

**ORDINANCE NO. 26-18-07**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDWATER, TEXAS, ESTABLISHING UNIFORM RULES AND REGULATIONS GOVERNING THE CONSTRUCTION AND USE OF PUBLIC RIGHTS-OF-WAY IN THE CITY; SETTING FORTH FINDINGS AND PURPOSE; ESTABLISHING AUTHORITY AND SCOPE; PROVIDING DEFINITIONS; REQUIRING MUNICIPAL AUTHORIZATION FOR USE OF PUBLIC RIGHTS-OF-WAY; PROVIDING FOR PERMITTING AND PERMIT FEES FOR INSTALLATION OF FACILITIES IN THE RIGHTS-OF-WAY; ADDRESSING THE RIGHTS AND OBLIGATIONS OF CERTIFICATED TELECOMMUNICATIONS PROVIDERS; PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, CONSTRUCTION OBLIGATIONS AND CONDITIONS OF OCCUPANCY OF PUBLIC RIGHTS-OF-WAY; PROVIDING FOR CONSTRUCTION PERMIT ACCEPTANCE; ESTABLISHING REGULATIONS FOR COMPANIES DIGGING AND/OR BORING IN THE CITY LIMITS; ESTABLISHING FEES AND AN APPLICATION PROCESS AND PROVIDING FOR OTHER MATTERS RELATED TO THE SUBJECT; ESTABLISHING INSURANCE REQUIREMENTS; PROVIDING FOR INDEMNIFICATION; PROVIDING A SEVERABILITY CLAUSE; ESTABLISHING GOVERNING LAW; PROHIBITING UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY; ESTABLISHING VIOLATIONS AND A PENALTY NOT TO EXCEED \$2,000 PER DAY OF VIOLATION; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, The City of Redwater is a Type A, General Law Municipality; and

**WHEREAS**, the General Law Municipalities have exclusive control over public grounds of the municipality in accordance with Section 282.002 of the Texas Local Government Code, and may abate or remove an encroachment or obstruction on the public ground of the municipality; and

**WHEREAS**, Chapter 283 of the Texas Local Government Code provides for management of public rights-of-way used by telecommunications providers within the municipality; and

**WHEREAS**, the rights-of-way are a valuable public resource that have required and will continue to require substantial investment by the City of Redwater, Texas ("City"); and

**WHEREAS**, the City desires to structure and implement a fair and orderly process for the authorization to occupy and use the rights-of-way in the City to protect the public interest consistent with applicable law; and

**WHEREAS**, the City desires to minimize inconvenience and disruption to the public, provide for the orderly and efficient use of the rights-of-way now and in the future, and preserve adequate capacity of existing and future uses of the rights-of-way; and

**WHEREAS**, in accordance with applicable federal, including yet not limited to, 47 U.S.C. § 253 (c) and state laws, including, yet not limited to, Tex. Util. Code §§ 14.008 and 54.205, and Tex. Rev. Civ. Stat., Art. 1175; the City seeks to exercise to the fullest extent permitted its historical rights to control and manage its public rights-of-way in a competitively neutral and nondiscriminatory basis; and implement certain powers regulating the use of those public rights-of-way, in accordance with Texas Local Government Code § 283.056; and

**WHEREAS** the City has received an influx of entities digging and/or boring within the City's rights-of-way, specifically for the installation of fiber optics and various utility line repairs, and the City's existing Ordinances have not been sufficient to maintain adequate City oversight of such work, potentially causing damage to vital City infrastructure and disruptions to the use of the City rights-of-way by the City and the traveling public; and

**WHEREAS** the City Council of the City of Redwater finds it in the best interest of the health, safety, and welfare of the citizens of the City to adopt reasonable rules and regulations concerning the use of City rights-of-way.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF REDWATER, TEXAS, THAT:**

All the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

## **RIGHT-OF-WAY MANAGEMENT**

### **SECTION I: Findings and Purpose**

The purpose of this Ordinance is to:

- (A) Assist in the management of facilities placed in, on or over the public rights-of-way in order to minimize the congestion, inconvenience, deterioration, visual impact and other adverse effects and the costs to the citizens resulting from the placement of facilities within the public rights-of-way.
- (B) Govern the use and occupancy of the public rights-of way.
- (C) Assist the city in its efforts to protect the public health, safety and welfare.
- (D) Conserve the limited physical capacity of the public rights-of-way held in public trust by the city.
- (E) Preserve the physical integrity of the streets and highways.
- (F) Control the orderly flow of vehicles and pedestrians.
- (G) Keep track of the different entities using the public rights-of-way to prevent interference between them.
- (H) Assist in scheduling common trenching and street cuts.

Protect the safety, security, appearance and condition of the public rights-of-way.

