

CITY OF NIEDERWALD, TEXAS

ORDINANCE NO. 111703 - B

UNIFORM RIGHT-OF-WAY MANAGEMENT ORDINANCE

**AN ORDINANCE OF THE CITY OF NIEDERWALD, TEXAS,
GOVERNING THE UNIFORM USE, OCCUPANCY AND
CONSTRUCTION IN THE CITY'S PUBLIC RIGHTS-OF-WAY;
PROVIDING FOR THE FOLLOWING: DEFINITIONS;
FRANCHISE REQUIRED; REGISTRATION OF RIGHTS-OF-
WAY OCCUPANTS; CONSTRUCTION STANDARDS;
CONDITIONS OF GRANT; ENFORCEMENT, INCLUDING FINE
NOT TO EXCEED \$500 OR CIVIL PENALTY NOT TO EXCEED
\$500; REPEALER; SEVERABILITY; EFFECTIVE DATE; AND
PROPER NOTICE AND MEETING.**

WHEREAS, the laws of the State of Texas have consistently and expressly preserved the historic authority of Texas municipalities to manage the public rights-of-way and regulate the use, occupancy and construction in those public rights-of-way; and

WHEREAS, in Chapter 283 of the Texas Local Government Code, the State of Texas has granted telecommunications companies holding a certificate from the Public Utilities Commission of Texas the authority to place their poles, conduit, cable, switches and related appurtenances and facilities within the City's public rights-of-way; and

WHEREAS, the City Council may at its discretion grant authority in the form of franchise ordinances to persons other than telecommunications companies seeking to occupy the City's public rights-of-way, such as but not limited to, those transmitting or distributing gas, water, wastewater, electricity, or cable services; and

WHEREAS, the City Council may require persons to register and obtain construction permits in order to place facilities within the public rights-of-way and repair or maintain those facilities; and

WHEREAS, the City Council may, in the course of protecting the public health, safety and welfare, exercise its police powers to regulate the use of the public rights-of-way in a reasonable, competitively neutral and nondiscriminatory manner; and

WHEREAS, pursuant to the laws of the State of Texas and its inherent police powers, the City Council may establish reasonable regulations governing construction activities within and upon the public rights-of-way so to preserve those valuable public resources, maintain the physical integrity of the streets, conserve the limited physical capacity of the public rights-of-way, prevent pedestrian and vehicular traffic hazards, minimize congestion, avoid damage to private property, limit visual blight and noise, and protect the public health, safety and welfare; and

WHEREAS, the City Council finds that it is necessary for the good government, peace or order of the City to adopt an ordinance regulating the use of public rights-of-ways within the City;

WHEREAS, municipal police power-based regulations as applied to management of the public rights-of-way typically include provisions regarding restrictions on excavations, cutting curbs and streets, detouring traffic, erecting barricades, restoring public rights-of-way, trimming trees, and relocating facilities; and

WHEREAS, upon issuance of public notice and conducting a public meeting, the City Council find the enactment of the following regulations to be reasonably necessary to protect the public health, safety and welfare.

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD, TEXAS, THAT:

SECTION I

ENACTING PROVISIONS

A. COMMON NAME

This Ordinance shall commonly be referred to as the “Uniform Right-of-Way Management Ordinance”.

B. FINDINGS OF FACT

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

C. PURPOSE

The purpose of this Ordinance is to:

1. Assist in the management of public rights-of-way in a non-discriminatory and competitively neutral manner.
2. Govern the use and occupancy of the rights-of-way by Certificated Telecommunications Providers, cable service providers, electric distribution systems, gas distribution systems, and all other persons expressly authorized by the City or State law to construct and maintain facilities in the public rights-of-way.
3. Assure that the City can continue to fairly and responsibly protect the public health, safety, and welfare and effectively manage its rights-of-way as a vital public resource.

4. Minimize the disruption, damage, or alteration of existing trees, vegetation, and ground cover in the City's public rights-of-way.

5. Minimize the congestion, inconvenience, visual impact, costs, and other adverse effects of construction in and use of the City's public rights-of-way.

