

CERTIFICATE FOR SECOND AMENDED ORDER OF DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10 ADOPTING RIGHT-OF-WAY MANAGEMENT AND PUBLIC EASEMENT REGULATIONS TO MANAGE CONSTRUCTION, EXCAVATION, AND PLACEMENT OF UTILITIES AND SIMILAR IMPROVEMENTS IN THE DISTRICT; ESTABLISHING FEES; PROVIDING FOR A PENALTY FOR THE VIOLATION FOR THIS ORDER; PROVIDING FOR SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

THE STATE OF TEXAS §
COUNTY OF DENTON §
DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10 §

We the undersigned officers of the Board of Directors (the "Board") of **DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10** (the "District") hereby certify as follows:

The Board convened in regular session, open to the public, on Thursday, August 19, 2021, at 6:00 p.m. at the Savannah Clubhouse, 701 Savannah Boulevard, Savannah, Texas, and the roll was called of the members of the Board, to-wit:

Rob Adams	President
Jon TenBroeck	Vice President
Robert Tague	Secretary
Amy Myers	Asst. Secretary/Treasurer
Maggie Hernandez	Director

All members of the Board were present, with the exception of Director Myers, thus constituting a quorum. Whereupon other business, the following was transacted at such Meeting: A written

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was duly introduced for the consideration of the Board. It was then duly moved and seconded that such Order be adopted; and after full discussion, such motion, carrying with it the adoption of such Order prevailed, carried, and became effective by the following vote:

AYES: 4 **NOES: 0**


A true, full and correct copy of the aforesaid Order adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; such Order has been duly recorded in the Board's minutes of such Meeting; the above and foregoing paragraph is a true, full,

and correct excerpt from the Board's minutes of such Meeting pertaining to the adoption of such Order; the persons named in the above and foregoing paragraph are the duly chosen, qualified, and acting officers and members of the Board as indicated therein; each of the officers and members of the Board are duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of such Meeting, and that such Order would be introduced and considered for adoption at such meeting, and each of the officers and members consented, in advance, to the holding of such meeting for such purpose; and such Meeting was open to the public and public notice of the time, place, and purpose of such Meeting was given, all as required by Chapter 551 of the Texas Government Code and Section 49.063 of the Texas Water Code, as amended.

SIGNED this 19th day of August, 2021.



Secretary, Board of Directors



President, Board of Directors

(DISTRICT SEAL)



A SECOND AMENDED ORDER OF DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10 ADOPTING RIGHT OF WAY MANAGEMENT AND PUBLIC EASEMENT REGULATIONS TO MANAGE CONSTRUCTION, EXCAVATION, AND PLACEMENT OF UTILITIES AND SIMILAR IMPROVEMENTS IN THE DISTRICT; ESTABLISHING FEES; PROVIDING FOR A PENALTY FOR THE VIOLATION FOR THIS ORDER; PROVIDING FOR SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, Denton County Fresh Water Supply District No. 10 (the "District") is a conservation and reclamation district and political subdivision of the State of Texas existing and operating pursuant to the provisions of Article III, Section 52, and Article XVI, Section 59, of the Texas Constitution and Chapters 49, 51 and, for certain purposes, 53, of the Texas Water Code; and

WHEREAS, pursuant to the provisions of Chapter 51.121, Water Code, a purpose of the District is to provide for the control, storage, preservation, and distribution of its floodwater; and the control, abatement, and change of any shortage or harmful excess of water;

WHEREAS, the District assumed the rights, authority, privileges, and functions of a road district operating under Article III, Section 52(b)(3), of the Texas Constitution, Chapter 257, Transportation Code, and other general laws of this state relating to road districts pursuant to and in accordance with an election held within the District on November 7, 2000; and

WHEREAS, further pursuant to elections held within the District, the duly qualified resident voters of the District have authorized the board of directors of the District (the "Board of Directors") to issue bonds for the acquisition and/or a construction of water, wastewater, and drainage facilities and roads and related drainage facilities;

WHEREAS, pursuant to such elections, the District has issued its bonds and has acquired or constructed water, sanitary sewer, and drainage facilities and roads and related drainage improvements (the "Road Infrastructure") that serve areas within the District;

WHEREAS, the Road Infrastructure is a significant and necessary component of the District's drainage and storm water control system, and the condition of the Road Infrastructure affects the control, storage, preservation, and distribution of the state's storm and flood waters; the control, abatement, or change of any shortage or harmful excess of water; and the ability of the District to accomplish its purposes under Sections 49.211, 51.121, and 51.331, Water Code;

WHEREAS, pursuant to the provisions of Chapter 51.122, Water Code, the District is authorized to adopt and enforce reasonable rules and regulations for the purpose, among others, of regulating privileges on any land or any easement owned or controlled by the District in order to protect the health, safety and welfare of its citizens; and pursuant to the provisions of Chapter

257.112, Transportation Code, the District is authorized to maintain a street within the District; and

