

CITY OF GRANDVIEW

BILL NO. 5470

ORDINANCE NO. 5255

AN ORDINANCE REPEALING ORDINANCE NUMBERS 571, 1550 AND 4881, CONCERNING EXCAVATION WITHIN THE PUBLIC RIGHTS-OF-WAY, AND ENACTING NEW RIGHTS-OF-WAY MANAGEMENT REGULATIONS WHICH ESTABLISH PROCEDURES AND REQUIREMENTS RELATING TO CONSTRUCTION OF FACILITIES IN, ACROSS, UNDER, AND OVER PUBLIC RIGHTS-OF-WAY.

WHEREAS, the City of Grandview has previously regulated the use of Public Rights-of-Way through a disparate variety of ordinances and practices; and

WHEREAS, changes in the various industries involving advancements in the convergence of technologies and the emergence of utility competition has increased and will continue to increase the number of requests to install utility facilities in, across, under, and over Public Rights-of-Way; and

WHEREAS, this increasing number of requests means increased disruption of the primary uses of such Public Rights-of-Way, increased damage to such Public Rights-of-Way, and decreased available space for future public and private utility installations; and

WHEREAS, it is determined by the Board of Aldermen that it is in the best interest of the City and its residents and businesses to minimize disruption of the primary uses of Public Rights-of-Way, and to minimize damage to Public Rights-of-Way; and

WHEREAS, it is further determined by the Board of Aldermen that it is in the best interest of the City and its residents and businesses to establish a more uniform and efficient approach to handling requests for access to and use of Public Rights-of-Way.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF GRANDVIEW, MISSOURI, AS FOLLOWS:

Section 1. Ordinances Repealed. Ordinance Numbers 571, 1550 and 4881, concerning excavation within the public rights-of-way, codified at Chapter 26, Article II, of the Code of Laws of the City of Grandview, are hereby repealed.

Section 2. Chapter 26, Article II - Rights-of-Way Management. A new ordinance regulating public rights-of-way, to be codified at Chapter 26, Article II, of the Code of Laws of the City of Grandview, is hereby enacted to read as follows:

SECTION 1. APPLICABILITY

To the extent permitted by law, this Chapter shall apply to all Persons desiring to construct, operate, or maintain Facilities in, across, under or over Public Rights-of-Way within the City.

SECTION 2. DEFINITIONS.

For the purposes of this Chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense and vice versa, words in the plural number include the singular number, and vice versa, and the masculine gender includes the feminine gender and vice versa. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated or clearly contrary to the context, terms, phrases, words, and abbreviations not defined herein shall be given the meaning set forth in the City Code, and if not defined therein, their common and ordinary meaning. For further convenience, the first letter of terms, phrases, words, and abbreviations defined in this Chapter have been capitalized, but an inadvertent failure to capitalize such letter shall not affect its meaning, nor shall the inadvertent capitalization of the first letter of a term, phrase, word or abbreviation not defined herein affect the meaning thereof.

- (A) *Applicant* - means the specific Person applying for a Permit under this chapter.
- (B) *Application* - means that form designed by the City Engineer which an Applicant must use to obtain a Permit.
- (C) *Board of Aldermen* - shall mean the governing body of the City.
- (D) *City* - shall mean the City of Grandview, Missouri.
- (E) *City Administrator* - shall mean the City Administrator of City, or his designee.
- (F) *City Engineer* - shall mean the City Engineer of City, or his designee.
- (G) *Emergency Facilities Work* - shall mean Facilities Work made necessary by unexpected emergency condition, including, but not limited to the following:
 - (1) an unexpected or unplanned outage, cut, rupture, leak or any other failure of Facilities that prevents or significantly jeopardizes the ability of a public utility to provide service to customers;
 - (2) an unexpected or unplanned outage, cut, rupture, leak or any other failure of Facilities that results or could result in danger to the public or a material

delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak or other such failure is not immediately repaired, controlled, stabilized or rectified; or

- (3) any occurrence involving a Facility that a reasonable person would conclude, under the circumstances, warrants immediate and undelayed action by the owner of the Facility, in order to protect the public and the Public Rights-of-Way.
- (H) *Excavation* - shall mean any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed or otherwise displaced by means of any tools, equipment or explosives; *provided*, that any *de minimis* displacement or movement of ground caused by pedestrian or vehicular traffic which does not materially disturb or displace surface conditions of the earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground shall not be deemed Excavation.
- (I) *Facilities* - shall mean any conduit, duct, line, pipe, wire, hose, cable, culvert, tube, pole, receiver, transmitter, satellite dish, repeater, amplifier or other device, material, apparatus or medium, useable (whether actually used for such purpose or not) for the transmission or distribution of any service or commodity, installed below or above ground within the Public Rights-of-Way of the City, whether used privately or made available to the public.
- (J) *Facilities Work* - shall mean the installation of new Facilities, or any change, replacement, removal, alteration or repair of existing Facilities that requires Excavation within the Public Rights-of-Way; *provided*, that neither (a) tree trimming/removal nor (b) the replacement of utility poles and related equipment at an existing location or immediately adjacent to an existing location, shall constitute Facilities Work.
- (K) *Minor Facilities Work* - means Facilities Work that will not disturb any sidewalk or street pavement, sanitary sewer, drainage system or other structure.
- (L) *Normal Business Hours* - shall mean 8 a.m. to 5 p.m., Monday through Friday.
- (M) *Permit* - means a Permit granted by the City Engineer to do Facilities Work.
- (N) *Person* - shall mean an individual, partnership, association, joint stock company, trust, organization, limited liability company, corporation or other entity, or any lawful successor thereto or transferee thereof, but such term does not include the City.

- (O) *Project* - shall mean a written plan of work prepared and presented by an Applicant that encompasses an outlined scope of Facilities Work to be conducted within the Public Rights-of-Way.
- (P) *Public Rights-of-Way* - shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, public easement or other similar property in which the City now or hereafter holds any property interest, which was dedicated or acquired for public use. No reference herein, or in any Permit, to "Public Rights-of-Way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes. Public Rights-of-Way includes neither (a) the airwaves above the Public Rights-of-Way with regard to cellular or other non-wire telecommunications or broadcast services nor (b) private property subject to private easement.

