

TITLE 7

CHAPTER 2: EXCAVATIONS

- 7-02-010: Definitions.**
- 7-02-020: Permit Required; Basis for Issuance.**
- 7-02-030: State License Required.**
- 7-02-040: Application for Permit.**
- 7-02-050: Emergency Excavations.**
- 7-02-060: Fee for Permit.**
- 7-02-070: General Standards.**
- 7-02-080: Time Limit for Completion.**
- 7-02-090: One Year Guarantee.**
- 7-02-100: Permit; No Transfer or Assignment.**
- 7-02-110: Relocation of Structures in Public Ways.**
- 7-02-120: Enforcement.**
- 7-02-130: Failure to Comply; Default in Performance.**
- 7-02-140: Failure to Conform to Design Standards; Penalty.**
- 7-02-150: Appeal of Suspension, Revocation, or Stop Order.**
- 7-02-160: Tampering with Traffic Barricades.**
- 7-02-170: Conflict with Governing Provisions.**
- 7-02-180: Violation; Penalty.**

7-02-010. Definitions.

In this Chapter the following words shall have the following meanings:

- (a) "Applicant" means any person who makes application for a permit.
- (b) "Appurtenances" means miscellaneous concrete surfaces within the public way, such as parking bays and carriage walks.
- (c) "Business" means any place in the City in which there is conducted or carried on principally or exclusively any pursuit or occupation for the purpose of gaining a livelihood.
- (d) "City" when spelled with a capital "C," means Fruit Heights City, a municipal corporation of the State of Utah.
- (e) "City Engineer" means the City Engineer or his/her authorized representative.

(f) “Emergency” means any unforeseen circumstances or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of utility services.

(g) “Engineering Specifications and Design Standards” means the latest version of the engineering Standard Specifications and Details for Municipal Construction maintained by the City Engineer.

(h) “Excavation Site Restoration” means and includes the restoring of the original ground or paved hard surface area to comply with engineering regulations, and includes, but is not limited to, repair, cleanup, backfilling, compaction, and stabilization, paving and other excavation necessary to place the site in acceptable condition following the conclusion of the excavation, or the expiration or revocation of the permit.

(i) “Excavation(s) or Excavate” means digging in, cutting into the surface of, or breaking the surface of a public way.

(j) “Failure” means an excavation site restoration which fails to meet Public Works Director specifications, or which results in a deteriorated or substandard condition within the duration of the warranty period. Failure may be settlement of surfaces, deterioration of materials, or other surface irregularities. Measurement of failure shall be further defined in the engineering regulations.

(k) “Fee, Diminished Road Integrity” means a fee collected by the City to pay for the accelerated need for pavement maintenance as a result of cutting the existing pavement.

(l) “Financial Guarantee” means cash escrow held to protect the City against failure of the excavation site restoration, released one (1) year following completion of restoration.

(m) “Infrastructure Provider” means a person providing to another, for the purpose of providing telecommunication services to customers, all or part of the necessary system which uses the right-of-way.

(n) “Manual on Uniform Traffic Control Devices (MUTCD)” means the current standards for signs, signals, and pavement markings.

(o) “New Pavement Cost (NPC)” means the current cost for installation of new asphalt pavement (4" asphalt, 10" road base). This cost shall be updated annually by the City Engineer.

(p) “Operator” means any person who provides service over a telecommunications system and directly or through one or more affiliates owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.

(q) “Permittee” means any person which has been issued a permit and thereby has agreed to fulfill the requirements of this Chapter.

(r) “Person” means and includes any natural person, partnership, firm, association, provider, corporation, company, organization, or entity of any kind.

(s) “Pipe Driveway” means a driveway approach which uses a pipe or other means to bridge the gutter.

(t) “Private Drain Line” means a pipe installed solely for the conveyance of water collected or generated on private property such as drainage, spring, or storm water, or condensate into the public drainage system.

(u) “Property Owner” means a person or persons who have legal title to property and/or equitable interest in the property, or the ranking official or agent of a company having legal title to property and/or equitable interest in the property.

(v) “Provider” means an operator, infrastructure provider, reseller, system lessee, or public utility company.

(w) “Public Utility Company” means any company subject to the jurisdiction of the Utah State Public Service Commission, or any mutual corporation providing gas, electricity, water, telephone, or other utility product or services for use by the general public.

