

Inglewood



California

Public Works Department
ONE MANCHESTER BOULEVARD / INGLEWOOD, CA. 90301 / P.O. BOX 6500 / INGLEWOOD, CA. 90312
Telephone (310) 412-5333 / Fax (310) 412-5552
www.cityofinglewood.org

April 13, 2023

To: Whom it May Concern

Subject: Excavation and Encroachment Policy For Wireline Communication Facilities

Recently, the City has received inquiries about significant new deployments for wireline communications facilities, particularly for fiber optic facilities. These facilities provide important services to the City's residents, businesses and visitors. At the same time, construction and excavation in the public rights-of-way degrades the streets, sidewalks and other facilities within the public rights-of-way and shorten their useful lifespan. The facilities themselves may also detract from neighborhood character, obstruct pedestrian travel and interfere with other authorized uses in the public rights-of-way. Accordingly, the City has important interests in encouraging deployment and at the same time regulating placement, construction and excavation associated with these facilities.

Inglewood Municipal Code ("IMC") Chapter 10, Article 6 (Excavations in Public Places) provides the framework for the orderly administration of private work in the public rights-of-way and is intended to protect the public interest and safety. The Public Works Director administers this article with delegated authority to adopt rules and regulations to carry out the intent of Article 6. IMC Section 10-81.

Pursuant to IMC Section 10-81, the Public Works Director has adopted the enclosed Encroachment and Excavation Policies for Wireline Communication Facilities. However, the City would like to solicit further comment from the public for any changes that should be made to the policies.

Accordingly, the City seeks comments to the enclosed policies for the City's consideration no later than Friday, April 28, 2023 for staff to review, evaluate and incorporate comments that the City should address. Any revisions or suggestions that the City deems necessary or appropriate would be included and an updated revision to the policies, if necessary, will be adopted. Please contact Boytrese Osias (bosias@cityofinglewood.org), Jeffery Lewis (jalewis@cityofinglewood.org) and Michael Johnston (mjohnston@telecomlawfirm.com) with any responses and/or questions.

Thank you,

Louis A. Atwell

LOUIS A. ATWELL, P.E.
ASSISTANT CITY MANAGER/PUBLIC WORKS DIRECTOR



CITY OF INGLEWOOD

Louis A. Atwell

Louis Atwell, P.E.
Public Works Director

adopted: April 13, 2023

**ENCROACHMENT AND EXCAVATION POLICIES
FOR WIRELINE COMMUNICATION FACILITIES**

BACKGROUND

Wireline communication services often require underground, surface-mounted and/or overhead facilities in the public rights-of-way. Recently, the City has received inquiries about significant new deployments, particularly for fiber optic facilities.

These facilities provide important services to the City's residents, businesses and visitors. At the same time, construction and excavation in the public rights-of-way degrades the streets, sidewalks and other facilities within the public rights-of-way and shorten their useful lifespan. The facilities themselves may also detract from neighborhood character, obstruct pedestrian travel and interfere with other authorized uses in the public rights-of-way. Accordingly, the City has important interests in encouraging deployment and at the same time regulating placement, construction and excavation associated with these facilities.

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PURPOSE

This Policy is intended to provide additional clarity and guidance to applicants as to the procedures, standards and conditions on which the Director will issue permits for the installation, construction, excavation or other work performed in connection with wireline communication facilities located or proposed to be located within the public rights-of-way.

This Policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal

requirements for rights-of-way management; (2) unreasonably discriminate among functionally equivalent services or service providers; (3) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; (4) otherwise authorize the City to preempt any applicable federal or California law; or (5) limit the exercise of the Director's discretion authorized under the Inglewood Municipal Code and other applicable law.

DEFINITIONS

The abbreviations, phrases, terms and words used in this Policy will have the following meanings assigned to them unless context indicates otherwise. Undefined phrases, terms or words in this Policy will have their ordinary meanings.

- (a) **"Director"** means the Public Works Director or designee.
- (b) **"facility"** includes, without limitation, any and all cables, wires, lines, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tracks, tunnels, utilities, vaults and other appurtenances or tangible things owned, leased, operated or licensed by a person or entity, that are located or are proposed to be located in the public rights-of-way in connection with any wireline communications service.
- (c) **"historic resource"** means a historic landmark or district, listed or eligible to be listed on the National Register of Historic Places or California Register of Historical Resources.
- (d) **"public right-of-way"** or **"public rights-of-way"** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.
- (e) **"surface-mounted facility"** means any facility or physical element or structure associated with a facility that is installed, attached or affixed in the public rights-of-way on a site that is above the surface of the public rights-of-way (except on existing utility poles or associated overhead appurtenances) and that requires excavation to install the facility.
- (f) **"underground utility district"** means any area in the City within which overhead wires, cables, cabinets and associated overhead equipment, appurtenances and other improvements are either (1) prohibited by ordinance, resolution or other applicable law; (2) scheduled to be relocated underground within 18 months from the time an application is submitted; or (3) primarily located underground at the time an application is submitted.