### **SECTION II: Authority; Scope**

This Ordinance applies to all Persons that place facilities in, on or over public rights-of-way. Compensation for use of the public rights-of-way shall be paid in accordance with all applicable state or federal law, including, yet not limited to, cable providers, in accordance with the Federal Cable Act, 47 U.S.C. §§ 541 *et seq.*; for certificated telecommunication providers, Tex. Local Gov't Code Ch. 283; for distributors of natural gas or as otherwise applicable, Tex. Tax Code§ 182.025; and/or in accordance with Tex. Rev. Civ. Stat., Art. 1175(1), wireless network providers, Tex. Local Gov't Code Ch 284, all as applicable, as are adopted and may be amended.

### **SECTION III: Definitions**

For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*Abandon (and its derivatives)*. 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 City's 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.

**Boring.** The act of digging away material with a turning or twisting motion or tool to create a hole, or to create access to an existing line in the City's right-of-way.

**Capital Improvements Program or Project.** The official proposed schedule of all future public projects listed in order of construction priority together with cost estimates and the anticipated means of financing each project as adopted by the City Council.

**Certificated Telecommunications Provider.** The same as defined in Tex. Local Gov't Code § 283.002(2) (any entity that 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 to offer local exchange telephone service), as it may be amended.

**City.** The territorial, corporate and geographic limits of the City of Redwater, Texas. As used throughout, the term city also includes the designated agent of the city.

**City Property.** All City buildings, infrastructure, bridges, parks, golf courses, parking lots and all other real property that is not dedicated for utility or street transportation purposes.

**Direction of the City.** All ordinances, laws, rules, resolutions and regulations of the city that are not inconsistent with this Ordinance and that are now in force or may hereafter be passed and adopted.

**Facilities or Facility.** Any and all the wires, cables, fibers, duct spaces, manholes, poles, conduits, pipes, lines, underground and overhead passageways and other equipment, structures, plant and appurtenances and all associated physical equipment placed in, on or under the public rights-of-way.

**Network Node.** Provider's equipment as defined by Chapter 284 of the Texas Local Government Code.

**Node Support Pole.** A pole as defined by Chapter 284 of the Texas Local Government Code.

**Park.** The properties under the direction, control and supervision of the City's City Council, under the maintenance of the Public Works Department, pursuant to the authority granted by City Council and City Ordinances.

**Permit.** A document issued by the City authorizing installation, removal, modification and other work for Providers' facilities in accordance with the approved plans and specifications.

**Person.** A natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association and other such legal entity.

**Public Rights-of-Way.** The same as defined in Tex. Local Gov't Code § 283.002(6) (the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway or utility easement in which the municipality has an interest. The term does not include the airwaves above a public right-of-way with regard to wireless telecommunications), as it may be amended. The term does not include City property.

**Traffic Signal.** Any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

**Underground Utility District.** 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.

#### **SECTION IV: Municipal Authorization Required**

- (A) Prior to installation or modification within a Public Right-of-Way, provider shall complete and submit to the City a Right-of-Way Permit Application, along with standard required documents and the following items:
- (1) **Permit Fee.** Any person, entity or provider seeking to place facilities on, in or over the public rights-of-way, shall pay a \$500.00 construction permit application fee (except as exempted by Tex. Local Gov't Code Ch. 283 and 284) and shall file an application for such construction permit with the City Secretary and shall abide by the terms and provisions of this Ordinance pertaining to use of the public rights-of-way. If there are additional direct costs to the City in processing the applications, the City may recover those from the applicant prior to the issuance of the construction permit. **Companies seeking to obtain a permit for directional boring or trenching phases shall pay a \$50.00 permit application per phase.**
  - (2) With such application, applicants shall submit to the City Secretary written applications identifying the applicant and all of the applicant's affiliates that may have physical control of facilities within the public rights-of-way, with a map of the proposed installations, general description of the services to be provided, a construction schedule and a general description of the effect on public rights-of-way as detailed in §VI below.
  - (3) Companies boring in the public right-of-way will additionally be required to submit a detailed description of the boring project, and divide the total project into phases, which encompass a maximum of a three (3) city block area per permit. A permit is required for each phase of the boring project as it progresses through the City. A limit on the number of permits issued for boring phases taking place simultaneously within the City's public rights-of-way shall be limited to three (3) permits.
- (B) Any Person, except a certificated telecommunications provider, prior to placing, reconstructing, or altering facilities in, on or over the public rights-of-way, must obtain separate municipal authorization from the City, such as a license agreement or franchise, as may be applicable. For use of the public rights-of-way, all users of the public rights-of-way shall compensate the City on the value of the public rights-of-way used, being typically either on a gross receipts basis or on a linear foot basis, to the fullest extent allowed by law.
- (C) Any Person with a current, unexpired consent, franchise, agreement or other authorization from the City ("grant") to use the public rights-of-way that is in effect at the time this Ordinance takes effect shall continue to operate under and comply with the grant until the grant expires or until it is terminated by mutual agreement of the City and the Person, or it terminated as otherwise provided for in law.
- (D) Prerequisites to issuance of construction permit - each Person must register with the City. In order for the City to know which Person or Persons owns or has physical control over facilities in a public right-of-way within the City, each such Person who owns or has physical controls over facilities shall register with the City and provide the following information at a minimum:
- (1) Person's name, address and telephone number(s); and
  - (2) A 24-hour telephone number(s) to a contact Person(s) with decision-making authority for the Person. Each Person shall update and keep current his or her registration with the City at all

times.

