

ORDINANCE NO. 2006-59

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF BOERNE, TEXAS, BY REPEALING AND REPLACING CHAPTER 19, STREETS AND SIDEWALKS, ARTICLE II, CONSTRUCTION IN AND USE OF PUBLIC RIGHTS-OF-WAY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR PENALTIES NOT TO EXCEED \$500

WHEREAS, the City of Boerne (the "City") seeks to facilitate an orderly use of the Public Rights-of-Way in a non-discriminatory and competitively neutral basis; and,

WHEREAS, in accordance with applicable federal laws, 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; Tex. Transp. Code §311.002 and §311.003; and Tex. Loc. Gov't Code §282.002, the City seeks to exercise its historical rights to control and manage its Public Rights-of-Way on a competitively neutral and nondiscriminatory basis, and to implement certain police power regulations in the use of those Public Rights-of-Way, in accordance with Local Gov't Code §283.056; and,

WHEREAS, Excavations in City Streets may significantly interfere with public use of the Streets and result in negative impact on air quality, a loss of parking, and a loss of business to merchants; and,

WHEREAS, Excavations in paved Streets may significantly degrade and shorten the life of the surface of the streets, and increase the frequency and cost to the public of requisite resurfacing, maintenance and repair, regardless of the quality of restoration; and,

WHEREAS, Substantial public funds have been invested to build, maintain and repair City Streets and the City holds these Streets as an asset in trust for its citizens. It is desirable to adopt regulations to protect the structural integrity of City Streets and safeguard the value of the public investment for the benefit of City residents; and,

WHEREAS, Entities making and benefiting from an Excavation in a City street also should comply with standards and requirements for compaction, backfill and pavement restoration and resurfacing that ensure the best possible restoration of the paved surface over and adjacent to the trench; and,

WHEREAS, Regulation of Excavations in City Streets helps reduce disruption of and interference with public use of the streets, helps prevent pavement damage, helps maintain the safe condition of the Streets, protects the public health, safety and welfare, is a valid and appropriate exercise of the City's police power, and is a municipal responsibility; and,

WHEREAS, the City Council finds there is an increasing demand for use of the Public Rights-of-Way; and,

WHEREAS, from time to time it becomes necessary for the City Council to repeal and reestablish ordinances of the City of Boerne, Texas; and,

WHEREAS, Ordinance No. 2001-17, The "Construction in Public Rights-of-Way Ordinance," is no longer adequate:

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS;

That the Code of Ordinances, City of Boerne, Texas, is hereby amended by repealing and replacing Chapter 19, Streets and Sidewalks, Article II, Construction in and Use of Public Rights-Of-Way with the following:

SECTION 1. FINDINGS AND PURPOSE

- (A) Assist in the management of Facilities placed in, on or over the Public Rights-of-Way in order to minimize the congestion, inconvenience, visual impact and other adverse effects, and the costs to the citizens resulting from the placement of facilities within the Public Rights-of-Way;
- (B) Govern the use and occupancy of the Public Rights-of-Way;
- (C) Assist the City in its efforts to protect the public health, safety and welfare;
- (D) Conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the City;
- (E) To preserve the physical integrity of the streets and highways;
- (F) To control the orderly flow of vehicles and pedestrians;
- (G) Keep track of the different entities using the rights-of-way to prevent interference between them;
- (H) Assist on scheduling common trenching and street cuts; and
- (I) Protect the safety, security, appearance, and condition of the Public Rights-of-Way.

This Ordinance may be referred to as the "**Construction in the Public Rights-of-Way Ordinance**".

SECTION 2 - AUTHORITY; SCOPE.

This Ordinance applies to all Persons that place Facilities in, on or over Public Rights-of-Way.

SECTION 3 – DEFINITIONS AND REFERENCES.

The following definitions apply in this Ordinance. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory. References cited below and elsewhere in the ordinance are hereby made part of this ordinance as if included in its entirety. In the event of discrepancies between this Ordinance and references cited, this Ordinance shall control.