(x) “Public Way” means and includes all public rights-of-way and easements, public footpaths, walkways and sidewalks, public streets, public roads, public highways, public alleys, and public drainage ways. It does not, however, include utility easements not within public ways of the City.

(y) “Public Works Director” means Director of Fruit Heights City Public Works.

(z) “New Service Connection” means the installation of a non-existing connection.

(aa) “Reseller” refers to any person that provides service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission and does not install any system in the rights-of-way.

(bb) “Resident” means a person or persons currently making their home at a particular dwelling within the City.

(cc) “Required Maintenance” means when service has been interrupted and requires repair. Upgrades to existing infrastructure is not considered required maintenance.

(dd) “Storm Drain” means a dedicated pipe, conduit, waterway, or ditch installed in a right-of-way or easement for the transmission of storm and drainage water. This term does not include private drain lines.

(ee) “System Lessee” refers to any person that leases a system or a specific portion of a system to provide services.

(ff) “Telecommunications System or System” means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased, or used by a provider located in the construction, ownership, operation, use or maintenance of a telecommunications system.

(gg) “Traffic Barricade Manual” means the manual on proper barricading and traffic-control practices.

7-02-020: PERMIT REQUIRED; BASIS FOR ISSUANCE.

(a) “Permit Required” means it shall be unlawful for any person, corporation, conservancy district, sewer district, water district, or any other entity: 1) to dig up, break, excavate, tunnel, bore, undermine or in any other manner damage any part of the municipal right of way; or 2) to make or cause to be made, excavations in or under the surface of any street right of way for any purpose; 3) to deposit or leave upon the street right of way any earth or material obstructing or tending to interfere with the free use of the street, unless such person or entity shall have first obtained an excavation permit from the City. Any person desiring to perform any kind of excavation in a public way within the City shall make application for an excavation permit.

(b) “Basis for Issuance” means when a road is cut, the design life of the road is compromised. The decision by the City to issue a permit shall include, but not be limited to, the following factors :

(1) The capacity of the public way to accommodate the facilities or structures proposed to be installed in the public way;

(2) The capacity of the public way to accommodate multiple wire in addition to cables, conduits, pipes or other facilities or structures of other users of the public way, such as electrical power, telephone, gas, sewer and water;

(3) The damage or disruption, if any of public or private facilities, improvements, or landscaping previously existing in the public way;

(4) The public interest in minimizing the cost and disruption of construction from numerous excavations of the public way.

(5) The square footage of the excavation site restoration and the age of the road being cut are considered when determining the value of the diminished life of the road.

(6) All permits shall be subject to revocation and the City may revoke or refuse to issue a permit for failure of the applicant to abide by the terms and conditions of this chapter.

(c) "Property Owner Exceptions" means property owners installing, replacing, or maintaining less than five hundred (500) square feet or one hundred (100) linear feet of sidewalk or driveway approach are not required to make application for an excavation permit.

7-02-030: STATE LICENSE REQUIRED.

(a) "Contractors" means all contractors desiring to perform work in the City's right of way shall be properly licensed by the state department of business regulation contractors division.

(b) "Exceptions" means no license will be required by the City for employees of a public utility company or the City, when doing work for these entities.

7-02-040: APPLICATION FOR PERMIT.

Each application for a permit shall include the following:

(a) "Applicant Information" means the name, address, and telephone number, including a twenty-four (24) hour emergency number, of the person, corporation, utility, or district desiring the permit. If the applicant is a corporation or utility or district, the name, address, and telephone number of the manager or person authorized to act for and in behalf of the corporation and to obligate it to the responsibilities set forth in this chapter.

(b) "Contractor Information" means the name, address, telephone number, including a twenty-four (24) hour emergency number, State license number of the person doing the actual digging, tunneling, trenching, and backfilling or construction work.

(c) "Means or Method of Excavation" means the mechanical means or method by which the street, highway, or roadway will be excavated, trenched, backfilled, bored, and/or compacted.

(d) “Location; Sketch” means the location of the place where the cut or excavation is to be made, in, or along, or across the road right of way as described, utilizing distances from permanently recognized monuments, manholes, or structures with a brief sketch of the trench or excavation and backfill material, and compaction.

