



## **ORDINANCE NO. 2625**

### **AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS TO AMEND THE CODE OF ORDINANCES TO ESTABLISH RULES AND REGULATIONS GOVERNING THE CONSTRUCTION AND PHYSICAL OCCUPANCY OF THE PUBLIC RIGHTS-OF-WAY, AND MAY BE KNOWN AS THE “CONSTRUCTION IN THE PUBLIC RIGHTS-OF-WAY ORDINANCE.”**

**WHEREAS**, to protect the health, safety, and welfare of the public, the City of Farmers Branch seeks to facilitate an orderly use of the Public rights-of-way in a non-discriminatory and competitively neutral basis;

**WHEREAS**, in accordance with applicable federal, including, but not limited to, 47 U.S.C. § 253(c) and state laws, including, but not limited to, Tex. Util. Code §14.008; and §54.205, and Tex. Civ. Statutes, Art. 1175; the City seeks to exercise its historical and legal rights to control and manage its Public rights-of-way in a competitively neutral and non-discriminatory basis; and implement certain police power regulations in the use of those Public rights-of-way, in accordance with Local Gov. Code §283.056.

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

#### **SECTION 1 FINDINGS AND PURPOSE**

The purpose of this ordinance is to:

- 1) Assist the City in its efforts to protect the public health, safety, and welfare of citizens and visitors;
- 2) Assist in the management of the Public rights-of-way in order to minimize the congestion, inconvenience, visual impact and other adverse effects and associated costs to citizens resulting from the placement of Facilities within Public rights-of-way;
- 3) Govern the use and occupancy in Public rights-of-way;
- 4) Conserve and protect the limited physical capacity of Public rights-of-way held in public trust by the City;
- 5) Preserve the physical integrity of the streets, highways, and pedestrian pathways;
- 6) Control the orderly flow of vehicles and pedestrians;
- 7) Provide a uniform set of standards that will ensure that all Facilities within the Public rights-of-way are planned and installed in a manner that will provide for safe

operation, protection of surrounding Facilities, and preservation of the Public right-of-way;

- 8) Identify different entities using the Public rights-of-way to prevent interference between them;
- 9) Assist in approving and scheduling trenching and minimizing street cuts;
- 10) Protect the aesthetics and appearance of properties where Structures and Facilities are located and adjacent properties; and
- 11) Protect the safety, security, appearance, and condition of the Public rights-of-way.

## **SECTION 2 AUTHORITY; SCOPE**

This ordinance applies to all Persons that place or own Facilities in, on, or over the Public rights-of-way, and may be referred to as the “Construction in the Public rights-of-way ordinance.”

## **SECTION 3 DEFINITIONS**

The following words, terms, and phrases, when used in this ordinance, shall have the meanings ascribed to them:

**Agreement** means any license, consent, franchise, or municipal agreement or other authorization entered into between the City and a Person, as allowed by law.

**Certificated Telecommunications Provider** means the same as in Local Government Code Section 283.002 (2), as amended [any entity that has been granted a certificate from the Texas Public Utility Commission under Chapter 54 of the Texas Utility Code authorizing that entity to provide local exchange telephone service].

**City** means The City of Farmers Branch, Texas.

**City Council** means the elected governing body of the City of Farmers Branch.

**City Manager** means the City Manager of the City of Farmers Branch or the City Manager's designee.

**Emergency or Emergencies** means a condition that (1) the City determines may pose a danger to life or health or of a significant loss of property; (2) requires immediate repair or replacement of Facilities by the Person in order to restore service to a customer; or (3) requires closure of major thoroughfares within the City, creating a traffic hazard.

**Facility or Facilities** mean any tangible item located in, on or over the Public rights-of-way used to deliver service including, but not limited to, any and all wires, cables, fibers, pipelines, duct spaces, splice boxes, surface location markers, tracks, tunnels, utilities, vaults, manholes, poles, wires, structures, plant and appurtenances, above ground structures, below ground structures, and all associated physical equipment.

**Person** means a natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock

company or association, contractor, sub contractor, or other entity including Certificated Telecommunications Providers.

**Permit** means an official document or certificate issued by the City authorizing performance of a specified activity.

**Public rights-of-way** means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement, except as otherwise restricted herein in which the City has an interest. [The term does not include the airwaves above a Public right-of-way with regard to wireless telecommunications.]

**Risk Manager** means the Risk Manager of the City of Farmers Branch.

**Structure** means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, excluding utility poles, street light poles, and equipment necessary for public safety related to the use of the Public right-of-way.

#### **SECTION 4 MUNICIPAL AGREEMENT REQUIRED**

- 1) Any Person, except a Certificated Telecommunications Provider, prior to placing, reconstructing, or altering Facilities in, on or over the Public rights-of-way, must obtain a separate Agreement from the City. Any Person with a current, unexpired Agreement shall comply with all City laws, rules, or ordinances that govern the physical occupation of the Public rights-of-way that currently exist or may be applicable during the term of the Agreement. In the event that there is conflict between requirements of said Agreement, this ordinance and/or any other lawful and generally applicable City ordinances governing the Person's ability to use the Public rights-of-way, the more strict provisions shall apply.
- 2) Except as otherwise provided herein, any Person seeking to place Facilities on, in, or over the Public rights-of-way, shall first file an application for a Permit with the City and upon approval shall abide by the terms and provisions of this ordinance and lawful conditions of the Permit.

#### **SECTION 5 ADMINISTRATION AND ENFORCEMENT**

- 9) The City Manager shall administer and enforce compliance with this ordinance.
- 9) A Person shall report information related to the physical occupancy of the Public rights-of-way required by this ordinance in the form and manner prescribed by the City Manager.

#### **SECTION 6 PERMITS**

- 1) Permit Required
  - a) No construction or installation of Facilities may begin within the Public rights-of-way without a construction Permit issued by the City, except as provided herein.
- 2) Registration Requirement

- a) In order for the City to know which Persons own Facilities and Structures in the City's Public rights-of-way, each Person shall register with the City and provide the following information at a minimum:
    - i) Name of the Person who owns existing/proposed Facilities and Structures
    - ii) Current name, address, and telephone number(s) of a contact who is available twenty-four (24) hours per day that has:
      - (1) Binding and decision making authority; or
      - Ability to contact a person that has binding and decision making authority.
  - b) Each Person shall update, at least annually, and keep current his/her registration with the City at all times.
  - c) Registration shall be a prerequisite to issuance of a Permit.
- 3) Work Exempt from Permit
- a) A Permit shall not be required for the following:
    - i) Installation of Facilities necessary to initiate service to a customer's property that meets the following criteria:
      - (1) Existing Facilities shall be within 200' of said customer's property.
      - (2) New Facility shall be placed in the rear utility easement, if it exists and is available, of a customer receiving new service. If a rear utility easement is not available, the Facility may be placed in the Public right-of-way.
      - (3) The new Facility does not require:
        - (a) Cutting of a street, alley, driveway, or sidewalk pavement; or
        - (b) Boring and jacking; or
        - (c) Trenching and digging to a depth greater than 36". Trenching and digging shall be performed manually without mechanized equipment for depths greater than 18" (ie- only by shovel, pick, sharpshooter, or other hand tool); or
        - (d) Placement of a Facility or Structure larger than 12" in diameter and 34" in height; or
        - (e) Installation of new poles.
    - ii) Repair, replacement, or maintenance of existing Facilities or installation of new Facilities that is not an expansion or enlargement and does not require:
      - (1) Boring or jacking;
      - (2) Cutting of street, alley, driveway, or sidewalk pavement;
      - (3) Closing part or all of a street, alley, or driveway;
      - (4) Boring, trenching, and digging to a depth greater than 36". Said trenching and digging shall be performed manually without mechanized equipment for depths greater than 18" (ie- only by shovel, pick, sharpshooter, or other hand tool). Said repair, replacement, or maintenance shall be limited to the use of existing foundations, conduit, and utility poles.
  - b) Exemption from the Permit requirements of this ordinance shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this ordinance or any other laws or ordinances of the City.
  - c) The City reserves the right to enforce the terms of the Permit and, in instances of non-compliance may take appropriate action to bring the Person into compliance with the terms therein.