6. Conserve the limited capacity of the City's public rights-of-way held in public trust by the City.

7. Preserve the physical integrity of and control the orderly flow of vehicles and pedestrians on the City's public rights-of-way.

8. Assist the City in its efforts to identify the different entities using the City's public rights-of-way.

SECTION II

DEFINITIONS

Definitions

Whenever used in this Ordinance, the following terms, as well as their singular, plural, and possessive forms, shall have the following definitions and meanings, unless the context of the sentence in which they are used indicates otherwise:

1. "*Cable Service*" means Cable Service as defined in the Cable Communications Policy Act of 1984, as amended, 47 U.S.C.A. §522 et seq.

2. "*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 Public Utility Commission to offer local exchange telephone service.

3. "*District*" means any district or authority created by authority of either Texas Constitution, art. III, § 2(b)(1)-(2), or art. XVI, § 59.

4. "*Facilities*" means any and all of the duct spaces, manholes, lines, wires, fibers, poles, conduits, underground and overhead passageways, and other equipment, structures, plant and appurtenances, and all associated transmission media placed in, on, over or under the public rights-of-way, including wires, cables and pipelines.

5. "*Grantee*" means a person that the City has expressly granted the authority to use, occupy and construct facilities within the City's public rights-of-way pursuant to a duly enacted franchise ordinance. The term also includes certificated telecommunications providers, districts, and water supply corporations.

6. “*Person*” means a natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, cooperative, utility, public utility, retail public utility, district, water supply corporation, political subdivision and any other legal entity.

7. “*Plans of Record*” means “as built” construction plans, maps, and drawings used in the ordinary course of business and as reasonably required by the City of facilities in the public rights-of-ways.

8. “*Public Rights-of-Way*” or “*Rights-of-Way*” means the area on, below, above or adjacent to a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement, in which the City has an interest. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications.

9. “*Public Utility*” means a public utility as that term is used in the Public Utility Regulatory Act of 1995, Texas Utilities Code, § 11.004, including municipally owned and/or operated utilities.

10. “*Telecommunications Service*” means the rent, sale or lease, of plant, equipment, facilities, or other property for the transmission of voice, data, image, graphics and other communications between or among points by wire, fiber optics, or other similar facilities, but does not include the provision to the public of any “wireless service,” as defined by law, and does not include long-distance transmissions (inter-LATA and intra-LATA toll transmissions).

11. “*Telecommunications Utility*” means “Telecommunications Utility” as used in the Public Utility Regulatory Act of 1995, Texas Utilities Code, Section 51.002(11).

12. “*Use and Occupancy*” means installation, construction, re-construction, maintenance, or repair, of any facilities in, over, under, along, through or across the Public rights-of-way for any purpose whatsoever.

13. “*City*” means The City of Niederwald, Hays and Caldwell County, Texas, a duly incorporated municipality, and the City Council.

14. “*Council*” means the City Council, which is the governing body of the City of Niederwald.

15. “*Water Supply Corporation*” means a nonprofit water supply or sewer service corporation created or operating under Texas Water Code Chapter 67.

C. Non-discrimination and Competitive Neutrality

City hereby recognizes that it has the legal duty to ensure that it will not create physical or economic barriers to any Grantee attempting to enter the market, and to ensure that all City regulations are imposed in a competitively neutral manner.

D. Governing Law

This Ordinance shall be construed in accordance with the other City ordinances in effect on the date of passage of this Ordinance and as may be amended from time to time to the extent that such Ordinance is not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

SECTION III

FRANCHISE REQUIRED

A. General

No person shall use, occupy, or construct Facilities in, upon, over, or under the City's public rights-of-way, without first having applied for and received a franchise or other authorization from the City unless otherwise provided by law.

B. Certificated Telecommunications Providers

Pursuant to Texas Local Government Code Chapter 283, a CTP is not required to obtain a franchise. A CTP is subject to all other provisions of this Ordinance.