- (g) **"wireline communications service"** includes the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals by wire, cable, fiber-optic cables or other wireline conveyances to a point, or between or among points, whether or not such information is transmitted through interconnected service with the public switched network.

APPLICATION AND REVIEW PROCEDURES

The Director may, in the Director's sole discretion, establish reasonable requirements, rules and regulations for duly filed applications, which may include without limitation standard application requirements, telephonic and/or electronic pre-submittal conferences and/or submittal appointments, regular hours for appointments and/or submittals without appointments as the Director deems necessary or appropriate to organize, document and manage the application intake process. Such rules and regulations shall be in written form and publicly stated to provide all interested parties with prior notice.

LOCATION AND DESIGN GUIDELINES

- (a) **Street Cut Moratorium Streets.** All facility deployments shall comply with any City street cut moratorium requirements, which includes without limitation all street cut repair requirements for work performed in a moratorium street.
- (b) **Dig Once.** The City strongly prefers joint trenches to reduce the number of excavations within the public right-of-way and preserve its useful life. The Director may require multiple excavators with overlapping projects to joint trench when technically feasible. If a joint trench is not technically feasible or if the applicant refuses to joint trench, the Director may require an applicant to use other methods, materials, equipment, techniques or any combination thereof used to install, replace, renew or repair underground facilities and improvements with no or minimal surface disturbance (e.g., drilling, auguring, boring and tunneling) and/or perform additional restoration to surfaces subject to multiple street cuts.
- (c) **Encroachments Over Private Property.** No facilities may encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent submitted contemporaneously with the application or as otherwise authorized by some other property right such as an easement.
- (d) **No Interference with Other Uses.** Facilities shall not be located in any place or manner that would physically obstruct, interfere with or impede any: (1) pedestrian access to travel over sidewalks or soft shoulders; (2) worker access to any surface-mounted or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (3) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (4) worker access to surface-

mounted or underground infrastructure owned or operated by any public or private utility agency; (5) access to any fire hydrant or water valve; (6) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; (7) access to any fire escape; or (8) access to any public or private property that currently exists or is planned to exist at the time of the permit approval.

- (e) **Compliance with Technical Specifications.** All facility deployments shall comply with the technical specifications required by the City for excavation, trenching, backfill, paving, compaction, and other construction, installation, or replacement work. Notwithstanding anything therein to the contrary, an excavation trench for microtrenching proposed pursuant to California Government Code Section 65964.5 to install a subsurface pipe or conduit for the limited purpose of the installation of underground fiber optic cables and related ancillary equipment such as conduit, ancillary cables, hand holes, vaults and terminals shall be less than twelve inches in depth and shall not be more than twenty-six inches in depth.
- (f) **Location Preferences for Surface-Mounted Facilities.** The City prefers surface-mounted facilities to be located along road classifications with higher traffic volume (*i.e.*, arterials are more-preferred than collectors and local streets, and collectors are more-preferred than local streets) and in non-residential zones (*i.e.*, non-residential zones are more-preferred than residential zones). To the extent that it would be technically feasible to install surface-mounted facilities in a more-preferred location, the Director shall have the discretion to require that the facilities be installed in such location.
- (g) **Additional Requirements for Surface-Mounted Facilities.** Surface-mounted facilities create obstructions and may adversely impact the public's use of the rights-of-way for travel, commercial, recreational and aesthetic purposes. In addition to all other requirements in this Policy, surface-mounted facilities shall:
 - (1) be located off any sidewalk or soft shoulder to the maximum extent technically feasible;
 - (2) when placement on the sidewalk cannot be avoided, be placed in a manner that maintains the appropriate path of travel for pedestrians, with particular attention to the needs of persons with disabilities in full compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*), the Fair Housing Act Amendments of 1988 and any other applicable disability/handicap accommodation laws;
 - (3) not be placed on sidewalks or pedestrian pathways with special paving or design features (such as paving stones or inlaid decorations);
 - (4) not be placed in underground utility districts, unless the applicant demonstrates that no other option is technically feasible;