(e) “Agreement” means a signed agreement whereby the applicant and applicant’s contractor agrees to abide by the following requirements:

1. “Notification for Inspection” means the permittee shall notify the city within two (2) business days for all inspections. Inspections shall be done as often as deemed necessary by the City with a minimum being prior to and following any work and one year from the date of completion. It is the responsibility of the permittee to see that these inspections are requested.

2. “Methods for Cutting, Excavating”

- I. All excavations shall be preceded by saw cut or other approved method of cutting pavement resulting in a neat straight, vertical line.
- II. All excavated materials shall be placed so as to not unnecessarily impair traffic or access to private property.
- III. All excavation shall comply with all requirements of the state industrial commission and the Occupational Safety and Health Administration (OSHA).
- IV. All damage resulting from poor or substandard construction practices, including, but not limited to, the failure to comply with the requirements of this ordinance and/or any required specifications, are solely the responsibility of the contractor. The contractor shall make all necessary repairs or reconstruction necessary to remedy any such construction, including, but not limited to, any resulting damage.

3. “Backfill Materials” all backfill materials shall be thoroughly compacted and installed per the City Standards. Backfill material shall be placed to the subgrade of the pavement in lifts consistent with the type of soil involved and the method of compaction being used. Broken pavement, large stones, roots, and other debris shall not be used in the backfill. No organic material shall be present in the backfill material. Each lift shall be rolled or tamped, or a combination of these methods shall be used, depending upon the type of soil involved, to compact the backfill material. Such backfill shall be done in a manner that will permit the restoration of the surface to a condition equivalent to that in which it was prior to excavation or better. The city may require soil tests to be furnished by a recognized soil testing laboratory or registered professional engineer specializing in soil mechanics, when, in its opinion, backfill for any reason is not being adequately compacted. In order for the resurfacing to be permitted, such tests must show that the backfill material meets the minimum

compaction requirements. All expenses of such tests shall be borne by the permittee.

4. "Pavement Resurfacing" following compaction of backfill, the street pavement shall be restored to match the existing pavement thickness (minimum of 4" thick) and consistent with the currently adopted city standards.

5. "Patch Requirements" the patch required for all cuts is to extend one foot (1') beyond the excavation on all sides. If the excavation limits are located within five feet (5') of the edge of pavement or lip of curb and gutter, the existing asphalt must be removed and the patch must extend to the original edge of pavement or lip of curb and gutter.

6. "Compliance with Specifications, Standards, Traffic-Control Regulations, Site Permittee Identification"

I. The excavation performed in the public way shall strictly conform to the requirements of this Chapter and the engineering regulations, design standards, construction specifications and traffic-control regulations of the City, copies of which shall be available from the City, kept on file in the office of the City Recorder, and open to public inspection during office hours. Any person desiring to perform any kind of excavation in a public way with the City, shall make application for an excavation permit.

II. Where a job site is left unattended, before completion of the excavation, signage with minimum two inch (02") high letters shall be attached to a barricade or otherwise posted at the site, indicating the permittee's name, or company name, telephone number, and after-hours telephone number.

III. All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to residents and businesses fronting on the public way shall be minimized as much as possible. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or persons. Barricades must be in place until all of the permittee's equipment is removed from the site and the excavation has been backfilled and proper temporary gravel surface is in place, except where backfilling and resurfacing is to be done by the City; in which case the barricades, together with any necessary lights, flares or torches, must remain in place until the backfill excavation is actually commenced by the City. From sunset to sunrise, all barricades and excavations must be clearly outlined by adequate signal lights, torches, etc. The Sheriff and Fire Department

shall be notified at least twenty four (024) hours in advance of any planned excavation requiring street closure or traffic detour.

7. "Hold City Harmless For Liabilities" the permittee shall indemnify and hold the city harmless from and against any and all liability, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorney fees arising from or growing out of any injury to or death of any person or persons, whatsoever, or for loss of or damage to the tools, plant or equipment of the permittee resulting directly or indirectly from carrying on the work herein specified. To that end and prior to the issuance of a permit, the applicant shall demonstrate to the city's satisfaction that the applicant has insurance policies which will be in effect during the period of construction given on the permit. These insurance policies must contain the following minimum coverage:

Bodily injury or property damage	\$1,000,000.00
liability per occurrence	
Bodily injury or property damage	02,000,000.00
liability policy aggregate	
Workers compensation	Statutory limits
Automobile liability	\$ 500,000.00

8. "Financial Guarantee"

I. "Cash Escrow" means the applicant shall file a fully executed Escrow Agreement and post required cash escrow funds with the City for each and every application based on an estimate by the city as stated in the current adopted fee schedule. The escrow will be deposited and retained for one (1) year following completion, as determined by the city, of the work to guarantee proper backfilling and proper maintenance and/or reconstruction of the work. Cash Escrow will be refunded upon satisfactory completion, inspections, and approval of the work performed under the permit and as determined by the City.