- (A) **Asphaltic Concrete, Hot Mix Asphaltic Concrete, Type D Asphaltic Concrete** means a specified mixture of asphalt cement with aggregate and sand mixed under high temperatures that cures with cooling and time to form a hard but flexible material used for paving roadways. Type D Asphaltic Concrete refers to a mixture with aggregate meeting a particular gradation specification per the Texas Standard Specifications published by the Texas Department of Transportation.
- (B) **Backfill** means excavation fill material that meets city specified quality requirements or the placement thereof.
- (C) **Certificate of Completion** means a document issued by the City of Boerne to a Right-of-Way User designating the date a street restoration is complete for the purposes of warranties and Guarantee periods.
- (D) **CIP** means street improvements projects included in a Capital Improvement Plan by the City of Boerne.
- (E) **City** means The City of Boerne, Texas. As used throughout, the term City also includes the designated agent of the City.
- (F) **City Manager** means the City Manager of the City or the City Manager's designee.
- (G) **City of Boerne Standards** means the specifications, details, drawings, and products used by the City in the construction, operation and maintenance of City owned facilities. These shall include standard specifications, ordinances adopted by City Council as well as specifications, details, drawings and other information regularly used by the City or referenced by the City.
- (H) **Controlled Low Strength Material and CLSM** means a mixture of cement, aggregates, sand, filler and admixtures to form a fluid material that can be poured and that quickly cures into a hard material that is not structural but generally stronger than compacted soil. This material is also known as "Flowable Fill" and usually has a compressive strength between 75 psi and 200 psi.
- (I) **Direction of the City** means all ordinances, laws, rules, resolutions, and regulations of the City that are not inconsistent with this Ordinance and that are now in force or may hereafter be passed and adopted.
- (J) **Engineer of Record** means the engineer responsible for the design and construction of the project of which all or a portion is constructed in Public Rights-of-Way.
- (K) **Facilities** means any and all of the wires, cables, fibers, duct spaces, manholes, poles, conduits, underground and overhead passageways and other equipment, structures, plant and appurtenances, concrete flatwork, driveways, pavers, and all associated physical equipment placed in, on or under the Public Rights-of-Way.
- (L) **Flexible Base** means a mixture of well graded crushed rock and stone with fine material graded to meet specifications for use as a base for paving materials for roadway construction.

- (M) **Hole** means excavation in the public Right-of-Way with the excavation having a length equal to or greater than one-half (1/2) the width of the pavement.
- (N) **OSHA** means the Occupational Safety and Health Administration or the United States Department of Labor.
- (O) **Major Thoroughfare Plan** means the latest revision of the document adopted by the City of Boerne City Council identifying existing and future thoroughfares and collector streets for the City of Boerne.
- (P) **PCI** means "pavement condition index" and is a number between 1 and 100 that is an indicator of the condition of street pavement as determined by a visual inspection made by the City in accordance with procedures specified in ASTM D6433.
- (Q) **Person** means a natural Person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity.
- (R) **Portland Cement Concrete and PCC** means a mixture of cement, aggregates, sand and water to form a fluid substance that cures into a hard structural material that when reinforced is capable of supporting significant loads. The cement in this mixture shall be portland cement.
- (S) **Professional Engineer** means a Person licensed by the Texas Board of Professional Engineers to practice engineering in the State of Texas as authorized by the State Legislature under Title 6, Subtitle A, Chapter 1001 of the Texas Occupations Code.
- (T) **Public Rights-of-Way, Right-of-Way and ROW** mean the same as in the Texas Local Government Code, §283.002(6), the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include the airwaves above a Public Right-of-Way with regard to wireless telecommunications.
- (U) **Right-of-Way User** means a person or the person's successor or assigns, who uses the Right-of-Way for purposes of work, Excavation, provision of Services, or to install, construct, maintain, repair Facilities, thereon, including, but not limited to, landowners and service providers.
- (V) **Service** means a commodity provided to a Person by means of a delivery system that is comprised of Facilities located or to be located in the Right-of-Way, including but not limited to gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum, or sanitary sewage.
- (W) **Texas Manual on Uniform Traffic Control Devices and TMUTCD** means the latest revision of the publication of the same name published by the Texas Department of Transportation.
- (X) **Traffic Control Plan and TCP** means a drawing and/or other documents showing the methods to be used to manage traffic in and around a work area including detours, road closures, lane closures, signs, markings and other traffic control devices.

- (Y) **Utility** means any privately or publicly owned entity which uses public Rights-of-Way to furnish to the public any general public service, including, without limitation, sanitary sewer, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam, chilled water, internet, data communication, voice communication, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the Right-of-Way.

SECTION 4 – QUALITY ASSURANCE

- (A) All projects that include excavation in ROW for a utility shall include final design drawings sealed, signed and dated by the Professional Engineer responsible for development of the drawings.
- (B) A Professional Engineer shall be designated as the Engineer of Record for the Right-of-Way User and shall be responsible for all construction involving excavation within the ROW.
- (C) All test reports shall be certified by qualified personnel of a testing laboratory, reviewed by the Engineer of Record, and submitted to the City.

SECTION 5 - MUNICIPAL AUTHORIZATION REQUIRED.

- (A) Any Person seeking to place Facilities on, in or over the Public Rights-of-Way shall first file an application for a construction/building permit with the City and shall abide by the terms and provisions of this Ordinance pertaining to use of the Public Rights-of-Way.
- (B) Any Person, prior to placing, reconstructing, or altering Facilities in, on or over the Public Rights-of-Way, must obtain separate municipal authorization from the City.
- (C) Any Person with a current, unexpired consent, franchise agreement or other authorization from the City ("Grant") to use the Public Rights-of-Way that is in effect at the time this Ordinance takes effect shall continue to operate under and comply with that Grant until the Grant expires or until it is terminated by mutual agreement of the City and the Person, or terminated as otherwise provided for in law.

SECTION 6 - ADMINISTRATION AND ENFORCEMENT.

