TOWN OF POETRY, TEXAS

ORDINANCE NO. 2023-01-01

AN ORDINANCE OF THE TOWN OF POETRY, TEXAS, ADOPTING RIGHT-OF-WAY MANAGEMENT REGULATIONS APPLICABLE TO THE INSTALLATION, CONSTRUCTION, OPERATION AND MAINTENANCE OF UTILITY FACILITIES AND THE USE, OCCUPANCY AND MAINTENANCE OF PUBLIC STREETS, ALLEYS AND RIGHTS-OF-WAY WITHIN THE TOWN AND SUBJECT TO THE TOWN'S AUTHORITY; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS ($500) FOR EACH OFFENSE; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Poetry, Texas finds and determines that Sections 311.002 and 311.003 of the Texas Transportation Code confers exclusive control to the Town over highways, streets, and alleys located within the Town; and

WHEREAS, the Town Council finds and determines that the Town's streets and rights-of-way are inclusive of utility easements and are used regularly by public and private utility providers, and that appropriate regulations are necessary to protect the Town's streets, alleys, and rights-of-way and to ensure proper management of this vital public asset; and

WHEREAS, the Town Council finds and determines that the regulations adopted herein are necessary to preserve and protect the public health and safety of all users of the Town's rights-of-way and are in the best interest of the public and the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF POETRY, TEXAS:

SECTION 1. That the following regulations shall, of and from the effective date of this Ordinance, apply to all persons, firms and associations using the Town's streets, alleys, and rights-of-way, and shall apply to all work performed by any person, firm or association in, on, above and under all streets, alleys and public rights-of-way within the territorial limits of the Town.

REGULATIONS AND STANDARDS FOR THE MANAGEMENT OF PUBLIC RIGHTS-OF-WAY

1. These regulations shall be known and referred to as the Right-of-way Management Regulations of the Town of Poetry, Texas. The phrase "these Regulations," refers to the following regulations adopted by this Ordinance.

2. Definitions. For the purpose of these Regulations, the following words, terms and phrases shall have the meanings ascribed to them in these Regulations, except where the context clearly indicates a different meaning:

Construction means any work performed above the surface, on the surface or beneath the surface of a public right-of-way, including, but not limited to, installing, servicing, repairing, upgrading, or modifying any facility(s) in, above or under the surface of the public rights-of-way, and restoring the surface and subsurface of the public rights-of-way, subject to the provisions of these Regulations. "Construction" does not include the installation of facilities necessary to initiate service to a customer's property beyond the boundaries of the right-of-way, or the repair or maintenance of existing facilities unless such installation, repair or maintenance requires the breaking of pavement, excavation or boring within the public rights-of-way boundaries.

Construction security means any of the following forms of security provided at the owner's option, and subject to the Town's approval:
(1) Individual project performance or maintenance bond;
(2) Cash or escrow deposit;
(3) Security of a form listed or approved under state law; or
(4) Letter of credit, in a form acceptable by Town

Construction permit means the permit that, pursuant to these Regulations, must be obtained before an owner may construct facilities in, on, above or under public rights-of-way. A construction permit allows the holder to construct facilities in that part of the public rights-of-way described in such permit.

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

Facility or *facilities* shall include, but not be limited to, any and all cables, pipelines, splice boxes, tracks, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an owner or owners, that are located or are proposed to be located in, on, above or under the public rights-of-way.

Municipal authorization means the individual grant issued by the Town to use the public rights-of-way and accepted by the individual owners in accordance with the ordinances of the Town, and includes a franchise agreement, a license, or a grant to use the public rights-of-way under operation of state law that provides a specific grant of authority to use the public rights-of-way.

Owner means any person who owns any facility or facilities that are or are proposed to be installed or maintained in, on, above or under the rights-of-way. Included within this definition is the owner's contractor, subcontractor, agent or authorized representative.

Permit or *permit to construct* means a permit to perform construction in accordance with these Regulations.

Person means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity, but excluding the Town.

Provider means a person, including any certificated telecommunications utility and excluding network providers, as defined herein, that delivers telecommunications service within the Town to person(s) by way of a network and that places facilities in, on or over the public rights-of-way. A provider does not include persons who are authorized by the Town to occupy the public rights-of-way in specifically approved routes within the Town unless they also have a municipal consent under these Regulations. To the extent allowed by law, provider also means a person that does not deliver telecommunications service within the Town, but who uses, constructs or maintains facilities or transmission media within the public rights-of-way.

