

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS REPEALING ORDINANCE NO. 91-12-24; ADOPTING RIGHT OF WAY MANAGEMENT AND PUBLIC EASEMENT REGULATIONS TO MANAGE CONSTRUCTION, EXCAVATION, AND PLACEMENT OF UTILITIES IN THE CITY OF FRISCO, TEXAS; ESTABLISHING FEES; PROVIDING FOR A PENALTY FOR THE VIOLATION FOR THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City of Frisco, Texas (the "City") is charged with maintaining control of and access to the Right of Way (ROW) in order to protect the health, safety and welfare of its citizens; and

WHEREAS, the City Council has investigated and determined that it would be advantageous and beneficial to the City and its inhabitants to repeal Ordinance No. 91-12-24; and

WHEREAS, the City Council of the City of Frisco, Texas (the "City Council") has investigated and determined that Excavations in City Streets may significantly interfere with public use of the Streets and resulting in negative impact to public safety, air quality, level of service on streets and sidewalks, the aesthetics of the community, loss of parking, and business; and

WHEREAS, the City Council has further investigated and determined that Excavations in paved Streets may significantly degrade and shorten the life of the surface of the Streets, and increase the frequency and cost to the public of requisite resurfacing, maintenance and repair regardless of the quality of restoration; and

WHEREAS, the City Council has further investigated and determined that it is desirable to adopt regulations that will provide the City greater control over Excavations in City Streets; and

WHEREAS, the City Council has further investigated and determined that substantial public funds have been invested to build, maintain and repair the City Streets and City utilities and the City holds these Streets and City utilities as an asset in trust for its citizens; It is desirable to adopt regulations to protect the structural integrity of City Streets and safeguard the value of the public investment for the benefit of City residents, by providing incentives to reduce the number of Excavations in City Streets. Such incentives will encourage coordination among Utilities and minimize the number of service disruptions, number of Excavations where feasible, so as to ensure Excavations are performed to the extent possible, in Streets scheduled for resurfacing within the same or succeeding fiscal year as the Excavation; and

WHEREAS, the City Council has further investigated and determined that when a repair fails in a paved Street that is not scheduled for resurfacing within the same or succeeding fiscal year, the Excavator should be required to make repairs necessary for

proper use and appearance of the street, as Excavations and faulty repairs cause the greatest damage in newly surfaced Streets; and

WHEREAS, the City Council has further investigated and determined that entities making and benefiting from an Excavation in a City Street also should comply with standards and requirements for compaction, backfill and pavement restoration and resurfacing that ensures the best possible restoration of the paved surface over and adjacent to the trench; and

WHEREAS, the City Council has further investigated and determined that regulation of Excavations in City Streets and ROW helps reduce disruption of and interference with public use of the Streets, helps prevent pavement and City utility damage, helps maintain the safe condition of the Streets, protects the public health, safety, welfare, and community aesthetics, is a valid and appropriate exercise of the City's police power, and is a municipal responsibility; and

WHEREAS, the City Council has further investigated and determined that there is increasing demand for use of the ROW; and

WHEREAS, the City Council has further investigated and determined that Chapter 283 of the Texas local Government Code (the "Act"), sets forth certain regulations governing municipalities and Certificated Telecommunications Providers ("CTP") and it is the City's intent to comply with these regulations; and

WHEREAS, the City Council has further investigated and determined that the purpose of the Act is to establish a uniform method of compensation for the use of ROW by CTPs that is fair and reasonable, administratively simple, competitively neutral (relative to all CTP's), nondiscriminatory, and consistent relative to the municipalities and CTP's; and

WHEREAS, the City Council has further investigated and determined that this Ordinance promotes compliance with the Texas Utilities Code; and

WHEREAS, the City Council finds that all legal notices, hearings, procedures and publishing requirements have been performed and completed in the manner and form set forth by law.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Repeal Ordinance No. 91-12-24: City Ordinance No. 91-12-24 is hereby repealed. Such repeal shall not abate any pending prosecution for violation of the repealed Ordinance No. 91-12-24, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of Ordinance No. 91-12-24.

SECTION 3: Purpose. This Ordinance provides principles and procedures for the placement of structures and Facilities, construction, Excavation, encroachments, and work activities within or upon a ROW and to protect the integrity and service level of

Streets, sidewalks and City Utility systems and protect the beauty of the community's aesthetics. To achieve these purposes, it is necessary to require Permits of private users of the ROW and to establish Permit procedures, rules and regulations for work done within or upon the ROW.

ARTICLE I (GENERAL PROVISIONS)

SECTION 1.1: Administration. The City Manager shall appoint a Right of Way (ROW) Manager, who is the principal City official responsible for the administration of the ROW, ROW Permits, the regulation of same and ordinances related thereto. The ROW Manager may delegate any or all of the duties hereunder. The ROW Manager shall have the duties, responsibilities and authority as specified for the ROW Manager stated herein.

SECTION 1.2: Definitions. The following definitions apply in this Ordinance. The terms, phrases, words, abbreviations and their derivations shall have the same meanings herein. When not inconsistent with the context words used in the present tense include the future; words in plural number include the singular number, and words in the singular include the plural. 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, or from any other Facilities that are in use or that still carry Service.

Administration Fee means the fee charged by the City to recover its costs incurred for ROW management; including, but not limited to, costs associated with registering Applicants; issuing, processing, and verifying ROW Permit applications; inspecting job sites and restoration improvements; determining the adequacy of the ROW restoration; revoking ROW Permits and other costs the City may incur in implementing the provisions of this Ordinance.

Applicant means an owner or authorized agent of an owner, who submits an application for a Permit under the provisions of this Ordinance.

Area of Influence means that area around a Utility Excavation where the pavement and subgrade is impacted by the Excavation and is subject to more rapid deterioration due to the trench Excavation.

Backfill means the following:

- A. the placement of new dirt, fill, or other material to refill an Excavation; or
- B. the return of excavated dirt, fill or other material to an Excavation.

Certified Telecommunications Provider or "CTP" means a Person who has been issued a certificate of convenience and necessity, certificate of operating authority, or Service provider certificate of operating authority by the Texas Public Utility Commission or "PUC" to offer local exchange telephone service as defined by Section 283 of the Local Government Code or "the Act".

City as used herein shall mean the City of Frisco, Texas and the City's officers and employees.

City Utilities means any water, sewer or drainage line owned and operated by the City of Frisco or the North Texas Municipal Water District.

Collector Street means any roadway or Street classified on the City of Frisco's Comprehensive Plan, as it exists or may be amended, as a collector.

Compaction refers to consolidating backfill material in a trench to prevent future settlement.

Comprehensive Plan means the City of Frisco's Comprehensive Plan, as it exists or may be amended.

Contractor means any public or private Person, subcontractor or organization, other than the City of Frisco, Texas.

Construction means boring, the breaking of pavement, or the installation, modification, upgrade, maintenance, removal, or similar activities, within the right-of-way. The definition includes, but is not limited to, providing primary service, restoration, or maintenance of existing facilities within the ROW.

Day means business day unless otherwise specified.

Department means the City of Frisco Department of Public Works or a successor department that is responsible for management of the ROW and roadway infrastructure.

Emergency operations are defined as 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 or prevent an immediate service interruption. Upgrading of Facilities, new service installation and neighborhood improvement projects are not emergency operations.

Excavation means any activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the ROW and does not include landscaping activity unless the activity removes or disturbs the paved portion of the ROW.

Facilities means the equipment, and property, including but not limited to, lines, poles, mains, pipes, conduits, ducts, cables, valves, man holes, hand holes and wires located under, on, or above the surface of the ground within the ROW, and related Facilities and equipment used or useful for the provision of Utility services.

FCC means the Federal Communications Commission.

Governing Body means the Mayor and the City Council of the City of Frisco, Texas.

Governmental Entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Texas or of any other state of the United States and any agency or instrumentality of the State of Texas or of any other state of the United States.

Holiday shall refer to days in which City offices are closed in observance of a holiday.

Local Street means any roadway or Street not classified on the City of Frisco's Comprehensive Plan, as it exists or may be amended, as a Highway / Tollway, Major Thoroughfare, Minor Thoroughfare or Collector.

Main Line shall refer to lines other than service connections used to convey the ROW User's product.

Major Project means any project, which includes three hundred (300) or more linear feet of Excavation or any Excavation under pavement.

Pavement shall refer to Streets containing Portland cement, asphalt, brick or other rigid or semi-rigid material that covers the surface of a Street and their underlying sub grade and base.

Permit means a Permit issued under this Ordinance authorizing Excavation in the ROW.

Permittee means any Person or ROW User to whom a Permit is issued to excavate a ROW.

Person means any person, company, partnership, contractor, subcontractor, agency or other public or private entity, excepting the City.

Perpendicular Excavations means any trench with a centerline that when projected toward the centerline of the Street, the two lines intersect at an angle of ninety (90) degrees.

Public Inconvenience Penalty shall refer to a penalty assessed to the ROW User who denies the public the use of public property for a time period greater than allowed by this Ordinance.

PUCT means the Public Utility Commission of Texas.

Registration means the annual application process of the ROW User to use any portion of the ROW.

Registration Certificate shall refer to the document provided by the City, annually, upon approval of the application for Registration.

Repair means the temporary or permanent construction work necessary to make the ROW useable.

Repair Area means that area around Excavation where the pavement and subgrade is impacted by an Excavation.

Restoration means the process by which an excavated ROW and surrounding area, including, but not limited to, pavement and foundation structures, ground cover, landscaping, and monuments are returned to the same condition, or better than that which existed before the commencement of the work.

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

Right of Way or Public Right of Way (ROW) means the surface of, and the space above and below, any Street, road, highway, freeway, tollway, lane, path, drainage way, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, fire lane or other easement now or hereafter held by the City or over which the City exercises any rights of management or control and shall include, but not be limited to, all easements now held, or hereafter held, by the City, but shall specifically excludes private property.

Right of Way (ROW) Manager as used herein shall mean the ROW Manager of the City of Frisco, or his/her designee.

Right of Way (ROW) User means a Person, its successors and assigns, that uses the ROW for purposes of work, Excavation, provision of Services, or installing, constructing, maintaining, or repairing Facilities thereon, including, but not limited to, landowners and Service providers.

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

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 ROW, including, but not limited to, gas, telephone, cable television, Internet services, Open Video Systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

Service Connection shall refer to the line that serves no more than two (2) individual customers or two (2) meter banks.

Street means the paved portion of the ROW that has been constructed, reconstructed, or resurfaced with concrete or asphalt or some other surface.

Surface Mounted Markers refers to any sign, post or other marker, which rises above the surface of the ground to show the location of an underground utility.

TMUTCD shall mean the Texas Manual on Uniform Traffic Control Devices, as it exists or may be amended.

Thoroughfare means any roadway or Street classified on the City of Frisco's Comprehensive Plan, as it exists or may be amended, as a Highway, Tollway, Major Thoroughfare or Minor Thoroughfare.

Traffic Control Representative shall refer to the designated representative of the ROW User who is responsible for work zone safety and compliance with TMUTCD. The ROW User shall ensure such Person has adequate training, knowledge and authority to perform the responsibilities listed above.

Trench shall refer to Excavation deeper than twenty-four (24) inches. This shall include linear trenches, holes, pits and etc.

Underground Facility Damage Protection Safety Act shall refer to the Texas Utility Code §251.001 *et seq.*, as it exists or may be amended.

Utility means any privately or publicly owned entity which uses ROW to furnish the public any general public Service, including, without limitation, sanitary sewer, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the ROW. Poles are regulated herein only as specifically set forth in this Ordinance.

White Lining means marking the Excavation site with white washable marking paint or flags prior to requesting a Utility locate in order to further identify the site.