SECTION 3. PERMIT REQUIREMENTS.

Any person desiring to conduct Facilities Work within the Public Rights-of-Way must first apply for and obtain a Permit, in addition to any other building permit, license, easement or authorization required by law, unless such Facilities Work is Emergency Facilities Work. A Person conducting Emergency Facilities Work shall as soon as practicable notify the City of the location of the work and shall apply for the required Permit by the next business day following the commencement of such Emergency Facilities Work. A permit should be obtained for each Project.

- (A) *Applications.* All Applications for Permits shall be submitted to the City Engineer. The City Engineer shall design and make available standard forms for such Application, requiring such information as the City Engineer determines to be necessary, to be consistent with the provisions of this Chapter and to accomplish the purposes of this Chapter. Each Application shall contain the following information:
- (1) the name, address, and telephone number of the Applicant;
 - (2) the legal status of the Applicant;
 - (3) the name, address and telephone number of a responsible person whom the City may notify or contact at any time concerning the Applicant's Facilities Work within the Public Rights-of-Way;
 - (4) the name, address, and telephone number of the owner of the Facilities, if Applicant is not the owner;

- (5) an engineering site plan showing the proposed location of the Applicant's Facilities, including proposed manholes or poles; length, size, type and depth of Facilities; relationship to other Facilities; and number of street crossings and their locations and dimensions;
 - (6) projected commencement and termination dates, unless such dates are unknown at the time the Permit is issued, in which case a provision requiring the Permit holder to provide the City Engineer with reasonable advance notice of such dates once they are determined shall be included. The anticipated duration of the Facilities Work shall be provided at the time of the Application;
 - (7) copies or other proof of certificates of insurance; and
 - (8) any additional information the City Engineer may require, including, but not limited to, such conditions and requirements as are reasonably necessary to protect structures and Facilities in the Public Rights-of-Way from damage and for the proper restoration of such Public Rights-of-Way, structures and Facilities, and for the protection of the public and the continuity of pedestrian and vehicular traffic.
- (B) *Payment of fees.* Each Application shall be accompanied by payment of fees as designated in this Chapter.
- (C) *Authority of Applicant.* The City Engineer shall review each Application and, upon determining that the Applicant has all requisite authority to perform the Facilities Work, and that the Applicant has submitted all necessary information and has paid the appropriate fee, shall issue the Permit, *except as provided in subsection (G) hereof.*
- (D) *Review of Application.* It is the intention of the City that disruption of the Public Rights-of-Way should be minimized. Upon receipt of an Application, the City Engineer shall:
- (1) evaluate the degree of Excavation necessary to perform the Facilities Work in the Public Rights-of-Way and determine whether the proposed Excavation will be more than minor in nature. If the Applicant can show to the City Engineer's reasonable satisfaction that the Facilities Work involves no significant disruption or damage to the Public Rights-of-Way, or that the Facilities Work involves time-sensitive maintenance, then the City Engineer shall grant the Permit without delay; *provided,* that if the Permit is not issued

in ten (10) business days, the aggrieved party may appeal as provided in subsection (H); and

- (2) for circumstances where the City Engineer determines that there will be significant excavation of the Public Rights-of-Way, and where no exemption under (D)(1) or any other provisions of this subsection applies, the City Engineer may, consistent with the time requirements set forth in Section 3 and in the Permit, direct Permit holders performing Facilities Work in the same area to consult with the City Engineer on how they may schedule and coordinate their work to accomplish the goals of this Chapter.
- (E) *Changes.* An Applicant receiving a Permit shall promptly notify the City Engineer of any changes in the information submitted in his Application.
- (F) *Index.* The City Engineer shall maintain an index of all Applicants who have been granted Permits and their point(s) of contact.
- (G) *Denial of Permit.* The City Engineer may deny an Application for any of the following reasons if deemed in the public interest:
- (1) undisputed past-due fees from prior Permits;
 - (2) failure to return the Public Rights-of-Way to their previous condition under previously-issued Permits;
 - (3) undue disruption to existing use of the Public Rights-of-Way by the public, the City, or other utilities;
 - (4) environmental sensitivity, as defined by state or federal statutes, of land within the desired Project's scope;
 - (5) failure to provide required information; or
 - (6) the Applicant is in violation of the provisions of this Chapter.

If a Permit is denied under subsection (G)(3) or (G)(4), the City Engineer shall cooperate with the Applicant to identify alternative routes which most nearly match the routes requested by the Applicant for the placement of Facilities.

- (H) *Appeal of Denial.* Applicant may appeal any final decision of the City Engineer to the City Administrator, which appeal shall be acted upon by the City Administrator within five (5) business days; and if denied by the City Administrator, the Applicant

may then appeal to the Board of Aldermen, which shall act upon the appeal within thirty (30) days.

- (I) *Applicable Fees.* The fees collected pursuant to this section will be used only to reimburse the City for costs incurred in managing the Public Rights-of-Way and will not be used to generate revenue above such costs.
 - (1) The Fee required for a single Excavation Permit shall be thirty-five dollars (\$35).
 - (2) Non-exclusive franchisees and owners of more than 1,000 lineal feet of Facilities within the Public Rights-of-Way shall be required to pay an annual fee of one-thousand dollars (\$1,000). This fee is in lieu of, and shall relieve such Persons of the obligation to pay, such fees as would ordinarily be required under subsection 3(I)(1) above for each Permit sought during the given year.

SECTION 4. FACILITIES WORK

- (A) *Oversight of Facilities Work.*
 - (1) Applicants shall comply with all City codes and ordinances.
 - (2) Facilities Work shall be subject to periodic inspection by the City.
 - (3) The City Engineer shall have full access to all portions of Facilities Work and may issue stop work orders and corrective orders to prevent unauthorized work. Such corrective or stop work orders shall state that work not authorized by a Permit is being carried out, summarize the unauthorized work and provide a period of not longer than thirty (30) days to cure the problem; *provided, however*, that the order may require immediate remedial action or the cessation of activities where such is necessary to protect the public safety. Such orders may be delivered personally or by certified mail to the address listed on the Application or to the Person in charge of the construction site at the time of delivery. Such orders may be enforced by equitable action in Circuit Court of Jackson County, Missouri, and if the City prevails, the Person involved in the Facilities Work shall be liable for all costs and expenses incurred by the City, including reasonable attorney's fees in enforcing the order, in addition to any and all fines and penalties established by this Chapter.