II. "Exception, Allowance for Bond" means Public utility companies may, at the City's discretion, deposit the financial guarantee amount with an escrow agent or establish a performance bond. If the applicant is allowed to establish a bond or use an escrow agent, a copy of the written escrow agreement or bond must be attached to the agreement.

9. "Damage to Public Facilities" means before commencing the work, the permittee shall identify any damaged public facilities in the vicinity of his/her

work, and make written notification to the City within two (02) business days of work commencing. While the work is in progress and after completion of the permitted work, upon notice from the city, the permittee shall immediately repair any damage to the public and private facilities as a result of the work done under the permit. In the event such repairs are not made by the permittee within forty eight (48) hours after notice, the city is hereby authorized to make such repairs and charge all costs, including fifteen percent (15%) overhead charge, to the permittee. By acceptance of the permit, the permittee agrees to comply with the above.

10. "City Right Of Way Access" means the permittee agrees not to interfere unreasonably with the access and use of the existing easements therein.

7-02-050: EMERGENCY EXCAVATIONS.

(a) Any person maintaining pipes, lines, or facilities in the public way may proceed with excavation upon existing facilities without a permit when emergency circumstances demand that the excavation be done immediately; provided a permit could not reasonably and practicably have been obtained beforehand.

(b) In the event that emergency excavation is commenced on or within any public way of the City during regular business hours, the City shall be notified within one-half (1/02) hour from the time the excavation is commenced. The person commencing and conducting such excavation shall take all necessary safety precautions for the protection of the public and the direction and control of traffic; and shall ensure that excavation is accomplished according to City Standards, the "Manual on Uniform Traffic Control Devices" and other applicable laws, regulations, or generally recognized practices in the industry.

(c) Any person commencing emergency excavation in the public way during other than business hours without a permit shall immediately thereafter apply for a permit or give notice during the first hour of the first regular business day on which City offices are open for business after such excavation is commenced. A permit for such emergency excavation may be issued which shall be retroactive to the date when the excavation was begun, at the discretion of the Public Works Director.

7-6-060: FEE FOR PERMIT.

The City shall charge and the permittee shall pay upon issuance of the permit, fees for costs associated with the excavation performed under the permit as outlined in the currently adopted fee schedule. For an explanation of how fees are calculated, see Exhibit A.

(a) "Permit Fee" means a Permit Fee shall be paid upon application for a permit. The Permit Fee will cover two inspections; one inspection immediately following

the work and one inspection one year from the date of completion. Additional Permit Fees will be assessed for additional inspections deemed necessary by the City.

(b) “Diminished Road Integrity Fee” means a fee shall be paid prior to commencement of excavation work for the diminished life of the road. The square footage of the excavation site restoration and the age of the road being cut are considered when determining the diminished road integrity fee.

(c) “Financial Guarantee” means a cash escrow, set up by the permittee and held by the City, shall be established prior to commencement of excavation work as a protection to the City against any failure in the repair work performed. This may be used in the event the permittee refuses to or is unable to make the required repairs as necessary to render the street in good working condition.

7-02-070: GENERAL STANDARDS.

(a) Environmental and Deposition Controls:

1. “Dust and Debris” means the permittee or contractor shall keep dust and debris controlled at the work site at all times. If necessary, the work site shall be wet down to control dust and containers shall be provided for all debris. The city reserves the right to shut down the work or issue a citation if dust is not controlled.

2. “Noise” means the permittee or contractor shall keep noise to a minimum as determined by the Public Works Director.

3. “Cleanup” means the permittee or contractor shall remove all equipment, material, barricades, and similar items or other debris from the right of way areas used.

4. “Water Not To Be Discharged On Streets” means it shall be unlawful for any person or organization owning, occupying or having control of any premises within the city to suffer or permit water to be discharged upon the surface of any street right of way to the point where the Public Works Director deems it a hazard or a nuisance to the community.