Public rights-of-way means the area of land within the Town that is used for the purpose of public travel and the provision of public and private utility services, and includes land acquired by, dedicated to, or claimed by the Town in fee simple, by easement, or by prescriptive right and that is expressly or impliedly accepted or used in fact or by operation of law as a public roadway, highway, street, sidewalk, alley, or utility access easement. The term includes the area on, below, and above the surface of the public rights-of-way. The term applies regardless of whether the public right-of-way is paved or unpaved. The term does not include airwaves above the public rights-of-way with regard to wireless telecommunications nor does the term include any private property or private easement in, or, across or under which an owner has allowed the Town or another owner to install or maintain any facilities.

Restore or *restoration* means the process by which public rights-of-way are returned to a condition that is at least equal to than the condition that existed before construction.

Town means the Town of Poetry, Texas, or a Town official authorized to implement, apply and enforce the provisions of these Regulations.

3. Right-of-Way Occupancy.

(a) Any person prior to constructing facilities in, on or over the public rights-of-way, must first have or obtain municipal authorization.

(b) These Regulations do not constitute or create authority to place, reconstruct, or alter facilities in, on or over the public rights-of-way nor to engage in construction, excavation, encroachments, or work activity within or upon any public rights-of-way, and said authority must be obtained in accordance with the terms of these Regulations.

(c) Any person with a current, unexpired franchise, municipal authorization, license or other authorization from the Town (grant) or state to use the public right-of-way that is in effect

at the time these Regulations take effect, shall continue to operate under and comply with that municipal authorization, and in the event these Regulations conflict with the terms of such municipal authorization, the more restrictive provision shall apply unless otherwise provided by the terms of a municipal authorization. To the extent that the provisions can be reconciled, both the franchise/grant and these Regulations shall be given effect, provided, however, that if the terms of a municipal authorization provide for the means of reconciling any conflict between the terms of such municipal authorization and the terms of these Regulations then the provisions of the municipal authorization shall control.

4. Registration. In order to protect the public health, safety and welfare, all owners of facilities in the public rights-of-way will register with the Town. Registration and permits will be issued in the name of the person who will own the facilities. Registration must be renewed on or before January 31 of each year. For owners with a current municipal authorization as of the effective date of these Regulations, such municipal authorization shall be evidence of renewal of registration. If a registration is not renewed, the facilities of the owner other than those facilities installed, owned, operated or maintained by an owner under the terms and conditions of a municipal authorization will be deemed to have been abandoned. When any information provided for the registration changes, the owner will inform the Town of the change no more than 30 days after the date the change is made. Registration shall include:
   (1) The name, address(es) and telephone number(s) of the owner;
   (2) The names, address(es) and telephone number(s) of the contact person(s) for the owner;
   (3) The name(s), address(es) and telephone number(s) of any contractor(s) or subcontractor(s) who will be working in the public rights-of-way on behalf of the owner. If the names of contractors and subcontractors are not available at the time of permit application, they must be submitted to the Town prior to permit issuance. Pre-submittal of an approved "annual contractor list" is also acceptable;
   (4) The name(s) and telephone number(s) of an emergency contact who shall be available 24 hours a day;
   (5) The source of the owner's municipal authorization (e.g., franchise, state law, etc.). If the owner is a certificated telecommunications provider, the certificate number issued by the Texas Public Utility Commission;
   (6) The owner shall submit two-year projections of their plans for the construction of facilities in the Town at the time of registration renewal; and
   (7) Registration shall be a prerequisite to issuance of a construction permit. Each owner shall update and keep current its registration with the Town at all times.

5. Construction Permits.
   (a) *In General.*
      (1) No owner shall perform any construction in, on, above or under the public rights-of-way without first obtaining a permit from the Town. Permit applications are required for construction of new, replacement or upgrades of the facilities in the public rights-of-way whether aerial or underground.
      (2) An annual permit may be issued to owners for routine typical work required for customer service. Submittal of notification information in a form authorized by the Town shall be required under the annual permit. Such notification shall reference the annual permit and contain the construction location, time of start and finish, and contractor identification. An annual roster of approved contractors may also be submitted for reference in annual permit construction notification.
      (3) Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, the Town shall be notified in writing within two business days of any construction related to an emergency response; including a

reasonably detailed description of the work performed in the public rights-of-way. An updated map of any facilities that were relocated, if applicable, shall be provided within 90 days.