- (5) not be placed on public rights-of-way adjacent to open space or parks, unless the applicant demonstrates that no other option is technically feasible;
 - (6) not be placed on public rights-of-way adjacent to a historic resource, or in a location that would adversely impact the view of a historic resource;
 - (7) be grouped next to any other nearby pre-existing surface-mounted pedestals, cabinets or other equipment to the maximum extent technically feasible;
 - (8) be concealed from view from the public rights-of-way to the maximum extent technically feasible utilizing landscaping features including but not limited to existing and/or new bushes, retaining walls or other screening methods to blend with the landscape features;
 - (9) be manufactured from materials able to be painted in a color and manner approved by the Director, including but not limited to community painting projects subject to separate agreements addressing permittee's liability and maintenance responsibility, or wrapped in a material with a design and colors approved by the Director;
 - (10) be placed as close as possible to the property line between two parcels that abuts the public rights-of-way;
 - (11) not be placed directly in front of any door or ground-floor window;
 - (12) not be placed in any location that obstructs (i) view lines for traveling vehicles, bicycles and pedestrians; (ii) views of any traffic signs or signals; or (iii) illumination patterns for existing streetlights;
 - (13) be placed at least 15 feet away from any driveway or established pedestrian pathway between a residential structure and the public rights-of-way; and
 - (14) be placed at least 50 feet away from any driveways for police/sheriff's stations, fire stations or other emergency responder facilities.
- (h) **Replacement Utility Poles.** All replacement poles must be located as close to the removed pole's location as possible; aligned with the other existing poles along the public right-of-way; and compliant with all applicable laws, including without limitation California Public Utilities Commission ("CPUC") General Order 95 and the Americans with Disabilities Act. To the extent that the existing pole cannot feasibly be removed within 60 days after the replacement pole would be installed, the Director may authorize the applicant to install a temporary bypass (or buddy) pole subject to the following conditions:
- (1) no more than one bypass pole may be installed per existing utility pole;

- (2) the applicant shall transfer, or cause to be transferred, all the existing utilities from the existing pole to the permanent replacement pole within (i) 12 months if installed in a residential zone; (ii) 18 months if installed in a commercial zone; or (iii) 24 months if installed in a manufacturing zone. The transfer of utilities in any other zoning district shall be subject to the 18-month limitation period or the limitation period for the nearest adjacent zoning district, whichever is shorter;
 - (3) within 30 days after the utilities have been transferred to the permanent replacement pole, the applicant shall remove, or caused to be removed, the replaced pole and restore the surrounding area to the Director's satisfaction; provided, however that the Director may for good cause grant a one-time extension of the removal and restoration period;
 - (4) prior to permit issuance, the applicant shall provide the City a letter of credit, or other security instrument acceptable to the City, in an amount sufficient to cover the entire cost to remove the utility pole and restore the surrounding area to the Director's satisfaction; and
 - (5) these conditions shall be construed consistently with the City's intent to (i) provide temporary relief from delays in the standard pole replacement process and (ii) ensure that buddy poles remain in the public rights-of-way no longer than the time periods provided in this subsection.
- (i) **Guy Wires.** To the extent that new down guy wires are required to be installed in accordance with CPUC General Order 95, the applicant shall use (and may replace or improve) existing down guy anchors if the new down guy wires will be located adjacent to existing anchors. For all new or replaced anchors above sewers or storm or flood control drains, the permittee shall obtain an inspection and/or provide sufficient evidence to the Director that such sewers or drains were not damaged in the installation.
- (j) **Cabling.**
- (1) **Overhead Lines.** The Director shall not approve any new overhead utility lines in underground utility districts. In areas with existing overhead lines, new communication lines shall be "overlashed" with existing communication lines to the extent feasible. No new overhead utility service drops shall be permitted to traverse any roadway used for vehicular transit.
 - (2) **Vertical Cable Risers.** Any vertical cabling on a utility pole shall be routed in external conduits or shrouds that have been finished to match the underlying pole. The applicant shall minimize the number and size of external conduits to the extent technically feasible.
 - (3) **Spools, Coils and Cabinets.** To reduce clutter and deter vandalism, excess fiber optic or other cables shall not be spooled, coiled, or otherwise stored on the

utility pole outside equipment cabinets or shrouds. The Director shall have discretion to require fiber optic equipment cabinets or shrouds to be surface-mounted to the extent feasible.