WHEREAS, pursuant to Section 49.211(c), Water Code, the District may adopt rules for construction activity to be conducted within the District that reasonably relate to providing adequate drainage or flood control and use generally accepted engineering criteria; and reasonable procedures to enforce rules adopted by the District under such subsection; and

WHEREAS, the Board of Directors of the District (the "Board") has investigated and determined that Excavations (as defined below) in District Streets (as defined below) may significantly interfere with public use of the Streets and resulting in negative impact to public safety, air quality, level of service on streets and sidewalks, water lines, sanitary sewer lines, and drainage lines, the aesthetics of the community, loss of parking, and business, and

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

WHEREAS, the Board of Directors have further investigated and determined that it is desirable to adopt regulations that will provide the District greater control over Excavations in District Streets; and

WHEREAS, the Board of Directors have further investigated and determined that substantial public funds have been and will be invested by or on behalf of the District to build, maintain and repair the District Streets and utilities owned by the District and Mustang Special Utility District ("Mustang") and the District and Mustang hold these Streets and these utilities as an asset in trust for District citizens; it is desirable to adopt regulations to protect the structural integrity of District Streets and safeguard the value of the public investment for the benefit of District residents, by providing incentives to reduce the number of Excavations in District Streets. Such incentives will encourage coordination among Utilities and minimize the number of service disruptions, number of Excavations where feasible, so as to ensure Excavations are performed to the extent possible, in Streets scheduled for resurfacing within the same or succeeding fiscal year as the Excavation; and

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

WHEREAS, the Board of Directors have further investigated and determined that regulation of Excavations in District Streets and District right of way ("ROW") helps reduce disruption of and interference with public use of the Streets, helps prevent pavement and City utility damage, helps maintain the safe condition of the Streets, protects the public health, safety, welfare, and community aesthetics, is a valid and appropriate exercise of the District's police power, and is a District responsibility; and

WHEREAS, the Board of Directors have further investigated and determined that there is increasing demand for use of the ROW; and

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

NOW THEREFORE, BE IT ORDERED BY THE BOARD OF DIRECTORS OF DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10:

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

SECTION 2: Purpose. This Order provides principles and procedures for the placement of structures and Facilities, construction, Excavation, encroachments, and work activities within or upon a ROW and to protect the integrity and service level of Streets, sidewalks and City Utility systems and protect the beauty of the community's aesthetics. To achieve these purposes, it is necessary to require Permits of private users of the ROW and to establish Permit procedures, rules and regulations for work done within or upon the ROW.

ARTICLE I GENERAL PROVISIONS

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

SECTION 1.2: Definitions. The following definitions apply in this Order. The terms, phrases, words, abbreviations and their derivations shall have the same meanings herein. When not inconsistent with the context words used in the present tense include the future; words in plural number include the singular number, and words in the singular include the plural. The word "shall" is mandatory and not merely permissive.

Abandoned Facilities means Facilities no longer in Service or physically disconnected from the operating Facilities, or from any other Facilities, or from any other Facilities that are in use or that still carry Service.

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

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

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

Backfill means the following:

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

Mustang as used herein shall mean Mustang Special Utility District and the Mustang's officers and employees.

Mustang Utilities means any water or sewer line owned and operated by the Mustang or the Upper Trinity Regional Water District

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

Contractor means any public or private Person, subcontractor or organization.

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

Day means business day unless otherwise specified.

District means the Denton County Fresh Water Supply District No. 10

District Utilities means any water, sewer or drainage line owned or operated by the District.

Emergency operations are defined as those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any Person and the work necessary to address or prevent an immediate service interruption. Upgrading of Facilities, new service installation and neighborhood improvement projects are not emergency operations.

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

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

Governing Body means the Board of Directors of the District.

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

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

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

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

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

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

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

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

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

PUCT means the Public Utility Commission of Texas.

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

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

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

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

Restoration means the process by which an excavated ROW and surrounding area, including, but not limited to, pavement and foundation structures, ground cover,

landscaping, and monuments are returned to the same condition, or better than that which existed before the commencement of the work.

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

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

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

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

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

Service means a commodity provided to a Person by means of a delivery system that is comprised of Facilities located or to be located in the ROW, including, but not limited to, gas, telephone, cable television, Internet services, Open Video Systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

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

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

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

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

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

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

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

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

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

SECTION 1.3: Field Utility Coordination. The ROW User shall notify the District at each of the following times during the project: (a) forty-eight (48) hours before the start of construction; (b) upon completion of the initial backfill; and (c) upon completion of the project. The ROW User shall make a request for a Utility locate in compliance with the Underground Facility Damage Prevention and Safety Act.

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

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

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

SECTION 1.4: Notice. Notice for purposes of this Order shall be made to the District via Electronic Message (e-mail), overnight courier (generally used carrier with tracing available) or hand delivery with signed receipt, facsimile to the District or United States mail return receipt required.

SECTION 1.5: Registration.

