

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING SECTIONS OF 9-1-1 THROUGH 9-1-6 OF THE MESA CITY CODE AND ADDING PAVEMENT CUT RESTRICTIONS, PAVEMENT RESTORATION FEES AND OTHER REGULATIONS CONCERNING CONSTRUCTION WORK DONE IN THE CITY RIGHT-OF-WAY.

WHEREAS, the City is charged with exercising exclusive control of and access to the right-of-way in order to protect the health, safety and welfare of its citizens; and

WHEREAS, the City desires to manage and regulate the right-of-way within its jurisdictional limits to serve multiple transportations modes and permitted public and private uses, and to optimize the location, installation and maintenance of public and private improvements, utilities and telecommunications facilities for efficient service; and

WHEREAS, the City finds and determines that pavement cuts cause early deterioration and degrade the pavement condition resulting in more frequent maintenance and/or replacement, which results in higher costs to the City, and also creates additional traffic disturbances; and

WHEREAS, the City desires to mitigate such financial and traffic impacts by creating restrictions on pavement cuts and to impose certain pavement restoration fees to cover such costs; and

WHEREAS, pursuant to A.R.S. §§ 9-240, 9-276, 9-501, *et seq.* and 9-581, *et seq.*, the City may impose a fee in connection with construction done, and improvements and facilities placed in the right-of-way;

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:**

Text written in **BOLD ALL CAPS** indicates new language.  
~~Strikethrough~~ fonts indicate deletions.

SECTION 1. That Title 9, Chapter 1, of the Mesa City Code entitled “RIGHT-OF-WAY PERMITS” is set forth in its entirety and hereby amended as follows:

**RIGHT-OF-WAY ~~PERMITS~~ MANAGEMENT**

**SECTION:**

- 9-1-1: DEFINITION OF TERMS**
- 9-1-2: RIGHT-OF-WAY PERMITS**
- 9-1-3: NOTIFICATION**
- 9-1-4: PLAN REVIEW AND INSPECTION CHARGES**
- 9-1-5: RELOCATION, JOINT LOCATION**
- 9-1-6: ~~CERTAIN MINIMUM REQUIREMENTS (REPEALED BY 3309)~~ PAVEMENT RESTORATION FEES, PAVEMENT CUT RESTRICTIONS**
- 9-1-7: AUTHORITY TO INSPECT**
- 9-1-8: STOP WORK ORDERS**

- 9-1-9:        **UNAUTHORIZED WORK**  
9-1-10:      **APPEALS**  
9-1-11:      **PENALTIES**

9-1-1:        **DEFINITION OF TERMS:**

**CITY EASEMENT:** AN AREA OF LAND RESERVED FOR USE BY THE CITY OF MESA, WHICH USES MAY INCLUDE BUT ARE NOT LIMITED TO THE STORAGE OR RETENTION OF STORMWATER, ACCESS TO THE PUBLIC RIGHT-OF-WAY OR CITY PROPERTY, AND THE CONSTRUCTION, INSTALLATION, MAINTENANCE AND OPERATION OF CITY UTILITIES AND FACILITIES.

**CITY ENGINEER:** THE CITY DEPARTMENT HEAD WHOSE DUTIES INCLUDE ENGINEERING FUNCTIONS, INCLUDING THE DEVELOPMENT, INTERPRETATION AND ENFORCEMENT OF ENGINEERING STANDARDS, SPECIFICATIONS AND PROCEDURES FOR THE DESIGN AND CONSTRUCTION OF RIGHT-OF-WAY IMPROVEMENTS AND IMPROVEMENTS IN PUBLIC EASEMENTS OR CITY EASEMENTS IN HARMONY WITH THE OBJECTIVES, PURPOSES AND REGULATIONS OF THIS CHAPTER AND NECESSARY OR APPROPRIATE TO PROTECT THE PUBLIC HEALTH, SAFETY, BEST INTERESTS AND WELFARE OF THE MESA CITIZENS. IN THIS CHAPTER, THE TERM CITY ENGINEER INCLUDES THE PERSON WHO HOLDS THE CITY ENGINEER POSITION AND HIS OR HER DESIGNEE.

**DEVELOPMENT AND SUSTAINABILITY DIRECTOR:** THE CITY DEPARTMENT HEAD WHOSE DUTIES INCLUDE BUILDING SAFETY, PLANNING, ENVIRONMENTAL AND SUSTAINABILITY FUNCTIONS. IN THIS CHAPTER, THE TERM DEVELOPMENT AND SUSTAINABILITY DIRECTOR INCLUDES THE PERSON WHO HOLDS THE DEVELOPMENT AND SUSTAINABILITY DIRECTOR POSITION AND HIS OR HER DESIGNEE.