SECTION IV

REGISTRATION OF RIGHTS-OF-WAY OCCUPANTS

A. Registration Required

1. No person shall use, maintain, operate, occupy, or construct Facilities in, upon, over, or under the City's public rights-of-way without having registered with the City in accordance with the following provisions. In order to protect the public health, safety, and welfare, all persons using or occupying the rights-of-way will register with the City. Registration will be issued in the name of the person who will own the facilities. Registration must be renewed every five (5) years. If a registration is not renewed, subject to sixty (60) day notification to the owner, the facilities of the user will be deemed to have been abandoned.
2. All persons using or occupying the City public rights-of-way must register within ninety (90) days after the effective date of this Ordinance.
3. Persons possessing a current franchise issued by the City do not need to register under this section.

B. Required Information

Registration shall be on a form prescribed by the City and shall include:

1. The name of the user of the rights-of-way;
2. The name, address and telephone number of the people who will be contact person(s) for the user;
3. The name, address, and telephone number of any and all contractors or subcontractors who will be working in the rights-of-way on behalf of the user;
4. The name(s) and telephone number of an emergency contact who shall be available twenty-four (24) hours a day;
5. Proof of insurance, as specified in Section VI, subsection B.
6. When any information provided in the registration changes, the user shall inform the City of the change no more than thirty (30) days after the date the change is made.

SECTION V.

CONSTRUCTION STANDARDS

A. Rights-of-Way Construction Permits

1. No person shall excavate, contract, install, repair or maintain facilities in, upon, over or under the City's public rights-of-way or affect traffic flow without first having applied for and received a non-exclusive rights-of-way construction permit from the City in accordance with the following provisions. Persons, including Grantees, are required to obtain a rights-of-way construction permit prior to conducting land-disturbing activities for any reason in the public rights-of-way.

2. A permit shall not be required for the installation of facilities necessary to initiate service to a customer's property, or repair or maintenance of existing facilities unless such repair or maintenance requires the breaking of pavement, the closure of a nonresidential traffic lane, excavation or boring.

3. No permit shall be issued unless the Grantee has a valid franchise, as provided by Section III, above, and the Grantee is in full compliance with all terms of the franchise, including payment of any franchise fees.

4. No permit shall be issued unless the Grantee has registered with the City, as provided by Section IV, above.

5. The rights-of-way construction permits shall be available at a cost of twenty-five dollars (\$25.00) and shall not be unreasonably delayed or withheld by the City.

6. On a form prescribed by the City, the Grantee shall provide the following information in order to apply for a rights-of-way construction permit.

(a) The name of the Grantee;

(b) The name, address, and telephone number of the contact person(s) for the Grantee;

(c) The name, address, and telephone number of any and all contractors or subcontractors performing the work;

(d) A detailed description of the project, duration of the project, location of the desired work, erosion control plan, and proposal for lane closures, if any; and

(e) Proof of insurance and a surety bond, as specified in Section VI, subsections B & C.

7. A copy of the permit and engineering plans shall be maintained at the construction site and made available for inspection by the City at all times when construction or installation work is occurring.

8. If any of the provisions of this Ordinance are not followed, a permit may be revoked by the Mayor or the Mayor's designee. If a person has not followed the terms and conditions of this Ordinance and work done pursuant to a prior permit, new permits may be denied or additional terms required.

9. Appeal from denial or revocation of permit or from the decision of the Mayor or the Mayor's designee shall be to the City Council. Appeal shall be filed with the City Secretary within fifteen (15) calendar days from the date of the decision being appealed.

10. The City shall assign the location in, across, along, over, or under the public right-of-way among competing users with due consideration to each user type and the public health, safety and welfare. Based on these considerations, the City may prohibit a person from using the public right-of-way, unless expressly prohibited to do so by state or federal law. A construction permit is not transferable or assignable to any person Other than the Grantee without the prior written approval of the City.

B. Construction and Maintenance of Facilities

1. Facilities installed by Grantee in City shall be placed underground and shall be under construction within sixty (60) days of a Developer's request and assurance that the site is ready for utility installation. Grantee shall maintain good faith efforts toward completion of the installation of facilities. Surface equipment may be installed at any time provided no excessive damage to infrastructure occurs.

2. Final or record plats of approved subdivisions may be obtained from the County. When any final or record plat has been signed by the property owner and approved by the City, a Grantee may begin construction and installation of facilities in the utility easements as depicted in the final or record plat.