- A. Nothing in this section relieves a ROW User and/or Utility from obtaining a Permit under this Order to perform work in the ROW.
- B. In order to protect the public health, safety, and welfare, a Utility maintaining or operating existing facilities in the ROW must register with the ROW Manager in accordance with the following requirements:

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

have a copy of the Registration Certificate on site when work is being conducted under the provisions of the Registration Certificate.

- D. Following completion of Registration and prior to beginning construction activities, any Contractor that will perform work under the Registration shall schedule an on-site pre-construction meeting or conference with the ROW Manager to discuss general expectations of the District, public safety, Contractor obligations during the work, and required notices to the public prior to start of any work. Contractor shall be responsible for taking the steps necessary to schedule the pre-construction meeting contemplated by this Section and will not be allowed to commence work under the Registration until such requirement is met.

SECTION 1.6: Traffic Handling Training: The ROW User is responsible for work zone safety including, but not limited to, traffic control through the designated Traffic Control Representative. The representative is responsible for compliance with the TMUTCD and the traffic control plan (if required) at all work zone sites. The Traffic Control Representative shall ensure employees on the job site have adequate training.

SECTION 1.7: Surface Mounted Markers. Where Surface Mounted Markers are needed, curb mounted medallions shall be used whenever possible.

SECTION 1.8: Relocation of Facilities for Public Improvements.

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

SECTION 1.9: Permit Required. It is unlawful for any Person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, tunnel, excavate or close lanes on a District Street without first having made application and obtained a Permit therefore except for as allowed by Section 1.10.1. It is unlawful for any Person, its agents, servants or employees to make or cause to be made any Excavation in or under the surface of any ROW for the installation, repair or removal of any Facilities, or for any other purpose without first obtaining from the ROW Manager a Permit in compliance with this Order.

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

SECTION 1.10.1: Exceptions to Require Permit:

- A. The ROW Manager reserves the right in his/her discretion to require a ROW Permit on Service Connections. Unless otherwise required by the ROW Manager, Service Connections do not require a Permit if all of the following conditions are met:
1. the Service Connection Excavation shall not exceed four (4) feet inside the ROW to property line;
 2. all Excavation shall be in accordance with Service Connection drawings;
 3. the address for the Service Connection is on the District provided form, which is submitted to the ROW Manager via e-mail. Work shall not begin until the electronic form is transmitted to the ROW Manager.
 4. the Excavation required is less than twenty four (24) inches in depth;
 5. the Excavation is no wider than two (2) inches or is hand dug; and
 6. the Service Connection does not require boring.
- B. Irrigation system installation does not require a Permit if all of the following conditions are met:
1. the work is performed with an existing valid Permit issued by the District for the installation of irrigation;
 2. the Excavation shall not exceed twelve (12) inches in depth and no wider than one (1) inch;
 3. the address for the Service Connection is on the District provided form, which is submitted to the ROW Manager via e-mail and is approved. All requests, which are not approved within forty-eight (48) hours, are denied; and
 4. line locates from the District are requested.
- C. Should a ROW User and/or Utility be legally exempt from the obligation to obtain a permit under this Order, such ROW User and/or Utility shall still be subject to all the remaining sections of this Order and subject to the obligations of a ROW User and/or Utility under this Order. Further, such ROW User and/or Utility under this section shall be required to either: 1) meet the registration requirements contained in Section 1.5 B and C (the "Registration Requirements") of this Order, OR 2) maintain evidence that such ROW User and/or Utility is an entity legally exempt from the permit requirements of this Order.
1. Even if a ROW User or Utility is legally exempt from the obligation to obtain a permit under this Order and maintains evidence demonstrating

such exemption, prior to beginning construction activities, any Contractor that will perform work on behalf the exempt ROW User or Utility shall schedule an on-site pre-construction meeting or conference with the ROW Manager to discuss general expectations of the District, public safety, Contractor obligations during the work, and required notices to the public prior to start of any work. Contractor shall be responsible for taking the steps necessary to schedule the pre-construction meeting contemplated by this Section and will not be allowed to commence work until such requirement is met.

2. A ROW User and/or Utility under this section and any Contractor or Subcontractor working on behalf of the ROW User and/or Utility that will be working on District property and/or in a ROW within the District boundaries shall be required to have in its possession at all times that such ROW User, Utility, Contractor, or Subcontractor is present and performing work on District property and/or in a ROW within the District boundaries, subject to examination by the ROW Manager at any time, either 1) proof of compliance with the Registration Requirements OR 2) evidence demonstrating that it is an entity legally exempt from the permit requirements of this Order or working on behalf of such a legally exempt entity. Should it be discovered by the ROW Manager that a ROW User, Utility, Contractor, or Subcontractor is present and performing work within the District boundaries and/or within the ROW at any time without proof of compliance with the Registration Requirements AND without evidence demonstrating that it is a legally exempt entity or working for such a legally exempt entity, the ROW Manager will order and enforce the immediate cessation of work until such time that proof of compliance with the Registration Requirements or evidence demonstrating that it is a legally exempt entity or working for such a legally exempt entity is presented.
3. If the ROW Manager determines that a ROW User and/or Utility under this section has committed a breach of any law or condition of this Order other than the registration and permit requirements, the ROW Manager shall make a written demand upon such ROW User and/or Utility to remedy such violation. Continued violation may be cause for a demand for cessation of work or legal action, or both. Within five (5) days of receiving notification of the breach, such ROW User and/or Utility shall contact the ROW Manager with a plan, acceptable to the ROW Manager, for correction of the breach. Such ROW User and/or Utility's failure to do so or ROW User and/or Utility's failure to timely implement the approved plan could result in a cessation of work or legal action, or both. This section does not limit the District from seeking other remedies that may be available under this Order.

