ORDINANCE NO. 94

CITY OF LAKEFIELD, JACKSON COUNTY, MINNESOTA

AN ORDINANCE TO ENACT A NEW CHAPTER OF THE CODE OF ORDINANCES TO ADMINISTER AND REGULATE THE PUBLIC RIGHTS OF WAY IN THE PUBLIC INTEREST, AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT OF WAY PERMITS.

THE CITY COUNCIL OF THE CITY OF LAKEFIELD, JACKSON COUNTY, MINNESOTA ORDAINS:

Chapter 1

Right of Way Management

Sec. 1.01. Findings, Purpose, and Intent.
To provide for the health, safety, and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights of way, the City strives to keep its rights of way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City hereby enacts this new chapter of this code relating to right of way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights of way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this chapter, persons excavating and obstructing the rights of way will bear financial responsibility for their work. Finally, this chapter provides for recovery of out-of-pocket and projected costs from persons using the public rights of way.

This chapter shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minn. Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and 2017 Minn. Laws, ch. 94, art. 9, amending the Act, and the other laws governing applicable rights of the City and users of the right of way. This chapter shall also be interpreted consistent with Minn. R. 7819.0050–7819.9950 and Minn. R., ch. 7560 where possible. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

Sec. 1.02. Election to Manage the Public Rights of Way
Pursuant to the authority granted to the City under state and federal statutory, administrative and common law, the City hereby elects, pursuant to Minn. Stat. 237.163 subd. 2(b), to manage rights of way within its jurisdiction.

Sec. 1.03. Definitions.
The following definitions apply in this chapter of this code. References hereafter to "sections" are, unless otherwise specified, references to sections in this chapter. Defined

terms remain defined terms, whether or not capitalized.

Abandoned Facility. A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right of way user.

Applicant. Any person requesting permission to excavate or obstruct a right of way.

City. The City of Lakefield, Minnesota. For purposes of section 1.29, City also means the City's elected officials, officers, employees, and agents.

Collocate or Collocation. To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the City or other governmental unit.

Commission. The State Public Utilities Commission.

Congested Right of Way. A crowded condition in the subsurface of the public right of way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minn. Stat. § 216D.04, subd. 3, over a continuous length in excess of 500 feet.

Construction Performance Bond. Any of the following forms of security provided at permittee's option:

- Individual project bond;
- Cash deposit;
- Security of a form listed or approved under Minn. Stat. § 15.73, subd. 3;
- Letter of Credit, in a form acceptable to the City;
- Self-insurance, in a form acceptable to the City;
- A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.

Degradation. A decrease in the useful life of the right of way caused by excavation in or disturbance of the right of way, resulting in the need to reconstruct such right of way earlier than would be required if the excavation or disturbance did not occur.

Degradation Cost. Subject to Minn. R. 7819.1100, means the cost to achieve a level of restoration, as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. R., parts 7819.9900 to 7819.9950.

Degradation Fee. The estimated fee established at the time of permitting by the City to recover costs associated with the decrease in the useful life of the right of way caused by the excavation, and which equals the degradation cost.

Department. The department of public works of the City.

Delay Penalty. The penalty imposed as a result of unreasonable delays in right of way excavation, obstruction, patching, or restoration as established by permit.

Emergency. A condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

Equipment. Any tangible asset used to install, repair, or maintain facilities in any right of way.

Excavate. To dig into or in any way remove or physically disturb or penetrate any part of a right of way.

Excavation permit. The permit which, pursuant to this chapter, must be obtained before a person may excavate in a right of way. An Excavation permit allows the holder to excavate that part of the right of way described in such permit.

Excavation Permit Fee. Money paid to the City by an applicant to cover the costs as provided in Section 1.13.

Facility or Facilities. Any tangible asset in the right of way required to provide Utility Service.

High Density Corridor. A designated portion of the public right of way within which telecommunications right of way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

Hole. An excavation in the pavement, with the excavation having a length less than the width of the pavement.

Local Representative. A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

Management Costs. The actual costs the City incurs in managing its rights of way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right of way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right of way work; determining the adequacy of right of way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right of way or small wireless facility permits. Management costs do not include payment by a telecommunications right of way user for the use of the right of way, unreasonable fees of a third-party contractor used by the City including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the City, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minn.

Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the City fees and costs related to appeals taken pursuant to Section 1.31 of this chapter.

Obstruct. To place any tangible object in a right of way so as to hinder free and open passage over that or any part of the right of way.