3. Pursuant to the laws of the State of Texas and this Ordinance, Grantee has the non-exclusive right and privilege to use and occupy the public rights-of-way in City for the purpose of maintaining and operating its facilities subject to the terms, conditions, and stipulations set forth in this Ordinance, the Constitution and laws of the United States and the State of Texas and the City's Ordinances to the extent such Ordinances are not in conflict herewith.

4. Grantee's facilities and transmission media used in or incident to the provision of services and to the maintenance of a business by Grantee in City shall remain as now constructed, subject to such changes under the conditions prescribed in this Ordinance as may be considered necessary to protect the public health and safety, and such changes and extensions as may be considered necessary by Grantee in the pursuit of its business. Grantee shall at all times during the term of this Ordinance be subject to all lawful exercise of the police power by City in the operation and maintenance of the public rights-of-way. The terms of this Ordinance shall apply throughout City and shall apply to all of Grantee's facilities.

5. The permitted working hours in the rights-of-way are 7:00 a.m. to 6:00 p.m., Monday through Friday. Work that needs to be performed after 6:00 p.m. Monday through Friday must be approved by the City in advance. Any work performed on Saturday must be approved twenty-four (24) hours in advance by the City. Directional boring is permitted only Monday through Friday 7:00 a.m. to 6:00 p.m., unless approved in advance. No work will be done, except for emergencies, on Sundays or legal holidays, unless approved in advance.

C. Location of Facilities

All facilities shall be constructed, installed and located in accordance with the following terms and conditions:

1. All cables, wires, telephone lines, pipelines and other facilities installed are required to be placed underground. Such facilities shall be installed within its existing underground duct or conduit or on existing poles whenever excess capacity exists within such facility.

2. All facilities in a public right-of-way shall be constructed, installed, placed, and maintained with the utmost diligence so that such facilities will not:

(a) endanger the lives of any person

(b) unnecessarily inconvenience the public or residents of the City;

- (c) unreasonably interfere with any City improvements;
- (d) obstruct the free use of public easements, public grounds, or public right-of-ways;
- (e) interfere with any existing facilities, traffic control signals, street lights, fire lines, or communication lines; or
- (f) obstruct or hinder in any manner the various utilities serving City residents.

3. In determining whether any requirement under this Section is unreasonable or unfeasible, the Mayor or the Mayor's designee shall consider, among other things, whether the requirement would subject Grantee to an unreasonably increased risk of service interruption, to an unreasonably increased liability for accidents, to an unreasonable delay in construction or in the availability of its services, or to any other unreasonable technical or economic burden.

D. Damage to Property

Grantee, or any person acting on Grantee's behalf, shall not take any action or permit any action to be done which may impair or damage any City property or other property located in, on or adjacent to the public rights-of-way. Nothing in this Ordinance relieves a Grantee, municipality, or any other person or entity from its obligations to obtain locates of underground facilities before excavation as required by the Underground Facility Damage Prevention and Safety Act, Texas Utilities Code, Section 251.001, et seq. (Vernon. Supp. 1999).

E. Notice of Repair and Emergency Work

Grantee, or any person acting on Grantee's behalf, shall not commence any work in or about City property or public rights-of-way without providing seven (7) days advance notice to City. If an emergency exists which makes advance notification impossible, the Grantee may begin that response or repair work, or take any action required under the circumstances, provided that notice to the City is given as promptly as possible after beginning the work, and Grantee acquires any approval required by City ordinances applicable to emergency response work.

F. Maintenance of Facilities

Grantee shall maintain its facilities in a good and safe condition and in a manner that complies with all applicable law.

