

Section 805 – Right-of-Way Management

805.01. Findings, Purpose, and Intent. Subdivision 1. To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Subd. 2. Accordingly, the city hereby enacts this new section of this code relating to right-of-way permits and administration. This section imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this section, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this section provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

Subd. 3. This section shall be interpreted consistently with Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way. This section shall also be interpreted consistent with Minnesota Rules 7819.0050 – 7819.9950 where possible. To the extent any provision of this section cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This section shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

805.03. Election to Manage the Public Rights-of-Way. Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects pursuant Minn. Stat. 237.163 subd. 2(b), to manage rights-of-way within its jurisdiction.

805.05. Definitions. Subd. 1. The following definitions apply in this section of this code. References hereafter to "paragraphs" are unless otherwise specified references to paragraphs in this section. Defined terms remain defined terms whether or not capitalized.

Subd. 2. "Abandoned Facility" means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

Subd. 3. "Applicant means any person requesting permission to excavate or obstruct a right-of-way.

Subd. 4 "Breach" means a breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of a permit, as provided in Paragraph 805.19 of this ordinance.

Subd. 5. "City" means the city of Hopkins, Minnesota.

Subd. 6. "Commission" means the State Public Utilities Commission.

Subd. 7. "Congested Right-of-Way" means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral

spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes, section 216D.04, subdivision 3, over a continuous length in excess of 500 feet.

Subd. 8. "Construction Performance Bond" means any of the following forms of security provided at permittee's option:

- a) Individual project bond;
- b) Cash deposit;
- c) Security of a form listed or approved under Minn. Stat. Sec. 15.73, subd. 3;
- d) Letter of Credit, in a form acceptable to the city
- e) Self insurance, in a form acceptable to the city
- f) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

Subd. 9. "Degradation" means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

Subd. 10. "Degradation Cost" subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

Subd. 11 "Degradation Fee" means the estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

Subd. 12 "Department" means the department of public works of the city.

Subd. 13 "Department Inspector" means any person authorized by the city to carry out inspections related to the provisions of this section.

Subd. 14 "Director" means the director of the department of public works of the city, or her or his designee.

Subd. 15. "Delay Penalty" is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

Subd. 16. "Emergency" means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

Subd. 17. "Equipment" means any tangible asset, property or equipment used to install, repair, or maintain facilities in any right-of-way.

Subd. 18. "Excavate" means to dig into or in any way remove, physically disturb or penetrate any part of a right-of-way.

"Excavation permit" means the permit, which, pursuant to this section, must be obtained before a person may excavate in a right-of-way. An Excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

Subd. 19. "Excavation permit fee" means the excavation permit fees established pursuant to Subd. 1 of Paragraph 805.11.

Subd. 20. "Facility or Facilities" means any tangible asset, equipment, property or thing installed or to be installed in the right-of-way to provide Utility Service.

Subd. 21. "Five-year project plan" means the capital improvement plan or any similar plan adopted by the city on an annual basis for construction projects to be performed in the right of way within the five years following adoption of such a plan.

Subd. 22. "High Density Corridor" means a designated portion of the public right-of-way within which telecommunications right-of-way users having multiple facilities may be required to build and install facilities in a common conduit system or other common structure.

Subd. 23. "Hole" means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

Subd. 25. "Local Representative" means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this section.

Subd. 27. "Management Costs" shall have the meaning stated in Minn. Stat. 237.162, Subd. 9.

Subd. 29. "Minnesota Rules" or "Minnesota Rule" shall mean the Right-of-Way Rules adopted by the Minnesota Public Utilities Commission.

Subd. 31. "Obstruct" means to place any tangible object in a right-of-way so as to hinder free and open passage over any part of the right-of-way.

Subd. 33. "Obstruction Permit" means the permit, which, pursuant to this section, must be obtained before a person may obstruct a right-of-way.

Subd. 35. "Obstruction Permit Fee" means the obstruction permit fees established pursuant to Subd. 2 of Paragraph 805.11.

Subd. 37. "Patch or patching" means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

Subd. 39. "Pavement" means any type of improved or man made surface that is within the public right-of-way and is paved or otherwise constructed with bituminous, concrete, aggregate, gravel or other hard surfaced material.

Subd. 41. "Permit" shall mean an excavation permit or obstruction permit applied for or issued in accordance with the provisions of paragraphs 805.08-805.14 of this ordinance.

Subd. 42. "Permittee" means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this section.

Subd. 43. "Person" means any natural person, individual, corporation, partnership, limited liability company, trust, political subdivision or other legal entity subject to the laws and rules of this state, however organized, whether public or private, domestic or foreign, for profit or nonprofit.

Subd. 44. "Registrant" means any person who is required to register with the city by Paragraph 805.05 of this ordinance.

Subd. 45. "Restore or Restoration" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

Subd. 46. "Restoration Cost" means the amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota public Utilities Commission rules.

Subd. 47. "Public Right-of-Way" or "Right-of-Way" means the area on, below, or above any public roadway, highway, alley, street, cartway, bicycle lane and public sidewalk in which the city has an interest and includes all areas, owned, granted or established for public rights-of-way for travel purposes or public utility easements. Public right-of-way includes areas that have not been opened or improved for street use or other public purposes. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

Subd. 48. "Right-of-Way User" means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subd. 4; or (2) a person owning or controlling facilities in the right-of-way, or seeking to do so, that are used or intended to be used for providing utility service.

Subd. 49. "Service" or "Utility Service" means

- a) those services provided by a public utility as defined in Minn. Stat. 216B.02, subs. 4 and 6;
- b) services of a telecommunications right-of-way user, including transporting of voice or data information;
- c) services of a cable communications system as defined in Minn. Stat. Section. 238;
- d) natural gas or electric energy or telecommunications services;
- e) services provided by a cooperative electric association organized under Minn. Stat., Section 308A; and
- f) water, sewer, steam, cooling or heating services. "Service" or "Utility Service" includes all of the types of services and facilities described in the preceding sentence, owned or operated by or leased to any person, whether presently in use or intended to be used in the future for the purpose of providing utility service.

Subd. 50. "Supplementary Application" means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

Subd. 51. "Telecommunication Right-of-way User" means a person owning or controlling a facility in the right-of-way, or seeking to own or control a Facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this section, a cable communication system defined and regulated under Minn. Stat. Sec. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Secs. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Sec. 308A, are not telecommunications right-of-way users for purposes of this section.

Subd. 52. "Temporary Surface" means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year project plan, in which case it is considered full restoration.

Subd. 53. "Trench" means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

Subd. 54. "Two Year project plan" means the capital improvement plan or any similar plan adopted by the city on an annual basis for construction projects to be performed in the right-of-way within the next two years following adoption of such a plan.

805.07 Administration. The director is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The director may delegate any or all of the duties hereunder.

805.09. Registration and Right-of-Way Occupancy. Subd. 1. Registration. Each right-of-way user who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city as provided in Paragraph 805.06 of this ordinance. This Paragraph 805.05 is not intended to apply to or require the following persons to register with the City: a) property owners maintaining service lines solely for the purpose of connecting to utility service facilities located in the right-of-way; and b) agents, contractors or subcontractors of a right-of-way user who has registered with the city as required by this Paragraph

Subd. 2. Registration Prior to Work. No right-of-way user may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the city as provided in Paragraph 805.06 of this ordinance.

Subd. 3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be required to obtain any permits or satisfy any other requirements under this section, except: a) permits shall be required for planting trees in right-of-way, and b) no provision of this ordinance shall relieve a person from complying with the provisions of the Minn. Stat. Chap. 216D, Gopher One Call Law.