~~**DEVELOPMENT SERVICES MANAGER:** The individual appointed by the City Manager and approved by the City Council as prescribed in Title 3, Chapter 4 of the City Code. Certain practical aspects of the Development Services Manager's authority may be delegated to other Development Services Department employees as deemed appropriate for the efficient and effective operation of the Development Services Department.~~

**ENGINEERING PLANS:** Plans, profiles, cross sections, and other required details for the construction of public or private improvements within the public rights-of-way, **CITY EASEMENTS** or public easements, prepared by a person, firm, company, corporation, public entity, or board in compliance with the code and rules of the Arizona State Board of Technical Registration, unless exempted thereunder; and conforming with (i) the ~~public or private~~ **RIGHT-OF-WAY** improvement standards of design and construction developed by the ~~Development Services Manager~~ **CITY ENGINEER**; or (ii) standards developed by the person, firm, company, corporation, public entity, or board that the ~~Development Services Manager~~ **CITY ENGINEER** accepts as substantially equivalent to the ~~Development Services Manager~~ **CITY ENGINEER**'s standards in protecting the public health, safety, and welfare; or (iii) in the case of a political subdivision of the State of Arizona, standards of design and construction developed and approved by such political subdivision and filed with the ~~Development Services Manager~~ **CITY ENGINEER**.

**FACILITY:** THE EQUIPMENT AND PERSONAL PROPERTY, INCLUDING BUT NOT LIMITED TO BOXES, POLES, WIRES, CABLES, PIPE, CONDUIT, INTERDUCT, FIBER, COAXIAL, PEDESTALS, ANTENNA, AND OTHER APPURTENANCES PLACED IN, ON, OVER, OR UNDER, RIGHT-OF-WAY, PUBLIC EASEMENTS OR CITY EASEMENTS.

**MESA PROJECTS:** Public improvement projects for which the City of Mesa is the general contracting agency, **AND PUBLIC OR PRIVATE IMPROVEMENT PROJECTS FOR WHICH THE CITY IS RESPONSIBLE OR OBLIGATED BY WRITTEN AGREEMENT TO COORDINATE OR FUND IMPROVEMENTS, CONSTRUCTION OR OTHER WORK IN THE RIGHT-OF-WAY, CITY EASEMENTS OR PUBLIC EASEMENTS.**

**NEW PAVEMENT:** PAVING MATERIAL APPLIED IN OR NEAR THE RIGHT-OF-WAY TO CONSTRUCT A NEW STREET, HIGHWAY, ALLEY, ROAD OR BIKEWAY WHERE NO SUCH MATERIAL PREVIOUSLY EXISTED.

**PAVEMENT RECONSTRUCTION:** REBUILDING A PORTION OF THE STREET BY REMOVING ALL THE PAVEMENT AND AGGREGATE BASE COURSE MATERIAL, AND RE-PAVING.

**PAVEMENT RENOVATION:** A MAJOR REHABILITATION OF STREET PAVEMENT, WHICH INCLUDES MILL AND OVERLAY, COLD IN PLACE RECYCLE, HOT IN PLACE RECYCLE, FRACTURED AGGREGATE SURFACE TREATMENT, CAPE SEAL, AND STRESS ABSORBING MEMBRANE INTERLAYER OR OTHER SIMILAR ROADWAY IMPROVEMENT THAT PHYSICALLY MODIFIES THE SURFACE OF THE ROADWAY.

**PAVEMENT RESTORATION FEE:** THE FEE REQUIRED BY THE CITY WHEN A PERMITTEE CUTS INTO, EXCAVATES, OPENS, BORES, TRENCHES, POTHOLES, DAMAGES, OR DISTURBS PAVEMENT IN THE PUBLIC RIGHT-OF-WAY, PUBLIC EASEMENTS OR CITY EASEMENTS.

**PERMIT CHARGES:** Fees assessed at the time of issuance of a right-of-way permit **THAT** are intended to cover costs incurred by the City for permit processing, plan review services, **MATERIALS TESTING** and inspections. Refer to latest schedule of fees and charges.

**PERMITTEE:** THE GOVERNMENTAL ENTITY, PERSON, OR BUSINESS ENTITY THAT HAS RECEIVED A RIGHT-OF-WAY PERMIT PURSUANT TO THIS SECTION OR ENGAGED IN CONSTRUCTION OR MAINTENANCE IN THE RIGHT-OF-WAY, PUBLIC EASEMENTS, OR CITY EASEMENTS.