- (A) The City Manager shall administer and enforce compliance with this Ordinance.
- (B) A Person shall report information related to the use of the Public Rights-of-Way that the City Manager requires in the form and manner reasonably prescribed by the City Manager.
- (C) The City Manager shall report to the City Council upon the determination that a Person has failed to comply with this Chapter.

SECTION 7 - CONSTRUCTION OBLIGATIONS.

A Person is subject to reasonable police power regulation of the City to manage its Public Rights-of-Way in connection with the construction, expansion, reconstruction, maintenance or repair of Facilities in the Public Rights-of-Way, pursuant to the City's rights as a custodian of public property,

based upon the City's historic rights under state and federal laws. Such regulations include, but are not limited to, the following:

- (A) At the City's request, a Person shall furnish the City accurate and complete information and a construction/building permit application relating to the construction, reconstruction, removal, maintenance, operation and repair of Facilities performed by the Person in the Public Rights-of-Way.
- (B) A Person may be required to place certain Facilities within the Public Rights-of-Way underground according to applicable City requirements absent a compelling demonstration by the Person that, in any specific instance, this requirement is not reasonable or feasible nor is it equally applicable to other similar users of the Public Rights-of-Way.
- (C) A Person shall perform operations, excavations and other construction in the Public Rights-of-Way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the Public Right-of-Way. The City shall waive the requirement of trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the City by the Person. 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 reasonable construction directions given by the City in order to minimize any such interference.
- (D) A Person must obtain a construction/building permit and any other permit, as reasonably required by applicable City Ordinances, prior to any excavation, construction, installation, expansion, repair, removal, relocation or maintenance of the Person's Facilities. Once a permit is issued, Person shall give to the City a minimum of forty-eight (48) hours notice (which may be at the time of the issuance of the permit) prior to undertaking any of the above listed activities on its Facilities in, on or under the Public Rights-of-Way. The failure of the Person to request and obtain a construction/building permit from the City prior to performing any of the above listed activities in, on or over any Public Right-of-Way, except in an emergency as provided for in Subsection (K) below, will subject the Person to a stop-work order from the City and enforcement action pursuant to the City's Ordinances. If the Person fails to act upon any permit within 90 calendar days of issuance, the construction/building permit shall become invalid, and the Person will be required to obtain another construction/building permit.
- (E) When a Person completes construction, expansion, reconstruction, removal, excavation or other work, the Person shall promptly restore the rights-of-way in accordance with applicable City requirements. A Person shall replace and properly relay and repair the surface, base irrigation system and landscape treatment of any Public Rights-of-Way that may be excavated or damaged by reason of the erection, construction, maintenance, or repair of the Person's Facilities within thirty (30) calendar days after completion of the work in accordance with existing standards of the City in effect at the time of the work.
- (F) Upon failure of a Person to perform any such repair or replacement work, and five

(5) days after written notice has been given by the City to the Person, the City may repair such portion of the Public Rights-of-Way as may have been disturbed by the Person, its contractors or agents. Upon receipt of an invoice from the City, the Person will reimburse the City for the costs so incurred within thirty (30) calendar days from the date of the City invoice.

- (G) Should the City reasonably determine, within two (2) years from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional restoration work to meet existing standards of the City, a Person shall perform such additional restoration work to the satisfaction of the City, subject to all City remedies as provided herein.
- (H) Notwithstanding the foregoing, if the City determines that the failure of a Person to properly repair or restore the Public Rights-of-Way constitutes a safety hazard to the public, the City may undertake emergency repairs and restoration efforts. A Person shall promptly reimburse the City for all costs incurred by the City within thirty (30) calendar days from the date of the City invoice.
- (I) A Person shall furnish the City with construction plans and maps showing the location and proposed routing of new construction or reconstruction as least fifteen (15) days before beginning construction or reconstruction that involves an alteration to the surface or subsurface of the Public Rights-of-Way. A Person may not begin construction until the location of new Facilities and proposed routing of the new construction or reconstruction and all required plans and drawings have been approved in writing by the City, which approval will not be unreasonably withheld, taking due consideration of the surrounding area and alternative locations for the Facilities and routing.
- (J) If the City Manager declares an emergency with regard to the health and safety of the citizens and requests by written notice the removal or abatement of Facilities, a Person shall remove or abate the Person's Facilities by the deadline provided in the City Manager's request. The Person and the City shall cooperate to the extent possible to assure continuity of service. If the Person, after notice, fails or refuses to act, the City may remove or abate the facility, at the sole cost and expense of the Person, without paying compensation to the Person and without the City incurring liability for damages.
- (K) Except in the case of customer service interruptions and imminent harm to property or Person ("Emergency Conditions"), a Person may not excavate the pavement of a street or public rights-of-way without first complying with City requirements. The City Manager or designee shall be notified immediately regarding work performed under such Emergency Conditions, and the Person shall comply with the requirements of City standards for the restoration of the Public Rights-of-Way.
- (L) Within sixty (60) days of completion of each new permitted section of a Person's Facilities, the Person shall supply the City with a complete set of "as built" drawings for the segment in a format used in the ordinary course of the Persons business and as reasonably prescribed by the City, and as allowed by law.