SECTION 1.3: Utility Coordination Committee. Each Utility shall name a Utility Coordinator who shall participate in the Utility Coordination Committee. All ROW Users with open Permits shall send one (1) representative to the monthly Utility Coordination Committee Meetings at the time and location established by the City. City shall notify, by any means, the ROW Users of the monthly meetings.

SECTION 1.4: Field Utility Coordination. The ROW User shall notify the Department at each of the following times during a project: (a) forty-eight (48) hours before the start of construction; (b) upon completion of the initial backfill; and (c) upon completion of the project. The ROW User shall make a request for a Utility locate in compliance with the Underground Facility Damage Prevention and Safety Act.

The use of markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of "Non-washable" markers is prohibited.

Compliance with the Texas Utilities Code, as amended, is required at all times.

All barricades, plates, cones, traffic directional equipment and all other traffic control devices owned, leased or used by the ROW User and used on or near any Excavation shall be clearly and visibly marked with the name of the Permittee and/or ROW User or subcontractor, as applicable, at all times such equipment is used on or near the ROW. An exception to the marking requirement may be made in the sole discretion of the ROW Manager in the event the traffic control equipment is not owned by the Permittee or ROW User.

SECTION 1.5: Maps and Records of Registrants. Within thirty (30) days of passage of this Ordinance, each ROW User shall provide the City an accurate map of their service area. The map shall be in electronic format overlaid over the North Central Texas Council of Government base digital map. In dual coverage areas, the City may request additional information to enable identification of ROW Users.

Each ROW User must maintain accurate maps and records of its Facilities. The City's road network may be provided in digital format upon request. The ROW User is encouraged to maintain their system maps geo-referenced to the City's Street network, which is on the North Central Texas Council of Government base digital map. The map should include true bearings and distances to the nearest established Street lines and official monuments, which shall be accurately described on the map. The ROW User will provide the City with digital information within ninety (90) days of a request for maps from the City for any user with less than fifty (50) miles of utilities within the City. All other ROW Users shall provide the digital information within one (1) year of the request. Thereafter, the data is to be provided to the City on an annual basis by January 1.

If the maps and records submitted in response to any request by or requirement of the City include information expressly designated by the ROW User as a trade secret or other confidential information protected from disclosure by state law, the City and its agents, employees, or other representatives may not disclose that information to the public without the consent of the ROW User, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a ROW User to designate all matters in its maps and records as confidential or as trade secrets.

SECTION 1.6: Notice. Notice for purposes of this Ordinance shall be made to the City via Electronic Message (e-mail), overnight courier (generally used carrier with tracing available) or hand delivery with signed receipt, facsimile to the Department or United States mail return receipt required.

SECTION 1.7: Registration.

A. Nothing in this section relieves a ROW User and/or Utility from obtaining a Permit under this Ordinance to perform work in the ROW.

B. In order to protect the public health, safety, and welfare, a Utility maintaining or operating existing facilities in the ROW must register with the ROW Manager in accordance with the following requirements:

1. The Registration must be on a form furnished by the ROW Manager and made in the name of the ROW User that owns the Facilities.
2. Registration expires December 31 of the following year after the first registration occurs. If the Utility fails to renew Registration by that date, the City will send by certified mail a notice of

noncompliance to the address listed on the registration. If the Utility fails to renew Registration within thirty (30) calendar days after the date of sending the notification, the Facilities of the Utility will be deemed to have been legally abandoned.

3. If information provided as part of the Registration changes, the Utility must inform the ROW Manager, in writing, not more than thirty (30) days after the date the change occurs.
4. The Utility shall also include the following Registration:
 - a. The name of the Utility using the ROW, including any business name, assumed name, or trade name the Utility operates under or has operated under in the City within the past five (5) years.
 - b. If the Utility is a CTP, the certificate number issued by the Texas Public Utility Commission.
 - c. The ordinance number of any franchise or license issued by the City that authorizes the Utility to use the ROW.
 - d. The names, addresses and telephone numbers of at least two (2) persons who will be general, day-to-day contacts for the Utility. At least one (1) of the addresses must be within the Dallas/Fort Worth metropolitan area.
 - e. The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the Utility.
 - f. The name, address and telephone number of any Contractor or subcontractor, who will be working in the ROW on behalf of the Utility. This list may be amended as needed by the Utility; however no work shall be performed in the ROW by a Contractor or subcontractor that is not on the list, regardless of whether a Permit is required.
 - g. The names and telephone numbers of at least two (2) persons serving as emergency contacts who can be reached by telephone twenty-four (24) hours a day, seven (7) days a week. The telephone numbers should be accessible without the City having to pay long distance telephone or toll charge.
 - h. Proof of existing insurance that complies with Article IV of this Ordinance.

C. Upon completion of Registration, the City will provide the ROW User a Registration Certificate valid until the end of the calendar year during which the Registration was completed. The ROW User may make as many photocopies of the

Registration Certificate as necessary. The ROW User is responsible for ensuring that all Contractors, listed in accordance with paragraph (B)(4)(f) above have a copy of the Registration Certificate on site when work is being conducted under the provisions of the Registration Certificate.

SECTION 1.8: Traffic Handling Training: The ROW User is responsible for work zone safety including, but not limited to, traffic control through the designated Traffic Control Representative. The representative is responsible for compliance with the TMUTCD and the traffic control plan (if required) at all work zone sites. The Traffic Control Representative shall ensure employees on the job site have adequate training.

SECTION 1.9: Reporting Obligations. All ROW Users shall, upon request, provide proof of any necessary Permit, license, certification, grant, registration, franchise agreement or any other authorization required by any governmental entity, including, but not limited to, the City, State, or Federal Government, or railroad or pipeline company, including a description of the ROW User's intended use of the ROW, information sufficient to determine whether the ROW User is subject to franchising or licensing by the City, and information to determine whether the ROW User has applied for and received any certificate of authority required by the PUCT. The information provided shall be sufficient enough to determine whether the ROW User has applied for and received any Permit or other approvals required by the FCC. ROW User shall provide all such other information as may be reasonably required by the City to complete the registration statement.

SECTION 1.10: Surface Mounted Markers. Where Surface Mounted Markers are needed, curb mounted medallions shall be used whenever possible.

SECTION 1.11: Relocation of Facilities for Public Improvements.

- A. In the exercise of governmental functions, the City has first priority over all other uses of the ROW. The City reserves the right to, among other things, lay water, sewer, drainage, and other pipelines or cables and conduits, and to do underground and overhead work, and attachments, restructuring, or changes in Street facilities in across, along, over, or under a public Street, alley or ROW occupied by an agency or ROW User, and to change the curb, sidewalks, or the grade of Streets.
- B. The ROW User must relocate its Facilities, at its own expense, in accordance with Section 2.16, prior to the start of construction of a City project. Failure to comply with this provision shall subject the ROW User to the enforcement provisions contained herein.
- C. A Permit will be required when making Facility adjustments in preparation for City projects.

SECTION 1.12: Permit Required. It is unlawful for any Person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, tunnel, excavate or close lanes on a Thoroughfare or Collector without first having made application and obtained a Permit therefore except for as allowed by Section 1.12.1. It is unlawful for any Person, its agents, servants or employees to make or cause to be made any Excavation in or under the surface of any ROW for the installation, repair or removal of

any Facilities, or for any other purpose without first obtaining from the ROW Manager a Permit in compliance with this Ordinance.

- A. Before issuing a Permit, the ROW Manager shall have been provided a written application, on a form furnished by the ROW Manager, setting forth the name and residence or business address of the Applicant; the location and approximate area of the Excavation, including its approximate length and width, and, if the Excavation is in a Street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the Excavation. The application form shall include plans prepared in accordance with City specifications. Plans shall be drawn at a reasonable scale that legibly and accurately show all existing improvements and proposed work. All proposed work must be shown in heavy or bold type lines and fonts. If proposed work is in phases or part of another overall drawing, show all existing and future work in lighter or faded out lines and fonts. If ROW User cannot show distinctive line weights, the plans shall clearly label the above information using text. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the State of Texas.
- B. At the time the Permit issued, the Applicant shall pay a nonrefundable Permit Application Fee in an amount as provided for in Article III of this Ordinance.
- C. The proposed location, depth and other characteristics of any Facilities for which the Permit is issued shall be subject to approval of the ROW Manager, and all backfilling, compaction and pavement restoration performed for any Excavation shall comply with the requirements of this Ordinance.
- D. No fee or requirement authorized or imposed pursuant to this Ordinance shall be construed to affect or alter in any way any obligation of public and/or private Utilities with Facilities installed in any ROW to relocate the Facilities, at no cost to the City, subject to state law, if applicable, in the event that relocation is required by the City to accommodate a proper governmental use of the ROW.
- E. Combinations of Permits shall be permitted at the sole discretion of the ROW Manager. Fees shall be assessed based on the Excavations permitted.
- F. Subdivision monuments, historical markers, and any other signs or structures with foundations in the ROW, excluding billboards, are subject to this Ordinance.

SECTION 1.12.1 Exceptions to Require Permit:

- A. The ROW Manager reserves the right in his/her discretion to require a ROW Permit on Service Connections. Unless otherwise required by the ROW Manager, Service Connections do not require a Permit if all of the following conditions are met:

1. the Service Connection Excavation shall not exceed four (4) feet inside the ROW to property line;
2. all Excavation shall be in accordance with Service Connection drawings;
3. the address for the Service Connection is on the City provided form, which is submitted to the ROW Manager via E-Mail. Work shall not begin until the electronic form is transmitted to the ROW Manager.
4. the Excavation required is less than twenty four (24) inches in depth;
5. the Excavation is no wider than two (2) inches or is hand dug; and
6. the Service Connection does not require boring.

B. Irrigation system installation does not require a Permit if all of the following conditions are met:

1. the work is performed with an existing valid Permit issued by the City for the installation of irrigation;
2. the Excavation shall not exceed twelve (12) inches in depth and no wider than an one (1) inch;
3. the address for the Service Connection is on the City provided form, which is submitted to the ROW Manager via E-Mail and is approved. All requests, which are not approved within forty-eight (48) hours, are denied;
4. line locates from the city are requested.

SECTION 1.13: Permit Application. Application for a Permit shall be addressed to the ROW Manager and made on a form furnished for that purpose, stating the extent, dimensions, character and purpose of the cut or Excavation to be made, the location, by Street and number if possible, where the work is to be done, and the time in which it is to be completed. The application form shall be accompanied by maps of the existing Facilities in the area, to the extent available, and the location of the proposed Facilities, methodology of construction, and proposed start and completion dates. When the work includes Excavation, which will exceed five (5) feet in depth, a trench safety design sealed by a Licensed Professional Engineer shall also accompany the application, unless otherwise provided by law.

A Permit shall only be valid for the area of the ROW specified within the Permit. No Permittee may cause any work to be done outside the area specified in the Permit, except as provided herein. Any Permittee who determines that an area is greater than that which is specified in the Permit must apply for and receive a new ROW Permit.

Applicants may apply jointly for Permits to excavate the ROW at the same time and place. Applicants who apply jointly for a ROW Permit may share in the payment of the Permit fee. Applicants must agree among themselves as to the portion each shall pay. The City will recognize only one (1) point of contact.

Permits will be issued or denied within five (5) business days of City receiving a complete application. Permits shall be valid for the dates specified in the Permit. The Applicant may request but is not guaranteed the Permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. The City may approve or deny the application for such extended Permit period. No Permittee may

commence work before the Permit start date and, except as provided herein, no Permittee may continue working after the end date. If a Permittee does not complete the work by the Permit end date, the Permittee must apply for and may receive a new ROW Permit or a Permit extension for additional time. This Supplementary Application must be submitted to the City prior to the Permit end date. Applicants are encouraged to request a pre-submission meeting for large projects.

An expedited Permit may be requested, and shall be issued or denied within two (2) days of application upon a showing of good cause, as solely determined by the ROW Manager.