## **SECTION V: Administration and Enforcement**

- (A) The City Council and Mayor shall administer and enforce compliance with this ordinance.
- (B) A Person shall report information related to the use of the public rights-of-way that the City Council requires in the form and manner reasonably prescribed by the City Council.
- (C) The City Secretary shall report to the City Council upon the determination that a Person has failed to comply with this Ordinance and the same shall be subject to the penalty provisions provided herein for violation of this Ordinance.
- (D) For the purposes of boring / trenching projects, a member of City Council or City Staff must be on site when boring or trenching near a main line of the City.

## **SECTION VI: Construction Obligations**

A Person is subject to reasonable regulation of the City to manage its public rights-of way in connection with the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of facilities in the public rights-of-way, pursuant to the City's rights as a custodian of public property based upon the City's historic rights under state and federal laws. Such regulations include, yet are not limited to, the following:

- (A) At the City's request, a Person shall furnish the City accurate and complete information relating to the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of facilities performed within the public rights-of-way underground according to the applicable City requirements unless the Person makes a compelling demonstration that, in any specific instance, this requirement is not reasonable, feasible or equally applicable to other similar users of the public rights-of-way.
  - (1) The underground placement of facilities is encouraged. In any event, facilities shall be installed underground where existing utilities are already underground. The utility owning the underground facilities shall make a reasonable determination as to whether space is available to accommodate the new facilities. A negative determination shall not relieve the Person of the responsibility to underground its facilities in underground utility areas. To the degree reasonably feasible previously installed aerial facilities shall be placed underground in concert, and on a cost-sharing basis, with other utilities when such other utilities convert from aerial to underground construction. All undergrounding of facilities shall be at a depth of twenty-four inches (24") or more unless otherwise directed by the City.
  - (2) Underground conduits and ducts shall be installed in the public rights-of-way between the adjacent property line and curb line unless otherwise directed by the City.
  - (3) Conduits and ducts shall be installed parallel with the curb line and cross the public rights-of-way between the adjacent property line and curb line unless otherwise directed by the City.
  - (4) Ducts and conduits shall be installed by trenchless excavation or directional boring when placing these facilities under paved public rights-of-way centerline unless otherwise directed by the City.
- (B) A Person shall perform excavations and other construction in the public rights-of-way in

accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the public right-of-way. The City shall waive the requirement of trenchless technology if it determines that, based upon information provided to the City by the Person, the particular field conditions warrant a waiver. All excavations and other construction in the public rights-of-way shall be conducted so as to minimize interference with the use of public and private property. Any plant or facility placed within the public rights-of-way which is suspended in any manner above ground shall either be placed on existing poles or equipment or be suspended at a height not less than 22 feet above ground level, unless otherwise approved by the City Council, but in no event less than 15 feet, except to the extent state law controls. A Person shall follow all reasonable construction directions given by the City in order to minimize any such interference.

- (C) A Person must obtain a permit, as reasonably required by applicable City codes, including division (C)(3) of this section prior to excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of the Person's facilities.
- (1) Bonding will be required as in division (L) below and insurance as in § VIII herein.
  - (2) A construction permit is not required for routine maintenance that does not require excavation of the public rights-of-way or which does not block traffic lanes or sidewalks during peak traffic periods between 7:00 am to 9:00 am, and 4:00 pm to 6:30 pm on weekdays or for more than two hours during any non-peak traffic period. The failure of the Person to request and obtain a permit from the City prior to performing any of the above listed activities in, on or over any public right-of-way, except in an emergency as provided for in division (J) below, will subject the Person to a stop-work order from the City and enforcement action pursuant to the City's ordinances. If the Person fails to act upon any permit with 90 calendar days of issuance, the permit shall become invalid unless extended by the City upon a showing of good cause. Upon expiration of a permit, a Person shall be required to obtain another permit pursuant to the requirements of this Ordinance.
  - (3) At least 45 days prior to submission of an application for a construction permit for a capital improvements project, a Person shall furnish the City Secretary with construction plans and maps using the standard format adopted by the City, showing the location and plans and specifications for a permit for construction of a capital improvements project until all required plans and drawings have been approved in writing by the City, which approval will not be unreasonably withheld, taking due consideration of the surrounding area and alternative locations for the facilities and routing.
  - (4) At least three days before beginning excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of facilities for a project that involves an alteration to the surface or subsurface of the public rights-of-way but is not a capital improvements project, a Person shall submit an application for a permit for the standard format adopted by the City, showing the location and proposed routing of the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair unless otherwise approved by the City Manager. A Person may not begin construction until the location of new facilities and proposed routing of the new construction or reconstruction and all required plans and drawings have been approved in writing by the City and a permit has been issued, which issuance will not be unreasonably withheld, taking due consideration of the surrounding area and alternative locations for the facilities and routing.
  - (5) Construction plans and maps shall show all features within the public rights-of-way that would affect the placement of the proposed facilities such as, yet not limited to, existing underground and aerial wires or conduits, ducts, poles, wires, pipes, sewerage, water lines and cables as

