### FILE OF THE COUNCIL NO. 10

### 2024

### AN ORDINANCE

ESTABLISHING REGULATIONS GOVERNING EXCAVATIONS WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF SCRANTON.

WHEREAS, telecommunication services are expanding and including but not limited to fiber optic cable and internet; and

WHEREAS, broadband internet providers are interested in expanding their services and customer base within the Greater Scranton area for numerous reasons;

WHEREAS, the City of Scranton wants to make sure all homes and businesses have access to high-speed broadband internet; and

WHEREAS, the City of Scranton seeks to minimize costs to residential and commercial users, and promote the installation, operation and maintenance methodologies that maximize dependability and resiliency for her residents; and

WHEREAS, fiber optic broadband services are not restricted to installation by poles, but also include underground installations; and

WHEREAS, broadband companies will require pave cuts to expand their services by and through poles and/or by and through underground wirings; and

WHEREAS, the technologies underlying the broadband services contemplated herein are newer and missing from the City of Scranton's current code and body of legislation; and

WHEREAS, the City of Scranton only seeks to impose fees and costs within reason and as previously litigated with other utility providers; and

WHEREAS, time is of the essence due to many broadband service providers being interested in developing their telecommunications network and service in the City of Scranton and are seeking to do so as of this filing.

NOW THEREFORE, BE IT ORDAINED THAT CHAPTER 412, STREET PAVING, AND SPECIFICALLY EXCAVATIONS, OF THE CODE OF ORDINANCES OF THE CITY OF SCRANTON IS HEREBY AMENDED AS FOLLOWS:

# SECTION 1. AMENDMENT OF CHAPTER 412 OF THE CODE OF ORDINANCES OF THE CITY OF SCRANTON

Chapter 412, Article III "Excavations," of the Code of Ordinances of the City of Scranton is hereby repealed in its entirety and replaced with a new Chapter 412, Article III, entitled and provided for as follows:

#### Street Openings and Excavations Article III.

#### § 412-11 Definitions.

- A. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number; words in the singular shall include the plural; and words in the masculine shall include the feminine and the neuter.
- B. The following words, when used in this article, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise.

- Aerial Facilities Poles, wires, cables, equipment, and other Facilities attached to utility
  poles or otherwise located above the surface of the ground, including their underground
  supports and foundations.
- Applicant Any natural Person, corporation, Limited Liability Company, trust, joint venture, association, company, partnership, Governmental Authority or other entity that is seeking a Street Opening Permit.
- 3. City The City of Scranton, County of Lackawanna, Commonwealth of Pennsylvania.
- 4. Emergency A condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, as determined by the City in its sole discretion.
- 5. Facilities Conduit, pipes, cables, wires, lines, towers, optic fiber, antennae, poles, associated equipment and appurtenances, and any other infrastructure or materials located in the Right-of-Way and designed, constructed, and/or used, by Permittees for transmitting, transporting, or distributing communications, telecommunications, electricity, natural gas or manufactured gas, oil, gasoline, steam, or any other form of energy, signal or substance, or for any other lawful purpose.
- Permittee A recipient of a Street Opening Permit that is issued by the City pursuant to this Article.
- Person Any natural Person, partnership, firm, association, corporation, public utility company, or municipal authority.
- 8. Public Utility Any entity that is currently certificated as a public utility by the Public Utility Commission of the Commonwealth of Pennsylvania.
- 9. Public Utility Commission (PUC) The Public Utility Commission of the Commonwealth of Pennsylvania.
- 10. Rights-of-Way The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way, as the same now or may thereafter exist, which are under the jurisdiction or control of the City.
- 11. Street The entire right-of-way established for the use of vehicles, including, but not limited to any public street, avenue, road, square, alley, highway or easement within the City limits, excluding the designated curb and sidewalk area.
- 12. Street Opening Permit or Permit A Street Opening Permit that has been validly issued under this Article.
- 13. Underground Facilities Facilities located under the surface of the ground, excluding the underground foundations or supports for Aerial Facilities.