(4) All construction in the public rights-of-way shall be in accordance with the permit for the facilities provided, however, that any applicable federal or state law requirements which govern the construction of particular facilities shall control to the extent any terms or conditions of a construction permit are inconsistent herewith. The Town shall be provided access to the work and to such further information as the Town may reasonably require to ensure compliance with the permit.

(5) Unless approved by the Town in the permit or in case of emergency, the owner or contractor shall not close any traffic lanes. All lane closures shall comply with the Texas Manual on Uniform Traffic Control Devices for Streets and Highways.

(6) A copy of the permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the Town at all times when construction work is occurring.

(7) All construction work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the owner may request an extension of the time period from the Town. The Town will use best efforts to approve or disapprove a request for permit as soon as possible. If the request for the extension is made prior to the expiration of the permit, work may continue while the request is pending.

(8) No owner or contractor shall perform construction, excavation, or work in an area larger or at a location different than that specified in the permit or permit application. If, after construction, is commenced under an approved permit, it becomes necessary to perform construction in a larger or different area than originally requested under the application, the owner or contractor shall notify the Town immediately and, within 48 hours, shall file a supplementary application for the additional construction.

(9) A copy of any permit or approval issued by federal or state authorities for work in federal or state right-of-way located in the Town shall be provided, if requested by the Town.

(b) *Permit application.*

(1) The permit shall state to whom it is issued, location of work, location of facilities, dates and times work is to take place and any other conditions set out by the Town. Permits shall expire within 90 calendar days after issuance if the owner fails to commence work pursuant to the permit during that period in which event the owner will be required to obtain another permit. A permit is non-transferable.

(2) The permit will be in the name of the person who will own the facilities to be constructed. The permit application must be completed and signed by a representative of the owner of the facilities to be constructed.

(3) Any person requesting a permit will provide the Town with documentation in the format specified by the Town, at the time of permit submittal describing and containing:

a. The proposed location and route of all facilities to be constructed or installed and the owner's plan for public rights-of-way construction.

b. Two sets of engineering plans, including plan and profile, which will be on a reasonable scale, acceptable to the Town, unless waived by the Town. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the state.

c. The location of all public rights-of-way and common utility easements that owner plans to use.

d. The existing utilities located in the public rights-of-way, including the Town owned utilities as may be known by owner, in relationship to owner's proposed route as known.
e. Detail of what owner proposes to construct including typical: size of facilities; materials used, such as pipe size, number of ducts, valves; etc.
f. The plans to remove and replace asphalt or concrete in streets in accordance with the general construction specifications.
g. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, equipment, etc. including depth located in public right-of-way.
h. Typical details of manholes and/or handholes owner plans to use or access.
i. Complete legend of drawings submitted by owner, which may be provided by reference to previously submitted documents acceptable to the Town.
j. The construction methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the public rights-of-way, and the dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the director.
k. Construction security in the form approved by the Town in an amount of not less than 150% of the estimated cost of restoration.

(4) A request for a permit must be submitted at least ten business days before the proposed commencement of work identified in the request, unless waived by the Town.

(5) Requests for permits will be approved or disapproved by the Town within a reasonable time of receiving all the necessary information. The Town will use best efforts to approve or disapprove a request for permit as soon as possible. The Town will consider all information submitted by the applicant including a review of the availability of space in the public rights-of-way based on the applicant's proposed route and location. The Town will provide a written notification of denial for rejected permits.

(6) Denial, suspensions, and revocations of permits may be appealed to and considered by the Town Council if a written appeal is filed with the Town within twenty (20) days of the denial, suspension pr revocation. The Town Council's decision shall be final and binding.

(7) The Town or the owner can request a pre-construction meeting with the construction contractor.

6. Construction Standards.

(a) All construction shall be in conformance with all Town codes, the most recent edition of the North Central Texas Council of Governments' Public Works Construction Standards North Central Texas, and applicable local, state and federal laws at time of permit issuance.

(b) The Town must be notified 24 hours in advance that construction is ready to proceed by the owner. At the time of notification, the owner will inform the Town of the number (or other information) assigned from the appropriate one-call notification center. "Notification center" means the same as in Chapter 251, Texas Utilities Code, or its successor. The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.

(c) Public notification of work to be performed.