5. “Depositing Material On Streets Prohibited” means it shall be unlawful for any person or organization intentionally or carelessly to throw, cast, deposit, put into, or leave, or allow the same, in any street, gutter, public right of way, or public place, any stones, gravel, sand, cement, coal, dirt, manure, snow, garbage, leaves, lawn or hedge clippings, or rubbish of any kind, or any other substance which in the opinion of the Public Works Director shall render any such street, gutter, public right of way, or public place, unsafe, or unsightly, or shall interfere with travel thereon.

(b) "Excavation Operations"

1. "Blue Stakes" means before commencing excavation operations, the permittee shall call "Blue Stakes" at 1-800-6602-4111. The contractor shall use extreme caution to avoid a conflict, contact or damage to existing utilities such as power lines, sewer lines, storm drains, streetlights, telephone lines, television cable lines, water lines, gas lines, poles, survey monuments or other appurtenances during the course of construction. Any such conflict, contact or damage shall be immediately communicated to the city.

2. "Traffic Control Devices" means traffic control devices must be in place before excavating begins and must be installed in accordance with the current addition of the "Manual on Uniform Traffic Control Devices" (MUTCD).

3. "Protection of Paved Surfaces Outside Of Excavation Area" means in order to avoid unnecessary damage to paved surfaces, backhoes, outriggers, track equipment or any other construction equipment that may prove damaging to asphalt shall use rubber cleats or paving pads when operating on or crossing said surfaces.

4. "Open Trench Limits" means open trenches will be limited to one thousand feet (1000'). No excavation shall be allowed to continue until the one thousand feet (1000') of trench has been restored with proper asphalt surface.

(c) "Utility Drawing Requirements" means whenever the work involves the extension, placement or the relocation of a utility easement, two (2) copies of the drawings shall be provided for the city engineer for approval which detail the location and type of the proposed facility. Work involving maintenance of existing facilities or placement of laterals does not require a drawing.

(d) "Street Excavation In Winter" means excavation of city streets during the winter months (herein defined as November 15 to April 1) will be allowed only if the work is a new service connection, required maintenance or emergency, or otherwise approved by the city. Permanent patching of a city street excavated in winter may be delayed until April 1, provided the permittee maintains a temporary untreated base course surface until such time as the permanent surfacing is accomplished. This provision applies regardless of whether the permittee or city crews are performing the permanent resurfacing.

7-02-080: TIME LIMIT FOR COMPLETION.

All work provided under this chapter must be completed within seven (7) calendar days from the date of first excavation, unless otherwise requested and authorized on the application. All roads are to be restored to a passable and safe condition within twelve (102) hours of completion. If, within the standard seven (7) days or other time limit authorized by the city, the road cut or excavation has not been

repaired as required, the City may revoke the excavation bond and cause the repairs to be made. The costs of repairs shall include administrative costs.

7-02-090: ONE YEAR GUARANTEE.

The applicant, his/her contractor, and agent will maintain and be responsible for the excavation performed under the permit for a period of one (1) year from the date of completion and will assume full responsibility for any injury or settling in any portion of the public right of way in which they have worked. Should the applicant within said year receive notice from the City that the work they have performed under their permit has settled, raised, or deteriorated, the applicant will immediately place barricades to protect the traveling public, and will within seven (7) business days, unless otherwise authorized by the city, repair the work at the point of construction placing it back in a condition equal to its original condition. Should the applicant or the contractor or agency fail to do this within seven (7) business days, the City shall have the authority, without further notice, to employ a third party contractor to repair the work. The City may also choose to perform the necessary work with their own work crews. The City will first use funds held within the escrow account to pay for the work performed. In the event that escrow funds are insufficient to pay for the work performed, the applicant and his contractor, upon notice from the City, will immediately pay the city the remaining amount for the work performed.

7-02-100: PERMIT; NO TRANSFER OR ASSIGNMENT.

Permits shall not be transferable or assignable, and excavation shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a permittee from subcontracting the excavation to be performed under a permit; provided, however, that the holder of the permit shall be and remain responsible for the performance of the excavation under the permit, and for all bonding, insurance and other requirements of this Chapter and under said permit.

7-02-110: RELOCATION OF STRUCTURES IN PUBLIC WAYS.