(M) Joint Construction

- (1) It is the City's desire to minimize the amount of time its Public Rights-of-Way are under construction. Construction in the Public Rights-of-Way causes traffic congestion, inconvenience to vehicle and pedestrian citizen travelers, and eventual weakness of the infrastructure. The City will therefore require all applicants for a construction/building permit for placement of Facilities in the Public Rights-of-Way to endeavor to coordinate and enter into joint construction agreements of their Facilities in the Public Rights-of-Way. Once the City receives a Persons application for a construction/building permit, the City will provide the applicant with the names, addresses and phone numbers of contact persons of other applicants for construction in the Public Rights-of-Way. It will be the responsibility of all the applicants to coordinate with other Persons in the excavation of the Public Rights-of-Way for the installation, reconstruction, removal, relocation, maintenance, operation, or repair of their Facilities. The applicants are required to use their best efforts to coordinate with each other and provide the City with a joint construction time line. If the City has current applications for a construction/building permit pending with the City and an applicant refuses to cooperate with any other applicants for joint construction, that applicant's request for a construction/building permit shall be denied for the requisite time period.
- (2) Once a construction in the right-of-way permit has been granted and the construction project completed, the City shall impose a four (4) month moratorium on construction in the Public Rights-of-Way in any location that has previously been disturbed or excavated. No construction/building permit shall be issued until the City Manager is fully satisfied that the applicant had contacted and attempted to coordinate a joint construction agreement with other pending applicants. An applicant's failure to cooperate in the joint construction of facilities may result in the denial of their construction/building permit application for the requisite time period.

SECTION 8 – STANDARDS FOR EXCAVATION AND RESTORATION OF PUBLIC RIGHTS-OF-WAY

No excavation or restoration is allowed in ROW that does not meet the requirements of this Ordinance.

- (A) **Safety:** The excavation and shoring of all trenches shall be in accordance with OSHA standards for trench protection. A trench safety and excavation protection plan shall be available for review upon request of the City at the excavation site. All work may be stopped if a trench safety and excavation protection plan is not on site. Right-of-Way Users with unsatisfactory safety records may be excluded from excavating in ROW.
- (B) **Jacking and Boring:** Where utilities are to be installed under a roadway by jacking or boring, the operation is to be inspected by the City. The following guidelines are identified for a Jacking and Boring operation. Construction operations shall not weaken, impair or damage the existing roadway and infrastructure. The Right-of-Way User is responsible for determining the vertical and horizontal location of any facilities that might conflict with the jacking or

boring operation. Care must be taken not to damage other utilities. The location of the boring pits shall be sufficient distance from the roadway to prevent undermining of the curb or shoulder. The City shall approve the location of the bore pit. Bore pits shall be excavated to a depth sufficient to maintain a minimum depth of thirty-six inches (36") from the surface to the top of the bore. Water jetting types of boring equipment will not be permitted. The jacking or boring shall be in accordance with the City of Boerne Standards. Clear space between the casing and the surrounding excavation shall be completely filled by pressure grouting the entire length of the installation. The pits or trenches excavated to accomplish this operation shall be backfilled immediately after the work has been completed.

- (C) Pavement Excavations: Excavation in any street not scheduled for reconstruction, paving, repaving or resurfacing should be kept to a minimum. The Right-of-Way User shall complete final pavement restoration of the excavated area within 4 weeks after final backfill is completed and accepted. The Right-of-Way User shall protect and prevent damage to existing utilities. If utilities are damaged as a result of the work in the Public Rights-of-Way, the Right-of-Way User shall be financially responsible for repairs or replacements required by the Owner of the Utility.
- (D) PCC Pavements: If the existing pavement is Portland Cement Concrete (PCC), the concrete shall be cut first with a saw to a minimum depth of half the thickness of the concrete. The concrete can then be broken out with an air chisel or pavement breaker. Care shall be taken so as not to break back more than 6" of PCC beneath the saw cut.
- (E) Asphalt PCI: The following provisions apply to excavations in streets with certain PCI indexes.
 - (1) PCI OF 0-50: Excavations in streets and/or ROW with PCI values of fifty (50) or less shall be deemed to be excavations in streets with nominal loss of life. The ROW excavator shall promptly repair the trench envelope and surface in accordance with City of Boerne Standard Specifications and requirements of this Ordinance.
 - (2) PCI OF 51-85.: In the event of an excavation in a street or ROW having a PCI of fifty-one (51) to eighty-five (85), the ROW excavator shall promptly repair the trench envelope and surface in accordance with City of Boerne Standard Specifications and requirements of this Ordinance. These excavations require full width pavement repair extending a minimum of 10 Feet beyond the extreme limits of the excavation from curb to curb.
 - (3) PCI OF 86-100: Excavations in streets and/or right of way with PCI values of eighty-six (86) or greater shall be deemed one hundred (100) percent loss of pavement life. These excavations require block to block and curb to curb pavement repair. Use of a "hot mix asphalt repaving process" is an option with approval of the City Manager. Narrow excavations (i.e. trench widths less than 8") shall be backfilled with Controlled Low Strength Material and finished with an asphaltic concrete surface layer. Excavations with trench widths greater than eight inches (8") shall be backfilled to the lower elevation of the existing base material with Flexible Base. The remaining areas shall be backfilled with a pavement structure equivalent to the existing pavement based on location of the cut. The