well as their ownership; traffic signal and street light poles; fire hydrants; driveways; curbs, inlets and drains; sidewalks, wheelchair ramps; and, trees and large shrubs. Drawings shall be drawn to an appropriate scale of no larger than one inch equals 50 feet. State plan coordinates shall be shown for benchmarks, curb lines and elevations. If typical are used, they shall reference the station numbers for which they are to be applied. Traffic control plans shall be in conformance with the latest revision of the Texas Manual on Uniform Traffic Control Devices (MUTCD).

- (6) A Person shall use their best efforts to coordinate joint trenching with any other Persons and/or public utilities which may be constructed in and along the same public rights-of-way in a time frame reasonably similar to the Person's construction time table. The City may mandate such coordination to the fullest extent allowed by law.
- (7) To the extent known, plans for ongoing repair, maintenance and improvements which involve cutting into paved City roads and streets shall be submitted to the City Secretary on an annual basis, no later than April 1 of each year and updated based upon any changes. This does not require any proprietary information such as equipment or customer specific information. Such information may be designated confidential and to the extent allowed by law will be kept confidential by the City. Alternatively, a Person may meet with the appropriate representative of the City each calendar quarter to provide such plans to the extent known.
- (8) Once a permit is issued, the City shall be notified at least 24 hours in advance that construction in the public rights-of-way is ready to proceed by a Person or their representative. Information signs (at least three feet by three feet in size) stating the identity of the Person doing the work, their telephone number and the Person's identity and telephone number shall be placed at the location where construction is to occur 48 hours prior to the beginning of work in the public rights-of-way and shall continue to be posted at the location during the entire time the work is occurring and/or until permanent repairs are completed.
- (9) Erosion control measures and advance warning signs, markers, cones and barricades must be in place before work begins. A Person may be required to show proof of engineered plans relating to storm water and erosion when applicable or a letter stating a Person is not required to obtain such plans. A Person shall be responsible for storm water management erosion control that complies with City, state and federal guidelines as applicable.
- (10) Lane closures on major thoroughfares will be limited to between 9:00 am and 4:00 pm unless the City grants prior approval. Arrow boards will be required on lane closures with all barricades, advance warning signs and 36-inch reflector cones placed according to the specifications of the City. Working hours in the public rights-of-way are limited to the hours between 7:00 a.m. to 6:00 p.m. Monday through Friday. Work to be performed after 6:00 p.m. on Monday through Friday or on Saturday must be approved by the City in advance. **Directional boring is permitted only Monday through Thursday, 7:00 am to 4:00 pm. No work in the public rights-of-way shall be performed, except for emergencies or cable pulling only, on Thursdays after 4:00 pm, Fridays, Saturdays, Sundays or on City Holidays.**
- (11) Without affecting the legal relationship between a Person and its contractors, a Person is responsible for the workmanship and any damages caused by a contractor or subcontractor.
- (12) If additional poles and existing aerial utility route are required, a Person shall negotiate with the utility company for the installation of the needed poles in accordance with existing statutes and regulations. However, if the utility will not install new poles on a reasonable basis, then a Person may erect its own poles.

(D) Within 14 days of completion of excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of facilities or other work in the public rights-of-way, a Person shall temporarily restore and repair the public rights-of-way in accordance with applicable sections of the ordinances of the City of Redwater. Within 30 calendar days after completion of work in the public rights-of-way, the Person shall permanently restore, replace, relay and/or repair the surface, base, curbs, drainage systems, irrigation systems, landscape treatment or other City facilities and infrastructure located on, in and under any public rights-of-way that has been excavated, altered or damaged by reason of the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of the Person's facilities in accordance with existing standards of the City in effect at the time of the work. Upon a showing of good cause, the City may at its sole discretion extend the time for restoration and repair of the public rights-of-way under this section. Unless the Person provides a recent dated photograph or a video tape of the public rights-of-way before the construction, the condition of the public rights-of-way before construction should be presumed in good condition, subject only to reasonable wear and tear as determined by the City Council.