(a) The City may direct any person owning or maintaining facilities or structures in the public way to alter, modify or relocate such facilities or structures as the City may require. Sewers, pipes, drains, tunnels, conduits, pipe driveways, vaults, trash receptacles and overhead and underground gas, electric, telephone, telecommunication and communication facilities shall specifically be subject to such directives. The person owning or maintaining the facilities or structures shall, at their own cost and expense and upon reasonable written notice by the City, promptly protect, or promptly alter or relocate such facilities or structures, or part thereof, as directed by the City. In the event that such person refuses or neglects to conform to the directive of the City, the City shall have the right to break through, remove, alter or relocate such part of the facilities or structures without liability to such person. Such person shall pay to the City all costs incurred by the City in connection with such excavation performed by the City, including

also design, engineering, construction, materials, insurance, court costs and attorney fees.

(b) Any directive by the City shall be based upon one of the following:

1. The facility or structure was installed, erected or is being maintained contrary to law, or is determined by the City to be structurally unsound or defective;
2. The facility or structure constitutes a nuisance as defined under State statute or City ordinance;
3. The permit under which the facility or structure was installed has expired or has been revoked;
4. The public way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction; or
5. The grades or lines of the public way are to be altered or changed.

(c) Any person owning or maintaining facilities or structures in the public way who fails to alter, modify or relocate such facilities or structures upon notice to do so by the City shall be guilty of a Class B misdemeanor. All costs of alteration, modification or relocation shall be borne by the person owning or maintaining the facilities or structures involved.

(d) Any directive of the City under this Section shall be under and consistent with the City's police power. Unless an emergency condition exists, the City shall make a good faith effort to consult with the person regarding any condition that may result in a removal or relocation of facilities in the public way to consider possible avoidance or minimization of removal or relocation requirements and provide the directive as far enough in advance of the required removal or relocation to allow the person a reasonable opportunity to plan and minimize cost associated with the required removal or relocation.

(e) This obligation does not apply to facilities or structures originally located on private property pursuant to a private easement, which property was later incorporated into the public way, if that prior private easement grants a superior vested right.

(f) The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the system and appurtenances on, over or under the public way, in which event the City shall not be liable therefore to a person. The City shall notify a person in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this subsection.

7-02-120: ENFORCEMENT.

The city is authorized to take any and all action such as is necessary to ensure and to enforce compliance with the terms of this chapter.

7-02-130: FAILURE TO COMPLY; DEFAULT IN PERFORMANCE.

(a) Any permit may be revoked or suspended and a stop order issued by the City, after notice to the permittee for:

1. Violation of any condition of the permit, the bond, or of any provision of this Chapter;
2. Violation of any provision of any other ordinance of the City or law relating to the excavation; or
3. Existence of any condition or the doing of any act which does constitute, may constitute, or cause a condition endangering life or property.

(b) A suspension or revocation by the City, and a stop order, shall take effect immediately upon entry thereof by the Public Works Director and notice to the person performing the excavation in the public way. Notice to the person performing the excavation shall be accomplished when the Public Works Director has posted a stop work order at the location of the excavation and written notice has been mailed, return receipt requested, to the address indicated by the permittee on the permit.

(c) Whenever the City finds that a default has occurred in the performance of any term or condition of the permit, written notice thereof may be given to the principal and to the escrow agent if there is an escrow. Such notice shall state the excavation to be done, the estimated cost thereof, and the period of time deemed by the City to be reasonably necessary for the completion of the excavation.

(d) In the event that the principal or escrow agent, within a reasonable time following the giving of such notice (taking into consideration the exigencies of the situation, the nature of the excavation, the requirements of public safety and for the protection of persons and property), fails either to commence and cause the required excavation to be performed with due diligence, or to indemnify the City for the cost of doing the excavation, as set forth in the notice, the City may perform the excavation, at the discretion of the Public Works Director, with City personnel or independent contractors or both, and suit may be commenced by the City against the principal or escrow agent, and such other persons as may be liable, to recover the entire amount due to the City, including attorney fees, on account thereof. In the event that cash has been deposited, the cost of performing the excavation may be charged against the amount deposited, and suit brought for the balance due, if any.

7-02-140: FAILURE TO CONFORM TO DESIGN STANDARDS; PENALTY.

