RULES AND REGULATIONS FOR

CHAPTER 40, ARTICLE V

HOUSTON CITY CODE

EXCAVATION IN PUBLIC WAY

Issued December 22, 2000

Revised and Adopted by City Council on February 28, 2001

Office of the Director

Department of Public Works and Engineering

City of Houston

INTRODUCTION. These Rules and Regulations ("these Rules") have been issued by the Director of Public Works and Engineering ("the Director") of the City of Houston ("the City") pursuant to Article V of Chapter 40 of the City of Houston Code of Ordinances ("the Ordinance"). The issuance of Permits for Excavations and other activities authorized or required under the Ordinance will be governed by the terms of the Ordinance. *It is not the purpose of these Rules to restate the provisions of the Ordinance.* Rather, these Rules establish an operational and procedural framework for administration of the Ordinance as contemplated by § 40-128 of the Ordinance. Therefore, these Rules should be read in conjunction with the Ordinance. Copies of these Rules and the Ordinance may be inspected and/or purchased at the fees established by law at the Permit office location identified herein. For the convenience of the user, applicable terms that are defined in the Ordinance or elsewhere in the Code of Ordinances have been capitalized in these Rules. Additionally, these Rules have, to the extent practicable, been organized by section numbers that correspond to the equivalent section numbers of the Ordinance.

EFFECTIVE DATE. The Ordinance takes effect on March 30, 2001, as provided by Section 4 of Ordinance 2000-***1115***. A Permit is required for any Excavation that is ***commenced*** on or after the effective date of the Ordinance. See Section 4 of Ordinance 2000-***1115*** for further information regarding the status of Excavations that are commenced before the effective date of the Ordinance. As provided therein, previously commenced Excavations will require a Permit if not completed by April 29, 2001, which is the thirtieth day following the effective date of the Ordinance.

GENERAL. The attached Construction Requirements, Design Manual, and City of Houston Standard Specifications are incorporated into these Rules and shall apply to the extent applicable to each Permittee and Excavation. To the extent that the incorporated documents are also applicable to work not performed under the Ordinance, they shall be read and applied in a manner consistent with the Ordinance for purposes of these Rules and Regulations.

SUBSTANTIVE PROVISIONS. (By reference to corresponding sections of the Ordinance.)

> **§ 40-126. Hearings.** Hearings under the Ordinance shall be conducted by a hearing officer designated by the Director under §40-126. The hearing officer may be an employee of the Public Works and Engineering Department but shall not be a person who is regularly assigned to duties involving the administration of the Ordinance or who has otherwise participated in any decision or action giving rise to the hearing. Hearings shall be informal and shall be conducted in a manner that is consistent with principles of due process. Each party shall have the right to be represented by legal counsel, to present evidence and to examine witnesses presented by other parties. The party initiating the hearing, which would, for example, be the Applicant in matters of Permit issuance or the City in matters of remedial actions against Permittees and Owners, shall have the burden of proof by a preponderance of credible evidence. The hearing officer shall issue his or her decision in writing within five City work days following completion of the hearing. Unless otherwise provided in the Ordinance, hearings shall be conducted upon ten days notice if initiated by the City or within ten days

of the date of request if initiated by another party. The notice or request shall set forth the grounds or basis for the hearing. Aggrieved parties may request a hearing upon an expedited basis, and such requests will be honored if determined to be justified by the hearing officer. Requests for hearings shall be made in writing, addressed to City of Houston Director of Public Works and Engineering and delivered to the Engineering Services Branch of the City of Houston Public Works and Engineering Department at 3300 Main Street, Houston, Texas, or such other place as may be specified by the Director. The outside of the envelope should be conspicuously marked "REQUEST FOR HEARING."

§ 40-127. Inasmuch as the City of Houston cannot release or indemnify itself and is self insured, the provisions of § 40-136(b)(8) and (14) shall not apply to Excavations for which the City is the Owner. This waiver shall not be deemed to excuse compliance by City contractors with any indemnification or insurance requirements of their contracts with the City, which shall include equivalent or more stringent requirements where contractors are employed to perform Excavations for which the City is the Owner.

