

ORDINANCE NUMBER _____

A ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, TEXAS ESTABLISHING A MASTER ROADS PROGRAM; ADOPTING A ROAD AND RIGHT-OF-WAY CONSTRUCTION AND UTILITY REPAIR POLICY; REGULATING ROAD AND RIGHT-OF-WAY CONSTRUCTION AND UTILITY REPAIRS; REQUIRING REGISTRATION OF RIGHT-OF-WAY USERS; ESTABLISHING FEES; AND PROVIDING A PENALTY AND REMEDIES FOR ANY VIOLATIONS OF THIS ORDINANCE.

WHEREAS, the City of Santa Clara, Texas is charged with maintaining control of and access to the public right-of-ways within the City in order to protect the health, safety and wellness of its citizens, and

WHEREAS, it is hereby found and determined that there are more than twenty miles of public roads and right-of-ways within the City, and

WHEREAS, the City finds and determines that multiple utilities are located within the public right-of-ways of the City, and

WHEREAS, the number and miles of roads, right-of-ways and utility services within the City will continue to increase as the City grows, and

WHEREAS, the City of Santa Clara, Texas finds and determines that road, right-of-way and utility construction will impact the operational life of the public roads within the City, and

WHEREAS, it is hereby found and determined that the City has the responsibility to regulate construction of public roads and right-of-ways as well as construction affecting public roads and right-of-ways, and

WHEREAS, the City finds and determines that regulation of road and right-of-way construction helps reduce disruption of and interference with public use, helps prevent damage, helps maintain the safe conditions of the roads, protects the public health, safety and welfare, and

WHEREAS, the City of Santa Clara, Texas finds and determines that in order to ensure the safety and comfort of the citizens of Santa Clara, Texas, and to extend the operational life of the public roads within the City, the establishment of a Master Roads Program providing for a construction policy is necessary, and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, TEXAS:

Section 1. SHORT TITLE. This ordinance shall be known as the City’s “**MASTER ROADS PROGRAM.**”

Section 2. INDEX.

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Section 3. DEFINITIONS.

For the purposes of this Ordinance, the following words, terms, phrases, abbreviations and their derivations shall have the meanings respectively ascribed to them by this section and the word “shall” is mandatory and not merely permissive:

Abandoned Facilities means facilities no longer in service or physically disconnected from the operating facilities, or from any other facilities that are in use or that still carry service.

Administrative Fee means the fee charged by the City to recover its costs incurred for right-of-way management.

Applicant means a person or entity who submits an application for permit under these provisions.

Area of Influence means the area around any road, right-of-way, or public easement construction, excavation or repair impacted by the construction, excavation or repair.

Authorized Emergency Vehicle means fire department trucks police trucks, public or private ambulances for which permits have been issued by the Texas State Board of Health, emergency trucks of municipal departments or public service corporations as are designated or authorized by the governing body the City of Santa Clara, County of Guadalupe or State of Texas, private trucks operated

by volunteer fireman or certified Emergency Medical Services volunteers while answering a fire alarm or responding to a medical emergency, and trucks owned by the state or by a political subdivision engaged in emergency utility repair or electric, water, or wastewater services.

Backfill means the placement of new dirt, fill, or other material to refill an excavation; or the return of excavated dirt, or other material to fill an excavation.

Boring means a hole drilled in the ground to obtain samples for subsoil investigation.

City means the City of Santa Clara, Texas.

Commercial Motor Vehicle means any motor vehicle designed or used for the transportation of property, not including a passenger bus, passenger automobile, motorcycle, panel delivery truck or pick-up truck, but including any other type of truck, trailer, semi-trailer, pole trailer or any combination thereof which has a gross registered carrying capacity of more than 28,000 pounds.

Contractor means any public or private person, organization, other than a City crew, performing or attempting to perform construction or excavation.

Crew means the construction, excavation or repair crew performing the necessary road, right-of-way or easement construction, excavation or repair.

Day means business day unless otherwise specified.

Design analysis means the narratives and calculations necessary to support design of a project.

Drawings means the plan, profile, detail and other graphic sheets to be used in construction contract which define character and scope of the project.

Driver means every person who drives or is in actual physical control of a vehicle.

Emergency Operations means those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address a service interruption. Upgrading of facilities, new services installation and neighborhood improvement projects are not emergency operations.

Emergency Road Repairs means any road repairs designated by the City Council as needing immediate repair for the safety of the City.

Excavation means an activity that removes or otherwise disturbs soil, pavement, driveways, curbs, sidewalks or other material in the public right-of-way and does not include landscaping activity unless the activity removes or disturbs the paved portion of a public right-of-way.

Facilities means the plant, equipment, and property, including but not limited to lines, poles, mains, pipes, conduits, ducts, cables, and wires located under, on, or above the surface of the ground within a public right-of-way and valves, and related facilities and equipment used or useful for the provision of utility services.

Fill means the soil or other material used to raise the grade of a site or work area.

“Life of the Street” means until such time as that certain paved street, right-of-way or public easement is repaved by the City or another, in the same location as the work, or until such time as the PCI index drops to below 50.

Light Truck means a truck with a manufacturer’s rated carrying capacity of two thousand (2,000) pounds or less, including trucks commonly known as pick-up trucks, panel delivery trucks and carryall trucks, as defined in the Texas Transportation Code.

Motor Vehicle means every vehicle, as herein defined, which is self-propelled.

MRP means Master Roads Program.

MRRL means Master Roads Repair List; to include both sections, each on the Major Road Repairs and the Minor Road Repairs within the City.

Overnight means 10PM through 6AM.

Owner means a person who owns the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with and immediate right of possession in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed owner for the purposes of this ordinance.

Pavement Condition Index (PCI) means a measure of the condition of an improved right-of-way on a scale of 1-100.

Pavement Degradation Recovery Fee means the cost incurred by the City and the public associated with a decrease in the useful life of a street caused by construction or excavations.

Pedestrian means any person afoot.

Permit means the authority approved and issued by the City to perform certain and specific construction and or excavation within a public right-of-way.

Permittee means a ROW User to whom a permit was issued.

Person means every natural person, firm, co-partnership, association or corporation.

Police Officer means every officer authorized to direct or regulate traffic and to cite or make arrests for violations of traffic regulations and other laws affecting such regulations.

Professional Engineer means an engineer currently licensed and in good standing with the Texas Board of Professional Engineers.

Professional Land Surveyor means a Surveyor currently registered and in good standing with Texas Board of Professional Land Surveying.

Repair means the temporary or permanent construction work necessary to make the right-of-way useable.

Restoration means the process by which an excavated right-of-way and any area of influence is returned to the same condition or better than existed before the commencement of the work.

Resurfacing means any repaving, overlay, seal or reconstruction which creates a new improved surface over the entire width of the street or originally improved right-of-way, excluding crack seals and localized base and pavement repairs.

Right-Of-Way (ROW) means any area of land within the City that is acquired by, dedicated to, or claimed by the public or city in simple fee, by easement, or by prescriptive right or 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 easement. The term includes the area on, below, and above the surface of the public right-of-way.

Routine Service Operation means a work activity that makes no material change to the facilities and does not disrupt traffic.

ROW User means a person, organization or entity, its successors, employees, agents and assigns, which uses a public road, ROW or easement for purposes of private property access, work, provision of services, or to install, construct, maintain or repair facilities thereon, including, but not limited to, landowners and services providers.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, internet service, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewer.

Spoils or Excavated Material means construction waste, or excavated dirt or fill.

Street, Road or Highway means the entire improved width between the boundary lines of every way publically maintained when any part thereof is open to use of the public for purposes of vehicular traffic.

Supplementary Application means an application made to excavate or obstruct more of the ROW than originally permitted.

TMUTCD means the Texas Manual on Uniform Traffic Control Devices, current edition.

Traffic means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using a street, road or highway for purposes of transportation.

Truck means a motor vehicle or a combination vehicle/trailer with a total of three or more axles, designed, maintained, or used primarily for the transportation, loading, or unloading of material or property, including "special mobile equipment" as defined in Section 541.201 (Vehicles) of the Texas Transportation Code. This does not include a passenger bus, passenger automobile with trailer, panel delivery truck with trailer, pickup truck with trailer, or utility truck with trailer having one and one-half tone or less rating.

TXDOT means Texas Department of Transportation.

UECM means Utility Excavation Criteria Manual, current edition.

Utility means any privately or publicly owned entity which uses public ROWs to furnish to the public and service, including, without limitation, sanitary sewer, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and apparatuses belonging to such entity and located within and near the ROW.

Vehicle means every device, motorized or non-motorized, the licensing or registration of which is required by the laws of Texas or any other State or Country, in, upon, or by which any person or property is or may be transported or drawn upon a street, road or highway, except devices and exclusively upon stationary rails or trucks.

Work means any construction, excavation or repair activity performed in, on, above or near a City road, ROW or public easement.

Work-Site means any location in which a road, right-of-way or public easement construction, excavation or repair activity is being performed.

Section 4. PURPOSE.

The purpose of this Ordinance is to provide the standards and processes for construction, excavation and repair of roads, right-of-ways and public easements. The goal of this Ordinance is to maintain a high standard for the

construction, excavation and repair activities of roads, right-of-ways and public easements within the City; to avoid damage to the roads, right-of-ways, public easements, utilities, improvements, and private property within the City. This section is not intended to interfere with the type of construction or equipment used.