- (4) Any Person who engages in Facilities Work in the Public Rights-of-Way without a valid Permit from the City shall nonetheless be subject to all requirements of this Chapter. Unless the Facilities Work is Emergency Facilities Work, the City may, in its discretion, at any time until a Permit is secured, order the Facilities Work ceased and do any of the following:
 - (a) require such Person to apply for a Permit within thirty (30) days of receipt of a written notice from the City that a Permit is required;
 - (b) require such Person to remove its property and restore the affected area to a condition satisfactory to the City; or
 - (c) take any other action it is entitled to take under applicable law, including, but not limited to, filing for and seeking damages for trespass.
- (5) Owners of Facilities that maintain more than 1,000 lineal feet of Facilities within the Public Rights-of-Way shall keep complete and accurate maps and records of the location of their Facilities. Within twelve (12) months of the effectiveness of this ordinance, any Person maintaining or owning more than 1,000 lineal feet of Facilities within the Public Rights-of-Way shall file with the City Engineer a detailed map of those portions of that Person's Facilities lying within the Public Rights-of-Way. Maps furnished to the City Engineer shall show the location of Facilities and their relationship to Public Rights-of-Way boundaries. Map updates shall be provided to the City Engineer at the time of payment of the annual Excavation Permit fee. The City shall indemnify the owners of Facilities required to provide a map from any damages or harm caused by the improper use or distribution of the maps and/or records provided by the owners of the Facilities, unless such damage or harm is caused by the owners of the Facilities. Such maps are intended to be proprietary to the owners of the Facilities and not owned by the City. The City, to the extent permitted by law, will not provide such maps to third parties.
- (6) The rights granted by a Permit inure to the benefit of the Applicant. The rights shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise, including by force or involuntary sale, without the express written consent of the City. Such consent shall not be withheld unreasonably nor required for assignment to entities that control, are controlled by, or are under common control with the Applicant.

- (7) Should any Applicant fail to abide by the terms of a Permit, the Board of Aldermen may, after thirty (30) days written notice of breach or default, and after a public hearing in which Applicant has been afforded due process, terminate a Permit if Applicant has failed to undertake reasonable steps to cure such breach or default. Upon such termination, the City may order the removal of any of Applicant's Facilities under the Permit and if Applicant should refuse, the City may remove such Facilities at Applicant's sole expense.

(B) *Construction Standards.*

- (1) All Facilities Work shall be performed in accordance with applicable health, safety, and construction codes.
- (2) All Facilities shall be installed and located so as to minimize interference with the public and with other users of the Public Rights-of-Way, including the City.
- (3) Before initiating construction of new Facilities in the Public Rights-of-Way, the Applicant shall make all reasonable efforts to use existing Facilities. An Applicant shall not place Facilities where they will damage or interfere with the use or operation of those previously installed, or obstruct or hinder the various utilities serving the residents and businesses in the City in their use of any Public Rights-of-Way.
- (4) Any and all Public Rights-of-Way disturbed or damaged during the Facilities Work shall be promptly repaired or replaced by Applicant to their previous condition, at Applicant's expense.
- (5) Any subcontractor of Applicant used for Facilities Work must be properly licensed under the laws of the state and all applicable local ordinances, and each subcontractor shall have the same obligations with respect to its work as Applicant would have hereunder. Applicant shall be responsible for ensuring that the work of all subcontractors is performed consistent with its Permits and applicable law, shall be fully responsible for all acts or omissions of subcontractors, and shall be responsible for promptly correcting acts or omissions by any subcontractor.
- (6) Additional requirements concerning the restoration and maintenance of the Public Rights-of-Way during and after construction of the Facilities Work is included in Appendix A.

- (7) The Technical Specifications, as fully set forth herein as Appendix A, may be amended by the City Engineer, as deemed necessary to insure conformance with the most recent Technical Specifications and Standard Plans as maintained by the City Engineer. The City Engineer shall notify Facility owners and contractors of proposed changes to the Technical Specifications, at least thirty (30) days prior to the implementation of such changes.

SECTION 5. PERFORMANCE GUARANTEE AND REMEDIES.

(A) *Performance Bond.*

- (1) Prior to any Facilities Work in the Public Rights-of-Way, an Applicant shall establish in the City's favor a performance bond in the penal sum of two thousand dollars (\$2,000), approved by the City Engineer, and in proper form approved by the City Attorney. Owners of Facilities that maintain more than 1,000 lineal feet of Facilities within the Public Rights-of-Way and franchisees shall establish in the City's favor a performance bond in the penal sum of five thousand dollars (\$5,000), approved by the City Engineer, and in proper form approved by the City Attorney. Differences in bond requirements, including provisions for self-insurance or provisions for a single continuing bond where Facilities Work is conducted by the same Applicant under numerous Permits, may be established by regulation based on the extent or nature of the Facilities Work and the past performance of the Applicant, but may not be based on the characteristics of the Applicant.
- (2) In the event an Applicant fails to complete the Facilities Work in a safe, timely and competent manner, there shall be recoverable, jointly and severally from the principal and surety on the bond, any damage or loss suffered by the City as a result, plus a reasonable allowance for attorneys fees, up to the full amount of the bond.
- (3) Upon completion of the Facilities Work to the satisfaction of the City Engineer, the City Engineer shall eliminate the bond or reduce its amount after a time appropriate to determine whether the work performed was satisfactory, which time shall be established by the City Engineer considering the nature of the work performed.
- (4) A performance bond shall be issued by a surety acceptable to the City, and shall contain the following endorsement: "This bond may not be canceled or allowed to lapse until sixty (60) days after receipt by the City of Grandview,

Missouri, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.”