SECTION 1.11: Permit Application. Application for a Permit shall be addressed to the ROW Manager and made on a form furnished for that purpose, stating the extent, dimensions, character and purpose of the cut or Excavation to be made, the location, by Street and number, if possible, where the work is to be done, and the time in which it is to be completed. The application form shall be accompanied by maps of the existing Facilities in the area, to the extent available, and the location of the proposed Facilities, methodology of construction, and proposed start and completion dates. When the work includes Excavation, which will exceed five (5) feet in depth, a trench safety design sealed by a Licensed Professional Engineer shall also accompany the application, unless otherwise provided by law.

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

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

Permits will be issued or denied within five (5) business days of District receiving a complete application. Permits shall be valid for the dates specified in the Permit. The Applicant may request but is not guaranteed the Permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. The District may approve or deny the application for such extended Permit period. No Permittee may commence work before the Permit start date and, except as provided herein, no Permittee may continue working after the end date. If a Permittee does not complete the work by the Permit end date, the Permittee must apply for and may receive a new ROW Permit or a Permit extension for additional time. This Supplementary Application must be submitted to the District prior to the Permit end date. Applicants are encouraged to request a pre-submission meeting for large projects.

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

SECTION 1.12: Excavation to be Under Supervision of the ROW Manager. Any ROW User engaged in making or backfilling any Excavation in any ROW shall, at all times while such work is in progress, keep at the job location the Permit, or a copy thereof, and shall provide of the same, when requested by any authorized District employee. At all times while the work is in progress, the ROW User shall also maintain, at the job location, a sign, barricade or other device bearing the ROW User's name.

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

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

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

All transmission and distribution structures, lines, equipment and Facilities erected by a ROW User within the District shall be so located as to cause minimum interference with the proper use of the ROW, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said Streets.

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

SECTION 1.13: Hours of Operation for Non-Emergency Work.

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

- C. Any ROW User or any person/contractor working on behalf of the ROW User shall be subject to that ORDER OF DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10 ADOPTING FINES FOR SPECIFIC CONSTRUCTION RELATED VIOLATIONS AFFECTING THE DRAINAGE, STORM WATER CONTROL, AND SANITARY CONDITIONS WITHIN THE DISTRICT; PROVIDING FOR A PENALTY FOR THE VIOLATION FOR THIS ORDER; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF duly passed and adopted by the District on November 17, 2016.

SECTION 1.14: Denial of Permit. A Permit may be denied or suspended for any of the following reasons:

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

SECTION 1.15: Appeal. A ROW User that: (i) has been denied registration; (ii) has been denied a Permit; (iii) has had a Permit revoked; or (iv) believes that fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request as follows:

- A. If an applicant desires to appeal a decision, the applicant may file a written notice of appeal with the ROW Manager within five (5) business days of the date the decision was rendered. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The ROW Manager shall provide a written decision within five (5) business days. Failure to render a decision within five (5) business days shall constitute a denial.

- B. If a further denial is given, the appellant may thereafter file a written notice of appeal to the Board of Directors within five (5) business days of receipt of the ROW Manager's written decision. The Board of Directors shall provide a written decision within five (5) business days of receipt of an appeal in accordance with this section. Failure to render a decision within five (5) business days shall constitute a denial.

ARTICLE II TECHNICAL SPECIFICATIONS

SECTION 2.1: Lawful Use of ROW.

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

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

SECTION 2.3: Routing and Spatial Assignment. The District reserves the right, in the Permit or otherwise, to restrict or determine the route (pathway) and/or spatial location, whether horizontal, vertical or depth, of any Facility and/or structure or improvement in the ROW. The District reserves the right to reserve space for future utilities.

SECTION 2.4: Commencement and Completion. After obtaining the Permit and prior to commencing the work, the Permittee shall notify the ROW Manager, and shall commence and complete all work within the time specified in the Permit, unless an extension of time is granted

by the ROW Manager. No work shall commence until erosion control measures (e.g. silt fence) and advanced warning signs, markers, cones and barricades are in place.