The following should be considered at all times during any road, right-of-way or public easement construction, excavation or repair:

- a) Maximize the protection and safety of the public and work crews during construction.
- b) Minimize the inconvenience and disruption to adjacent areas.
- c) Provide quality construction, replacements and repairs.
- d) Minimize future maintenance cost to the City of Santa Clara.
- e) Minimize the time of lane closures or restrictions of traffic flow.

Unless otherwise required by law, all road, right-of-way or public easement construction, excavation or repair performed or contracted by the City shall be completed by designated City Crews or a Contractor selected from the Approved Contractor List.

Section 5. CONFORMANCE WITH CITY ORDINANCES AND RESOLUTIONS.

A ROW User shall consult the City's Ordinances and Resolutions prior to the acquisition of any interest in real property in the City for the instillation or relocation of Service lines or other equipment or Facilities along or adjacent to any street, ROW or public easement to attempt to minimize any future conflict regarding the location of such Facilities. All ROW Users are charged at all times with constructive notice of the MRRL subsequent to the effective date of this Ordinance. The City shall have no liability for the value of or loss by a ROW User of any improvements constructed in any area designated on the MRRL subsequent to the effective date of this Ordinance.

Section 6. ROADS ADMINISTRATOR.

The City Council shall select a point of contact for road, ROW and public easement construction, excavation and repair activities in the City of Santa Clara. Such point of contact shall be titled the Roads Administrator. If no Roads Administrator is designated the Mayor shall be the point of contact. The Roads Administrator is the principal City official responsible for the administration of the City's Master Roads Program and may delegate any or all of the duties hereunder.

Section 7. MASTER ROADS REPAIR LIST.

The Planning and Zoning Commission shall develop a Master Roads Repair List including two sections, one for Major Road Repairs and one for Minor Road Repairs, and shall propose the list to the City Council for adoption. The list shall designate City roads or parts of roads that are in need of repair in order of priority and whether the repair is a Major repair or a Minor repair. A Major Road Repair shall include any repairs that either 1) by law requires the City to initiate the bid process due to the estimated expense of the repairs, or 2) requires one-quarter (1/4) or more of a mile of any designated road to be repaired, or 3) requires fifty percent (50%) or more of any designated stretch of road to be repaired. A minor Road Repair shall include any repairs that do not rise to the level of a Major Road Repair except Emergency Road Repairs. The City Council shall review and edit the proposed list as necessary before adopting a final Master Roads Repair List. This list shall not include emergency road repairs. The list shall be reviewed by the Planning and Zoning Commission as necessary to ensure accuracy submitting any recommended changes to the City Council for approval. For so long as the City maintains a website the list shall be published and maintained on the City website.

Section 8. APPROVED CONTRACTOR LIST.

The Planning and Zoning Commission shall develop a list of Contractors eligible to perform road, right-of-way and easement construction, excavation and repairs according to the following contractor requirements. The list shall be proposed by the Planning and Zoning Commission to the City Council each October. The City Council shall review and edit the proposed list as necessary before adopting the list no later than the last December City Council meeting of each year. The adopted list shall be known as the Approved Contractor List and shall be reviewed annually by the Planning and Zoning Commission with changes recommended and adopted accordingly within the forgoing timeline and subject to the requirements below.

Any Contractor wishing to be on the Approved Contractor List must apply or re-apply to the list no later than June 1 of each year and submit the following in a resume packet to the City Council for consideration:

- a) the firm's or individual's name and place of business;
- b) the principal scope of work;
- c) any license or certification for the designated scope of work;
- d) insurance documentation as required by the City's Insurance and Indemnity Resolution;
- e) an affidavit of acceptance, acknowledgment and understanding that any and all work performed by applicant will be in accordance with the City's Ordinances, Resolutions and Policies;
- f) the number of years the applicant has been in business performing the designated scope of work; and
- g) a description of projects completed for the designated scope of work;

Nothing in this section shall prevent the City from submitting a project for bid or requesting qualifications from any contractor whether or not they are on the approved contractor list or not.

All road work completed for or on behalf of the City with a cost of at least and more than five-thousand dollars (\$5,000,00) shall be detailed in a Contract in which any Contractor, whether selected from the Approved Contractor List or selected through a competitive bidding process, shall agree to and sign the City Master Agreement for contractors.

Section 9. PERMIT REQUIRED.

All ROW Users are required to obtain a City permit prior to performing any road, ROW or public easement construction, excavation or repair activity. Except as otherwise provided by law, the City Roads Administrator may place additional conditions (i.e. pavement resurfacing, selected material, work hours) on permitted activities. The same procedure can be followed to obtain a variance request to the standards contained here-in. Variance requests may require City Council approval.

A. No Work Done Without a Permit.

It is unlawful for any person or entity, its agents, servants or employees, other than the City and its employees or authorized crews or contractors, to dig, plow, blast, make cuts, openings, bore, excavate or use any ROW or public easement for any purpose without first having made application and obtained a permit therefore. It is unlawful for any person or entity, its agents, servants or employees, other than the City and its employees or authorized crews or contractors, to make or cause to be made any excavation in or under the surface of any ROW or public easement for the instillation, repair or removal of any facilities, or for any other purpose without first obtaining from the City a permit in compliance with this Ordinance.

It is unlawful for any person or entity, its agents, servants or employees, other than the City and its employees or authorized crews or contractors, to make, cause or allow to be made, any excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, utility pole or other utility, appliance or facilities in or under the surface of any street, alley, sidewalk, ROW or other public easement, at any location, other than that described in the application for the Permit and as shown on the

plans filed with the City Roads Administrator, and in accordance with the requirements of the Permit. If the circumstances appearing after the excavation is commenced make it impossible to comply with the Permit, the Administrator may grant a waiver to take the circumstances into account.

B. Scope, Location and Time Frame.

No person or ROW User shall at any time open or encumber more of the ROW or public easement than shall be reasonably necessary to complete a project in the most expeditious manner.

A permit will specify the scope of work to be completed, the location and area of influence of the work and the time frame, providing a start and end date, of the work to be completed. Thus a permit authorizes only the scope of work stated in the permit to be completed at a specific location and influencing only those areas specified in the permit during a specific time frame stated in the permit. No permittee may cause any work to be done outside the scope, location, area of influence or time frame of the permit except as provided herein.

If a permit does not otherwise specify a time frame for the completion of the work specified in the permit, such permit shall be valid for ten days in which the work specified may begin upon issuance of the permit, as that date shall be counted as day1, and must be completed by 6PM on day10.

Unless in an emergency or prior approval has been granted and designated on the permit, there shall be no work performed prior to 7AM or later than 6PM on any day.

C. Permit Applications.

An applicant for construction, excavation or repair of or within a road, ROW or public easement shall use the form furnished for that purpose, stating the extent, dimensions, character and purpose of the construction or excavation to be made, the location and area of influence, by street and number if possible, where the work is to be done, and the time frame, including hours of operation, in which the work is to be completed. The application form shall be accompanied by maps and records of the existing facilities indicating horizontal and vertical locations within a two (2) block radius of the work-site, a description of the service facilities involved in the construction, excavation or repair activity as well as the work to be completed and a proposed timeline with start and completion dates.

Applicants may apply jointly for permits if the construction and or excavation is to occur at the same time and same location. The City will only recognize one point of contact for the permit thus the applicants must agree among themselves and file the permit application accordingly.

A nonrefundable permit application fee shall be paid at the time of submitting the application.

D. Issuance of Permit.

Permits will be issued or denied within thirty (30) days of application unless, and upon a showing of good cause, an expedited permit is requested.

Expedited permits may be requested upon a showing of good cause, including but not limited to a pending order for service that cannot be met by means of existing Facilities of the ROW User, and will be issued or denied within ten (10) days of application.

All Applications will be approved or denied based upon compliance with the provisions contained herein and a permit may be denied or suspended for any of the following reasons:

- 1) Failure to provide proof of a surety bond or liability insurance acceptable to the City.
- 2) Failure to secure a Contractor's license or other required license.

- 3) Failure to perform in accordance with the requirements of the State of Texas or any applicable State agency.
- 4) The proposed or utilized traffic control procedures or equipment do not comply with the requirements of the latest edition of the Texas Manual on Uniform Traffic Control Devices or the requirements of the Roads Administrator.
- 5) The proposed activity would violate a City ordinance or resolution, or a State or federal statute.
- 6) The permit application contains false or misleading information.
- 7) The activity would cause a public health or safety hazard.
- 8) The applicant is not registered as a right-of-way user or is not otherwise authorized within the City.
- 9) The applicant is in violation of this Ordinance or another City Resolution or Ordinance.

E. Commencement and Completion.

After obtaining the Permit and prior to commencing the work, the Permittee shall notify the City Roads Administrator, and shall commence and complete all work within the time specified in the Permit unless an extension of time is granted by the Administrator.

The work to be done pursuant to the Permit and any repair and subsequent restoration of the road, ROW, or public easement must be completed within the dates specified in the Permit. In the event of circumstances beyond the control of the Permittee or when work is prohibited by unseasonable or unreasonable conditions, the Administrator may extend the dates on receipt of a substantiated supplementary application for a Permit extension.

If at any time a permittee determines that the scope, area of influence or time frame is greater than that which is specified in the permit the permittee must make application for a permit extension and pay any additional fees required thereby. No work shall be initiated outside the initial permit parameters until a new permit or a permit extension is issued.