### § 412-12 Permit Required.

- A. No Person shall open or make any excavation of any kind in any of the Streets of the City without applying for and being issued a Street Opening Permit in accordance with the requirements of this Article. No excavation work or street opening may be performed other than that which is specifically detailed in the Permit.
- B. Any Person maintaining Underground Facilities may open or make excavation of the Rightsof-Way in the event of an Emergency requiring immediate response by such Person. In cases where such Emergency openings are necessary, the City shall be notified as immediately as possible and the Person performing the Emergency opening shall apply for the necessary Street Opening Permit on the first business day on which the City Department of Public Works is open following commencement of the Emergency opening.

- C. Excavation work for which a Street Opening Permit has been issued under this Article shall commence within forty-five (45) days of the date on which the Permit was issued. If the excavation work for which a Street Opening Permit has been issued has not commenced within forty-five (45) days of the date on which the Permit was issued, then the Permit shall be deemed automatically terminated.
- D. Permittees may apply for a Permit extension by submitting a request to the City Engineer, who may grant such request in their sole discretion. Such extension shall apply from the date on which the original Permit expired.
- E. Permits shall be valid for the amount of time specified in the Permit. If the Permittee has not completed all work authorized by the Permit within such timeframe, then the Permittee may request an extension of the Permit by submitting a written request to the City Engineer at least three (3) days prior to the expiration of the Permit. Such extension request may be granted by the City Engineer in their sole discretion upon a determination that such additional time is necessary. If such extension request is not timely submitted and the Permit expires prior to the completion of all work authorized by the Permit, then the Permittee shall apply for a new Street Opening Permit. The Permittee shall be required to pay all applicable fees relating to the application for such new Permit.
- F. Street Opening Permits may not be transferred from a Permittee to another Person.
- G. City departments and City corporate authorities shall not be required to obtain a Street Opening Permit provided that all work is to be completed by City Personnel. Contractors or subcontractors under contract to perform work for the City, City corporate authority, Commonwealth of Pennsylvania, or federal government shall be required to obtain a Street Opening Permit.

# \$ 412-13 Application Requirements

A. Applications for a Street Opening Permit shall be submitted in writing to the City Building Code Official or designee. Such application shall be made upon blanks to be furnished by the City and shall set forth the name of the Applicant, the exact location of the proposed opening or excavation and the approximate size or depth thereof, the full scope of work to be included in the project, the date or dates during which such excavation is to be Permitted and the date such excavation is to be refilled and resurfaced in the manner hereinafter provided. An Applicant shall furnish a drawing of the proposed opening site upon request by the City Building Code Official or designee.

The City reserves the right to deny an application for failure to provide contact information (including but not limited to phone number and email address) that allows the City and/or its designee to directly communicate with a representative in live time and as appropriate during business hours. Further, it is the duty of the permittee to update this information within three business days with the City should a contact's information change and/or should the contact leave or change positions thereafter. Failure to comply may result in adverse action and/or revocation of a permit.

B. The application shall contain an agreement on the part of the Applicant that the work shall be done in full compliance with the ordinances of the City and the laws of the Commonwealth in relation thereto and that the Applicant shall well and truly save, defend and keep harmless the City from and indemnify it against any and all actions, suits, demands, payments, costs and charges for or by reason of the proposed opening or excavation and all damages to Persons or property resulting in any manner therefrom or occurring in the prosecution of the work connected therewith or from any other matter, cause or thing relating thereto. In the event that the suit shall be brought against the City either independently or jointly with the Permittee, and in the event of a final judgment being obtained against the City either independently or jointly with the Permittee, the Applicant shall pay such judgment with all costs and hold the City harmless therefrom.