- (4) **Existing Underground Conduits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits whenever available and technically feasible. Access to any conduit owned by the City shall be subject to a separate written agreement and the Director of Public Works' prior written approval, which the Director of Public Works may withhold or condition as the Director of Public Works deems necessary or appropriate to protect the City's infrastructure, prevent interference with the City's municipal functions, and public health and safety.

STANDARD CONDITIONS

The following conditions shall be in addition to any conditions imposed on the temporary construction activities undertaken in connection with the facility(ies) covered by each such permit and remain in effect at all times while the facility(ies) covered by each such permit remain within the City's right-of-way. These conditions shall be attached and incorporated into the permit issued by the City. These conditions shall be effective when the permittee accepts the permit issued by the City. All references to the "Director" shall mean the Public Works Director or the Director's designee.

- (a) **No Property Rights Created.** This permit grants the permittee only a non-possessory, non-exclusive and revocable right to enter on to and use the public rights-of-way in accordance with the terms and conditions in the Inglewood Municipal Code, this permit and any other permits or regulatory authorizations issued by the City. The permittee expressly acknowledges and agrees that: (1) this permit neither creates nor will be deemed to create any leasehold, easement, franchise or any other possessory interest (whether present, future, contingent or otherwise) or real property interest whatsoever in the right-of-way or any other City property; (2) this permit is not coupled with an interest; (3) the City retains legal possession and control over all City property for the City's municipal functions, which will be superior to the permittee's rights and interest, if any, in any such City property covered by this permit at all times; (4) subject to the terms and conditions in the Inglewood Municipal Code, this permit and any other applicable laws, the City may terminate this permit, in whole or in part, at any time; (5) the City may enter into any agreement with third parties to use and/or occupy the public rights-of-way and/or any City property, whether in the City's regulatory or proprietary capacity as the case may be; and (6) this permit neither creates nor will be deemed to create any partnership or joint venture between the City and the permittee.
- (b) **Unlawful Uses; Nuisances.** The permittee shall not use the facilities authorized by this permit, in whole or in part, in any unlawful manner or for any illegal purpose. In addition, the permittee shall not use the facilities authorized by this permit, in whole or in part, in any manner that constitutes a nuisance as determined by the City in its

reasonable discretion. The permittee shall take all precautions to eliminate any nuisances or hazards in connection with its uses and activities on or about the public rights-of-way.

- (c) **Safety.** The permittee shall at all times employ reasonable care, within the meaning of applicable laws, and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents that may cause damage, injury or nuisance to the public. The permittee shall construct, operate and maintain its facilities so as not to endanger or interfere with improvements the City shall deem appropriate to make, consistent with applicable laws, or to interfere in any manner with the public rights-of-ways or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic. The permittee shall not place its facilities, equipment or fixtures where they will interfere with any gas, electric, telephone, telecommunications, water, sewer or other utility facilities or obstruct or hinder in any manner such entity's use of any public rights-of-way.
- (d) **Underground Service Alert.** The permittee warrants and represents to City that permittee is presently a member in good standing with the Underground Service Alert ("USA"). The permittee shall maintain current membership in USA at all times while the facilities remain within the right-of-way. Prior to any excavation performed in the right-of-way, permittee shall observe and perform all notice and other obligations required under applicable Laws, which includes, without limitation, California Government Code §§ 4216 *et seq.*, as may be amended or superseded.
- (e) **City Fees; Cost Reimbursement.**
 - (1) **Standard Fees.** The permittee shall pay all required City fees including, without limitation, processing, field marking, engineering and inspection fees in accordance with the published rates in effect at the time of permit issuance.
 - (2) **Right to Cost Reimbursement.** The City shall be entitled to recover from the permittee the actual, reasonable and documented costs to provide or perform any services in connection with this permit, which includes without limitation any costs incurred by City staff or the City's contractors, consultants and experts to review permit applications, issue permits or supervise or inspect any construction, installation or other work in connection with this permit. The permittee's payment of any fees in connection with any permit shall not relieve the permittee's obligation to reimburse the City for any and all actual, reasonable and documented costs incurred by the City in the future.
 - (3) **Nonpayment.** The City shall be entitled to withhold issuance of any permits or approvals based on the permittee's nonpayment of any required fee or accrued costs. The City's acceptance of any payment less than the full amount due shall not be construed as an accord and satisfaction.
- (f) **Installation, Construction, Excavation and Other Work.**