Subd. 4. Failure to Register. Nuisance. One year after the passage of this section, any facilities of a right-of-way user found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, to abate or correct such nuisance, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition, and the right-of-way user shall reimburse the city for all costs incurred in doing so. The city shall, in addition to any other penalties specified in this ordinance, be entitled to obtain an injunction in Hennepin County District Court enforcing the provisions of this subdivision.

805.11. Registration Information. Subd. 1. Information Required. The information provided to the city at the time of registration shall include, but not be limited to:

- a) Each registrant's name, Gopher One Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.
- b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- c) A certificate of insurance or self insurance:
 - (1) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the city;
 - (2) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

- (3) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - (4) Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
 - (5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this section.
- d) The city may require a copy of the actual insurance policies.
 - e) If the registrant is a corporation, a copy of the certificate required to be filed under Minn. Stat. 300.06 as recorded and certified to by the Secretary of State.
 - f) A copy of the registrant's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

Subd. 2. Notice of Changes. The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

805.13. Reporting Obligations. Subd. 1. Operations. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city (in this paragraph, a "plan"). Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

- a) The plan shall include, but not be limited to, the following information:
 - 1) The locations and the estimated beginning and ending dates of all projects for facilities to be constructed in right-of-way to be commenced during the next calendar year (in this paragraph, a "next year project"); and
 - 2) To the extent known, the tentative locations and estimated beginning and ending dates for all projects for facilities to be constructed in right-of-way contemplated for the five years following the next calendar year (in this paragraph, a "five-year project").
- b) The term "project" in this paragraph shall include both next year projects and five-year projects.
- c) The city will have available for inspection in the city's office a list of all plans submitted by registrants. All registrants are responsible for keeping themselves informed of the current status of this list and the plans filed with the city.

- d) Thereafter, by February 1, each registrant may change any project in its list of next year projects, and must notify the city and all other registrants of all such changes in said list. A registrant may at any time join in a Next year project of another registrant listed by the other registrant, subject to the prior consent of such other registrant.

Subd. 2. Additional Next Year Projects. Failure by a registrant to include a project in a plan submitted to the city shall not, in and of itself, constitute grounds for denial of a permit if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

805.15. Permit Requirement. Subd. 1. Except as may otherwise be provided in this code, no person may obstruct or excavate any right-of-way without first having obtained a permit.

- a) Excavation Permit. An excavation permit must be obtained by any person to excavate any part of a public right-of-way.
- b) Obstruction Permit. An obstruction permit must be obtained by any person to obstruct any part of a public right-of-way. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

Subd. 2. Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless, prior to expiration of the permit: (i) such person makes a supplementary application for a permit extension, and (ii) a new permit or permit extension is granted.

Subd. 3. Delay Penalty. The city council may establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration, as permitted by Minnesota Rule 7819.1000, subd. 3. The delay penalty shall be established from time to time by city council resolution.

Subd. 4. Emergency Situations. Each registrant shall immediately notify the director of any emergency event regarding its facilities. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency the registrant 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 section for the actions it took in response to the emergency.

If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

Subd. 5. Permit Display. Permits issued under this section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

805.17. Permit Applications. Applications for permits shall be made to the city. Permit applications shall contain, and will be considered complete only upon compliance with the following requirements:

- a) In the case of right-of-way users, registration with the city pursuant to Paragraph 805.06;
- b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project facilities or obstruction and the location of all known existing and proposed facilities or obstructions.
- c) Submission to the city of detailed plans for all facilities to be installed and work to be performed in the right-of-way. If determined necessary by the city, a registered professional engineer shall prepare such plans.
- d) Payment of money due the city for:
 - 1) permit fees, estimated restoration costs and other management costs;
 - 2) prior obstructions or excavations caused or performed by the applicant, including delay penalties;
 - 3) any loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;
 - 4) franchise fees or other charges, if applicable.
- e) Except in instances when the city elects to restore the right-of-way as provided in Paragraph 805.12 of this ordinance, delivery to the city of a construction performance bond in an amount determined by the director to be sufficient to restore the right-of-way to the condition that existed before the excavation by the applicant, including restoration of all street improvements, sidewalks, utilities and other public improvements that may be damaged as a result of excavation and construction and other reasonable, directly-related costs that the city may incur if the applicant fails to complete work within the right-of-way and restore the right-of-way. The amount of the construction performance bond delivered at the time of permit application may be reduced to take into account the amount of any construction performance bond then in effect and previously delivered to the city by the permittee that provides coverage for such right-of-way restoration. In no event shall the construction performance bond be in an amount of less than \$10,000.00. The construction performance bond shall remain in force and effect until sixty (60) days after full completion of all construction activities for which the permit has been issued, including rest of the right of way.

805.19. Issuance of Permit; Conditions. Subd. 1. Permit Issuance. If the Applicant has satisfied the requirements of this section, the city shall issue a permit.

Subd. 2. Conditions. The city may impose reasonable conditions upon the issuance of the permit and the performance of the work for which it is issued to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. Such conditions may include but are not limited to:

- a) a date or dates by which the work for which the permit is issued and all restoration of right-of-way must be completed;
- b) in instances in which the scope or complexity of the work or facilities for which the permit is to be issued requires, in the judgment of the director, that the right-of-way user enter into an encroachment agreement, right-of-way user may be required to enter into encroachment agreements with the city specifying additional reasonable terms and conditions to be imposed upon the right-of-way users use of right-of-way;
- c) in instances in which the scope or complexity of the work or facilities for which the permit is to be issued requires, in the judgment of the director, the retention of an inspecting engineer, the permittee may be required to retain a qualified inspecting engineer approved by the city to perform regular inspections of the work or facilities during the course of construction.

805.21. Permit Fees. Subd. 1. Excavation Permit Fee. The city shall establish excavation permit fees in amounts sufficient to recover the following costs:

- a) the city's management costs;
- b) degradation costs, if applicable.

Subd. 2. Obstruction Permit Fee. The city shall establish obstruction permit fees in amounts sufficient to recover the city's management costs.

Subd. 3. Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. At the option of the city, a right-of-way user that performs or is likely to perform a number of separate construction projects in the right-of-way for which permits will be required during the course of any calendar year may be charged retroactively for the permit fees for all such construction projects at the end of each calendar year, and all permits issued to such a right-of-way user shall include an acknowledgment of the permittee's obligation to pay the retroactive permit fees.

Subd. 4. Non Refundable. Permit fees that were paid for a permit that the city has revoked for a breach as stated in Paragraph 805.19 are not refundable.

Subd. 5. Application to Franchises. Unless otherwise agreed to in a franchise, permit fees shall be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

805.23. Right-of-Way Patching and Restoration. Subd. 1. Timing. The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be performed because of circumstances beyond the control of the permittee.

Subd. 2. Patch and Restoration. When patching has been determined by the city to be an appropriate method of pavement replacement, the permittee shall patch its own work. The city may elect either to have the permittee restore the right-of-way or to restore the right-of-way itself. If the city elects to restore the right-of-way, the city shall advise the permittee of its election at the time of permit issuance. If the city fails to so advise the permittee, the city shall be deemed to have elected to have the permittee restore the right-of-way.

- a) City Restoration. If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting such settlement and restoring the right-of-way.
- b) Permittee Restoration. If the permittee restores the right-of-way itself, it shall at the time of issuance of the permit post a construction performance bond as provided in Paragraph 805.09 of this ordinance.
- c) Degradation fee in Lieu of Restoration. If allowed by the city at the time of permit issuance, a right-of-way user may elect to pay a degradation fee. In instances where the city will allow payment of a degradation fee in lieu of restoration, the city shall advise the right-of-way user of the amount of the degradation fee prior to permit issuance, and the right-of-way user shall elect, at the time of permit issuance, to restore the right-of-way or pay the degradation fee. If the right-of-way user elects to pay a degradation fee, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish patching.