- C. In any instance where the Street Opening Permit is required for water supply and/or sewer service purposes, the application shall be countersigned by the City Engineer or any Person authorized by the City Engineer before any Permit shall be granted.
- D. An Applicant shall provide all necessary certificates of insurance to the Department, which have been properly executed by the Applicant's insurance agency and verify that the Applicant is insured against claims for personal injury as well as against claims for property damages which may arise from or out of the performance of the excavation work, whether such performance be by the Applicant or anyone directly or indirectly employed by him. The City shall be named as an additional insured by any Applicant, including but not limited to utilities operating water, gas, electric or telephone facilities within the City. Such insurance shall include protection against liability arising from completed operations, underground utility damage and collapse of any property. Liability insurance for bodily injury shall be in an amount not less than \$1,000,000 for each Person and \$1,000,000 for each accident and for property damages an amount not less than \$1,000,000. If an insurance certificate is not provided as required, a Permit shall not be issued. Evidence of insurance for public liability and property damage shall not be applicable to any excavation work carried on by the City or its employees or utilities operating water, gas, electric or telephone facilities within the City. Liability insurance requirements for any blasting may be obtained from the Department. All blasting Permits shall be obtained from the Department.
- E. Any Applicant issued a Permit shall remit the Street Opening Permit fee in the amount established in the City fee schedule and any and all other fees associated with the street opening within ten (10) business days of the date on which the Permit is issued.
- F. No Permit shall be issued to any Applicant unless the Applicant has paid to the City any and all moneys, then due to the City, for prior excavations made or for any loss, damages or expense in any manner occasioned by or arising from the work done by the Applicant under the provisions of this article.
- G. Inspection; Fees. The City and/or its designee shall inspect any street opening or excavation performed pursuant to a Permit upon completion of such street opening or excavation. The Permittee shall pay inspection fees in order to reimburse the City and/or its designee for the costs of such inspection. Any street opening or excavation shall be computed to the nearest whole square yard of excavation for purposes of computing the inspection fee. See Table 1 for the inspection fee schedule.
- H. Inspections documentation. The City of Scranton and/or its designee shall create and maintain appropriate documentation as a work order inspection tracking ticket. This document shall be issued to the City Inspector when a Permit is issued by the City of Scranton, and/or its designee, and shall be maintained for compliance by the Department of Public Works and the City Inspectors as assigned to perform the required activity. This document shall be in effect until the work is completed and accepted by the agent/inspector of the City of Scranton and/or its designee.
- I. Copies of Permits and work order inspection tracking tickets shall be issued and maintained by the Department of Public Works. Each Permit and work order inspection tracking ticket shall be maintained for no less than seven years. Each Permit issued shall be maintained together with its work order inspection tracking ticket following the completion of work and inspection.

### § 412-14 Revocation of Permits

- A. Any Permit issued under this Article may be revoked by the City Engineer, following notice and opportunity to cure, for:
  - 1. Violation of any condition of the Permit or any requirement of this Article;

- 2. Violation of any requirement of the City Code or any applicable law relating to the work contemplated by the Permit; or
- The creation of any nuisance or the endangerment of any life or damage to public or private property as a result of the work contemplated by the Permit or any other activity of the Permittee.
- B. The City Engineer shall issue written notice of any violation under Subsection A above to the Permittee. The Permittee shall have three (3) days from the date of such notice to correct such violation. The City Engineer may extend the time period in which the Permittee must correct such violation upon a showing by the Permittee that such additional time is necessary and that the Permittee is diligently pursuing remediation of the violation.
- C. Upon revocation of any Permit pursuant to this Section 412-13, the City may perform any necessary work in order to repair or restore the Rights-of-Way to as good a condition as existed prior to the revocation. All costs incurred by the City relating to such repair or restoration may be recovered from the Permittee.

# § 412-15 Opening of Recently Excavated Streets

- A. New paving shall not be opened or excavated for a period of five (5) years after the completion thereof, except in the case of an Emergency, the existence of which Emergency and the necessity for the opening or excavation of such paving to be determined by the Department of Public Works.
- B. Any Person who desires to excavate a street for a utility within five (5) years after completion of the paving shall make written application to the Department of Public Works, and a Permit for such opening shall be issued only after express approval of the Department of Public Works and City's Business Administrator.

