage.**

- A. Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the node support poles and network nodes that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law or the City.
- B. Except as required by Laws or by the utility pole owner, Provider shall not post any other signage or advertising on the node support poles and network nodes, or utility pole.

4.9 **Overhead Lines Prohibited.**

In Underground Utility Districts, Provider shall neither allow nor install overhead lines connecting to node support poles. All overhead lines connecting to the node support pole where other overhead telecommunications or utility lines are or planned to be buried below ground as part of a project shall be buried below ground.

4.10 **Repair.**

Whenever the installation, placement, attachment, repair, modification, removal, operation, use, or relocation of the node support poles or network nodes, or any portion thereof is required and such installation, placement, attachment, repair, modification, removal, operation, use, or relocation causes any property of the City to be damaged or to have been altered in such a manner as to make it unusable, unsafe, or in violation of any Laws, Provider, at its sole cost and expense, shall promptly repair and return such property to its original condition. If Provider does not repair such property or perform such work as described in this paragraph, then the City shall have the option, upon 15 days' prior written notice to Provider or immediately if there is an imminent danger to the public, to perform or cause to be performed such reasonable and necessary work on behalf of Provider and to charge Provider for the reasonable and actual costs incurred by the City. Provider shall reimburse the City for the costs.

4.11 **Graffiti Abatement.**

As soon as practical, but not later than fourteen (14) days from the date Provider receives notice thereof, Provider shall remove all graffiti on any of its node support poles and network nodes located in the Right of Way.

4.12 **Inventory**

Provider shall maintain a list of its network nodes and node support poles and provide City an Inventory of locations within ten (10) days of installation. The Inventory of network nodes and node support poles shall include GIS coordinates, date of installation, City pole ID number (if applicable), type of pole used for installation, pole owner, and description/type of installation for each network node and node support pole installation.

Upon City's written request, Provider shall provide a cumulative Inventory within thirty (30) Days of City's request. Concerning network nodes and node support poles that become inactive, the Inventory shall include the same information as active installations in addition to the date the network node and/or node support pole was deactivated and the date the network node and/or node support pole was removed from the Right-of-Way. City may compare the Inventory to its records to identify any discrepancies.

4.13 **Reservation of Rights.**

- A. The City reserves the right to install, and permit others to install, utility facilities in the Rights-of-Way. In permitting such work to be done by others, the City shall not be liable to Provider for any damage caused by those persons or entities.
- B. The City reserves the right to locate, operate, maintain, and remove City traffic signal poles in the manner that best enables the operation of its traffic signal system and protect public safety.
- C. The City reserves the right to locate, operate, maintain, and remove any City pole or structure located within the right-of-way in the manner that best enables the City's operations.

4.14 **Coordination of Traffic Signal Maintenance Activities and Emergency Response**

Provider will provide City a key to each meter box at the time of inspection and have the ability to temporarily cut-off electricity to its facilities for the safety of maintenance personnel. In the event of failure of components of the traffic signal system for whatever reason, including damage resulting from vehicular collisions, weather related events, or malicious attacks, City will respond to restore traffic signal operations as a matter of public safety. Should the events that result in damage or failure of the traffic signal system also affect Provider's network nodes, Provider shall have the sole responsibility to repair or replace its network nodes and shall coordinate its own emergency efforts with the City.

V. Interference with Operations

5.1 **No Liability**

- A. The City shall not be liable to Provider for any damage caused by other

Providers with Wireless Facilities sharing the same pole or for failure of Provider's network nodes for whatever reason, including damage resulting from vehicular collisions, weather related events, or malicious attacks.

- B. The City shall not be liable to Provider by reason of inconvenience, annoyance or injury to the network nodes or node support poles or activities conducted by Provider therefrom, arising from the necessity of repairing any portion of the Right-of-Way, or from the making of any necessary alteration or improvements, in, or to, any portion of the Right-of-Way, or in, or to, City's fixtures, appurtenances or equipment. The City will use reasonable efforts not to cause material interference to Provider's operation of its network nodes or node support poles.