SECTION 2.5: Revocation or Suspension of Permit. The District reserves its right, as provided herein, to revoke or suspend any Permit, without refund of the Permit fee, in the event of a breach by the Permittee of the terms and/or conditions of the Permit, this Order and/or any other District Order. A breach of the terms of the Permit shall include, but not be limited to any of the following:

- A. The violation of any provision of the Permit.
- B. An evasion or attempt to evade any provision of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the District or its citizens.
- C. Any material misrepresentation of any fact in the Permit Application.
- D. The failure to meet insurance, surety bond or indemnification requirements.
- E. The failure to complete the work as specified in the Permit.
- F. The failure to correct a condition indicated on an order issued pursuant to this Order.
- G. Repeated traffic control violation.
- H. Failure to protect Facilities or repair Facilities damaged in the ROW.
- I. Violation of any part of this Order.
- J. Recognition by the ROW Manager that a Permit was issued in error.
- K. Failing to comply with an order of the ROW Manager on the Permit and any other valid Permit held by the ROW User.
- L. Any safety violation or other action that threatens the health, welfare and/or safety of the public as solely determined by the ROW Manager.
- M. If the ROW Manager determines that the Permittee has committed a breach of any law or condition of the ROW Permit, the ROW Manager shall make a written demand upon the Permittee to remedy such violation. Continued violation may be cause for revocation of the Permit or legal action, or both. The ROW Manager may, in his/her discretion, revoke the Permit, provide specifications to cure the breach, or both. Within five (5) days of receiving notification of the breach, Permittee shall contact the ROW Manager with a plan, acceptable to the ROW Manager, for correction of the breach. Permittee's failure to do so or Permittee's failure to timely implement the approved plan shall be cause for revocation of the Permit.

SECTION 2.6: Work Not in Accordance with Permit Declared Unlawful.

- A. It shall be unlawful for any Person to make, cause or allow to be made, any Excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, Utility pole or other Utility or appliance in or under the surface of any Street, alley, sidewalk, ROW or other public place, at any location, other than that described in the application for the Permit and as shown on the plans filed with the ROW Manager, and in accordance with the requirements of the Permit. If circumstances appearing after the Excavation is commenced make it impossible to comply with the Permit, the ROW Manager may, in his/her sole discretion, grant a waiver to take the circumstances into account.
- B. Failure to comply with requirements set forth in this Order or on any Permit shall be cause for revocation of the subject Permit and of any other Permits held by the same Permittee until the violations have been corrected or the ROW Manager has approved alternative requirements.

SECTION 2.7: Work Done Without a Permit. No cut, Excavation, grading or disturbing of the ROW, in any way, shall be made, other than Excavations necessary for Emergency work, without first securing a Permit. No Person or ROW User shall, at any time, open or encumber more of the ROW than shall be reasonably necessary to complete a project in the most expeditious manner.

SECTION 2.8: Cease Work. At any time, the ROW Manager may order the immediate cessation of any work that poses a threat to the health, safety or wellbeing of the public. The ROW Manager may revoke the Permit of any Permittee in any instance where there is a threat to the health, safety or wellbeing of the public.

SECTION 2.9: Requirements. The ROW Manager may issue a written notice to the Permittee indicating work that does not conform to the terms of the Permit, applicable standards, conditions, codes or other applicable regulation. Within ten (10) days after insurance of written notice, the Permittee shall present proof to the ROW Manager that the violation has been corrected. If such proof has not been presented within the required time, the ROW Manager may revoke the Permit.

SECTION 2.10: Location and Relocation of Facilities. Subject to applicable federal, state, and local laws, the ROW User shall, upon the request of the District, locate and/or relocate its Facilities situated within any ROW, at no expense to the District, where reasonable and necessary to accommodate the District's and Mustang's public improvements associated with Street construction and widening.

SECTION 2.11: Location of Poles and Conduits. All poles in the ROW shall be of sound material and straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to unduly interfere with vehicular and pedestrian travel. The location and route of all conduits, fiber, cables, Utilities and Facilities placed and constructed by a ROW User in the construction and maintenance of its system, the District shall be subject to the reasonable

and proper control, direction and approval of the District. Replacement of existing poles does not require a Permit.

SECTION 2.12: Size and Location of Above-Ground Facilities. The maximum dimensions for utility structures above the ground in the ROW adjacent to Streets are seven (7) feet long (parallel to the road), two (2) feet wide (perpendicular to the road) and six (6) feet in height. For structures three (3) feet or less in height, the width may be forty-four (44) inches. This does not include poles. The height of utility structures shall be measured from the lowest grade at any point eighteen (18) inches or less from the side of the structure that faces the Street to the highest point of the structure. Utility structures exceeding those dimensions shall not be located in the ROW adjacent to Streets, unless otherwise approved in writing by the ROW Manager. All above-ground Facilities shall be located outside of the corner visibility triangle at all intersections, future intersections and all driveways. No above-ground Facilities may be placed in a parkway that is across from a median opening.

SECTION 2.13: Street Closures.