Subd. 3. Standards. The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the city and shall comply with Minnesota Rule 7819.1100.

Subd. 4. Duty to Correct Defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the city, shall correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Paragraph 805.15.

Subd. 5. Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

805.25. Joint Applications. Subd. 1. Permit applicants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

Subd. 2. Shared fees. Applicants who jointly apply for permits may share in the payment of the obstruction or excavation permit fee. In order to obtain a joint permit, applicants must agree as to the portion each will pay and indicate the same on their applications.

Subd. 3. With city projects. Registrants who join in a scheduled project or work performed by the city within the right-of-way are not required to pay the excavation or obstruction permit fees specified in subs. 1 and 2 of par. 805.11, but a permit and compliance with the other terms and conditions of this ordinance will still be required.

805.27. Supplementary Applications. Subd. 1. Limitation on Area. A permit is valid only for the area of the right-of-way designated in the permit. No permittee may do any work outside the area designated in the permit without first obtaining a new permit or permit extension. Any permittee who determines that an area greater than that designated in the permit must be obstructed or excavated shall, before working in that greater area: (i) make application for a permit extension and pay any additional fees required for such extension, and (ii) obtain a new permit or permit extension.

Subd. 2. Limitation on Dates. A permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or continue working after the end date without first obtaining a new permit or permit extension. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit.

805.29. Other Obligations. Subd. 1. Compliance With Other Laws. Obtaining a permit or registering with the city does not relieve a permittee of its obligation to obtain all other necessary permits, licenses, franchises and authority and to pay all other fees required by the city, the State of Minnesota or other governmental agencies. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Stat. 216D.01_.09 (Gopher One Call Excavation Notice System). A permittee shall perform all work in conformance with all applicable statutes, 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 does the work.

Subd. 2. Prohibited Work. Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when adverse weather conditions or other conditions are unsuitable for the performance of such work, as determined by the city.

Subd. 3. Interference with Right-of-Way. A permittee shall not interfere with the passage of water through the gutters, storm sewer system or other drainage ways. Vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless otherwise specifically authorized by the permit.

Subd. 4. Construction Requirements. The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and other applicable state and local laws and regulations.

805.31. Denial of Permit. The city may deny a permit for failure to meet the requirements and conditions of this section or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

805.33. Inspection. Subd. 1. Notice of Completion. If required by the city at the time of permit issuance, the permittee shall deliver a Completion Certificate to the city in accordance Minnesota Rule 7819.1300 when the work under any permit is completed.

Subd. 2. Site Inspection. Permittee shall make the worksite available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subd 3. Authority of Director.

- a) At the time of inspection the director may order the immediate cessation of any work, which poses a serious threat to the life, health, safety or well being of the public.
- b) The director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to Paragraph 805.19.

805.35. Work Done Without a Permit. Violations. Any person who, without first having obtained a permit, obstructs or excavates a right-of-way must apply for and obtain a permit, and as a penalty pay double the normal fee for said permit, double all the other fees required by the city code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this section, including reconstruction of any work that is not in compliance with city requirements or the requirements of Minnesota Rules. In addition, any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, may be punished by fine and imprisonment as specified in Minnesota Statutes Chapter 609.

805.37. Revocation of Permits. Subd. 1. Breach. The city may, as provided herein, revoke any permit, without a fee refund, if there is a breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A breach by permittee 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 any material provision of the permit;
- c) Any material misrepresentation in the application for a permit or in any document or other submission supporting the application;
- d) The failure to complete the work within the time specified in the permit; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
- e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to paragraph 805.17.

Subd. 2. Written Notice of Breach. If the city determines that the permittee has committed a breach, the city shall serve a written notice upon the permittee to remedy such breach. The notice shall state that failure to correct the breach shall be cause for revocation of the permit and shall specify the time and manner for responding to the notice and correcting the breach. In addition, a breach will entitle the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach. Written notice of breach shall be duly delivered to a permittee when personally delivered to a local representative of the permittee designated in the permit application or registrant information provided to the city under Paragraph 805.06 or one business day after mailing to a local representative of the permittee by first class mail at the address stated in the permit application or registrant information provided to the city under Paragraph 805.06.

Subd. 3. Response to Notice of Breach. Within the time period stated in the notice of the breach, permittee shall provide the city with a plan that will cure the breach, which plan must be acceptable to the city. Permittee's failure to provide such a plan to the city or to reasonably implement the approved plan and remedy the breach within the time period stated in the notice of breach, shall be cause for immediate revocation of the permit and the city shall notify the permittee of such revocation.

Subd. 4. Revocation and Enforcement. Upon revocation of a permit, a permittee shall discontinue the construction, use or operation of the facilities for which the permit was issued until such time as the breach has been cured and a new permit for such facilities has been obtained in conformity with the requirements of this ordinance. The city shall, in addition to any other penalty specified in this ordinance, be entitled to obtain an injunction in Hennepin County District Court enforcing the provisions of this ordinance.

Subd. 5. Reimbursement of city costs. If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs, costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

805.39. Mapping Data. Subd. 1. Information Required. Each registrant and permittee shall provide "as built" drawings in digital format and mapping information to the city in accordance with Minnesota Rules 7819.1300, Subd. 2, 7819.4000 and 7819.4100. Such as-built drawings shall show vertical and horizontal placement of facilities and shall be formatted to comply with the city's current mapping standards.

805.41. Location and Relocation of Facilities. Subd. 1. Location and Relocation. Right-of-way users shall comply with the facilities placement, location, and relocation requirements and provisions of the Act, other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100. In addition, right-of-way users shall place all facilities underground in locations where the city requires all other right-of-way users providing the same type of service to do the same. In those areas of the city where right-of-way users facilities are located on above-ground transmission or distribution facilities of a public utility or other telecommunications provider, right-of-way users shall relocate or reinstall their facilities underground, at such user's own cost, within 120 days of written request from the city when:

- a) the utility on whose above-ground transmission facilities the right-of-way user has attached its facilities is required to relocate such utilities facilities underground; or
- b) the city requires all right-of-way users to relocate aboveground facilities underground within a designated right-of-way area.

Unless excavation or disturbance is unavoidable, permittees shall not excavate or disturb public streets, roads or sidewalks that have been constructed by the city within five (5) years prior to installation of any facilities but shall, instead, use installation and construction techniques, such as directional boring, that require the least possible excavation or disturbance of public streets, roads or sidewalks.

Subd. 2. Corridors. The city may assign specific areas within the right-of-way, or any particular segment thereof for locating each type of facilities. If applicable, all permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant

Subd. 3. Limitation of Space. To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential right-of-way users, but shall be guided primarily by considerations of the public interest, the public's needs for the particular Utility Service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

805.43 Pre-excavation Facilities Location. In addition to complying with the requirements of Minn. Stat. 216D.01.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

805.45. Damage to other facilities. When the city does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities, the city shall notify the local representative as early as is reasonably possible. The costs associated with supporting or moving a registrant's facilities will be the responsibility of that registrant and must be paid within thirty (30) days from the date of billing. Right-of-way users shall not damage or interfere in any manner with the existence, condition or operation of any public or private roads, streets, curbs, sidewalks, sanitary sewers, water mains, storm drains, gas mains, overhead and underground electric and telephone wires or other utility service facilities without having first obtained the approval of the owner(s) of the affected property or facilities. Each right-of-way user shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each right-of-way user shall be responsible for the cost of repairing any damage to the facilities of another right-of-way user caused during the city's response to an Emergency occasioned by that registrant's facilities.