5.2 **Signal Interference with City's Communications Infrastructure Prohibited.**

- A. No interference. In the event that Provider's network nodes interferes with the City's traffic signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, Provider shall promptly cease operation of the network nodes causing said interference upon receiving notice from the City and refrain from operating. Provider shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving notice.
- B. Protocol for Responding to Event of Interference. The protocol for responding to events of interference will require Provider to provide the City an Interference Remediation Report that includes the following items:
 - 1. Remediation Plan. Devise a remediation plan to stop the event of inference;
 - 2. Time Frame for Execution. Provide the expected time frame for execution of the remediation plan; and
 - 3. Additional Information. Include any additional information relevant to the execution of the remediation plan.

In the event that interference with City facilities cannot be eliminated, Provider shall shut down the network nodes and remove or relocate the network node that is the source of the interference as soon as possible to a suitable alternative location made available by City.

- C. Following installation or modification of a network node, the City may require Provider to test the network node's radio frequency and other functions to confirm it does not interfere with the City's Operations.

VI. Abandonment, Relocation and Removal

6.1 Abandonment of Obsolete Network Nodes and Node Support Poles

Provider shall remove network nodes and node support poles when such facilities are abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the network nodes and node support poles being abandoned or within 90 days of receipt of written notice from the City. When Provider removes or abandons permanent structures in the Right-of-Way, the Provider shall notify the City in writing of such removal or abandonment and shall file with the City the location and description of each network node or node support pole removed or abandoned. The City may require the Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

6.2 Relocation and Removal at Provider's Expense

- A. Provider shall remove and relocate its network nodes and node support poles at its own expense to an alternative location not later than one hundred twenty (120) days after receiving written notice that removal, relocation, and/or alteration of the network nodes and/or node support poles is necessary due to:
1. Construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project or other public improvement project; or
 2. Maintenance, upgrade, expansion, replacement, removal or relocation of the City's pole or structure upon which Provider's network nodes are attached; or
 3. The network node or node support pole, or portion thereof, is adversely affecting proper operation of traffic signals, streetlights or other City property;
 4. Closure of a street or sale of City property; or
 5. Projects and programs undertaken to protect or preserve the public health or safety; or
 6. Activities undertaken to eliminate a public nuisance; or
 7. Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its network nodes or node support poles; or

8. Duty otherwise arising from applicable law.

- B. Provider's duty to remove and relocate its network nodes and node support poles at its expense is not contingent on the availability of an alternative location acceptable for relocation. City will make reasonable efforts to provide an alternative location within the Right-of-Way for relocation, but regardless of the availability of an alternative site acceptable to Provider, Provider shall comply with the notice to remove its network nodes and node support poles as instructed.
- C. The City may remove the network node and/or node support pole if provider does not remove such within one hundred twenty (120) days. In such case, Provider shall reimburse City for the City's actual cost of removal of its network nodes and node support poles within 30 days of receiving the invoice from the City.

6.3 Removal or Relocation by Provider

- A. If the Provider removes or relocates at its own discretion, it shall notify the City in writing not less than 10 business days prior to removal or relocation. Provider shall obtain all Permits required for relocation or removal of its network nodes and node support poles prior to relocation or removal.
- B. The City shall not issue any refunds for any amounts paid by Provider for network nodes and node support poles that have been removed.

6.4 Restoration

Provider shall repair any damage to the Right-of-Way, and the property of any third party resulting from Provider's removal or relocation activities (or any other of Provider's activities hereunder) within 10 days following the date of such removal or relocation, at Provider's sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Provider was granted a Permit for the applicable location, including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City.

6.5 Provider Responsible

Provider shall be responsible and liable for the acts and omissions of Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub lessees, and subcontractors in connection with the performance of activities within the City's right-of-way, as if such acts or omissions were Provider's acts or omissions.

City Council Regular and Workshop Session

Meeting Date: 06/01/2017
Title: Professional Service Agreement
Submitted For: Mike Brownlee, City Engineer **Submitted By:** Kim Pence, City Secretary
Finance Review: N/A **Legal Review:** Yes
City Manager Review: Approval: Bob Hart, City Manager

AGENDA ITEM

Consider and act on a Professional Services Agreement with Level 3 for the replacement of sewer line near the southwest corner of the intersection of Lake Sharon Drive and Interstate 35.