- A. All lane closures on any District Street shall comply with TMUTCD, and shall include a lane closure exhibit to be submitted with the Permit to the ROW Manager. The ROW Manager may require a traffic control plan. Arrow boards and message boards may be required for lane closures on District Streets.
- B. Except in an Emergency, no Street shall be closed on weekdays during the hours of 6:30 a.m. to 9:00 a.m. and 3:30 p.m. to 7:00 p.m. Every day of the week, all roadways shall be open to traffic by sunset on the same day as the construction.
- C. All lane closures require twenty-four (24) hour notification of the County Sheriff and Fire Departments prior to closing.

SECTION 2.14: Site Maintenance During Construction and Prior to Full Restoration.

- A. Erosion Control and Storm Water Management. The ROW User shall be responsible for storm water management, erosion control and Excavation safety measures that comply with District, City, state and federal guidelines. Requirements shall include, but not limited to, construction fencing around any Excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request of ROW Manager, the ROW User may be required to furnish documentation submitted or received from the federal or state government.
- B. Dust Control. The ROW User shall ensure that the work conducted and site maintained to minimize blowing dust. At any time dust leaves the job site so that it is a nuisance, the work will stop until measures can be taken to eliminate the dust.

- C. Traffic Control Safety. In the event of non-compliance with the TMUTCD, the ROW User shall be notified of the violation. In the event of continued non-compliance, the ROW Manager may revoke the Permit, in addition to any other remedies available to the District. At any time the ROW Manager determines the work threatens public safety, he/she may take immediate action as necessary including but not limited to, stopping all work, or have a third party make the repairs at the expense of the Applicant.
- D. Responsibility for Signs, Barricades and Warning Devices. The ROW User working in any ROW is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The ROW User shall meet all requirements for barricading and traffic control as specified in the TMUTCD.
1. Only those individuals who are qualified by means of adequate training to safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including without limitation, those in TMUTCD, may place and maintain the traffic control devices in a construction area.
 2. The ROW User must either (i) subcontract the barricading to a firm specializing in traffic control; or (ii) submit the qualifications and name(s) of employees to the ROW Manager for approval prior to the work commencing. The ROW User must also submit a traffic control plan for review when required by this Order. All signs and barricades must conform to the requirements of the TMUTCD.
 3. All barricades, plates, and other traffic control equipment must conform to TMUTCD specifications and must be inspected and maintained by the ROW User.
 4. All barricades, plates and other traffic control equipment must display accurate and sufficient information including with limitation, the name of the ROW User.
 5. Non-compliance with the TMUTCD shall be cited in writing. In the event of non-compliance after citation, the ROW Manager may place the necessary devices as required, and the ROW User shall reimburse the District for all such expenses as well as Five Hundred and No/100 Dollars (\$500.00) for non-compliance. Failure to comply with this provision may result in denial of application for future Permits.
 6. All traffic control devices must be removed immediately upon completion of work.
- E. Duty to Barricade. At all times during construction activity, the Contractor and/or ROW User, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including without limitation, watchmen certified in

accordance with the safety training described in this Ordinance, if necessary, upon and around the work and for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

SECTION 2.15: Materials Testing. The District requires testing of materials used in construction in or near the ROW to determine conformance with District or Mustang construction specifications, including, but not limited to, compaction tests on backfill materials, subgrade, aggregate based course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary by the District. The ROW User shall, at his expense, hire a testing laboratory with current accreditation by the American Association for Laboratory Accreditation, American Association of State Highway and Transportation Officials (AASHTO) or another nationally recognized accreditation agency that verifies compliance with ASTM E 329 and that demonstrates the laboratory's capabilities to perform applicable ASTM or AASHTO test procedures, as may be required.

SECTION 2.16. Excavation in Streets. Except in case of an Emergency, there shall be no Excavation in any Street without the prior written approval of the ROW Manager. Any request for a Permit to excavate a Street shall include a description of the proposed work and proposed restoration of the area, as well as a statement of clear and convincing evidence is provided to the ROW Manager as to why alternate procedures cannot or should not be used in lieu of excavating a Street. All pavement cuts and repairs shall be performed by a Contractor with experience in Street repair work. Any damage to pavement outside the removal area shall also be repaired subject to approval of the ROW Manager. A Permittee or ROW User shall maintain its repairs in the ROW for two (2) years from the completion date of any repair.

SECTION 2.17: ROW Restoration Requirements. The work to be done pursuant to the Permit and any repair and/or subsequent restoration of the ROW must be completed within the dates specified in the Permit. In the event of circumstances beyond the control of the Permittee or when work is prohibited by unseasonable or unreasonable conditions, the ROW Manager may, in his/her sole discretion, extend the dates on receipt of a substantiated supplementary application for a Permit extension.

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

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

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

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

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

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

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

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

SECTION 2.18: Restoration of Pavement. Unless otherwise specified in the Permit, restoration of the pavement of any Street, alley, ROW or other public place shall be performed by the Permittee.