- 4) Application for Permit
  - a) To obtain a Permit, the Person shall first file an application therefore in writing on a form furnished by the City for that purpose. Every such application shall:
    - i) Identify and describe the work to be performed by the Permit for which application is made.
    - ii) Identify the owner of the Facility (as listed in the Registration Requirement) and the contractor(s) who will be performing work described in the application.
    - iii) Describe the land on which the proposed work is to be done by legal description, street address, or similar description that will readily identify and definitively locate the proposed work.
    - iv) Indicate the type of excavation and/or construction to be performed.
    - v) Be accompanied by plans, diagrams, specifications and other data required by this ordinance.
    - vi) Be signed by the Person, or the Person's authorized agent.
    - vii) Give other data and information as may be required by the City.
- 5) Submittal documents
  - a) Plans, specifications, engineering calculations, diagrams, or other data shall constitute submittal documents and shall be submitted in three sets with application for a Permit. The City reserves the right to require that the plans be sealed by a professional engineer when structural or hydraulic design of the Facility, or the construction of the Facility, is determined by the City as necessary to preserve and protect water lines, sanitary sewer lines, storm sewer lines and other drainage structures, streets, bridges, and traffic signals/appurtenances or protect public health, safety, and welfare.
  - b) Plans and specifications shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this ordinance and all relevant laws, ordinances, rules, and regulations. The City reserves the right to establish criteria and require said plans to contain sufficient detail as to protect surrounding City Facilities and landscaped areas and ensure the safety and well being of the community.
  - c) The City reserves the right to require that plans be drawn to scale based on the existing site conditions.
- 6) Permit Issuance
  - a) The City shall review the application, plans, specifications, computations, and other data filed by a Person for a Permit. If the City finds that the work described in an application for a Permit and the plans, specifications and other data filed therewith conform to the requirements of this ordinance and other pertinent laws and ordinances, the City shall issue a Permit therefor to the Person.
  - b) When the City issues the Permit where plans are required, the City shall endorse in writing or stamp the plans and specifications "Released for Construction." Such permitted plans and specification shall not be changed, modified, or altered without authorization from the City, and all work regulated by this ordinance shall be done in accordance with the permitted plans.

- c) One set of permitted plans and specifications shall be returned to the Person, and said set or multiple copies thereof shall be kept on the site(s) of the work at all times during which the work authorized thereby is in progress.
- 7) Expiration
- a) Every Permit issued by the City under the provisions of this ordinance shall expire by limitation and become null and void if the work authorized by such Permit is not commenced within sixty (60) days from the date of such Permit.
  - b) Any Person holding an unexpired Permit may apply for an extension of the time within which work may commence under that Permit when the Person is unable to commence work within the time required by this section for good and satisfactory reasons. The City may extend the time for action by the Person for a period not exceeding 180 days on written request by the Person showing that circumstances beyond the control of the Person have prevented action from being taken.
- 8) Denial
- a) The City may deny a Permit to any Person that has failed to remedy non-compliance of a prior Permit or is presently not in full compliance with the requirements of this ordinance or any other ordinance of the City; to any Person if the City determines that the denial is necessary to protect the health, safety, and welfare of the public; when necessary to protect the Public rights-of-way and its current use; and to any Person as to whom there exists grounds for the revocation of a Permit as provided in this ordinance.
  - b) The City shall notify the Person by written, electronic, or facsimile communication of the basis for Permit denial.
- 9) Revocation
- a) If any of the provisions of this ordinance are not followed, the City may revoke a Permit.
  - b) If a Person has not complied with the terms and conditions of this ordinance in work done pursuant to a prior Permit, new Permits may be denied or additional terms required.

## **SECTION 7 APPEALS**

- 1) A Person may appeal a decision rendered by the City Engineer pursuant to this ordinance to the City Manager. Such appeal shall be taken within fifteen (15) days after the City Engineer has rendered a decision by filing a written request with the City Manager.
- 2) A Person may appeal a decision by the City Manager to the City Council. Such appeal shall be taken within fifteen (15) days after the City Manager has rendered the decision, by filing with the City Secretary a written notice of appeal specifying the grounds thereof.
- 3) The City shall fix a reasonable time for the hearing of the appeal by the City Council. Notice of the meeting shall be posted in accordance with state law. At the hearing, any party may appear in person, by attorney, or by agent.

## **SECTION 8 BOND REQUIREMENT**

- 1) The Person shall, unless otherwise provided for herein, provide the City with a Performance Bond.
- 2) Person shall, prior to the beginning of excavation or construction, file an annual surety bond which will be valid each year construction will occur through one (1) full year after the completion of the construction from a surety company authorized to do business in the State of Texas in the amount of the estimated amount of the cost to restore the right-of-way for the work anticipated to be done that year, in the event the Person leaves a job site in the right-of-way unfinished, incomplete, unsafe, or other provisions as required by the City.
- 3) Any Person may meet the above requirements with a current Agreement with the City that adequately provides for insurance or bonds or provides an indemnity in favor of the City.
- 4) If the Person submits documentation, in a form acceptable to the City Manager, that shows that the Person has adequate financial assurances to cover actions in the Public right-of-way, the City may waive the above requirements. If the Person's financial condition is no longer adequate to comply with the requirements of this section, the Person shall immediately notify the City and shall obtain the bond. In no instance shall the requirements be waived if the Person has less than \$20 million in assets.
  - d) If the City determines independently that the financial condition of the Person has changed and does not meet the requirements outlined in this Section, the City reserves the right to require the Person to obtain a bond.
- 5) Warranty Period  
Should the City reasonably determine, within one (1) year from the date of the completion of the work, that the pavement, curb, storm sewer, city utilities, landscaping, or irrigation system requires additional restoration to meet City specified standards, the Person shall perform such additional restoration work to the satisfaction of the City, subject to all City remedies as provided herein; provided, however, should additional restoration be necessitated that is caused by parties other than the Person, the Person shall not be required to complete the additional restoration.