Obstruction Permit. The permit which, pursuant to this chapter, must be obtained before a person may obstruct a right of way, allowing the holder to hinder free and open passage over the specified portion of that right of way, for the duration specified therein.

Obstruction Permit Fee. Money paid to the City by a permittee to cover the costs as provided in Section 1.13.

Patch or Patching. A method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

Pavement. Any type of improved surface that is within the public right of way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

Permit. Has the meaning given "right of way permit" in Minn. Stat. § 237.162.

Permittee. Any person to whom a permit to excavate or obstruct a right of way has been granted by the City under this chapter.

Person. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

Registrant. Any person who (1) has or seeks to have its equipment or facilities located in any right of way, or (2) in any way occupies or uses, or seeks to occupy or use, the right of way or place its facilities or equipment in the right of way.

Restore or Restoration. The process by which an excavated right of way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

Restoration Cost. The amount of money paid to the City by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

Public Right of Way or Right of Way. The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, or public sidewalk in which the City has an interest, including other dedicated rights of way for travel purposes and utility easements of the City. A right of way does not include the airwaves above a right of way with regard to cellular or

other non-wire telecommunications or broadcast service.

Right of Way Permit. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.

Right of Way User. (1) A telecommunications right of way user as defined by Minn. Stat., § 237.162, subd. 4; or (2) a person owning or controlling a facility in the right of way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right of way.

Service or Utility Service. Includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right of way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. ch. 238; (4) natural gas or electric energy or telecommunications services provided by the City; (5) services provided by a cooperative electric association organized under Minn. Stat., ch. 308A; and (6) water, and sewer, including service laterals, steam, cooling, or heating services.

Service Lateral. An underground facility that is used to transmit, distribute or furnish 'gas, electriCity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

Small Wireless Facility. A wireless facility that meets both of the following qualifications:

(i) each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and

(ii) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

Supplementary Application. An application made to excavate or obstruct more of the right of way than allowed in, or to extend, a permit that had already been issued.

Temporary Surface. The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the City's two-year plan, in which case it is considered full restoration.

Trench. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

Telecommunications Right of Way User. A person owning or controlling a facility in the right

of way, or seeking to own or control a facility in the right of way that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. ch. 453 and 453A, or a cooperative electric association organized under Minn. Stat. ch. 308A, are not telecommunications right of way users for purposes of this chapter except to the extent such entity is offering wireless service.

Two Year Project Plan. Shows projects adopted by the City for construction within the next two years.

Utility Pole. A pole that is used in whole or in part to facilitate telecommunications or electric service.

Wireless Facility. Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

Wireless Service. Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

Wireless Support Structure. A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the City.

Sec. 1.04 Administration.
The City is the principal official responsible for the administration of the rights of way, right of way permits, and the ordinances related thereto. The City may delegate any or all of the duties hereunder to the proper representative.

Sec. 1.06. Registration and Right of Way Occupancy.
Subd. 1. ***Registration.*** Each person who occupies or uses, or seeks to occupy or use, the right of way or place any equipment or facilities in or on the right of way, including persons with installation and maintenance responsibilities by lease, sublease, or assignment, must register with the City. Registration will consist of providing application information.

Subd. 2. ***Registration Prior to Work.*** No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right of way without first being registered with the City.

Subd. 3. ***Exceptions.*** Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right of way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right of way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, nothing herein relieves a person from complying with the provisions of the Minn. Stat. ch. 216D, Gopher One Call Law.

Sec. 1.07. Registration Information.

Subd. 1. ***Information Required***. The information provided to the City at the time of registration shall include, but not be limited to:

(a) Each registrant's name, Gopher One-Call registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.

(b) The name, address, and email address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(c) A certificate of insurance or self-insurance:

(1) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state of Minnesota, or a form of self-insurance acceptable to the City;

(2) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right of way by the registrant, its officers, agents, employees, and permittees, and (ii) placement and use of facilities and equipment in the right of way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities, and collapse of property;

(3) Naming the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;

(4) Requiring that the City be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term; and

(5) Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the City in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this chapter.

(6) The City may require a copy of the actual insurance policies.

(7) If the person is a corporation, a copy of the certificate is required to be filed under state law as recorded and certified to by the secretary of state.

(8) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval from said commission or other state or federal agency.

Subd. 2. ***Notice of Changes.*** The registrant shall keep all of the information listed above current at all times by providing to the City information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

Sec. 1.08. Reporting Obligations.

Subd. 1. ***Operations****.* Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the City. Such plan shall be submitted using a format designated by the City and shall contain the information determined by the City to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights of way.

The plan shall include, but not be limited to, the following information:

(a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next-year project"); and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "five-year project").