- (1) **General Work Standards.** The permittee shall perform all installation, construction, excavation and other work in connection with the facilities (1) in accordance with the terms and conditions in the Inglewood Municipal Code, this permit and any other applicable laws; (2) at the permittee's sole cost and expense, and at no cost to the City; (3) in strict compliance with the approved plans, specifications and conditions associated with this permit; (4) in a safe, diligent, skillful and workmanlike manner; and (5) to the Director's reasonable satisfaction.
- (2) **Excavation Monitoring and Protection.** Any excavation performed in the public rights-of-way must be monitored by the permittee for any lateral movement, trench failures and other similar hazards. The permittee shall, at the permittee's sole cost and expense, repair any damage (which includes without limitation any subsidence, cracking, erosion, collapse, weakening and/or any loss or reduction in lateral or subjacent support) to the public rights-of-way, any adjacent private property, any utility lines or systems (whether overhead or underground) and any sewer and/or water lines or systems resulting from or in connection with any excavation by the permittee or its agents. All repair or restoration work performed pursuant to this condition shall be performed under the Director's supervision and to the Director's reasonable satisfaction.
- (3) **Inspections.** The City shall have the right to inspect the permittee's facilities at any time during or after any construction, installation or other work in connection with any permit. If the City discovers any defects or non-compliant conditions in connection with the facilities, the permittee shall, at the permittee's sole cost and expense, correct any such defects and conditions within the time period specified in the written notice from the City. If no time period is specified in the written notice, the default time for such corrections shall be 30 days from the date of the written notice; provided, however, that defects or non-compliant conditions that threaten public health and safety or threaten to cause imminent property damage shall be immediately corrected by the permittee. Such period may be extended by the City at its discretion upon written request from the permittee where the permittee shows good cause as to why additional time is reasonably required to complete the necessary work. The permittee shall promptly reimburse the City for all actual, reasonable and documented costs incurred in connection with any inspections or re-inspections by the City. The City's final inspection will occur after: (1) all surface improvements have been restored; (2) all construction debris, excess materials, traffic control devices, and equipment have been removed; and (3) the site has been cleaned and rendered safe for pedestrian and vehicular traffic by the Director. Any work performed by the permittee without an inspection is subject to rejection and removal by the City in accordance with applicable laws.

- (4) **As-Built Plans and Maps.** Within 60 days after the permittee notifies the City that the work has been completed (or such other time as may be specified by the Director in writing), the permittee shall file as-built plans and maps in a format specified by the Director. In addition to any format required by the Director, all as-built plans and maps shall include digital copies in a native format compatible with the City's document management, GIS and/or other digital information management systems. The permittee's as-built plans and maps must show the accurate location and dimensions for all facilities. The City shall have the right to reject any as-built plans or maps for cause, in which case the permittee shall file revised as-built plans and/or maps within 60 days after notice from the City (or such other time as may be specified by the Director in writing). The City shall not close the permit until the as-built plans and maps required in this condition have been provided by the permittee.

(g) Ongoing Maintenance and Repairs.

- (1) **General.** The permittee shall be solely responsible for any repairs or maintenance required to keep its facilities in a clean, safe and code-compliant condition. The permittee, at its sole cost and expenses, shall complete any repair damage to its facility within: (1) 30 days after the permittee discovers or receives notice (written or verbal) that such damage exists or (2) immediately if such repairs are necessary to preserve life or property. All repair or restoration work performed pursuant to this condition shall be performed under the Director's supervision and to the Director's satisfaction.
- (2) **Graffiti.** The permittee shall be solely responsible for graffiti removal on its facilities within the public rights-of-way. The permittee, at its sole cost and expenses, shall remove any graffiti from its facilities within 10 days after the permittee discovers or receives notice (written or verbal) that such graffiti exists on its facilities.
- (3) **Routine Inspections.** The permittee shall regularly inspect its facilities at least once per calendar year to assess its compliance with the requirements in the Inglewood Municipal Code, this permit and other applicable laws and determine the need for maintenance and/or graffiti abatement.
- (4) **Damage to Landscape Features.** The permittee shall replace any public or private landscape features damaged or displaced by the construction, installation, excavation operation, maintenance or other work performed by the permittee or at the permittee's direction in connection with this permit and/or the facilities. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. If the permittee does not replace such damaged or

displaced landscape features, including trees, the permittee shall pay in-lieu fee to the City for such replacement required by this condition, and such in-lieu fee shall be based on the City's actual, reasonable and documented costs for such landscape replacement.

