CITY OF DAPHNE, ALABAMA
ORDINANCE 2020-22

REPEALING AND REPLACING ORDINANCE 2019-08
THE RIGHT OF WAY ORDINANCE

WHEREAS, the City Council of the City of Daphne, Alabama desires to protect, preserve, and promote the health, welfare, and safety of the citizens of Daphne by ensuring the structural integrity of public streets; and

WHEREAS, the City Council of the City of Daphne, Alabama desires to ensure that city rights-of-way are maintained in a state of good repair free from unnecessary encumbrances; and,

WHEREAS, the City Council of the City of Daphne, Alabama, possessing authority to manage and control the use of public rights-of way within its jurisdiction, desires to amend its Right-of-Way Ordinance, as codified at Section 18, Article II, to revise and further clarify procedures to issue permits for wireless facilities and support structures in the rights-of-way and to regulate the placement of above grade utility markers in the rights-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA THAT ORDINANCE 2019-08 IS HEREBY REPEALED AND REPLACED WITH THE FOLLOWING:

SECTION I. - DEFINITIONS.

For the purpose of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, the words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely derivative.

AASHTO. American Association of State Highway and Transportation Officials.

Applicant. Any person or entity who submits an Application under this Ordinance.

Application. A written request, on a form provided by the City, for a Permit.

Block. That part of the public right-of-way that includes the area from the property line to the parallel property line in width and extending from the centerline of an intersecting street to the centerline of the next intersecting street in length or five hundred (500) feet, whichever is less.

City. The City of Daphne, Alabama.

City cost. The direct and indirect costs borne by the City for the administration of this Ordinance.

Code enforcement officer. Any person authorized by the City to enforce the codes of the City and issue municipal offense tickets for violations thereof.

Collocate. To install or mount a Wireless Facility in the public right-of-way on an existing Support Structure, an existing Tower, or on an existing Pole and/or the modification of such a structure for the purpose of such placement or installation. "Collocation" has a corresponding meaning.

Commercial Mobile Radio Service Providers. Entities authorized by the FCC to provide Commercial Mobile Radio Services in the City of Daphne.

Construct. To excavate, repair, rehabilitate, maintain, and install sanitary sewers, water mains, fire hydrants, valves, meters, manholes, service lines and connections, gas mains, telephone and electrical conduit and their miscellaneous service lines and connections, telecommunications facilities, cables, wires, lines, wave guides, antennas, and other equipment or facilities, pedestals, and service cabinets, poles, guy wires, storm drains, manholes, inlets, catch basins, irrigation systems, driveways, sidewalks, pavement extensions, curbs, walks, steps, building canopies, balconies, overhead walkways, and temporary detour pedestrian walkways on, above, or under any part of the rights-of-way provided however, that "construct" shall not mean installation, repair, rehabilitation, or maintenance of facilities that do not involve excavation of any portion of the rights-of-way.

Construction bond. A bond posted to ensure proper and complete construction and/or repair of a permitted site pursuant to a permit issued by the City.

Construction standards for miscellaneous construction, utility excavation, and right-of-way and pavement restoration ("Construction Standards"). The compilation of provisions and requirements that provide the technical specifications and details for the construction of facilities in the right-of-way, as published and amended from time-to-time by the Department (see Appendix B to this Ordinance for Construction Standards in effect on the effective date of this Ordinance).

Department. The department designated by the City to be responsible for Right of Way management and overseeing compliance with this Ordinance. Unless otherwise designated by the City, the Department shall be presumed to be the Public Works Department.

Emergency. A condition that poses a clear and immediate danger to life or health, or of a significant loss of property or utility service. "Emergency" also includes requests for service which the applicant deems urgent and can be classified as small project types A and B.

Excavation. Any work on the surface or subsurface of the public right-of-way including but not limited to opening the right-of-way, installing, servicing, repairing, or repairing/ modifying any facilities/sites in or under the surface or subsurface, and restoring the surface and subsurface of the public right-of-way.

FCC. Federal Communications Commission.

Facilities. Any tangible thing located in any right-of-way; but shall not include boulevard plantings or gardens planted and maintained in the right-of-way between a person's property and the street edge of pavement.

Geotechnical engineer. A professional engineer experienced in soils engineering and materials testing.

Geotechnical company. A professional engineering company that provides soils engineering and testing services, laboratory and field testing services, construction material testing, and possesses a certificate of authorization from the state board of registration for professional engineers and land surveyors.

In. When used in conjunction with "right-of-way," means over, above, in, within, on, or under a right-of-way.

Inspector. Any person designated/authorized by the City to carry out inspections related to the provisions of this Ordinance.

Landscape or landscaping. Trees, shrubs and other plantings of materials that are or may grow to a height of eighteen (18) inches or more, and irrigation systems (in unpaved areas), in the right-of-way.

Major project. Construction of water, sewer, gas, telephone, fiber optic, electrical power conduit, cable and duct, TV cable, jacking, boring, pushing and tunneling, retrofitting existing facilities/sites, storm drain and any other miscellaneous major facility construction projects that involve more than one continuous block or five hundred (500) linear feet of right-of-way.

Mayor. The Mayor of the City of Daphne, Alabama

Minor project. Construction of miscellaneous utility service lines, manhole installation not associated with major project construction, main line point repairs and installation, miscellaneous utility service line repair, storm drain and inlet repairs, vaults, irrigation systems and other miscellaneous construction and repair projects that involve less than one (1) block or five hundred (500) linear feet of right-of-way.

Municipal court. Means the part of the City of Daphne Municipal Court System designed to enforce local laws and ordinances relating to the physical appearance of the City, and the health and safety of the public.

Municipal offense ticket (M.O.T.). A citation issued for a violation of this Ordinance. An M.O.T. may require payment of a fine as defined by the municipal offense ticket system fine schedule, as may be amended from time to time, appearance in municipal court and if determined by the judge of said court, jail or community service.

MUTCD. Manual on Uniform Traffic Control Devices, for Streets and Highways, as published by the US Department of Transportation Federal Highway Administration.

Notice of violation. A written warning issued by the department, or the City of Daphne Code Enforcement Officer, for a violation or possible violation of this Ordinance.

NJUNS. National Joint Use Notification System.

Obstruct. To place anyone or any tangible object in a right-of-way so as to hinder free and open passage over, under, or through that or any part of the right-of-way.

Permit fee. Money charged by the City to cover the costs as provided in Appendix A (Schedule of fees) of this Ordinance.

Permittee. Any person or company to whom a permit has been granted by the City under this Ordinance.

Person. Any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity which has or seeks to have facilities/sites located in any right-of-way.

Restoration. The process by which a constructed or obstructed right-of-way is restored as specified in the constructed standards.

Right-of-way. The surface and space above and below any real property in which the City has an interest in law or equity, whether held in fee, or other estate or interest including easements, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, detention pond, retention pond, culvert, ditch, storm water management facility, bridge, park, or any other place, area, or real property owned by or under the control of the City.

Right of Way Manager ("ROW Manager"). The individual or position in the City designated to oversee compliance with this Ordinance. Unless otherwise designated by City Administration, the ROW Manager shall be the City of Daphne Public Works Director.