SECTION 1.14: Issuance of Permit. Every Person making application for a Permit in accordance with the provisions of this Ordinance, and having complied with such provisions, shall be entitled thereto, and, upon filing such application with the ROW Manager, it shall be his/her duty to issue the Permit, when the provisions of this Ordinance have been complied with.

- A. Upon receiving a written application for a Permit and a plan prepared in accordance with the City specifications, the ROW Manager's designee shall set forth all requirements, approve or disapprove the application, sign and return it to Applicant. Excepting only Emergency Excavations, at least one (1) working day prior to the start of work, the Applicant shall notify the ROW Manager the date the work will commence when traffic control devices are necessary on a Thoroughfare.
- B. No Permit shall be transferable. A Permit shall be void unless the Excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.
- C. Each Permit shall state a time period for completion of all the work to be done hereunder. The ROW Manager may in his/her sole discretion, grant extensions of time.
- D. No Person in violation of any requirement of this Ordinance shall be issued an Excavation Permit, nor shall any Contractor or agent apply for or be issued a Permit on the Person's behalf, until the outstanding violation(s) is/are corrected or a plan for correction is approved by the ROW Manager. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the City at law or equity.
- E. No work shall be done under any Permit issued under this Ordinance except as stated in the Permit. If the Permit is allowed to expire, the ROW User shall procure a new Permit, paying the applicable fee, prior to proceeding with any such work.

SECTION 1.15: Posting of Signs: The ROW User and Contractor (if used) shall be identified by three (3) feet by three (3) feet information signs on all work requiring a Permit. The signs shall state the name and phone number of the ROW User and Contractor (if used). The signs shall be placed in the ROW on each approach to the location where construction is occurring from the time of the beginning of work in the

ROW and shall continue to be posted at the location during the entire time the work is occurring.

SECTION 1.16: Excavation to be Under Supervision of the ROW Manager. Any ROW User engaged in making or backfilling any Excavation in any ROW shall, at all times while such work is in progress, keep at the job location the Permit, or a copy thereof, and shall provide of the same, when requested by any authorized City employee. At all times while the work is in progress, the ROW User shall also maintain, at the job location, a sign, barricade or other device bearing the ROW User's name.

The ROW User shall protect from damage, Utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, irrigation, sidewalks, Streets, signs, street lights, or other property at, near or encountered in its work. The ROW User shall determine the boundary of the ROW.

All Excavations and other construction in the Streets shall be conducted so as to interfere as little as practicable with the use of ROW and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the Governing Body of the City pursuant to the policy and regulatory powers of the City necessary to provide for public convenience. The ROW User shall not trespass upon private property. The ROW User shall determine the boundary between ROW and private property.

The City reserves the right to among others, lay, and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and Facilities, as well as drainage pipes, and channels and Streets, and to perform, and allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the Governing Body of the City, in, across, along, over or under any ROW or public place occupied by a ROW User and to change any curb or sidewalk or the grade of any Street and to maintain all of the City's Facilities. In allowing such work to be performed by others, the City shall not be liable to a ROW User for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a ROW User by such third party.

All transmission and distribution structures, lines, equipment and Facilities erected by a ROW User within the City shall be so located as to cause minimum interference with the proper use of the ROW, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said Streets. No pole may be placed in an area prohibited by another section of this Ordinance.

If the City requires a ROW User to adapt or conform its Facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or Person, except the City, to use, or to use with greater convenience, any ROW or public place, the ROW User shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a ROW User for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of a ROW User's Facilities; provided, however, that the City shall never be liable for such reimbursement.

SECTION 1.16.1: Registration Certificate Required. It is unlawful for any Person, its agents, servants or employees to perform construction in the ROW without

first having made either application and obtained a Permit therefore or have in possession a valid Registration Certificate. A Registration Certificate may only be used for construction activities not requiring a Permit in accordance with Section 1.12. These activities include tree trimming, general maintenance, line work and providing a service connection from the property line to a customer provided that no Excavation is required in the ROW.

SECTION 1.17: Hours of Operation for Non-Emergency Work.

- A. Excavation and Boring is Allowed. Excavation and boring shall be conducted between the hours of 7:00 AM to 4:00 PM on Monday thru Friday, except on holidays. No Excavation or boring shall be performed on Holidays.
- B. All other work requiring an inspection shall be done between the hours of 7:00 AM to 4:00 PM on Monday thru Friday, except on Holidays. No work shall be performed on Holidays. A ROW User may work on Saturday subject to the approval of the ROW Manager and a notification no later than noon on Thursday before the Saturday in which the work is to be performed. The Saturday inspection fee must be paid prior to noon on Thursday prior to the Saturday in which the work is to be performed.

SECTION 1.18: Denial of Permit. A Permit may be denied or suspended for any of the following reasons:

- A. Failure to provide proof of a surety bond or liability insurance acceptable to the City or notice of termination of the same.
- B. Failure to secure a Contractor's license or other required license.
- C. Failure to perform in accordance with the requirements of this Ordinance.
- D. The Excavation would be in a Street and not otherwise permitted by this Ordinance.
- E. The proposed warning or other traffic control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the ROW Manager.
- F. The proposed activity would violate any City Ordinance or state or federal law, rule, regulation or statute.
- G. The Permit application contains false or misleading information.
- H. The activity would cause a public health or safety hazard.
- I. The ROW User is not authorized within the City.
- J. The ROW User is in violation of this Ordinance relative to work in progress.

SECTION 1.19: Appeal. A ROW User that: (i) has been denied registration; (ii) has been denied a Permit; (iii) has had a Permit revoked; or (iv) believes that fees

imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request as follows:

- A. If an applicant desires to appeal a decision, the applicant may file a written notice of appeal with the ROW Manager within five (5) business days of the date the decision was rendered. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The ROW Manager shall provide a written decision within five (5) business days. Failure to render a decision within five (5) business days shall constitute a denial.
- B. If a further denial is given, the appellant may thereafter file a written notice of appeal to the Director of Public Works within five (5) business days of receipt of the ROW Manager's written decision. The Director of Public Works shall provide a written decision within five (5) business days of receipt of an appeal in accordance with this section. Failure to render a decision within five (5) business days shall constitute a denial.
- C. If a further denial is given, the appellant may thereafter file a written notice of appeal to the office of the City Manager within five (5) business days of receipt of the Director of Public Works written decision. The City Manager shall provide a written decision within five (5) business days of receipt of an appeal in accordance with this section. Failure to render a decision within five (5) business days shall constitute a denial.

ARTICLE II TECHNICAL SPECIFICATIONS

SECTION 2.1: Lawful Use of ROW.

- A. The use of the ROW in any manner which violates federal, state, or local laws, or City codes, Ordinances and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All Permittee shall provide satisfactory evidence of compliance with the foregoing upon request of the City.
- B. Permittee shall dispose of all material removed from the ROW and any waste created by Permittee in compliance with all state, federal and local laws and requirements. Temporary storage of material may be placed in a pile no higher than thirty (30) inches.
- C. If a Permittee excavates any contaminated, regulated or hazardous materials in the ROW, Permittee shall be responsible for environmental assessment, Excavation, testing, transportation and disposal of that material in accordance with applicable law. The Permittee shall promptly notify the City, orally, of the condition within two (2) hours of discovery of any contaminated, regulated or hazardous materials in the ROW, and within eight (8) hours provide the aforementioned information to the City in writing. Permittee must consult with and receive written authorization

from the City before undertaking any of the steps/actions set forth in this paragraph.

SECTION 2.2: Compliance with Safety Regulations. The Permittee and ROW User shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not limitation, the Occupational Safety and Health Standards for the construction industry.

SECTION 2.3: Conformance with the Thoroughfare Plan. A ROW User should consult the City's Thoroughfare Plan (TP) prior to the acquisition of any interest in real property in the City for the installation or relocation of Service lines or other equipment or Facilities along or adjacent to any Street, ROW, Thoroughfare, highway, or any proposed Street, ROW, highway or Thoroughfare 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 TP subsequent to the effective date of this Ordinance. The City shall, at a minimum, have no liability for the value of or loss by a ROW User of any improvements constructed in the area shown on the TP, except as provided herein. Typical locations of City Facilities are depicted in Figure 1.

SECTION 2.4: Tree Trimming and Graffiti Abatement. Permission is granted to a ROW User, subject to the requirements of the City's tree preservation ordinance, as exists or may be amended from time to time, to trim trees upon and overhanging the ROW, so as to prevent the branches of such trees from coming in contact with a ROW User's Facilities. When so directed by the City, the tree trimming shall be done under the supervision and direction of the City. The City shall report damage or vandalism to the ROW User's Facilities as soon as practicable after the City discovers or learns of such event. The ROW User shall make the necessary repairs or restoration, including, but not limited to, cleaning of graffiti, as soon as practicable but not to exceed seven (7) days after the ROW User discovers or learns of any misuse, destruction, damage or vandalism to its Facilities.

SECTION 2.5: Employee Communication. The ROW User shall ensure that there is at least one (1) employee on the job site, during any type of work activity, who can read, write and speak English fluently.

SECTION 2.6: Routing and Spatial Assignment. The City reserves the right, in the Permit or otherwise, 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. The City reserves the right to reserve space for future utilities.

SECTION 2.7: Commencement and Completion. After obtaining the Permit and prior to commencing the work, the Permittee shall notify the ROW Manager, and shall commence and complete all work within the time specified in the Permit, unless an extension of time is granted by the ROW Manager. No work shall commence until erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades are in place.

SECTION 2.8 Notification of Effected Property Owners. Except in the case of an Emergency, whenever Excavation is required in the ROW adjacent to an occupied property, the ROW User shall notify the property owner of the

activity through use of a door hanger, which shall include the following information:

- A. Permit number;
- B. identity of the Contractor and the ROW User, including a contact name and phone number by which more information regarding the project could be obtained and a twenty four (24) hour a day Emergency phone number; and
- C. the anticipated duration of the construction work.

SECTION 2.9: 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 or ROW where the work is being performed, from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings and Excavation. All material, implements and tools stored upon the premises and used in connection with the Excavation shall be stored in a safe and non-hazardous manner.

SECTION 2.10: Revocation or Suspension of Permit. The City reserves its right, as provided herein, to revoke or suspend 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, this Ordinance and/or any other City ordinance. A breach of the terms of the Permit shall include, but not be limited to any of the following:

- A. The violation of any provision of the Permit.
- B. 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.
- C. Any material misrepresentation of any fact in the Permit Application.
- D. The failure to meet insurance, surety bond or indemnification requirements.
- E. The failure to complete the work as specified in the Permit.
- F. The failure to correct a condition indicated on an order issued pursuant to this Ordinance.
- G. Repeated traffic control violation.
- H. Failure to protect Facilities or repair Facilities damaged in the ROW.
- I. Violation of any part of this Ordinance.
- J. Recognition by the ROW Manager that a Permit was issued in error.

- K. Failing to comply with an order of the ROW Manager on the Permit and any other valid Permit held by the ROW User.
- L. Any safety violation or other action that threatens the health, welfare and/or safety of the public as solely determined by the ROW Manager.
- M. If the ROW Manager determines that the Permittee has committed a breach of any law or condition of the ROW Permit, the ROW Manager 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 ROW Manager may, in his/ her discretion, revoke the Permit, provide specifications to cure the breach, or both. Within five (5) days of receiving notification of the breach, Permittee shall contact the ROW Manager with a plan, acceptable to the ROW Manager, for correction of the breach. Permittee's failure to do so or Permittee's failure to timely implement the approved plan shall be cause for revocation of the Permit.

SECTION 2.11: Work Not in Accordance with Permit Declared Unlawful.

- A. It shall be unlawful for any Person 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 or appliance in or under the surface of any Street, alley, sidewalk, ROW or other public place, at any location, other than that described in the application for the Permit and as shown on the plans filed with the ROW Manager, 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 ROW Manager may, in his/ her sole discretion, grant a waiver to take the circumstances into account.
- B. Failure to comply with requirements set forth in this Ordinance or on any Permit shall be cause for revocation of the subject Permit and of any other Permits held by the same Permittee until the violations have been corrected or the ROW Manager has approved alternative requirements.