In the event any work governed by this Ordinance is not completed by the ROW User within the time required or in accordance within the specifications required herein or by the Administrator, the Administrator may cause such work to be performed as is necessary to secure the work area to a safe and passable condition. The ROW User shall reimburse the City for the costs of securing the site.

F. Cease Work.

At any time, the City Roads Administrator may order the immediate cessation of any work which poses a threat to the health, safety or well-being of the public. The Administrator may revoke the permit of any Permittee in any instance where there is a threat to the health, safety or well-being of the public.

G. Revocation.

The City reserves the right, as provided herein, to revoke any permit, without refund of the permit fee, in the event of a breach by the permittee of the terms and/or conditions of the permit or of this Ordinance or any City Ordinance or Resolution. A breach of the terms of the Permit shall include, but not be limited to the following:

- 1) The violation of any provision of the Permit;
- 2) An evasion or attempt to evade any provision of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- 3) Any material misrepresentation of any fact in the Permit Application;
- 4) The failure to meet insurance, surety bond, or indemnification requirements;
- 5) The failure to complete the work in a timely manner;
- 6) The failure to correct a condition indicated on an order issued pursuant to this Ordinance;
- 7) Repeated traffic control violations;
- 8) Failure to repair facilities damaged in the Right-of-Way; or
- 9) Violation of any part of this Ordinance.

If the City Roads Administrator determines that the Permittee has committed a breach of any law or condition of the permit, the Administrator shall make a written demand upon the permittee to remedy such violation. Continued violation may be cause for revocation of the Permit, or legal action, or both. The Administrator may revoke the Permit, provide specifications to cure the breach, or both. Within five (5) calendar days of receiving notification of the breach, the Permittee shall contact the Administrator with a plan, acceptable to the Administrator, for correction of the breach. A Permittee's failure to do so or a Permittee's failure to timely implement the approved plan shall be cause for revocation of the Permit.

H. Non-Conforming Work.

The City Roads Administrator may issue a written notice to the Permittee indicating work that does not conform to the terms of the Permit, applicable standards, conditions, codes, laws, ordinances or resolutions. Within ten (10) days after issuance of written notice, the Permittee shall present proof to the Administrator that the violation has been corrected. If such proof has not been presented within the required time, the Administrator may revoke the permit.

I. Lawful Use of Right-Of-Way.

The use of any public ROW, road or easement in any manner which violates federal, state, or local laws, or City codes and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All Permittees and ROW Users shall provide satisfactory evidence of compliance with the foregoing upon request of the City.

All Permittees or ROW Users shall dispose of all material removed from the road, ROW or public easement and any waste created by the Permittee or ROW User in compliance with all state, federal and local laws and requirements.

If a Permittee or ROW User discovers any contaminated, regulated, or hazardous materials in or near a road, ROW or public easement, the Permittee or ROW User shall be responsible for environmental assessment, excavation, testing, transportation, and disposal of any such contaminated or regulated material in accordance with applicable law, or the Permittee or ROW User may elect to abandon the contaminated area of the road, ROW or public easement and reroute around the contaminated area. The Permittee or ROW User shall promptly notify the City in writing of the condition.

The City reserves the right, at any time, to restrict or determine the route (pathway) and/or spatial location, whether horizontal, vertical or depth, of any Facility and/or structure or improvement in the ROW.

J. Permit Fees.

A non-refundable permit application fee will be charged in addition to any other permit fees applicable to the work specified within the permit, including but not limited, a pavement degradation fee, a tree removal or vegetative destruction fee, ect. All fees are required to be paid prior to any work being performed.

Section 10. UTILITY REGISTRATION.

All utility ROW Users must register with the City within thirty (30) days of the effective date of this Ordinance. Any utility who is not an existing ROW User prior to the effective date of this Ordinance and who wishes to become a ROW User must first register with the City prior to any use of a City road, ROW or public easement by the utility ROW User. All utility ROW Users shall report all changes in its registration information within thirty

(30) days of such change. No utility ROW User shall be authorized to utilize a City road, ROW or other public easement, in any capacity or manner, without registering and obtaining the necessary Permit from the City.

The information required for registration includes the following:

- a) Identity and legal status of utility.
- b) Name, telephone number, physical, mailing and email addresses of the officer, agent or employee responsible for the accuracy of the registration information.
- c) Name, telephone number, physical, mailing and email addresses of the local representative of the utility who shall be available at all times to act on behalf of the utility in the event of an emergency.
- d) If applicable, certification number issued by the Public Utilities Commission.
- e) General description of Services to be provide.
- f) Insurance and bonding information.
- g) Safety and compliance certification to abide by the laws of the State of Texas, applicable state agency regulations as well as the Ordinances and Resolutions of the City, to include any and all safety standards and requirements.

Each utility ROW user must maintain accurate maps and records of its facilities located within the public ROWs and easements within the City and its ETJ. The information shall be made available to the City within five (5) days of request by the City. The maps and records shall depict horizontal and vertical locations of all facilities in and near any public ROW or easement. The City may have facilities located within the ROW or public easement if the utility ROW user does not provide the requested information and in such event the utility ROW user shall reimburse the City for the cost to locate the facilities.

Section 11. UTILITY POLES, CONDUITS AND WIRES.

All poles, conduits and wires in, on, above, under or near a public ROW or easement shall be of sound material and straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as to not unduly interfere with either vehicular nor pedestrian travel. The location and route of all conduits, fiber, cables, and other Facilities placed and constructed by a utility ROW User in the construction and maintenance of its system in the City shall be subject to the reasonable and proper control, direction and approval of the City. Any “non-standard” placement of poles, stubs, conduits, guys, wires and anchors is subject to all provisions of this Ordinance. Any “standard” placement of poles, stubs, conduits, guys, wires and anchors is exempt from this Ordinance. “Standard” is defined by the provisions of the UECM.

Nothing shall obligate or restrict a Utility ROW User from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or Facilities agreements with other utilities authorized to operate within the City.

A Utility ROW User shall utilize existing poles, conduits, and other Facilities whenever reasonably and/or economically possible. Prior to the utilization of any public ROW or easement for the placement of any of its Facilities, the utility ROW User shall make available to the City Roads Administrator any utility pole usage agreement with each Utility within the City currently owning poles, conduits, and other Facilities, whose poles, conduits and Facilities are to be used.

The Utility ROW User shall rearrange its transmission media temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall pay the reasonable and necessary expense of such temporary rearrangements. The Utility ROW User may require payment in advance. The Utility ROW User shall be given not less than five (5) business days advance notice to arrange for such temporary rearrangements. The Utility ROW User shall remove its transmission media in connection with the demolition of unsafe structures, including emergency or ordered demolitions at no cost to the City. The Utility ROW User may invoice third parties for the cost of this work where applicable.

Section 12. EXCAVATION.

All excavations shall be made in accordance with plans submitted with the Permit Application and in accordance with specifications set forth in the UECM. All plans shall be prepared in accordance with all City specifications and the UECM. All excavations shall be repaired in such a way so as not to become depressed, cracked, broken, or in any way fail during the remaining “Life of the Street.” The remaining “Life of the Street” for this purpose shall be until the PCI Index drops below 50 or until the subject area is repaved by the City or other entity. Additional specifications may be contained in the UECM.

The crew shall conduct the work with minimal exposure and disturbance of adjacent unaffected areas and it shall be the responsibility of the crew to coordinate all work with any existing utilities and ROW users.

The excavation of streets and pavements should begin with an air-hammer shovel, saw, or pavement breaker that will not damage the pavement outside an approximate width of the ditch prior to beginning trenching activities.

The removal and replacement of portions of existing concrete pavement, drives, slabs, etc. shall require breakout grooves to be sawed by the use of an approved power driven concrete saw.

No portion of pipe, conduit, line, or other conveyance of utility service shall be placed less than twelve (12) inches below the bottom of the existing pavement base or subgrade. If any such utility is discovered within twelve (12) inches of the bottom of the existing pavement base or subgrade, the utility shall be notified and it shall be the utility’s sole responsibility, cost and expense to relocate the utility facilities.

A Permit holder shall perform jacking and boring operations in a manner that does not weaken or impair the Right-of-Way upon completion of restoration of the Excavation.

All excavations shall be backfilled with acceptable materials in the required lifts and to the required densities provided in Section 14A. Backfill of this Ordinance.

All subgrades and pavements excavated or damaged by the excavation activity shall be restored as provided in Section 14B. Subgrade Fill of this Ordinance.

The Permittee shall complete pavement restoration of the excavated area within thirty (30) days of all affected streets and alleys after final backfill is completed and accepted by the City Roads Administrator. The Permittee shall conduct the work with a minimum disturbance to existing Utilities and shall coordinate all work in or near the existing Utilities with the Utility Owners.

A. Excavation in Streets in Good Condition.

Excavation in all Streets in good condition regardless of age should not occur without prior approval of the Administrator. Streets assigned a PCI of 86 or above by the Pavement Management System are deemed to be in good condition and are subject to the review procedures of excavation of new streets.

B. Excavation in New Streets.

There shall be no excavation in new streets without the prior approval of the City Roads Administrator. Any request to excavate a new street shall include a description of the proposed work and proposed restoration of the area, as well as a statement as to why alternate procedures cannot or should not be used in lieu of excavating a new street.