(1) For any closure of a traffic lane or blocking of a sidewalk or alley lasting six days or less, the permittee shall conspicuously mark its vehicles with the permittee's or contractor's name and telephone number.
(2) For projects scheduled to last more than six calendar days a three feet by three feet informational sign stating the identity of the person doing the work, a local telephone number and owner's identity shall be placed at the location where construction is to occur prior to the beginning of work in the public rights-of-way and shall continue to be placed at the location during the entire time the work is occurring. The informational sign will be posted on public right-of-way 100 feet before the construction location commences unless other posting arrangements are approved or required by the director.
(3) When projects last more than two calendar days, the owner shall also provide written notification to all adjacent property occupants prior to the beginning of construction. Informational fliers shall include identity of the person doing the work, a local telephone number, owner's identity, and proposed schedule.
(4) Projects in public easements on private property, or in rights-of-way adjacent to private property that is likely to be disturbed, require notification by flier as in (3) above.

(d) Approved erosion control measures and advance warning signs, markers, cones and barricades must be in place before construction begins. Advance warning must comply with the Texas Manual on Uniform Traffic Control Devices.
(e) Lane closures on major thoroughfares. Arrow boards will be required for lane closures on Town streets, with all barricades, advanced warning signs and 36-inch reflector cones placed according to the Texas Manual on Uniform Traffic Control Devices.
(f) Without affecting the legal relationship between the owner and their contractor, owners are responsible for any damages by their contractors or subcontractors. A responsible representative of the owner will be reasonably available to the Town at all times during construction.
(g) Owner shall be responsible for storm water management, dust control, erosion control, employee sanitation and excavation safety measures that comply with Town, state and federal guidelines effective at time of permit issuance. Requirements shall include, but not be limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing, and placement and maintenance of portable toilets. Upon request, owner may be required to furnish documentation submitted or received from federal or state government relative to a storm water pollution prevention plan as applicable.
(h) Owner will notify the Town immediately of any damage to other utilities within public rights-of-way.
(i) All disturbances in the public rights-of-way shall be restored as required in section 10 of these Regulations.
(j) Construction of facilities must not interfere with Town utilities or facilities and operations of other public utility service providers, in particular gravity dependent facilities. Facilities shall not be located over, or within two feet, horizontally or vertically, of any water or sanitary sewer mains, unless approved by the Town.
(k) New facilities must be installed to a minimum depth required by state and federal codes and/or industry standards. Underground and buried utilities, shall be installed at a minimum depth of 36 inches, unless the industry standard depth for such facilities is less than 36 inches or otherwise approved by the Town. Industry standard depths shall be submitted in writing to the Town for approval. Such approved depths shall be documented and become attached to the general construction specifications for reference.

(l) The working hours in the public rights-of-way are 7:00 a.m. to 8:00 p.m., Monday through Friday, unless otherwise approved by the Town or in case of emergency. Any planned work performed on Saturday must be approved by the Town by 9:00 a.m. on the Thursday prior to the proposed Saturday. No work will be done, except for emergencies, on Sundays or Town holidays.

(m) Persons working in the public rights-of-way are responsible for obtaining line locates in accordance with state and federal underground facility damage prevention and safety laws (one-call/call before you dig laws) from all affected utilities or others with facilities in the public rights-of-way prior to any excavation. Use of a geographic information system or the plans of records does not satisfy this requirement.

(n) Owner will be responsible for verifying the location, both horizontal and vertical depth, of all facilities. When required by the Town, owner shall verify locations by pot holing, hand digging, or other method approved by the Town prior to any excavation or boring.

(o) Placement of all manholes and/or handholes must be approved in advance by the Town. Handholes or manholes will not be located in sidewalks, unless approved by the Town.

(p) Locate flags shall not be removed from a location while facilities are being constructed.

(q) When construction requires pumping of water or mud, the water or mud shall be contained in accordance with federal and state law and the directives of the Town.

(r) A person shall perform operations, excavations and other construction in the public rights-of-way in accordance with all applicable Town requirements, at time of permit issuance. All excavations and other construction in the public rights-of-way shall be conducted so as to minimize interference with the use of public and private property. A person shall follow all reasonable construction directions given by the Town in order to minimize any such interference.

(s) Excavation safety. On construction projects in which excavation will exceed a depth of five feet, the owner must have detailed plans and specifications for excavation safety systems. The term "excavation" includes trenches, structural or any construction that has earthen excavation subject to collapse. The excavation safety plan shall be designed in conformance with state law and occupational safety and health administration (OSHA) standards and regulations.