**EASEMENT, PUBLIC EASEMENT:** ~~An area of land over which the City of Mesa coordinates the locations of public or private improvements, underground or overhead, furnished for the use of the public; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, etc. owned and operated by any person, firm, corporation, municipal department, or board duly authorized by state or municipal regulations.~~ **PUBLIC UTILITY EASEMENTS OF THE CITY.**

**~~RIGHT-OF-WAY~~, PUBLIC RIGHT-OF-WAY:** An area of land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved or dedicated to the City for

public purposes including, but not limited to, street, highway, alley, public utility, pedestrian walkway, bikeway, or drainage. Within public rights-of-way, the City of Mesa coordinates the locations of public or private improvements, underground or overhead; including electricity, gas, steam, communication, telecommunications, data transmission, cable TV, water, storm drainage, sewage, sidewalks, landscaping, traffic signals, streetlights, flood control, pedestrian, roadway purposes, etc. owned and operated by any person, firm, company, corporation, municipal department, or board duly authorized by federal, state, or municipal regulations.

~~PUBLIC OR PRIVATE RIGHT-OF-WAY~~ IMPROVEMENT STANDARDS: A set of regulations setting forth the details, specifications, instructions, and procedures to be followed in the planning, design, installation, and construction of public or private improvements within the public rights-of-way, **PUBLIC EASEMENTS** or **CITY** easements; ~~formulated~~ **ADOPTED** by the ~~Development Service Manager~~ **CITY ENGINEER, WHICH MAY INCLUDE BY REFERENCE OR INCORPORATION, REGULATIONS OF** the County Health Department, the Maricopa Association of Governments, and other City departments. **RIGHT-OF-WAY IMPROVEMENT STANDARDS MAY INCLUDE, BUT ARE NOT LIMITED TO UNIFORM STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION SPONSORED BY AND DISTRIBUTED BY THE MARICOPA ASSOCIATION OF GOVERNMENTS (MAG STANDARDS), CITY ENGINEERING DESIGN STANDARDS, MESA STANDARD DETAILS AND SPECIFICATIONS, THE NATIONAL ELECTRICAL SAFETY CODE (NESC), THE NATIONAL ELECTRICAL CODE (NEC) AND FEDERAL AND STATE REGULATIONS. A CURRENT COPY OF THE RIGHT-OF-WAY IMPROVEMENT STANDARDS MAY BE OBTAINED BY CONTACTING THE CITY ENGINEERING DEPARTMENT.**

**RIGHT-OF-WAY PERMIT:** An official document issued by the ~~Development Services Manager~~ **CITY** authorizing performance of a specified activity or work within the public rights-of-way, **PUBLIC EASEMENTS** and ~~public~~ **CITY** easements ~~of the City of Mesa~~ by a person, contractor, company, firm, or corporation duly qualified under the statutes and rules of the Arizona Registrar of Contractors, unless exempted thereunder. A Right-of-Way Permit may also authorize specified activity or work involving City utilities or facilities outside the corporate limits when issued in conjunction with the appropriate permit required for specified activity or work within another jurisdiction. **RIGHT-OF-WAY PERMITS INCLUDE NON-CITY UTILITY (NCU) PERMITS, JOINT USE MEMOS, PAVEMENT RESTORATION PERMITS, AND ANY OTHER PERMIT THAT AUTHORIZES A PERMITTEE TO WORK OR PERFORM A SPECIFIED ACTIVITY IN THE PUBLIC RIGHTS-OF-WAY, PUBLIC EASEMENTS OR CITY EASEMENTS.**

~~**SPECIAL INSTRUCTIONS:** Required instructions involving unique activity or work in the public rights of way, or public easements where inspection charges cannot be reasonably determined by those methods outlined in Section 9-1-4.~~

**STREET MAINTENANCE: APPLICATION OF SLURRY AND FOG SEALS TO STREET PAVEMENT.**

#### **9-1-2: RIGHT-OF-WAY PERMITS:**

- (A) It shall be unlawful for any person, firm, company, corporation, **BUSINESS ENTITY**, public entity, or board to grade, pave, fill, or level any street or alley within the public rights-of-way, **CITY EASEMENTS** or public easements of the City of Mesa or to construct, alter, or repair therein any pavement, sidewalk, crosswalk, curb, driveway,

gutters, landscaping, sewers, water mains, or other structures or to make therein any excavation or in any manner disturb or obstruct the same or perform any other activity or work without first obtaining a Right-of-Way Permit ~~to do so from the Development Services Manager.~~