The term "project" in this section shall include both next-year projects and five-year projects.

By January 1 of each year, the City will have available for inspection in the City's office a composite list of all projects of which the City has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by February 1, each registrant may change any project in its list of next-year projects, and must notify the City and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

Subd. 2. ***Additional Next-Year Projects.*** Notwithstanding the foregoing, the City will not deny an application for a right of way permit for failure to include a project in a plan submitted to the City if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

Sec. 1.09. Permit Requirement.

Subd. 1. ***Permit Required.*** Except as otherwise provided in this code, no person may obstruct or excavate any right of way, or install or place facilities in the right of way, without first having obtained the appropriate right of way permit from the City to do so.

(a) *Excavation Permit.* An excavation permit is required by a registrant to excavate that part of the right of way described in such permit and to hinder free and open passage over the specified portion of the right of way by placing facilities described therein, to the extent and for the duration specified therein.

(b) *Obstruction Permit.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right of way by placing equipment

described therein on the right of way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(c) *Small Wireless Facility Permit.* A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion or the right of way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

Subd. 2. *Permit Extensions.* No person may excavate or obstruct the right of way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right of way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

Subd. 3. *Delay Penalty.* In accordance with Minn. Rule 7819.1000 subp. 3 and notwithstanding subd. 2 of this Section, the City shall establish and impose a delay penalty for unreasonable delays in right of way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.

Subd. 4. *Permit Display.* Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.

Sec. 1.10. Permit Applications.

Application for a permit is made to the City. Right of way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

(a) Registration with the City pursuant to this chapter.

(b) Submission of a completed permit application form, including all required attachments, and drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.

(c) Payment of money due the City for:
  (1) permit fees, estimated restoration costs, and other management costs;
  (2) prior obstructions or excavations;
  (3) any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights of way or any emergency actions taken by the City;
  (4) franchise fees or other charges, if applicable.

(d) Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.

(e) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the City deems the existing construction performance bond inadequate under applicable standards.

Sec. 1.11. Issuance of Permit; Conditions.

Subd. 1. ***Permit Issuance***. If the applicant has satisfied the requirements of this chapter, the City shall issue a permit.
Subd. 2. ***Conditions.*** The City may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right of way and its current use. In addition, a permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560.

Subd. 3. ***Small Wireless Facility Conditions***. In addition to subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

(a) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
(b) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the City's written authorization, provided that the City may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
(c) No wireless facility may extend more than 10 feet above its wireless support structure.
(d) Where an applicant proposes to install a new wireless support structure in the right-of-way, the City may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
(e) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the City may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.
(f) Where an applicant proposes to replace a wireless support structure, the City may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.
(g) Where an applicant proposes a colocation, a switch to disengage the system for maintenance of the other facility, located on the same structure shall be installed. (e.g. street light maintenance)

Subd. 4. ***Small Wireless Facility Agreement.*** A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the City, or any other City asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the City. The standard collocation agreement may require payment of the following:

(a) Up to $150 per year for rent to collocate on the City structure.
(b) $25 per year for maintenance associated with the collocation;
(c) A monthly fee for electrical service as follows:
    1. $73 per radio node less than or equal to 100 maximum watts;

2. $182 per radio node over 100 maximum watts; or
3. The actual costs of electricity, if the actual cost exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the City and applicant,

Sec. 1.12 Action on Small Wireless Facility Permit Applications.
Subd. 1. *Deadline for Action*. The City shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the City fails to approve or deny the application within the review periods established in this section.

Subd. 2. *Consolidated Applications*. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:
(a) are located within a two-mile radius;
(b) consist of substantially similar equipment; and
(c) are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the City may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

Subd. 3. *Tolling of Deadline*. The 90-day deadline for action on a small wireless facility permit application may be tolled if:
(a) The City receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the City may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.
(b) The applicant fails to submit all required documents or information and the City provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the City shall have ten days to notify the applicant in writing of any still-missing information.
(c) The City and a small wireless facility applicant agree in writing to toll the review period.

Sec. 1.13. Permit Fees.

Subd. 1. *Excavation Permit Fee.* The City shall impose an excavation permit fee in an amount sufficient to recover the following costs:
(a) the City management costs;
(b) degradation costs, if applicable.

Subd. 2. ***Obstruction Permit Fee.*** The City shall impose an obstruction permit fee in an amount sufficient to recover the City management costs.