C. Excavation in Portland Cement Concrete (PCC) Pavement Surface.

If the existing pavement is PCC, the concrete shall be cut first with a saw to a minimum depth of half the thickness of the concrete which shall also cut the reinforcing steel. The concrete can then be broken

out with an air chisel or pavement breaker. No more than 6" of PCC shall be broken back beneath the saw cut. Further criteria is set forth in the UECM.

D. Excavated Area Maintenance.

A Permittee or ROW User shall maintain their repairs in the ROW or public easement for the Life of the Street as defined in this Ordinance.

After backfilling is completed, and prior to repaving the cut, the Permittee or ROW User shall remove all loose paving material and trim the edges of the excavation at the street surface to the satisfaction of the City Roads Administrator.

Section 13. TRENCHING.

Trench walls shall be vertical and the practice of undercutting at the bottom or flaring at the top will not be permitted except where it is justified for safety. Special cases where trench flaring is required, the trench walls shall remain vertical to a depth of at least one foot (1') above the top of the facilities installation. The trench bottom shall be square or slightly curved to the shape of the trenching machine cutters. The trench shall be accurately graded along its entire length to provide uniform bearing and support for each section of installed facilities upon the bedding material. Bell holes and depressions for joints shall be dug after the trench bottom has been graded and bedding installed. The facilities installation shall rest upon the new bedding material for its full length. Where over-excavation occurs, the under-cut trench shall be restored to grade at no cost to the City by replacement with a material conforming to the requirements of the bedding material or a material approved by the City Roads Administrator. The back fill shall be compacted to a density equal to typical trenching repairs.

A. Minimum Width of Trench.

The minimum width of trenches, measured at the crown of the facilities installation, shall be not less than 12 inches greater than the exterior diameter of the facilities installation, exclusive of bells. The minimum base width of such trench shall be not less than 12 inches greater than the exterior diameter of the facilities installation, exclusive of special structures or connections.

B. Trench profile dimensions. (Ref. Detail 1)

The pavement shall be cut back 24 – 36 inches from the edge of excavated trench. If the construction, excavation or repair is more than 30% of the lane width of the road, then the cut should be from the center line of the road to one edge. If the construction, excavation or repair contains more than one lane of the road, the pavement cut should extend entirely across the road.

No trench shall be opened in any street for the purpose of laying pipe, conduits, ducts or other facilities more than four hundred (400) feet in advance of the pipe, conduit, ducts or other facilities being placed in the trench, other than with the prior written consent of the City Roads Administrator.

C. Trench Caving.

Whenever any caving occurs in the sidewalls of any trench, the paving above such caving shall be cut away, trench backfilled and pavement restored in accordance with the UECM. In no case shall any side or lateral tamping fill any void under pavement.

Section 14. JACKING AND BORING.

Construction, excavation or repair shall be made in a manner that will minimize interference with vehicular traffic and shall not weaken or damage the existing roadway, right-of-way or easement. The location of the boring pits shall be a sufficient distance from any roadway (normally 5 feet), to prevent undermining of the

shoulder section. The boring should maintain a minimum of twenty-four (24) inches between the traffic surface and the nearest bore surface. Over cutting in excess of approximately two (2) inches shall be remedied by pressure grouting the entire length of installation. The pits or trenches excavated to facilitate this operation shall be backfilled immediately after work has been completed.

Additional guidelines for jacking and boring are set forth in the UECM.

Section 15. FILL.

Construction, excavation or repair of roads, right-of-ways or easements utilizing one of the following types of fill shall conform to the requirements of the respective type used.

A. Backfill.

Open trenches may be temporarily backfilled for the convenience of the Permittee or the public safety. At least one (1) hour prior to beginning permanent backfill operations, the Permittee shall notify the City Roads Administrator of the time the backfill will begin.

Backfilling shall be performed in a manner that supports the restoration of similar materials that were excavated. The surface must be restored to a condition equal or better in quality than before the excavation was performed.

All excess water and mud shall be removed from the trench prior to backfilling. Any backfill placed during a rainy period or at other times, where excess water cannot be prevented from entering the trench, will be considered temporary and shall be removed as soon as weather permits. All disturbed base material or any base that has been displaced shall be removed and discarded.

B. Subgrade Fill.

The subgrade shall be compacted by approved mechanical equipment to a density of not less than ninety-five percent (95%) standard Proctor density. If the subgrade fails to meet the density specified, it shall be reworked as necessary to obtain the density required. Fills must be placed and compacted on horizontal lifts of not over twelve inches (12") depth to the specified density. Fill sections whose depth exceeds eight feet (8'), at any point on the cross section, shall require a slope stability analysis and/or approval of the City Roads Administrator.

C. Flexible Base Course.

The base material must meet the requirements of TXDOT Item 247, Flexible Base, Type "A" Grade 2. The flexible base material shall be compacted to a minimum 95% standard Proctor density and optimum moisture of -2 to +4. Base material shall be placed and compacted in equal horizontal lifts when possible. No lift shall exceed six-inches (6") in depth after compaction. Base course shall be maintained by blading, and the surface, upon completion, shall be smooth and in conformity with the typical section indicated, and to the established lines and grades.

All irregularities, depressions or weak spots which develop shall be corrected immediately by scarifying the areas affected, adding suitable material as required, re-shaping and re-compacting by sprinkling and rolling. Should the base course, due to any reason or cause, lose the required stability, density and finish before the surface is complete, it shall be re-compacted and refinished at the sole expense of the Permittee or ROW User.

In addition to the provisions above the portion of the backfill which lies within twelve (12) inches below any portion of driveway or improved roadway shall be compacted to secure a density of not less than 98% of the Standard Proctor Density at 0-4% above optimum moisture test.

New roadway base material shall be a minimum of six (6) inches approved roadway base material.

D. Vegetative Cover.

Excavation in areas that are not used for sustained roadway use where no flexible base exists may only require natural backfill. The natural backfill should be compacted to the equal density of the surrounding area.

Section 16. PAVED SURFACE REPAIRS.

Unless otherwise specified in the Permit, restoration of the paved surface of any Street, alley, ROW or other public place shall be performed by the Permittee or by the City, upon request by the Permittee. Nothing in this section shall relieve the Permittee or a ROW User from the responsibility to maintain the Excavation or installation in a safe condition until it is repaved by the City or otherwise restored. In addition to all other applicable fees or charges, if the ROW User or Permittee making the Excavation requests repaving by the City, the ROW User or Permittee shall pay for repaving at a rate to be established by the City.

Construction, excavation or repair of roads, ROWs or easements paved with one of the following types of surface shall conform to the requirements of the respective type used.

A. Asphalt Course Penetration Surface.

The three course penetration seal (3-CPS) shall meet the requirements of TXDOT Item 316, "Surface Treatments." The asphaltic materials shall include both a prime coat of either emulsified or medium curing asphalt and surface coats of rapid setting asphalt in accordance with TXDOT Item 300, "Asphalts, Oils, and Emulsions." The types and quantities of asphalt to be applied shall be accordance with generally accepted road construction practices or as directed by the City Roads Administrator.

The aggregates for surface treatment shall meet TXDOT Item 302, "Aggregates for Surface Treatments" Type A, Grade 4.

In the event a three course penetration seal (3-CPS) is used, a minimum of twenty-two (22) months shall have passed before placing the third and final course penetration seal.

Surface treatments may be placed only between May 1st and September 15th of any given year. At the sole discretion of the City Roads Administrator, placement may be permitted outside this time frame if weather conditions allow. Surface treatments shall not be applied when the air temperature is below 60 degrees Fahrenheit and falling, but it may be applied when the air temperature is 50 degrees Fahrenheit and rising. Surface treatments will not be applied when the temperature of the roadway surface is below 60 degrees Fahrenheit.

B. Hot Mix Asphaltic Concrete (HMAC) Surface.

The asphaltic material for Prime Coat shall meet the requirements for TXDOT Item 310, Prime Coat. Prime Coat shall be applied at a rate not to exceed 0.35 gallon per square yard of surface.

The HMAC surface course shall meet the current specifications of TXDOT Item 340, Type D. HMAC pavement shall not be placed when the general weather conditions, in the opinion of the City Road Administrator, are not suitable.

All asphaltic mixtures shall be placed with a spreading and finishing machine. The mix shall be compressed thoroughly and uniformly compacted immediately after placing to the required density. All compaction rolling shall be complete before the material cools below 175 degrees Fahrenheit. The

completed surface shall meet the approval of the City Roads Administrator for riding surface, finish, and appearance.

C. Concrete Surface.

Concrete driving surfaces shall be eight inches (8") of Class "A" (3,000 lb. in 28 days) concrete with number five (#5) rebar at twelve inch (12") on center both ways using at least six inches (6") of compacted base material. Concrete shall not be placed when the ambient temperature is below 40 degrees Fahrenheit and falling, without permission from the City Roads Administrator.

In case the paved surface of a street, alley, ROW or public easement in, over or near any excavation should become depressed, cracked, or broken any time or fails in any way at any time after the excavation or repair has been made and during the remaining Life of the Street, the ROW User shall comply with any applicable obligations of this Ordinance, including, without limitation, reimbursement to the City of the cost to restore the Street, ROW or public easement and payment of the pavement degradation recovery fee as set forth in this Ordinance.