§ 40-136(a). Two or more Excavations will be considered to be part of the same project, so that one Application and Permit may cover them as related work, provided that:

1. If the Owner is utilizing a contractor instead of its own forces to do the work, then the same contractor must be responsible for all work covered by the Permit;

2. The Excavation must all be within the same named street; and

3. The Excavation may not extend beyond the named street's intersection with a Major Thoroughfare.

Otherwise, a separate Permit is required for each Excavation. This provision shall not be construed to preclude an Owner from obtaining a series of Permits where the Excavation involves differing contractors or two or more streets or extends beyond a Major Thoroughfare intersection. Additionally, the same plans and specifications may cover work under two or more Applications and Permits.

§ 40-136(b). Permit applications shall be filed at the Engineering Services Branch of the City of Houston Public Works and Engineering Department at 3300 Main Street, Houston, Texas, or such other place as may be specified by the Director. Application forms will be made available on the City's Internet Website (www.ci.houston.tx.us/pwe/streetcut.htm) and at the place where applications are to be filed. To the extent technically feasible, Applicants may file their applications by email.

§ 40-137(a). *General.* Drawings and specifications that are to be filed with Permit applications shall conform to the Construction Standards and to the Design Manual. Standard details that are approved for frequently encountered types of Excavation are also set forth in the Design Manual.

Drawings and specifications must be submitted for all excavations that meet the following conditions.

1) The excavation will occur in any public way that has been constructed, reconstructed, repaired or resurfaced in the preceding period of five years as measured from the date of acceptance by the Public Works' Construction entity.
2) Excavation includes new facilities that:
   a) are longitudinal to the public way street for a distance of more than 10-feet
   b) traverse the public way street and extend more than one travel lane into the street.

Traffic Control Plans. A traffic control plan (TCP) shall be submitted with any Permit application for all proposed work that is to be conducted on a roadway that appears on the City's Major Thoroughfare and Freeway Plan or is otherwise identified by the City's Traffic Engineer as having substantial traffic. The TCP shall describe the method by which vehicular and pedestrian traffic will be controlled during the Excavation process. For excavations performed under Division 4, General Permits, no TCP will be required, but all signs, barricades and other necessary Traffic-control Devices shall be installed in accordance with the Texas Manual on Uniform Traffic Control Devices. A TCP typically may not be required for work on a residential street, but all signs, barricades and other necessary Traffic-control Devices shall be installed in accordance with the Texas Manual on Uniform Traffic Control Devices.

Specific anticipated construction dates and work hours must be included as part of the TCP. The City's Traffic Engineer may specify the exact dates and times of day under which construction activity may occur and specify any street or lane closures that are permitted upon the face of the approved Permit. Utilization of uniformed police officers may be required as part of the approved Permit and TCP to effectively manage traffic operations.

a. *Traffic Flow During Peak Hours.* No work that would interfere with the traffic flow shall be conducted during peak hours on a roadway that appears on the City's Major Thoroughfare and Freeway Plan or on any other roadway that is identified by the City Traffic Engineer as having substantial traffic flow during peak hours. Typically, peak hours are from 6:00 a.m. to 9:00 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday. Hours and days may vary throughout various activity centers of the City.

b. *End of Day Lane Conditions.* When work is stopped for the day, all lanes must be reopened to traffic, unless the City's Traffic Engineer has granted prior approval. A traffic lane shall be considered

satisfactorily open if it meets the standards for the temporary surfaces in the Construction Requirements.

See the attached Construction Requirements for additional provisions with respect to traffic signals and traffic markings.

§ 40-137(b). All drawings and specifications shall be presented under seal of a professional engineer, licensed as such in Texas in accordance with rules established by the Texas State Board of Professional Engineers, unless the City Engineer determines that the work is covered by standard plans and specifications and is of a nature that has prior engineering approval.

§ 40-137(c). For Excavations that are commenced on an Emergency basis, appropriate drawings and specifications shall be filed within five days following the day that the Permit application is required to be filed under § 40-139 of the Ordinance, unless the Permittee requests in writing and is granted in writing an extension for reasonable cause beyond the control of the Permittee relating to the inability to create and present the drawings and specifications within five days.

§ 40-138(a). Applicants should ensure that all information required under the Ordinance and these Rules is provided with their applications. The City Engineer will endeavor to review applications for completeness and to return incomplete applications with notice of defects within two City work days following their receipt. Following the initial review for completeness, the City Engineer shall endeavor to review and approve or disapprove each application within 3 to 14 days, depending upon complexity of the Excavation, considering the type of Excavation, site of the Excavation, the need for coordination with other agencies and Owners, and the proposed construction techniques. Applicants should submit their applications so as to allow sufficient time for review of their applications.

§ 40-138(c). Fourteen days are allowed for completion of an Excavation unless an extension is authorized as provided in the Permit.

§ 40-139. Reports of the commencement of Emergency work shall be made by telephone to 713-837-0600, or such other telephone number as may be specified by the Director. If that telephone number is unattended at the time of the call, then the Owner shall leave a recorded message including the Owner's name, the name of the contractor, if any, the location of the Excavation by street address or segment, the nature of the Emergency, and the name and 24-hour telephone number of a contact person for the Owner.

§ 40-142(b). Permittees shall at each street entrance to the Excavation site post in clear view a copy of their Permit together with a sign not less that 36 inches by 36 inches with minimal 2 inch black letters on a white high intensity reflective background. The sign shall conform to the Texas Manual on Uniform Traffic Control Devices and set forth the name of the Owner, name of the contractor, if any, and the Owner's address and emergency telephone number.

§ 40-144. Business plans shall be submitted to the City Engineer in paper and electronic form, such as Microsoft Excel, describing the proposed type of facility, the affected street segments, and the anticipated time of commencement and duration of excavation to the Planning and Programming Division of the Public Works and Engineering Department at 611 Walker, Houston, Texas 77002, or such other place as may be specified by the Director. The purpose for business plans is to identify the nature and types of Facilities that Owners expect to require within specific streets or alternate streets. Owners need not identify the specific customer that they intend to serve or the exact type of wires, pipes, cables, and other Facilities to be installed, provided that they should, wherever possible, advise the size and type of Facility with sufficient detail to facilitate coordination of Excavations and street construction/repair activities. To the extent that Owners are asserting that any information provided is confidential under the Public Information Act, the business plans should so indicate.

§ 40-146(a). Applications that are submitted by any Applicant who, based upon reasonable inquiry, appears to be in default or breach, as provided in § 40-146(a) of the Ordinance, shall be withheld from processing pending a hearing to determine whether a breach or default exists, which hearing shall be conducted in accordance with § 40-126 of the Ordinance and these Rules. If, based upon the hearing, the Applicant is determined to be in breach or default, the application shall not be considered. This provision shall not be construed to require a second hearing if the Applicant has previously been found to be in breach or default and there is no dispute that the matter or matters giving rise to the breach or default have not been corrected.

§ 40-146(b). Debarments under this section shall be initiated when, based upon reasonable inquiry, it appears to the City Engineer that a person has performed or an Owner has knowingly allowed an unpermitted Excavation. The City Engineer shall cause a hearing to be conducted pursuant to § 40-126 of the Ordinance and these Rules. The period of any debarment shall not exceed two years. Applications received from debarred persons shall be returned without consideration.

§ 40-147. Insurance coverage shall be provided for both the Owner and contractor if a contractor is to be utilized. The same policy may cover both entities or they may elect to provide separate policies. Insurance coverage may be provided by a Permittee by demonstrating a status of self-insurance and providing appropriate evidence from an agency of the State of Texas that the owner has an approved self-insurance plan for the applicable insurance coverage.

§ 40-158. Before commencing an Excavation, a Permittee shall give 48 business hours notice (Monday – Friday, except City observed holidays) to the City Engineer. The notice shall be given by facsimile to 713-525-8580, or such other telephone number as may be specified by the Director, and shall set forth the Permit number and the commencement date. This provision shall not apply to Emergencies.

§ 40-160(a). If an excavation occurs in any public way that has been constructed, reconstructed, repaved or resurfaced in the preceding period of five years, as measured from the date of acceptance by the Public Works' Construction entity, inspection must be performed by a third party inspector or self-inspection by Permittee's staff who meet the Laboratory and Technician Qualifications Requirement contained in the

Construction Requirements of these Rules and Regulations for material testing or experience requirements for inspectors that are contained in this section of the Rules and Regulations. Inspection and testing must be performed as defined in Frequency and Types of Tests of the Construction Requirements of these Rules and Regulations. Self-inspection by Permittee's staff will be allowed as long as the Permittee continues to demonstrate a history of performing satisfactory work. If the City Engineer determines that Permittee is performing work resulting in errors or failures, the City Engineer may notify the Permittee of this finding and following an opportunity for a hearing under Section 40-126 of the these Rules and Regulations prohibit the Permittee from performing self inspections.

If an excavation occurs in any public way that is greater than five years old as measured from the date of acceptance by the Public Works Construction entity, the Permittee must certify that restoration occurred in conformance with the City of Houston's Design and Construction Standards.

Persons who wish to be approved as third party inspectors for purposes of the Ordinance shall make application to the Engineering, Construction and Real Estate Branch of the Public Works and Engineering Department at 611 Walker, Houston, Texas, or such other place as may be specified by the Director. The application shall be filed on a form promulgated by the Director and shall provide evidence that the Applicant has at least 18 months' relevant education or training beyond the high school level, has at least two years' active and practical experience as an inspector of Excavations or equivalent work and can read and write any required reports in the English language. Any third party inspector applicant who is denied shall be afforded notice of the grounds and an opportunity for a hearing under § 40-126 of the Ordinance and these Rules. Upon receipt of credible information that an approved third party inspector has failed to perform any material obligation under or has violated any provision of the Ordinance or these Rules, or any applicable law, or that the person otherwise is no longer qualified or fit to be included on the list of approved inspectors, the City Engineer may notify the inspector of the grounds, and following an opportunity for a hearing under § 40-126 of the Ordinance and these Rules, remove the person from the list. No Owner shall engage any third party inspector nor shall any third party inspector accept any engagement under the Ordinance or these Rules if the third party inspector or a firm with which the third inspector is employed has any other contractual relationship with the Permittee relating to the performance of the Excavation other than for the performance of the Inspections. A current list of approved third party inspectors may be obtained from the City of Houston Internet Website. Inspectors shall maintain their records of Inspections at a location within Harris, Fort Bend, or Montgomery Counties and shall make the records available to the City Engineer for review or copying during regular City work hours upon 24 hours' prior notice.

§ 40-160(b). In considering whether to require a Permittee to retain a professional engineer to observe the Excavation and certify the completion of work on an Excavation, the City Engineer shall consider whether the complexity and depth of the Excavation, the existence, if any, of other public and private infrastructure improvements in the vicinity of the Excavation, the skills required to perform the Excavation, or other factors merit the use of an engineer, rather than a regular Inspection, to observe the work.

§ 40-162. The as-built drawings to be provided by Permittee shall conform to the requirements of the attached Design Manual, and shall be delivered to the City Engineer on or before the thirtieth day following completion of the Excavation at the Engineering Services Branch of the Public Works and Engineering Department, 3300 Main Street, Houston, Texas, or such other plans as may be specified by the Director. Where the work was performed substantially as portrayed in the plans filed with the application and no modifications are required, the Permittee shall so certify in writing in the same time and manner.

§ 40-163. 5(a)

The Owner shall post a Surface Restoration Bond for each General Permit that extends for a period of three (3) years to cover the work performed during the duration of the permit. The value of bond shall be determined from the following schedule which is based on the anticipated value of the work to be performed by the Permittee during the permit duration:

Value of Work		Bond Value
Zero to	$1,000,000	$150,000
1,000,001 to	$10,000,000	$ 250,000
Greater than	$10,000,001	$ 500,000

§ 40-163. 5(c)

The Permittee or contractor performing the work for the Permittee at each street entrance to the excavation site shall post in clear view a sign not less than 36-inches by 36-inches with minimal 2-inch black letters on a white high intensity reflective background. The sign shall conform to the Texas Manual on Uniform Traffic Control Devices and set forth the name of the Permittee, the General Permit number and the Permittee's address and emergency telephone number.

§ 40-164. Permit applications for a General Permit shall be filed at the Engineering Services Branch of the City of Houston Public Works and Engineering Department at 3300 Main Street, Houston, Texas, or such other place as may be specified by the Director. Application forms will be made available on the City's Internet Website and at the place where applications are to be filed. To the extent technically feasible, Applicants may file their applications by email.

§ 40-164. (5)

The Permittee must identify, at the time of making application, contractors that they anticipate will be performing work on their behalf while the permit is active. The Permittee will be responsible for sending the City an updated list of contractors that will be performing excavations on their behalf. The updated list should be addressed to City of Houston, Engineering Services Branch, Public Works and Engineering Department, 3300 Main Street, Houston, Texas 77002, or other such location as may be specified by the Director.

§ 40-165(2). Notices to commence an excavation shall be made to the City Engineer 48 business hours in advance (Monday – Friday, except City observed holidays) of initiating work by completing a "Notice to Commence Work form" that will be made available on the City's Internet Website or at the place where applications are to be filed. To the extent technically feasible, Permittee may file their Notice by email or by facsimile to 713-525-8580.

CONSTRUCTION REQUIREMENTS

A. General Conditions

The following general conditions apply to Excavations.

1. Protection of Existing Improvement

   a. The Permittee shall at all times take proper precautions and be responsible for the protection of existing street and alley surfaces, driveway culverts, street intersection culverts or aprons, irrigation systems, mail boxes, driveway approaches, curbs, gutters, and sidewalks and all other identifiable installations that may be encountered during the work.
   b. The Permittee shall at all times take proper precautions for the protection of existing utilities, the presence of which are known or can be determined by field locations of the utility companies.
   c. Existing improvements to adjacent property such as landscaping, fencing, utility services, driveway surfaces, etc., that are not to be removed shall be protected from injury or damage resulting from the Permittee's work.
   d. The Permittee shall keep photographs of the site prior to commencement of work to provide a record of preexisting conditions.
   e. The Permittee shall at all times take proper precautions for the protection of property pins/corners and survey control monuments encountered during construction. A registered land surveyor at the Permittee's expense shall replace any damaged or disturbed survey markers.
   f. The repair of any damaged improvements as described above shall be the responsibility of the Permittee.
   g. The Permittee shall make adequate provisions to assure that traffic and adjacent property owners experience no more than a minimum of inconvenience.

2. Temporary Surfaces Required

   Where a temporary surface is required, the temporary installation and maintenance thereof shall be the responsibility of the Permittee until the permanent surface is completed and accepted. The surface shall be either a hot mix or cold mix paving material or steel plate. Temporary surfaces shall be compacted, rolled smooth and sealed to prevent degradation of the repair and existing structures during the temporary period. Steel plating may be utilized for a period not to exceed 4 days unless specified differently as part of the Permit.

3. Work to be Done in Expedient Manner

   All work shall be done in an expedient manner. Repairs shall be made as rapidly as is consistent with high quality workmanship and materials. Use of fast setting concrete and similar techniques are encouraged whenever possible without sacrificing the quality of repair. Completion of the work including

replacement of pavement and cleanup shall normally be accomplished within 14 days after the repair work or activity involving the cut is commenced. Extension of time for completions shall be with the written approval of the City Engineer and noted on the Permit. If the repairs are not completed in the allotted time, the City has the right to repair the street at the Permittee's expense, as provided in Section 40-158 of the Ordinance.

B. Street Restoration

All restoration shall be performed in compliance with provisions of the City of Houston Department of Public Works and Engineering Design Manual.