7. Record Drawings and Plans.

(a) Right-of-way users will provide the Town with "record drawings or plans" or "as-built plans" within 90 days of completion of facilities in the right-of-way. The plans shall represent the actual installation as accurately as possible. The plans shall be provided to the Town with as much detail and accuracy as required by the Town. All the requirements specified for the plans submitted for the initial permit, as set forth in section 5(b) of these Regulations shall be submitted and updated in the plans. Users which have facilities in the public rights-of-way existing as of the effective date of these Regulations who have not provided plans shall provide one-quarter of the information concerning facilities in Town right-of-way within one year after the passage of these Regulations and one-quarter each six months thereafter. The detail and accuracy will concern issues such as location, size of facilities, materials used, and any other health, safety and welfare concerns. Public rights-of-way users will provide the Town with updates to the plans of facilities in the public rights-of-way annually. The plans shall represent the actual facilities as detailed and accurately as reasonably possible. Submittal of plans shall be in digital format and one set of plans in a paper format.

(b) If the plans submitted under this section include information expressly designated by the owner as a trade secret or other confidential information protected from disclosure by state law, the Town may not disclose that information to the public without the consent of the owner, unless otherwise compelled by an opinion of the attorney general pursuant to

the Texas Open Records Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize an owner to designate all matters in its as-built plans as confidential or as trade secrets.

(c) Plans submitted under this section are for the general informational purposes of the Town only. They shall not be relied upon by Town or other owners performing construction in the public rights-of-way. Town and owners will be responsible for verifying the location of all facilities.

8. Conformance with Public Improvements.
   (a) Whenever by reasons of widening or straightening of streets, sidewalks, water or sewer line projects, or any other Town or public utility project, it shall be deemed necessary by the governing body of the Town to remove, alter, change, adapt, or conform an owner's underground or overhead facilities within the public rights-of-way to another part of the public rights-of-way, such alterations shall be made by the owner of the facilities at the owner's expense (unless provided otherwise by federal law, state law, a franchise, a license or a municipal authorization until that grant expires or is otherwise terminated). The owner shall be responsible for conforming its facilities within mutually agreed upon time limits. If no time limits can be agreed upon, the time limit shall be 90 days from the day the Town transmits final plans and notice to make the alterations. The owner of facilities shall be responsible and shall reimburse the Town for any direct costs associated with project delays associated with failure to conform facilities within the mutually agreed upon time limits. Reimbursement for all costs provided for by this paragraph shall be made within 60 calendar days.
   (b) An owner may trim trees in or over the public rights-of-way for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with standards promulgated by the National Arborist Association and the International Society of Arboriculture. The owner, its contractor or agent, shall remove such trimmings within 24 hours during normal maintenance. During emergency weather conditions owners shall remove tree trimmings within five days of all service restoration activities within the Town. The Town may remove the trimmings or have them removed, and upon receipt of a bill from the Town, the owner shall promptly reimburse the Town for all costs incurred within 60 calendar days.
   (c) An owner shall temporarily remove, raise or lower its aerial facilities to permit the moving of houses or other bulky structures. The owner shall temporarily remove, raise or lower its aerial facilities within 15 working days of receiving a copy of a permit issued by the Town. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The owner may require prepayment or prior posting of a bond from the party requesting the temporary move.

9. Improperly Installed Facilities.
   (a) Any owner doing work in the public rights-of-way shall properly install, repair, upgrade and maintain facilities.
   (b) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:
      (1) The installation, repair, upgrade or maintenance endangers people or property;
      (2) The facilities do not meet the applicable Town codes applicable at time of permit issuance;
      (3) The facilities are not capable of being located using standard practices;

(4) The facilities are not located in the proper place at the time of construction in accordance with the directions provided by the department or the plans approved by the department.

10. Restoration of Property.
    (a) Owners shall restore property affected by construction of facilities to a condition that is at least equal to the condition of the property prior to construction. Owners may submit photographs and/or a video of the construction area at the time of the issuance of the permit for record purposes. Restoration must be approved by the Town and must be completed as expeditiously as practical.
    (b) Upon failure of an owner to perform such restoration, and five days after written notice has been given to the owner by the Town, and in the event restoration has not been initiated during such five-day period, the Town may repair such portion of the public rights-of-way as may have been disturbed by the owner, its contractors or agents. Upon receipt of an invoice from the Town, the owner will reimburse the Town for the costs reasonably incurred within 30 calendar days from the date of the Town invoice.
    (c) If the Town determines that the failure of an owner to properly repair or restore the public rights-of-way constitutes a safety hazard to the public, the Town may undertake emergency repairs and restoration efforts, after emergency notice has been provided, to the extent reasonable under the circumstances. Upon receipt of an invoice from the Town, the owner shall promptly reimburse the Town for the costs incurred by the Town within 30 calendar days from the date of the Town invoice. If payment is not received within the 30 calendar days, the Town shall initiate a claim for compensation with the appropriate bonding company or may pursue recovery against any security provided to the Town by the owner.
    (d) Should the Town reasonably determine, within one year from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional restoration work to meet the standards of subsection (a), an owner shall perform such additional restoration work to the satisfaction of the Town, subject to all Town remedies as provided herein.
    (e) Restoration must be to the reasonable satisfaction of the Town.