- (B) ~~Prior to obtaining a Right-of-Way Permit, the~~ A person, firm, company, corporation, **BUSINESS ENTITY**, public entity, ~~OR board~~ **SEEKING A RIGHT-OF-WAY PERMIT** shall apply for said permit by submitting **AN APPLICATION AND** engineering plans to the **DEVELOPMENT AND SUSTAINABILITY MANAGER.** ~~Development Services Manager~~ **THE CITY ENGINEER SHALL REVIEW THE APPLICATION AND PLANS, AND APPROVE THE ISSUANCE OF A RIGHT-OF-WAY PERMIT IF THE APPLICATION AND PLANS MEET THE REQUIREMENTS OF THIS CHAPTER.** ~~for approval that conforms with the requirements of this Chapter.~~
- (C) **THE CONSTRUCTION AND MAINTENANCE OF ALL IMPROVEMENTS IN THE PUBLIC RIGHT-OF-WAY, CITY EASEMENTS OR PUBLIC EASEMENTS, SHALL BE SUBJECT TO THE INSPECTION AND APPROVAL OF THE CITY ENGINEER.**
- (D) **ALL IMPROVEMENTS IN THE PUBLIC RIGHT-OF-WAY SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF A RIGHT-OF-WAY PERMIT AND IN COMPLIANCE WITH RIGHT-OF-WAY IMPROVEMENT STANDARDS.**
- (E) **WHILE WORK IS BEING DONE IN THE PUBLIC RIGHT-OF-WAY, CITY EASEMENTS OR PUBLIC EASEMENTS, PERMITTEE SHALL PROVIDE TO THE CITY, UPON DEMAND, PROOF OF ANY REQUIRED RIGHT-OF-WAY PERMIT, INCLUDING A DESCRIPTION OF THE WORK AND CONSTRUCTION LIMITS.**
- (F) **A RIGHT-OF-WAY PERMIT MAY BE REVOKED BY THE CITY ENGINEER UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:**
1. **WHEN THE RIGHT-OF-WAY, CITY EASEMENTS, OR PUBLIC EASEMENTS, OR ANY PORTION THEREOF, OCCUPIED AND USED BY THE PERMITTEE IS NEEDED IN CONNECTION WITH THE CONSTRUCTION OF A MESA PROJECT, UPON REASONABLE NOTICE FROM THE CITY ENGINEER, UNLESS A CITY LICENSE, FRANCHISE OR AGREEMENT PROVIDES OTHERWISE.**
  2. **IF THE PERMITTEE DOES NOT COMPLY WITH THE TERMS AND CONDITIONS OF THE RIGHT-OF-WAY PERMIT OR PERFORMS WORK THAT IS NOT IN COMPLIANCE WITH RIGHT-OF-WAY IMPROVEMENT STANDARDS.**
  3. **IF THE CITY ENGINEER FINDS THAT A DELAY IN COMPLETION OF WORK AUTHORIZED BY A RIGHT-OF-WAY PERMIT IS DUE TO LACK OF DILIGENCE ON THE PART OF THE PERMITTEE, THE CITY MAY REVOKE THE PERMIT AND RESTORE THE CITY RIGHT-OF-WAY, CITY**

EASEMENT, OR PUBLIC EASEMENT TO ITS FORMER CONDITION UNLESS SUCH RESTORATION, RELOCATION, OR REMOVAL IS COMPLETED BY THE PERMITTEE. THE PERMITTEE SHALL REIMBURSE THE CITY FOR ALL DOCUMENTED COSTS AND EXPENSES INCURRED BY THE CITY IN CONNECTION WITH LOCATING AND REMOVING THE WORK, AND RESTORING THE RIGHT-OF-WAY.

- (G) PERMITTEE SHALL PARTICIPATE AS A MEMBER OF THE ARIZONA LOCATION SERVICE, AS SET FORTH IN A.R.S. § 40-360.21, *ET SEQ.* A COPY OF EACH PERMITTEE'S AGREEMENT OR PROOF OF PARTICIPATION SHALL BE SUBMITTED TO THE CITY ENGINEER.
- (H) PERMITTEE SHALL PREPARE AND MAINTAIN ACCURATE RECORD DRAWINGS OF ITS FACILITIES IN THE PUBLIC RIGHT-OF-WAY, CITY EASEMENTS AND PUBLIC EASEMENTS, AND SHALL FURNISH SUCH RECORD DRAWINGS TO THE CITY UPON REQUEST. IF ACCURATE RECORD DRAWINGS OF A PERMITTEE'S FACILITIES ARE NOT PROVIDED TO THE CITY, AND THE CITY INCURS COSTS OR EXPENSES LOCATING THE PERMITTEE'S FACILITIES IN CONNECTION WITH THE CONSTRUCTION OF A MESA PROJECT, THE PERMITTEE SHALL REIMBURSE THE CITY FOR DOCUMENTED COSTS ASSOCIATED WITH LOCATING AND POTHOLING PERMITTEE'S FACILITIES.