## **SECTION 9 INSURANCE REQUIREMENTS**

- 1) The Person, at his own expense, shall purchase, maintain, and keep in force such liability insurance as will protect him from claims set forth below which may arise out of or result from the Person's operations under the permit, whether such operations be by himself or by any agent, contractor, subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
  - a) Workers' Compensation claims;
  - b) Claims for damages because of bodily injury, occupational sickness or disease or death of his employees, and claims insured by usual bodily injury liability coverage;
  - c) Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees, and claims insured by usual bodily injury liability coverage; and

- d) Claims for damages because of bodily injury to or destruction of tangible property, including loss of use resulting therefrom.
- 2) To satisfy the insurance requirements outlined in this ordinance, the City may accept:
  - a) Certificates of self-insurance issued by the State of Texas or letters written by the Person in those instances where the State of Texas does not issue such letters of self insurance as allowed by law, which provide the same coverage as required herein.
    - i) For the City to accept such letters, the Person must demonstrate by written information in a manner satisfactory to the City Manager that it has adequate financial resources to be a self-insured entity as reasonably determined by the City, based on financial information requested by and furnished to the City.
    - ii) The Person shall meet the requirements in the amounts set in the City's current insurance requirements on file with the Risk Manager.
    - iii) If the Person's financial condition is no longer adequate to comply with the requirements of this section, the Person shall immediately notify the City.
    - iv) If the City determines independently that the financial condition of the Person have changed and does not meet the requirements outlined in this section, the City reserves the right to require the Person to secure liability insurance pursuant to the section below.
  - b) Copies of a certificate of liability insurance evidencing the coverage required by this Section.
    - i) The City may request the deletion, revision or modification of particular policy terms, conditions, limitations, or exclusions, unless the policy provisions are established by a law or regulation binding the City, the Person, or the underwriter.
    - ii) The City reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the City determines that changes in statutory law, court decisions, or the claims history of the industry require adjustment of the coverage. Should the insurance requirements be updated, the City will provide notice of the changes to the Person.
- 3) An insurance certificate shall contain the following required provisions:
  - a) Name the City of Farmers Branch and its officers, employees, board and commission members, and elected representatives as additional insureds for all applicable coverage;
  - b) Provide for thirty (30) days notice to the City for cancellation, non-renewal, or material change; and
  - c) Provide that notice of claims shall be provided to the City Manager by certified mail.
- 4) Any Person may meet the above requirements with a current Agreement with the City that adequately provides for insurance or bonds or provides an indemnity in favor of the City.
- 5) All insurance companies shall be rated A+VI or better by A.M. Best or A or better by Standard and Poor's. The insurance shall be issued in the standard form approved by the Texas State Board of Insurance from an insurance company licensed to do business in the State of Texas.



- 6) An insurer has no right of recovery against the City. The required insurance policies shall protect the Person and the City. The insurance shall be the primary coverage for losses covered by the policies.
- 7) The policy clause "Other Insurance" shall not apply to the City if the City is an insured under the policy.
- 8) The Person shall pay premiums and assessments. A company that issues an insurance policy has no recourse against the City for payment of a premium or assessment. Insurance policies obtained by a Person must provide that the issuing company waives all right of recovery by way of subrogation against the City in connection with damage covered by the policy.

## **SECTION 10            DAMAGE TO FACILITIES**

### **1) City Facilities**

Should the Person damage City Facilities in the Public rights-of-way, the Person shall cease construction and notify the City immediately. The Person may continue only after a determination by the City. Should the City deem repairs necessary, such repairs shall be remedied at the expense of the Person. Continuance of the construction shall not commence again until authorized by the City.

### **2) Non-City Owned Facilities**

Should non-City owned facilities be damaged, the Person shall notify the owner of such facilities and the City immediately of such damage. The City may require cessation of work. Cessation of work will be dependent on the extent and nature of the damage. If the damage warrants cessation of work, the Person who has caused the damage may continue construction only after authorization by the City.

## **SECTION 11            RELOCATION AND REMOVAL OF FACILITIES**

- 1) General: Upon written notice from the City, the Person shall, at its own expense, temporarily or permanently, remove, relocate, change or alter the position of its Facility that is in the Public rights-of-way whenever the City has determined that removal, relocation, change or alteration is necessary for the construction, operation, repair, maintenance or installation of a governmental public improvement in the Public rights-of-way. The City shall give the Person written notice on when the Facilities must be relocated, removed, altered or changed which at no time shall be greater than 120 calendar days unless the City grants an extension(s) in writing. The Person shall work with the City to develop a schedule for relocation, removal, alteration or change, giving consideration to the availability of Public rights-of-way and sufficient information from the City that identifies the nature and location of the governmental public improvement; the City shall approve such schedule in writing. If the Person fails to properly relocate its Facilities within the timeframe prescribed in this section, the Person who caused the delay shall be liable for any and all damages incurred by the City by such failure to relocate Facilities.
- 2) Recovery of Cost: This section shall not be construed to prevent agreements with Person's other than the City to recover the cost of relocation or removal from other Persons using the Public rights-of-way that initiate the request for relocation or removal for purposes other than those stated above.

- 3) Aerial Facilities: Persons shall temporarily remove, raise, or lower its aerial Facilities to permit the moving of houses or other bulky structures when requested by the City. The party or parties requesting and benefiting from the temporary rearrangements shall meet with all affected Persons no later than 15 days in advance of the requested move and shall pay the expense of these temporary rearrangements. Persons may require prepayment or prior posting of a bond from the party requesting temporary move. Should the Facilities not be relocated in 15 days, they shall be relocated as soon as practicable thereafter.
- 4) Emergency Alteration, Relocation, or Removal: If the City determines that emergency conditions exist, as defined in this ordinance, and require immediate alteration, relocation, or removal of Facilities, a Person shall alter, relocate, or remove the Person's Facilities as soon as possible in a timeframe prescribed by the City, taking into account the nature and extent of the emergency. If the Person, after notice fails or refuses to act or if circumstances require that the City act immediately, the City may alter, relocate, or remove the Facility. If the Person fails or refuses to act, the Person shall be required to pay the costs incurred by the City in relocating the Facility. Alteration, relocation, or removal of a Person's Facilities conducted by the City pursuant to this subsection shall not subject the City to pay compensation to the Person nor shall the City incur liability for any damages.
- 5) Removal or Relocation by the City: When the City does work in the Public rights-of-way and finds it necessary to maintain, support, or move a Person's Facilities to protect such Facilities, the City shall notify the Person as early as is reasonably possible. If the Person and the City agree that it is in the interest of both parties that the City does the work to maintain, support, or move the Person's Facilities to protect such Facilities, the costs associated therewith will be billed to that Person and must be paid within forty-five (45) days from the date of the City invoice.
- 6) Abandoned Facilities:
  - a) A Person that is no longer providing service within the City may be required to remove the above ground and aerial Facilities within twelve (12) months from the Public rights-of-way unless the City receives written notice that said Facilities will be used within twenty-four (24) months.
    - i) The Person may request extension(s) to this provision by filing a written notice to the City Manager outlining the reason for the extension(s).
    - ii) If the request for an extension(s) is denied by the City Manager, the Person may appeal to the City Council by filing a written request with the City Secretary. The City shall fix a reasonable time for the hearing of the appeal by the City Council. Notice of the meeting shall be posted in accordance with state law. At the hearing, any party may appear in person, by attorney, or by agent.
    - iii) Decisions made by the City Council shall be final.
  - b) If the Person has not removed all Facilities from the Public rights-of-way within twelve (12) months following the cessation of the provision of service within the City or unless an extension has been granted as provided in this ordinance, the City may deem all of the Person's Facilities remaining in the Public rights-of-way abandoned and, at the City's sole option:
    - i) Take possession of and title to such property; or

- ii) Take any and all legal action necessary to compel the Person to remove such Facilities.
- c) Removal of Facilities under this subsection is subject to restoration requirements as outlined in this ordinance.
- d) Removal of a Person's Facilities conducted by the City pursuant to this subsection shall not subject the City to pay compensation to the Person nor shall the City incur liability for any damages.