Right-of-way Permit. The permit which must be obtained before a person may construct in, or obstruct in a right-of-way as required by Section III (Right-of-way permits) of this Ordinance.

Service or utility service. Services provided by utilities or by Commercial Mobile Radio Service Providers.

Sidewalk. The paved pedestrian walkway between the edge of the road and the street right-of-way line.

Small Cell Infrastructure Guidelines. Requirements and conditions regarding small cell infrastructure within the City's rights-of-way as published and amended from time-to-time by the Department. Permits shall be subject to the version of these Guidelines in effect on the date the permit application is received by the Department, notwithstanding any subsequent amendment(s) thereto.

Small project (type A). The installation of equipment cabinets, junction boxes, terminal boxes, splice boxes, regulator stations, meters and valves in paved areas, utility poles, guy poles, and appurtenances not associated with a major or minor project.

Small project (type B). The installation, repair, and routine maintenance of miscellaneous utility drop lines, overhead wires and cables, traffic signal poles, light poles, traffic signs, meters, valves, and other miscellaneous construction, repair, routine maintenance, and inspection that requires minimal right-of-way disruption or less than sixteen (16) square feet of excavation and involves less than one hundred (100) linear feet of right-of-way.

Supplementary application. An application made to construct or obstruct more of the right-of-way than allowed in, or to extend, a permit that has already been issued.

Transmission Equipment. Equipment that facilitates transmission of any FCC-licensed or authorized Wireless Communications Services. Transmission Equipment includes an antenna or small cell facility and its associated equipment, which includes any and all on-site equipment, such as back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, shelters, radio transceivers, regular power supply units, and wiring, to which a wireless antenna or small cell facility is attached in order to facilitate mobile broadband service and personal wireless service delivered on mobile broadband devices. Transmission Equipment does not include wireless communications equipment (such as wireless meter reading and other utility wireless communications) that is (1) owned and operated by a public utility subject to regulation by the Alabama Public Service Commission or the Federal Energy Regulatory Commission, including its parents, affiliates, or subsidiaries, (2) used solely for internal utility purposes.

Trenchless technology. The use of directional boring, horizontal drilling, and micro tunneling and other techniques in the construction of underground portions of facilities which result in the least amount of disruption and damage to right-of-way as possible.

Underground facilities. All lines, cables, conduits, posts, tanks, and any other facilities owned or operated by persons other than the City which are located wholly or partially underneath right-of-way.

Utilities. Any water, sewer, gas, drainage, irrigation, or culvert pipe and any electric power, telecommunication, signal, communications, or cable television conduit, fiber / fiber optic, wire, cable, or operator thereof. For purposes of this Ordinance, "utilities" includes Commercial Mobile Radio Services and Wireless Communications Services.

Utility Markers. Above grade marker, pillar, post, sign, or similar facility placed to provide visual reference of, or otherwise mark the location of, underground facilities which do not provide structural support to any underground or overhead facility.

Utility Provider. Any person who provides utilities services in the City.

Wireless Communications Services. Without limitation, commercial mobile radio services, personal wireless services, all FCC-licensed or authorized back-haul and other fixed wireless services, broadcast, private, and public safety communication services, and unlicensed wireless services.

Wireless Facilities. Transmission Equipment used to provide Wireless Communications Services.

SECTION II. - RIGHT-OF-WAY ADMINISTRATION.

(a) *Administration.* The ROW Manager shall be the principal City official responsible for the administration of the right-of-way, right-of-way permits, and the ordinances related thereto. The City shall adopt and may amend from time to time Construction Standards and other rules reasonably required to carry out the purposes of this Ordinance. Any requirement not specifically covered by this Ordinance or the Construction Standards shall be determined by City Administration.

(b) *Appeal of Decision.*

(1) *Cause for Appeal.* The City may grant a special exception to the requirements of this Ordinance if an applicant/permittee demonstrates with written evidence that:

a. The exception will not create any threat to public health, safety, or welfare;

b. The applicant/permittee demonstrates that the increased economic burden and the potential adverse impact on the applicant's/permittee permittee's construction schedule resulting from the strict enforcement of this Ordinance actually, or effectively, prohibits the ability of the applicant/permittee to provide utility services in the City; and

c. The applicant/permittee demonstrates that the requirement unreasonably discriminates against the applicant/permittee in favor of another person.

(2) *Appeal Procedure.*

a. *Department Appeal.* Should an applicant/permittee be aggrieved by the decision of the ROW Manager, such applicant/permittee may request reconsideration by the ROW Manager. Such request for reconsideration shall be submitted in writing along with justification to the Department within fifteen (15) days from the date of such original decision. ROW Manager and Department shall review such request and may alter the original decision if deemed appropriate. Such decision shall be issued to the applicant/permittee in writing by either the ROW Manager or Department head.

b. *Administration Appeal.* In the event a dispute is not satisfactorily resolved by the Department Appeal, within fifteen (15) days of the issuance of the Department Appeal decision, the applicant/permittee may appeal to City Administration. Such appeal shall be submitted in writing along with justification to the Office of the Mayor within fifteen (15) days from the date of issuance of the Department Appeal decision. City Administration shall review and may alter the original decision or the Department Appeal decision if deemed appropriate. Such decision shall be issued to the applicant/permittee in writing by an authorized member of City Administration.

c. *Final Appeal.* In the event the dispute is not satisfactorily resolved by the Administration Appeal, within fifteen (15) days of the issuance of the Administration Appeal decision, the applicant/permittee may submit a final appeal to the City Council. Such appeal shall be submitted in writing along with justification and all relevant documentation to the Office of the City Clerk within fifteen (15) days from the date of issuance of the Administration Appeal decision. The City Clerk shall cause the matter to be considered as soon as reasonably possible by the City Council at a public hearing.

SECTION III. - RIGHT-OF-WAY PERMITS.

(a) *Permit requirements.*

(1) Except as otherwise provided in this Ordinance, no person may construct, obstruct, or otherwise encumber any right-of-way without first having obtained one (1) of the following right-of-way permits from the Department:

a. Major project;

b. Minor project;

c. Small projects;

1. Type A;

2. Type B;

d. Landscape; or

e. Wireless facilities project.

(2) *Right-of-way permit.* A right-of-way permit is a permit which allows the holder to construct, obstruct, or landscape in that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein. A permit is valid only for the date(s) and the area(s) of right-of-way specified in the permit. No person may construct in or obstruct the right-of-way beyond the date or dates specified in the permit unless such person:

a. Makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and

b. A new permit or permit extension is granted.

However, if no work is initiated within four (4) months or if the project lies dormant for a period of thirty (30) calendar days after being started, the permit shall be invalid.

(3) *Emergencies.* When the work must commence immediately because of an emergency, the permittee shall comply with the provisions in Section VI Enforcement of permit obligation, subsection (b)(l).

(4) *Exemptions.* No permits shall be required for the following activities:

a. Installation and repair of facilities by, or for, City of Daphne Departments; and

b. Installation of landscaping materials which are, or may grow, to a height of not more than eighteen (18) inches.

c. The replacement, maintenance, and repair of utility markers, independent of any other activity for which a permit is required under Section III.