AGENDA ITEM SUMMARY/BACKGROUND

The proposed agreement provides the basis for the City to enter into contracts to design and construct a sewer line damaged by Level 3 Communications. The agreement also contains the mechanisms allowing the city to be reimbursed for all expenses related to the project including legal fees, engineering, construction costs, easement acquisition and staff time related to the repairs.

The estimated cost of the project is \$182,115 which does not include the cost of the easement. The city is currently negotiating with two landowner to purchase the easement and dedicate an easement by plat.

A breakdown of the cost (not including the easement) is shown below:

LAKE SHARON / IH35E SANITARY SEWER REPLACEMENT

Design Cost	\$43,700
Easement Cost	Not Yet Determined
Estimated Construction Cost	\$138,415
Subtotal	\$182,115

RECOMMENDATION

Staff recommends that City Council approve a Professional Service Agreement with Level 3 Communications,L.L.C.

Attachments

Professional Service Agreement

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this “Agreement”), effective as of the _____ day of _____, 2017, (the “Effective Date”), is made and entered into by and between the **City of Corinth, Texas** (the “City”), and Level 3 Communications, LLC (“Level 3”) (collectively “Parties” and each individually a “Party”).

WHEREAS, in or about 2001, WiTel Communications, LLC (a subsidiary of Level 3 pursuant to a later acquisition) bored and installed conduit and fiber in TxDOT right-of-way within the City of Corinth, Texas, an approximately seven hundred fifty feet (750’) portion of which (the “Fiber”) breached a legally existing sewer line of the City in a location as shown and highlighted on Exhibit “A” attached hereto and incorporated herein (the “Sewer Line”); and

WHEREAS, Level 3 has requested that the City allow the Fiber to remain within the Sewer Line and that the City abandon the Sewer Line; and

WHEREAS, the City is willing to abandon and transfer ownership of the Sewer Line to Level 3 if an alternate and equivalent easement and sewer line (the “New Sewer Line”) can be obtained and installed to provide service within the same service area as the Sewer Line; and

WHEREAS, the City has an immediate need to provide service within the Sewer Line to new developments adjacent to the Sewer Line and time is of the essence for the New Sewer Line to be installed; and

WHEREAS, the Parties desire to negotiate and to enter into this Professional Services Agreement in order to facilitate the development of the Fiber, transfer of the Sewer Line, and installation of the New Sewer Line in a manner that benefits both the Developer and the City (this “Agreement”); and

WHEREAS, the negotiation of this Agreement, transfer of the Sewer Line to Level 3, and acquisition of easements and construction of the New Sewer Line will require the City to expend resources for city staff and various consultants and professionals (“Professional Services”); and

WHEREAS, Level 3 hereby agrees to pay for Professional Services provided by the City staff and consultants listed on **Exhibit “B”** and by additional consultants as set forth herein or as approved in writing by Level 3 (collectively, the “City Consultants”); and

WHEREAS, Level 3 hereby agrees to reimburse the City for all reasonable costs for the design and installation of the New Sewer Line, an anticipated cost analysis of the New Sewer Line design and installation being attached hereto as Exhibit “C” (“Construction Costs”); and

WHEREAS, the City Council of the City, by and through this Agreement, shall maintain reasonable controls to ensure that the public purpose and best interests of the City are carried out.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Level 3 agree as follows:

1. Recitals. That the representations, covenants, and recitations set forth in the foregoing are material to this Agreement and are incorporated into and made a part of this Agreement.

2. Exhibits. All Exhibits referenced in this Agreement, and listed below, are incorporated herein for all purposes; specifically:

Exhibit “A” – Property Description and Map

Exhibit “B” – City Consultants

Exhibit “C” – Projected Design and Construction Costs

3. Covenants of City and Level 3.

A. City shall design, construct, and perform all work on the New Sewer Line in accordance with the approved construction documents and other City ordinances, and all other rules, regulations and local, state, or federal laws and on a schedule determined by the City. The City may contract and procure City Consultants to provide Professional Services in accordance with Exhibit “B” and incur Construction Costs in accordance with Exhibit “C” to engineer, design, and construct the New Sewer Line. The projected Construction Costs attached in Exhibit “C” are estimates and may change in scope and timing. The City shall prepare, bid, award, and manage all contracts for the construction for the construction of the New Sewer Line. City shall make its design, construction, and financial records related to the New Sewer Line available to Level 3 for inspection. Level 3 shall be notified of any cost overruns exceeding ten percent (10%) of the estimates as soon as said overruns are identified. Any notice of a cost overrun shall be accompanied with an explanation.