Whenever a Person shall disturb or destroy any right-of-way markers or monuments, it shall restore the same within 30 days after construction has ceased. A Person shall furnish three sets of drawings, blueline or blackline, detailing the restored monumentation. State plane coordinates shall be shown for all monumentation (existing or restored). The drawings shall be signed (original signature), sealed and certified by a registered professional land surveyor and delivered to the City Secretary for approval no later than 30 days after construction has ceased.

- (E) Upon failure of a Person to perform any such repair or replacement work after five days written notice has been given by the City to the Person, and in the event repairs have not been initiated during such five day period, the City may repair such portion of the public rights-of-way as may have been disturbed by the Person, its contractors or agents. The City may, at its discretion for good cause, alter the five-day period. Upon receipt of an invoice from the City, the Person shall reimburse the City for the costs so incurred within 30 calendar days from the date of the City invoice.
- (F) Should the City Council reasonably determine within one year from the date of the completion of the repair work that the surface, base, curbs, drainage systems, irrigation systems, landscape treatment or other City facilities and infrastructure located on, in or under any public rights-of-way requires additional restoration, replacement or repair work to meet existing standards of the City, a Person shall perform such additional restoration, replacement or repair work to the satisfaction of the City, subject to all City remedies as provided herein.
- (G) Notwithstanding the foregoing in division (F), if the City Council determines that the failure of a Person to properly repair or restore the public rights-of-way constitutes a safety hazard to the public, the City may undertake emergency repairs and restoration efforts after emergency notice has been provided to the extent reasonable under the circumstances and the Person failed to respond within a reasonable time specified by the City. Upon receipt of an invoice from the City a Person shall promptly reimburse the City for all costs incurred by the City within 30 calendar days from the date of the City invoice.
- (H) If the City Council declares an emergency with regard to the health and safety of the citizens and requests by written notice the removal or abatement of facilities, a Person shall remove or abate the Person's facilities by the deadline provided in the City Council's request. The Person and the City shall cooperate to the extent possible to assure continuity of service. If the Person, after notice, fails or refuses to act, the City may remove or abate the facility at the sole cost and expense of the Person without paying compensation to the Person and without the City incurring liability for damages.

- (I) Except in the case of customer service interruptions and imminent harm to property and Persons ("emergency conditions"), a Person may not excavate the pavement of a street or public rights-of-way without first complying with City requirements. The City shall be notified as promptly as possible regarding work performed under such emergency conditions and the Persons shall comply with the requirements of City standards and of this Ordinance for restoration, replacement or repair of the public rights-of-way. Any emergency repairs requiring saw cuts shall be performed in accordance with standards established by the City Council.
- (J) Within 120 days of completion of each new permitted section of a Person's facilities, the Person shall supply the City with a complete set of "as built" drawings for the segment in a format used in the ordinary course of the Person's business to the extent they are prepared in the ordinary course of business, excluding customer specific, proprietary or confidential information and as reasonably prescribed by the City as is described below, and as may be allowed by law. Such "as built" maps may be corrected and revised construction plans. In the event the facilities were built as specified in the originally submitted plans, the Person may certify to the City that there were no changes. The City may, at its discretion, accept in lieu of "as built" drawings any reasonable alternative which provides adequate information as to the vertical depth, linear location and size of facilities in the public rights-of-way which may include direct on-line access to such information.

To the extent the Person's customary as-built format will confirm without economic impracticability, a Person shall furnish the City "as built" drawings as follows: drawings shall show ownership of conduits, ducts, poles, cables and any other facilities placed within the public rights-of-way. Drawings shall be drawn to a scale of one inch equals 20 feet on 24- inch by 36-inch sheets and one inch equals 40 feet on 11-inch by 17-inch sheets using the standard format adopted by the City . A Person shall provide one set of all such drawings on flash drive in PDF format drawn to full scale and one set of blue or blacklined "as built" drawings to the City Secretary. State plane coordinates shall be shown for benchmarks, curb lines and structures. Drawings shall show horizontal dimensions from the curb line and elevations.

All Persons who have facilities in the public rights-of-way existing as of the date of this Ordinance and who have not provided "as built" drawings shall do so no later than sixty (60) days after the passage of this Ordinance, unless the Person demonstrates and economic impracticability to provide such "as built" drawings in the above format. The City may waive such "as built" maps as to existing facilities for good cause.

If "as built" drawings submitted under this section include information expressly designated by the Person as a trade secret or other confidential proprietary information protected from disclosure by state or federal law, the City Council or City employees may not disclose that information to the public without the consent of the Person, unless otherwise required by an opinion of the Attorney General pursuant to the Texas Public Information Act, as amended, or by a court heaving jurisdiction of the matter pursuant to applicable law or as otherwise required by law. This subsection may not be construed to authorize a Person to designate all matters as confidential or as trade secrets.