entire block shall be milled a minimum of 1 1/2 Inches full width and a 1 1/2 inch Type D asphaltic concrete overlay placed in accordance with City of Boerne Standard Specifications

- (F) Temporary Restoration: If trenches are not permanently backfilled by the end of the working day, the Right-of-Way User shall temporarily backfill and plate the trench to open to traffic; the plates shall be of appropriate capacity for potential traffic loads and shall be secured by applying Hot Mix Asphaltic Concrete, Cold Laid around the perimeter of the plate and tack welding sections end to end to secure the plate from lateral movement. Pinning of the plates with rebar or other objects will not be allowed. At no time shall the plates be placed in such a manner that causes a traffic hazard to pedestrians, cyclists and other non-vehicular traffic. The City recommends that steel plates be used when necessary over any open trench to maintain a safe construction site.
- (G) Curbs: If the excavation occurred under the existing curb and gutter and undermines more than four feet (4') of curb line, the undermined curb and gutter shall be removed and replaced to the nearest joints on each side of the cut. If the excavation occurred under machine laid curb (not an integral curb and gutter) and has no joints, the curb shall be removed two (2') feet back from the excavation wall on each side but no less than a total of eight (8') feet. If the curb or curb and gutter is undermined less than four feet (4'), Controlled Low Strength Material (CLSM) may be used as backfill and bedding under the curb. The CLSM shall be placed over the bedding material encasing the utility line and shall extend a minimum of six inches (6") in the back and in front of the curb or curb and gutter and a minimum of one inch (1") above the bottom of the curb or curb and gutter and two inches (2") below the proposed pavement. The placement of the CLSM shall insure that all undermined areas will rest on the CLSM free of voids. There shall be a minimum of twelve inches (12") of CLSM under the bottom of the existing curb or curb and gutter. All curb or curb and gutter with visible signs of damage or movement shall be removed and replaced. CLSM used shall be in accordance with City of Boerne Standard Specifications.
- (H) Sidewalks: If the excavation occurred under an existing sidewalk, the sidewalk shall be removed back to the nearest expansion or dummy joint beyond the trench wall and replaced after the work is completed. Concrete and physical installation used shall be in accordance with City of Boerne Standard Specifications and Standards.
- (I) Driveways shall be restored to original condition or better, but shall meet City of Boerne standards even if the original did not meet standards. Any curbing on the driveway that was damaged shall be replaced.
- (J) Testing: The Right-of-Way User shall provide material testing for each phase of the work at no cost to the City.
 - (1) Laboratory and Technician Qualification Requirements: Laboratories shall have current accreditation by the American Association for Laboratory Accreditation (A2LA). Material tests shall be taken by technicians with current certification as follows.
 - a. Soil and aggregates: National Institute for Certification in Engineering technologies (NICET) Level 11

- b. Portland Cement Concrete: (NICET) Level 11 or American Concrete Institute(ACI) Level 1
 - c. Asphalt Concrete: (NICET) Level II or Texas Department of Transportation TxDOT Level 1A (Plant Inspection), Level 1B (Field Inspection)
- (2) Frequency and Types of Tests: The following testing frequencies shall be followed. The number of tests required may be adjusted for large projects when different frequencies are provided in individual standard specification section if approved by the City Manager.
- a. Minimum Horizontal Frequencies for Density Tests:
 - i. Utility Trench-One test per 100 linear feet per lift for each utility trench.
 - ii. Utility Hole, Manhole, or Valve Box-One test per lift.
 - b. Excavation Activities Tests:
 - i. Backfill-One test for every 2 vertical feet and 100 linear feet or fraction thereof, with at least one test per lift,
 - ii. Cement Stabilized Sand-Testing as directed by City Manager.
 - iii. Concrete Pavement, Curbs, Gutters, and Sidewalks-Four compressive test specimens per each 100 cubic yards or portion thereof.
 - c. Asphalt Concrete Pavement:
 - i. Asphalt Content-One test per 500 tons or fraction thereof of mix produced with a minimum of one test per day's placement.
 - ii. Aggregate Gradation-One test per 500 tons or fraction thereof of mix produced with a minimum of one test per day's placement.
 - iii. In-Place Density-One test per 500 tons or fraction thereof of mix placed with minimum of one test per day's placement.
 - d. Base Course Materials: - One test per 400 lane feet with no fewer than 2 tests per Excavation.
- (3) City Inspection/Certificate of Completion: All construction work within the public rights-of-way shall be subject to inspection by the City Manager and/or third party inspection. It shall be the responsibility of the Right-of-Way User to provide safe access for the inspector to perform the required Inspections. Upon completion and receipt of affirmation on Inspection and successful execution of required tests, the City will issue a Certificate of Completion. Upon issuance of the Certificate, the Guarantee Period provided in the Ordinance will commence.
- (4) Guarantee Inspection: The City will inspect the work prior to expiration of the guarantee period. If deficient work is found, Right of Way User shall correct work as provided by Ordinance.
- (K) Warranty and Guarantee: The Utility Owner shall guarantee all ROW restoration made by or on behalf of the utility owner for the "life of the street". The "life of the street" for these purposes is defined to be until such time as that certain street or ROW is repaved by the city or another, in the same location as the excavation, or until such time as the PCI of such street or ROW drops below fifty (50). If the PCI of the street or ROW at the time of repair is fifty (50) or below, the Utility Owner