G. Relocation or Removal of Facilities

1. Grantee may not locate or maintain its Facilities so as to unreasonably interfere with the use of City property or public rights-of-way by City or by other persons

authorized to use or be present in or upon City property or public rights-of-way. In the event of unreasonable interference to City property or public rights-of-way, such Facilities shall be moved by Grantee, temporarily or permanently, as determined by the Mayor or the Mayor's designee upon reasonable notice. If the temporary removal of Grantee's aerial facilities is necessary to permit the moving of houses or other bulky structures, Grantee shall be required to temporarily remove the same upon not less than twenty (20) days advance notice by a party permitted to move a building, house or other bulky structure. Upon a showing that twenty (20) days does not afford a Grantee adequate time to arrange removal of facilities, the parties shall agree upon a schedule, which shall not unreasonably delay the moving of houses or other bulky structures. The expenses of such temporary relocation or removal of aerial facilities shall be paid in advance by the party or parties requesting and benefiting from such temporary relocation or removal.

2. Within thirty (30) days following written notice from City, or a mutually agreed upon time frame, Grantee shall, without claim for reimbursement or damages against City, temporarily or permanently (as determined by the City) remove, relocate, change or alter the position of any facilities on City property or within the public rights-of-way whenever City officials determine that such removal, relocation, change or alteration is reasonably required for the widening or straightening of streets.

3. In any instance in which operation of Subsection 2 of this Section is deemed by Grantee to impose a significant financial hardship, Grantee shall have the right to present alternative proposals to City, and City shall give due consideration to any such alternative proposals.

4. If after proper notice, Grantee fails or refuses to remove or abate the facilities in question, City retains the rights and privilege to remove or abate any such utility facilities, at the sole cost and expense of Grantee. In performing or permitting such work to be done, City shall not be liable to any carrier or any Grantee for any damages to any utility facilities unless directly and proximately caused by the willful, intentional, or malicious act by City, and shall not be liable in any event for any consequential damages relating to service interruptions.

H. Emergency Removal or Relocation of Facilities

City retains the right and privilege to cut or move any facilities located on City property or within the public rights-of-way that the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. City shall cooperate to the extent possible with Grantee in such instances to assure continuity of service, and to afford Grantee the opportunity to make such relocation and/or removal itself where deemed reasonable, at City's sole discretion. City shall use all reasonable means to minimize the disruption of service.

I. Restoration of Public Rights-of-Way and City Property

1. When Grantee, or any person acting on its behalf, does any work in or affecting any public rights-of-way or City property, it shall at its own expense, promptly remove any obstructions and restore such public rights-of-way or City property to as good a condition as existed before the work was undertaken, including the compaction of all trench fill material in accordance with applicable regional standards. Soil testing shall be undertaken at all street crossings and as requested by the City, and as is required of all other users of the public rights-of-way.

2. Grantee shall replace and properly repair the surface, base, irrigation system and landscape treatment of any public rights-of-way that may be excavated or damaged by reason of the erection, construction, maintenance, or repair of the Grantee's facilities within ten (10) calendar days after completion of the work in accordance with existing standards of the City in effect at the time of the work.

3. If weather or other conditions do not permit the complete restoration required by this Section, Grantee shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at Grantee's sole expense and Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

4. Grantee shall contain all sediment within the work area using erosion control measures and erosion-limiting construction techniques. Grantee shall submit a construction erosion control plan with all permit applications. All construction materials shall be cleared from rights-of-way by the end of every business day. A waiver may be granted for this requirement.

5. Grantee or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way or property.

6. If the Grantee, or any person acting on Grantee's behalf, fails to restore the public rights-of-way within ten (10) calendar days after completion of the work, or if the City Council determines that the situation poses an immediate danger to the public, then the City on its own initiative may undertake restoration activities and the City's actual costs of restoration shall be charged to the Grantee. In the event of restoration by the City, Grantee shall remain subject to the criminal fines and civil penalties provided by this Ordinance in addition to the obligation to reimburse the City the actual costs of restoration.

7. If, within one (1) year from the completion of the restoration work, the City reasonably determines that additional restoration is needed to place the public right-of-way or other property in as good a condition as the public right-of-way or other property was in immediately prior to the person's disturbance, damage or injury, then the person shall

perform such additional restoration at the person's sole cost and expense, and to the satisfaction of the City.