- (K) The City Council shall require reasonable bonding requirements of a Person, as are required of other entities that place facilities in the public rights-of-way. Such bonding amounts will be reasonably determined by the City Council depending on several factors as to public safety and risk of harm to Persons and property. Such factors include:
- (1) The nature of the construction project (overhead, trenchless, open trench);
  - (2) Type of facility (gas, electric, water, telecommunications, cable, fiber); and/or

- (3) Past construction history of Person in the City as to any damage claims, repairs and timeliness of construction.

The City may, in a non-discriminatory manner, waive or reduce the amount of the bond in the event the Person provides written documentation as to reserves available to compensate the City for damages and has a two-year history of no claims or damages to City property by the City or of prompt payment on such claims.

- (L) In determining whether any requirements under this section is unreasonable or unfeasible, the City Council or their designee shall consider, among other things, whether the requirement would subject the Person or Persons to an unreasonable increase in risk or service interruption, or to an unreasonable increase in liability for accidents, or to an unreasonable delay in construction or in availability of its services or to any other unreasonable technical or economic burden.
- (M) A Person issued a permit pursuant to this Ordinance shall, at all times, employ the standard of care attendant to the risks involved to prevent actions, failures and accidents which may cause damage, injury or nuisance to Persons, the public, the facilities of other Persons, or to any City structures or structures owned by other Persons located in the public rights-of-way. A Person issued a permit pursuant to this Ordinance shall observe all federal and state statutes and regulations and all applicable City ordinances and safety codes. A Person issued a permit pursuant to this Ordinance shall keep and maintain its facilities in a safe and suitable condition and in good order and repairs sufficient for its intended purpose.

## **SECTION VII: Conditions of Public Rights-of-Way Occupancy**

- (A) In the exercise of governmental functions, the City has first priority over all other users of the public rights-of-way. The City reserves the right to lay sewer and/or water facilities and any other pipe lines or cables and conduits, and to do underground and overhead work and have attachments and require restructuring or changes in the City's aerial facilities in, across, along, over or under a public street, alley or public rights-of-way that may be occupied by a Person and to change the curb, route or grade of sidewalks and streets, to the fullest extent allowed by law.
- (B) The City shall assign the location in or over the rights-of-way among competing users of the public rights-of-way with due consideration to the public health and safety considerations of each user type, and to the extent that the City can demonstrate that there is limited space available for additional users, may limit new users, as allowed under state or federal law. As a priority, each user of the public rights-of-way will be allowed one alignment on one side of the street for placement of its facilities, provided there is adequate space available. In the event an additional alignment(s) or both sides of the street has been requested by a user, the City Council will grant such request, provided there is adequate space available and the requester has demonstrated the financial or technical impracticability of the use of the requester's single alignment or use of only one side of the street.
- (C) If the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or public rights-of-way, the grant to an abutting landowner shall be subject to the rights of the previously authorized user of the public rights-of-way.
- (D) If the City Council gives written notice, a Person shall, at its own expense, temporarily or permanently, remove, relocate, change or alter the position of Person's facilities that are in the public rights-of-way within 120 days, except in circumstances that require additional time as reasonably determined by the City based upon information provided by the Person. For projects expected to take longer than 120 days to remove, relocate, change or alter, the City Council or Mayor will confer with the Person before determining the alterations to be required and the timing

thereof. The City Council shall give notice whenever the City has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a City governmental public improvement in the public rights-of-way. This section shall not be construed to prevent a Person's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal, nor shall it be required if improvements are solely for beautification purposes without prior joint deliberation and agreement with the Person. On a non-discriminatory basis, the City Council and a Person may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change.

- (E) If the Person fails to relocate facilities in the time allowed by the City Council in this section, the Person may be subject to liability to the City for such delay and as set forth in the City ordinances, now or hereafter enacted.
- (F) A Person may trim trees or other vegetation in or over the public rights-of-way as needed for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with standards promulgated by the City. Should the Person, its contractor or agent, fail to remove such trimmings within 24 hours, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Person shall promptly reimburse the City for all costs incurred within 30 working days. A Person shall not be responsible for tree trimming or removal, except as to the trimming required to construct, maintain or restore utility service.
- (G) A Person shall temporarily remove, raise or lower its aerial facilities to permit the moving of houses or other bulky structures, if the requesting party provides written notice of no less than five days, except for good cause shown. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefitting from the temporary arrangements. The Person may require prepayment or prior posting of a bond from the party requesting the temporary move.
- (H) In the event a Person's use of the facilities is discontinued, the Person shall be notified by the City and thereafter shall forthwith remove its facilities there from unless specifically permitted to continue the same, and on the removal thereof shall restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in the condition prior to the removal, as determined by the City. In the event of failure, neglect or refusal of the Person, after 30 days notice by the City Council to repair, improve or maintain such street portion, the City may do such work or cause it to be done, and the reasonable cost thereof as determined by the City shall be paid by the Person and collection may be made by court action or otherwise.