shall guarantee all ROW restoration made by or on behalf of the utility owner for two (2) years.

- (L) Failures: In the event of a failure of the restoration, the City Manager shall notify the Utility Owner of the failure. The Utility Owner shall have 30 days to replace the failed restoration. If the restoration is not replaced in accordance with City of Boerne Standards within 30 days, then the City Manager may cause repairs to be made by City forces or contractors as described herein at the Utility Owner's expense.
- (1) PCI of 0-50: The utility trench envelope shall be excavated and backfilled with CLSM. The pavement shall be repaired with a minimum of six (6) inches of asphalt treated base and one and one-half (1 ½) inches of hot mix asphaltic concrete per City Standards for pavement repairs.
 - (2) PCI of 51-85: The utility trench envelope shall be excavated and backfilled with CLSM. The pavement shall be repaired curb to curb and ten (10) feet beyond the original repair with a minimum of six (6) inches of asphalt treated base and one and one-half (1 ½) inches of hot mix asphaltic concrete per City Standards for pavement repairs.
 - (3) In the event of any trench failure in the street or ROW during the Guarantee Period, the ROW user shall reimburse the city for its costs to repair the failure, and pay the pavement degradation recovery fee, calculated as set forth herein. Additionally, in the event of such failure, the ROW user shall within forty eight (48) hours repair the subject trench envelope, if required by the City Manager.
- (M) Traffic Control: The Utility Owner shall have full responsibility for providing for adequate traffic control in and around the excavation in accordance with the Texas Manual on Uniform Traffic Control Devices. Except in emergency situations, traffic must be maintained through all ROW unless otherwise authorized by the City Manager.
- (1) A Traffic Control Plan (TCP) shall be submitted with any Permit application for all proposed work that is to be conducted on a roadway that appears on the City's Major Thoroughfare Plan or is otherwise identified by the City Manager as having substantial traffic. The TCP shall describe the method by which vehicular and pedestrian traffic will be controlled during the Excavation process. For emergency excavations, no TCP will be required, but all signs, barricades and other necessary Traffic-control Devices shall be installed in accordance with the Texas Manual on Uniform Traffic Control Devices. - A TCP typically may not be required for work on a residential street, but all signs, barricades and other necessary Traffic-control Devices shall be installed in accordance with the Texas Manual on Uniform Traffic Control Devices.
 - a. Specific anticipated construction dates and work hours must be included as part of the TCP. The City Manager may specify the exact dates and times of day under which construction activity may occur and specify any street or lane closures that are permitted upon the face of the approved Permit. Utilization of uniformed police officers may be required as part of the approved Permit and TCP to effectively manage traffic operations.

- b. Traffic flow during peak hours. No work that would interfere with the traffic flow shall be conducted during peak hours on a roadway that appears on the City's Major Thoroughfare Plan or on any other roadway that is identified by the City Manager as having substantial traffic flow during peak hours. Typically, peak hours are from 6:00 a.m. to 9:00 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday. Hours and days may vary throughout various activity centers of the City.
 - c. End of day lane conditions. When work is stopped for the day, all lanes must be reopened to traffic, unless the City Manager has granted prior approval. A traffic lane shall be considered satisfactorily open if it meets the standards for the temporary surfaces in Subsection (F) above.