Section 17. DRIVEWAY SURFACES. (Ref. Detail 2)

When driveways are excavated on a public road, ROW or easements they shall be replaced "in-kind", i.e., an asphalt surface on a flexible base shall be replaced with similar materials to a similar depth. Any asphalt surface replaced shall be at least three inches (3") of asphalt. A concrete drive shall be replaced with Class "A" concrete (Standard Specification Item No. 300.1) to a similar depth as existing except that in no case shall it be less than five inches (5") of concrete on less than two inches (2") of flexible base - crushed rock gravel – with six by six (6x6) number six (#6) gage wire mesh. Any curbing on the driveway that was damaged shall be replaced. Commercial driveways are required to use at least six inches (6") of compacted base material with at least six inches (6") of concrete with at least number 5 (#5) rebar at twelve inches (12") on center.

Section 18. VEGETATIVE AREAS.

Where construction, excavation or repairs occur in vegetative cover ROWs or easements where no paved surface is present, vegetative cover backfilling specifications set herein are in affect to include restoration of the vegetative cover to previous conditions with a minimum of 100% coverage, original or better, in disturbed areas. All damaged trees, shrubs, and ground cover shall be restored or replaced as determined by a landscape protection plan agreed upon by the adjacent land owners and approved by the City Roads Administrator prior to the excavation. It is the responsibility of the Permittee or ROW User to perform erosion control measures to prevent property damage and environmental damage.

Section 19. TRAFFIC MARKINGS.

Traffic markings that were removed or damaged during any construction, excavation or repair activity must be replaced by the Permittee or ROW User.

Section 20. INSPECTIONS AND TESTING.

The City Roads Administrator may, at any time, require that any work completed or materials used in or near a road, ROW or public easement may be tested and/or inspected to determine conformance to required specifications, including, but not limited to, compaction tests on backfill materials, subgrade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary, at any time, by the Administrator. The frequency of these inspections and/or tests shall be as required by the City Roads Administrator. Tests shall be completed by an Independent Testing Laboratory paid for by the Permittee or ROW User and copies of the test results shall be supplied by the Permittee or ROW User to the City Roads Administrator. Inspections shall be completed by the City Roads Administrator or another City official designated to administer inspections.

The Permittee or ROW User shall make the work-site accessible to the City, and others authorized by law, for inspection at all reasonable times during performance of the work.

Section 21. CLEANUP.

In every case and at all times, the work of removing from the road, ROW or public easement all obstructions, surplus materials, debris and waste matter of every description caused by and accumulated from any work on the road, ROW or public easement shall be the responsibility of the Permittee or ROW User. Streets shall be cleaned by use of a regenerative air or vacuum street sweeper. The Permittee or ROW User shall clean the surrounding area, as outlined above, within one (1) day upon completion and approval of all work and pavement restoration unless the City Roads Administrator finds sufficient reason to grant an extension of time.

In addition to restoration of all work-sites as described above, the Permittee or ROW User shall care for adjacent areas. In particular:

- a) Roads, ROW and public easements shall be cleaned and kept free of debris both during and after any construction, excavation or repair activity.
- b) All earth, materials, sidewalks, paving, crossing, or improvements to any kind which are owned or possessed by the City and damaged, disturbed, or removed by a Permittee or ROW User shall be fully repaired promptly by the Permittee or ROW User, at its sole expense, to the reasonable satisfaction of the City Roads Administrator.
- c) After any work, the Permittee or ROW User shall, at its expense, restore the road, ROW or public easement, and the surrounding area, to the same or better condition than it was prior to the work. The restoration shall be made in accordance with specifications set forth in the UECM and the repair shall endure without failure for the remaining Life of the Street, as such period is described in this Ordinance.
- d) Disturbed soils shall be final graded, seeded and mulched after all construction, excavation and repair activities. In limited areas, seeding and mulching by hand, or the use of other approved methods, will be acceptable.
- e) Excavations in a street, ROW or public easement with PCI values of 86 or greater shall be deemed 100% loss of pavement life. These excavations require (a) block to block and curb to curb pavement reconstruction or (b) use of a Hot Mix Asphalt Repaving Process, or (c) such other method of repair as the City Roads Administrator approves, for all cuts.
- f) Ditch lines with erodible soil and subject to rapid water flows may require seeding, matting, netting, or rock lining to control erosion.

g) Any silting of downstream drainage facilities, whether ditches or pipe and catch basins, which results from any construction, excavation or repair activity shall be cleaned out and the work site restored to a stable condition as part of site cleanup.

h) Remove all temporary erosion and sediment control materials and fencing, and dispose of such materials properly.

i) Any Excavated pavement, debris and other rubble shall be removed, together with any surplus material, within one (1) working day from the time such material is placed upon the street.

Any person who shall cause to be made any excavation or obstruction in any street ROW or public easement may not suffer the same to remain there beyond a time reasonably sufficient for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of any street, ROW or public easement so as to restore the same to its condition previous to the making of such excavation or obstruction. It shall be the duty of such Permittee or ROW User to protect the area while such condition exists and promptly to repair the same so as to leave the street, ROW or public easement in as good condition as before the work or obstruction.

In all restoration activities, the Permittee or ROW User guarantees its work and shall maintain it for the remaining "Life of the Street" following completion of the restoration. During the period following completion, the Permittee or ROW User shall, in the event of any failure of the restoration, upon notification from the City Roads Administrator, reimburse the City for (i) pavement restoration costs, and (ii) the Pavement Degradation Recovery Fee as provided for in this Ordinance. Additionally, the Permittee or ROW User in the event of such failure, shall within forty-eight (48) hours of notice from the City, repair the subject road, ROW or public easement.

Section 22. SAFETY GUIDELINES.

All Permittees and ROW Users shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not by limitation, the Occupational Safety and Health Standards for the construction industry.

A. Safe Conduct of Work.

Every Permittee and ROW User shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public using the Street, ROW or public easement where the work is being performed from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings, and excavations. All material, implements and tools stored upon the premises and used in connection with the work shall be stored in a safe and non-hazardous manner. All work must be performed only within the hours and days as set forth in the Permit or as otherwise specified herein and in accordance with the requirements of the UECM. Work in residential areas may only occur during daylight hours, certain commercial areas and hospital districts are subject to noise controls and other limitations. Additional details and requirements are available in the UECM.

B. Traffic Control Safety.

In the event of non-compliance with the TMUTCD, the Permittee or ROW User shall be notified in writing of the violation. In the event of continued non-compliance, the City Roads Administrator may revoke the Permit, in addition to any other remedies available to the City.

- 1) All construction, excavation or repair activities shall be performed within the applicable OSHA requirements.
- 2) Each side of an excavation or trench which is five (5) feet or deeper must be protected by sheeting, bracing, shoring and/or sloped.
- 3) During construction, excavation or repair activities, barricades, flashers, signs and other appropriate traffic control devices shall be used and maintained to safeguard traffic.

The Permittee or ROW User working in any road, ROW or public easement is responsible for the safe movement of traffic, both pedestrian and vehicular, through the work-site and area of influence. The ROW User shall meet all requirements for barricading and traffic control as specified in the TMUTCD.

- 1) Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including those in TMUTCD, may place and maintain the traffic control devices.
- 2) The Permittee or ROW User must either (i) subcontract the barricading to a firm specializing in traffic control, or (ii) submit the qualifications and name(s) of employees to the City Roads Administrator for approval prior to the work commencing. They must also submit a traffic control plan for review. All signs and barricades must conform to the requirements of the TMUTCD.
- 3) All barricades, plates, and other traffic control equipment must conform to TMUTCD specifications and must be inspected and approved by the Administrator if not provided by a traffic control firm.
- 4) All barricades, plates, and other traffic control equipment must display accurate and sufficient information including the name of the Permittee or ROW User.
- 5) Non-Compliance with the TMUTCD shall be cited in writing. In the event of non-compliance after citation, the Administrator may place the necessary devices as required and the Permittee or ROW User shall pay the charges therefor. The Permittee or ROW User shall reimburse the City for all such expenses as well as a \$500.00 penalty for non-compliance. Failure to comply with this provision may result in denial of application for future permits.
- 6) All traffic control devices must be removed immediately upon completion of work.

Prior to commencement of any work affecting a City road, ROW or public easement, the Permittee or ROW User shall install, at the work-site, an informational sign in conformance with the requirements of the UECM.

C. Duty to Barricade.

At all times during any work, the Permittee or ROW User, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including watchmen certified in accordance with the

safety training described in this Ordinance, as necessary, upon and around the work-site for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

If any excavation cannot be back-filled immediately, the Permittee or ROW User shall securely and adequately cover the excavation and maintain proper barricades, safety fencing and lights as required, from the time of the opening of the excavation until the excavation is surfaced, inspected, accepted as complete by the City Roads Administrator and opened for travel.

Section 23. EMERGENCY ACTIVITIES.

Emergency activities may be initiated and completed either upon a written emergency designation signed by either the City Roads Administrator or the Mayor.

Nothing in this Ordinance shall be construed to prevent any ROW User from maintaining any pipe, conduit, duct or other facilities in, under or above any Street, ROW or public easement by virtue of any law, ordinance or Permit, from making such Excavation or repair as may be necessary for compliance with law or for the preservation of life or property when the necessity arises, provided that the ROW User making the Excavation or repair shall notify the City Roads Administrator within twenty-four (24) hours. Except as specifically provided otherwise in this Ordinance, Excavations or repairs authorized by this section shall be subject to all fees and requirements of this Ordinance.