## **SECTION VIII: Insurance Requirements**

- (A) A Person shall obtain and maintain insurance in the amounts reasonably prescribed by the City Council with an insurance company licensed to do business in the State of Texas and acceptable to the City. A Person shall furnish the City Secretary with proof of insurance at the time of the request for construction permits. The City Council reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the City Council determines that changes in statutory law, court decisions or the claims history of the industry or the Person may require adjustment for coverage. For purposes of this section, the City will accept certificates of self-insurance issued by the State of Texas or letters written by the Person in those instances where the state does not issue such letters, and in all such instances, the Person that self-insures shall provide written documentation as to substantially the same coverage, claims process and defense to the City as would be provided by an insurance carrier as

required herein, all as may be detailed in the information provided to the City. However, for the City Council to accept such self-insurance coverage, the Person must demonstrate by written information that he or she has adequate financial resources to be a self-insured entity as reasonably determined by the City, based on financial information requested by and furnished to the City. The City's current insurance requirements are described in Exhibit "A" attached hereto.

- (B) A Person shall furnish to the City Secretary, at no cost to the City, copies of certificates of insurance evidencing the coverage required by this section. The City may request the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, unless the policy provisions are established by a law or regulation binding the City, the Person or the underwriter. If the City requests a deletion, revision or modification, a Person shall exercise reasonable efforts to pay for and to accomplish the change.
- (C) The insurance certificate required under division (B) shall:
  - (1) Name the City and its officers, employees, board members and elected representatives as additional insureds for all applicable coverage;
  - (2) Provide for 30 days written notice to the City for cancellation, non-renewal or material change; and
  - (3) Provide that written notice of claims shall be provided to the City Secretary by certified mail.
- (D) A Person shall file and maintain proof of insurance with the City Secretary. An insurance certificate obtained in compliance with this section is subject to City Attorney approval. The City may require the certificate to be changed to reflect changing liability limits. A Person shall immediately advise the City Attorney of actual or potential litigation that may develop or affect an existing carrier's obligation to defend and indemnify.
- (E) An insurer has no right of recovery against the City. The required insurance policies shall protect the Person and the City. The insurance shall be primary coverage for losses covered by the policies.
- (F) The policy clause "Other Insurance" shall not apply to the City if the City is an insured under the policy.
- (G) A Person shall pay premiums and assessments for the insurance required under this section. A company which issues an insurance policy has no recourse against the City for payment of a premium or assessment. Insurance policies obtained by a Person must provide that the issuing company waives all right of recovery by way of subrogation against the City in connection with damage covered by the policy.

## **SECTION IX: Wireless Services (Network Nodes)**

### **(A) Purpose.**

- (1) To establish standards and procedures 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.
- (2) To provide technical criteria and details for Providers seeking to install and construct network nodes and node support poles in the City's Right-of-Way.

- (3) To encourage the deployment of state-of-the-art small cell wireless technology within the City for the many benefits it promises the citizens of Redwater, including increased connectivity and reliable networks and services.
- (4) Providers shall adhere to the requirements found in the "Right-of-Way Management" Ordinance, for the placement of their facilities within the City's Right-of-Way.

(B) Permitting.

- (1) Completion of no-fee permit.
- (2) Detailed Map showing the location(s) of the existing pole to which the network node is proposed to be attached, and a street view image.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) If location on a City pole is proposed, language must be included to designate the exact pole being proposed.
- (7) A traffic control plan, stormwater or drainage plan, and trench safety plan may also be required based on the proposed scope of work.
- (8) 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.
- (9) Notification to adjacent residential developments / neighborhoods within 300 feet is required on all node attachments on City infrastructure.
- (10) 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) An 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.

(C) Installation of New Poles.

Existing communications lines between existing utility poles. Micro Network Nodes shall only be lashed on existing communications lines between existing utility poles (electric poles or telephone poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.

(D) Electrical Permit.

- (1) 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.
- (2) Provider shall provide City with the electrical permit and provide sealed engineered drawings for conduit size, circuit size, calculations for Amp, distances running, etc.

(E) Network Node and Node Support Pole Requirements.

- (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 "Right-of-Way Management" Ordinance 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.

(2) Inspections.

- (a) 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.

- (b) 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.

(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 thirty (30) 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 any decorative poles in the City. The City may entertain proposals for location on decorative poles if a stealth design is proposed.
- (f) Poles. Wireless Facilities on node support poles shall be installed at least eight (8) feet above the ground. If any attachments project towards the street side, a minimum vertical clearance of 16 feet shall be provided.
- (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) 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.

- (5) Generators. Provider shall not allow or install generators or back-up generators in the

Right-of-Way.