Payment for Professional Services and Construction Costs. Level 3 shall be responsible for reimbursement of the City for the payment of all reasonable costs including City staff time, the City Consultant invoices for Professional Services, and Construction Costs relating to the provision of services for negotiation and drafting of this Agreement and the documents and agreements necessary to facilitate the transfer of the Sewer Line, acquisition of easements for the New Sewer Line, and design and construction of the New Sewer Line. The City shall initially pay any costs incurred for Professional Services and Construction Costs and will invoice Level 3 approximately every thirty (30) days with a detailed billing statement of all City staff time, Professional Services and Construction Costs rendered in accordance with this Agreement, including invoices for Professional Services rendered prior to the Effective Date. The City shall be entitled to

redact any information covered by the attorney/client privilege. Level 3 shall have fifteen (15) days during which to review each invoice and to make the reimbursement payment to the City. If there is a dispute over the amount of any reimbursement payment, Level 3 shall nevertheless pay the undisputed amount, and the Parties shall use all reasonable efforts to resolve the disputed amount before the next reimbursement payment is due. In the event of litigation relating to the reimbursement payments, the prevailing party shall be entitled to receive from the other party reimbursement for reasonable attorney's fees, court costs, and expert fees and costs.

4. Effect of Agreement. This Agreement shall not: (a) confer upon Level 3 any vested rights or development rights with respect to the Sewer Line, and more specifically, this Agreement does not constitute a permit under Chapter 245 of the Texas Local Government Code; (b) bind or obligate the Parties to approve any documents or agreements related to the Sewer Line or the New Sewer Line. After the City Engineer's final inspection and acceptance of the New Sewer Line and written certification that Level 3 made all reimbursement payments in full, this Agreement shall: (a) abandon, relinquish, release, discharge, assign, or waive any claims, demands, controversies, and causes of action of every conceivable character, past and current, without limitation, of the City against Level 3 or any other entity for damages to the Sewer Line; (b) transfer the City's ownership and control of the Sewer Line to Level 3; or (c) authorize, grant, allow, or approve the installation of the Fiber in the Sewer Line. In addition, nothing contained in this Agreement shall be construed as an admission of liability by Level 3 or the City.

5. **INDEMNIFICATION.**

LEVEL 3 SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS, COUNCIL MEMBERS, APPOINTED OFFICIALS, ATTORNEYS, CITY CONSULTANTS, AND OTHER CITY REPRESENTATIVES, FROM ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, AS AMENDED. THE TERM "CLAIMS" IS TO BE CONSTRUED AS BROADLY AS POSSIBLE TO INCLUDE ANY AND ALL LIABILITIES, CLAIMS, COSTS, EXPENSES, JUDGMENTS, CAUSES OF ACTION, DEMANDS, LOSSES WHATSOEVER RESULTING FROM THE ACTS OR OMISSIONS OF LEVEL 3 (INCLUDING ANY OF ITS EMPLOYEES AND CONTRACTORS), INCLUDING BUT NOT LIMITED TO CAUSES OF ACTION OR DAMAGES SOUNDING IN TORT, PERSONAL INJURIES, CONTRACT DAMAGES, ECONOMIC DAMAGES, PUNITIVE DAMAGES, STRICT LIABILITY, COMMON LAW NEGLIGENCE AND GROSS NEGLIGENCE, INTENTIONAL TORTS, FEDERAL AND STATE STATUTORY AND COMMON LAW, CLAIMS UNDER THE TEXAS TORT CLAIMS ACT, EMPLOYMENT DISPUTES, FEDERAL AND STATE CIVIL RIGHTS, CLAIMS FOUNDED IN CONTRACT OR QUASI-CONTRACT, BREACH OF WARRANTY, CLAIMS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, AND ANY AND ALL