J. Plans of Record

1. Within sixty (60) days of completion of each new permitted section of Grantee's facilities, the Grantee shall supply the City with a complete set of "as built" plans of record for the new permitted section in a format used in the ordinary course of business of the Grantee's business, to the extent they are prepared in the ordinary course of business, but excluding customer specific, proprietary or confidential information and as reasonably prescribed by City, and as allowed by law. The City may, at its discretion, accept any reasonable alternative to "as built" plans of record which provides adequate information as to the location of Facilities in the public rights-of-way.

2. Grantee shall maintain maps of all of Grantee's facilities located on City property or within the public rights-of-way and shall promptly locate its Facilities at City's request.

K. Duty to Provide Information

Within ten (10) days of a written request from Mayor or the Mayor's representatives, Grantee shall furnish City with information directly related to the Grantee's use, occupancy or construction within or upon a public rights-of-way and as otherwise required by state law to be furnished to the City.

SECTION VI

CONDITIONS OF GRANT

A. Indemnity

1. The Grantee shall, at its sole cost and expense, indemnify, defend and hold harmless the City, its officers, Councils, commissions, agents and employees, against and from any and all claims, demands, causes of actions, suits, proceedings, damages, liabilities and judgments of every kind arising out of or due to the Grantee's construction, maintenance, or operation of a system in the City, including but not limited to damages for injury or death or damages to property, real or personal, and against all liabilities to others and against all loss, cost and expense, resulting or arising out of any of the same.

2. The indemnity provided by this Subsection does **not** apply to any liability resulting from the negligence of the municipality, its officers, employees, contractors, or subcontractors. If a Grantee and the municipality are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state or federal law and without waiving any defenses of the parties under state or federal law. This Section is solely for the benefit of the

municipality and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

3. Grantee or City shall promptly advise the other in writing of any known claim or demand against the Grantee or City related to or arising out of the Grantee's activities in a public right-of-way.

B. Grantee Insurance

1. Each Grantee shall secure and maintain the following liability insurance policies.

a. General liability insurance with limits not less than:

(1) One Million and No/100 Dollars (\$1,000,000.00) primary; and

(2) One Million and No/100 Dollars (\$1,000,000.00) umbrella or other securities as acceptable to the Mayor or the Mayor's designee.

b. Worker's compensation for Grantee's employees within statutory limits.

c. The liability insurance policies required by this Section shall be maintained by Grantee throughout the term during which Grantee is otherwise operating within public rights-of-way, or is engaged in the removal of its facilities.

2. Such liability insurance shall be kept in full force and effect by the Grantee during the existence of this franchise and thereafter for a period of not less than twelve (12) months.

3. An insurer has no right of recovery against the City, and no recourse against the City for a Grantee's non-payment of premiums or assessments.

4. Insurance policies and certificates must be issued from an insurance company licensed to do business in the State of Texas. Insurance policies and certificates issued by insurance companies not licensed to do business in the State of Texas are not acceptable.

5. Unless otherwise precluded by law, Grantee may satisfy one or more of the insurance requirements specified in this Section through self-insurance. In no event shall a self-insurance proposal be approved absent City's satisfaction that Grantee is in a sound financial condition, which shall be evidenced by a letter of self-insurance to be provided to City.

C. Bonds

1. The Mayor or the Mayor's designee may waive the requirement of a bond, if Grantee is able to demonstrate financial responsibility by having assets in excess of an amount determined appropriate by the Mayor. In the event the Mayor determines a bond is required, due to insufficient assets or a demonstration that the Grantee is not adequately

or promptly fulfilling its responsibilities in the public rights-of-way, it shall meet the requirements of this section.

2. To the extent not maintained by an affiliate, Grantee shall annually obtain, maintain and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas, and found acceptable by City Attorney, in the amount of Seventy-Five Thousand and No/100 Dollars (\$75,000.00), or of the estimated amount of the value of work anticipated to be done in that year, whichever is greater, to guarantee the restoration of the rights-of-way in the event the Grantee leaves a job site in the rights-of-way unfinished, incomplete, unsafe or unreasonably delays the completion of the construction. Grantee shall provide this corporate surety bond within thirty (30) days of the issuance of a permit under this Ordinance but prior to commencement of construction. Should a Grantee without a bond in place leave a job site in the rights-of-way unfinished, incomplete, unsafe or unreasonably delays the completion of construction, Grantee will pay the actual cost of restoring the rights-of-way, plus an administrative fee to reimburse the City's cost of overseeing any such restoration.