SECTION 2.12: Work Done Without a Permit. No cut, Excavation, grading or disturbing of the ROW, in any way, shall be made, other than Excavations necessary for Emergency work, without first securing a Permit. No Person or ROW User shall, at any time, open or encumber more of the ROW than shall be reasonably necessary to complete a project in the most expeditious manner.

SECTION 2.13: Cease Work. At any time, the ROW Manager may order the immediate cessation of any work that poses a threat to the health, safety or well being of the public. The ROW Manager 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.

SECTION 2.14: Requirements. The ROW Manager may issue a written notice to the Permittee indicating work that does not conform to the terms of the Permit, applicable standards, conditions, codes or other applicable regulation. Within ten (10) days after issuance of written notice, the Permittee shall present proof to the ROW Manager that the

violation has been corrected. If such proof has not been presented within the required time, the ROW Manager may revoke the Permit.

SECTION 2.15: Reserved.

SECTION 2.16: Location and Relocation of Facilities. Subject to applicable federal, state, and local laws, the ROW User shall, upon the request of the City, locate and/or relocate its Facilities situated within any ROW, at no expense to the City, where reasonable and necessary to accommodate the City's public improvements associated with Street construction and widening. When relocation is necessitated by federal government requirements, and includes reimbursements, the City will reimburse Applicant for its proportionate share from funds provided the City in such reimbursements.

SECTION 2.17: Relocation Facilities for the City. In the event the City finds it necessary to move a ROW User's Facilities to protect the ROW and/or Street, the City shall notify the local representative of the ROW User. ROW User shall promptly move or facilitate the relocation of the subject Facilities at ROW User's sole expense.

SECTION 2.18: Abandoned Facilities. A ROW User owning Abandoned Facilities in the ROW shall:

- A. remove its Facilities and repair, at its sole expense, any damage caused by the removal. The ROW Manager may allow some or all Facilities to remain if the ROW Manager determines 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 ROW have been lawfully assumed by another authorized ROW User.

The Facilities of the ROW User who fails to comply with this section, 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, as solely determined by City, that the ROW User intends to use the Facilities. The City may exercise any remedies and/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 at the ROW Users sole expense.

SECTION 2.19: Reserved.

SECTION 2.20: Reserved.

SECTION 2.21: Underground Service Requirements. Placement of new utility support structures (poles) shall be prohibited for electrical distribution lines with sixty-thousand (60,000) volts and less and all communication utilities, unless otherwise allowed by an existing franchise agreement between the ROW User and the City or a PUCT tariff. (This does not prohibit replacing existing poles for maintenance purposes.)

SECTION 2.22: Location of Poles and Conduits. All poles in the ROW 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 not to unduly interfere with vehicular and pedestrian travel. The location and route of all conduits, fiber, cables, Utilities and Facilities placed and constructed by a 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. Typical placement of poles and anchor guys along curvilinear Streets are shown in Figure 2. Replacement of existing poles does not require a Permit.

SECTION 2.23: Size and Location of Above Ground Facilities. The maximum dimensions for utility structures above the ground in the ROW adjacent to Streets are seven (7) feet long (parallel to the road), two (2) feet wide (perpendicular to the road) and six (6) feet in height. For structures three (3) feet or less in height, the width may be forty-four (44) inches. This does not include poles. The height of utility structures shall be measured from the lowest grade at any point eighteen (18) inches or less from the side of the structure that faces the Street to the highest point of the structure. Utility structures exceeding those dimensions shall not be located in the ROW adjacent to Streets, unless otherwise approved in writing by the ROW Manager. All aboveground Facilities shall be located outside of the corner visibility triangle at all intersections, future intersections and all driveways. No aboveground Facilities may be placed in a parkway that is across from a median opening.

SECTION 2.24: Height of Overhead Line. The User shall ensure all overhead lines are constructed and maintained so that the minimum clearances are in compliance with the National Electric Code as it exists or may be amended.

SECTION 2.25: Attachments to Poles.

- A. Nothing shall obligate or restrict a ROW User from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or Facilities agreements with light and/or power companies or with other wire-using companies authorized to operate within the City.
- B. A ROW User shall utilize existing pole space, conduit, and other Facilities whenever reasonably and/or economically possible.

SECTION 2.26: Temporary Rearrangement of Aerial Wires. The 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 ROW User shall in a reasonable time frame and reasonable cost, remove its transmission media in connection with the demolition of unsafe structures, including Emergency or ordered demolitions at no cost to the City. The ROW User may invoice the requesting parties for the cost of this work, where applicable.

SECTION 2.26.1 Street Closures

- A. All lane closures on any Thoroughfare or Collectors shall comply with TMUTCD, and shall include a lane closure exhibit to be submitted with the Permit to the ROW Manager. The ROW Manager may require a traffic control plan. Arrow boards and message boards may be required for lane closures on Thoroughfares and Collectors.

- B. Except in an Emergency, no Thoroughfare or Collector Street shall be closed on weekdays during the hours of 6:30 AM to 9:00 AM and 3:30 PM to 7:00 PM. Everyday of the week, all roadways shall be open to traffic by sunset on the same day as the construction.
- C. All lane closures require twenty-four (24) hour notification of the Police and Fire Departments prior to closing

SECTION 2.27: Site Maintenance During Construction and Prior to Full Restoration.

- A. Erosion Control and Storm Water Management. The ROW User shall be responsible for storm water management, erosion control and Excavation safety measures that comply with City, state and federal guidelines. Requirements shall include, but not limited to, construction fencing around any Excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request of ROW Manager, the ROW User may be required to furnish documentation submitted or received from the federal or state government.
- B. Dust Control. The ROW User shall ensure that the work is conducted and site maintained to minimize blowing dust. At any time dust leaves the job site so that it is a nuisance, the work will stop until measures can be taken to eliminate the dust.
- C. Traffic Control Safety. In the event of non-compliance with the TMUTCD, the ROW User shall be notified of the violation. In the event of continued non-compliance, the ROW Manager may revoke the Permit, in addition to any other remedies available to the City. At any time the ROW Manager determines the work threatens public safety, he/she may take immediate action as necessary including but not limited to, stopping all work, or have a third party make the repairs at the expense of the Applicant.
- D. Responsibility for Signs, Barricades and Warning Devices. The ROW User working in any ROW is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. 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 without limitation, those in TMUTCD, may place and maintain the traffic control devices in a construction area.

2. The 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 ROW Manager for approval prior to the work commencing. The ROW User must also submit a traffic control plan for review when required by this Ordinance. 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 maintained by the Traffic Control Representative.
 4. All barricades, plates and other traffic control equipment must display accurate and sufficient information including without limitation, the name of the ROW User.
 5. Non-compliance with the TMUTCD shall be cited in writing. In the event of non-compliance after citation, the ROW Manager may place the necessary devices as required, and the ROW User shall reimburse the City for all such expenses as well as Five Hundred and No/100 Dollars (\$500.00) 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.
- E. Duty to Barricade. At all times during construction activity, the Contractor and/or ROW User, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including without limitation, watchmen certified in accordance with the safety training described in this Ordinance, if necessary, upon and around the work and for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

SECTION 2.28: Inspection. The Permittee shall make the work-site accessible to the City, and others as authorized by law, for inspection at all reasonable times during performance of the work.

SECTION 2.29: Materials Testing. The Department will require testing of materials used in construction in or near the ROW to determine conformance with City construction 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 by the Department. The ROW User shall, at his expense, hire a testing laboratory with current accreditation by the American Association for Laboratory Accreditation, American Association of State Highway and Transportation Officials (AASHTO) or another nationally recognized accreditation agency that verifies compliance with ASTM E 329 and that demonstrates the laboratory's capabilities to perform applicable ASTM or AASHTO test procedures, as may be required.

SECTION 2.30: Duties of Persons Making Excavations or Creating Obstructions. Any Person who shall cause to be made any Excavation or obstruction in any Street or ROW shall not allow 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 such Street and/or ROW 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 excavators to protect the area while such condition exists and promptly to repair the same so as to leave the Street or ROW in as good condition as before the Excavation.

SECTION 2.31: Emergency Excavations. Nothing in this Ordinance shall be construed to prevent any Person maintaining any pipe, conduit or duct in or under any Street, or ROW by virtue of any law, Ordinance or Permit, from making such Excavation as may be necessary for compliance with law or for the preservation of life or property when the necessity arises, provided that the Person making the Excavation shall notify the ROW Manager within twenty four (24) hours. Except as specifically provided otherwise in this Ordinance for Excavations authorized by this section, Permittee shall be subject to all fees and requirements of this Ordinance.

SECTION 2.32: Excavation in Streets. Except in case of an Emergency there shall be no Excavation in any Street without the prior written approval of the ROW Manager. Any request for a Permit to excavate a Street shall include a description of the proposed work and proposed restoration of the area, as well as a statement of clear and convincing evidence is provided to the ROW Manager as to why alternate procedures can not or should not be used in lieu of excavating a Street. All pavement cuts and repairs shall be performed by a Contractor with experience in Street repair work. Any damage to pavement outside the removal area shall also be repaired subject to approval of the ROW Manager.

- A. 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 depth of the full the thickness of the concrete, and the full width of the trench, which shall also cut the reinforcing steel. A second cut shall be twelve (12) inches parallel to the first cut to full thickness of the concrete and excavated to undisturbed soil. Further criteria is set forth in Figure 3.
- B. Excavation in Hot Mix Asphalt Concrete (HMAC) Pavement Surface. If the existing pavement is HMAC, the HMAC shall be cut first with a saw to a depth of the full thickness of the concrete, and the full width of the trench, which shall also cut the reinforcing steel. A second cut shall be twelve (12) inches parallel to the first cut to full thickness of the concrete and excavated to undisturbed soil. Further criteria is set forth in Figure 4.
- C. Jacking and Boring. Refer to specifications shown in Figure 5.
- D. Responsibility of Excavated Area Maintenance. A Permittee or ROW User shall maintain its repairs in the ROW for two (2) years from the completion date of any repair.

SECTION 2.33: Backfill of Excavated Area. Open trenches may be temporarily backfilled for the convenience of the Permittee or the public safety. Traffic bearing

plates can be used temporarily as shown in Figure 6 for pavement areas. At least one (1) hour prior to beginning permanent backfill operations, the Permittee shall notify the ROW Manager of the time the backfill will begin.

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 undermined shall be removed and discarded. Compaction of all backfill shall be ninety five (95) percent of maximum density with a moisture content of 0% to +4% of optimum moisture content as determined by ASTM D698 under or near paved surfaces, future paved surfaces or otherwise as determined by ROW Manager. Outside of pavement surfaces, compaction of all backfill shall be ninety (90) percent of maximum density with a moisture content of -2% to +4% of optimum moisture content as determined by ASTM D698.

SECTION 2.34: ROW Restoration Requirements. The work to be done pursuant to the Permit and any repair and/or subsequent restoration of the ROW 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 ROW Manager may, in his/ her sole discretion, extend the dates on receipt of a substantiated supplementary application for a Permit extension.

All earth, materials, sidewalk, pavement, utilities, conduits, crossing, irrigation, landscaping, monuments, manhole covers, valve covers, meter box lids or improvements of any kind, which are owned or possessed by the City, and damaged, disturbed, or removed by a ROW User shall be fully repaired promptly by the ROW User, at its sole expense, to the reasonable satisfaction of the ROW Manager.

After any Excavation, the ROW User shall, at its expense, restore the ROW, trench envelope, pavement structure and the surrounding area, to the same or better condition than it was prior to the Excavation. The restoration shall be made in accordance with specifications set forth herein, and the repair shall endure without failure for two (2) years from the completion date of any repair.

In the event the ROW User fails to restore the ROW in the manner and to the condition required herein, or fails to satisfactorily and/or timely complete all restoration, the City may, at its option, serve written notice upon the ROW User that, unless within five (5) days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the ROW by the ROW User, the City may take over the work and prosecute same to completion, by contract or otherwise, at the sole expense of the ROW User, and ROW User, and its surety, shall be liable to the City for any and all cost incurred by the City by reason of such prosecution an completion including, without limitation, the applicable Public Inconvenience Penalty. Nothing contained herein shall limit any other remedies available to the City.

If any Excavation cannot be backfilled immediately, the ROW User shall securely and adequately cover the Excavation and maintain proper barricades, safety fencing and/or lights as required, from the time of the opening of the Excavation until the Excavation is surfaced and opened for travel.

In all ROW restoration, the ROW User guarantees its work and shall maintain it two (2) years from the date of completion of any restoration. During the period following completion, the ROW User shall, in the event of any failure of the restoration, and upon notification from the ROW Manager, reimburse the City for pavement restoration costs as provided for in this Ordinance. Additionally, the ROW User, in the event of such failure, shall within forty-eight (48) hours of notice from the City, repair the subject trench envelope.

The two (2) year guarantee period shall be applicable to, among others, failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by the City, the ROW User retains repair responsibility at all times during the guarantee period for the trench envelope. In locations where two (2) or more ROW Users have made repairs in the exact same location, the last ROW User to excavate shall be responsible for the two (2) year guarantee in that location, unless the ROW Manager determines, in his/her sole discretion, that a failure was most likely a result of work performed by another ROW User. That ROW User shall be responsible for the two (2) year maintenance period.

All Street Excavations shall be Perpendicular Excavations, unless otherwise approved by the ROW Manager. Excavations in Streets, which are not Perpendicular Excavations require (a) block-to-block and curb-to-curb pavement reconstruction or (b) other method of repair approved by the ROW Manager. All repairs shall be equal or better than that which existed prior to the commencement of any work.

No trench shall be opened for the purpose of laying pipes, conduits or ducts for a distance greater than can be backfilled on the same work day before sunset. Any variance from this requirement must be granted in writing from the ROW Manager prior to work beginning.

SECTION 2.35: Restoration of Pavement. Unless otherwise specified in the Permit, restoration of the pavement of any Street, alley, ROW or other public place shall be performed by the Permittee.

- A. No trench shall be opened in any Street for the purpose of laying pipes, conduits or ducts more than two hundred (200) feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the ROW Manager.
- B. All Excavations shall comply with the City construction standards, as amended, and requirements of this Ordinance. Unless otherwise required by City standards, as amended, or if unusual conditions are encountered, the ROW Manager may require new standards for compaction, backfill and pavement restoration.
- C. Any excavated pavement, debris and/or 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. After backfilling is completed, and prior to repaving the cut, the ROW User shall remove all loose paving material and trim the edges of the Excavation at the Street surface to the satisfaction of the ROW Manager.

- D. Whenever any caving occurs in the sidewalks of any Excavation, the pavements above such caving shall be cut away, trench backfilled, compacted and sidewalk pavement restored. In no case shall any side or lateral tamping fill any void under a pavement.

SECTION 2.36: Permanent Pavement Repairs. The ROW User will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The ROW User shall make the final repairs within seven (7) days on Thoroughfares and collector Streets and within thirty (30) days on residential, local and alley Streets after the ROW Manager makes final inspection. Backfill failures shall remain the responsibility of the ROW User.

SECTION 2.37: Substandard Repair of Pavement of ROW. In case the pavement or the surface of the Street, alley, or ROW in, over or near any Excavation should become depressed, cracked or broken at any time or fails in any way at any time after the Excavation has been made and during the two (2) year warranty, 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 and/or ROW.

SECTION 2.38: Failure to Complete Work Within Specified Time. In the event any work governed by this Ordinance is not completed by the ROW User within the time required or in accordance with the specifications required herein or by the ROW Manager, the ROW Manager 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.

SECTION 2.39: Removal and Reconstruction Where Work is Defective. All construction work in the Streets, ROW, sidewalks and public places of the City is declared to be subject to the exclusive control of the City, and whenever, in the sole opinion of the ROW Manager, 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 specification therefore given to him by the ROW Manager, then upon written demand or notice from the ROW Manager, such ROW User or Contractor shall promptly remedy, complete and/or remove and reconstruct such incomplete or defective work all as the ROW Manager may require, and these provisions shall also apply to all repair and maintenance work. If the Contractor or ROW User shall fail or refuse to do so within a reasonable time to be specified by the ROW Manager, then, if required by the ROW Manager, such work shall be completed or corrected or removed and wholly or partially reconstructed by the City, in such a manner as in the opinion of the ROW Manager 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 ROW Manager, and the Contractor or ROW User shall reimburse City for any and all cost incurred by the City performing the work described in this paragraph.

SECTION 2.40: Cleanup of ROW. In every case, and at all times, the work of removing from the ROW all obstructions, surplus materials, debris and waste matter of every description caused by and/or accumulated from the Excavation shall be the sole responsibility of the ROW User. Streets shall be cleaned by use of a regenerative air or vacuum street sweeper. The ROW User shall clean the surrounding area, as outlined above, within one (1) day upon completion and approval of all trench work and pavement

restoration unless the ROW Manager, sufficient reason therefore having been given to his/her satisfaction, grants a written extension of time.

SECTION 2.41: Reporting. When the work under Permit hereunder is completed, the Permittee shall notify the City in accordance with the requirements placed on the Permit.

SECTION 2.42: Effect of Ordinance on Persons Engaged in Construction. Any Permit issued prior to the adoption of this Ordinance will remain subject to the terms and conditions of City Ordinances and requirements in effect at the time of issuance of the Permit and is not affected by this Ordinance, except that, upon expiration or conclusion of the Permit, a new or renewal Permit must be obtained in accordance with this Ordinance.

ARTICLE III FEES, ENFORCEMENT AND PENALTIES

SECTION 3.1: The fees in this section shall apply to all ROW Users, unless governed by an existing agreement, such as a franchise agreement with the City.

- A. Permit Application Fee. There is a Permit application fee of Twenty-Five Dollars (\$25.00). Permits shall be issued or denied within five (5) days from City's receipt of the application. There is an Expedited Application Fee of Two-Hundred Fifty Dollars (\$250.00) for Permits, which shall be issued or denied within two (2) days. An Applicant shall pay the fees when a Permit is issued. The fees are charged for administration and input of Permit data. An expedited Permit may be requested upon a showing of good cause, including but not limited to, a pending order for service that can not be met by means of existing Facilities of the ROW User.
- B. Saturday Inspection Fee. The Saturday inspection fee shall be One Hundred Fifty Dollars (\$150.00) per Saturday.
- C. Permit Expiration Fee. A fee of Thirty Dollars (\$30.00) 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.
- 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 hard copy format in lieu of submittals to the City in electronic format. There is a minimum of two (2) hours.
- E. Registration Fee. There is a fee of Thirty-Five Dollars (\$35.00) per ROW User per year for processing registration information fee, which will be collected by City upon registration.

SECTION 3.2: Public Inconvenience Penalty. Public Inconvenience Penalties are assessed and calculated from the date of expiration of the Permit until date of

completion of work or repair or of final backfill if turned over to the Department for repair. This penalty shall not exceed and is capped by statutory limits. Public Inconvenience Penalties are charged per day as follows:

Type of Facility	Unit of Cost (Per Day)	Penalty			
		31-75 days	79-90 days	90-100 days	>100 days
(a) Sidewalk	Per Square Ft.	\$0.0026	\$0.0052	\$0.0078	\$0.0104
(b) Driveway	Per Each	\$39.00	\$78.00	\$117.00	\$156.00
Metered Traffic Lane		*In addition to Traffic Lane Fee			

SECTION 3.3: Clean Up Costs. The ROW User shall maintain the area on and around the Excavation and related work in a clean, safe and orderly fashion at all times during conduct of the Excavation and shall clean the same area upon completion of work.

SECTION 3.4: Reserved.

**ARTICLE IV
INDEMNIFICATION, INSURANCE,
BONDING AND LIABILITY**

SECTION 4.1: Liability of ROW User. To the extent allowed by law, the ROW User shall be liable to the City for any damage or loss occasioned by any act and/or omission occurring in connection with its Excavation, and subject to state law, the ROW User shall fully indemnify, hold harmless and defend the City, its council members, officers, employees, agents, representatives and volunteers 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 council members, officers, employees, agents, representatives and volunteers may be subjected for injury of any type, death or property damage arising from or connected with any such act and/or omission. The City shall promptly notify a Permittee, or ROW User, at the address set forth in the Permit, or last known address, of any claim, suit or demand served upon the City and alleging negligent or wrongful conduct by the Permittee or ROW User in connection with an Excavation.

SECTION 4.2: Insurance.

- A. ROW Users shall furnish an original completed Certificate of Insurance to the Department which shall be completed by an agent authorized to bind the named underwriter(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 be mailed directly from the agent to the City. The City shall have no duty to perform under this Ordinance until such certificate has been delivered to the Department.
- B. The City reserves the right to review the insurance requirements of this section to modify insurance coverage and limits when deemed necessary and prudent by the City 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 may incur increased risk.

- C. Subject to the ROW User's right to maintain reasonable deductibles in such amounts as are approved by the City, 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 time it maintains Facilities in the public ROW, at the 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:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (Public) Liability Insurance to include coverage for the following:	
a) Premises/Operations	Bodily Injury and Property Damage of
b) Independent Contractors	\$2,000,000 per occurrence
c) Products/completed operations	\$5,000,000 General
d) Contractual Liability	aggregate or its equivalent in umbrella or
e) Personal Injury	excess liability coverage
f) Explosion, collapse, underground	
g) Broad form property damage, to include fire legal liability	
*3. Business Automobile Liability	Combined Single Limit For Bodily Injury
a) Owned/Leased Vehicle	and Property Damage of \$1,000,000 per
b) Non-Owned vehicles	occurrence or its equivalent
c) Hired vehicles	
*4. Professional Liability (Claims made from)	\$1,000,000 per claim to 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
*5. Contractor's Pollution Liability Coverage	\$1,000,000 written on a claims made form with a two (2) year extended reporting period
*6. Pollution Liability Motor Carrier & Trucker Coverage endorsing the upset, overturn and remediation of a load in transport	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence written on an occurrence form

*If applicable.

- D. 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, limitations or exclusions (except where policy revisions are established by law or regulation binding upon any party to the policy or the underwriter of such policy). Upon such request by the City, the ROW User shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
- E. ROW Users shall ensure that all insurance contracts and Certificate(s) of Insurance contain the following required provisions.
1. Name the City and its Council Members, officers, employees, volunteers, agents and representatives as additional insured with respect to the operations and activities of, or on behalf of, the named insured performing in the ROW under provision of this Ordinance, with the exception of the professional liability, workers' compensation and liability policy;
 2. ROW User's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City;
 3. Provide for an endorsement that the "other insurance" clause shall not apply to the City of the City where the City is an additional insured shown on the policy;
 4. Workers' compensation and employers' liability will provide for a waiver of subrogation in favor of the City.
- F. 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 thirty (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:
- ROW Manager
Department of Public Works
City of Frisco
6726 Walnut
Frisco, Texas 75034
- G. Nothing herein contained shall be construed as limiting in any way the extent to which the ROW User may be held responsible for payments of damages to persons (including death) or property resulting from the ROW User's, or its subcontractors', performance of the work performed in the Public ROW.
- H. The City owned Utilities shall not be required to provide the insurance specified herein.