CLAIMS CAUSES OF ACTION OR DEMANDS WHEREBY ANY LOSS IS SOUGHT AND/ OR INCURRED AND/ OR PAYABLE BY CITY, CITY CONTRACTORS, THEIR AGENTS, EMPLOYEES, REPRESENTATIVES AND/ OR INSURERS OR RISK POOLS. THIS PROVISION IS TO BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS, AND IT IS EXPRESSLY RECOGNIZED BY ALL PARTIES THAT IT COMPLIES WITH THE CONSPICUOUSNESS REQUIREMENT AND THE EXPRESS NEGLIGENCE TEST, AND IS VALID AND ENFORCEABLE AGAINST LEVEL 3. LEVEL 3 HAS CAREFULLY READ, FULLY UNDERSTANDS, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS PROVISION, AND THE INDIVIDUAL SIGNING THIS AGREEMENT ON BEHALF OF LEVEL 3 HAS FULL AUTHORITY TO BIND LEVEL 3 TO THIS AGREEMENT AND THIS INDEMNITY PROVISION. IT IS FURTHER RECOGNIZED AND AGREED, THAT SHOULD ANY PARTICULAR PORTION OR PROVISION OF THIS INDEMNITY PROVISION BE HELD INVALID, VOID AND/ OR UNENFORCEABLE, IT SHALL NOT EFFECT THE VALIDITY AND ENFORCEABILITY OF THE REMAINDER OF THIS PROVISION. NOTWITHSTANDING ANYTHING TO THE CONTRARY, LEVEL 3 SHALL NOT BE OBLIGATED TO INDEMNIFY OR DEFEND ANY PARTY OR ENTITY TO THE EXTENT ANY CLAIM ARISES FROM THAT PARTY OR ENTITY'S NEGLIGENCE OR MISCONDUCT.

6. Term. The term of this Agreement shall begin on the date the last party to this Agreement executes this Agreement and shall continue until the later to occur of the New Sewer line being accepted by the City or Level 3's reimbursement payments to the City are paid in full.

7. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the provision of Professional Services, transfer of the Sewer Line, and Construction Costs of the New Sewer Line in accordance with the terms of this Agreement in a manner that benefits the City and Level 3.

8. Amendment. This Agreement may only be amended by written instrument signed by Level 3 and the City.

9. Successors and Assigns. Neither the City nor Level 3 may assign or transfer their interest in the Agreement without prior written consent of the other Party.

10. Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States Mail, Certified, with Return Receipt Requested, postage prepaid, addressed to the appropriate Party at the following addresses, or at such other addresses provided by the Parties in writing.

LEVEL 3:

Level 3 Communications, LLC
1025 Eldorado Blvd.
Broomfield, CO 80021-8254
Attn: Lisa Fox

with copies to:

Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
Attn: Legal Department

CITY:

City of Corinth
Attn: City Engineer
3300 Corinth Parkway
Corinth, Texas 76208
Phone: 940.498.3200

With a copy to:

Wm. Andrew Messer
Messer, Rockefeller & Fort, LLP
6351 Preston Road
Suite 350
Frisco, Texas 75034
972.668.6400(telephone)
andy@txmunicipallaw.com

11. Non-Recordation. This Agreement shall not be recorded.
12. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against either Party.
13. Applicable Law. This Agreement is made, and shall be construed in accordance with the laws of the State of Texas and venue shall lie in Denton County, Texas or in the United States District Court for the Eastern District of Texas.
14. Severability. In the event any portion or provision of this Agreement is illegal, invalid, or unenforceable under present or future law, then and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause

or provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

16. Authority for Execution. The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with all applicable City ordinances and state law. Level 3 hereby certifies, represents, and warrants that the individual executing this Agreement on behalf of Level 3 is duly authorized and has full authority to execute this Agreement and bind Level 3 to the same.

17. Default/Remedies. If either party fails to perform an obligation imposed on such Party by this Agreement (a "Failure") and such Failure is not cured within thirty (30) days written notice, then such Failure shall constitute a "Default." If either party is in Default, the other party's sole and exclusive remedy shall be to compel performance through injunctive relief or specific performance of this Agreement. No Default shall entitle the other party to terminate this Agreement.