Section 24. NO INSURANCE OR SECURITY.

The City of Santa Clara is not required to provide and will not provide security or insurance for any work it approves, permits, performs or contracts. By granting a permit, approving or performing construction, excavation or repair activities, the City does not make any representation as to the safety of any crew or the safety or stability of any work-site. Each person, firm, corporation, organization or entity shall exercise caution and due regard for signage or signals including obeying all traffic laws when entering or passing a work-site within the City as they do so at their own risk.

Section 25. GUARANTEE, DAMAGE AND REMEDIES.

All construction, excavation or repair activity in a City street, ROW, sidewalk or other public easement or place is declared to be subject to the exclusive control of the City, and whenever, in the opinion of the City Roads Administrator, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or materials or because not true to the lines or grades or specifications therefor given to the Permittee or ROW User by the Administrator, then upon written demand or notice from the Administrator, such Permittee or ROW User shall promptly remedy, complete or remove and reconstruct such incomplete or defective work all as the Administrator may require, and these provisions shall also apply to all repair and maintenance work. If the Permittee or ROW User shall fail or refuse to do so within a reasonable time to be specified by the Administrator, then, if the Administrator shall so order, such work shall be completed or corrected or removed and wholly or partially reconstructed by the City, in such manner as in the opinion of the Administrator may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the direction of the Administrator.

A Permittee or ROW User whose work is completed by the City shall, on completion of the work and according to the certified bill of the cost thereof to be prepared by the City Roads Administrator, pay to the City, on its order, the amount of the certified bill as reimbursement for such work.

A. Guarantee.

The “Life of the Street” guarantee period shall be applicable to failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by the City, the Permittee or ROW User retains the responsibility to repair, at all times during the guaranty period, the trench envelope and any other work completed by the Permittee or ROW User.

B. Damage.

Any person, firm, corporation, organization or entity violating any provision of this ordinance shall be deemed liable for any damage caused by such violation, including but not limited to pavement, bar ditches and culverts, and shall be determined and held liable for the repair and the cost of the repair. The provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violations. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

In the event a Permittee or ROW User fails to restore the road, ROW or public easement in the manner and to the condition required herein, or fails to satisfactorily and timely complete all restoration, the City may, at its option, serve written notice upon the Permittee or ROW User that, unless five (5) days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the road, ROW or public easement by the Permittee or ROW User, the City may take over the work-site and prosecute same to completion, by contract or otherwise, at the expense of the Permittee or ROW User, and the Permittee or ROW User and its surety and/or insurer shall be liable to the City for any and all cost incurred by the City by reason of such prosecution and completion. Nothing herein shall limit any other remedies available to the City pursuant to local, state and federal law.

Section 26. LOCATION AND RELOCATION OF FACILITIES.

Subject to applicable Federal, State, and local law a ROW User shall, upon the request of the City, locate and/or relocate its Facilities situated within any street, ROW or public easement, at no expense to the City, where reasonable and necessary to accommodate street construction, widening, or public improvement projects of the City. When relocation is necessitated by federal government requirements, and includes reimbursements, the City will reimburse the ROW User for its proportionate share from funds provided the City in such reimbursements.

In the event of vacation of a street, ROW or public easement requiring the relocation of facilities, the ROW User being relocated shall pay the costs of the relocation where the ROW User does not own an easement or other real property interest.

A ROW User owning Abandoned Facilities in a City street, ROW or other public easement shall:

- a) Remove its facilities and repair, at its expense, any damage caused by the removal. The Administrator may allow some or all Facilities to remain if the City Roads Administrator determines the same is in the best interest of the public to do so; or
- b) Provide information satisfactory to the City that the ROW User’s obligations for its Facilities in the street, ROW or public easement have been lawfully assumed by another authorized ROW User.

The Facilities of a ROW User who fails to comply with this Ordinance, and those Facilities which remain unused for two (2) years, shall be deemed to be abandoned unless, within the aforesaid two year period, the City receives written confirmation and reasonable evidence that the ROW User intends to use the Facilities. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, taking possession of the Abandoned Facilities or requiring the removal of the Facilities by the ROW User.

Section 27. FEES.

All ROW Users are subject to the following fees, as applicable, unless specifically exempt by this Ordinance or other State, Federal or local law. Failure to pay any applicable fee when due shall be a violation of this Ordinance and subject to penalty as provided herein.

A. Permit Application Fee.

There is a non-refundable Permit application fee of seventy-five dollars (\$75.00). Permits shall be issued or denied within thirty (30) days. There is an expedited non-refundable application fee of two-hundred-fifty dollars (\$250.00) for permits which shall be issued or denied within ten (10) days. Application fees shall be paid at the time of requesting the Permit.

B. Inspection Fee.

The work authorized by each permit shall be subject to inspection as determined by the City Roads Administrator. There is an inspection fee of two-hundred dollars (\$200.00) per inspection. The inspection fees shall be paid at the time the Permit is issued. Inspections may be performed on any and all work at the discretion of the Administrator, based on previous performance of the Permittee or ROW User, the location of the work-site, the type of work and the methodology. Overtime inspection fees are incurred at a rate of \$40.00 per hour and \$70.00 per hour on Sundays and holidays.

C. Permit Expiration Fee.

A fee of one-hundred dollars (\$100.00) will be charged for any Permit that has not been extended before its expiration date and for any Permit wherein work has not been completed by the expiration date provided for in the Permit. The Permit period begins with the date of issuance of the Permit.

D. Electronic Maps Submittal Fee.

A fee of forty dollars (\$40.00) per hour will be charged for each hour of labor necessitated by information submitted to the City in only one format in lieu of submittals to the City in both electronic format and at least five (5) hard copy format. There is a minimum of two hours.

E. Pavement Degradation Recovery Fee

This reimbursement to the City is due upon failure of any Permittee's or ROW User's restoration, or upon a Permittee's or ROW User's failure to restore the street, ROW or public easement. The following provisions apply to excavations in streets with certain PCI Indexes.

1) PCI of O-50

An excavations in a paved street, ROW or public easement with PCI values of 50 or less shall be deemed to be an excavation in a street with normal loss of life. The Permittee or ROW User shall promptly repair the trench envelope and surface in accordance with specifications set forth herein and in the UECM. The repair shall have a guaranty by the Permittee or ROW User as set forth herein.

2) PCI of 51-85

In the event of an excavation in a paved street, ROW or public easement having a PCI of 51-85, the Permittee or ROW User shall promptly repair the trench envelope and surface in accordance with the specifications set forth herein and in the UECM. The repair shall have a guaranty as set forth herein. In the event of failure of the repair during the guaranty period, the Permittee or ROW User shall reimburse the City (i) for its pavement restoration cost, and (ii) pay the pavement degradation recovery fee, calculated as set forth herein.

3) PCI of 86-100

An excavation in a paved street, ROW or public easement with PCI values of 86 or greater shall be deemed 100% loss of pavement life. These excavations require block to block and

curb to curb pavement reconstruction. Use of a Hot Mix Asphalt Repaving Process is an option with approval of the City Roads Administrator. Specifications are available in the UECM and through the Administrator. In the event of any trench failure in the street, ROW or public easement during the guaranty period, the Permittee or ROW User shall reimburse the City (i) for its costs to repair the failure, and (ii) pay the pavement degradation recovery fee, calculated as set forth herein.

Additionally, in the event of such failure, the Permittee or ROW User shall within forty-eight (48) hours repair the subject trench envelope, if required by the Administrator.

All work or repairs in a City Street, ROW or public easement of any PCI, shall be guaranteed by the Permittee or ROW User doing the work or making the repair, and the Permittee or ROW User causing the work or repair to be made, for the “life of the street.” The “life of the street” for these purposes is defined to be until such time as that certain street or right-of-way is repaved by the City or another, in the same location as the excavation, or until such time as the PCI index of such street or right-of-way drops to below 50.

All damages caused directly or indirectly to the street surface or subsurface outside the pavement excavated area shall be regarded as a part of the work-site or repair area. This includes any holes drilled into the pavement and not properly plugged, as well as damages caused by work equipment. These areas, as established by the Administrator, will be included in the total area to be repaired.

Pavement Degradation Recovery Fee Calculation

- 1) The pavement degradation recovery fee is determined by multiplying the percent loss of life by the pavement cost per square yard determined below by the area of influence. Unit costs shall be annually.
- 2) The area of influence adjacent to the trench is calculated by using the following formula:

$$[(\text{length of cut in feet} + (\text{two (2) times the depth of trench in feet})) \times (\text{width of the cut in feet} + (\text{two (2) times the depth of trench in feet}))] / 9 = \text{square yards of area of influence.}$$
- 3) (Ex. Trench = 15’ long x 2’ wide x 4’ deep = $(15 + (2 \times 4)) \times (2 + (2 \times 4)) / 9 =$ area of influence of 25.56SY)

(i) Damage Recovery Cost Calculation

The damage recovery cost per square yard shall be based on the pavement thickness and/or street classification (residential, collector minor arterial or major arterial), and the (PCI).

(ii) Pavement Cross-Sectional Thickness Determination

Determine the pavement cross-sectional thickness (in inches) from one of the following sources:

- (a) City Pavement Management System (PMS) data base information; or
- (b) From Infrastructure Plans on file with the City; or
- (c) From the As-Built drawings on file with the City.