- (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.
- (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 City. The City shall not be liable for any damages, injuries, or claims arising from Provider's actions under this section.
- (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 (e.g. RF ground notification signs) 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.
- (9) Overhead Lines Prohibited. In areas designated as underground utility areas, 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.
- (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.
- (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.
- (12) Inventory.
  - (a) 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 identification, type of pole used for installation, pole owner, and description/type of installation for each network node and node support pole installation.
  - (b) 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.

(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.

(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.

(F) Interference with Operations.

(1) No Liability.

- (a) The City will 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.

(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.

(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.

(G) Abandonment, Relocation and Removal.

(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.

(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 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; or
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.
- (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.
- (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. All repair, restoration and replacement shall be subject to the sole, reasonable approval of the City.
- (5) Provider responsible. Provider shall be responsible and liable for the acts and omissions of Provider's employees, temporary employees, officers, 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.

## **SECTION X: Idemnity.**

- (A) Except as to Certificated Tele-communications Providers as provided in Tex. Local Gov't Code, Ch. 283 each Person placing facilities in the public rights-of-way shall agree to promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses:
- (1) For the repair, replacement or restoration of the City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of the Person's acts or omissions.

- (2) From and against any and all claims, demands, suits, causes of action and judgments for:
- (a) damage to or loss of the property of any Person (including yet not limited to the Person, its agents, officers, employees and subcontractors, City's agents, officers and employees and third parties); and/or
  - (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any Person (including yet not limited to the agents, officers, and employees of the Person, Person's subcontractors and City and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Person, their agents, employees, and/or subcontractors, in the performance of activities pursuant to or authorized under this Ordinance.
- (B) Upon commencement of any suit, proceeding at law or in equity against the City relating to or covering any matter covered by this indemnity, to indemnify and hold the City harmless, or to pay said final judgment and costs, as the case may be, the City shall give the Person reasonable notice to the City, the City shall have the right to defend the same and in addition to being reimbursed for any such judgment that may be rendered against the City, together with all court costs incurred therein, the Person shall promptly reimburse the City for attorney's fees, including those employed by the City in such case or cases, as well as all expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised or fully adjudicated against the City.
- (C) This indemnity provision shall not apply to any liability resulting from the negligence of the City, its officers, employees, agents, contractors or subcontractors.
- (D) The provisions of this indemnity are solely for the benefit of the City and is not intended to create or grant any rights, contractual or otherwise, to any other Person or entity.
- (E) To the fullest extent permitted by law, a Person shall pay all expenses incurred by the City in defending itself with regard to all damages and penalties provided in this Ordinance. These expenses shall include all out-of-pocket expenses such as attorneys' fees, and shall also include the reasonable value of any services rendered by any employees of the City. In the event the City is compelled to undertake the defense of any such suit by reason of a Person's failure to perform as hereinabove provided, the City shall have the full right and authority to make or enter into any settlement or compromise of such adjudication as the City Council shall deem in the best interest of the City, this without the prior approval or consent of the Person with respect to the terms of such compromise or settlement.

## **SECTION XI: Severability.**

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

## **SECTION XII: Governing Law.**

This Ordinance shall be construed in accordance with the City ordinances in effect on the date of passage of this Ordinance to the extent that such ordinances are not in conflict with or in violation of the

Constitution and laws of the United States or the State of Texas.

**SECTION XIII: Unauthorized Use of Public Rights-of-Way.**

Each construction permit application to use the public rights-of-way shall contain, or have attached, the following:

“By this application for a construction permit to use the public rights-of-way, I, as the lawful representative of \_\_\_\_\_ (not the contractor, but a representative of the facility owner with authority to bind the owner), hereby agree to use the City’s public rights-of-way under the terms and conditions approved by the City of Redwater by the City’s Public Rights-of-Way Management Ordinance (Ordinance No. 26-18-07).

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date”

**SECTION XIV: Severability.**

Should any section, subsection, sentence, clause, phrase or word of this Ordinance, or application thereto, 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 and the City shall promptly promulgate new or revised provisions in compliance with the authority’s decision or enactment.

**SECTION XIV: Penalty.**

Any Person violating any of the provisions or terms of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not exceeding \$2,000.00 for each violation, and each day that such violation shall continue to exist constitutes a separate offense.

**SECTION XV: Effective Date.**

The fact that present City ordinances and regulations of the City of Redwater, Texas, are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the inhabitants of the City of Redwater, Texas, creates an emergency for the immediate preservation of public business, property, health, safety and general welfare of the public that requires that this Ordinance shall become effective from and after the date of its passage and it is accordingly so ordained.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF REDWATER, TEXAS, ON THE 2<sup>ND</sup> DAY OF FEBRUARY, 2026.**

  
\_\_\_\_\_  
**CLAY PARKER, MAYOR**

Attest:

  
\_\_\_\_\_  
**ANITA GRIFFITH, CITY SECRETARY**