- A. No trench shall be opened in any Street for the purpose of laying pipes, conduits or ducts more than two hundred (200) feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the ROW Manager.
- B. All Excavations shall comply with the District construction standards, as amended, and requirements of this Order. Unless otherwise required by District standards, as amended, or if unusual conditions are encountered, the ROW Manager may require new standards for compaction, backfill and pavement restoration.
- C. Any excavated pavement, debris and/or other rubble shall be removed, together with any surplus material, within one (1) working day from the time such material is placed upon the Street. After backfilling is completed, and prior to repaving the cut, the ROW User shall remove all loose paving material and trim the edges of the Excavation at the Street surface to the satisfaction of the ROW Manager.
- D. Whenever any caving occurs in the sidewalks of any Excavation, the pavements above such caving shall be cut away, trench backfilled, compacted and sidewalk pavement restored. In no case shall any side or lateral tamping fill any void under a pavement.

SECTION 2.19: Permanent Pavement Repairs. The ROW User will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The ROW User shall make the final repairs within seven (7) days on Streets after the ROW Manager makes final inspection. Backfill failures shall remain the responsibility of the ROW User.

SECTION 2.20: Cleanup of ROW. In every case, and at all times, the work of removing from the ROW all obstructions, surplus materials, debris and waste matter of every description caused by and/or accumulated from the Excavation shall be the sole responsibility of the ROW User. Streets shall be cleaned by use of a regenerative air or vacuum street sweeper. The ROW User shall clean the surrounding area, as outlined above, within one (1) day upon completion and approval of all trench work and pavement restoration unless the ROW Manager, sufficient reason therefore having been given to his/her satisfaction, grants a written extension of time.

ARTICLE III FEES, ENFORCEMENT AND PENALTIES

Section 3.1: The fees in this section shall apply to all ROW Users, unless ROW Users and /or Utilities legally exempt from paying such fees under statute:

- A. **Permit Application Fee.** There is a Permit application fee of Two Hundred Dollars (\$200.00). Permits shall be issued or denied within five (5) days from receipt of the application.
- B. **Permit Expiration Fee.** A fee of Thirty Dollars (\$30.00) will be charged for any Permit that has not been extended before its expiration date and for any Permit

wherein work has not been completed by the expiration date provided for in the Permit.

SECTION 3.2: Clean Up Costs. The ROW User shall maintain the area on and around the Excavation and related work in a clean, safe and orderly fashion at all times during conduct of the Excavation and shall clean the same area upon completion of work.

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

SECTION 4.1: Liability of ROW User. To the extent allowed by law, the ROW User shall be liable to the District and Mustang for any damage or loss occasioned by any act and/or omission occurring in connection with its Excavation, and subject to state law, the ROW User shall fully indemnify, hold harmless and defend the District and Mustang, officers, employees, agents, representatives and volunteers from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the District and Mustang, officers, employees, agents, representatives and volunteers may be subjected for injury of any type, death or property damage arising from or connected with any such act and/or omission.

SECTION 4.2: Insurance.

- A. ROW Users shall furnish an original completed Certificate of Insurance to the District which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the District. The District shall have no duty to perform under this Order until such certificate has been delivered to the District.
- B. Subject to the ROW User's right to maintain reasonable deductibles in such amounts as are approved by the District, ROW Users shall obtain and maintain in full force and effect for the duration of the Permit, and any extension thereof, and/or duration of time it maintains Facilities in the public ROW, at the ROW User's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the District, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (Public) Liability Insurance to include coverage for the following:	

a) Premises/Operations	Bodily Injury and Property Damage of
b) Independent Contractors	\$2,000,000 per occurrence
c) Products/completed operations	\$5,000,000 General
d) Contractual Liability	aggregate or its equivalent in umbrella
e) Personal Injury	or excess liability coverage
f) Explosion, collapse, underground	
g) Broad form property damage, to include fire legal liability	
*3. Business Automobile Liability	Combined Single Limit for Bodily
a) Owned/Leased Vehicle	Injury and Property Damage of
b) Non-Owned Vehicles	\$1,000,000 per occurrence or its
c) Hired Vehicles	equivalent
*4. Professional Liability (Claims made from)	\$1,000,000 per claim to pay on behalf of the insured all sums which the Insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services
*5 Contractor's Pollution Liability Coverage	\$1,000,000 written on a claims made form with a two (2) year extended reporting period
*6. Pollution Liability Motor Carrier & Trucker Coverage endorsing the upset, overturn and remediation of a load in transport	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence written on an occurrence form

*If applicable.

- C. The District shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the District, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon any party to the policy or the underwriter of such policy). Upon such request by the District, the ROW User shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
- D. ROW Users shall ensure that all insurance contracts and Certificate(s) of Insurance contain the following required provisions.