(iii) Pavement Equivalent Granular Thickness (EGT) Determination

The pavement Equivalent Granular Thickness (EGT) value is equal to the sum of all layers in the existing pavement section times the respective value for each material as follows:

<u>Pavement Material</u>	<u>EGT Value per Inch</u>
Lime stabilized subgrade	0.6
Crushed limestone base	1.0
HMACP, Type A or B	2.0

HMACP, Type C or D	1.8
Asphalt Stabilized Base	1.7
Asphalt In-Place Base Stabilization	1.6
Old or Weathered Concrete	2.0
Newly or Mildly Weathered Concrete	3.0

(iv) *Pavement Section Classification Determination*

Use the calculated EGT value from above to determine the classification of the pavement section.

Total EGT Value	Classification	Cost per sq.yd.
Less than or Equal to 15	Thin	\$28/SY
Greater than 15 but less than 20	Medium	\$34/SY
Equal to or Greater than 20	Thick	\$42/SY

F. Registration Fee.

There is a fee of thirty-five (\$35.00) dollars per Right-of-Way User per year for processing registration information, which fee will be collected upon registration.

G. Clean-Up Fee.

There is a clean-up fee of five-hundred dollars (\$500.00) if the Permittee or ROW User fails to clean up the Work-Site and the area of influence.

H. Public Inconvenience Fee.

Public Inconvenience fees are assessed and calculated from the date of expiration of the Permit until the date of completion of work or of backfill if turned over to the City for repair. Public inconvenience fees are charged per day as follows:

Type of Facility	Unit Cost (per day)	Fee Rate			
		31-75days	76-90days	90-100days	>100days
Traffic Lane	Per SQFT	\$0.0521	\$0.1042	\$0.1563	\$0.2084
Sidewalk	Per SQFT	\$0.0026	\$0.0052	\$0.0078	\$0.0104
Driveway	Per Each	\$39.00	\$78.00	\$117.00	\$156.00
Parking	Per Meter	\$14.00	\$21.00	\$28.00	\$42.00
Metered Traffic Lane	*In addition to traffic lane fee*				

Section 28. PENALTY FOR VIOLATION.

Each Violation of this Ordinance shall be punishable by a fine not to exceed Five-Hundred dollars (\$500.00). Each day during which a violation continues shall be deemed a separate violation.

Section 29. INDEMNIFICATION, INSURANCE, BONDING, AND LIABILITY.

A. Liability of Right-of-Way User.

To the extent allowed by law, a Permittee or ROW User shall be liable to the City for any damage or loss occasioned by any act or omission occurring in connection with any construction, excavation or repair activity in a City street, ROW or public easement, and subject to state law, the Permittee or ROW User shall fully indemnify, hold harmless and defend the City, its officers and employees from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the City, its officers or employees may

be subjected for injury of any type, death or property damage arising from or connected with any such act or omission.

B. Insurance.

- 1) Permittees or ROW Users shall furnish an original completed Certificate of Insurance which shall be completed by an agent authorized to bind the named underwrite(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and mailed directly from the agent to the City. The City shall have no duty to perform until such certificate has been delivered to the City.
- 2) The City reserves the right to review the insurance requirements of this section to modify insurance coverage and their limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or circumstances surrounding this Ordinance, but in no instance will the City allow modification whereupon the City will incur increased risk.
- 3) Subject to the Permittee’s or ROW User’s right to maintain reasonable deductions in such amounts as are approved by the City, Permittees and ROW Users shall obtain and maintain in full force and effect for the duration of the Permit, and any extension thereof, and/or duration of the time it maintains Facilities in a City street, ROW or public easement, at the Permittee’s or ROW User’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and /or otherwise acceptable to the City, in the following types and amounts:

TYPE	AMOUNT
(i) Worker’s Compensation Employer’s Liability	Statutory \$500,000/\$500,000/\$500,000
(ii) Commercial General (Public) Liability Insurance to include coverage for the following:	
(a) Premises Operations	Bodily Injury and
(b) Independent Contractors	Property Damage of \$2,000,000 per occurrence
(c) Products/Completed Operations	\$5,000,000 General
(d) Contractual Liability	aggregate of its equivalent in umbrella or Excess liability coverage
(e) Personal Injury	
(f) Explosion, collapse, underground	
(g) Broad form property damage, to include fire legal liability	
(iii) Business Automobile Liability	Combined Single Limit for Bodily and
(a) Owned/Leased Vehicles	Property Damage of \$1,000,000 per occurrence
(b) Non-owned Vehicles	or it’s equivalent
(c) Hired Vehicles	
(iv) Professional Liability (Claims made from)	\$1,000,000 per claim t pay on behalf of the insured all sums which the insured shall Become legally obligated to pay as damages By reason of any act, malpractice, error or omission in professional services.
(v) Contractor’s Pollution Liability Coverage	\$1,000,000 written on a claims for with A two year extended reporting period
(vi) Pollution Liability Motor Carrier & Trucker Coverage endorsing the upset, overturn	\$1,000,000 per occurrence written on an occurrence form (combined single limit for

and remediation of a load in transport.

Bodily injury and property damage.

*if applicable

- 4) The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions,

imitations or exclusions (except where policy revisions are established by law or regulation binding upon either the Permittee or ROW User, the City or the underwriter of any such policies). Upon such request by the City, the Permittee or ROW User shall exercise reasonable effort to accomplish such changes in the policy coverage, and shall pay the cost thereof.

- 5) Permittees and ROW Users shall ensure that all insurance contracts and certificate(s) of insurance contain the following required provisions.

(i) Name the City and its officers, employees, volunteers, agents, and elected representatives as additional insureds with respect to the operations and activities of, or on behalf of, the named insured performed in a City street, ROW or public easement under provisions of this Ordinance, with the exception of the professional liability, worker's compensation and liability policy; and

(ii) Permittee's and ROW User's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City; and

(iii) Provide for an endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy; and

(iv) Worker's compensation and employer's liability will provide for a waiver of subrogation in favor of the City.

- 6) The Permittee or ROW User shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement certificate of insurance. All notices shall be given to the City at the following address:

The City of Santa Clara
Attn: City Mayor
1535 Santa Clara
Marion, Texas 78124

- 7) Nothing herein contained shall be construed as limiting in any way the extent to which the Permittee or ROW User may be held responsible for payments of damages to persons or property resulting from the Permittee's or ROW User's or its subcontractors' performance of any work performed in a City street, ROW or public easement.

- 8) City Utilities shall not be required to provide the insurance specified herein.

- 9) With respect to the Permittee's or ROW User's obligation to comply with the requirements for Commercial General (public) Liability Insurance coverage to include pollution coverage, the City may allow the Permittee or ROW User to self-insure upon annual production of evidence that is satisfactory to the City. With respect to the Permittee's or ROW User's obligation to comply with the requirements for automobile liability insurance and for worker's compensation

insurance, a Permittee or ROW User may self-insure, provided the Permittee or ROW User tenders satisfactory evidence of self-insurance as contemplated by the State of Texas motor vehicle financial responsibility law and the Texas Worker's Compensation Act.

C. Performance/Assurance Bond.

Before a permit may be issued, the applicant thereof shall execute and deliver to the City, to be kept on file in the City Clerk's office, a good and sufficient bond of or assurance, in the sum of ten-thousand dollars (\$10,000) and conditioned that the person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of carelessness or negligence in the manner of performing such work or by reason of any defects therein caused or arising from careless, negligent or imperfect construction thereof, and to hold the City free and harmless from liability on all such claims for damages to the performance or assurance bond shall cover the cost of repairs in or upon a City street, ROW, sidewalk or other public easement or place where the work is to be done that may become necessary by reason of such construction, excavation or repair having been made. The bond shall be maintained until the work is accepted as complete by the City.

D. Optional Continuing Bond and Deposit.

In lieu of a bond of performance or assurance required for each Permit issued through this Ordinance, the Applicant may maintain a one-time bond of performance or assurance with the City for the sum of one-hundred-thousand dollars (\$100,000.00) for the purposes specified by this Ordinance, and shall have on file, in the City Clerk's office, an approved bond of performance or assurance in like amount, being then in full force and effect, against which claims shall not have been presented aggregating more than one-hundred-thousand dollars (\$100,000.00). The bond shall be maintained until the Applicant is no longer working in, on or above any City Street, ROW or public easement.

E. Liability of Contractor and Sureties for Maintenance and Repair Work.

Any defects of workmanship or material relating to work done by a Permittee or ROW User during the initial project or becoming known or which should have been known during the guarantee period (the Life of the Street) shall be known as maintenance or repair work and both the Permittee or ROW User and its sureties and insurers shall be fully liable for any default of such Permittee or ROW User under this section. In the event of a failure in any work, maintenance, repair or restoration, the Permittee or ROW User shall have the opportunity to repair, in a timely manner, the section of the street, ROW or public easement work or repair that has failed at its expense, which restoration shall be in accordance with the standards set forth in this Ordinance. In the event of any subsequent failure of that section of the restoration, the City retains the right and option to terminate the Permittee's or ROW User's guaranty, upon written notice to the Permittee or ROW User. In such event, the Permittee or ROW User shall reimburse the City for its direct costs associated with the restoration of the failure.