(5) *Permit authorizing routine work.* Applicants may be allowed, if determined by the Department, to obtain in advance, an annual, quarterly or semi-annual permit for minor projects outside roadway limits and some small projects that involve minimal excavation. Permit fees shall be calculated based upon the actual work completed during the term and due for payment at the end of the term. Bi-weekly summary submittals will be required of blanket permit applicants covering the type and extents of work, locations, durations, etc. These summary submittals will be used to verify fees based on the actual work completed under that blanket permit. A twenty-five dollar ($25.00) administrative fee plus all fees will be charged at the end of the term.

(b) *Permit applications.* Application for a permit is made to the ROW Manager.

(1) All permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the Construction Standards, as appropriate.

(2) All permit applications submitted by a person who will perform the proposed work in the City's rights-of-way for or on behalf of another person shall identify the name of the other person for whom the work will be performed.

(3) Tree and landscaping requirements of this Ordinance shall be administered and enforced by the appropriate City departments.

(c) *Issuance of permit; conditions.*

(1) If the ROW Manager determines that the applicant has satisfied the requirements of this Ordinance, he may issue a permit or issue notification and reason for denial of same.

(2) The ROW Manager may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder in order to protect the public health, safety and welfare, to insure the structural integrity of the right-of-way, to protect the property of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public, including notification to property owners.

(d) *Permit fees.*

(1) Permit fees shall be established by the City Council upon recommendation by City Administration. Said fees shall be in an amount sufficient to recover the following costs:

a. The City costs, including administration, inspection, and enforcement;

b. The cost for obstructing the right-of-way, including costs associated with traffic management that results from street obstruction, lost tax

revenues resulting from streets blocked and as an encouragement to minimize costs and to encourage timely, efficient use of the right-of-way; and

c. For wireless facilities projects, applicable fees for both non-recurring and recurring costs associated with applications and access to the public rights-of-way and for attachment to government-owned facilities, as set forth in the City's Schedule of Right-of-Way Permit Fees.

d. The current schedule of permit fees is set forth in Appendix A to this Ordinance.

(2) *Payment of permit fees*. No permit shall be issued without payment of such fees unless the ROW Manager authorizes payment to be made thirty (30) days following billing. All changes in fees shall be approved by the City Council.

(3) *Nonrefundable fees*. All permit fees are nonrefundable.

(4) *Joint applications*. Applicants are encouraged to make joint applications for permits to construct or obstruct the right-of-way at the same place and time.

(e) *Wireless facilities and support structures.*

(1) The installation of wireless facilities and support structures in City rights-of-way shall require a wireless facilities project permit under this Ordinance. An applicant for such a permit shall submit the following information pertaining to particular sites or a proposed deployment:

a. A technical description of the proposed facilities, along with detailed diagrams and photo-simulations accurately depicting all proposed facilities and support structures;

b. A detailed deployment plan describing construction planned for the 12 month period following the issuance of the permit, and a description of the completed deployment;

c. An engineering certification from an engineer licensed in Alabama for the proposed construction;

d. A statement regarding specific sites of potential collocation in the rights-of-way and whether such collocation is feasible or desirable in lieu of the installation of new support structures;

e. In the case of a proposed attachment to a City-owned facility located in the City rights-of-way, an executed attachment agreement with the City, which such agreement shall contain a provision requiring that the applicant consent to relocating its facilities attached to any city-owned facility, subject to a period of reasonable notice and terms to be agreed upon by the City and the applicant in their attachment agreement;;

f. In the case of a proposed attachment to an existing utility pole in the City rights-of-way, proof of an executed attachment agreement with the utility pole owner. Proof may be provided via submission of a letter from the owner of the support structure stating that it has an executed attachment agreement with the applicant and that the applicant has permission to use the support structure; and

g. Such other and reasonably necessary safety-related information as the City may request to further clarify information contained in the application.

h. If the applicant alleges that failure to approve the application will result in unreasonable discrimination among providers of functionally equivalent services pursuant to 47 U.S.C. 332(c)(7)(B)(i)(I) and/or that failure to approve the application will prohibit or have the effect of prohibiting personal wireless services pursuant to 47 U.S.C. 332(c)(7)(B)(i)(II), the applicant must so state on the application and provide documentation in support of this claim.

(2) An Application shall not be deemed complete until the Applicant has submitted all documents, information and forms specifically enumerated in this Ordinance that pertain to the location, construction, or configuration of the Facilities or support structures at the requested location(s). Within the lesser of (i) twenty (20) business days and (ii) any applicable timeframe imposed by FCC regulation or order (which is ten (10) calendar days as of the effective date of this ordinance) after an Application for permit is submitted, the City shall notify the Applicant in writing if any additional information is needed to complete that Application or supplemental information is required to process the request. Once the completed Application is submitted, the Director shall make the final decision to approve or deny a complete Application within sixty (60) days. Applications for a new support structure requiring a conditional use permit from the Director shall be approved or denied within ninety (90) days of the submission of the completed Application. The processing deadline may be tolled by agreement of the Applicant and the City.

SECTION IV. - GENERAL COMPLIANCE REQUIREMENTS.

(a) *Compliance with Construction Standards.* All construction or maintenance of facilities shall be in accordance with this Ordinance, the Construction Standards, and such other conditions imposed on the permit by the ROW Manager under Section III(c).

(b) *Location of facilities.* The ROW Manager shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to do so and still maintain the safety and integrity of existing facilities.

(c) *Least disruptive technology.* Applicants are encouraged to perform construction and maintenance of facilities in a manner resulting in the least amount of damage and disruption of the right-of-way. Applicants will be required to use trenchless technology for major and minor construction projects, within roadway limits, in arterial and other high volume streets constructed or resurfaced within the last five (5) years, unless otherwise approved by the City and such approval shall not be unreasonably withheld.

The City may require trenchless technology in other locations, where extreme circumstances prevent or make open cut methods impractical. Applicants may use the open cut method or trenchless technology for major and minor projects outside roadway limits.

(d) *Right-of-way restoration.*

(1) The work to be done under the permit, and the restoration of the right-of-way as required herein, must be completed within the dates specified in the permit. In addition to its own work, the permittee must restore the general area of the work, including all disturbed landscaping materials and the permitted areas, including the paving and its foundations, per the City of Daphne Construction Standards.

(2) The permittee shall perform the work according to the standards and with the materials specified by the City, including but not limited to the Construction Standards.

(3) *Guarantee of work outside roadway limits.* The permittee, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in compliance with this Ordinance and the City's Construction Standards, and warrants and guarantees all work done for a period of twenty-four (24) months following its completion. During this twenty-four (24) month period, the permittee shall, upon notification from the City, correct all restoration work to the extent necessary using the method required by the City. Said work shall be completed within the time frame specified by the City. In addition to other enforcement and penalty provisions of this Ordinance, the failure to complete said work within the time frame specified by the City may result in the City's refusal to issue any new permits to the permittee and to the person for whom or on whose behalf the permittee is performing the work.