Subd 3. ***Small Wireless Facility Permit Fee.*** The City shall impose a small wireless facility permit fee in an amount sufficient to recover:

(a) management costs, and;
(b) City engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

Subd. 4. ***Payment of Permit Fees.*** No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The City may allow applicant to pay such fees within thirty (30) days of billing.

Subd. 5. ***Non Refundable.*** Permit fees that were paid for a permit that the City has revoked for a breach as stated in Section 1.23 are not refundable.

Subd. 6. ***Application to Franchises.*** Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right of way user in the franchise.

Sec. 1.14. Right of Way Patching and Restoration.

Subd. 1. ***Timing***. The work to be done under the excavation permit, and the patching and restoration of the right of way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 1.17.

Subd. 2. ***Patch and Restoration.*** Permittee shall patch its own work. The City may choose either to have the permittee restore the right of way or to restore the right of way itself.

(a) ***City Restoration***. If the City restores the right of way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with correcting the defective work.
(b) ***Permittee Restoration.*** If the permittee restores the right of way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. Rule 7819.3000.
(c) ***Degradation Fee in Lieu of Restoration.*** In lieu of right of way restoration, a right of way user may elect to pay a degradation fee. However, the right of way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

Subd. 3. ***Standards.*** The permittee shall perform excavation, backfilling, patching, and restoration according to the standards and with the materials specified by the City and shall comply with Minn. Rule 7819.1100.

Subd. 4. ***Duty to Correct Defects.*** The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the City, shall correct all restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five (5) calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 1.17.

Subd. ***5. Failure to Restore***. If the permittee fails to restore the right of way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right of way. If permittee fails to pay as required, the City may exercise its rights under the construction performance bond.

Sec. 1.15. Joint Applications.
Subd. 1. ***Joint application.*** Registrants may jointly apply for permits to excavate or obstruct the right of way at the same place and time.

Subd. 2. ***Shared fees***. Registrants who apply for permits for the same obstruction or excavation, which the City does not perform, may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Subd. 3. ***With City projects.*** Registrants who join in a scheduled obstruction or excavation performed by the City, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

Sec. 1.16. Supplementary Applications.
Subd. ***1. Limitation on Area.*** A right of way permit is valid only for the area of the right of way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

Subd. 2. ***Limitation on Dates.*** A right of way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

Sec. 1.17. Other Obligations.
Subd. 1. ***Compliance with Other Laws.*** Obtaining a right of way permit does not relieve

permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the City or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right of way pursuant to its permit, regardless of who does the work.

Subd. 2. ***Prohibited Work.*** Except in an emergency, and with the approval of the City, no right of way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Subd. 3. ***Interference with Right of Way.*** A permittee shall not so obstruct a right of way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right of way may not be parked within or next to a permit area, unless parked in conformance with City parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

Subd. 4. ***Trenchless excavation*****.** As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minn. Stat. ch. 216D and Minn. R., ch. 7560 and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City.

Sec. 1.18. Denial or Revocation of Permit.

Subd. 1. ***Reasons for Denial.*** The City may deny a permit for failure to meet the requirements and conditions of this chapter or if the City determines that the denial is necessary to protect the health, safety, and welfare of the public or when necessary to protect the right of way and its current use.

Subd. 2. ***Procedural Requirements.*** The denial or revocation of a permit must be made in writing and must document the basis for the denial. The City must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the City and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The City must approve or deny the resubmitted application within 30 days after submission.

Sec. 1.19. Installation Requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right of way shall be done in conformance with Minn. R. 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minn. Stat., §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minn. R., ch 7560 and these ordinances. Service lateral installation is further subject to those requirements and conditions set forth by the City in the applicable permits and/or agreements

referenced in Section 1.23 subd. 2 of this ordinance.

Sec. 1.20. Inspection.
Subd. 1. ***Notice of Completion.*** When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rule 7819.1300.

Subd. 2. ***Site Inspection***. Permittee shall make the work site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subd 3. ***Authority of City***.

(a) At the time of inspection, the City may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well-being of the public.

(b) The City may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the City that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the permit pursuant to Sec. 1.23.

Sec. 1.21. Work Done Without a Permit.
Subd. 1. ***Emergency Situations.*** Each registrant shall immediately notify the City of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

If the City becomes aware of an emergency regarding a registrant's facilities, the City will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

Subd. 2. ***Non-Emergency Situations.*** Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right of way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit, pay double all the other fees required by the City code, deposit with the City the fees necessary to correct any damage to the right of way, and comply with all of the requirements of this chapter.

Sec. 1.22. Supplementary Notification.
If the obstruction or excavation of the right of way begins later or ends sooner than the date given on the permit, permittee shall notify the City of the accurate information as soon as this

information is known.