805.47. Right-of-Way Vacation. Reservation of right. If the city vacates a right-of-way, which contains the facilities of a right-of-way user, the right-of-way user's rights and obligations regarding such vacation and its facilities shall be as stated in Minnesota Rules 7819.3200.

805.49. Indemnification, Liability and Abandonment. By registering with the city, or by accepting a permit under this section, a right-of-way user or permittee agrees and is required to defend, indemnify and hold harmless the city and its elected officials, employees, agents and representatives to the full extent provided in Minnesota Rule 7819.1250, which indemnification provisions are incorporated in this ordinance. It shall be a condition of every permit, whether or not stated therein, that the permittee is required to defend, indemnify and hold the city harmless as provided in this paragraph and in Minnesota Rule 7819.0250.

805.51. Transfer of Facilities; Abandoned and Unusable Facilities. Subd. 1. Transferred operations. A right-of-way user who has determined to transfer or assign all or a portion of its operations in the city must provide information satisfactory to the city that the right-of-way user's obligations for its facilities in the right-of-way under this section have been lawfully assumed by another registrant.

Subd. 2. Abandonment and removal. Right-of-way user shall notify the city of the discontinuance of use or abandonment of any facilities. Abandoned facilities shall be removed from the right-of-way at the right-of-way user's expense or abandoned in place to the extent permitted by the Act, Minnesota Rules or other applicable law. Any right-of-way user who has discontinued the use of or abandoned facilities in any right-of-way shall remove such facilities from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction.

805.53. Appeal. A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) otherwise seeks to contest any fee or condition imposed by this ordinance, may have the denial, revocation, fee, condition or imposition reviewed by the city council, upon written request for such review delivered to the director within 180 days after the date of the denial or revocation or imposition of the fee, condition or imposition sought to be contested. A request for review by the city council shall specify the denial, revocation, fee, condition or imposition that is contested by the right-of-way user and shall contain a detailed description of the grounds for contesting the denial, revocation, fee, condition or imposition. The city council shall act upon a timely written request for review at the next regularly scheduled meeting following delivery of a request for review to the director. At such meeting, the city council may postpone its decision on the right-of-way user's request for review for a period not to exceed 30 days, as necessary for the purpose of obtaining additional information to support its decision on the appeal. A decision by the city council affirming the denial, revocation, fee, condition or imposition will be in writing and supported by written findings.

805.55. Severability and franchises. If any part or provision section of this section is for any reason held invalid 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 provisions of this section. Nothing in this section precludes the city from requiring a franchise agreement with the right-of-way user, as allowed by law, or an encroachment agreement, in addition to compliance with the requirements of this section.

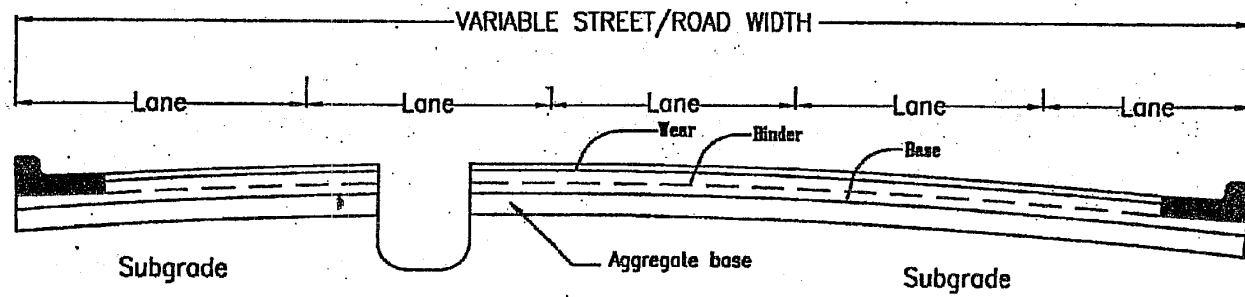
805.57 City exemption. The city shall be exempt from the permitting requirements and provisions of Paragraphs 805.08 through 805.14 this section, except that persons performing work or constructing facilities under contract with the city shall be required to comply with all of the provisions of this section.

This Section was added by Ordinance 2001-854

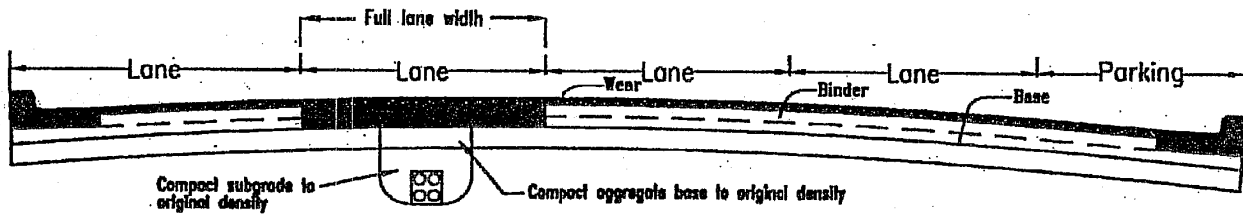
Trench Restoration
Typical Pavement 0 to 5 Years Old

Date: 11-00

PLATE 1
No Scale



Note: Lane widths and number of lanes are variable



Note 1: Bituminous Pavement

- Full lane replacement of base and binder to the nearest construction joint or transverse crack
- Full street width mill & overlay of wearing course

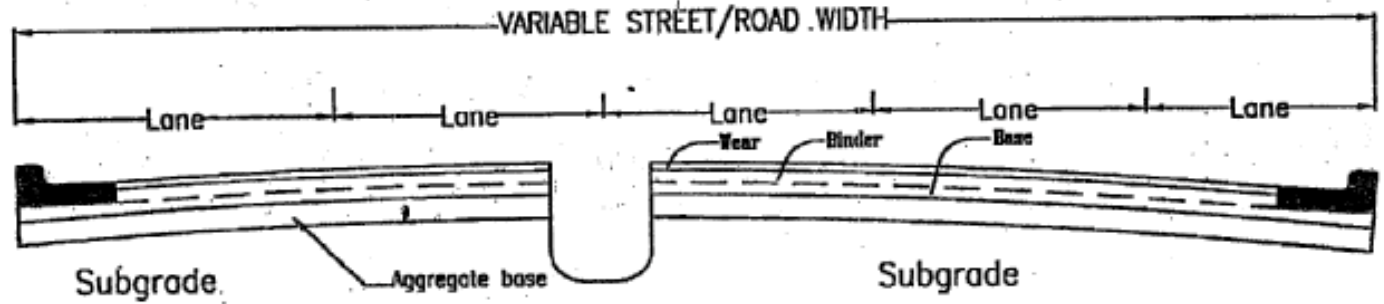
Note 2: Concrete Pavement

- Full panel replacement for concrete pavement

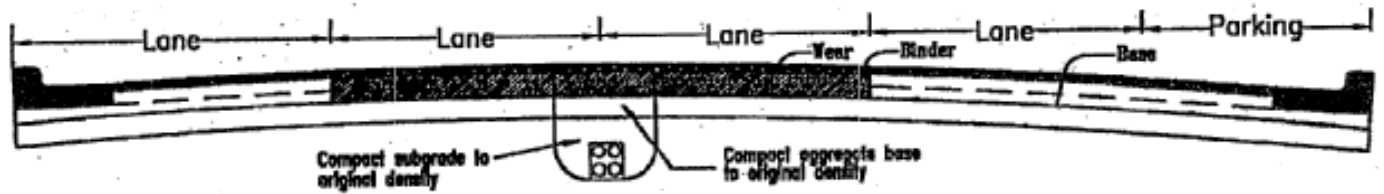
Note 3: All Other Types of Surfaces and Pavements