(h) **Facility Identification.** The permittee shall permanently affix a sign on each surface-mounted and above-ground facility within the City's right-of-way that contains the permittee's (1) name; (2) facility-specific identification information; and (3) telephone number to be used to report damage, required maintenance, graffiti or other similar matters to the permittee about the facility. Such signage must be displayed in a conspicuous manner and maintained and/or replaced as may be necessary.

(i) **Liability.**

(1) **Generally.** Each owner shall be responsible for the work performed and completed operations in connection with the permit and shall be liable for any consequences that result from the installation, construction, excavation or other work and any condition thereof. The permittee shall not be excused from such responsibility and liability based on any permit issuance, inspection, repair, suggestion, approval or acquiescence by any person affiliated with the City.

(2) **Consequential, Indirect or Punitive Damages.** Without limiting any indemnification obligation placed on the permittee or other waivers contained in the Inglewood Municipal Code or this permit, the permittee fully releases, waives and discharges forever any and all claims against the City for consequential and incidental damages that may arise from or in connection with any permit or the permittee's use on or about the City's right-of-way, which includes without limitation any lost profits related to any disruption to the permittee's facilities, any interference with uses or operations conducted by the permittee, from any cause whatsoever, and each party covenants not to sue for such damages the City, the City's departments and each other's agencies, officers, directors and employees, and all persons acting by, through or under them. Notwithstanding the foregoing, the foregoing waiver by the permittee shall not apply to consequential or indirect damages that may arise from the City's sole active negligence or willful misconduct.

(3) **No Personal Liability for City Personnel.** In no event will any City council, commission, board, agency, member, officer, employee or other agent be personally liable to the permittee, its successors or assigns, for any default, breach, other nonperformance or sum unpaid sum by the City. The provisions in this condition shall survive this permit's revocation, termination or expiration.

(j) **Indemnification.**

- (1) **Permittee's Indemnification Obligations.** The permittee, for itself and its successors and assigns, shall indemnify, defend and hold the indemnified City parties harmless from and against any and all third party claims, incurred in connection with or arising in whole or in part from any act or omission by the permittee or its agents, licensees, customers or invitees in connection with any permit or any regulatory approvals, but except to the extent that that such claim is caused by the City's sole active negligence or willful misconduct. Licensee's obligations under this condition include, without limitation, all reasonable fees, costs and expenses for attorneys, consultants and experts, and the City's actual and reasonable costs to investigate and defend against any claim. The permittee expressly acknowledges and agrees that: (a) the permittee has an immediate and independent obligation to defend any indemnified City parties from any claim that actually or potentially falls within this condition, even when the allegations in the claim are or appear to be groundless, fraudulent or false; and (b) the permittee obligations arise at the time any indemnified City parties tender a claim to the permittee and, to the extent that such claim actually falls within this condition, continue until such claim's final, non-appealable resolution. The permittee obligations under this condition shall survive any permit's revocation, termination or expiration.
- (2) **Permittee's Defense of the City.** In the event that any claim is brought against any indemnified City parties in connection with any subject matter for which any indemnified City parties are indemnified by the permittee under any permit, the permittee shall, upon written notice and at the permittee's sole cost and expense, resist and defend against such claim with competent and experienced legal counsel reasonably acceptable to the City. The City shall not unreasonably withhold or delay its consent to legal counsel selected by the permittee. The permittee shall not, without the City's written consent, enter into any compromise or settlement agreement on any indemnified City parties' behalf that admits any liability, culpability or fault whatsoever on any indemnified City parties' part or that requires any indemnified City party to take or refrain from any action, which includes without limitation any change in the City's policies or any monetary payments. Nothing in these conditions shall be construed to limit or preclude any indemnified City parties or their respective legal counsel from cooperating with the permittee and/or participating in any judicial, administrative, alternative dispute resolution or other litigation or proceeding. The permittee's obligations under this condition shall survive any permit's revocation, termination or expiration.
- (k) **Taxable Possessory Interest.** The permittee agrees to pay when due (and prior to delinquency) any and all taxes, assessments, charges, excises and exactions whatsoever, including without limitation any possessory interest taxes, that arise from or in connection with the permittee's use within the public rights-of-way or the permittee's facilities that may be imposed on the permittee under applicable laws. The permittee shall not allow or suffer any lien for any taxes, assessments, charges,

excises or exactions whatsoever to be imposed on the public rights-of-way or the permittee's facilities. In the event that the City receives any tax or assessment notices on or in connection with the public rights-of-way or the permittee's facilities, the City shall promptly (but in no event later than 30 calendar days after receipt) forward the same, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount directly attributable to the permittee's facilities. The permittee understands and acknowledges that any permit may create a possessory interest subject to taxation and that the permittee will be required to pay any such possessory interest taxes. The permittee further understands and acknowledges that any sublicense or assignment under any permit and any options, extensions or renewals in connection with any permit may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under the permit.