# § 412-16 Requirements for Excavations and Openings

## A. Manner of Completion.

- 1. Any Permittee who shall open or excavate any street in the City shall thoroughly and completely refill the opening or excavation in such a manner as to prevent any settling thereafter and shall restore the surface to the same condition as it was before the opening or excavation, and such restoration shall be in accordance with the specifications of the Department of Transportation of the Commonwealth of Pennsylvania, which are hereby adopted as specifications of the City for restoration of surfaces of streets in the City; as restored, the surface shall conform to the proper grade and be of the same surface covering as the part of the thoroughfare immediately adjoining the opening.
- 2. Any street or court that has received bituminous resurfacing (paving) within a five-year period shall be milled to a depth of 1.5 inches and resurfaced with appropriate material with (scratch leveling course) and (wearing course I 1/2 inches) depth curb to curb and 10 feet beyond the farthest point of the pave cut edge in any direction by any Permittee who shall open or excavate any street or court for any purposes; this includes Emergency work. All restoration work shall be completed within and no later than 30 days from the day recorded for the excavation.
- 3. Trenching excavations in lengths equal to the road surface and in parallel or otherwise to the road surface shall have the same restoration requirements as for pave cuts above for the manner of completion.
- If any Street or court with a surface area older than five years has more than 10% of disturbance in the surface area of any one City block limits following any excavation,

the road surface shall have the same restoration requirements as for pave cuts above for the manner of completion. If two pave cuts are made less than 100 feet apart, the entire area between the two pave cuts and including the two pave cuts shall be milled and resurfaced as described above for a width of 1/2 the Street/court width (i.e., nearest curb to center line). If the repair excavation crosses the center line of the Street/court, then the mill and resurfacing shall be for the full width of the street/court (curb to curb) for the entire length of the work area.

- 5. If, within five (5) years after the restoration of the surface as herein provided, defects shall appear, the Permittee shall reimburse the City for the cost of all necessary repairs to the permanent paving or, as directed by the City of Scranton, may be required to reconstruct the road surface of the pave cut area to meet compliance.
- 6. Pavement markings. Any Permittee who shall open or excavate any Street/court in the City shall thoroughly and completely replace all pavement markings to their preexisting condition within five (5) days following the resurfacing of the Street/court.

### B. Excavation and opening requirements.

- No more than 500 feet, as measured longitudinally, shall be opened in any street at any
  one time.
- No excavation or opening shall extend beyond the center line of the street before being backfilled and the surface of the affected street temporarily restored to a condition that is safe for pedestrian and vehicular traffic.
- 3. All excavations or openings shall be performed in a manner so as not to interfere with water mains, sewers or their connection with adjacent houses, or any other subsurface lines or constructions until permission has been obtained from the proper authorities in connection with such subsurface lines or constructions.
- Pipe drains, pipe culverts, French drains or other drainage facilities shall be protected
  and, if necessary, restored and/or replaced by the Permittee to ensure their continued
  functionality.
- 5. Any disturbed portions of the street or any other public or private property, including but not limited to slopes and appurtenances and structures, such as guiderails, curbs, signs, markings, drainpipes, driveways and vegetation, shall be restored by the Permittee to as good a condition as existed prior to the disturbance.
- 6. If the Permittee opens any pavement having a bituminous concrete surface, the Permittee shall, in addition to the requirements contained herein, overlay the payment in accordance with the following conditions:
  - a. When a longitudinal opening longer than 100 linear feet has been made in the pavement, the Permittee shall overlay the lane or lanes in which the opening was made, for the entire length of roadway that was opened, curb to curb, in a manner authorized by the Department of Public Works.
  - b. When three or more transverse openings have been made in the same lane within 100 linear feet of pavement and when such openings occupy more than 25% of the road surface between the openings, the Permittee shall overlay the lane or lanes in which the openings were made, for the entire length of roadway between the first and last opening, curb to curb.
  - c. If disturbed lanes adjacent to undisturbed lanes are overlaid, the edge of the disturbed lane shall be saw-cut and milled to a depth of 2.25 inches or to the depth of the existing surface course, whichever is less, for the length of the opening, to

ensure a smooth joint with proper elevation and cross section. A full-width overlay will be required if the undisturbed lane is severely deteriorated as determined by the Department of Public Works.