- Replacement with in-kind materials

Trench Restoration
Typical Pavement 0 to 5 Years Old



Note: Lane widths and number of lanes are variable



Note 1: Bituminous Pavement

- Two lane replacement of base and binder to the nearest construction joint or transverse crack
- Full street width mill & overlay of wearing course

Note 2: Concrete Pavement

- Full panel replacement for concrete pavement

Note 3: All Other Types of Surfaces and Pavements

- Replacement with in-kind materials

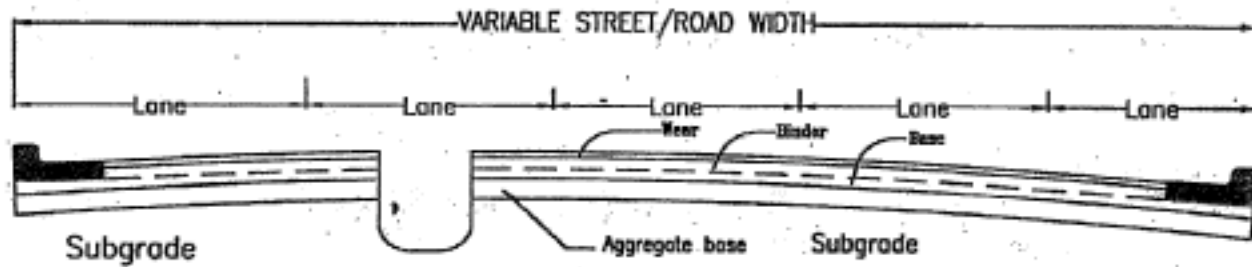
Date: 11-00

PLATE 2
No Scale

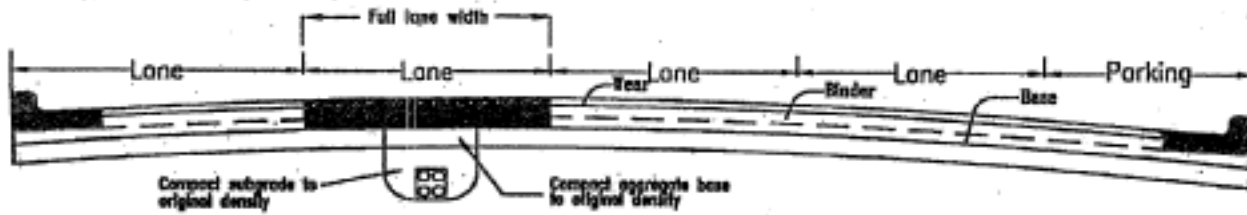
Trench Restoration Typical Pavement
5 Years Old to 5 Year Capital Improvement Plan

Date: 11-00

PLATE 3
No Scale



Note: Lane widths and number of lanes are variable



Note 1: Bituminous Pavement

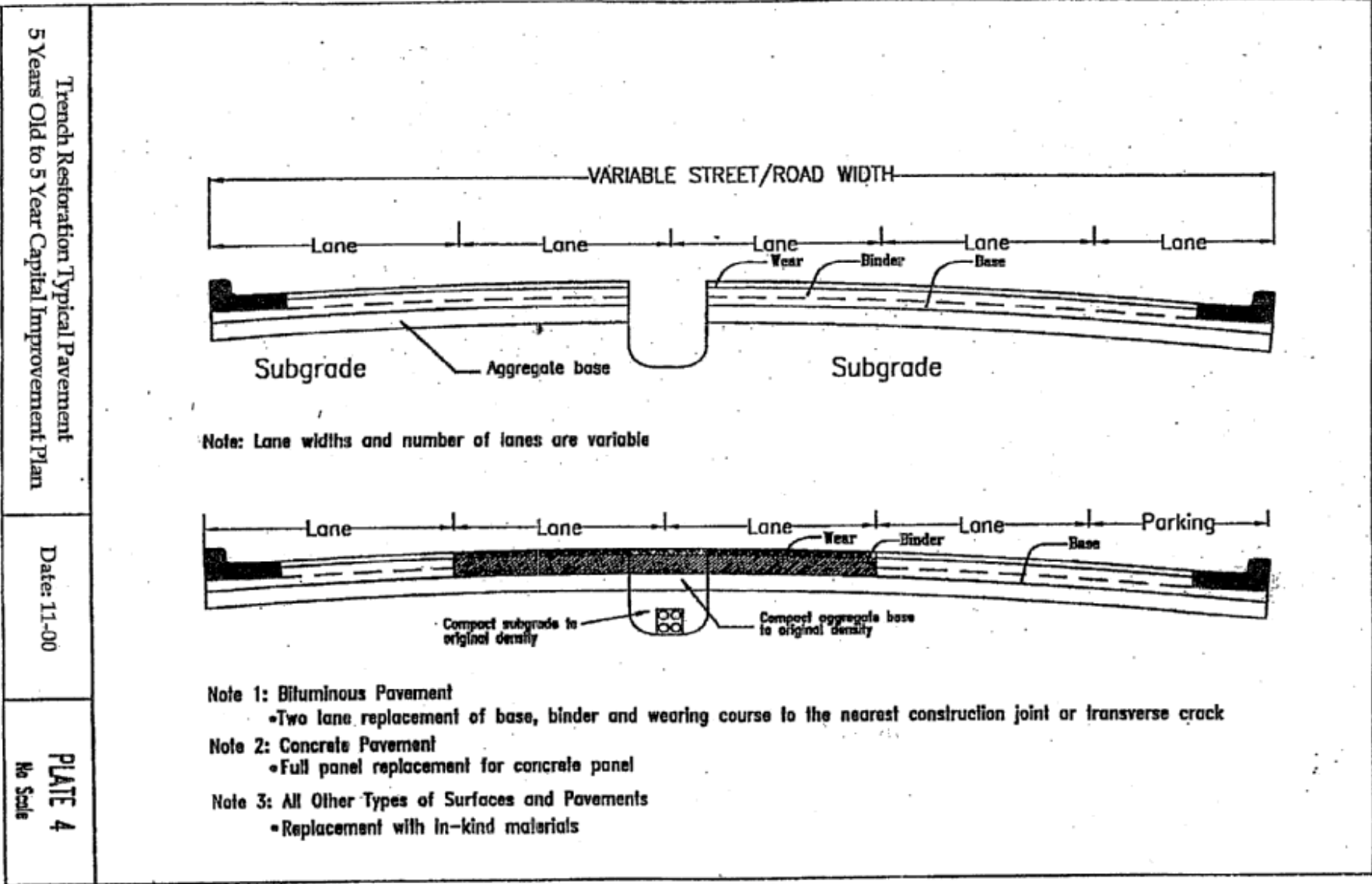
•Full lane replacement of base, binder, and wearing course to the nearest construction joint or transverse crack