#### 9-1-3: NOTIFICATION:

~~Said Right-of-Way Permit~~S shall require that the person, firm, company, corporation, public entity, or board to whom the same is issued shall give the ~~Development Services Manager~~ **ENGINEERING DEPARTMENT** twenty-four (24) hours' notice of the commencement of such activity or work authorized by said Right-of-Way Permit. ~~, shall carry on such activity or work to the satisfaction and subject to the approval of the Development Services Manager, shall~~ **THE PERMITTEE SHALL** diligently prosecute the same to completion, shall leave the public rights-of-way, **CITY EASEMENTS** or public easements in a good and safe condition, and shall at all times keep signal lights, barricades, or other **SAFETY DEVICES FUNCTIONING PROPERLY** ~~proper warning as may be necessary~~ to prevent injury to persons and property, and such person, firm, company, corporation, public entity, or board shall comply with such additional reasonable provisions and conditions as may be prescribed by the ~~Development Services Manager~~ **CITY ENGINEER**.

#### 9-1-4: PLAN REVIEW AND INSPECTION CHARGES:

A Right-of-Way Permit shall not be issued under the provisions of this Chapter until the applicant has paid all applicable fees and charges as established in the most recent City of Mesa Schedule of Fees and Charges. The ~~Development Services Manager~~ **DEVELOPMENT AND SUSTAINABILITY MANAGER AND THE CITY ENGINEER** ~~is~~ **ARE** authorized to enter into agreements with the United States, the State of Arizona, political subdivisions of the State of Arizona, and agencies thereof, establishing offsets or credits for fees or charges applied by both agencies.

#### 9-1-5: RELOCATION, JOINT LOCATION:

- (A) THE CITY RESERVES ITS PRIOR OR SUPERIOR RIGHTS TO LAY,

CONSTRUCT, ERECT, INSTALL, USE, OPERATE, REPAIR, REPLACE, REMOVE, RELOCATE, REGRADE, WIDEN, REALIGN OR MAINTAIN ANY RIGHT-OF-WAY, AERIAL, SURFACE, OR SUBSURFACE IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO WATER MAINS, TRAFFIC CONTROL DEVICES, CABLE AND DEVICES, SANITARY SEWER, PIPES, TUNNELS, POLES, OVERHEAD FACILITIES, OR ANY OTHER CITY CONSTRUCTION WITHIN PUBLIC RIGHT-OF-WAY, CITY EASEMENTS AND PUBLIC EASEMENTS.

1. WHEN THE CITY INVOKES ITS PRIOR OR SUPERIOR RIGHTS UNDER THIS SECTION, THE PERMITTEE SHALL MOVE ITS FACILITIES LOCATED IN THE PUBLIC RIGHT-OF-WAY, CITY EASEMENTS OR PUBLIC EASEMENTS AT ITS OWN COST, TO SUCH A LOCATION AS THE CITY DIRECTS, UNLESS A CITY LICENSE, FRANCHISE, OR AGREEMENT PROVIDES OTHERWISE.
2. WHEN THE CITY DIRECTS A PERMITTEE TO REMOVE OR RELOCATE ITS FACILITIES PURSUANT TO THIS SECTION, THE PERMITTEE SHALL REMOVE OR RELOCATE ITS FACILITIES WITHIN A REASONABLE TIME, BUT IN NO EVENT SHALL THE TIME PERIOD EXCEED THIRTY (30) DAYS. HOWEVER, IF THE CITY ENGINEER DETERMINES THAT THE CIRCUMSTANCES WARRANT AN EXTENSION, THE CITY MAY EXTEND THIS TIME PERIOD.
3. IF A PERMITTEE'S RELOCATION EFFORTS PURSUANT TO THIS SECTION DELAY THE CONSTRUCTION OF A MESA PROJECT TO THE EXTENT THAT THE CITY BECOMES LIABLE FOR DOCUMENTED DELAY DAMAGES, THE PERMITTEE SHALL REIMBURSE THE CITY FOR THE DOCUMENTED DAMAGES ATTRIBUTABLE TO THE DELAY CAUSED BY THE PERMITTEE.