(4) *Guarantee of work within roadway limits.* The permittee, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in compliance with this Ordinance and the City's Construction Standards, and warrants and guarantees all work done from date of completion until the date that the City resurfaces the roadway. During this period of time, the permittee shall, upon notification from the City, make all necessary repairs and correct all restoration work to the extent necessary using the method required by the City. Said work shall be completed within the time specified by the City. In addition to other enforcement and penalty provisions of this Ordinance, the failure to complete said work within the time frame specified by the City may result in the City's refusal to issue any new permits to the permittee and to the person for whom or on whose behalf the permittee is performing the work.

(5) *Construction bond.* For construction bond requirements under this section, see the Construction Standards, as published and amended from time-to-time by the Department. (See Appendix B, Section II, Bond Requirements, for construction bond requirements in effect on the effective date of this Ordinance).

(e) *Installation requirements.* The excavating, backfilling, restoration, and all other work performed in the right-of-way shall be done in conformance with specifications set forth in the Construction Standards.

(f) *Inspection.* Except for routine work, when the work under any permit for major and minor projects hereunder is completed, the permittee shall notify the ROW Manager.

(1) Permittee shall make the work site available to the ROW Manager or his authorized representative and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work.

(2) At the time of the inspection, the ROW Manager or his authorized representative may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

(3) The ROW Manager or his authorized representative may issue a notice of violation to the permittee for any work which does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for issuance of a municipal offense ticket (M.O.T.) and/or a stop work order. Within the time frame indicated on the notice after issuance of the order, the applicant 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 issue a stop work order and/or have a municipal offense ticket (M.O.T.) issued.

(g) *Other obligations.* Obtaining a right-of-way permit does not relieve the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other City, county, state, or federal rules, laws or regulations.

(1) A permittee shall comply with all lawful requirements of local, state and federal laws, including a franchise duly adopted by the City Council. Contact shall be made to the one (1) call excavation notice system, Alabama Statutes @ 1-800-292-8525, or such other number which may be applicable.

(2) A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.

(3) Except in the case of an emergency, and with the approval of the City, no right-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

(4) A permittee shall not so obstruct a right-of-way that the natural and free passage of water through the gutters or other waterways shall be interfered with.

(5) Private vehicles not owned by or under contract to permittee may not be parked within or adjacent to a permit area.

(6) Each above grade structure placed in a right-of-way, including but not limited to towers, poles, and utility markers, shall display the identification of the utility provider that has caused the structure to be placed. Such utility provider shall maintain at the Public Works Office a registered phone number for addressing concerns about such above-grade structures.

(7) Any above grade structure installed in the City's rights-of-way prior to the effective date of this section must be brought into compliance with the provisions of this section within six (6) months of the effective date thereof. After six (6) months from the effective date of this section, in addition to other remedies available to the City, the City shall not process or issue any right-of-way permits to a utility provider or its designees until such time as the utility provider is fully compliant with the requirements set forth herein regarding above grade structures in the City's rights-of-way.

(8) All entities that have attachments to poles in the City of Daphne shall have and utilize the necessary electronic equipment and training required to utilize the NJUNS system and shall include the City of Daphne on a read-only basis. Once all facilities have been transferred off of a replaced pole, the pole owner or, in the case of any contractual arrangement among utility providers designating the provider responsible for removal of the old pole stub, the designated provider shall have one hundred and eighty (180) days to remove the old pole stub. Notwithstanding, a longer period shall be allowed for removal of the old pole stub if exigent circumstances exist that create good cause for a longer period.

(h) All persons owning and operating any underground utilities, pipes, conduits, or underground mains and services within the City, shall adjust all manhole castings so that they are level to the finished surface of paving, and shall keep and maintain all manhole castings level to the finished surface of paving at all times. Notwithstanding the foregoing, any person or entity responsible for resurfacing or repaving projects shall adjust said manhole castings so that they are level to the finished surface of paving, but the persons owning and operating the underground utilities, pipes, conduits, or underground mains and services shall thereafter remain responsible for keeping and maintaining said castings level to the finished surface of paving at all times.

(i) *Utility Markers*. All utility markers installed within the City's rights-of-way shall comply with the following requirements at all times:

(1) Utility markers shall not exceed 24 inches in height above grade except as required by federal or state law. Utility markers shall be placed no more frequently than every 300 feet or line of sight, whichever is less frequent, and shall be located at the right-of-way line if that location will provide adequate warning. The telephone number for one-call notification services to request marking the line location prior to excavation and for emergency response shall appear on each utility marker. Any above grade facility markers installed prior to the effective date of this Ordinance must be brought into compliance with the provisions of this Ordinance within six (6) months of the effective date thereof.

(2) All utility markers located in the City's right-of-way shall legibly display the name of the utility provider owning the utility marker as well as a unique serial number for the marker. It is intended that the unique serial number be generated by and applied to the utility marker by the utility provider, who shall also maintain an inventory of the installed utility markers and their deployed location. Should a utility provider not have the capability of generating utility marker serial numbers, or the process of doing so be otherwise burdensome, the utility provider may request a City-generated serial number and decal containing the serial number

from the City, which the utility provider can affix to the utility marker prior to its installation.

(3) Notwithstanding the foregoing, the City may affix a sticker on each utility marker placed in the right-of-way to uniquely identify each utility marker for the City's own record-keeping purposes, provided that said stickers do not conceal any information or text on the utility marker or otherwise render the utility marker less conspicuous than it would be without the sticker.

(4) In the event a utility provider installs or replaces a utility marker independent of any permitted right-of-way construction project, the utility provider shall notify the City of same within a reasonable time after such installation or replacement.

(5) In addition to the other requirements of this Ordinance, the owner of utility markers installed within the City's rights-of-way must maintain an accurate phone number on record with the Public Works Department.

SECTION V. - WIRELESS FACILITIES FINDINGS AND REQUIREMENTS.

(a) Wireless facilities and support structures proposed to be located on City streets, sidewalks, or other rights-of-way shall be permitted as a wireless facilities project and meet the following requirements:

(1) Wireless facilities may be installed on new utility poles or light poles only if the applicant reasonably demonstrates that neither collocation on an existing utility or light pole in the right of way provides a feasible or practical alternative for the provision of wireless service in the area. Only entities granted a certificate of convenience and necessity by the Alabama Public Service Commission pursuant to Alabama Code § 37-4-28 or licensed by the FCC may erect new poles in the City's right-of-way.

(2) Any new pole installed in City rights-of-way to support wireless facilities shall:

a. Comply with all structural and safety standards adopted by the City, including, but not limited to: AASHTO, MUTCD, International Building Code and International Electrical Code, as adopted by the City, and the City's Storm Water Management Ordinance;

b. Not obstruct pedestrian or vehicular traffic flow or sight lines;

c. Not exceed 40 feet in height in any residentially zoned area and 50 feet in height in any non-residentially zoned area;

d. Not be designed to prevent the collocation of other wireless providers' antennas and related equipment;

e. Be treated or painted with non-reflective paint, and in a way to conform to or blend with the surroundings; and

f. Comply with such other requirements and conditions as the City may conclude are appropriate to impose, including but not limited to those provided in the City's Small Cell Infrastructure Guidelines.