- (N) The Right of Way User working in any ROW is responsible for the safe movement of traffic (pedestrian and/or vehicular) through the construction area. Right of Way User shall meet all requirements for barricading and traffic control as specified in the Texas Manual on Uniform Traffic Control Devices (TMUTCD).
 - (1) Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including those in TMUTCD should place and maintain the traffic control devices in construction area.
 - (2) If the Right of Way User does not subcontract the barricading to a firm specializing in traffic control, then he must employ trained and qualified person(s) and must submit the qualifications and name(s) of employees to the City Manager for approval prior to commencing work. Right of Way User must also at this time submit for review a traffic control plan with all signs and barricades conforming to the requirements of TMUTCD.
 - (3) All barricades used by the Right of Way User shall be of the type, size and design specified by TMUTCD.
 - (4) Flashing or steady burning amber lights as specified by the TMUTCD are required on barricades.
 - (5) All traffic control devices must display accurate information describing the exact road situation.
 - (6) If the City Manager finds non-compliance with the TMUTCD, he will notify the Right of Way User in writing of the violation. If the Right of Way User ignores the citation, then the City Manager will call a firm specializing in traffic control and place the necessary devices as required. The CITY will pay the charges but the Right of Way User must reimburse the CITY for all expenses plus a \$500 administrative fee. Failure to pay all charges will be sufficient grounds for denying subsequent permits.
 - (7) All traffic control devices must be removed immediately upon completion of work.

- (O) Specifications and Standards: All construction within ROW shall conform to the latest version of the City Standard Specifications and Standards.

SECTION 9 - CONDITIONS OF PUBLIC RIGHTS-OF-WAY OCCUPANCY.

- (A) In the exercise of governmental functions, the City has first priority over all other uses of the Public Rights-of-Way. The City reserves the right to lay sewer, gas, water, electric and other pipe lines or cables and conduits, and to do underground and overhead work, and attachments, restructuring or changes in aerial Facilities in, across, along, over or under a public street, alley or Public Right-of-Way occupied by a Person, and to change the curb, sidewalks or the grade of streets.
- (B) The City shall assign the location in or over the Public Rights-of-Way among competing 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 the City can demonstrate that there is limited space available for additional users, may limit new users, as allowed under state or federal law.
- (C) If the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or Public Rights-of-Way, the grant to an abutting landowner shall be subject to the rights of the previously authorized user of the Public Rights-of-Way. If the City closes or abandons a Public Right-of-Way that contains a portion of a Person's Facilities, the City shall close or abandon such Public Right-of-Way subject to the rights of the Person.
- (D) If the City gives written notice, a Person shall, as its own expense, temporarily or permanently, remove, relocate, change or alter the position of Person's Facilities that are in the Public Rights-of-Way within 120 days, except in circumstances that require additional time as reasonably determined by the City based upon information provided by the Person. For projects expected to take longer than 120 days to remove, change or relocate, the City will confer with Person before determining the alterations to be required and the timing thereof. The City shall give notice whenever the City has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a City or other governmental public improvement in the Public Rights-of-Way. This section shall not be construed to prevent a Person's recovery of the cost of relocation or removal from third parties who initiate the request for relocation or removal, nor shall relocation or removal be required if improvements are solely for beautification purposes without prior joint deliberation and agreement with Person.

If the Person fails to relocate Facilities in the time allowed by the City in this Section, the Person may be liable to the City for such delay, as set forth in the City Code of Ordinances, now or hereafter enacted.

Notwithstanding anything in this Subsection (D), the City Manager and a Person may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change.

- (E) During the term of its Municipal Consent, a Person may trim trees in or over the Rights-of-Way for the safe and reliable operation, use and maintenance of its Facilities. All tree trimming shall be performed in accordance with standards promulgated by the City. Should the Person, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Person shall promptly reimburse the City for all costs incurred within thirty (30) working days.

- (F) Persons shall temporarily remove, raise or lower their aerial Facilities to permit the moving of houses or other bulky structures, if the City gives written notice of no less than 48 hours. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. Person may require prepayment or prior posting of a bond from the party requesting temporary move.

SECTION 10 - INSURANCE REQUIREMENTS.

- (A) A Person shall obtain and maintain insurance in the amounts reasonably prescribed by the City with an insurance company licensed to do business in the State of Texas acceptable to the City throughout the term of a Municipal Consent conveyed under this Chapter. A Person shall furnish the City with proof of insurance at the time of the application for the construction/building permits. The City reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the City Manager determines that changes in statutory law, court decisions, or the claims history of the industry or the Person require adjustment of the coverage. For purposes of this section, the City may accept certificates of self-insurance issued by the State of Texas or letters written by the Person in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, for the City to accept such letters the Person must demonstrate by written information 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. The City's current insurance requirements are described in Exhibit "A" attached hereto.
- (B) Person shall furnish, at no cost to the City, copies of certificates of insurance evidencing the coverage required by this Section to the City. 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. If the City requests a deletion, revision or modification, a Person shall exercise reasonable efforts to pay for and to accomplish the change.
- (C) An insurance certificate shall contain the following required provisions:
 - (1) name the City and its officers, employees, board members and elected representatives as additional insureds for all applicable coverage;
 - (2) provide for 30 days notice to the City for cancellation, non-renewal, or material change; and
 - (3) provide that notice of claims shall be provided to the City Manager by certified mail.
- (D) Person shall file and maintain proof of insurance with the City Manager. An insurance certificate obtained in compliance with this section is subject to review by the City attorney and approval by the City Manager. The City may require the certificate to be changed to reflect changing liability limits. A Person shall immediately advise the City Attorney of actual or potential litigation that may develop which may affect an existing carrier's obligation to defend and indemnify.