(B) As part of the coordination of public or private improvements **IN THE RIGHT-OF-WAY, CITY EASEMENTS OR PUBLIC EASEMENTS**, and as a condition of obtaining a Right-of-Way Permit, ~~for activity or work within the public rights of way and easements~~, the City may require joint location of all underground and overhead public or private improvements when said joint location is not otherwise prohibited by applicable safety or design standards.

(C) **PERMITTEE SHALL RELOCATE EXISTING FACILITIES, AT NO COST TO THE CITY, TO ACCOMMODATE THE LOCATION OR RELOCATION OF, OR THE CLEARANCE REQUIREMENTS ASSOCIATED WITH, OTHER FACILITIES WHOSE OWNERS HAVE PRIOR RIGHTS IN THE PUBLIC RIGHT-OF-WAY, CITY EASEMENTS OR PUBLIC EASEMENTS.**

~~(D) If a public or private improvement has been installed in a public easement, in accordance with the requirements of this Chapter and the City of Mesa subsequently requires relocation of said public or private improvement to accommodate a Mesa project, the City shall reimburse the owner of the public or private improvement for documented relocation costs; unless an existing City license franchise, or agreement provides otherwise.~~

**9-1-6: ~~PENALTIES~~ PAVEMENT RESTORATION FEES, PAVEMENT CUT RESTRICTIONS:**

- (A) **PAVEMENT RESTORATION FEES.** A PERMITTEE SHALL PAY A PAVEMENT RESTORATION FEE IN CONNECTION WITH ANY RIGHT-OF-WAY PERMIT TO CUT INTO, EXCAVATE, OPEN, BORE, TRENCH OR DISTURB STREET PAVEMENT FOR A PERIOD OF FIVE (5) YEARS AFTER THE CITY'S ACCEPTANCE OF STREET CONSTRUCTION THAT INCLUDES NEW PAVEMENT, PAVEMENT RENOVATION OR PAVEMENT RECONSTRUCTION AT THE LOCATION FOR WHICH THE RIGHT-OF-WAY PERMIT IS BEING SOUGHT. THE AMOUNT OF THE PAVEMENT RESTORATION FEE SHALL BE AS ESTABLISHED IN THE CITY'S FEE SCHEDULE. THE PAVEMENT RESTORATION FEE SHALL BE PAID BEFORE A RIGHT-OF-WAY PERMIT IS ISSUED UNLESS THE PERMITTEE HAS A WRITTEN AGREEMENT WITH THE CITY THAT ALLOWS FOR PAYMENT OF THE PAVEMENT RESTORATION FEE AFTER THE PAVEMENT CUT IS MADE. THE PAVEMENT RESTORATION FEE WILL BE IN ADDITION TO, AND WILL NOT BE OFFSET BY, ALL LICENSE AND FRANCHISE FEES, EXPENSES AND TAXES.
- (B) **PAVEMENT CUT RESTRICTIONS.** THE CITY ENGINEER SHALL NOT APPROVE A RIGHT-OF-WAY PERMIT TO CUT INTO, EXCAVATE, OPEN, BORE, TRENCH, OR DISTURB STREET PAVEMENT FOR A PERIOD OF TWO (2) YEARS AFTER THE CITY'S ACCEPTANCE OF STREET CONSTRUCTION THAT INCLUDES NEW PAVEMENT, PAVEMENT RENOVATION, PAVEMENT RECONSTRUCTION, OR STREET MAINTENANCE AT THE LOCATION FOR WHICH THE PERMIT IS BEING SOUGHT. THE CITY ENGINEER MAY AUTHORIZE AN EXCEPTION TO THIS PAVEMENT CUT RESTRICTION UNDER ANY ONE OF THE FOLLOWING CONDITIONS:
1. A VERIFIABLE EMERGENCY EXISTS THAT ENDANGERS LIFE OR PROPERTY;
  2. THERE IS AN INTERRUPTION OF ESSENTIAL UTILITY SERVICE;
  3. UTILITY OR OTHER SERVICE FOR BUILDINGS IS REQUIRED WHERE NO OTHER FEASIBLE MEANS OF PROVIDING SUCH SERVICE EXISTS;
  4. A PAVEMENT CUT IS REQUIRED BY CITY, COUNTY, STATE OR FEDERAL REGULATION; OR
  5. IF THE CITY ENGINEER DETERMINES, AFTER REVIEWING EVIDENCE SUBMITTED BY THE PERMITTEE, THAT THE COST TO MILL AND OVERLAY/INLAY AS DESCRIBED IN SUBSECTION (D) BELOW, IS SUBSTANTIALLY LESS THAN THE COST OF ALTERNATE ROUTING FOR PERMITTEE'S FACILITIES. IN THE EVENT THAT THE CITY ENGINEER MAKES SUCH A DETERMINATION, THEN PERMITTEE MAY CHOOSE TO PERFORM A MILL AND OVERLAY/INLAY AS DESCRIBED IN SUBSECTION (D) BELOW.
- (C) **IF PERMISSION IS GRANTED TO CUT INTO, EXCAVATE, OPEN, BORE,**