Sec. 1.23. Revocation of Permits.
Subd. 1. ***Substantial Breach.*** The City reserves its right, as provided herein, to revoke any right of way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

(a) The violation of any material provision of the right of way permit.
(b) An evasion or attempt to evade any material provision of the right of way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens.
(c) Any material misrepresentation of fact in the application for a right of way permit.
(d) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control.
(e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 1.20.

Subd. 2. ***Written Notice of Breach.*** If the City determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation, or any condition of the permit, the City shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the City, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. ***3. Response to Notice of Breach.*** Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the City with a plan, acceptable to the City, that will cure the breach. Permittee's failure to so contact the City, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the City, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

Subd. 4. ***Cause for Probation***. From time to time, the City may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right of way grossly outside of the permit authorization.

Subd. ***5. Automatic Revocation.*** If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

Subd. 6. ***Reimbursement of City costs.*** If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Sec. 1.24. Mapping Data.
Subd. 1. ***Information Required.*** Each registrant and permittee shall provide mapping information required by the City in accordance with Minn. R. 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the City accurate maps and drawings certifying the "as-built" location of all equipment installed, owned, and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the City's electronic mapping system, when practical or as a condition imposed by the City. Failure to provide maps and drawings pursuant to this subsection shall be grounds for revoking the permit holder's registration.

Subd. 2. ***Service Laterals***. All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minn. R. 7560.0150, subp. 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the City reasonably requires it. Permittees or their subcontractors shall submit to the City evidence satisfactory to the City of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after Dec. 31, 2005, shall be a condition of any City approval necessary for:

a) payments to contractors working on a public improvement project, including those under Minn. Stat. ch. 429, and

b) City approval under development agreements or other subdivision or site plan approval under Minn. Stat. ch. 462. The City shall reasonably determine the appropriate method of providing such information to the City. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or future permits to the offending permittee or its subcontractors.

Sec. 1.25. Location and Relocation of Facilities.
Subd. 1. Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minn. R. 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

Subd. 2. ***Corridors.*** The City may assign a specific area within the right of way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the City expects will someday be located within the right of way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the right of way in a position at variance with the corridors established by the City shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right of way, unless this requirement is waived by the City for good cause shown, upon

consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs, and hardship to the registrant.

Subd. 3. ***Nuisance.*** One year after the passage of this chapter, any facilities found in a right of way that have not been registered shall be deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right of way to a useable condition.

Subd. 4. ***Limitation of Space.*** To protect the health, safety, and welfare of the public, or when necessary to protect the right of way and its current use, the City shall have the power to prohibit or limit the placement of new or additional facilities within the right of way. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the right of way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right of way, the time of year with respect to essential utilities, the protection of existing facilities in the right of way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

Sec. 1.26 Pre-Excavation Facilities Location.
In addition to complying with the requirements of Minn. Stat. 216D.01-.09 ("One Call Excavation Notice System") before the start date of any right of way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

Sec. 1.27. Damage to Other Facilities.
When the City does work in the right of way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the City shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right of way which it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the City's response to an emergency occasioned by that registrant's facilities.

Sec. 1.28. Right of Way Vacation.
Reservation of right. If the City vacates a right of way that contains the facilities of a registrant, the registrant's rights in the vacated right of way are governed by Minn. R. 7819.3200.

Sec. 1.29. Indemnification and Liability
By registering with the City, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the City in accordance with the provisions of Minn. Rule 7819.1250.

Sec. 1.30. Abandoned and Unusable Facilities.
Subd. 1. ***Discontinued Operations.*** A registrant who has determined to discontinue all or a portion of its operations in the City must provide information satisfactory to the City that the registrant's obligations for its facilities in the right of way under this chapter have been lawfully assumed by another registrant.

Subd. 2. ***Removal.*** Any registrant who has abandoned facilities in any right of way shall remove it from that right of way if required in conjunction with other right of way repair, excavation, or construction, unless this requirement is waived by the City.

Sec. 1.31. Appeal.
A right of way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, subd. 6; or (5) disputes a determination of the City regarding Section 1.24, subd.2 of this ordinance may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the right of way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

Sec. 1.32 Reservation of Regulatory and Police Powers
A permittee's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances as necessary to protect the health, safety, and welfare of the public.

Sec. 1.33. Severability.
If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this chapter precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Passed by the City Council of Lakefield this _____ day of December, 2017.

_____
Brian Rossow, Mayor

Attest:

_____
Kelly Rasche, Administrative Clerk