- (E) 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 primary coverage for losses covered by the policies.
- (F) The policy clause "Other Insurance" shall not apply to the City if the City is an insured under the policy.
- (G) The Person shall pay premiums and assessments. A company which 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.
- (H) **Financial Guarantees:** A Right-of-Way User whose work in ROW will cost \$15,000 or more shall provide a performance bond for the total cost of construction in ROW including restoration. Alternatively, a Utility or other Right-of-Way User may post an annual Bond in the amount of the construction anticipated to be performed in ROW during that year, including restoration. All bonds shall be written on a form approved by the City Manager and provided through a surety listed on the US Department of Treasury's Listing of Approved Sureties (Department Circular 570). Annual bonds must be renewed until work is complete and all restorations have been accepted by the City. The holder of an annual bond must submit proof of renewal of the bond within 30 days of the bonds expiration. In the event construction is abandoned, restoration is not completed or repairs are not made to restoration, the City shall file claim against the bond for the full cost to complete the construction, restoration or repair.

SECTION 11 - INDEMNIFICATION

- (A) Unless otherwise provided by Tex. Loc. Gov't. Code §283.057, any permit issued under this ordinance shall not be effective unless it contains the following:

Each person agrees to and shall indemnify, hold harmless and defend, the City, its officers, agents and employees, collectively referred to as "City", from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees for injury to or death of any person, or for damage to any property, arising out of or in connection with the construction, maintenance, operation, repair, replacement, adjustment or removal of any part or all of the Facilities permitted herein, where such injuries, death, or damages are caused by the concurrent negligence of the City and Person and/or by the joint or sole negligence of the Person. It is the expressed intention of the parties hereto, both Person and the City, that the indemnity provided for in this paragraph is an indemnity by Person to indemnify, protect and defend the City from the consequences of (i) the City's own negligence, where that negligence and Persons negligence are concurring causes of the injury, death or damage; and/or (ii) Persons joint and sole negligence. Furthermore, the indemnity provided for in this paragraph shall have no application to any claim, loss, damage, cause of action, suit and liability where the injury, death or damage results from the sole negligence of the City unmixed with the fault of any other person or entity.
- (B) Each Person placing Facilities in the Public Rights-of-Way shall agree to promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or

expenses (i) for the repair, replacement, or restoration of City's or any other public utilities' 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, the 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.

- (C) 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 other Person or entity.

SECTION 12 - NO GRANT OF CITY EASEMENT

- (A) Nothing in this ordinance shall be construed as granting permission for the use of any public way within the CITY, without the express consent of the City Council.
- (B) Nothing in this ordinance shall be construed as an assumption by the CITY of any responsibility of an owner or operator of Facilities not owned by the CITY, and no CITY officer, employee or agent shall have authority to relieve an owner or operator of Facilities from their responsibility under this ordinance or any other law.

SECTION 13 - SEVERABILITY.

The provisions of this ordinance are severable. In the event this Ordinance or any procedure provided in this Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, the remaining and lawful provisions shall be full force and effect and the City shall promptly promulgate new or revised provisions in compliance with the authority's decision or enactment.

SECTION 14 - GOVERNING LAW.

This Ordinance shall be construed in accordance with City Ordinances in effect on the date of passage of this Ordinance to the extent that such Ordinances 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, pursuant to Sections 6 and 7 or as otherwise provided by law.

SECTION 15 - UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY.

The City may institute all appropriate legal action to prohibit any Person from knowingly using the Public Rights-of-Way unless the Person has complied with the terms of this Ordinance.

Penalty for Violation

Each violation of this Ordinance shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00). Each day during which a violation continues shall be deemed a separate violation of this Ordinance. Any fines collected pursuant to this Section shall be deposited to the Street Maintenance account of the General Fund of the City of Boerne.

PASSED and APPROVED on first reading this the 24th day of October, 2006.

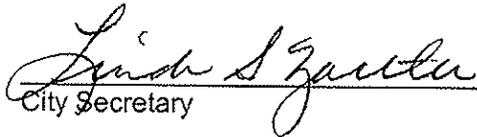
PASSED, APPROVED, and ADOPTED on second reading this the 14th day of November, 2006.

APPROVED:



Mayor

ATTEST:



City Secretary

Exhibit "A"

City of Boerne Insurance Requirements

An applicant for a permit for construction/building in the public right-of-way shall maintain at all times during the life of the construction/building permit; during the term of municipal consent/franchise agreement.; and as long as the Person is providing local access under Tex Loc. Gov't Code 283, shall maintain at all times, liability insurance in the total amount of one million dollars (\$1,000,000.00). The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards, as it pertains to all Facilities owned by the Person in a Public Right-of-Way in the City's jurisdiction. Such policy shall name the City of Boerne, its officers, agents, and employees as an additional insured. Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing, not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits. The applicant shall file the required original certificate of insurance prior to any issuance of a permit to commencement of work.