1. Name the District and its District, officers, employees, volunteers, agents and representatives as additional insured with respect to the operations and activities of, or on behalf of, the named insured performing in the ROW under provision of this Order, with the exception of the professional liability, workers' compensation and liability policy;
 2. ROW User's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the District;
 3. Provide for an endorsement that the "other insurance" clause shall not apply to the District where the District is an additional insured shown on the policy; and
 4. Workers' compensation and employers' liability will provide for a waiver of subrogation in favor of the District.
- E. ROW User shall notify the District in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days' notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the District at the following address:

ROW Manager
Andy Glasgow, P.E., CFM
Director of Engineering
142 North Ohio Street
Celina, TX 75009.
Off: 972-382-2682

- F. Nothing herein contained shall be construed as limiting in any way the extent to which the ROW User may be held responsible for payments of damages to persons (including death) or property resulting from the ROW User's, or its subcontractors', performance of the work performed in the Public ROW.

SECTION 4.3: Performance/Assurance Bond. Before a Permit shall be issued, the Applicant shall execute and deliver to the District, a good and sufficient bond of performance or assurance, in the sum of Ten Thousand Dollars (\$10,000.00) to be approved by the District and conditioned that the Person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of any defects therein caused or arising from careless, negligent or imperfect construction thereof, and to hold the District, its Developers, its officers, employees, volunteers, agents, and representatives, free and harmless from liability on all such claims for damages to the performance or assurance bond which shall cover the cost of repairs in or upon the Street, sidewalk or other public place where the work is to be done that may become necessary by reason of such cut or Excavation having been made. The bond shall be maintained until the work is accepted by the District. With respect to the ROW User's

obligation to comply with the requirements for a performance/assurance bond, the District may allow the ROW User to self-insure such obligation upon production of evidence that is satisfactory to the District.

SECTION 4.4: Liability of Contractor and Sureties for Maintenance and Repair Work. Any defects of workmanship or material relating to work done by an excavator during the initial project or becoming known, or which should have been known, during the guarantee period (the two (2) years) shall be known as maintenance or repair work, and both the excavator and the sureties and/or the Contractor's bond shall be fully liable for any default of such Contractor under this section. In the event of a failure in the restoration of an Excavation, the ROW User shall, at its sole expense, have one (1) opportunity to repair, in a timely manner, the section of the restoration that has failed, which repair shall be in accordance with the standards set forth in this Order. In the event of any subsequent failure of that section of the restoration, the District retains the right and option to terminate the ROW User's guaranty, upon written notice to the ROW User. In such event, the ROW User shall reimburse the District for its direct costs associated with the repair of the failure of the restoration work.

SECTION 4.5: When Additional Security Required. In the event the ROW Manager reasonably believes the Contractor's or ROW User's solvency is threatened, the ROW Manager may, at any time, make written demand on a Contractor and/or ROW User for bonds, and the Contractor and/or ROW User shall immediately furnish such additional bond or bonds to the District.

ARTICLE V VARIANCES AND EXCEPTIONS

SECTION 5.1: Variances/Exemptions. A Permittee or ROW User may request a variance from any of the requirements of this Order by filing a written request with the ROW Manager stating the requirement and the basis for the variance. The ROW Manager may reject incomplete variance requests. The applicant shall bear its own expenses of the application process.

- A. Any request for a variance from any ROW restoration requirement shall be made in writing, in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted reconstruction and/or repair of the excavated area, if applicable.
- B. Any request for an exemption and/or variance from any penalty and/or fee, other than as provided in this Order, shall be made in writing, and shall be accompanied by a written detailed request stating the reasons therefore.
- C. Any request for an exemption and/or variance from any Permit, or any other requirement of this Order shall be made in writing, stating in detail all reasons for the requested exemption and/or variance.
- D. The District shall grant or deny an application for a variance and/or exemption within ten (10) days of receipt of the application for variance and/or exemption.

- E. Denial of the variance may be appealed in accordance with the Section 1.15 of this Order.

**ARTICLE VI
MISCELLANEOUS**

SECTION 6.1: Bridge Weight Limit Violation. It shall be unlawful for the operator of any vehicle to drive, haul, push or tow, wholly or partially, any load upon a posted weight limited bridge, which collectively exceeds the officially designated and posted maximum bridge weight, whether or not all load bearing wheels travel on the bridge.

SECTION 6.2: Penalty Provision. Any person, firm, corporation or business entity violating this Order shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of Five Hundred and No/100 Dollars (\$500.00), unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of Two Thousand and No/100 Dollars (\$2,000.00). Each continuing day's violation under this Order shall constitute a separate offense. The penal provisions imposed under this Order shall not preclude the District from filing suit to enjoin the violation. The District retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6.3: Savings/Repealing Clause. All provisions of any order in conflict with this Order are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the order. Any remaining portions of said order shall remain in full force and effect.

SECTION 6.4: Severability. Should any section, subsection, sentence, clause or phrase of this Order be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Order shall remain in full force and effect. The District hereby declares that it would have passed this Order, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 6.5: Effective Date. This Order shall become effective from and after its adoption and publication as required by law

DULY PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO.10 on this 10th day of August, 2021.

/s/ Rob Adams

President

Board of Directors

/s/ Robert Tague

Secretary

Board of Directors