C. Traffic Signals

Whenever any restoration is to be performed within 500 feet of a signalized intersection, special care and coordination must be exercised to avoid damage to any traffic signal components. In addition, the Permittee may be required to provide modified traffic signal timing parameters, at its cost, by a licensed Professional Engineer.

The Permittee is responsible to repair or replace at its own expense any damage to the traffic control resources, including but not limited to vehicle loops, home-runs, stub-outs, conduits, risers, and cabinet. The Permittee must hire experienced and qualified personnel and restore the signal to its original operational function. All materials, labor, and procedures must be according to the specifications of the City's Traffic Management and Maintenance Branch.

Should the proposed scope of work conflict with the existing traffic resources (signals, signs, markings), the Permittee is responsible for identifying and implementing any and all temporary measures (outside the controller box) required to continue traffic control operations during construction in accordance with the Texas Manual on Uniform Traffic Control Devices and the City's traffic engineering guidelines. These measures as well as the traffic management plan are to be approved by the City's Traffic Engineer.

D. Traffic Markings

Traffic markings that were removed or damaged during the Excavation process must be replaced with the same product or current City standard that is existing on the road. In addition, new markings must be installed prior to and beyond the Excavation area to provide the proper consistent visibility to the motorist. These boundaries may extend to the nearest intersection on both sides of the excavated site.

Temporary markings must be in place at all times when the site is open to traffic. The permanent markings must be replaced immediately after the Excavation is completely restored. The Permittee must hire a firm specializing in the application of traffic markings, and all materials, labor and procedure must be according to the

standard specifications of the City's Traffic Management and Maintenance Branch. The Permittee is responsible for all costs.

E. Testing

1. Description
   The Permittee shall provide material testing for each phase of the work at no cost to the City.

2. Laboratory and Technician Qualification Requirements
   Laboratories shall have current accreditation by the American Association for Laboratory Accreditation (A2LA). Material tests shall be taken by technicians with current certifications as follows:
   - Soil and aggregates: National Institute for Certification in Engineering Technologies (NICET) Level II
   - Portland Cement Concrete: (NICET) Level II or American Concrete Institute (ACI) Level I
   - Asphalt Concrete: (NICET) Level Ii or Texas Department of Transportation TxDOT Level IA (Plant Inspection), Level 1B (Field Inspection)

3. Frequency and Types of Tests
   The following testing frequencies shall be followed. The number of tests required may be adjusted for large projects when different frequencies are provided in individual standard specification sections if approved by the City Engineer.

   1. Minimum Horizontal Frequencies for Density Tests:
      a. Utility Trenches–One test per 100 linear feet per lift for each utility trench.
      b. Utility Hole, Manhole, or Valve Box–One test per lift.

   2. Construction Activities Tests:
      a. Backfill–One test for every 2 vertical feet and 100 linear feet or fraction thereof, with at least one test per lift.
      b. Cement Stabilized Sand–Testing as directed by City Engineer.
      c. Concrete Pavement, Curbs, Gutters, and Sidewalks–Four compressive test specimens per each 100 cubic yards or portion thereof.
      d. Asphalt Concrete Pavement:
         1. Asphalt Content–One test per 500 tons or fraction thereof of mix produced with a minimum of one test per day's placement.
         2. Aggregate Gradation–One test per 500 tons or fraction thereof of mix produced with a minimum of one test per day's placement.
         3. In-Place Density–One test per 500 tons or fraction thereof of mix placed with a minimum of one test per day's placement.
      e. Base Course Materials:–One test per 400 lane feet with no fewer than 2 tests per Excavation.

F. City Inspection/Certificate of Completion

All construction work within the public rights-of-way shall be subject to Inspection by the City Engineer and/or third party Inspection. It shall be the responsibility of the Permittee to provide safe access for the inspector to perform the required Inspections.

Upon completion and receipt of affirmation of Inspection and successful execution of required tests, the City will issue a Certificate of Completion. Upon issuance of the Certificate, the warranty period provided in the Ordinance will commence.

G. Warranty Inspection

The City will inspect the work prior to expiration of the warranty period. If deficient work is found, Permittee shall correct work as provided by Ordinance.