- (5) Recovery by the City of any amounts under the performance bond does not limit an Applicant’s duty to indemnify the City in any way, nor shall such recovery relieve an Applicant of its obligations under a Permit or reduce the amounts owed the City other than by the amounts recovered by the City under the performance bond, or in any respect prevent the City from exercising any other right or remedy it may have.

(B) *Cost Recovery.*

- (1) In the event that an Excavation is not refilled within a reasonable time after it is ready for refilling, the City Engineer shall notify the Applicant making the Excavation that if such Excavation is not filled within four (4) days, it shall be filled by the City. The cost of such work shall be paid by the Permit holder within ten (10) days after completion, and no additional Permit shall be issued to that Person until such charge has been paid.
- (2) In the event the City incurs additional costs as a result of an unauthorized action or an inaction by any Person and/or owner of Facilities, the City shall have the right to recover from that Person or owner any and all documentable costs incurred, including, but not limited to, the identification of undocumented Facilities, completion of improper Facilities Work, long-term structural damage, construction delay fees and penalties, fees paid to other agencies and any other documentable costs incurred by the City within the Public Rights-of-Way.

- (C) *Penalties.* For each violation of the provisions of this Chapter, or of a Permit granted pursuant to this Chapter, as to which the City has given notice to Applicant as provided in this Chapter, penalties may be chargeable to the Applicant at a rate not exceeding \$100 per day for so long as the violation continues.

SECTION 6. RELOCATION OF FACILITIES IN EXISTING PUBLIC RIGHTS-OF-WAY

Whenever, by reason of changes to a street or in the location or manner of constructing a drainage facility, sanitary sewer or other city-owned underground or above-ground structure, it is deemed necessary by the City to move, alter, change, adapt or conform existing Facilities, the owner of such Facilities shall make the alterations or changes, on alternative right-of-way provided by the City, if available. Such alterations or changes shall be performed as soon as practicable after being so ordered in writing by the City at the owner’s expense and without claim for reimbursement or damages against the City, unless those Facilities requiring alterations or changes were constructed

within a private utility easement that pre-dates the Public Rights-of-Way, in which case the Facility owner would be due reimbursement of the reasonable cost of relocation. The City will endeavor to minimize the interference with previously installed Facilities when conducting its own Facilities Work.

SECTION 7. MISCELLANEOUS PROVISIONS.

- (A) *Compliance with Laws.* Each Applicant shall comply with all applicable federal and state laws as well as City ordinances, resolutions, rules and regulations heretofore and hereafter adopted or established.
- (B) *Applicant Subject to Other Laws, Police Power.*
 - (1) An Applicant shall at all times be subject to all lawful exercise of the police powers of the City, including but not limited to all powers regarding zoning, supervision of the restoration of the Public Rights-of-Way and control of the Public Rights-of-Way.
 - (2) No act or omission of the City shall operate as a future waiver of any rights of the City under this Chapter.
 - (3) Except where rights are expressly granted or waived by a Permit, they are reserved, whether or not expressly enumerated. This Chapter may be amended from time to time and in no event shall this Chapter be considered a contract between the City and an Applicant such that the City would be prohibited from amending any provision hereof.
- (C) *Indemnification.* Applicant shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, board members, commissions, commissioners, agents and employees against any and all claims, suits, causes of action, proceedings and judgments, including reasonable attorney's fees, for damage or equitable relief arising out of the construction and maintenance of the Applicant's Facilities Work, except to the extent such claim, suit, cause of action or proceedings, and judgments for damages or equitable relief arise out of the negligent or willful misconduct of the City or its officials, boards, board members, commissions, commissioners, agents or employees.
- (D) *Franchise Not Superseded.* Nothing herein shall be deemed to relieve an Applicant or the City of the express provisions of an existing franchise, license, or other agreement or Permit.

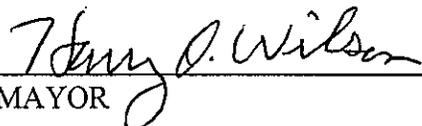
- (E) *Rights and Remedies.*
- (1) The exercise of one remedy under this Chapter shall not foreclose use of another, nor shall the exercise of a remedy or the payment of damages or penalties relieve an Applicant of its obligations to comply with its Permits. Remedies may be used alone or in combination; in addition, the City may exercise any rights it has at law or equity.
 - (2) The City hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provisions of this Chapter.
 - (3) No Applicant shall be relieved of its obligation to comply with any of the provisions of this Chapter by reason of any failure of the City to enforce prompt compliance.
- (F) *Incorporation by Reference.* Any Permit granted pursuant to this Chapter shall by implication include a provision that shall incorporate by reference this Chapter into such Permit as fully as if copied therein verbatim.
- (G) *Force Majeure.* An Applicant shall not be deemed in violation of the provisions of this Chapter where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond the Applicant's control, and a Permit shall not be revoked nor an Applicant penalized for such noncompliance, provided that the applicant takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Permit without unduly endangering the health, safety, and integrity of the Applicant's employees or property, the public, the Public Rights-of-Way, public property or private property.
- (H) *Calculation of Time.* Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required under this Chapter or any Permit, and a period of time is proscribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the proscribed or fixed period of time.
- (I) *Severability.* If any term, condition or provision of this Chapter shall, to any extent, be held invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision that has been held invalid is no longer invalid, said provisions shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the Applicant and the City.

- (J) *Eminent Domain.* Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, any right the City may have to acquire the property of the Applicant through the exercise of the power of eminent domain.
- (K) *Rights in the Event of Abandonment.* In the event that the Board of Aldermen closes or abandons any Public Rights-of-Way which contain Facilities installed hereunder, any land contained in such closed or abandoned Public Rights-of-Way shall be subject to the rights of the Applicant.
- (L) *Annexation.* The provisions of this Chapter shall specifically apply to any lands or property annexed by City as of the date of such annexation.
- (M) *Savings Clause.* Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplement or otherwise nullify any other ordinances of the City or requirements thereof, whether or not relating to or in any manner connected with the subject written hereof, unless expressly provided otherwise herein or hereafter.