- I. With respect to the 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 ROW User to self-insure upon annual production of evidence that is satisfactory to the City. With respect to the ROW User's obligation to comply with the requirements for Automobile Liability Insurance and for Workers' Compensation Insurance, a ROW User may self-insure, provided the ROW User tenders satisfactory evidence of self-insurance as contemplated by the State Motor Vehicle Financial Responsibility Law, TEX. TRANSP. CODE §601.124, and the Texas Workers' Compensation Act, TEX. LABOR CODE §407.001 *et seq.*, as amended.

SECTION 4.3: Performance/Assurance Bond. Before a Permit shall be issued, the Applicant shall execute and deliver to the City, to be kept on file with the City, a good and sufficient bond of performance or assurance, in the sum of Ten Thousand Dollars (\$10,000.00) to be approved by the City 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, its Council Members, officers, employees, volunteers, agents, and representatives, free and harmless from liability on all such claims for damages to the performance or assurance bond which shall cover the cost of repairs in or upon the Street, sidewalk or other public place where the work is to be done that may become necessary by reason of such cut or Excavation having been made. The bond shall be maintained until the work is accepted by the City. With respect to the ROW User's obligation to comply with the requirements for a performance/assurance bond, the City may, in the City's sole discretion, allow the ROW User to self-insure such obligation upon production of evidence that is satisfactory to the City.

SECTION 4.4: Optional Continuing Bond and Deposit. In lieu of a bond of performance or assurance required for each Permit issued under the Performance/Assurance Bond Section of this Ordinance, the Applicant may maintain a one-time bond of performance or assurance with the ROW Manager in the sum of One Hundred Thousand Dollars (\$100,000.00) for the purposes specified in Section 4.3, and shall have on file, with the City, 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); provided, further, that Section 4.3 shall not apply to applications for Permits to make cuts, openings or Excavations in any Street, plaza or other public place paved under contract with the City, unless the contract of maintenance and the maintenance bond therefore shall have expired. The bond shall be maintained until the Applicant is no longer working in or on the ROWs.

SECTION 4.5: Liability of Contractor and Sureties for Maintenance and Repair Work. Any defects of workmanship or material relating to work done by an excavator during the initial project or becoming known, or which should have been known, during the guarantee period (the two (2) years) shall be known as maintenance or repair work, and both the excavator and the sureties and/or the Contractor's bond shall be fully liable for any default of such Contractor under this section. In the event of a failure in the restoration of an Excavation, the ROW User shall, at its sole expense, have one (1) opportunity to repair, in a timely manner, the section of the restoration that has failed,

which repair 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 ROW User's guaranty, upon written notice to the ROW User. In such event, the ROW User shall reimburse the City for its direct costs associated with the repair of the failure of the restoration work.

SECTION 4.6: When Additional Security Required. In the event the ROW Manager reasonably believes the Contractor's or ROW User's solvency is threatened, the ROW Manager may, at any time, make written demand on a Contractor and/or ROW User for bonds, and the Contractor and/or ROW User shall immediately furnish such additional bond or bonds to the City.

SECTION 4.7: Decision of ROW Manager Binding on Contractor, ROW User and Sureties. If any question arises as to when any work was actually begun or other specific dates, the decision of the ROW Manager shall be conclusive on the Contractor, ROW User, and the sureties on all such bonds.

ARTICLE V VARIANCES AND EXEMPTIONS

SECTION 5.1: Variance/Exemptions. A Permittee or ROW User may request a variance from any of the requirements of this Ordinance by filing a written request with the ROW Manager stating the requirement and the basis for the variance. The ROW Manager may reject incomplete variance requests. The applicant shall bear its own expenses 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 reconstruction and/or repair of the excavated area, if applicable.
- B. Any request for an exemption and/or variance from any penalty and/or fee, other than as provided in this Ordinance, shall be made in writing, and shall be accompanied by a written detailed request stating the reasons therefore.
- C. Any request for an exemption and/or variance from any Permit, or any other requirement of this Ordinance shall be made in writing, stating in detail all reasons for the requested exemption and/or variance.
- D. The Department shall grant or deny an application for a variance and/or exemption within ten (10) days of receipt of the application for variance and/or exemption.
- E. Denial of the variance may be appealed in accordance with the Section 1.19 of this Ordinance.

SECTION 5.2: Reserved:

ARTICLE VI CERTIFIED TELECOMM PROVIDERS

SECTION 6.1: Certificated Telecommunications Providers Authority Required/Non-Exclusive Use. A CTP must provide evidence that the CTP has acquired authorization from the PUCT pursuant to state law, prior to obtaining a Permit to use Public ROW. The CTP's right to use and occupy the Public ROW shall not be exclusive, and the City shall have the right to exercise its police powers and manage its Public ROW, based on the Act and all other state or federal laws.

SECTION 6.2: Additional Authority Required. The CTP, and any of its Affiliates, are not authorized to provide cable television service as a 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.

SECTION 6.3: Transfer and Notice. A CTP shall notify the ROW Manager of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within thirty (30) days of such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the ROW Manager at all times during which the CTP uses the ROW.

SECTION 6.4: Exemption From Fees. CTPs are exempted from the following fees provided for in this Ordinance:

- A. Permit Application Fee, including Expedited Application Fee and Permit Expiration Fee,
- B. Additional Permit Fee,
- C. Saturday Inspection Fee,
- D. Registration Fee.

SECTION 6.5: Waiver Bonds. Unless determined otherwise by the ROW Manager a CTP will be exempt from the bonding requirements of this Ordinance, including Sections 4.3 and 4.4, however, in the event that the ROW Manager determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, and/or the health and safety of the public, then the ROW Manager may require that a CTP post a reasonable bond not to exceed One Hundred Thousand Dollars and No/100 (\$100,000.00). Factors to be considered in determining reasonable grounds may include, but are not limited to, a conviction for violation of this Ordinance, a general pattern of substandard 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 ROW Manager 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.

SECTION 6.6: 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, Texas Local Government Code, as amended.

**ARTICLE VII
MISCELLANEOUS**

SECTION 7.1: Bridge Weight Limit Violation. It shall be unlawful for the operator of any vehicle to drive, haul, push or tow, wholly or partially, any load upon a posted weight limited bridge, which collectively exceeds the officially designated and posted maximum bridge weight, whether or not all load bearing wheels travel on the bridge.

SECTION 7.2: Reserved.

SECTION 7.3: Penalty Provision. This is not a traffic ordinance authorized under the Texas Motor Vehicle Statutes, and is not governed by the penal provision hereunder. Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of FIVE HUNDRED DOLLARS (\$500.00), unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 7.4: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 7.5: Existing Franchise. If any provision of this Ordinance conflicts with an existing franchise agreement, the franchise agreement shall prevail until the expiration thereof.

SECTION 7.6: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 7.7: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and bylaw.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 7 day of May 2002.

E. Michael Simpson
E. Michael Simpson, Mayor

ATTESTED TO AND
CORRECTLY RECORDED BY:

Nan Parker
NAN PARKER

City Secretary



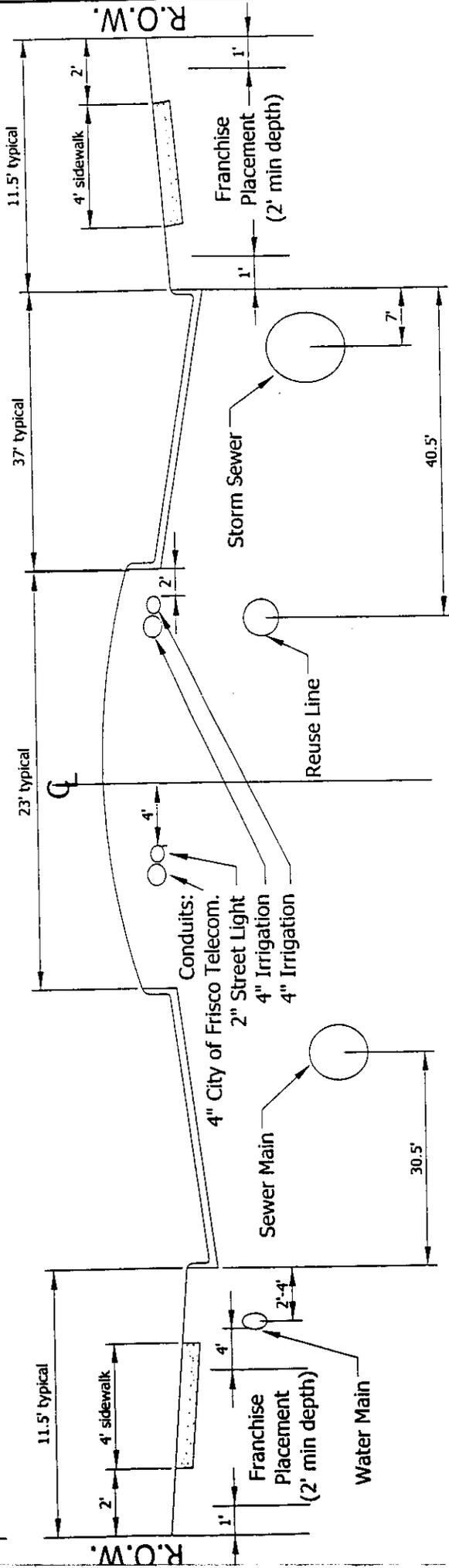
APPROVED AS TO FORM:

Richard M. Abernathy
Rebecca Brewer
ABERNATHY, ROEDER, BOYD
& JOPLIN, P.C.
RICHARD M. ABERNATHY
REBECCA BREWER
City Attorneys

Ordinance May 10 + 17, 2002, Frisco Enterprise.

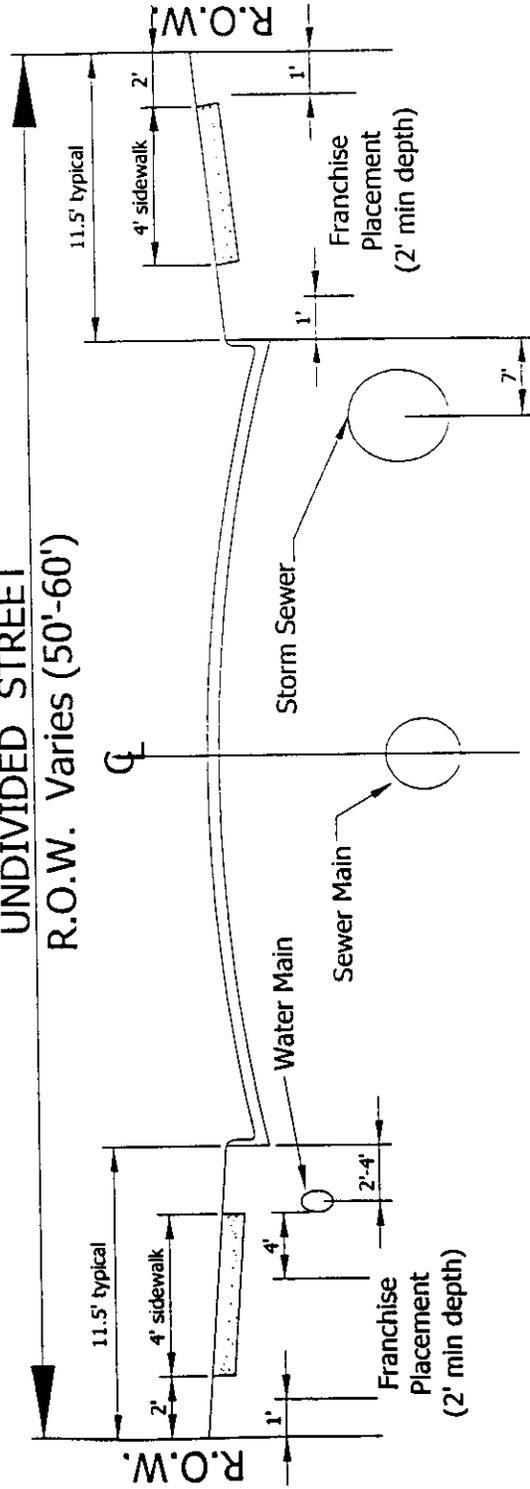
DIVIDED STREET

R.O.W. Varies (90'-140')



UNDIVIDED STREET

R.O.W. Varies (50'-60')



*Dimensions are from back of curb
Unless otherwise specified

FIGURE 1

**TYPICAL LOCATIONS
CITY FACILITIES**

**STANDARD CONSTRUCTION
DETAILS**

CITY OF FRISCO, TEXAS
6459 Main St. · Frisco, TX 75034 · (972) 315-5540

REVISION:	DATE: 10/2001
DESIGNED BY: HW	SCALE: N.T.S.
DRAWN BY: WW	SHEET NO.: 1
CHECKED BY: HW	FILENAME: roadway

NOTE: Street sections above do not apply to all situations.
Typical sections are for new construction.