- d. If disturbed lanes adjacent to curbs are overlaid, the gutter areas must be milled at least three (3) feet wide to maintain proper curb reveal for the length of roadway that is overlaid.
- 7. No tunneling shall be allowed without the express approval of the City Engineer. If such tunneling is approved, the scope of such tunneling will be clearly noted and endorsed upon the Permit. The backfilling of tunnel excavation shall be made only in the presence of the Department of Public Works, or an inspector designated by the same, and shall be done only in a method approved by the City Engineer
- 8. All excavations or openings shall be backfilled immediately with excavatable flowable fill or select granular material (2RC). The materials, mix design and construction method shall conform to the specifications below:
  - a. Excavatable flowable fill shall be in accordance with the Section 220, Flowable Backfill, of the most current edition of PennDOT's Publication 408.
  - b. Select granular material (2RC) shall be in accordance with Section 703.3, Select Granular Material (2RC), of the most current edition of PennDOT's Publication 408. If 2RC backfill is used, the pavement restoration will include eight (8) inches of bituminous base course. The bituminous base course shall be in accordance with Section 309 or 311 of the most current edition of PennDOT's Publication 408.
- 9. No temporary paving or cold-patch premix used as a temporary filling in an excavation or opening shall be permitted (unless dictated by weather and availability). Permanent paving shall be installed immediately after the excavatable flowable fill has set or the select granular material (2RC) has been properly placed.
- 10. Whenever a Permittee or any of its contractors or subcontractors shall disturb any pavement, sidewalk or other public property in order to perform any underground activities, such Permittee will fully comply by registering with the state's "One Call" system pursuant to 73 P.S. §§ 176 et seq. The Permittee shall provide the City with information showing planned locations and reference points for equipment to be installed.
- .11. On concrete base streets, such concrete base shall be replaced with concrete, and the minimum size of the excavation or opening shall be 16 square feet. During the making of any excavation in the street, every necessary and reasonable precaution shall be taken by the Permittee and the parties making the same to keep the street in a safe and passable condition both day and night by guards, barriers, lanterns and other devices, and all Permits granted hereunder are granted under and subject to the express condition that the Permittee shall indemnify, save and keep harmless the City from any loss in damages, or otherwise whatsoever, which may or shall be occasioned at any time by said excavation or by any leak, explosion, or other injury from any pipe, apparatus, conduit or any other matter placed in said excavation. Said excavation shall be done in conformity with Ordinance No. 20-1992, whereby the City requires that all utility and construction/maintenance work done on streets, roads, and alleys in the City of Scranton and all utility, construction, or maintenance work done within state highway rights-of-way be done in accordance with Temporary Traffic Control Guidelines, PennDOT Publication 203, and any and all amendments and supplements thereto.
- 12. The Permittee shall notify the Pave Cut Inspector when the excavation or opening is ready for backfilling before any backfilling is done, when backfilling work is completed and when the street has been permanently restored so that inspections may be made.

- 13. When any work performed by the Permittee causes any earth, gravel or other excavated material to flow, roll or wash upon any street, the Permittee remove such earth, gravel or other excavated material from the affected street within eight (8) hours to permit the safe flow of traffic. In the event that such earth, gravel or other excavated material is not removed within eight (8) hours, the City may remove the earth, gravel or other excavated material and the cost of such removal assessed to the Permittee.
- 14. The Permittee shall ensure that all Streets and private properties shall be thoroughly kept clear of all rubbish, excess earth, rock and other debris resulting from the work. All clean-up operations at the location of the excavation shall be accomplished at the expense of the Permittee and shall be completed to the satisfaction of the City Engineer.
  - 15. In the event that any work performed by or for a Permittee shall be determined to be unsatisfactory, as determined by the Director of Public Works in their sole discretion, and the same shall not be corrected in accordance with its instructions within the time fixed by it, or in the event that the work for which the Permit was granted is not completed within the time fixed by the Department of Public Works, the City may proceed to correct such unsatisfactory work or complete any such work not completed and assess the cost thereof, plus an administrative fee of 20%, to the Permittee.

### § 412-17 Financial Security

A. Each Permittee shall furnish to the City, at the Permittee's expense, a bond or other form of financial security, in such form and in the amount as required by the City consistent with the regulations of the City to guarantee the proper closing and restoration of the City's streets, sidewalks, or ROW. The security shall be a continuing obligation until the completion of the construction or maintenance as confirmed in writing by the City.