Section 3. Effective Date. This Ordinance shall become effective on May 1, 2000.

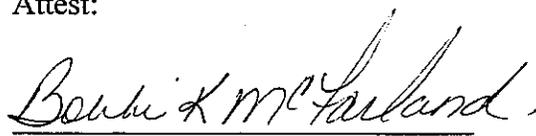
Passed this 15th day of March, 2000.

Approved this 15th day of March, 2000.



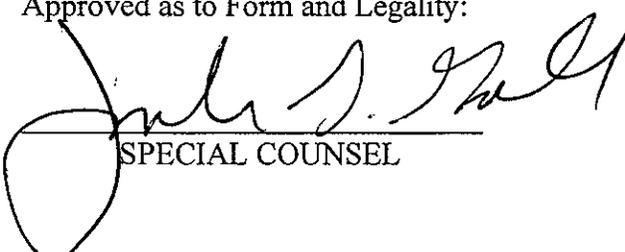
 MAYOR

Attest:



 ACTING CITY CLERK

Approved as to Form and Legality:



 SPECIAL COUNSEL

APPENDIX A.
TECHNICAL SPECIFICATIONS
for
FACILITY WORK IN PUBLIC RIGHTS-OF-WAY
ADOPTED MARCH 15, 2000

ARTICLE I - GENERAL REQUIREMENTS

SECTION 1. GENERAL

The facility work covered by these specifications shall mean any conduit, duct, line, pipe, wire, hose, cable, culvert, tube, pole, receiver, transmitter, satellite dish, repeater, amplifier, or other device, material, apparatus, or medium, useable (whether actually used for such purpose or not) for the transmission or distribution of any service or commodity, installed below or above ground within the Public Rights-of-Way of the City, whether used privately or made available to the public. It is to include repair of any excavation, final grading, clean-up, disposal of surplus materials and restoration of the site. All facility work shall be made and completed by the Applicant at his expense and in conformance with these specifications.

(A) *DEFINITIONS.* For the purposes of this Chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense and vice versa, words in the plural number include the singular number, and vice versa, and the masculine gender includes the feminine gender and vice versa. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated or clearly contrary to the context, terms, phrases, words, and abbreviations not defined herein shall be given the meaning set forth in the City Code, and if not defined therein, their common and ordinary meaning. For further convenience, the first letter of terms, phrases, words, and abbreviations defined in this Chapter have been capitalized, but an inadvertent failure to capitalize such letter shall not affect its meaning, nor shall the inadvertent capitalization of the first letter of a term, phrase, word or abbreviation not defined herein affect the meaning thereof.

(1) Applicant - means the specific Person applying for a Permit under this chapter.

(2) Application - means that form designed by the City Engineer which an Applicant must use to obtain a Permit.

- (3) Arterial - means a thoroughfare designated as an expressway, parkway, boulevard, or arterial street on the City's future land use and thoroughfare map.
- (4) Board of Aldermen - shall mean the governing body of the City.
- (5) City - shall mean the City of Grandview, Missouri.
- (6) City Administrator - shall mean the City Administrator of City, or his designee.
- (7) City Engineer - shall mean the City Engineer of City, or his designee.
- (8) Emergency Facilities Work - shall mean Facilities Work made necessary by unexpected condition, including, but not limited to the following:
- (a) an unexpected or unplanned outage, cut, rupture, leak or any other failure of Facilities that prevents or significantly jeopardizes the ability of a public utility to provide service to customers;
 - (b) an unexpected or unplanned outage, cut, rupture, leak or any other failure of Facilities that results or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak or other such failure is not immediately repaired, controlled, stabilized or rectified; or
 - (c) any occurrence involving a Facility that a reasonable person would conclude, under the circumstances, warrants immediate and undelayed action by the owner of the Facility, in order to protect the public and the Public Rights-of-Way.
- (9) Excavation - shall mean any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced by means of any tools, equipment or explosives, provided, any *de minimis* displacement or movement of ground caused by

pedestrian or vehicular traffic which does not materially disturb or displace surface conditions of the earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground shall not be deemed Excavation.

(10) Facilities - shall mean any conduit, duct, line, pipe, wire, hose, cable, culvert, tube, pole, receiver, transmitter, satellite dish, repeater, amplifier, or other device, material, apparatus, or medium, useable (whether actually used for such purpose or not) for the transmission or distribution of any service or commodity, installed below or above ground within the Public Rights-of-Way of the City, whether used privately or made available to the public.

(11) Facilities Work - shall mean the installation of new Facilities, or any change, replacement, removal, alteration or repair of existing Facilities that requires Excavation within the Public Rights-of-Way, provided, that neither (a) tree trimming/removal nor (b) the replacement of utility poles and related equipment at an existing location or immediately adjacent to an existing location, shall constitute Facilities Work.

(12) Installation - shall mean the original construction, replacement, or repair of Facilities.

(13) Maximum Density shall be determined by the Standard Compaction Test as defined by ASTM D698.

(14) Minor Facilities Work - means Facilities Work that will not disrupt any sidewalk or street pavement, sanitary sewer, drainage system, or other structure.

(15) Normal Business Hours - shall mean 8 a.m. to 5 p.m., Monday through Friday.

(16) Permit - means a Permit granted by the City Engineer to do Facilities Work.

(17) Person - shall mean an individual, partnership, association, joint stock company, trust, organization, limited liability company, corporation, or other entity, or any lawful successor thereto or transferee thereof, but such term does not include the City.

(18) Project - shall mean a written plan of work prepared and presented by an Applicant that encompasses an outlined scope of Facilities Work to be conducted within the Public Rights-of-Way.

(19) Public Rights-of-Way - shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, public easement, or other similar property in which the City now or hereafter holds any property interest, which was dedicated or acquired for public use. No reference herein, or in any Permit, to "Public Rights-of-Way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes. Public Rights-of-Way includes neither (a) the airwaves above the Public Rights-of-Way with regard to cellular or other non-wire telecommunications or broadcast services nor (b) private property subject to private easements.

(B) *SEQUENCE* - The Applicant shall first apply for and receive a Permit, granted by the City Engineer to perform Facilities Work within the Public Rights-of-Way, unless the requirement for a Permit is temporarily suspended because of the emergency nature of the Facilities Work. The Applicant shall schedule the Facilities Work to allow emergency vehicle access to public and private property at all times.

(C) *APPLICANT'S USE OF PUBLIC RIGHTS-OF-WAY* - The Applicant shall confine construction equipment, storage of materials and equipment, and operations or workers to areas within the Public Rights-of-Way and easements of record as indicated on the Permit. If the Applicant proposes to temporarily use private property, written authorization shall be included with the Permit Application. The City shall not be liable for any damages caused by Applicant's use of private property.

(D) *CERTIFICATE OF INSURANCE* - The Applicant, prior to the commencement of Facilities Work, shall furnish the City Engineer satisfactory evidence in writing that the Applicant has in force and will maintain in force during the performance of the Facilities Work a certificate of insurance with a company acceptable to the City, and the City shall be named as an additional insured against liability for personal injury and property damage with a combined single limit of at least two million dollars (\$2,000,000.00).

The City shall receive written notice thirty (30) days prior to cancellation. Proof of coverage in an amount equal to or exceeding the above limits running to public-owned utilities will be acceptable to the City.

(E) *COORDINATION* - The Applicant shall cooperate with City's employees or others who may be working in the area of the Facilities Work. He shall strive to coordinate the Facilities Work to not interfere with the work of others unnecessarily. He will not be required to interrupt the progress of his operations materially to assure such coordination.

(F) *REDUCTION OF NOISE, DUST, ETC.* - The Applicant shall perform the Facilities Work in such a manner as to avoid unnecessary disturbance and inconvenience to the general public and occupants of neighboring property. During the Facilities Work and immediately following completion, the Applicant shall clean all rubbish, excess earth, rock and other debris from all streets, including those streets that traffic has caused material to be tracked upon. The Applicant shall take appropriate measures to reduce to the fullest extent practicable in the performance of the Facilities Work, noise, dust and unsightly debris that may be created. During the hours of 10:00 P. M. and 7:00 A. M. the Applicant shall not use, except with the express written permission of the City Engineer or in case of an emergency as otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

SECTION 2. EXISTING FACILITIES

Existing Facilities in the vicinity of the proposed Facilities Work shall be indicated on the Application. The Applicant shall use the best information available to locate these Facilities, but field verification may be required before the Permit can be granted.

The Applicant shall make every effort to protect existing Facilities. Any delays or extra cost to the Applicant caused by existing Facilities, whether shown on the plans or not, or found in locations different than those reported or field indicated, shall not constitute a claim against the City. The City makes no assurances or guarantees should damage result from the Facilities Work performed and the Applicant shall indemnify, hold harmless and defend the City, its officials, boards, board members, commissions, commissioners, agents and employees.

SECTION 3. ADJOINING PROPERTY.

(A) *MAINTENANCE OF SEWERS AND DRAINS* - The Applicant shall provide for the continued flow of all sewers and drains that may be intercepted during the Facilities Work, and if it should be necessary to remove and replace any sewer or drain, the Applicant shall provide for the replacement in as good a condition as existed prior to the Facilities Work. The Applicant shall also make appropriate provisions for the transport of all muck, silt, storm water or groundwater pumped from excavations.

(B) *DAMAGE* - The Applicant shall at all times and at his own expense preserve and protect from injury any adjoining property by proper Facilities Work. If it is necessary to enter upon private property for the purpose of taking appropriate measures to protect such property, the Applicant shall first obtain written permission from the owner of such property. The Applicant shall at his own expense shore up and protect all buildings, walls, fences or other property likely to be damaged during the Facilities Work and shall be responsible for any damage done to any public or private property by the Facilities Work.

(C) *PRESERVATION OF SURFACE MONUMENTS OR HUBS* - The Applicant shall not disturb any surface monuments or hubs found without first providing for the replacement by a registered land surveyor.

SECTION 4. TRAFFIC CONTROL AND PUBLIC SAFETY.

(A) *MAINTENANCE OF TRAFFIC* - The Applicant shall conduct his Facilities Work as to interfere as little as possible with public travel, whether vehicular or pedestrian. Facilities Work performed within the roadway shall be either plated or barricaded in accordance with the Manual on Uniform Traffic Control Devices and applicable statutory requirements. No collector or local street shall be completely closed to traffic in excess of two (2) hours duration. No Arterial street shall be completely closed to traffic without the authorization of the police department and may at the Applicant's expense, require the designation and signing of a temporary detour. No driveway shall be closed in excess of twenty-four (24) hours.

(B) *BARRICADES* - All portions of streets, sidewalks, and other public thoroughfares which are closed shall be protected by means of effective barricades, barriers, and appropriate warning signs and lights which are placed as

provided by the Manual on Uniform Traffic Control Devices and applicable statutory requirements.

(C) *PEDESTRIANS* - All open trenches and other Excavations shall be provided with suitable barricades, barriers, warning signs and lights to the extent that adequate protection is provided to the public. Obstructions, such as material piles and equipment, shall be provided with similar protection devices. Such barricades shall include warning lights that are illuminated at night and continuously burn from sunset to sunrise. Materials stored upon or alongside public streets shall be so placed, and the work at all times shall be so conducted, as to cause the minimum obstructions and inconvenience to the public.

ARTICLE II - INSTALLATION OF BURIED FACILITIES

SECTION 1. GENERAL

This specification covers the Installation of buried Facilities by boring, drilling, augering, or cut and cover, which includes clearing, grubbing and site preparation; removal and disposal of existing improvements; removal and disposal of debris; trench excavation; handling, storage, transportation and disposal of excavated material; sheeting, shoring, or other protection work; pumping and de-watering; back-filling and compaction; and other appurtenant work.