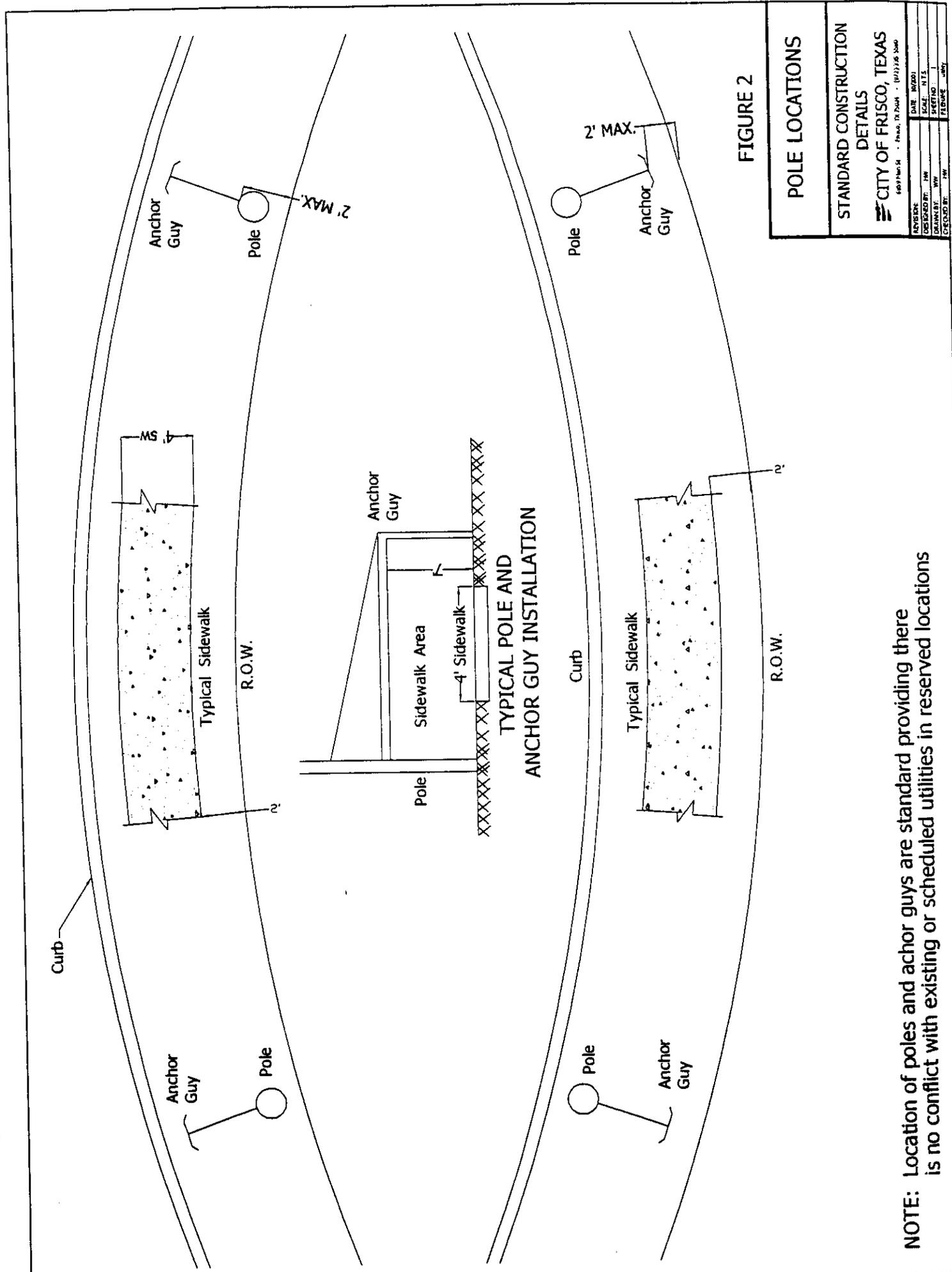


FIGURE 2

POLE LOCATIONS	
STANDARD CONSTRUCTION DETAILS	
CITY OF FRISCO, TEXAS	
DATE: 02/20/14	SCALE: N.T.S.
DESIGNED BY: J.W.	DRAWN BY: J.W.
CHECKED BY: J.W.	DATE: 02/20/14

NOTE: Location of poles and anchor guys are standard providing there is no conflict with existing or scheduled utilities in reserved locations