**TRENCH, OR DISTURB NEW, RECONSTRUCTED, RENOVATED OR MAINTAINED STREET PAVEMENT PURSUANT TO SUBSECTION (B) ABOVE, THE PERMITTEE MUST PAY THE PAVEMENT RESTORATION FEE ESTABLISHED BY THE CITY COUNCIL IN THE CITY'S FEE SCHEDULE.**

- (D) IN ADDITION TO THE PAYMENT OF THE PAVEMENT RESTORATION FEE, A CONDITION OF ANY STREET CUT PERMIT FOR CUTTING THE PAVEMENT OF A STREET WITHIN ONE (1) YEAR OF CONSTRUCTION, RECONSTRUCTION OR RENOVATION, SHALL BE THAT THE PERMITTEE RENOVATE SUCH STREET BY MILL AND OVERLAY/INLAY, FOR A MINIMUM OF THE FULL WIDTH OF ALL LANES IMPACTED BY THE CUT(S) (OUTSIDE LANE INCLUDES TO THE CURB) AND FOR ARTERIAL STREETS EXTENDING A MINIMUM LENGTH OF FIFTY (50) FEET BOTH DIRECTIONS FROM THE AREA OF THE CUT(S) AND FOR COLLECTOR AND RESIDENTIAL STREETS EXTENDING A MINIMUM LENGTH OF TWENTY-FIVE (25) FEET BOTH DIRECTIONS FROM THE AREA OF THE CUT(S), ALL AS MORE SPECIFICALLY DIRECTED BY THE CITY ENGINEER/DESIGNEE. PROVIDED, HOWEVER, FOR ONE POTHOLE SMALLER THAN TWO (2) SQUARE FEET, THE REQUIREMENT TO RENOVATE THE STREET BY MILL AND OVERLAY/INLAY SHALL NOT APPLY.**
- (E) IF THE CITY ISSUES A RIGHT-OF-WAY PERMIT TO CUT INTO, EXCAVATE, OPEN, BORE, TRENCH, OR DISTURB NEW, RECONSTRUCTED, RENOVATED OR MAINTAINED STREET PAVEMENT PURSUANT TO THIS SECTION, THE PERMITTEE IS REQUIRED TO REPAIR THE PAVEMENT, AFTER MAKING THE PERMITTED CUT, TO MEET RIGHT-OF-WAY IMPROVEMENT STANDARDS.**
- (F) THE CITY ENGINEER MAY SPECIFY THE LENGTH AND PLACEMENT OF ANY PAVEMENT CUT MADE PURSUANT TO THIS SECTION.**

**9-1-7: AUTHORITY TO INSPECT:**

**THE CITY ENGINEER IS HEREBY AUTHORIZED AND DIRECTED TO CONDUCT INSPECTIONS AND TESTING FOR VIOLATIONS OF THIS CHAPTER.**

**9-1-8: STOP WORK ORDERS:**

**WHENEVER THE CITY ENGINEER FINDS WORK REGULATED BY THIS CHAPTER OR THE RIGHT-OF-WAY IMPROVEMENT STANDARDS BEING PERFORMED IN A MANNER EITHER CONTRARY TO THE PROVISIONS OF THIS CHAPTER OR UNSAFE, THE CITY ENGINEER IS AUTHORIZED TO ISSUE A STOP WORK ORDER.**

- (A) ISSUANCE. THE STOP WORK ORDER SHALL BE IN WRITING AND SHALL BE GIVEN TO THE PERMITTEE, OWNER'S AGENT, OR THE PERSON DOING THE WORK. UPON ISSUANCE OF A STOP WORK ORDER, THE CITED WORK SHALL IMMEDIATELY CEASE AND THE PERMITTEE SHALL MAKE THE WORK AREA SAFE. THE STOP WORK ORDER SHALL STATE THE REASON FOR THE ORDER, AND THE CONDITONS UNDER**