(A) *MINIMUM DEPTH* - All Facilities shall be installed a minimum of twenty-four (24) inches below the finish grade of the Public Rights-of-Way, and a minimum of twenty-four (24) inches beneath the bottom of any pavement, except as provided below:

(1) Facilities for the transmission of natural gas shall be placed at depths specified by DOT/MPSC Part 192. Any Facility passing under a street shall be buried at a minimum of thirty-six (36) inches below the street surface.

(2) Telecommunication trunk lines and fiber optic lines shall be buried at a minimum depth of thirty-six (36) inches.

(3) Electric transmission lines shall be buried at a minimum depth of thirty-six (36) inches. This minimum depth does not apply to low voltage buried street light cable.

(B) *SITE PREPARATION* - Any special conditions or considerations shall be addressed prior to the commencement of the Facilities Work to minimize the impact on public and private property or other Facilities. All Facilities Work shall be performed in a safe and proper manner, with suitable precautions being taken against hazards of every kind. Adequate working space and clearance for the Facilities Work shall be anticipated during the design and preparation of the site.

(C) *WARRANTY* - The Applicant shall be responsible financially, and otherwise, for a period of one year after completion of work, for (a) all settlement of the site which may occur from time of original installation, (b) the repair of all settlement and the repair or replacement to the original or a better condition of all street pavement, driveways, sidewalks, structures, other Facilities, and sod which have been damaged as a result of the settlement or which have been removed or destroyed in connection with replacement operations, and (c) all damage claims or court actions against the City for any damage directly or indirectly caused by the settlement. The Applicant shall make, or cause to be made, all necessary replacements, and repairs or replacements thereto, within thirty days after due notification by the City Engineer.

SECTION 2. BORING BURIED FACILITIES

Under-cutting or hand tunneling under streets and driveways shall not be permitted. Facilities may be bored, drilled, or augered in place if the Applicant retains the services of qualified personnel and specialized equipment to perform the installation of the Facilities. The Permit Application shall set forth the experience of the individuals that will perform the installation. Buried Facilities to be placed in Public Rights-of-Way shall be installed in the locations approved in the Permit granted or in alternate locations that have been authorized by the City Engineer.

SECTION 3. CUT AND COVER BURIED FACILITIES

Buried Facilities to be placed in Public Rights-of-Way by cut and cover shall be installed in the locations approved in the Permit granted or in alternate locations that have been authorized by the City Engineer. The Facilities shall be installed in the manner provided by the standard of practice for the installation of the Facility as established by the appropriate industry, any applicable statutory requirements, and in accordance with the provisions of this specification.

(A) *EXCAVATION* - Mechanical equipment used for trench excavation shall be of a type, design, and construction, and shall be so operated, that the rough trench excavation bottom elevation can be controlled, and that the trench alignment is such that the Facility when accurately placed to specified alignment will be centered in the trench with adequate clearance between the Facility and side walls of the trench. Except where Facilities are bored, drilled, or augered in place, all trench excavation shall be open cut from the surface. The Applicant shall minimize the amount of open trench necessary to perform the Facilities Work. In the event that the Facilities Work is stopped for any cause, 100 feet shall be the maximum length of open trench permitted on any Facility under construction.

(B) *SHEETING AND SHORING* - All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all state and local codes, where applicable. Additional sheeting, bracing, and shoring may be required to protect the general public, or public and private property and shall be designed and built to withstand all loads that might be caused by earth movement or pressure, and shall be rigid, maintaining its shape and position under all circumstances.

(C) *DE-WATERING* - The Applicant shall provide and maintain adequate de-watering equipment to remove and dispose of all surface and ground water entering Excavations, trenches, or other parts of the work. Each Excavation shall be kept dry until the Facility is installed and the trench back-filled and compacted.

(D) *DRAINAGE MAINTENANCE* - The Applicant shall be responsible to maintain surface drainage during the Facilities Work. Surface water shall be diverted or otherwise prevented from entering excavated areas or trenches, to the greatest extent practicable without causing damage to adjacent property. The Applicant shall minimize the obstruction of any gutter or roadside ditch of any street and use all proper measures to continue the free passage of storm water. Back-filling shall be done so that water will not accumulate in unfilled or partially filled trenches. Bridges and other temporary structures may be required to maintain traffic across such unfilled trenches. All material deposited in roadway ditches or gutters shall be removed as soon as possible and graded to restore their original drainage pattern.

(E) *DISPOSAL OF EXCESS EXCAVATED MATERIAL* - All excess excavated materials shall be disposed of away from the site of the Facilities Work. The Applicant shall be responsible for locating areas for disposal of such materials. Excavated rock in excess of the amount permitted to be and actually installed in trench back-fill, asphalt, concrete, and debris encountered in Excavation work, and other similar waste material shall be disposed of away from the site.

(F) *SPECIAL REQUIREMENTS* - Non-metallic Facilities that can not be located by other means shall be buried with metallic locator wires or tape which will permit accurate location of said Facilities from the surface with normal magnetic locator devices.

(G) *BACK-FILLING* - No back-fill materials shall be installed on frozen surfaces, nor shall frozen materials, snow or ice be placed in any trench. Succeeding layers of back-fill shall be placed as described in the following paragraphs.

(1) 90% Compacted Back-fill. 90% compaction will be required where the Facility is installed within the Public Rights-of-Way, other than under a street or driveway. The average density of the trench back-fill shall be 90% of maximum density. Material shall be placed in lifts as required for adequate compaction with variations in lift thickness depending on soil and on method of compaction. Completed back-fill shall have no less than 90% density in the top 2.5 feet in back-fill, excluding the top few inches to be used as seed bed or for bedding sod. Compaction may be by hand tamping, tamping machine, or other approved methods. Certified copies of the results of compaction field test performed by qualified personnel will be required where settlement could result in damage.

(2) 95% Compacted Back-fill. 95% compaction will typically be required under streets and driveways. Placement of material and compaction for 95% compacted back-fill shall be as described above for 90% compacted back-fill except a minimum of 95% of maximum density must be maintained throughout the back-fill. The Applicant may propose alternative back-fill such as clean rock back-fill or flowable fill.