#### **SECTION 12 REPAIRS BY CITY**

- 1) Notwithstanding Emergencies, as provided in this ordinance, after written notification by the City, and a Person fails to perform any repairs or replacement work in a reasonable amount of time in a timeframe prescribed by the City, taking into account the nature and extent of the repairs or replacement work, the City may immediately repair such portion of the Public right-of-way as may have been disturbed by the Person, its contractors, or agents. Upon failure of a Person to perform any such repair or replacement work and upon receipt of an invoice from the City, the Person will reimburse the City for all costs so incurred within forty-five (45) days from the date of the City invoice. Such costs may include, but are not limited to, administrative costs, cost of having City personnel present, equipment rental, repair and replacement costs, and the cost of contractors, if necessary.

#### **SECTION 13 CONSTRUCTION OBLIGATIONS**

- 1) The provisions of this section establish requirements and procedures for use of the Right of Way and are not intended to determine or limit the ability of a user of the right of way to seek compensation from a third party.
- 2) General Provisions:
  - a) A Person shall apply for a Permit and receive authorization prior to the installation and maintenance of a Facility within the Public rights-of-way, except as provided herein. No construction or installation of Facilities may begin within the Public rights-of-way without a construction Permit issued by the City, unless otherwise provided in this ordinance.
  - b) The Person shall prominently post notice at the area the Permit that was issued by the City in a manner that protects the Permit from damage due to weather.
  - c) Notice to Property Owners, Abutting Property Owners, and Occupants
    - i) When practical, notification to the property owner and abutting property owner of any undeveloped property adjacent to the Public rights-of-way shall be made at least two (2) business days prior to the commencement of work, except as otherwise provided herein. In the event that the property owner cannot be located, the Person shall contact the City, which will satisfy the notification requirement.
    - ii) No notice is required for installation, maintenance, repair, or replacement of Facilities that do not require a Permit as outlined in this ordinance.
    - iii) A Person must notify the owner/occupant of single-family dwellings or the building manager of any other building of proposed work on or adjacent to their property at least two (2) business days prior to the commencement of the

work, unless the proposed work is an Emergency as defined in this ordinance. Emergency notification shall be provided as soon as practicable.

- d) All construction shall conform to North Central Texas Council of Government (NCTCOG) Standard Specifications for Public Works Construction, unless otherwise provided on the plans authorized by the City.
  - e) The Public rights-of-way must not be impaired in any manner that obstructs the natural free and clear passage of water through the gutters and other waterways without prior authorization from the City. Facilities shall not be installed in locations where Facilities would obstruct, restrict, or inhibit the flow of storm water.
  - f) All construction sites are subject to hazardous material guidelines for data collection; disposal, handling, release, and treatment of hazardous material; site remediation; and worker safety and training. Should hazardous materials be discovered on site or if hazardous materials are introduced to the Permit area, the City shall be notified immediately.
  - g) When construction requires pumping water or mud, the water or mud must be contained in accordance with city, state and federal laws.
  - h) Private vehicles, exclusive of equipment used to complete the work, may not park within or next to a Permit area, unless parked in conformance with city parking regulations. The loading and unloading of trucks must be done solely within the defined Permit area unless otherwise specifically authorized by the Permit.
  - i) The Person shall maintain a clean work site. All debris, excavated material not used in the backfill, or other material not essential to the work being performed shall be removed from the site daily, unless otherwise authorized by the City. All excavation shall be protected from the public. Excavated material that is not used in the backfill shall be removed on the day of excavation. The City Manager may grant extensions to this provision.
  - j) Storage of materials on areas not included in the Permit issued by the City shall be prohibited, unless otherwise provided in this ordinance.
- 3) Placement of Facilities within the Public Rights-of-Way
- a) The City shall have the first right to place its utilities within the Public rights-of-way. The City reserves the right to:
    - i) Lay sewer, water, and other pipe lines or cable and conduits;
    - ii) Do underground and overhead work;
    - iii) Restructure or change City-owned aerial Facilities, in, across, along, over, or under a public street, alley or Public rights-of-way occupied by existing Facilities; and
    - iv) Change the curb, sidewalks, medians, grade of streets and alleys, or to do other public improvements within the Public right-of-way.
  - b) The Person shall not locate its Facilities within the Public rights-of-way until the City has reserved the necessary area for future City-owned Facilities.
  - c) The City may authorize the horizontal and vertical location of Person proposed Facilities in or over the Public rights-of-way among users of the Public rights-of-way with due consideration to the public health and safety considerations of each user type, and to the extent there is limited space available for additional uses, may limit new uses, as allowed under state and federal law. If the City

determines that the proposed Facility cannot be placed within a right-of-way without adversely affecting the integrity of an existing or future Facility owned by the City, the City shall have the right to deny the installation of a new or replacement Facility within the said right-of-way and may provide assistance in identifying alternative locations for the said Facility.

- d) In those areas where the existing Facilities are underground or where there are no existing above ground Facilities, except street lights and associated wires and Structures necessary for traffic or fire safety, a Person shall be required to place Facilities underground within the Public right-of-way.
  - e) In those areas where the existing Facilities are above ground, a Person may place the Facilities above ground and installation of such Facilities shall follow these criteria:
    - (1) If the proposed Facilities are wires or cables, said aerial Facilities shall be installed on existing poles. Installation of a single new pole shall be permitted to provide service to an individual property.
    - (2) The Facility shall not block sidewalks, pedestrian pathways, or vehicular access to utility easements;
    - (3) The Facility shall not inhibit the placement of a sidewalk or pathway where sidewalks or pathways presently do not exist.
    - (4) The Facility shall not inhibit or obstruct drainage.
    - (5) The Facility shall not obstruct pedestrian or vehicular traffic; obstruct pedestrian or motorist visibility of other pedestrians, other motorists, or other objects in the Public rights-of-way, including traffic control devices.
    - (6) The Facility shall not be placed in or directly adjacent to City parks or medians unless authorized by the City Council.
    - (7) Landscaping and/or screening for any above ground Facility shall conform to the landscaping requirements as outlined in this ordinance.
  - f) In addition to other requirements provided in this ordinance, the City shall have final authorization on the location of the said Facility. If the City determines that the Facility will have a detrimental effect on the area due to noise, appearance, or incompatibility with the area, or will be a hazard, which may include, but is not limited to, obstructing visibility, then the City shall require that the Facility be located at another location.
- 4) Placement Requirements for the Installation of Structures in Public rights-of-way
- a) The City has obtained Public rights-of-way for streets, bridges, traffic signs and signals, sidewalks, water lines, sanitary sewer lines, storm sewer pipes, and other City related purposes. Historically, the City's limited rights-of-way have been made available for the installation of private utility poles, wires, cables, and pipes to serve property owners within the City. The City will consider allowing Structures within the Public rights-of-way when the placement does not:
    - i) Adversely affect neighborhood appearance; or
    - ii) Restrict to an unacceptable level the use of the Public rights-of-way by the City; or
    - iii) Reduce property values.
  - b) When placing Structures within the Public rights-of-way, the Person shall comply with the following general requirements:

- i) Placement of Structure, including the foundation and required landscaping **SHALL NOT:**
- (1) Inhibit access to existing City Facilities, which may include, but are not limited to, streets, bridges, traffic signs, signals, and signal boxes, sidewalks, pedestrian pathways, water lines, sanitary sewer lines, and storm sewer pipes; and
  - (2) Be within a 25' clear sight triangle at intersections; and
  - (3) Be within a 25' clear sight triangle at driveways, excepting Structures along streets that have a maximum 36" in height and 18" in diameter and Structures that have a maximum height of 36", unless otherwise specifically authorized by the City; and
  - (4) Be placed above water lines and appurtenances; and
  - (5) Be placed above sanitary sewer lines, storm sewer lines, and appurtenances unless specifically authorized by the City; and
  - (6) Block sidewalks, pedestrian pathways, or vehicular access to utility easements; and
  - (7) Inhibit the placement of a sidewalk or pathway where sidewalks or pathways presently do not exist; and
  - (8) Inhibit vehicular access to utility easements; and
  - (9) Be placed in, directly adjacent to, or otherwise adversely impact the character, view, or appearance of City parks or medians unless authorized by the City Council.
- ii) Placement of Structure **SHALL:**
- (1) Be a minimum of 3' from the back of curbs, water meters, water valves, sanitary sewer cleanouts, manholes, and other facilities; and
  - (2) Be a minimum 10' from fire hydrants; and
  - (3) Be a permanent color such that attention is not drawn to the Structure. If the Structure is plastic, the color shall be impregnated into the plastic. If the Structure is metal, the color shall be factory anodized or baked onto the metal. Field painting on initial installation of the Structure is not permitted.
  - (4) Be installed in areas that minimize the obtrusiveness of the Structure.
    - (a) The Person may be required to screen the Structure by utilizing existing landscaping, hardscape, or fencing.
    - (b) If the existing landscaping is insufficient to provide screening or if no landscaping exists, the City may require that the Structure be screened with authorized landscaping or hardscape to reduce the visual impact of the Structure. Such hardscape or landscape shall be compatible with the existing landscaping and hardscape materials in the vicinity.
    - (c) Subsections (a) and (b) above shall not apply to Structures having maximum dimensions of 18" x 18" x 36" that are located in the rear utility easement. For the purposes of this section, a rear utility easement shall be defined as the utility easement parallel and behind the generally recognized entrance to the building.

- (d) The City Manager may consider granting a waiver to the screening requirement if the Person applies for an exception. Such application shall be made in writing.
- c) In addition to the general requirements identified above, the Person shall conform to the following specific requirements when placing Structures 18" x 18" x 36" or smaller:
- i) If the Structure serves only one property, said Structure must be placed in the utility easement immediately adjacent to or on the property being served as close to the extension of the property line as possible. The Structure shall not be placed on an adjacent property unless authorized by the City.
  - ii) If the Structure provides service to two adjacent properties, the Structure shall be placed in the utility easement as close to the extension of the property line as possible.
  - iii) The Structure must be placed in a rear utility or alley easement, if it exists. For the purposes of this section, a rear utility easement shall be defined as the utility easement parallel and behind the generally recognized entrance to the building. In the event that no rear utility or alley easement exists or is available adjacent to the property being served, the Structure may be placed in other existing utility easements on the property. If there are no other existing or available utility easements on the property, the Structure may be placed in the street right-of-way.
  - iv) For properties that are located on street corners, the Structure shall be placed in the utility easement in the generally recognized side street behind the extension of the front of the building.
- d) In addition to the general requirements identified above, the Person shall conform to the following specific requirements when placing Structures larger than 18" x 18" x 36" but not to exceed 24" deep x 65" high x 60" wide:
- i) The Structure must be placed in a rear alley or utility easement as close to the extension of the property line as possible unless, in the determination of the City, that another location is appropriate. In the event that no rear utility or alley easement exists or is available, the Structure may be placed in Public right-of-way of the streets, with first consideration given to the Public right-of-way of side streets, followed by Public right-of-way of undivided streets, then Public right-of-way of divided streets.
  - ii) A Person may not place more than one Structure within 300' of another Structure in the rear Public right-of-way, except those 18" x 18" x 36" and smaller unless the City Manager has granted an exception.
  - iii) A Person may not place more than one Structure within 1000' of another Structure in the Public right-of-way in front of the generally recognized entrance to the building, except those 18" x 18" x 36" and smaller unless the City Manager has granted an exception.
  - iv) For placement of Structures on corner properties, the Structure shall be placed behind the generally recognized front yard setback.
  - v) A Person may replace a Structure existing at the time of adoption of this ordinance with a like Structure, whose total dimensions do not exceed 125% of the total volume of the original Structure.

- e) The City Manager may grant minor deviations to the aforementioned placement and maximum dimension requirements for the installation of Structures in Public rights-of-way, including utility easements and alleys, provided that the intent of the requirements is achieved. The City Manager may also consider specific requests from the property owner(s) being served or from property owner(s) adjacent to the property being served. The City Manager reserves the right to forward such requests for deviations to these requirements to the City Council for consideration and final determination.
  - f) The Public rights-of-way, including utility easements and alleys, generally will not accommodate Structures larger than 24” deep x 65” high x 60” wide. In certain unique circumstances, the Public right-of-way may accommodate a Structure that exceeds the maximum dimensions. The City Manager is authorized to consider requests for placement of Structures in such locations consistent with the requirements of this ordinance. Specific conditions that are consistent with the intent of the requirements of the ordinance may be placed on Structures placed under this provision.
- 5) Locates:
- a) Of City Facilities
    - i) Prior to any construction or installation of Facilities in the Public rights-of-way and utility easements, the City’s water lines, sanitary sewer lines, storm sewer lines, traffic signal conduits, and irrigation lines shall be located in the field by the appropriate City personnel. It is the sole responsibility of the Person to contact the City and obtain a locate of City Facilities.
    - ii) The Person shall designate a representative that will be present at the time each City Facility is located and the appropriate city personnel shall sign on the Permit that each Facility has been located. Requests for locates shall be made not less than two (2) business days in advance.
    - iii) When the City locates its Facilities, the location shall identify the approximate horizontal location of the Facilities. The Person shall be responsible for field verification of all actual locations of the Facilities and shall exercise extraordinary care when working in the vicinity of these Facilities to avoid damaging them. The City shall not be liable for any damage to its Facilities as a result of the locates and the Person shall be liable for damages as provided in this ordinance.
  - b) Of Non-City Owned Facilities
    - i) From time to time, the City may request identification of the specific location of Person’s Facilities. The Person shall respond to such request within two (2) business days of the receipt of the request. In the event the Person fails to provide the necessary information, and damage is caused to Person’s Facilities as a direct result of withholding said information, the Person shall hold the City harmless from all liability, damage, cost, or expense resulting from any City action in this regard unless such damage was caused solely by the negligence or willful misconduct of the City or its agents.
    - ii) In addition to providing the location of Person’s Facilities, the Person shall be responsible to contact all other users of the Public rights-of-way, either individually or through a state-sponsored third party one-call system, for on-



the-ground locations of all non-city lines prior to construction, reconstruction, maintenance, operations, and repair of Person's Facilities.