CITY OF CORINTH, TEXAS

Bill Heidemann, Mayor

Date: _____

ATTEST:

Kimberly Pence, City Secretary

APPROVED AS TO FORM:

Wm. Andrew Messer, City Attorney

LEVEL 3 COMMUNICATIONS, LLC

_____, _____

Date: _____

EXHIBIT "A"
PROPERTY DEPICTION AND MAP

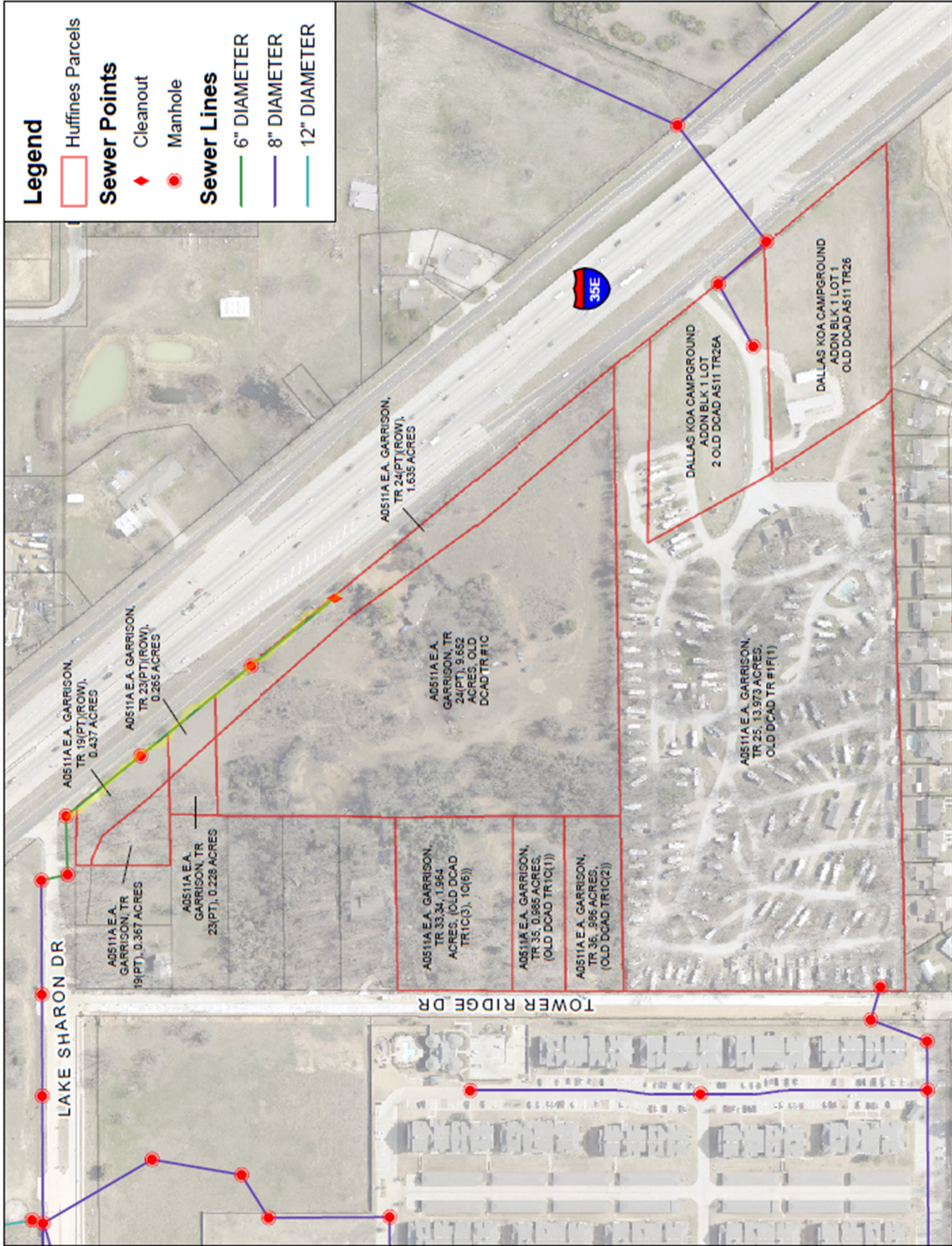


EXHIBIT “B”
CITY CONSULTANTS

City’s Attorney Billing Rate \$225 per hour for principal or senior associate; \$175 per hour for associates; \$85 per hour for paralegals