- (l) **Records.** The permittee shall maintain throughout the term of any permit, and for at least four years after any permit expires or terminates, the following records in an electronic format: (a) identification information and physical location including but not limited to a physical address and GPS coordinates for all facilities within the City's territorial and/or jurisdictional boundaries; (b) a ledger or other similar document that contains the amount, payment date and reason for all sums paid to the City in connection with this permit and the facilities covered by this permit; (c) true and correct copies of all as-built plans, maps and regulatory approvals in connection with the facilities; and (d) proof of insurance and other related documents required to be carried and maintained under this permit. To determine whether the permittee has fully and accurately paid all sums payable to the City in connection with this permit and the facilities covered by this permit, if any, and to determine whether the permittee has complied with its other obligations, the City, or its designee, will have the right (but not the obligation) to inspect and audit the permittee's records pertaining to any permit during regular business hours on 10 days' notice to the permittee and/or the permittee shall provide the City, or its designee, electronic copies of documentation reasonably required by the City to confirm the permittee's compliance hereunder.

(m) Rearrangement and Relocation.

- (1) **Rearrangement and Relocation for City Work.** The permittee acknowledges that the City for a valid governmental purpose, in its sole discretion and at any time, may: (1) change any street grade, width or location; (2) add, remove or otherwise change any improvements owned by the City or any other public agency located in, on, under or along any public rights-of-way, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (3) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). In the event that the Director reasonably determines that any City work will require the facilities to be rearranged and/or relocated the permittee shall, at

its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the facilities within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at The permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the facilities without prior notice to the permittee when the Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all actual, reasonable and documented costs and expenses in connection with such work within 30 days after a written demand for reimbursement and reasonable documentation to support such costs. In addition, the permittee shall indemnify, defend and hold any and all indemnified City parties harmless from and against any claims in connection with rearranging or relocating the facilities, or turning on or off any water, oil, gas, electricity or other utility service in connection with the facilities. Within 90 days after any facilities have been rearranged or relocated (or such other time as may be specified by the Director in writing), the permittee shall file as-built plans and maps with the Director in the same manner and subject to the same requirements as provided in condition (f)(5).

- (2) **Rearrangement and Relocation for Emergencies.** In the event of an emergency, or where the permittee's facilities create or are contributing to an imminent danger to health, safety or property, the permittee shall immediately take proper emergency measures to remove, relay, or relocate its facilities without first applying for and obtaining City permits otherwise required for said work; provided, that the permittee shall immediately notify the City of said condition and of the emergency work, and shall obtain all necessary permits as promptly as possible after the emergency work is performed, and in any event no later than the second business day following the discovery of the condition requiring the emergency work. To the extent that the permittee does not immediately commence proper emergency measures, the City may remove, relay or relocate any or all parts of those facilities without prior notice; however, the City shall make reasonable efforts to provide prior notice. Notwithstanding the foregoing, if the City has not provided notice in advance of taking such action, the City shall provide such notice within two days after taking such action.
- (3) **Rearrangement and Relocation to Accommodate Permittee.** If the public rights-of-way to be used by the permittee have preexisting installations placed in the said public rights-of-way, the permittee shall assume the responsibility to verify the location of the preexisting installations and notify, consistent with applicable laws, the City and any third-party owner of such preexisting installations. The cost of any work required of such third-party owner or the City to provide adequate space or required clearance to accommodate the permittee's installation shall, consistent with applicable laws, be borne solely

by the permittee. Except as required by applicable laws, the City is under no obligation to move its existing installations out of the way to accommodate or make room for the permittee's facilities.