- 6) Construction in the Rights-of-Way
  - a) The City may establish conditions to minimize any such interference with the use of public and private property and may include requirements for trenchless construction, traffic control, and construction hours.
  - d) Trenchless construction
    - i) Trenchless construction shall be required when installing Facilities under driveways, streets, trees and landscaped areas within the City of Farmers Branch and when such use is practical. The City shall consider exceptions to this requirement on a case-by-case basis. All excavations and other construction in the Public rights-of-way shall be conducted so as to minimize interference with the use of public and private property. A Person shall follow all construction directions given by the City in order to minimize any such interference.
  - d) Traffic Control
    - i) Traffic control and barricading is the responsibility of the Person performing the work and must conform to the Texas Manual on Uniform Traffic Control Devices.
    - ii) In order to maintain the highest possible level of traffic flow through areas involving lane closures and to ensure the safety of vehicular and pedestrian traffic, as well as for those working, the following requirements will apply when streets are closed:
      - (1) The Person shall provide the traffic barricade plan to the city inspector prior to the closing of the street;
      - (2) The Person shall provide sufficient number of workers on site so that flagging and directing of traffic is conducted at all times during the closure;
      - (3) No more than one lane of a two-lane street may be closed at a time unless otherwise authorized by the City;
      - (4) For streets with four (4) or more lanes, no more than one lane in either travel direction shall be closed at a time without specific authorization from the City.
      - (5) The trenches shall be covered with a steel plate at the end of each workday to allow the street to be opened to traffic unless otherwise authorized by the City;
      - (6) The length of open trench shall not exceed that which can be closed within one (1) day or shall not pose a danger to pedestrians, vehicular traffic, or existing utilities.
  - d) Construction Hours
    - i) Except in emergencies, construction on weekends and holidays, regardless of the hour, shall be prohibited without prior written permission of the City. Requests for permission to work on weekends, holidays, or during hours other than those listed below must be submitted not less than two (2) business days prior to the desired date and time of the proposed work. The Person will be

- responsible for any and all costs including overtime, associated with city employees being at the work site during hours other than those listed below.
- ii) Boring and excavation operations in the Public rights-of-way shall only take place between 7:00 a.m. and 4:00 p.m., without prior permission from the City, which may include the City Engineer or his designee.
  - iii) No lanes on thoroughfares shall be blocked from 6:30 a.m. to 9:00 a.m. and 3:30 p.m. to 6:30 p.m., Monday through Friday, without prior permission from the City, which may include the City Engineer or his designee.
- e) Boring and Excavation
- i) No Public rights-of-way shall be encumbered by construction, maintenance, removal, restoration, or repair by a Person for a longer period than shall be necessary to execute such work.
  - ii) All borings shall be made with traceable and steerable boring or tunneling equipment.
  - iii) All bores 8” in diameter or greater shall have pressure grouting in the void between the borehole and the conduit within the bore. Refer to Exhibit “A” in the Appendix.
  - iv) Where trenches cross streets, the following provisions apply:
    - (1) The width of pavement to be removed from a trench shall be a minimum of 3’ wider than the trench width and the edge of the trench shall be a minimum of 12” from the edge of the street pavement or curb. Refer to Exhibit “B” in the Appendix.
    - (2) Pavement shall be saw cut the full depth of the pavement prior to removal. The saw cut shall not be closer than 3’ to an existing joint in the pavement. If a saw cut is to be closer than 3’, then the pavement shall be removed and replaced to the existing joint.
    - (3) The Person shall place temporary pavement repairs that will allow for safe vehicular and pedestrian traffic within two (2) business days. Permanent new pavement shall be placed within fourteen (14) working days after the installation of the Facilities with concrete that attains a compressive strength of 3000 p.s.i. within seventy two (72) hours. The concrete shall be covered with a steel plate, which shall not be removed until the required strength is attained. If the width of the new concrete is too great to be covered with a steel plate, then a concrete that attains a compressive strength of 3000 p.s.i. within 24 hours must be used and the street shall not be re-opened to traffic until the required strength has been attained.
- f) Inspections
- i) The Person shall make the work site available for inspection at all times during the performance of and upon completion of the work. The City may issue a stop-work order to the Person for any work that violates the terms of the Permit, other applicable standards, conditions, codes, or poses a threat to the life, health, safety, or well being of the public. The order shall state that failure to correct the non-conformance will be cause for revocation of the Permit. Within seventy-two (72) hours after issuance of the stop-work order, the Person shall present proof to the City that the violation has been corrected.

If such proof has not been presented within the required time, the City may revoke the Permit pursuant to this ordinance.

7) Restoration of the Rights-of-Way

a) General

- i) The City shall have the authority to prescribe the manner and extent of the restoration of Public rights-of-way. Property affected by the construction must be restored to a condition that is at least equal to the condition of the property prior to the performance of the work.
- b) Relocation or replacement of all existing items such as, but not limited to, signs, trees, ground cover, and landscaping shall be replaced as soon as is reasonably possible, but in no instance more than twenty-one (21) days after the completion of the work.
  - i) The twenty-one (21) day period shall be extended for days that the Person is unable to perform the work due to unfavorable weather conditions.
  - ii) In the event the restoration is scheduled to take longer than twenty-one (21) days for any other reason, the City may grant permission to exceed twenty-one (21) days. If the City determines the delay in restoring and maintaining the Public rights-of-way after such excavations and/or repairs have been made to be unreasonable, the City shall have the right to restore or repair the same.
  - iii) If the Person fails or refuses to act, the Person shall be required to pay the costs incurred by the City in restoring the Public right-of-way.
  - iv) Restoration of the Public right-of-way conducted by the City pursuant to this subsection shall not subject the City to pay compensation to the Person nor shall the City incur liability for any damages.
  - v) In the event the City determines that Person's use of any of City's Public rights-of-way as set forth in this ordinance pose an immediate danger to the health, safety, or general welfare of the public, the City shall have the right to restore or repair the same and shall require the Person to pay the City reasonable costs incurred regarding same.
  - vi) Backfilling and leveling of excavations and disturbed areas are to be done within 24 hours of completing the work for which the Permit was issued. All soil beneath sidewalks, street pavement, and behind curbs is to be compacted in conformance with the NCTCOG Standards Specifications for Public Works Construction prior to the placement of new pavement.

c) Irrigation, Landscaping and Tree Trimming

i) Irrigation

- (1) Unless otherwise provided in writing by the City, the Person shall keep all irrigation systems operational throughout construction. Any damage to irrigation systems shall be repaired by a licensed irrigator within two (2) business days unless approved by the City. The Person shall replace, in like kind and quality, any vegetation, including grass, ground cover, shrubs, trees, and flowers lost due to inoperable irrigation systems that result from any action of the Person within forty-five (45) days after completion of the work.
- (2) The Person may be required to install a new irrigation system or an extension of the existing irrigation system if the Facility is placed so that

the existing or surrounding landscaping cannot be serviced by the existing irrigation system. The Person shall coordinate with the owner of the system when installing or extending irrigation systems.

- (3) A Person shall not be required to install irrigation system in locations where irrigation currently does not exist.

ii) Landscaping

- (1) Any disturbed landscaped areas are to be restored.
- (2) Landscaping shall be restored using appropriate methods and quality workmanship with materials of like kind and quality to that which was existing prior to construction.
- (3) The City shall consider exceptions or reasonable alternatives to this requirement.

iii) Tree Trimming

- (1) No trees shall be trimmed or removed without the approval of the City, except in Emergency as provided herein. The Person shall be liable for the cost of replacing any tree damaged or removed without the City's approval. Upon approval by the City, the Person may trim trees in or over the Public rights-of-way for the safe and reliable operation, use, and maintenance of its Facilities. All trimmings shall be performed in accordance with American National Standards Institute (ANSI) 1995 standards for tree care operations. The cost of such trimming will be the responsibility of the Person.
- (2) The Person shall remove any tree-trimmings within one (1) business day of trimming for routine work. No trimmings shall be left on any paved surfaces. Should the Person fail to remove such trimmings, the City may remove the trimmings or have them removed, and upon receipt of an invoice from the City, the Person shall promptly reimburse the City within forty-five (45) days for all costs incurred as a result of removing said trimmings.
- (3) Except as provided herein, for tree trimming completed during an Emergency, the trimmings shall be removed as soon as practicable after the cessation of the Emergency. The Person shall advise the City of the schedule for removing said trimmings. Nothing herein shall prevent the City and the Person from developing a program to trim trees and remove trimmings during Emergency situations.
- (4) The Person shall notify the occupant of the property prior to cutting any limbs from the trees except during Emergencies. Any notice provided to inform occupants of tree trimming shall prominently state that the said trimming will be performed with no charge.