(b) Any wireless facilities installed on a new or existing pole or any other structure in the rights-of-way shall:

(1) Have equipment box or boxes each no greater in size than 17 cubic feet in volume, exclusive of any antenna enclosure, with any collocated equipment boxes not exceeding 28 cubic feet in total collective volume on a single support structure;

(2) Have panel antennas no greater than 2 feet in height, and omni/dome antennas no more than 4 feet in height, and no wider than the diameter of the Pole;

(3) Have no more than 3 panel antennas per pole, and no more than one omni/dome antenna per pole;

(4) Have microwave dishes no greater than 2 feet in diameter, with no more than 3 microwave dishes per pole;

(5) Be treated or painted with non-reflective paint in a way to conform to the pole with no discernable difference in color, and be continuously maintained going forward to ensure no discernable difference in color; and

(6) Comply with other published in advance, prospective requirements and conditions as the City may conclude are appropriate to impose, including but not limited to those provided in the City's Small Cell Infrastructure Guidelines.

(c) Wireless facilities and support structures proposed to be located on City streets, sidewalks, or other rights-of-way may be permitted upon a finding by the City that:

(1) The application complies with all standards set forth in Article XXXII of the Daphne Land Use and Development Ordinance, including camouflage, at Section 32-3(f);

(2) Wireless facilities and support structures in the Olde Towne Daphne District will be consistent with the design standards for said district, see Daphne Land Use and Development Ordinance, Article XIV; and

(3) The application complies with all standards set forth in the City's Small Cell Infrastructure Guidelines.

SECTION VI. - ENFORCEMENT OF PERMIT OBLIGATION.

(a) *Denial of permit.*

(1) *Mandatory denial.* Except in the case of emergency, no right-of-way permit will be granted:

a. To any person who has failed to comply with the requirements of this Ordinance;

b. To any person who is delinquent in paying a debt owed to the City;

c. If, in the discretion of the ROW Manager, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The ROW Manager, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the right-of-way, and by considerations relating to the public health, safety and welfare.

(2) *Permissive denial.* The ROW Manager may deny a permit in order to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the rights-of-way and its users. The ROW Manager may consider one (1) or more of the following factors:

a. The extent to which the right-of-way space where the permit is sought is available;

b. The competing demands for the particular space in the right-of-way;

c. The availability of other locations in the right-of-way or in other right-of-way for the facilities of the particular company;

d. The applicability of other ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;

e. The degree of compliance of the applicant with the terms and conditions of its franchise, this Ordinance, and other applicable ordinances and regulations; the degree of disruption to surrounding neighborhoods and businesses that will result from the use of that part of the right-of-way; and

f. The condition and age of the right-of-way, and whether and when it is scheduled for total or partial construction; and the balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way.

g. The public policy of allowing an obstruction of similar character in other right of ways in the City.

(b) *Work done without a permit.*

(1) *Emergency situations.* Each permittee shall notify the ROW Manager (by telephone or in person) of any event regarding its facilities which it considers to be an emergency immediately upon its discovery of same. The applicant may proceed to take whatever actions are necessary in order to respond to the emergency. Within three (3) business days after the occurrence of the emergency, the applicant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Ordinance for the actions it took in response to the emergency.

(2) In the event that the ROW Manager becomes aware of an emergency regarding a permittees' facilities/site, the Department shall attempt to contact the local representative of each permittee affected, if known, or potentially affected, by the emergency, who must comply with subsection (b)(l) of this section. In any event, the Department may take whatever action deemed necessary in order to respond to the emergency.

(3) *Non-emergency situations*. Except in the case of an emergency, any person who obstructs or excavates a right-of-way without a permit must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by City Codes, is subject to the issuance of a notice of violation and/or a Municipal Offense Ticket (M.O.T.), deposit with the Department the fees necessary to correct any damage to the right-of-way and comply with all requirements of this Ordinance.

(c) *Enforcement.*

(1) Permittees hold permits issued pursuant to this Ordinance as a privilege and not as a right.

(2) If the ROW Manager determines that the applicant has violated a material term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the ROW Manager shall issue a notice of violation to the applicant to remedy such violation. The demand shall state that continued violations may cause for the issuance of a stop work order and issuance of a Municipal Offense Ticket (M.O.T.). Further, a substantial breach, as stated above, will allow the ROW Manager, at his or her discretion, to place additional or revised conditions on the permit.

(3) A material violation by applicant shall include, but shall not be limited to, the following:

a. The violation of any material provision of the permit;

b. An evasion or attempt to evade obtaining a permit or any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;

c. Any material misrepresentation of fact in the application for a permit;

d. The failure to maintain the required bonds and/or insurance;

e. The failure to complete the work within a timely manner; or

f. The failure to correct a condition indicated on an order issued pursuant to Section IV(f).

(5) For violations creating an "Emergency" as defined under Section I above, within forty-eight (48) hours of receiving a notice of an "Emergency"

violation, permittee shall contact the ROW Manager with a plan, acceptable to the ROW Manager, for its correction. Applicant's failure to so contact the ROW Manager, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall be cause for immediate issuance of a stop work order and issuance of a Municipal Offense Ticket (M.O.T.).

(6) For all other violations, within fifteen (15) business days of receiving a written notice of "Non-Emergency" violation, permittee shall contact the ROW Manager to discuss the components of an acceptable plan for correcting the violation and a timeframe for submitting the plan. Permittee's failure to (i) so contact the ROW Manager, (ii) submit a plan containing agreed-upon components in the agreed timeframe, or (iii) implement the approved plan within the agreed-upon timeframe, shall be cause for immediate issuance of a Municipal Offense Ticket (M.O.T.).

(7) For permits not involving a utility regulated by the FCC, the ROW Manager may from time-to-time establish a list of conditions of the permit that will automatically warrant the issuance of a Municipal Offense Ticket (M.O.T.) to the permittee. A current list of any such conditions shall be made available for review on the City's website.

SECTION VII. - INDEMNIFICATION AND LIABILITY.

(a) *The City does not accept liability.* By reason of the grant of a right-of-way permit, the City does not assume any liability:

(1) For injuries to persons, damage to property, or loss of service claims by parties other than the applicant or the City; or

(2) For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by permittees or activities of permittees.

(b) *Applicant or permittee indemnifies the City.* By accepting a permit, a permittee is required to, indemnify and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its facilities/site, or out of any activity undertaken in or near a right-of-way, whether any act or omission complained of is authorized, allowed, or prohibited by a right-of-way. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City for any claim nor for any award arising out of the presence, installation, maintenance or operation of its facilities/site, or any activity undertaken in or near a right-of-way, whether the act or omission complained of is authorized, allowed or prohibited by a permit. The foregoing does not indemnify the City for its own negligence. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the applicant or to the City; and the applicant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert on its own behalf.

(c) *Exceptions.* The provisions of subsection (b) of this section shall not apply to a permittee that has, as effective date of this Ordinance, a valid franchise duly granted by the City, and said franchise requires the permittee to hold harmless the City for damages occasioned by the presence, operations or maintenance of the permittee's facilities/site. This exemption shall not apply where said franchise does not afford the City at least the level of protection stated in section (b) of this section, unless the permittee agrees to provide the same or greater level of protection to the City.

SECTION VIII - PENALTY.

(a) Any person found guilty of violating any provision of this Ordinance shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or by imprisonment for a period not exceeding six (6) months, or both, in the discretion of the Municipal Judge.

(b) This Ordinance shall also be subject to enforcement by the issuance of a summons and complaint pursuant to the provisions of Ordinance No. 1993-02, as the same may be from time to time amended.

SECTION IX - NONEXCLUSIVITY.

The remedies provided in this Ordinance are not exclusive or in lieu of other rights and remedies that the City may have at law or in equity. The City is hereby authorized to seek legal and equitable relief for actual or threatened injury to the public right-of-way, including damages to the right-of-way, whether caused by a violation of any of the provisions of this chapter or other provisions of this Ordinance.

SECTION X - SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof.

SECTION XI – REPEALER.

Ordinance 2019-08 is hereby repealed and replaced by this Ordinance. Any other Ordinance of parts of Ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they conflict.

SECTION XII - EFFECTIVE DATE.

This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF DAPHNE, ALABAMA, ON THE 20th DAY OF JULY, 2020.

Dane Haygood, Mayor

ATTEST:

Candace G. Antinarella, City Clerk

APPENDIX A

SCHEDULE OF RIGHT-OF-WAY PERMIT FEES

Description	Permit Fee
Administration Fee	$25.00 (all non-wireless permits)
Aerial utility construction	$0.50 per L.F.
Utility poles including guy and anchor	$2.00 per pole
Longitudinal and transverse excavation for all new projects (paved areas)	$3.00 per L.F. (minimum fee $ 100.00)
Longitudinal and transverse excavation for all new projects (unpaved areas)	$0.75 per L.F.
Longitudinal and transverse excavation for point repairs, service lines, storm drains, manholes, etc. (paved areas)	$20.00 per square yard
Longitudinal and transverse excavation for point repairs, service lines, storm drains, manholes, etc. (unpaved areas)	$6.00 per square yard
Excavation for utility construction, point repairs (unpaved areas)	
Directional boring and jacking operations, tunneling, retrofit or repair of existing utilities by bore, stitch boring, plowing, irrigation systems, etc.	$0.40 per L.F. (minimum fee $25.00)
Communication towers (new installation)	$50.00 per tower
Terminal boxes, junction boxes, equipment cabinets, splice boxes, regulator stations, meters & valves in paved areas, vaults, utility pedestals	$5.00 each
Sidewalk, driveway, curb, gutter, mitered-end sections (new construction, replacement, or repair):	(See below)
- 0 sq. yds. to 2 sq. yds.	$10.00
- 2 sq. yds. to 25 sq. yds.	$30.00
- 25 sq. yds. to 100 sq. yds.	$50.00
- 100 sq. yds. to 200 sq. yds.	$100.00
- 200 sq. yards. or greater	$0.50 per square yard
Steps, ramps (ADA compliant), etc.	$50.00 per location
Monitoring wells	$50.00 each
Temporary pedestrian walkway	$50.00 per location
Balconies, canopies	$10.00 per location
Wireless Facility (Non-refundable application fee for up to 5 wireless facilities)	$500.00
Non-refundable, additional application fee per each wireless facility over the 5 wireless facilities contained in the Wireless Facilities application	$100.00 each
Annual recurring fee assessed to each Wireless Facility permittee	$270.00 per year

Note: Applicants may be allowed, if determined by the department to obtain, in advance, an annual, quarterly, or semi-annual permit for minor projects outside roadway limits and some small projects that involve minimal excavation as defined by the ROW Manager. Permit fees shall be calculated based upon the actual work completed during the term and due for payment at the end of the term. Bi-weekly summary submittals will be required of blanket permit applicants covering the type and extents of work, locations, durations, etc. These summary submittals will be used to verify fees based on the actual work completed under that blanket permit. Excluding wireless facilities, a twenty-five dollar ($25.00) application fee plus all fees will be charged at the end of the permit term.

**** *Please note*: all fees are non-refundable ****

OBSTRUCTION FEES

The following conditions shall apply in determining obstruction fees:

(1) The obstruction of commercial pedestrian walkways will be charged at the rate of five dollars ($5.00) per calendar day for each twenty (20) linear feet of length.

(2) The planned obstruction of any portion of a roadway for any reason will be charged at the rate of ten dollars ($10.00) per calendar day for each twenty (20) linear feet of length.

(3) Fees will not be charged for obstruction of less than eight (8) hours.

APPENDIX B

CONSTRUCTION STANDARDS FOR MISCELLANEOUS CONSTRUCTION, UTILITY EXCAVATION, AND RIGHT-OF-WAY AND PAVEMENT RESTORATION

The provisions contained herein are those which were in effect on the effective date of the City's ROW Ordinance, as amended. This document may be amended from time-to-time by the Department. For the current version of this document, please visit the Department's website at http://www.daphneal.com/190/Public-Works or call the City Clerk's Office at (251) 620-1000.

SECTION I. CONSTRUCTION PLAN SUBMITTAL REQUIREMENTS WITHIN PUBLIC RIGHT-OF WAYS AND EASEMENTS

A. *Major and Minor Projects.* Applicants for right-of-way permits shall submit the following for review and approval for major or minor project, as applicable:

1. Three (3) sets of construction plans and specifications, including the location of all topographic features within the right-of-way that will be affected or impacted by the proposed project;
2. Complete plan & profile sheets using GIS mapping technology indicating the horizontal and vertical location of all components of the proposed project and other related information including, but not limited to, pipe and manhole flow line elevations, type and size of pipe, the number and location of all utility markers other related structures left above grade, profile and other elevations necessary for roadway and right-of-way restoration, and the design details of the proposed construction and pavement and right-of-way restoration that will be required for gravity flow systems including sanitary sewer, storm drain, and related projects;
3. A plat prepared at a scale acceptable to the ROW Manager to indicate the plan view of the proposed project; location of the proposed project with respect to centerline, edge of roadway, and right-of-way; tie-in to nearest street subdivision lot corner or street intersection; components and type of material used for the project; and dimensions and depth of the proposed installation or excavation that will be required for non-gravity flow systems including water distribution systems, gas systems, communication, cable TV and electric power distribution systems, unless otherwise authorized by the ROW Manager;
4. An erosion control plan and best management practices (BMPs) complying with provisions of the City Storm Water Management Ordinance;
5. A safety plan to include methods to be used to protect the general public from injury, and including the proposed use of barricades, signs, lights, fencing and other barriers;
6. A traffic control plan complying with all of the provisions of the Federal Manual on Uniform Traffic Control Devices, current edition, if any impact on traffic movement is involved;
7. A landscape plan complying with the tree landscaping and protection ordinance; and

8. Complete as-built construction plans of the construction project shall be submitted to the ROW Manager after final inspection of the project. The as-built plans shall be submitted in hard copy medium as well as CAD files in DWG and/or DXF Format.

B. *Small projects*. The applicant will not be required to submit a construction plan or plat for small projects. However, a location sketch will be required for the approval of small projects (Type A). Any pavement or area in the right-of-way that is disturbed shall be restored in conformance with Section 18-24 of the City Code.

SECTION II. BOND REQUIREMENTS

A. *Construction bond*. The applicant shall be required to provide an irrevocable, unconditional letter of credit or bond to guarantee the proper construction and completion of right-of-way restoration. Such bond or letter of credit may apply for a period of time, such as annually, and provide security for the completion of single or multiple construction or restoration projects during that period. The amount of the bond shall be based on the estimated cost of the right-of-way restoration provided by the permittee and approved by the ROW Manager. A construction bond will not be required for small projects if no paved area or right-of-way is disturbed by the project. The ROW Manager may waive the requirement for the construction bond for permittees who evidence financial ability to pay the cost of the repairs to City rights-of-way resulting from their permittee activity. Any such Construction Bond or Letter of Credit terminates upon completion of the installation or repair or, in the case of an annual or multi-project guarantee, its application to any right-of-way construction or restoration activity terminates upon completion of the activity.

B. City Departments performing installation of facilities/sites, routine maintenance and repair, and other agencies working in the right-of-way that are not involved in the installation, repair and maintenance of utilities, are exempt from the requirements of this Section II.

SECTION III. NOTIFICATION PROCEDURES FOR MAJOR AND MINOR PROJECTS

A. Except for emergencies, the following notification procedures will be followed for major & minor projects, prior to the commencement of any construction activities:

1. The one call line location center will be notified forty-eight (48) hours prior to any excavation. The location of all utilities shall be verified before commencing construction.
2. The ROW Manager shall be notified twenty-four (24) hours prior to commencing any construction activity involving major and minor projects within roadway limits.
3. The ROW Manager will be notified seventy-two (72) hours prior to the closure of any roadway or interruption in traffic flow.
4. A written notice will be distributed to each occupant of premises adjacent to the project site five (5) days prior to commencing construction activity relating to major projects.

SECTION IV. INSPECTION

A. City engineering personnel will conduct periodic inspections of utility construction, right-of-way and pavement restoration. The contractor will schedule a final inspection for major & minor projects when construction is complete.

SECTION V. TRENCH EXCAVATION AND GENERAL UNDERGROUND CONSTRUCTION REQUIREMENTS FOR MAJOR AND MINOR PROJECTS

A. *Excavation.*

1. Trench excavating methods (trench box, shoring, etc.) shall be used to keep the width of the trench to a minimum. Extra wide excavation to accommodate equipment will not be permitted. Sheeting, bracing, shoring, pre-fabricated steel trench boxes and other trench restraint system will be used to keep trench width to a minimum and to comply with OSHA regulations.

2. Hazardous materials. The applicant will comply with all federal, state and local laws, regarding hazardous material. For purposes of this section, hazardous material shall mean any material, substance or waste which, because of its quantity, concentration, or physical or chemical characteristics, is deemed to pose a present or potential hazard to human health, safety or to the environment.

3. Utility construction. The construction of utilities will be in conformance with the plans which constitute a part of the permit approval process.

4. Depth requirements for underground installation:

   a) Within roadway limits. The minimum clear depth for open cut installation, and jacking, boring,, and pushing operations shall be thirty-six (36) inches, unless otherwise authorized or directed by the ROW Manager.

   b) Outside roadway limits and driveways. The minimum clear depth for open cut installation and jacking, boring, and pushing operations shall be thirty (30) inches, unless otherwise authorized or directed by the ROW Manager.

5. Housekeeping and excavated material. The permittee shall keep the area surrounding the excavation clean (including trash, loose materials or other debris).

B. *Backfill material.*

1. Backfill material for major projects will be select granular soil material approved by the geotechnical engineering company or the ROW Manager. Excavated material from the trench will not be used unless approved. Material excavated from utility poles, guy wire installation, replacing existing poles and routine pole inspections may be used for backfill.

2. Backfill material for minor projects within the roadway shall be comprised of crushed stone material up to subgrade elevation, unless otherwise approved by the ROW Manager. Backfill material for other areas will be select granular soil material approved by a geotechnical engineering company or the ROW Manager.

3. Installation of backfill material:

   a) Backfilling of the excavated area shall follow closely behind the installation project.

   b) The backfill material shall be compacted at near optimum moisture content, in layers not exceeding six (6) inches compacted thickness, to a density of not less than ninety-five (95) percent, unless otherwise approved by the geotechnical company. Mechanical tampers shall be used unless another method of compaction is approved. Jetting will not be permitted. The backfill material shall be installed uniformly and brought up evenly in layers for the full length of the trench.

4. Geotechnical testing and compaction for major & minor projects.

   a) Major projects. A geotechnical engineering company will perform compaction tests at intervals of no more than 200 feet along the main trench line. Tests will be conducted at the installation of service lines within these limits where directed by the ROW Manager. The geotechnical engineering company will perform tests at as many levels of backfill installation, and at lateral locations to certify that compaction requirements have been achieved. Documented test reports will be prepared and submitted to the ROW Manager before any right-of-way restoration proceeds.

   b) Minor projects. Compaction tests may be requested for minor projects at specific locations.

5. General public safety: Every effort will be taken by the contractor to protect the safety and welfare of the general public, and to insure compliance with the safety and traffic plans submitted with the permit application.

6. Steel plates may be required by the ROW Manager, in congested or heavily traveled areas, to cover open trenches. Temporary patching will be required for any trench excavation in the roadway prior to opening the area to traffic. The ROW Manager may also require the temporary covering of any excavated area that will be left open overnight, if he so deems that not covering the excavated area will present a threat to public safety or health.

7. For major projects a construction sign will be placed adjacent to the utility construction area where traffic flow is to be obstructed. The signs will be placed seventy-two (72) hours prior to construction, at least every five hundred (500) feet along the project. The name of the utility/company involved and phone numbers that may be contacted on a twenty-four hour basis to be shown on the sign(s).

SECTION VI. RIGHT-OF WAY RESTORATION WITHIN ROADWAYS

A. All construction procedures and materials utilized will be in compliance with Alabama Department of Transportation Standard Specifications for Highway Construction, current edition. A geotechnical engineering company will be retained by the utility/company or permittee, to conduct field testing to document and certify that all materials and compaction efforts are in compliance with Alabama Department of Transportation Standard Specifications for

Highway Construction, latest edition and procedures specified in the City engineering department's design details for right-of-way restoration.

B. *Major projects.*

1. Asphalt road surface.

   a) Base construction.

      1) Granular soil, sandy clay base. The base course of the affected lanes shall be reconstructed full width.

      2) Bituminous base, stone base. The base course of the affected lanes shall be patched with equivalent base material if the structural integrity of the roadway has not been affected by the project, as determined by the geotechnical engineering company. Otherwise, the affected lanes shall be reconstructed full width.

   b) Wearing surface. The full width of the roadway surface shall be resurfaced within the limits of the project. Existing traffic striping and markings will be replaced.

2. Asphalt roadway surface overlay on existing concrete pavement.

   a) Base construction. The existing concrete street may be patched with concrete, if the structural integrity of the roadway has not been affected by the project, as determined by the geotechnical engineering company. Otherwise, the affected panels of the existing concrete street shall be reconstructed.

   b) Wearing surface. The full width of the roadway surface shall be resurfaced within the limits of the project. Existing traffic striping and markings will be replaced.

3. Concrete roadway surface.

   a) Base construction. The base course of the affected lanes shall be reconstructed full width as determined by the geotechnical engineering company.

   b) Concrete pavement. The entire roadway panel sections of the affected lanes shall be reconstructed. If the structural integrity of the roadway has been significantly affected by the project, the ROW Manager may require the entire concrete surface, within the project limits, be reconstructed full width. Existing traffic striping and markings will be replaced.

4. Unpaved roadway surface. The entire roadway shall be surfaced with six (6) inches of stone within project limits.

C. *Minor projects.*

1. Asphalt roadway surface sixteen (16 square) feet or greater. For transverse service lines and miscellaneous installation and repair projects within excavated areas sixteen (16) square feet or greater, the entire width of the lane disturbed will be

resurfaced from a point measured ten (10) feet from the edge of the excavation each way longitudinally along the centerline of the roadway. If more than one (1) lane is disturbed, the entire width of the disturbed lanes will be resurfaced. If the replacement pavement is more than seventy (70) feet long or more than ten (10) percent of the roadway area within a block is affected, the entire roadway will be resurfaced within the block. Existing traffic striping and markings will be replaced (See Fig. B-1).

2. Asphalt roadway surface less than sixteen (16) square feet. For miscellaneous construction involving excavated areas less than sixteen (16) square feet, the area from the edge of the excavation extending one (1) foot outside the perimeter of the cut area will be resurfaced. If more than one (1) lane is disturbed, the entire width of the disturbed lanes will be resurfaced. If the replacement pavement is more than seventy (70) feet long or more than ten (10) percent of the roadway area within a block is affected, the entire roadway will be resurfaced within the block. Existing traffic striping and markings will be replaced.

3. Concrete roadway surface. The entire affected roadway panel sections, including base course, will be reconstructed joint to joint. Existing traffic striping and markings will be replaced.

4. Unpaved roadway surface. The entire roadway width will be resurfaced with six (6) inches of stone from a point ten (10) feet measured longitudinally along the roadway from the center of the excavation each way.

D. Jacking, boring, pushing, tunneling, retrofitting, and pipe lining projects. Any pavement damage caused by these types of projects will be restored in conformance with provisions of this ordinance. Any existing pavement damage relating to the replacement, retrofitting, or lining of damaged utilities will be restored in conformance with this ordinance.

SECTION VII. RIGHT-OF-WAY AND EASEMENT RESTORATION OUTSIDE ROADWAY LIMITS

A. *Driveways*. Asphalt driveways affected by the construction project shall be replaced from the right-of-way line to the curb or edge of road. Concrete driveways affected by the construction project shall be replaced to the nearest control joint. Construction of asphalt and concrete driveways will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, current edition, sections 410 and 618, respectively.

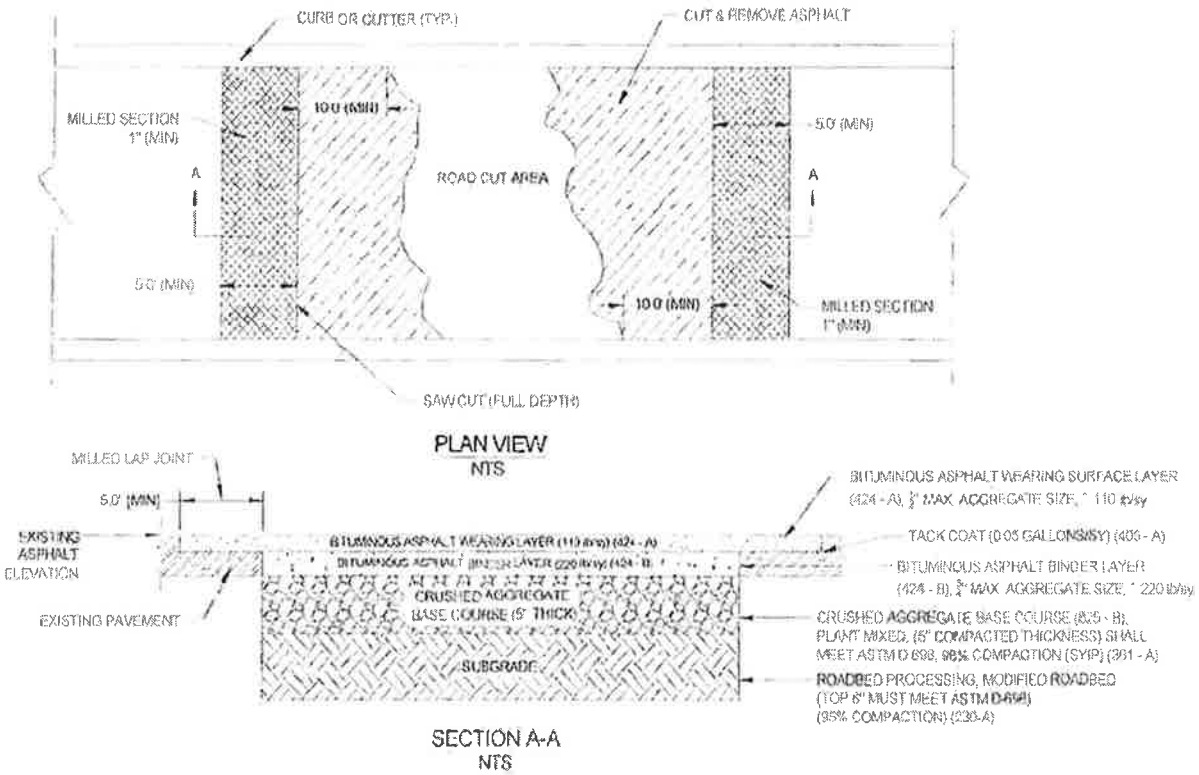
B. *Concrete sidewalks*. Concrete sidewalks affected by the construction project shall be replaced to the nearest control joint in the affected construction area. Joints will be sawed unless at an expansion joint. Construction of sidewalks will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, current edition, section 618.

C. *Curb and gutter*. Concrete curb and gutter, affected by the construction project, will be replaced from joint to joint in the affected area. Concrete curb and gutter construction will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, current edition, section 623.

D. *Miscellaneous structures*. All walls, steps, and other miscellaneous structures, affected by the construction, will be replaced as required by the ROW Manager.

E. *Drainage systems and structures*. All disturbed drainage channels, structures, and pipe systems affected by the construction will be replaced as required by the ROW Manager.

F. *Unpaved areas*. All established lawn areas affected by the construction project will be replaced with similar landscaping materials which were existing prior to the project construction beginning, or upgraded at the discretion of the ROW Manager. Other areas will be restored with approved topsoil replacement, and or sodding or seeding.

Figure B-l

TYPICAL ASPHALT ROADWAY REPAIR