(3) Field Density Test. Field density shall be obtained using the sand cone method (ASTM D1 556), the balloon method (ASTM D2167), or nuclear density gauge (ASTM D2922). The calculated density obtained in this

test is divided by the maximum density as determined by the Standard Compaction Test to determine the percent compaction obtained.

(H) *DURATION* - Any person who shall perform Facilities Work in any Public Rights-of-Way is obligated to complete any Excavation within fifteen days of commencement thereof so as to restore the surface permanently to conform to these specifications.

ARTICLE III - RESTORATION OF SURFACE

SECTION 1. STREETS AND ALLEYS

Street restoration of Excavations required for the repair of existing sanitary service connections may be made by the City's Public Work Department. The Permit Application shall stipulate if the City or the Applicant is to restore the pavement. Restoration of the pavement removed for all other Excavations shall be made by the Applicant.

The Applicant shall restore all surfaces equal to or better than their original condition unless otherwise specified. The top of all pavement repairs shall be flush with the existing pavement. Curb and gutters are to be replaced with MCIB Mix No. A-556-1-2 or WA-610-1-4.

(A) *STREETS* - All materials used shall conform to City of Grandview specifications for such use. The repair shall have a width of at least twelve (12) inches greater than the trench width or disturbed area, minimum of six (6) inches each side. Each repair area shall be first cut full depth with a concrete saw. The material shall be removed so that no damage occurs to the surrounding pavement. If damage to the surrounding pavement should occur, the damaged areas shall also be removed.

(1) For street pavement surfaces which are portland cement concrete, the repair shall be made with portland cement concrete at least as thick as that removed, BUT in no case less than eight (8) inches. Concrete used for repair shall meet MCIB Mix A564-3/4-4, A753-3/4-4 or as approved.

(2) For street pavement surfaces which are asphaltic concrete, the repair shall be two (2) inches of Type 3 hot-mix asphalt, compacted thoroughly, placed over a six (6) inch minimum MCIB Mix A564-3/4-4 or A753-3/4-4

portland cement concrete base. The total thickness shall be eight (8) inches or the same as what existed, whichever is GREATER.

(B) *ALLEYS* - All materials used shall conform to City of Grandview specifications for such use. The repair shall have a width of at least twelve (12) inches greater than the trench width or disturbed area, minimum of six (6) inches each side. Each repair to a paved alley shall be first cut full depth with a concrete saw. The material shall be removed so that no damage occurs to the surrounding pavement. If damage to the surrounding pavement should occur, the damaged areas shall also be removed.

(1) For portland cement concrete alleys the repair shall be at least as thick as that removed BUT in no case less than a minimum thickness of six (6) inches of MCIB Mix No. A-556-1-2 or WA-610-1-4 portland cement concrete.

(2) Asphalt surface alley shall be replaced with commercial grade hot mix asphalt at least as thick as that removed, BUT in no case less than six (6) inches thick.

(3) Crushed stone alley shall be repaired with six (6) inches of compacted stone meeting Missouri Standard Specifications for Highway Construction, Section 1006.2. Grade G aggregate is to be placed over the disturbed portion of the alley.

(C) *TEMPORARY PAVEMENT* - All temporary surfacing placed on streets and alleys (except gravel alleys) shall consist of cold mix asphalt at a minimum. Maintenance of the temporary patch is the responsibility of the Applicant.

SECTION 2. DRIVEWAYS AND SIDEWALKS

The Applicant shall restore all driveways and sidewalks equal to or better than their original condition unless otherwise specified. The top of all pavement repairs shall be flush with the existing pavement.

(A) *DRIVEWAYS* - All materials used shall conform to City of Grandview specifications for such use. The repair shall have a width of at least twelve (12) inches greater than the trench width or disturbed area, minimum of six (6) inches each side. Each repair to a paved driveway shall be first cut full depth with a concrete saw. The material shall be

removed so that no damage occurs to the surrounding pavement. If damage to the surrounding pavement should occur, the damaged areas shall also be removed.

(1) For portland cement concrete driveways the repair shall be at least as thick as that removed BUT in no case less than a minimum thickness of six (6) inches of MCIB Mix No. A-556-1-2 or WA-610-1-4 portland cement concrete.

(2) Asphalt surface driveways shall be replaced with commercial grade hot mix asphalt at least as thick as that removed, BUT in no case less than six (6) inches thick.

(3) Crushed stone driveways shall be repaired with six (6) inches of compacted stone meeting Missouri Standard Specifications for Highway Construction, Section 1006.2. Grade G aggregate is to be placed over the disturbed portion of the driveway.

(B) *TEMPORARY PAVEMENT* - All temporary surfacing on driveways and sidewalks, (except gravel driveways) shall consist of cold mix asphalt at a minimum. Maintenance of the temporary patch is the responsibility of the Applicant.

(C) *SIDEWALKS* - Sidewalks shall be replaced over the entire width to the nearest existing joint beyond the limits of the disturbance. The concrete thickness shall be at least four (4) inches. Concrete used for sidewalk repair shall be MCIB Mix No. A-556-1-2 or WA-610-1-4.

SECTION 4. LAWNS

The Applicant shall restore all lawn surfaces equal to or better than their original condition unless otherwise specified. Seeding, fertilizing and mulching are required where any Facilities Work disturbs established lawns located within Public Rights-of-Way or other public places. After shaping and dressing of areas to be seeded has been completed, a commercial fertilizer, grade 10-10-10, shall be applied at a rate of not less than 1000 pounds per acre. The area shall be prepared to receive the seed mixture by using a disc or other suitable implement. Seeding shall not be done during windy weather, or when the ground is frozen, muddy or otherwise in a non-tillable condition. For areas greater than 1/4 acre, seed shall be applied at the rate of 80 pounds per acre. For areas 1/4 acre and less seed shall be applied at a rate of 0.6 pounds per 100 square feet. The seed shall be composed of a mixture of 40% blue grass,

40% creeping fescue, and 20% perennial rye grass. Seeded areas shall be mulched with straw at a rate of 1.5 tons per acre.

The Applicant, at his option and at no cost to the City, may provide sod in lieu of seeding in any of the areas required to be seeded.