(a) For failure to conform to the design standards and regulations, the City may:

1. Suspend or revoke the permit;
2. Issue a stop order;
3. Order removal and replacement of faulty excavation;
4. Require an extended warranty period; and/or
5. Negotiate a cash settlement to be applied toward future maintenance costs.

7-02-150: APPEAL OF SUSPENSION, REVOCATION, OR STOP ORDER.

Any suspension, revocation or stop order by the City may be appealed by the permittee to the City Council by filing a written notice of appeal with the City Recorder within ten (10) days of the action of the City. The City Council shall hear such appeal, if written request therefor be timely filed, as soon as practicable, and render its decision within a reasonable time following filing of notice of appeal.

7-02-160: TAMPERING WITH TRAFFIC BARRICADES.

It shall be unlawful for any person to maliciously or wantonly or without authorization and legal cause, extinguish, remove or diminish any light illuminating, any barricade or excavation, or to tear down, remove or in any manner alter any rail, fence or barricade protecting any excavation or other construction site.

7-02-170: CONFLICT WITH GOVERNING PROVISIONS.

Should there be a conflict between the provisions of this Chapter and the provisions of any other ordinance, agreement, franchise, or other document governing the excavation of a public way, the more restrictive provisions of the aforesaid documents shall apply.

7-02-180: VIOLATION; PENALTY.

Unless otherwise specified in this Chapter, a violation of any provision of this Chapter, or failure to comply with an order of suspension, revocation or stop work, shall be a Class B misdemeanor. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the person from otherwise complying with the provisions of this Chapter.

Exhibit "A"
Fruit Heights City – Excavation Ordinance Fee Calculation

This exhibit has been prepared in order to demonstrate the process by which the applicable fees were calculated:

Explanation:

It is assumed that a brand new road has a design life of approximately 020 years. Meaning that if new pavement is installed, receives the proper maintenance (crack seal, seal coats, etc.), and is not cut or compromised in any way, it will last approximately 020 years before another overlay is needed. If the road is cut, however, the design life of the road is compromised. The road is now more susceptible to water getting underneath the asphalt. If this happens, the road is susceptible to damage due to freeze/thaw situations as well as degradation of the base and possibly subbase material. The square footage of the excavation is measured to be the impact on the road. The age of the road being cut has also been considered. If the road is less than 4 years old, the design life is shortened more than if the road is older than 4 years old.

For the purpose of calculating the fee, the following assumptions have been made: if a road that is less than 4 years old is cut, the design life has been shortened by approximately 6 years (or 30%); if a road that is older than 4 years old is cut, the design life has been shortened by approximately 3 years (or 15%). Also, even though potholes have minimal square footage, the impact on the road is still the same. Therefore, in order to adequately compensate for the diminished road integrity of the road, the fee is the same for all small excavations of 100 square feet or less. The following equations represent how the fees are being calculated:

***(The following variables and equations are for illustration purpose only. For actual figures, see current Consolidated Fee Schedule.)**

Variables:

NPC = New Pavement Cost = \$02.94/s.f.

TSF = Total Square Footage of excavation site restoration

L4F = Roads less than 4 years old factor = 30% = 0.3

M4F = Roads more than 4 years old factor = 15% = 0.15

Permit Fee:

This is the cost of the estimated time required for City Staff to inspect the work being performed and give additional direction if the work being performed is inadequate.

Diminished Road Integrity Fee:

Equations:

- For Potholes (100 s.f. or less) on roads Less than 4 years old
[(NPC * 100s.f. * L4F) = (\$02.94 * 100 s.f.* 0.3)] = \$88
Fee = \$88

- For Potholes (100 s.f. or less) on roads More than 4 years old
[(NPC * 100 s.f. * M4F) = (\$02.94 * 100 s.f. * 0.15)] = \$44
Fee = \$44

- For Street Cuts (more than 100 s.f.) on roads Less than 4 years old
(NPC * L4F * TSF = \$02.94 * 0.3 * TSF) = \$0.88 * TSF
Fee = \$0.88 * TSF
- For Street Cuts (more than 100 s.f.) on roads More than 4 years old
(NPC * M4F * TSF = \$02.94 * 0.15 * TSF) = \$0.44 * TSF
Fee = \$0.44 * TSF

Financial Guarantee:

Equation:

Escrow amount = (NPC * TSF) = **\$02.94 * TSF**