City Engineer/staff Billing Rate \$78.52 per hour for Planning and Development Director; \$65.64 per hour for City Engineer; \$34.57 per hour for GIS Analyst; \$45.07 per hour for Public Works Inspector; \$43.00 per hour for Business Manager; \$38.59 per hour for Utility Supervisor, \$30.21 per hour for Crew Leader; \$28.72 per hour for Heavy Equipment Operator; \$27.60 per hour for Maintenance Worker

Professional Service Fees All reasonable costs incurred by the city for professional review of plans, applications, site plans, engineering, inspections, development agreements, and other related reviews, inspections or permits shall be borne by Level 3 and payable to the City. The professional fees shall include, but not necessarily be limited to, civil engineering, design, planning and financial analysis in order that the project can be properly evaluated to achieve compliance with the City’s codes and regulations.

The applicant shall be provided with documentation detailing the actual costs of professional review provided by the City and City Consultants prior to reimbursement.

EXHIBIT "C"

PROJECT DESIGN AND CONSTRUCTION COSTS

BIRKHOFF, HENDRICKS & CARTER, L.L.P.

PROFESSIONAL ENGINEERS

TBPE Firm 526

Project No. _____

Client: City of Corinth

Date: 12-May-17

Project: IH-35 Sanitary Sewer Line

By: JTG

ENGINEER'S OPINION OF CONSTRUCTION COST

Item No.	Description	Quantity	Unit	Price	Amount
101	Furnish & Install 8-Inch SDR 35 PVC Sanitary Sewer by Open Cut	700	L.F.	\$ 60.00	\$ 42,000.00
102	Furnish & Install 8-Inch SDR 35 PVC Sanitary Sewer by Other Than Open Cut	100	Ea.	\$ 180.00	\$ 18,000.00
103	Furnish & Install 4-Foot Diameter Standard Manhole	3	Ea.	\$ 5,000.00	\$ 15,000.00
104	Cut, Plug & Abandon Existing Sanitary Sewer	2	Ea.	\$ 1,000.00	\$ 2,000.00
105	Connect to Existing 8-Inch Sanitary Sewer	1	Ea.	\$ 1,500.00	\$ 1,500.00
106	Remove & Replace Reinforced Concrete Pavement (Meadows Oak Drive)	150	S.Y.	\$ 80.00	\$ 12,000.00
107	Remove & Replace Barbed Wire Fence	200	L.F.	\$ 15.00	\$ 3,000.00
108	Furnish, Install & Maintain Solid Sod	1,800	S.Y.	\$ 8.00	\$ 14,400.00
109	Furnish Trench Safety Plan	1	L.S.	\$ 1,500.00	\$ 1,500.00
110	Install & Implement Trench Safety Plan	800	L.F.	\$ 1.50	\$ 1,200.00
111	Furnish Storm Water Pollution Prevention Plan (SW3P)	1	L.S.	\$ 500.00	\$ 500.00
112	Furnish, Install, Maintain & Remove Erosion Control Devices	1	L.S.	\$ 500.00	\$ 500.00
113	Furnish, Install, Maintain & Remove Traffic Control Devices	1	L.S.	\$ 2,500.00	\$ 2,500.00
	Construction Subtotal:				\$ 114,100.00
	Contingencies and Miscellaneous Items	15%			\$ 17,115.00
	Construction Total:				\$ 131,215.00

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
PROFESSIONAL ENGINEERS
TBPE Firm 526

Project No. _____

Client: City of Corinth

Date: 12-May-17

Project: IH-35 Sanitary Sewer Line

By: JTG

ENGINEER'S OPINION OF CONSTRUCTION COST

Item No.	Description	Quantity	Unit	Price	Amount
	Surveying, Engineering, Easement Plats, Bidding & Construction Contract Administration:				\$ 43,700.00
	Land Rights Acquisition (Easements from 3 Parcels)			UNKNOWN	
	Materials Testing & Quality Control	2.5%			\$ 3,300.00
	City Inspection	3%			\$ 3,900.00
	Project Total:				\$ 182,115.00
				USE:	\$ 183,000.00