### § 412-18 Payment for Work Done by City

A. Payment for all work done by the City of Scranton under the provisions hereof shall be made by the Person made liable therefor under the provisions hereof within 30 days after a bill therefor is sent to such Person by the City of Scranton. Upon failure to pay such charges within such time, the same shall be collectible by the City of Scranton by an action in assumpsit or in the manner provided by law for the collection of municipal claims.

### § 412-19 Violations; Penalties

- A. If a Permittee is found to be in violation of any provision of this article, the Director of Public Works shall notify the Permittee of the nature of such violation in writing as immediate as is practicable. Upon receipt of such notice, the Permittee shall remedy any such violation within five (5) calendar days of receipt of such notice.
- B. Any Person, firm or corporation who is found to be in violation of any provision of this article may, upon conviction thereof, be sentenced to pay a fine of no more than \$1,000 and, in default of such payment, to imprisonment for a term not to exceed 90 days.
- C. Each day that a violation of this article continues shall be deemed to constitute a separate offense.
- D. If any Person shall fail, refuse or neglect to comply with the provisions of this article or any rules or regulations or any reasonable orders or directions of a City representative in reference thereto, the City may refuse to issue further permits to such Person until such conditions or orders are complied with.

### SECTION 2. MISCELLANEOUS.

- A. Police powers. The City, by granting any Permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen, or impair the lawful police powers vested in the City under applicable federal, state and local laws and regulations.
- B. Previous Ordinances. Any Ordinance, or part of any Ordinance, conflicting with this Ordinance is hereby repealed insofar as the same effects this Ordinance.
- C. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.
- D. Safety. All Facilities shall comply with the applicable requirements of the Americans with Disabilities Act ("ADA"), and every other local, state, and federal law and regulation, as well as City construction and sidewalk clearance standards, city ordinance, and state and federal laws and regulations to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new facility must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.
- E. Effective Date. This Ordinance shall become effective immediately upon enactment by the Council of the City of Scranton and signature by the Mayor.

SECTION 3. If any section, clause, provision, or portion of this Resolution shall be held invalid or unconstitutional by any Court of competent jurisdiction, such decisions shall not affect any other section, clause, provision, or portion of this Resolution so long as it remains legally enforceable minus the invalid portion. The City reserves the right to amend this Resolution of any portion thereof from time to time as it shall deem advisable in the best interest of the promotion of the purposes and intent of this Resolution, and the effective administration thereof.

SECTION 4. This Ordinance shall become effective immediately upon approval.

SECTION 5. All ordinances or resolutions or parts of ordinances or resolutions insofar as they are inconsistent herewith are hereby repealed and rescinded.

SECTION 6. This Ordinance is enacted by the Council of the City of Scranton under the authority of the Act of the Legislature, April 13, 1971, Act No. 62, known as the "Home Rule Charter and Optional Plans Law", and any other applicable law arising under the laws of the State and Pennsylvania.

# TABLE 1 – Pave Cut Fee Schedule

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Fee Description	
Permit application fee	\$50.00
Inspection fee - Opening in pavement (per	\$40.00
100 feet)	,
Inspection fee - Opening in Shoulder (per	\$20.00
100 feet)	
Inspection fee - Opening Non-	\$10.00
Pavement/Shoulder (per 100 feet)	
Inspection fee - Multiple Highway areas	\$0.00
Inspection fee - Opening in Pavement	\$30.00
(< 36 ft sq.)	
Inspection fee — Opening in Shoulder	\$15.00
(< 36 ft sq.)	
Inspection fee - Opening Non-	\$10,00
Pavement/Shoulder (< 36 ft sq.)	
Inspection fee - Crossing	\$80.00
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Passed by the Council	
Receiving the Affirmative votes of Council Persons KING VI SCHUSTER, ROTHCHILD, MCANDREW	SMIRL
Negative IV Novie	
President	•9
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Approved 3/13/2024

Pringle Connett Mayor

Little Copy City Clerk