F. When Additional Security Required.

In the event the City Roads Administrator reasonably believes the Permittee's or ROW User's solvency is threatened, the Administrator may, at any time, make written demand on a Permittee or ROW User for bonds and the Permittee or ROW User shall immediately furnish such additional bond or bonds.

Section 30. VARIANCE.

Any person, firm, corporation, organization or entity wishing to apply for a variance from any process or procedure in this Ordinance may do so by submitting a written request for hardship variance to the City. A request for hardship variance shall state the special circumstances under which compliance with the specific process or procedure for which the variance is requested will impose undue hardship on the person, firm, corporation, organization or entity. Incomplete variance requests may be rejected. The applicant shall bear its own expense of the application process.

- a) Any request for a variance from any ROW restoration requirement shall be made in writing in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted work and/or repair of the street, ROW or public easement area, if applicable.
- b) Any request for a variance from any penalty or fee, shall be made in writing, and shall be accompanied by a written detailed request stating the reasons therefor.
- c) Any request for a variance from any Permit, or any other requirement of this Ordinance shall be made in writing, by detailed written request therefor, stating all pertinent reasons.
- d) The City shall grant or deny an application for a variance within thirty (30) days of receipt of the application for variance.
- e) Denial of the variance may be appealed in accordance with the Appeals Section of this Ordinance.

Section 31. APPEALS.

An applicant that has been denied registration, has been denied a permit, has had a permit revoked, or believes that fees imposed are invalid, may appeal the denial, revocation, or fee imposition and have the appeal reviewed, as follows:

- a) File a written notice of appeal with the City Planning and Zoning Commission within five (5) calendar days of the denial, revocation or fee imposition stating the hardship encountered and the alternatives explored and available, including a cost and safety analysis.
- b) The Planning and Zoning Commission shall review the appeal within twenty (30) days of receipt of the notice of appeal. Failure to render a decision within twenty (30) days shall constitute a denial of the appeal.
- c) If a further denial is given, the applicant may thereafter file a written notice of appeal to the City Council within five (5) calendar days of the Planning and Zoning Commission denial and the City Council shall provide a written determination within twenty (20) days of the receipt of the notice of appeal.

Section 32. EXCEPTION FOR RESIDENTIAL IRRIGATION PURPOSES.

This Ordinance shall not be applicable to Excavations which are not in Pavement and are solely for the purpose of creating a sprinkler system for one or more residential units.

Section 33. CERTIFICATED TELECOMMUNICATIONS PROVIDERS.

A. Certificated Telecommunications Providers Authority Required/Non-Exclusive Use.

A CTP must provide evidence that the CTP has acquired authorization from the Texas Public Utility Commission pursuant to state law, prior to obtaining a permit to use Public Rights-of-Way. The CTP's right to use and occupy the Public Rights-of-Way shall not be exclusive and CTP recognizes the City's right to exercise its police powers and manage its Public Rights-of-Way, based on the Act and all other State and Federal laws.

B. Additional Authority Required.

The CTP and any of its Affiliates are not authorized to provide cable television service as cable operator or to operate an open video system in the City, but must first obtain a separate Franchise Agreement from the City for that purpose, under such terms and conditions as may be required by law. This section does not preclude the CTP from providing its services to cable television companies. Unless a cable television operator shows proof of appropriate City authorization, nothing herein shall authorize the CTP to license, sublicense, lease, sublease or by any instrument authorize any cable television operator the right to use or utilize the transmission media or Facilities of the CTP.

C. Transfer and Notice.

A CTP shall notify the Administrator and the City's Supervisor of Public Utilities of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within at least thirty (30) days of such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the Administrator and the City's Supervisor of Public Utilities at all times during which the CTP uses the Right-of-Way.

D. Exemption from Fees.

Certified Telecommunications Providers are exempted from the following fees provided for in this Ordinance:

- 1) Permit Application Fee, including Expedited Application Fee, and Permit Expiration Fee
- 2) Additional Excavation Permit Fee
- 3) Inspection Fee
- 4) Pavement Degradation Fee
- 5) Fiberoptic and Conduit and Minor Encroachment Fees
- 6) Registration Fee

E. Waiver of Bonds.

Unless determined otherwise by the Administrator a CTP will be exempt from the bonding requirements of this Ordinance, however, in the event that the Administrator determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, or the health and safety of the public, then the Administrator may require that a CTP post a reasonable bond not to exceed one-hundred-thousand dollars (\$100,000.00). Factors to be considered in determining reasonable grounds may be include, but not limited to, a prior violation of this Ordinance, a general pattern of sub-standard adherence to the provisions of this Ordinance or the failure to comply with this Ordinance. If three (3) years pass from the date that the Administrator requires a bond of a CTP and it has not been necessary for the City to seek performance under the bond, then a bond will no longer be required pursuant to this section.

F. CTP Indemnity.

A CTP shall indemnify the City as specified by Section 283.057 of the Texas Local Government Code, as may be amended. A CTP shall be exempt from all indemnity requirements of this Ordinance that are inconsistent with Section 283.057.

Section 34. CONFLICT.

All Ordinances or Resolutions or parts of ordinances or resolutions in conflict with the provisions of this Ordinance are hereby repealed.

Section 35. SEVERABILITY.

If any provision, section, paragraph, sub-paragraph, clause or phrase of this Ordinance or the application of such to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 36. SAVINGS CLAUSE.

This Ordinance shall remain in full force and effect, save and except as amended or repealed.

Section 37. MEETING OPEN TO PUBLIC.

It is hereby found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that the public notice of the time, place and purpose of said meeting was given as required.

Section 38. EFFECTIVE DATE.

This Ordinance shall be effective upon passage and applicable posting.

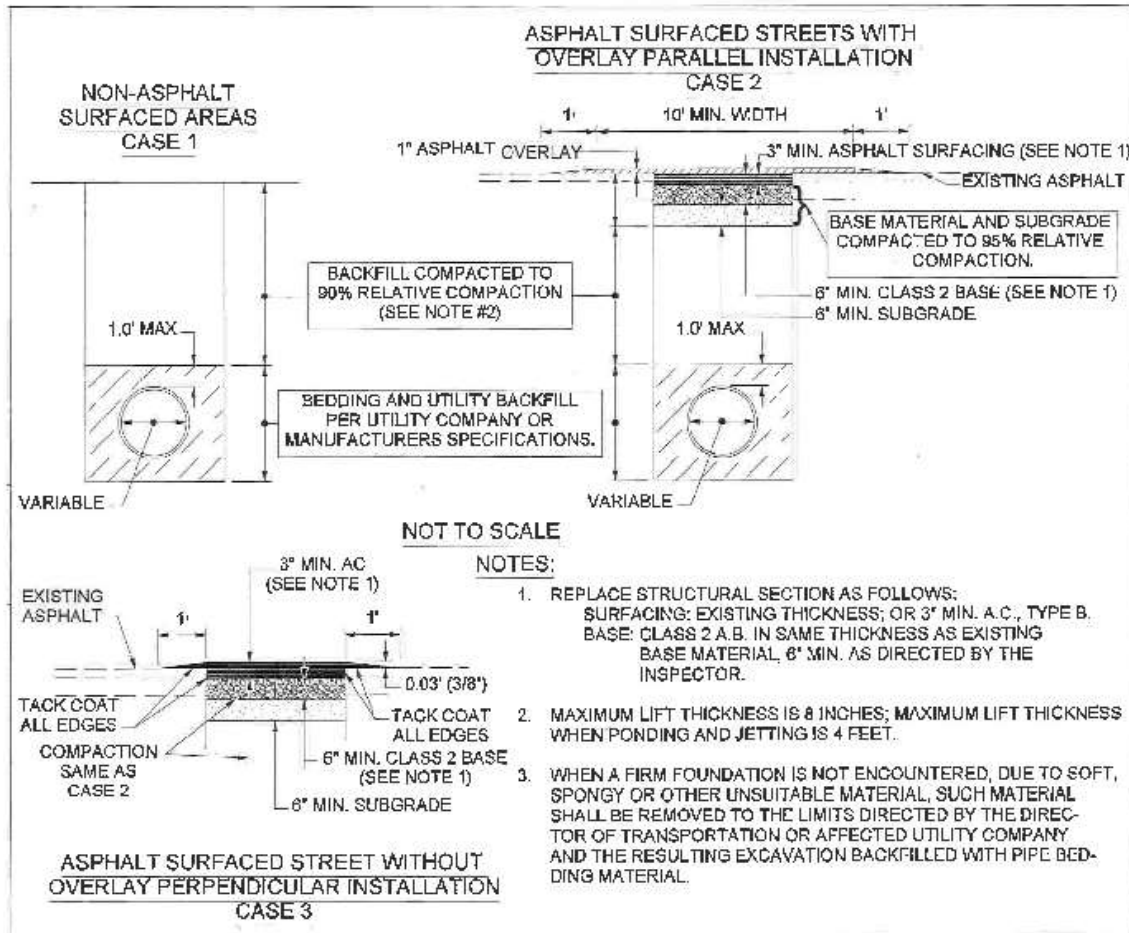
PASSED AND APPROVED this ____ day of _____, 201__.

Jeff Hunt, Mayor

ATTEST:

Donna White, City Secretary

Detail 1. Trench Profile Dimensions.



Detail 2. Concrete Driveway Surface.