- (4) **Rearrangement and Relocation to Accommodate Third Parties.** The permittee shall reasonably cooperate with and promptly respond to requests to rearrange or relocate the facilities to accommodate third parties authorized to use the public rights-of-way ("third-party accommodations") within 60 days of such request. All reasonable costs to perform any third-party accommodations shall be borne by the person or entity to be accommodated; provided, however, that the permittee shall be solely responsible to collect any costs incurred by the permittee from such third party and the City shall have no liability to the permittee for any such costs. Prior to any third-party accommodations performed by the permittee, the permittee may require a written agreement signed by the person or entity to be accommodated to indemnify, defend and hold the permittee and its agents harmless from and against any and all claims that arise in connection with the proposed third-party accommodations, except to the extent any claims are directly caused by the permittee's or its agent's negligence or willful misconduct. Nothing in this permit shall be construed to require the permittee to perform any third-party accommodations that would materially reduce, impair or otherwise diminish the permittee's facilities or the permittee operations on the encroachment area. Within 90 days after any third-party accommodations, the permittee shall file as-built plans and maps with the Director in the same manner and subject to the same requirements as provided in condition (f)(5).
- (5) **No Right to Relocate City Property.** Nothing in this permit will be construed to require the City or authorize the permittee to change any street grade, width or location, or add, remove or otherwise change any improvements owned by the City or any other public agency located in, on, under or along any public rights-of-way, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications, for the permittee's or any third party's convenience or necessity.
- (n) **Abandonment.** If any portions of the facilities covered under any permit are no longer used by the permittee, or are abandoned for a period of at least six months, the permittee shall notify City and shall either promptly vacate and remove the facilities at its own expense or, at the discretion of the Director, with written approval, may abandon some or all of the facilities in place. Notwithstanding the foregoing, this condition shall not apply to facilities installed to meet future demand or needs for capacity and identified as such to the City on permittee's most recent annual capital improvement forecast report. If the permittee fails to remove the unused or abandoned facilities and restore the public rights-of-way within 90 days after receiving notice from the City and the Director has not approved abandonment in place, the City may, but shall not be obligated to, remove the facilities at the sole

expense of the permittee, and the permittee shall promptly reimburse the City for any and all actual, reasonable and documented expenses, including but not limited to administrative, legal and consultant costs, within 30 days after receiving an invoice from the City.

- (o) **Surety.** Before the City issues any permit required to commence construction in connection with any surface-mounted facilities, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the surface-mounted facilities and improvements and restore all public rights-of-way and affected areas based on a written estimate from a qualified contractor with experience in infrastructure removal. The written estimate must include the cost to remove all surface-mounted facilities and other improvements constructed or installed in connection with the facilities, plus the cost to completely restore any public rights-of-way and areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the above ground facilities to a standard compliant with applicable laws. The Director, in the Director's sole discretion, may authorize the permittee to post a single performance bond to cover multiple permits subject to this Policy if the amount for additional permits is increased in accordance with the terms of this condition. The performance bond required by this condition shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the surface-mounted facilities as required by this Policy.
- (p) **Annual Capital Improvement Forecasts.** Upon at least 60 days' prior written notice from the City, but in no event more than once per year, the permittee shall submit a projected capital improvement forecast for its operations within the City's territorial and jurisdictional boundaries. The capital improvement forecast must include anticipated schedules for all new facilities and repairs, replacements and modifications to existing facilities to the extent feasible and with sufficient detail to allow the City to coordinate its own public improvements and other capital improvement projects by third parties. The permittee shall also participate in any periodic capital improvement meetings held between the City and other utility or communications providers that deploy facilities in the public rights-of-way.
- (q) **Cooperation with Other Utilities.** Upon written notice by the City, the permittee agrees to reasonably cooperate in the planning, locating and constructing of its facilities in utility joint trenches or common duct banks with other similar utilities providers and/or City projects, and to participate in cost-sharing for the joint trench and ducts, when other entities are proposing excavation in the same public rights-of-way or when an underground project is being planned by the City. The foregoing shall not apply when the permittee's excavation work is due to an emergency or other maintenance or repair event that requires urgent action, or when excused by the Director for good cause.

- (r) **Potholing.** Within a time specified by the Director (but not less than 21 business days after the permittee's receipt of a written request from the City), the permittee shall, at its sole cost and expense, expose its subsurface facilities by potholing (digging a test hole) to a depth of one foot (1') below the bottom of such facility. If the permittee fails to perform the potholing, the City may (but shall not have the obligation to) proceed on the permittee's account and the permittee shall promptly reimburse the City for the actual, reasonable and documented cost of same, including without limitation administrative and actual legal costs, and the City is hereby held harmless and indemnified by the permittee for any loss and/or damages resulting from the City's performance of the required work. The provisions of this condition shall be applicable only to potholes required in connection with a public works project by the City.
- (s) **Successors and Assigns.** The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the City and the permittee and their respective successors and assigns.
- (t) **Severability of Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (1) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (2) all other provisions in this use permit or their application to any person, entity or circumstance will not be affected; and (3) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.