11. Revocation, Suspension or Denial of Permit.
    (a) If any of the provisions of these Regulations are not followed, a permit may be revoked by the Town. If a person has not followed the terms and conditions of these Regulations in work done pursuant to a prior permit, new permits may be denied or additional terms required. Revocation shall be effective upon the expiration of 15 business days after written notice of the violation(s), unless cured, or during that period, a plan to cure is agreed upon, except for violations that pose a threat to public safety or health, for which the revocation will be immediate upon delivery of written notice.
    (b) Appeals. The revocation, suspension or denial of a permit may be appealed to the Town Council upon the filing of a written notice of appeal within twenty (20) days of the issuance of notice of revocation, suspension or denial. Failure to timely submit the foregoing written notice is a forfeiture of the appeal. No appeal may be taken for any criminal violation of these Regulations. The Town Council shall promptly consider the appeal and may uphold, reverse or modify the revocation, suspension or denial. The Town Council's decision shall be final and binding.

12. Penalties. Any owner, contractor, subcontractor, person, firm or corporation violating any of the provisions or terms of these Regulations shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not exceeding $2,000.00 for each violation, and

each day that such violation shall continue to exist constitutes a separate offense. Violations are strict liability offenses; no intent need be alleged or proven in the prosecution of an offense hereunder.

13. Indemnity.
    (a) Each owner conducting construction in the public rights-of-way shall promptly defend, indemnify and hold the Town harmless from and against all damages, costs, losses or expenses (i) for the repair, replacement, or restoration of Town's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of the owner's acts or omissions, (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to or loss of the property of any owner (including, but not limited to the owner, its agents, officers, employees and subcontractors, Town's agents, officers and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any owner (including, but not limited to the agents) arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the owner, its agents, employees, contractors and/or subcontractors, in the performance of activities pursuant to these Regulations.
    (b) This indemnity provision shall not apply to any liability resulting from the negligent or willful acts of the Town, its officers, employees, agents, contractors, or subcontractors.
    (c) The provisions of this indemnity are solely for the benefit of the Town and is not intended to create or grant any rights, contractual or otherwise, to any other owner or entity.

SECTION 2. That all ordinances of the Town of Poetry, Texas, in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the Town of Poetry not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 4. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 5. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the Town of Poetry, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of

five hundred dollars ($500.00) for each offense, and each day a violation continues shall be deemed a separate offense.

SECTION 6. That this ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and Charter in such cases provide.

DULY PASSED AND APPROVED by the Town Council of the Town of Poetry, Texas, on this the 17th day of January, 2023.

APPROVED:

Sara Sentwech
MAYOR

ATTEST:

Jana Shelton
TOWN SECRETARY

APPROVED AS TO FORM:

TOWN ATTORNEY

POETRY TEXAS

TOWN OF POETRY, TEXAS
ORDINANCE NO. 2023-01-01

AN ORDINANCE OF THE TOWN OF POETRY, TEXAS, ADOPTING RIGHT-OF-WAY MANAGEMENT REGULATIONS APPLICABLE TO THE INSTALLATION, CONSTRUCTION, OPERATION AND MAINTENANCE OF UTILITY FACILITIES AND THE USE, OCCUPANCY AND MAINTENANCE OF PUBLIC STREETS, ALLEYS AND RIGHTS-OF-WAY WITHIN THE TOWN AND SUBJECT TO THE TOWN'S AUTHORITY; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS ($500) FOR EACH OFFENSE; AND, PROVIDING AN EFFECTIVE DATE.

DULY PASSED AND APPROVED by the Town Council of the Town of Poetry, Texas, on this the 17th day of January, 2023.

APPROVED:

Sara Sentwell
MAYOR

ATTEST:

Jana Tucker
TOWN SECRETARY

POETRY TEXAS