#### **SECTION 14            IMPROPERLY INSTALLED FACILITIES**

- 1) Any Person doing work in the Public right-of-way shall properly install, repair, upgrade and maintain Facilities.
- 2) The Person shall be remedy any installation, repair, upgrade, or maintenance work that meets the definition of an Emergency, per Section 3, immediately. If the Person fails to act, the City has the right to act immediately. The costs associated therewith

will be billed to the Person that owns the Facility and must be paid within forty-five (45) days from the date of the City invoice

- 3) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:
  - a) The Facilities do not meet the requirements of this ordinance or any other applicable City codes; or
  - b) The Facilities are not capable of being located using standard practices; or
  - c) The Facilities are not located in the proper place at the time of construction in accordance with construction plans submitted to the City and any directions provided by the City.
- 4) Should the City determine that Facility has been improperly installed because the Facility has met one or more of the above criteria, the City shall notify the Person by mail, electronic communication or facsimile that he shall, at his own expense, bring the said Facility into compliance with this Section and other provisions of this ordinance within seven (7) days unless otherwise permitted by the City.

#### **SECTION 15                    INCOMPLETE INSTALLATION OR CONSTRUCTION OF FACILITIES**

- 1) If the Permit for which a Facility was issued has expired prior to the completion of installation or construction of the Facility and an extension has not been authorized by the City, the Facility may be considered incomplete.
- 2) A Person that fails to complete installation or construction of Facilities within the Public right-of-way shall be in violation of this ordinance. If the Person does not complete the installation within six (6) months the City will deem the Facilities no longer in service as provided in this ordinance.
- 3) If the Person's Permit is expired and additional time is necessary to complete the installation of the Facility, the Person must apply for a new Permit in accordance with this ordinance.
- 4) If the Person's permit is unexpired and additional time is necessary to complete the installation of the Facility, the Person may request an extension of the Permit in accordance with this ordinance.

#### **SECTION 16                    EMERGENCIES**

- 1) A Person may excavate the pavement of a street or Public right-of-way without first complying with City requirements only under Emergency conditions as defined in this ordinance.
- 2) The City shall be notified as soon as practicable regarding work performed under Emergency conditions and the Person shall apply for the necessary Permits and fulfill all of the requirements necessary to achieve full compliance with this ordinance.

#### **SECTION 17                    TRANSFERS**

- 1) Non-Certificated Providers
  - a) Any rights or privileges that a Person has by or through this or other City ordinances which are in the Public rights-of-way, shall not be sold, resold, assigned, transferred or conveyed by the Person, either separately or collectively, to any other Person, without written notice to the City and the prior written

- approval of the City by ordinance or resolution, subject to any requirements or limitations imposed by federal law. The City's approval may be based upon the transferee providing adequate information to the City that it has the ability to perform and comply with the obligations and requirements of this ordinance. Such approval shall not be unreasonably withheld. Should a Person sell, assign, transfer, convey or otherwise dispose of any of its rights or interests, including such Person's Network, or attempt to do so, without the City's prior consent, the City may revoke the Person's Agreement, in which event all rights and interest of the Person under it Agreement with the City shall cease.
- b) Any transfer in violation of this Section shall be null and void and unenforceable. Any change of control of Person shall constitute a transfer under this Section. However, such a change in control shall not void the Person's Agreement as to the transferee, unless and until the City has given notice that such a change in control necessitates compliance with this section. If the Person does not initiate compliance with this section within thirty (30) days after the above notice has been given by the City, the Person's Agreement shall be null and unenforceable as to the transferee.
  - c) There shall be a rebuttable presumption of a change of control of the Person upon a change of 15% or greater in the ownership of such Person. Such a change in control shall be deemed a transfer that requires consent of the City.
  - d) A mortgage or other pledge of assets to a bank or lending institution in a bona fide lending transaction shall not be considered an assignment or transfer.
  - e) Notwithstanding anything else in this section, if the City has not authorized or denied a request to transfer under this Section within 120 days of written notice of such request from the Person to the City, it shall be deemed authorized. Such time frame may be extended by mutual agreement of the parties.
- 2) Certificated telecommunications providers
- a) A Certificated telecommunications provider that has transferred ownership or control of a provider's business shall provide the City with notice of transfer and current point of contact information within a time as specified by law.

## **SECTION 18           NOTICES**

Unless otherwise provided herein or by other prevailing codes, all notices to the City shall be made in writing and mailed via certified mail to the following address:

Office of the City Secretary  
City of Farmers Branch  
Farmers Branch, TX 75381

## **SECTION 19           RECORDS AND REPORTS**

- 1) Within 120 days of completion of each new permitted segment of Person's Facility, the Person shall supply the City with a complete set of drawings of record for the segment in a format used in the ordinary course of the Person's business, but excluding customer specific, proprietary or confidential information and as reasonably prescribed by the City, and as allowed by law. If the construction complied with the engineering plans submitted to the City as required in this

ordinance, the engineering plans as approved by the City shall satisfy this requirement.

- 2) When possible, the Person shall provide the drawings of record in an electronic format specified by the City.

## **SECTION 20            RESERVATION OF POLICE POWERS**

- 1) In addition to the provisions of this ordinance and subject to applicable law, a Person's physical occupation of the Public rights-of-way is subject to police power regulation of the City in the management of its Public right-of-way in connection with the expansion, reconstruction, maintenance or repair of Facilities in the Public right-of-way, pursuant to the City's rights as a custodian of public property.
- 2) The City shall have the right to exercise police power regulations in the management of all Persons within the Public rights-of-way as provided by federal and state laws.

## **SECTION 21:            UNAUTHORIZED USE OF THE PUBLIC RIGHTS-OF-WAY**

- 1) To the extent allowed by applicable law, the City may institute all appropriate legal action to prohibit any Person from using the Public rights-of-way unless the City has consented to such use in accordance with the terms of this ordinance.
- 2) Any person using the Public rights-of-way without a Permit in accordance with this ordinance shall be held to be in violation of this ordinance and will be subject to any penalties the City may assess, as provided in this ordinance.

## **SECTION 22            VIOLATION OF ORDINANCE**

- 1) A Person commits an offense if he:
  - a) Performs, authorizes, directs, or supervises construction without a valid Permit issued under this ordinance; or
  - b) Violates any provision of this ordinance; or
  - c) Fails to comply with restriction or requirements of a Permit issued pursuant to this ordinance; or
  - d) Fails to comply with an order or regulation of the City issued pursuant to this ordinance.
- 2) This ordinance may be enforced by civil court action in accordance with state or federal law, in addition to any other remedies, civil or criminal, the City has for violation of this ordinance.
- 3) Prior to the initiation of civil or criminal enforcement litigation, a Person who has violated a provision of this ordinance must be given the opportunity to correct the violation within the timeframe specified in this ordinance or by the City. This section does not prohibit the City from taking enforcement action as to past or present violations of this ordinance, notwithstanding their correction.
- 4) Any Person violating any of the provisions or terms of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject to a fine not exceeding \$2,000 for each offense, and each and every day or portion thereof that such violation shall continue shall be deemed to constitute a separate offense.