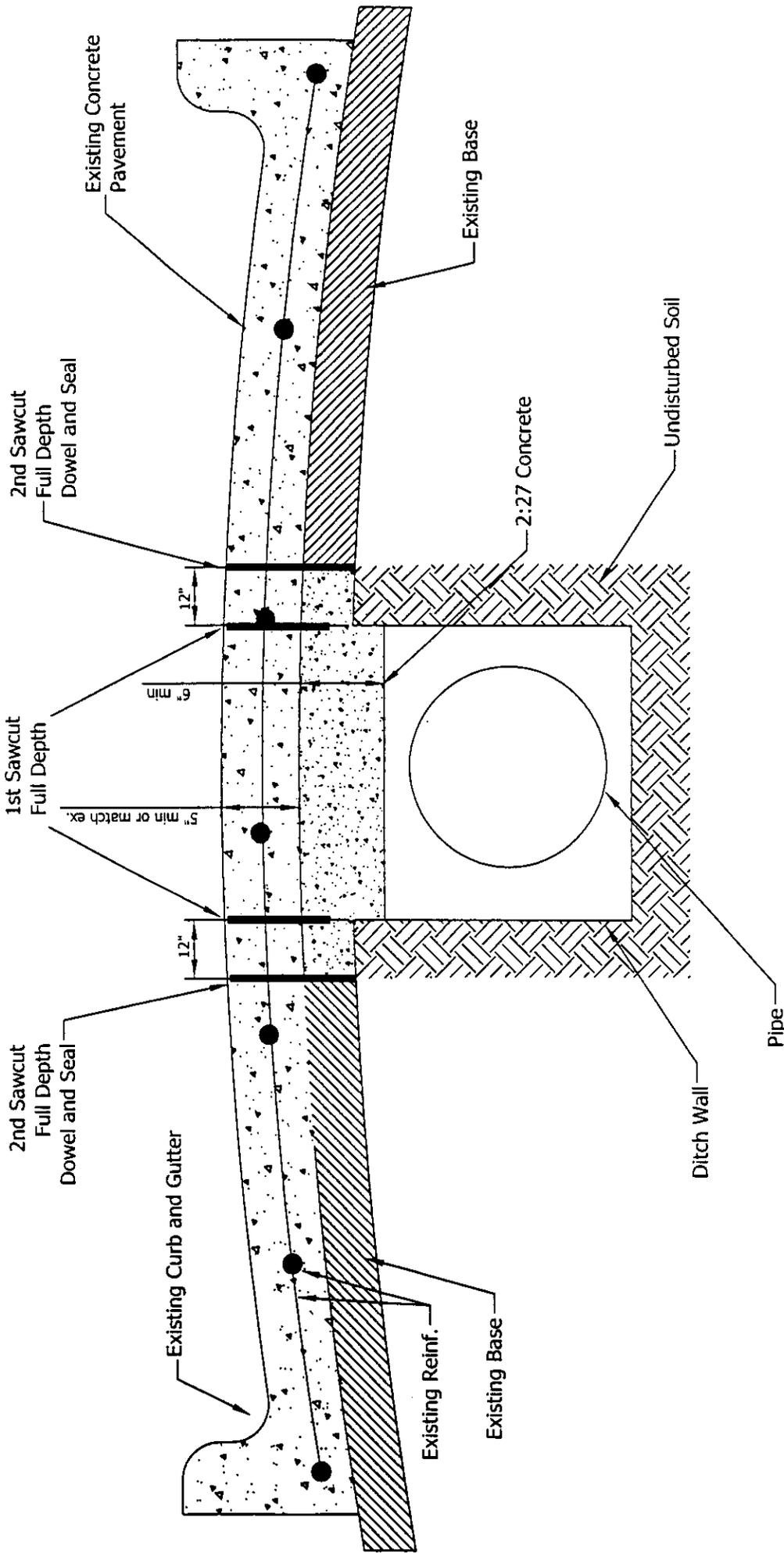


FIGURE 3

EXCAVATION
PCC

STANDARD CONSTRUCTION
DETAILS

CITY OF FRISCO, TEXAS
6659 Main St. • Frisco, TX 75034 • (972) 335-5500

REVISION:	DATE: 10/2001
DESIGNED BY: HW	SCALE: N.T.S.
DRAWN BY: WW	SHEET NO.: 1
CHECKED BY: JMW	FILENAME: 100001.DWG

REINFORCED CONCRETE PAVEMENT

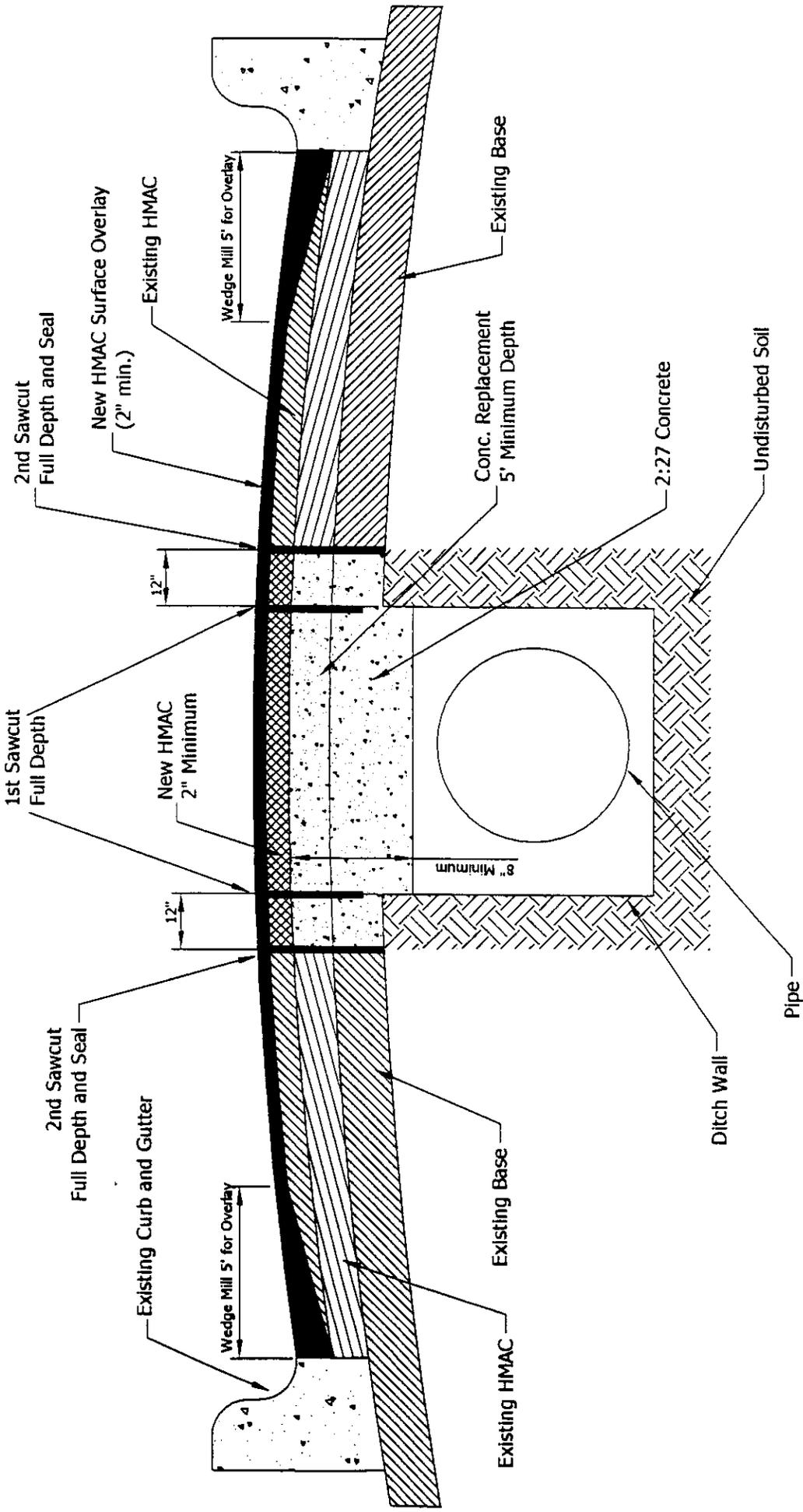
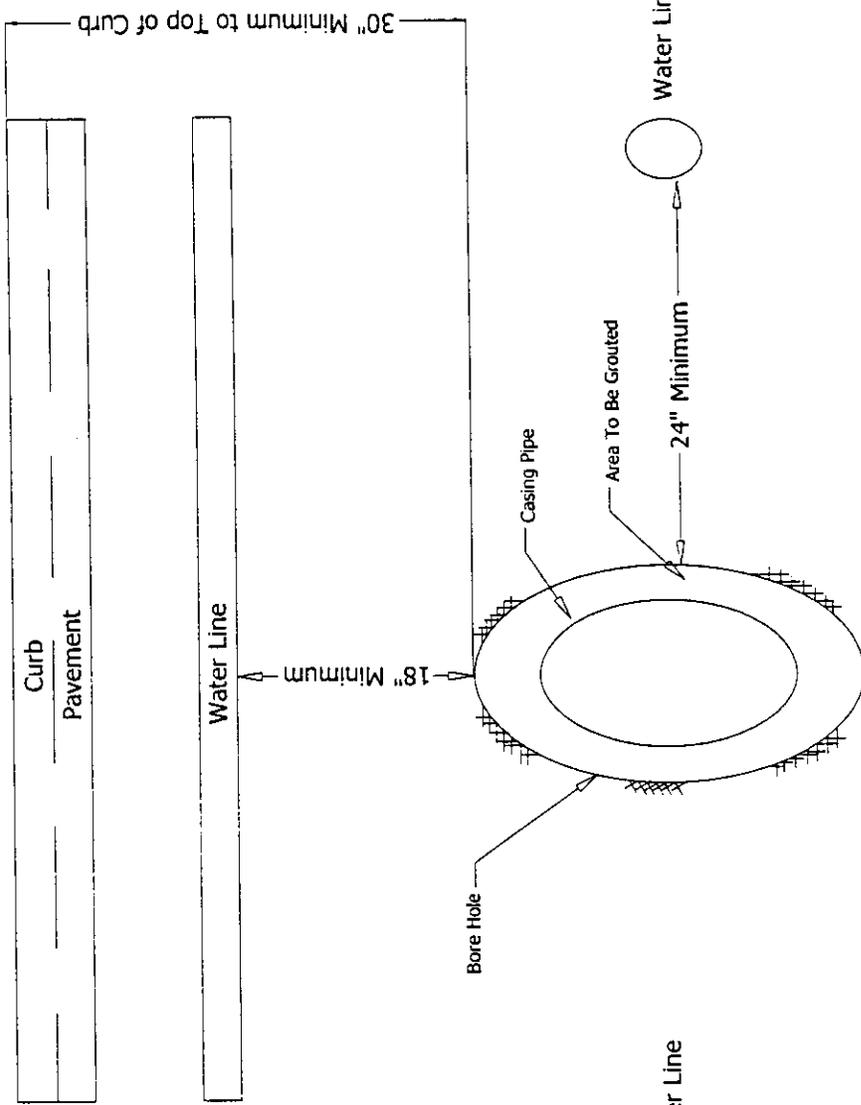


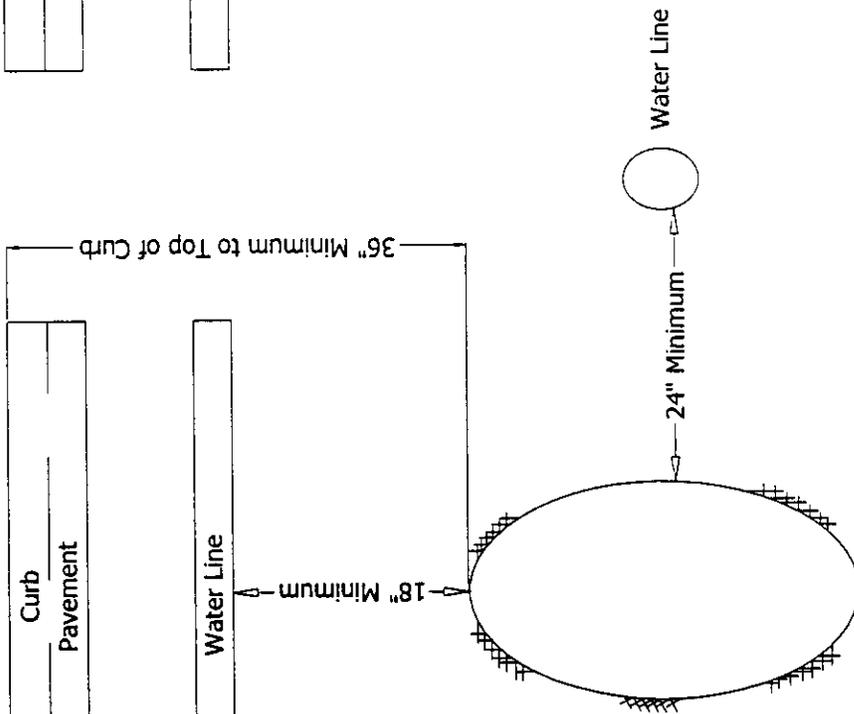
FIGURE 4

EXCAVATION HMAC	
STANDARD CONSTRUCTION DETAILS	
CITY OF FRISCO, TEXAS	
485 Park St. • Frisco, TX 75034 • (972) 335-5500	
REVISION:	DATE: 10/2001
DESIGNED BY: HW	SCALE: N.T.S.
DRAWN BY: HW	SHEET NO.: 1
CHECKED BY: JH	FILE NO.: 38101.000

HMAC PAVEMENT



BORING DETAIL
N.T.S.



JACKING DETAIL
N.T.S.

FIGURE 5

JACKING AND BORING DETAIL

STANDARD CONSTRUCTION DETAILS
CITY OF FRISCO, TEXAS
6459 Main St. • Frisco, TX 76034 • (972) 335-5340

REVISION	DATE	BY
DESIGNED BY: HW	SCALE: R.T.S.	
DRAWN BY: HW	SHEET NO.: 1	
CHECKED BY: HW	FILENAME	

* NO MISSILES ALLOWED

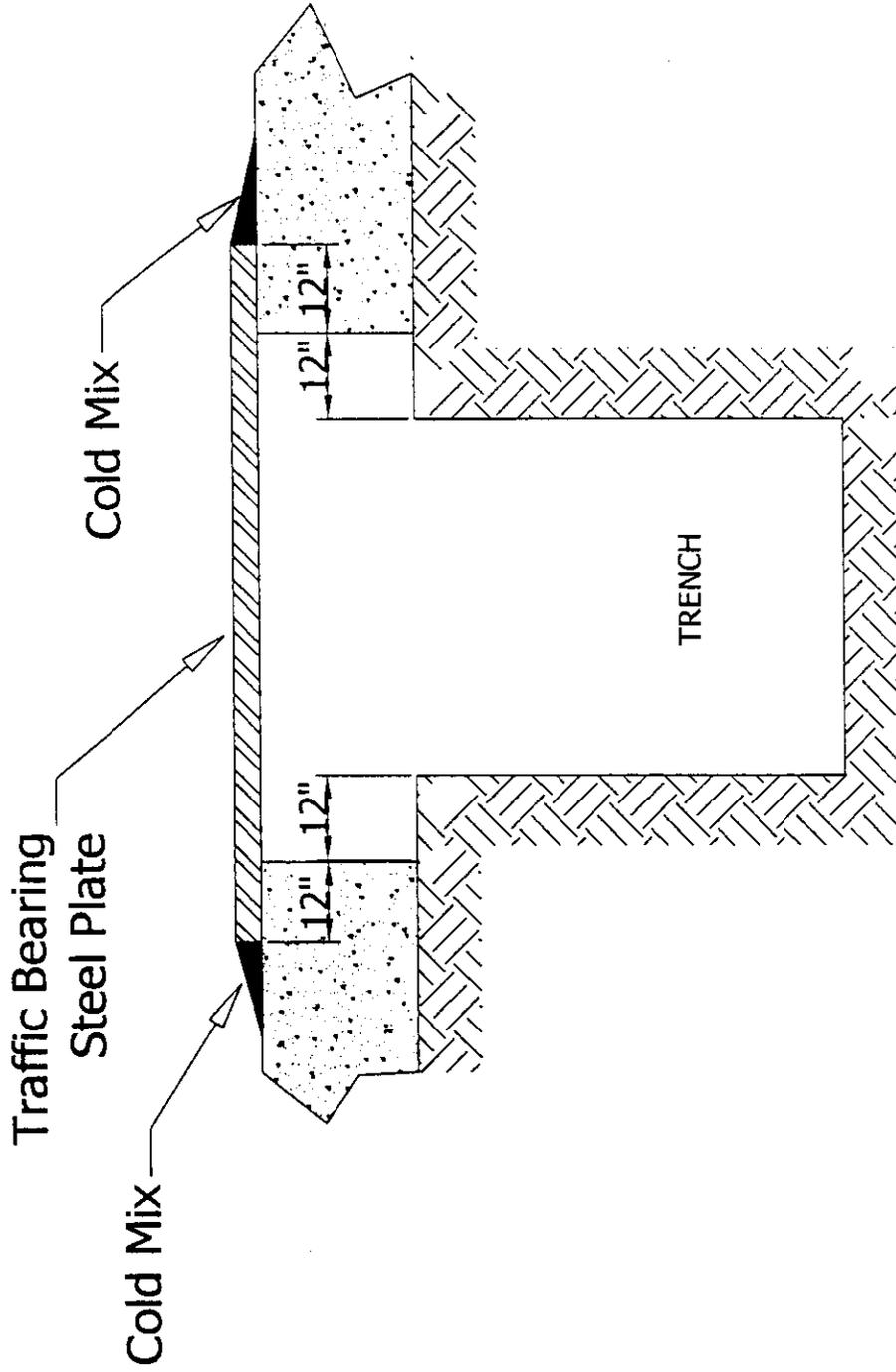


FIGURE 6

TRAFFIC BEARING
PLATES

STANDARD CONSTRUCTION
DETAILS

CITY OF FRISCO, TEXAS

6809 PARK ST. • FRISCO, TX 75034 • (972) 335-1500

REVISION:	DATE: 10/2001
DESIGNED BY: HW	SCALE: N.T.S.
DRAWN BY: HW	SHEET NO.: 1
CHECKED BY: HW	PROJECT: BRUSHY LN