3. The rights reserved to City with respect to the Bond are in addition to all other rights of City, whether reserved by this Ordinance or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other right City may have.

4. The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after the receipt by City of Niederwald, by registered mail, of written notice of such intent."

5. Pursuant to Texas Water Code § 49.220, this subsection does not apply to districts and water supply corporations.

D. Assignments of Transfers of Business

The City requires Grantee to maintain a current point of contact information and provide notice of a transfer or assignment of business ownership or control.

E. Notice

1. All notices to City shall be in writing via certified mail, return receipt requested, to:

Mayor

City of Niederwald

13851 Camino Real

Niederwald, Texas 78640

2. All notices to Grantee shall be in writing via certified mail, return receipt requested, to the contact person and address provided by Grantee to the City upon execution of this Ordinance. Notice shall be deemed effective when mailed to the most recent address provided by Grantee to City.

3. Any change in the address, telephone number, or fax number of Grantee or City shall be furnished to the other within a reasonable time.

SECTION VII

ADMINISTRATION OF ORDINANCE

A. The City may, at reasonable times but not more than once annually unless there is good cause, make inquiries pertaining to compliance with this Ordinance and Grantee shall respond to such inquiries on a timely basis.

B. City may establish, after reasonable notice, such rules and regulations as may be appropriate for the administration of this Ordinance in the construction of Grantee's facilities on City property to the extent permitted by law.

C. The City shall have the right to lay, and permit to be laid, cable, electric, gas, water, wastewater, and other pipelines, cables, conduits or facilities and to do and permit to be done, underground and overhead installation in, across, along, over or under any street, alley, highway, public right-of-way or public property occupied by the Grantee and to change any curb or sidewalk or grade of any street.

SECTION VIII

VARIANCES

The City Council is authorized in specific cases to issue a variance from the strict and literal terms of this Ordinance if the Council expressly finds as follows:

- (1) the variance is not contrary to the public interest;
- (2) due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship; and
- (3) the spirit of the Ordinance will be observed and substantial justice will be done.

SECTION IX

ENFORCEMENT

A. Civil and Criminal Penalties

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

B. Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding \$500.00. Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

C. Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

1. injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
2. a civil penalty up to \$500.00 a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
3. other available relief.

SECTION X

REPEALER

A. General

All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

B. Franchises

Should all or part of this Ordinance be inconsistent or conflict with a specific franchise ordinance adopted by the City, the two shall be read together to the extent possible, otherwise, specific provisions contained within the franchise ordinance shall govern as to that particular Grantee.

C. Amendments

Grantees shall, at all times, be subject to the lawful exercise of the City's police power and regulatory authority and such reasonable and authorized regulations as the City shall hereafter by resolution or Ordinance provide.

D. Newly Annexed Areas

This Ordinance shall apply in newly annexed areas upon the date of annexation.

SECTION XI

SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or invalid by the judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

SECTION XII

EFFECTIVE DATE

This Ordinance shall take effect immediately from and after the date of passage and upon publication as required by law.

SECTION XIII

PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

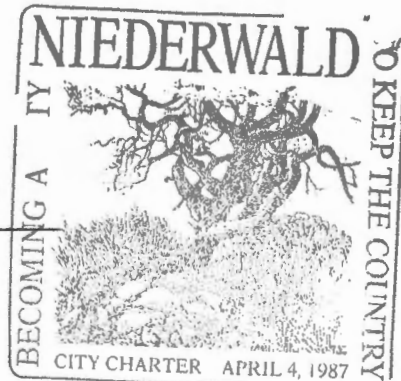
PASSED AND APPROVED this 17th day of November, 2003,
by the City Council of the City of Niederwald, Texas.

CITY OF NIEDERWALD, TEXAS

BY: Shirley Whisenant
Hon. Shirley Whisenant, Mayor

ATTEST:

Angie Schulze
Angie Schulze, City Secretary



APPROVED AS TO FORM:

Cary L. Bovey, City Attorney