## **SECTION 23 INDEMNITY**

- 1) Except as to Certificated Telecommunications Providers, each Person placing Facilities in the Public rights-of-way shall promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses, and expenses (i) for the repair, replacement, or restoration of City's property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of the Person's acts or omissions, (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to or loss of the property of any person (including, but not limited to the Person, its agents, officers, employees and subcontractors, City's agents, officers, and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any Person (including, but not limited to the agents, officers and employees of the Person, Person's subcontractors and City, and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Person, its agents, employees and/or subcontractors, in the performance of activities pursuant to this ordinance.
- 2) This indemnity provision shall not apply to any liability resulting from the sole negligence of the City, its officers, employees, agents, contractors, or subcontractors.
- 3) The provisions of this indemnity are solely for the benefit of the City and are not intended to create or grant any rights, contractual or otherwise, to any Person or entity.
- 4) Certificated telecommunications provider
  - a) A Person that is a Certificated Telecommunications Provider as defined in Chapter 283 of the Texas Local Government Code, as amended, shall provide to the City the indemnity provided in Section 283.057, Texas Local Government Code, as amended.
- 5) The provisions of this Clause are solely for the benefit of the City and are not intended to create or grant any rights, contractual or otherwise, to any Person or entity.

## **SECTION 24 SEVERABILITY**

If any section, subsection, sentence, cause, phrase, term, provision, condition, covenant or portion of this ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this ordinance shall be valid and enforceable to the fullest extent permitted by law.

## **SECTION 25 CONFIDENTIALITY**

Any materials or documents pertaining to this ordinance are subject to the Texas Public Information Act, the federal Freedom of Information Act, and other applicable federal and state law. To the extent the City determines that any requested information is excepted from public disclosure under Texas Public Information Act, the Freedom of Information Act, and other applicable federal or state law, it will seek a ruling from the



applicable governing agency and will not be required to take any further action to have the requested information declared confidential.

**SECTION 26                    INJUNCTIVE RELIEF**

In addition to, and accumulation of all penalties, the City shall have the right to seek injunctive relief for any and all violations of this ordinance.

**SECTION 27                    GOVERNING LAW**

This ordinance shall be construed in accordance with the city code(s) and ordinance(s) in effect on the date of passage of this ordinance to the extent that such code(s) and ordinance(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas, subject to the City's ongoing authority to adopt reasonable regulations to manage its Public rights-of-way.

**SECTION 28                    EFFECTIVE DATE**

This ordinance takes effect from and after its passage. Not earlier than six (6) months from the effective date, staff will conduct a review of the ordinance and report to the City Council the impact/effectiveness of the provisions contained herein as applied to the City and/or other Persons in the Public rights-of-way.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, on this the 9<sup>TH</sup> day of September 2002.

APPROVED

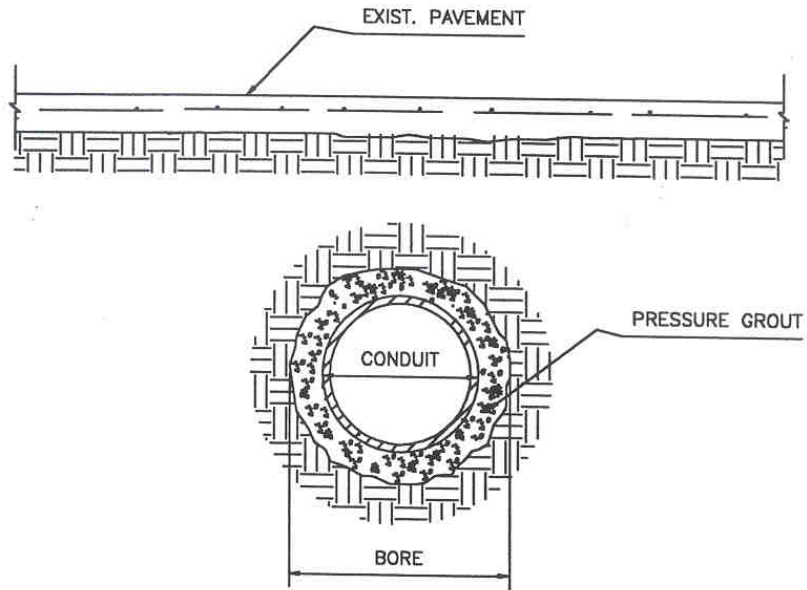
\_\_\_\_\_  
Mayor Bob Phelps

\_\_\_\_\_  
City Secretary Cindee Peters

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

# Exhibit A



## EXHIBIT A

N.T.S.

REQUIRED FOR BORES 8" DIAMETER  
OR GREATER

EXHIBIT A

BORE

City of  
Farmers Branch



SCALE:

N.T.S.

DRAWN BY:

BSJ

APPROVED BY:

JVM

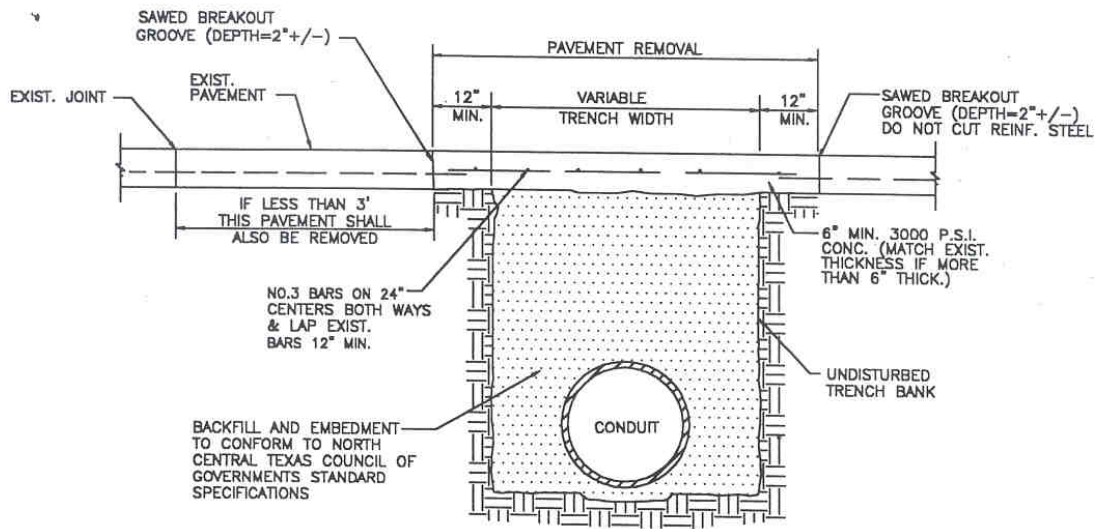
DATE:

AUGUST 1999

F.B. DWG. NAME:

BORE.DWG

# Exhibit B



## EXHIBIT B

DETAIL OF OPEN CUT TRENCH ACROSS  
STREET, DRIVE, AND SIDEWALK  
N.T.S.

EXHIBIT B

OPEN CUT TRENCH

City of  
Farmers Branch



SCALE:

N.T.S.

DRAWN BY:

BSJ

APPROVED BY:

JVM

DATE:

AUGUST 1999

F.B. DWG. NAME:

OPENCUT.DWG