Note 2: Concrete Pavement

•Full panel replacement for concrete pavement

Note 3: All Other Types of Surfaces and Pavements

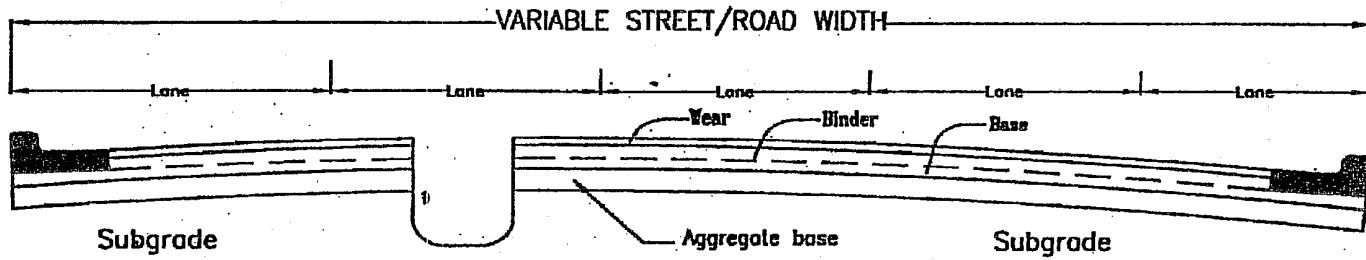
•Replacement with in-kind materials



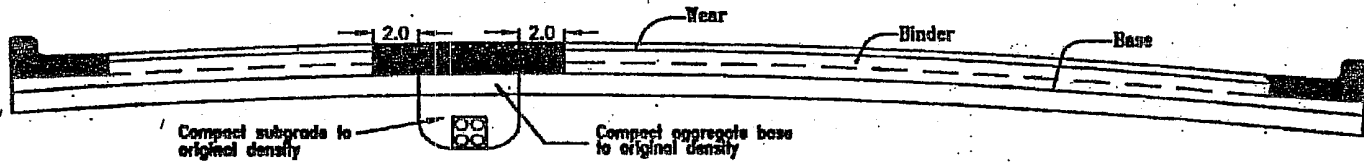
Utility Trench Restoration in 5 Year CIP
or Utility Trench Patch

Date: 11-00

PLATE 5
No Scale



Note: Lane widths and number of lanes are variable

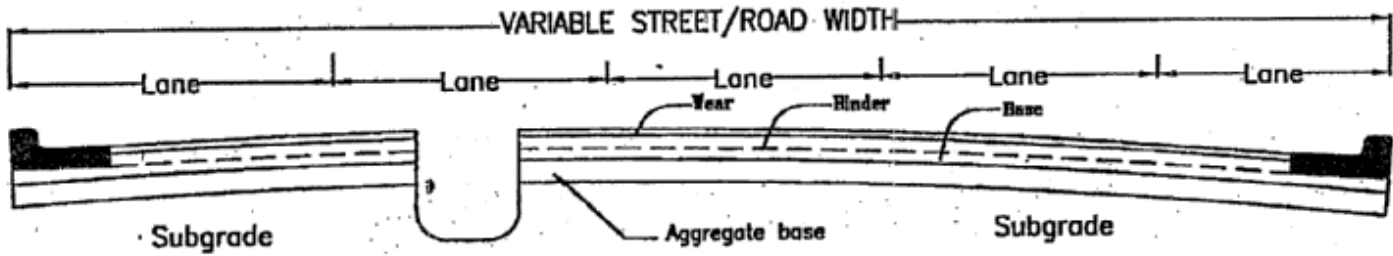


- Note 1: Bituminous Pavement**
 - Replace base, binder and wearing course for trench width plus 2 ft. on either side of cut
- Note 2: Concrete Pavement**
 - Replace trench width plus 2 ft. on either side of cut
- Note 3: All Other Types of Surfaces and Pavements**
 - Replace trench width plus 2 ft. on either side of cut

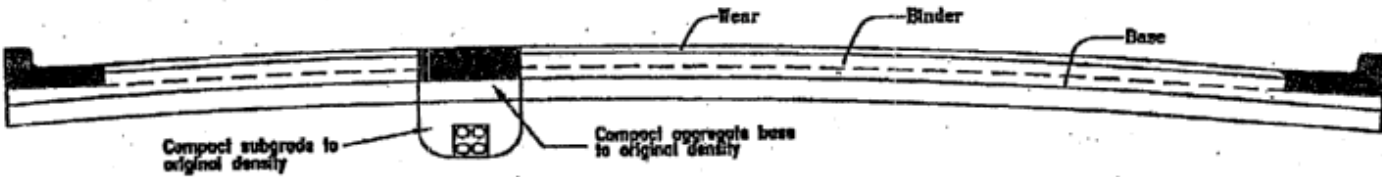
Utility Trench Restoration Typical Pavement
in an Approved Project Location

Date: 11-00

PLATE 6
No Seals



Note: Lane widths and number of lanes are variable

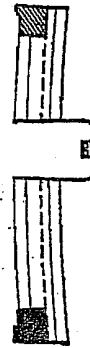
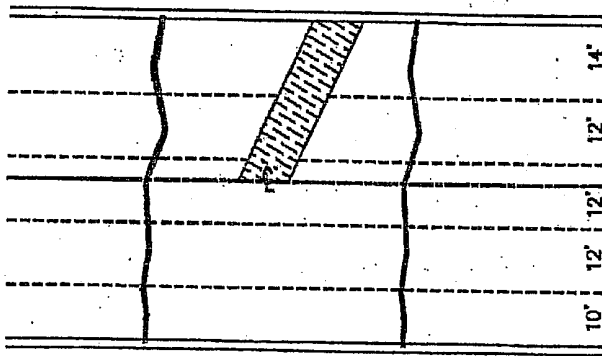


Note 1: Bituminous Pavement
•Replace base, binder and wearing course for trench width only

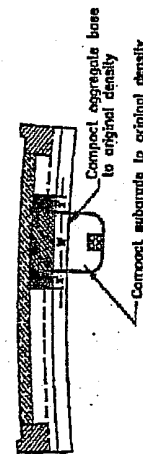
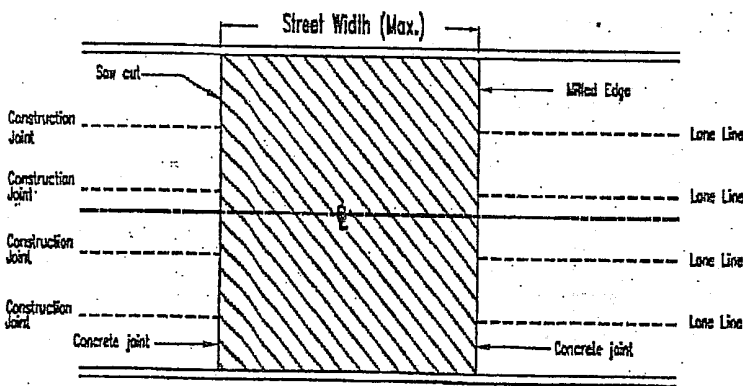
Note 2: Concrete Pavement
•Replace for trench width only

Note 3: All Other Types Of Surfaces And Pavements
•Replacement with in-kind materials for trench width only

TYPICAL HOLE EXCAVATION



TYPICAL RESTORATION



Note 1: Bituminous Pavement

- Full lane replacement of base and binder to the nearest construction joint or transverse crack
- Full street width mill & overlay of wearing course

Note 2: Concrete Pavement

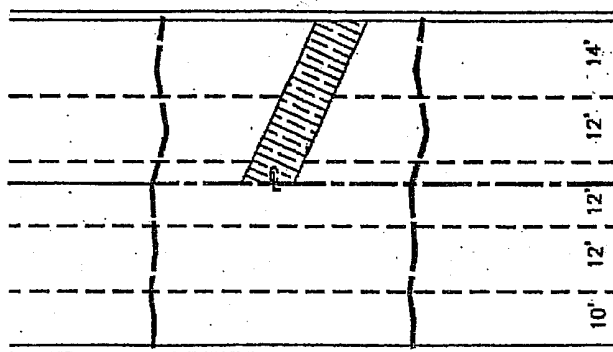
- Full panel replacement for concrete pavement

Note 3: All Other Types of Surfaces and Pavements

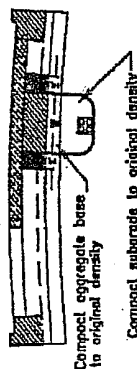
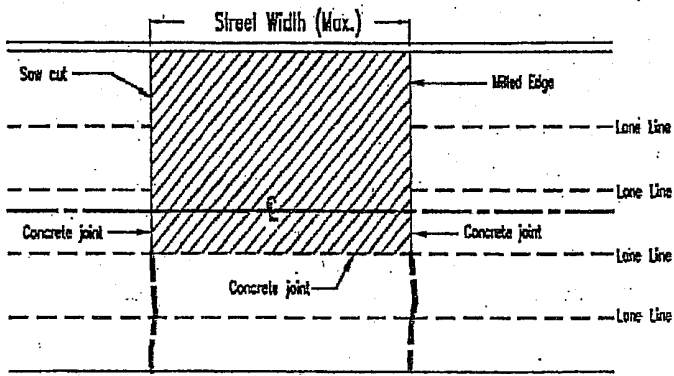
- Replacement with in-kind materials

<p>Hole Restoration Typical Pavement 0 to 5 Years Old</p>	<p>Date: 11-00</p>	<p>PLATE 7 No Scale</p>
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TYPICAL HOLE EXCAVATION



TYPICAL RESTORATION



Note 1: Bituminous Pavement

- Full lane replacement of base, binder, and wearing course to the nearest construction joint or transverse crack

Note 2: Concrete Pavement

- Full panel replacement for concrete pavement

Note 3: All Other Types of Surfaces and Pavements

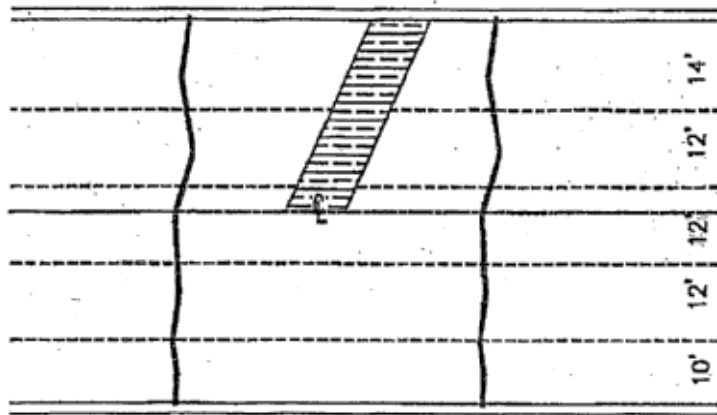
- Replacement with in-kind materials

Hole Restoration Typical Pavement
5 Years Old to 5 Year CIP

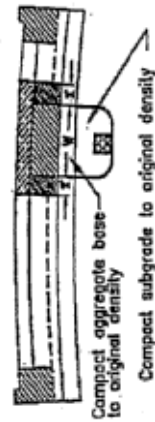
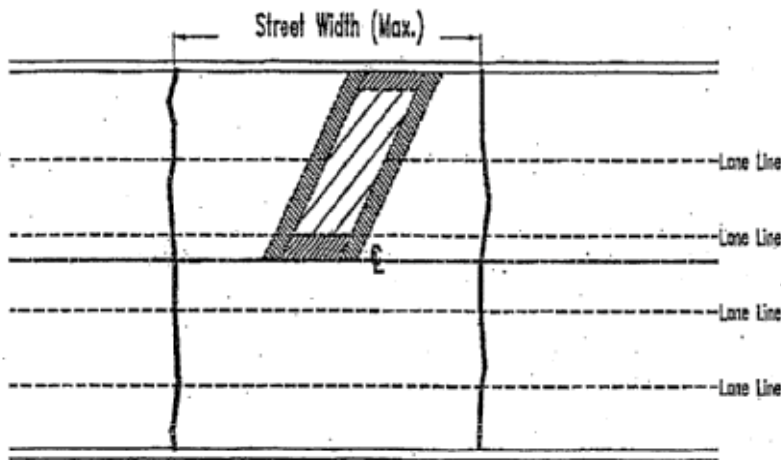
Date: 11-00

PLATE 8
No Scale

TYPICAL HOLE EXCAVATION



TYPICAL RESTORATION



Note 1: Bituminous Pavement

• Replace base, binder and wearing course for width of hole plus 2 ft. on either side of cut

Note 2: Concrete Pavement

• Replace width of hole plus 2 ft. on either side of cut

Note 3: All Other Types of Surfaces and Pavements

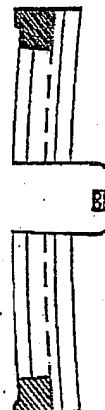
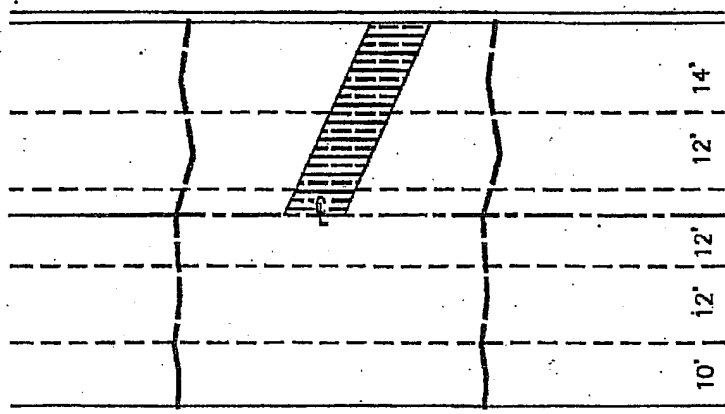
• Replace width of hole plus 2 ft. on either side of cut

Hole Restoration in 5 Year CIP
or Utility Hole Patch

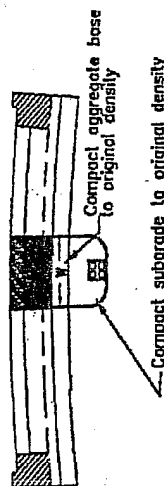
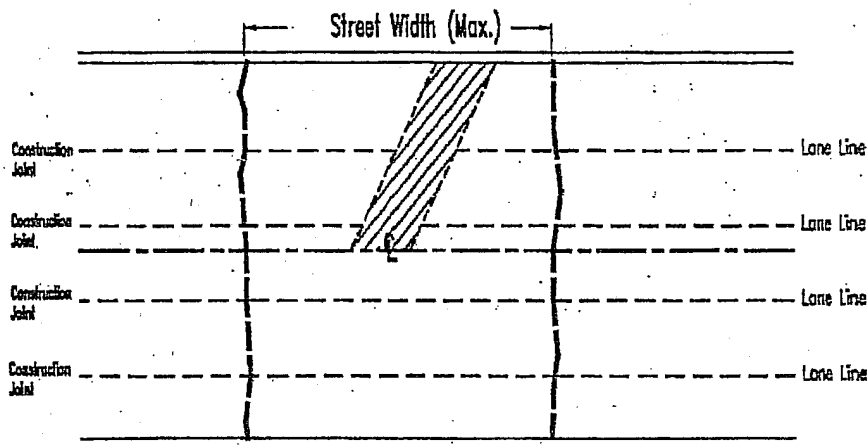
Date: 11-00

PLATE 9
No Scale

TYPICAL HOLE EXCAVATION



TYPICAL RESTORATION



Note 1: Bituminous Pavement

•Replace base, binder and wearing course for width of hole only

Note 2: Concrete Pavement

•Replace width of hole only

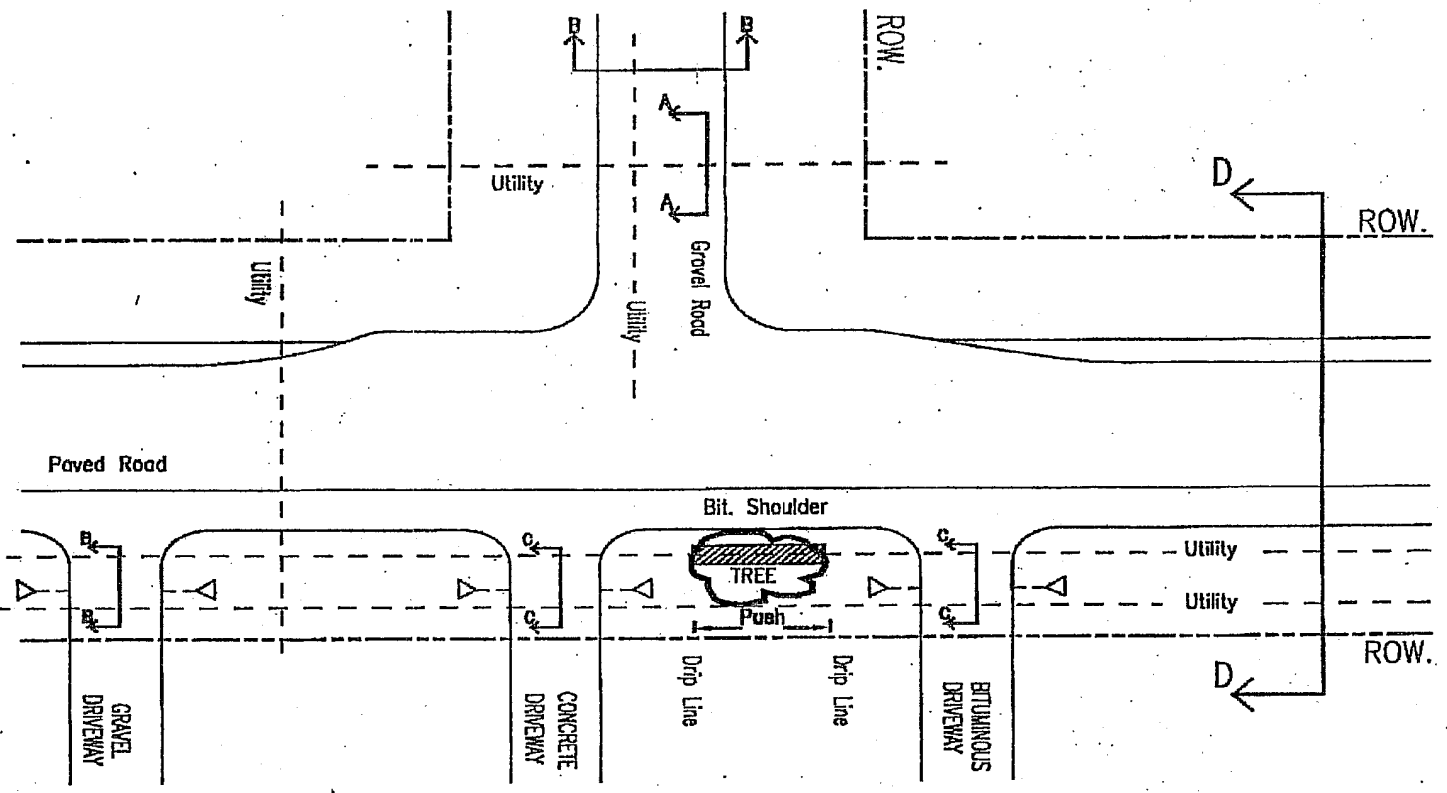
Note 3: All Other Types of Surfaces and Pavements

•Replacement with in-kind materials for width of hole only

Hole Restoration Typical Pavement in an Approved Project Location

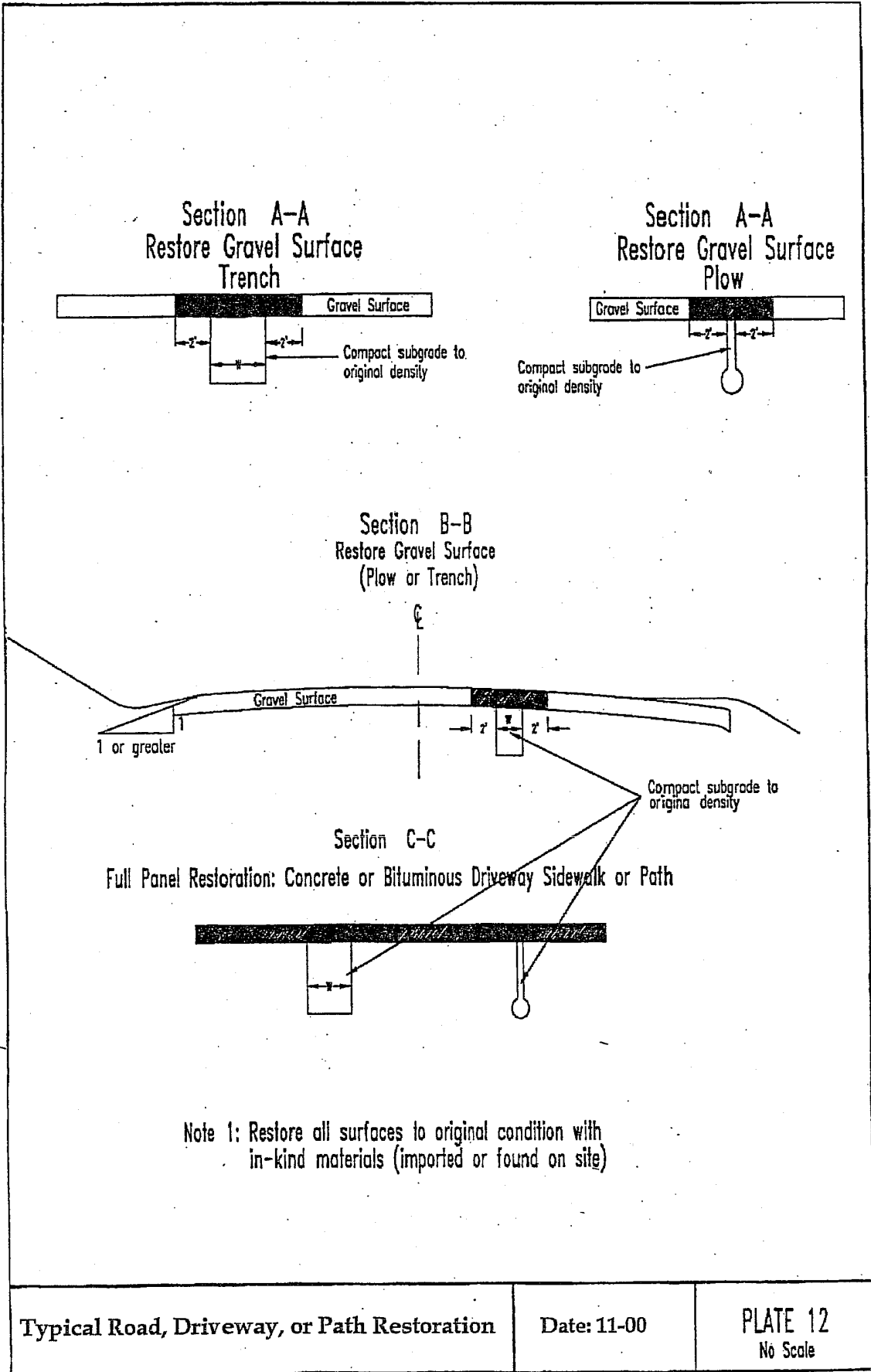
Date: 11-00

PLATE 10
No Scale



Note: All utility lines must be pushed under roads, shoulders and driveways unless other construction methods are approved by the Local Governmental Unit

Typical Road Plan	Date: 11-00	PLATE 11 No Scale
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Typical Road, Driveway, or Path Restoration

Date: 11-00

PLATE 12
No Scale