**WHICH THE CITED WORK WILL BE PERMITTED TO RESUME.**

- (B) UNLAWFUL CONTINUANCE. ANY PERSON WHO SHALL CONTINUE ANY WORK AFTER HAVING BEEN SERVED WITH A STOP WORK ORDER, EXCEPT SUCH WORK AS THAT PERMITTEE IS DIRECTED TO PERFORM TO REMOVE A VIOLATION OR UNSAFE CONDITION, SHALL BE SUBJECT TO PENALTIES AS ADOPTED IN THE CITY'S SCHEDULE OF FEES AND CHARGES.**

**9-1-9: UNAUTHORIZED WORK:**

**UNAUTHORIZED WORK IN THE PUBLIC RIGHT-OF-WAY, CITY EASEMENTS OR PUBLIC EASEMENTS DOES NOT EXEMPT THE USER OR PERMITTEE FROM THE REQUIREMENTS OF THIS CHAPTER. ANY PERSON WHO COMMENCES WORK WITHIN THE PUBLIC RIGHT-OF-WAY, CITY EASEMENTS OR PUBLIC EASEMENTS, OR ON A BUILDING, STREETLIGHT, TRAFFIC SIGNAL, FACILITY OR UTILITY POLE BEFORE OBTAINING THE NECESSARY RIGHT-OF-WAY PERMITS SHALL BE SUBJECT TO A SEPARATE UNAUTHORIZED CONSTRUCTION FEE AS ADOPTED IN THE CITY'S SCHEDULE OF FEES AND CHARGES. THE PAYMENT OF AN UNAUTHORIZED CONSTRUCTION FEE SHALL NOT EXEMPT A PERMITTEE FROM COMPLIANCE WITH ALL OTHER PROVISIONS OF THIS CHAPTER.**

**9-1-10: APPEALS:**

**ANY DETERMINATION MADE BY ANY OFFICIAL OF THE CITY CHARGED WITH THE ADMINISTRATION OF ANY PART OF THIS CHAPTER MAY BE APPEALED FIRST TO THE CITY'S RIGHT-OF-WAY MANAGER, WHO SHALL RENDER A DECISION WITHIN THREE (3) BUSINESS DAYS OF RECEIVING THE APPEAL, AND THEN TO THE CITY MANAGER OR HIS DESIGNEE, WHO SHALL RENDER A DECISION WITHIN FIVE (5) BUSINESS DAYS OF RECEIVING THE APPEAL. THE DETERMINATION OF THE CITY MANAGER, OR HIS DESIGNEE, MAY BE APPEALED TO THE CITY COUNCIL COMMITTEE THAT IS DESIGNATED BY THE CITY TO HEAR SUCH APPEALS. THE DETERMINATION OF THE CITY COUNCIL COMMITTEE SHALL BE FINAL. ALL APPEALS MUST INCLUDE A WRITTEN NOTICE OF APPEAL THAT CONTAINS AN EXPLANATION OF WHY THE APPELLANT BELIEVES THAT THE DETERMINATION WAS IN ERROR. THE WRITTEN NOTICE OF APPEAL MUST BE FILED WITH THE CITY CLERK WITHIN THIRTY (30) DAYS AFTER THE DETERMINATION FOR WHICH THE APPEAL IS BEING FILED.**

**9-1-11: PENALTIES:**

- (A) NOTICE OF VIOLATION. THE CITY ENGINEER IS AUTHORIZED TO ISSUE A NOTICE OF VIOLATION OR ORDER ON ANY PERMITTEE FOR THE VIOLATION OF THE PROVISIONS OF THIS CHAPTER, OR THE VIOLATION OF A PERMIT ISSUED PURSUANT TO THE PROVISIONS OF THIS CHAPTER.**
- (B) PENALTY CLAUSE. Any person, firm, or corporation violating any provision of this chapter and any amendment to it shall be guilty of a class 1 misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or by imprisonment in the city jail for a period not to exceed six (6) months, or by both such fine and imprisonment; and each day of violation continued shall be a separate offense, punishable as described.**

- (C) **REMEDIES NOT EXCLUSIVE. VIOLATIONS OF THIS CHAPTER ARE IN ADDITION TO ANY OTHER VIOLATION ESTABLISHED BY LAW, AND THIS CHAPTER SHALL NOT BE INTERPRETED AS LIMITING THE PENALTIES, ACTIONS, OR ABATEMENT PROCEDURES THAT MAY BE TAKEN BY THE CITY OR OTHER PERSONS UNDER THE LAWS, ORDINANCES, AGREEMENTS OR RULES.**

SECTION 2: RECITALS. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 3: EFFECTIVE DATE. The effective date of this Ordinance shall be 30 days following adoption by the Mesa City Council.

SECTION 4: PRESERVATION OF RIGHTS AND DUTIES. This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

SECTION 5: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk