

ORDINANCE NO. 447

AN ORDINANCE OF THE TOWNSHIP OF SPRING, BERKS COUNTY, PENNSYLVANIA, AMENDING AND RESTATING IN ITS ENTIRETY SUBPART A, ENTITLED "STREET OCCUPANCY AND EXCAVATIONS", OF PART 1, ENTITLED "STREETS", OF CHAPTER XXVI, ENTITLED "STREETS, SIDEWALKS, DRIVEWAYS AND CURBS", OF THE CODE OF ORDINANCES OF THE TOWNSHIP OF SPRING

BE IT ENACTED AND ORDAINED by the, BOARD OF SUPERVISORS OF THE TOWNSHIP OF SPRING, Berks County, Pennsylvania, and IT IS HEREBY ENACTED AND ORDAINED by the authority of the same as follows:

Section 1. Subpart A, entitled "Street Occupancy and Excavations", of Part 1, entitled "Streets", of Chapter XXXVI, entitled "Streets, Sidewalks, Driveways and Curbs", of the Code of Ordinance of the Township of Spring is hereby amended and restated in its entirety as follows:

"Subpart A. Road Occupancy and Excavations.

Section 101. Purpose. The purpose of this Subpart is to improve the long-term quality of roadways in the Township and to ensure that roadways are restored in good order and repair in accordance with Township specifications.

Section 102. Definitions and Interpretation.

(A) The following words, as used in this Subpart, shall have the meanings hereby respectively ascribed thereto:

Applicant. The Person filing an application under this Subpart for a Permit. Once a Permit has been issued, the Applicant or his/her/its assignee, if the assignment of the Permit shall have been approved by the Township Engineer, shall be deemed the Permittee.

Board of Supervisors. The Board of Supervisors of the Township of Spring, Berks County, Pennsylvania.

Emergency. Any unforeseen occurrence or combination of circumstances which the Board of Supervisors, or its designee, in its/his/her discretion, determines to create an eminent danger to the health, safety or welfare of the public and requires immediate action or remedy, including but not limited to: a break to or leak by underground conduits, water pipes or gas pipes; the installation of sprinkler systems or other appliances for fire protection along the line of an improved Road; or in the event a heating system fails and the owner of such property is changing from an oil heating system to a gas heating system. For purposes of this Subpart, renovations and/or upgrades are not considered an

Emergency. Notwithstanding anything to the contrary, a voluntary conversion to a gas heating system which is not the result of the failure of an existing heating system is not an emergency, nor is it an emergency if a utility company fails to take reasonable measures to maintain/repair/replace its facility after receiving Notice of Improvements (pursuant to Section 104 hereinbelow) from the Township that road improvements will occur.

New Road. A Township road having a new, continuous and unbroken wearing surface consisting of mechanically placed bituminous hot mix, cement concrete material or similar wearing surface materials, whether placed over newly constructed base and sub-base or over a modified or unmodified previously existing road surface.

PennDOT. The Commonwealth of Pennsylvania, Department of Transportation.

Permit. A road opening permit issued by the Township pursuant to this Subpart.

Permittee. The Person receiving a Permit.

Person. Any natural person, partnership, association, firm, corporation, company, municipal authority, utility or other entity.

Public Works Department. The Public Works Department of the Township.

Publication 213. A PennDOT publication containing requirements for work area traffic control during highway maintenance operations and utility work, including any amendment thereto and any substitution or replacement thereof.

Publication 408. A PennDOT publication containing PennDOT's highway construction specifications, including any amendment thereto and any substitution or replacement thereof.

Restoration Work. Collectively, the (1) temporarily restoration of the permitted Road Cut and other affected facilities in proper order and repair; and (2) the permanent restoration of the permitted Road Cut and other affected facilities in proper order and repair; all in accordance with the provisions of this Subpart.

Right-of-Way. The area between the right-of-way lines of a Road.

Road. A strip of land, including the entire right-of-way, open to vehicular use by the public. The term "Road" shall include, road, avenue, boulevard, highway, freeway, parkway, lane, alley or viaduct.

Road Cut. Any cut or breaking of the pavement or surface of any improved Road.

Segment. Intersection to intersection.

Township. The Township of Spring, Berks County, Pennsylvania.

Township Engineer. The Person so designated by the Board of Supervisors or his/her/its representative so designated either by the Board of Supervisors or by the Township Engineer.

Township Road. A Road under the jurisdiction of the Township.

(B) In this Subpart, the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and the neuter.

Section 103. Permit Required to Make Opening or Excavation in Road; Exceptions. It shall be unlawful for any Person to perform any work involving the opening of or the excavation in or under any Township Road unless and until a Permit therefor has been secured from the Public Works Department. A separate Permit shall be issued for each individual Road Cut. All work performed within the right-of-way shall conform to the provisions of PennDOT Publication 213, PennDOT Publication 408 and any other related PennDOT publications that involve regulations for work within public rights-of-way, as amended from time to time, unless superseded by more restrictive specifications that may be issued and made available by the Township. In the event Township provisions are different from said PennDOT provisions, the Township provisions shall control.

A Permit shall NOT be required, however, in the case of Emergency repairs for utility facilities, a Permit shall not be required prior to making an opening in the Road and repairing the facility, however, a Permit shall be required prior to placement of the final backfill material and permanent pavement Restoration Work.

Section 104. Openings and New Roads.

(A) Notice of Road Improvements. When the Township shall improve or pave any Township Road, the Township shall give notice to all Persons owning property abutting the Township Road about to be paved or improved and to all public utilities and municipal authorities operating in the Township; provided, however, the Township shall not be required to give notice to any Person (1) in the event of an emergency, (2) in the event of a change in the roads to be paved or improved after completion of bidding for such work, or (3) if the scheduled paving or improvement is reduced or eliminated as a result of any change in the scope of the road schedule pavings and/or improvements after bidding. All such Persons, public utilities and municipal authorities shall make connections as well as any repairs thereto which would necessitate excavation of the Road, within forty-five (45) days from the giving of such notice. This time may be altered by the Township, in the Township's discretion, if requested by the notified Person, public utility or municipal authority in

writing.

(B) Restrictions Upon Openings Within Five (5) Years of Completion of Improvements. No Permit shall be granted by the Township for a Road Cut in any improved Road within five (5) years from the date of approval by the Township of final construction, installation and paving of a New Road, or completion of final Restoration Work of a rebuilt Road, unless the Board of Supervisors, or its designee, in its/his/her sole discretion, determines that an Emergency condition exists which is detrimental to and/or impacts public health or safety.

(C) Surcharge for Opening New Roads. If, by special action of the Township, a Permit is issued to open any paved and improved road surface of any Road within five (5) years of approval by the Township of final construction, installation and paving of a New Road or final Restoration Work of a rebuilt Road, a surcharge shall be paid for the opening by the Permittee, except that the surcharge may be waived by the Township Supervisors, or its designee, in its/his/her sole discretion, in the event the work is of an Emergency nature. The Permittee shall be solely responsible for payment in full of (1) all costs and expenses incurred in restoring the pavement, as set forth in this Subsection, and (2) the surcharge as set forth in this Subsection. The surcharge shall be on a sliding scale and shall be equal to three percent (3%) of the actual cost of restoring the pavement five feet (5') beyond each side of such Road Cut, per month, for the number of months remaining in the five (5) year period, and as may be amended from time to time by resolution of the Board of Supervisors. The cost of restoring the pavement for the entire width of the entire Segment of said Road shall be determined by the Township, in its reasonable discretion, based upon the actual costs of paving the entire project on a pro rata lineal feet basis. Absent manifest error, the actual costs of restoring the pavement for the entire width of the entire Segment of said Road as determined by the Township shall be final and binding upon Permittee. (Example: If a Road was rebuilt in April of a calendar year, and Permittee applies for and is granted by the Township a Permit for a Road Cut in said Road in March of the immediately following calendar year, and the actual cost for restoring the Road Cut five feet (5') beyond each side of such Road Cut is \$2,000.00, the surcharge to be paid by Permittee shall be \$2,880.00 [3% x 48 months x \$2,000.00 = \$2,880.00]). For the purpose of assessing a surcharge for opening a New Road, it shall not be deemed an Emergency if a utility company fails to take reasonable measures to maintain/repair/replace its facility after receiving Notice of Improvements (pursuant to Section 104(a) hereinabove) from the Township that road improvements will occur.

Section 105. Administrative Requirements.

(A) Application for Permit. An application for a Permit to break the pavement or surface of any legally open Road shall be submitted on the form provided by the Public Works Department, shall include all information and applicable fees, and shall be signed by the Applicant.

(B) Review of Application. The Public Works Department, or its designee, shall review all applications for a Permit, subject to Subsection 106(B) of this Subpart. The Public Works Department, or its designee, may permit the project to begin

contingent upon the review of several factors, including but not limited to final Restoration Work date, size of the Road Cut, use of steel plates, and scope of the project; provided, however, no non-Emergency projects shall begin in December, January or February of any given year.

(C) Rejection of Application. The Township may, in its discretion, reject an application for a Permit: (1) for any Person who is indebted to the Township due to a previously issued Permit; (2) for any Person who has failed to obtain a Permit for a Road Cut for a non-Emergency project prior to commencement of work on said Road Cut; or (3) for work for a Road Cut commencing in December, January or February of any given year.

(D) Contractor. Each application shall include the name of each contractor and subcontractor who will or may perform any work with regard to the Road Cut, including but not limited to Restoration Work. No contractor or subcontractor shall perform any work with regard to the Road Cut unless such contractor or subcontractor is PennDOT pre-qualified.

(E) Detailed Plan of Work. Applicant shall furnish to the Township a scale plan, which shall accompany the application, showing the extent and nature of the planned work at each Road Cut location within the right-of-way. The plan shall set forth, but is not limited to:

- (1) The purpose for which the Road Cut is to be made;
- (2) The dimensions and location of the proposed Road Cut, including the nearest cross Roads where the Road Cut is considered;
- (3) The full scope of work to be included in the project;
- (4) The date or dates during which the requested Road Cut is to be permitted;
- (5) The date such Road Cut is to be refilled and resurfaced in the manner hereinafter provided; and
- (6) A traffic control plan (TCP) shall be submitted with each application for all proposed work that is to be conducted on the Township Road.

(F) Permit Fee. Each application shall be accompanied by a permit fee as determined and set from time to time by Resolution of the Township Board of Supervisors. The permit fee shall include an inspection fee for each separate Road Cut. In the event the fees incurred by the Township for processing the permit application exceed the permit fee, the additional amount shall be paid to the Township prior to issuance of the Permit.

(G) Conditions of a Permit. A Permit shall only be issued upon the condition that Applicant or Permittee, as applicable, enter into an agreement with the Township in the form of the Road Opening Agreement set forth in Section 111 of this Subpart ("Road Opening Agreement"). All expenses incurred by the Township for inspection and/or to correct a violation of the requirements of this Subpart shall be reimbursed to the Township as set forth in this Subpart.

(H) Inspection Fees. The Permittee shall, within ten (10) days of written notice from the Township to the Permittee, reimburse the Township for all costs incurred by the Township associated with making the inspections and/or Restoration Work. No additional Permits shall be issued to said Applicant or Permittee until all amounts owing by said Applicant or Permittee to the Township have been paid in full.

(I) Additional Fees and Information. The size and type of Road Cut(s) may require payment of additional fees and submission of additional information as prescribed in this Subpart. All fees, plan information and the application must be provided and approved before the Township will issue a Permit. Permits are issued subject to all other applicable ordinances of the Township and all applicable state and federal laws.

(J) Comprehensive General Liability and Indemnification. The Applicant for a Road Cut or excavation Permit, and the Permittee if different from the Applicant, shall provide a certificate of insurance with general liability coverage, including any liability normally covered by a general liability policy with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate. Prior to commencement of the performance of the excavation, the contractor shall furnish to the Township a certificate of insurance evidencing the required coverage in at least the limits required herein, naming the Township, its elected officials, agents and employees as additional insured for "ongoing operations" and "products and completed operations". Moreover, the Applicant, and the Permittee if different from the Applicant, agrees as a condition governing the issuance of a Permit, Applicant, and the Permittee if different from the Applicant, shall hold harmless the Township, its elected officials, agents and employees from any and all claims and actions whatsoever arising under the execution of said permit.

(K) Additional Notifications. The Permittee shall notify the Wilson School District, the Township Fire Company and the Township Police Department at least three (3) days in advance of commencement of any work in a Road. In the case of an Emergency road opening, verbal notification shall be provided to the Wilson School District, the Township Fire Company and the Township Police Department as soon as possible.

(L) Permit Issuance and Schedule for Construction of Street Cuts. Permit applications shall be submitted not less than fourteen (14) days prior to commencement of the proposed Road Cut work, and construction work must commence within sixty (60) calendar days of approval. Failure to commence such work within sixty (60) calendar days of approval may result in Permit revocation, or require the submission

of a new application. The Permittee shall notify the Township and the Township Engineer least three (3) days in advance of breaking the Road.

(M) Life of the Permit. Each Permit shall be valid for a period of sixty (60) days. The completion date of a Permit shall be specified on the Permit.

(N) Time Extension. If the Permittee has not completed all authorized work by the completion date specified on the Permit and an extension of time beyond the Permit expiration date is necessary for the Permittee to complete the work, the Permittee shall submit to the Township a written and signed application requesting a time extension at least two (2) weeks prior to the expiration date of the original Permit or any approved extensions thereof, which may be granted at the sole discretion of the Township. If approved, a supplement to the Permit will be issued by the Township. Permit time extensions may only be granted upon the timely submission of the Permit extension application and the payment of the time extension fee, as determined and set from time to time by resolution of the Board of Supervisors. Any Permittee that fails to request and receive an extension for permitted work and continues to work shall be in violation of this Subpart.

For conditions where the permitted work may not be completed, or has not been completed, on or before the Permit expiration date specified on the Permit and the Permittee has failed to submit to the Township a Permit extension application, the Public Works Department may, but shall not be required to, take steps to backfill the trench and replace a permanent pavement over the opening.

(O) Display of Permits and Signage at Work Site. Unless otherwise authorized, each Permit shall be: (1) maintained at the work site for the duration of the project and made available for inspection upon request of any duly authorized Township official; or (2) accessible and made available for inspection by any duly authorized Township official within four (4) hours of each request by any duly authorized Township official. Each such Permit shall not be affixed to any temporary structure including but not limited to fences, containers or construction equipment.

(P) Revocation of Permit. Each Permit is subject to revocation at any time by the Public Works Department. Written notice shall be served on the Person to whom the Permit was granted or its/his/her agent or employee. Such notice shall contain a brief statement detailing the reason for revocation, and each violation set forth in such notice shall be corrected within three (3) days of the date of such notice. The following items shall constitute revocation of a permit:

- (1) A violation of any condition of the Permit.
- (2) A violation of this Subpart or any other applicable Township ordinance relating to the work.
- (3) The creation or failure to eliminate a condition or action that constitutes a violation of applicable Americans with Disabilities Act

compliance guidelines, or endangers the life, property or welfare of any Township resident.

(4) The creation of any condition deemed by any duly authorized Township official to be a hazard or safety issue to the public.

(Q) Authorization to Begin Work. A Permit issued in accordance with the requirements of this Subpart shall constitute Permittee's authority to proceed with the work and shall serve as a receipt for the fees accompanying the application. The Permittee shall notify the Township Engineer at least forty-eight (48) hours in advance of any backfill or Restoration Work so the work may be inspected as it is performed.

(R) Work Completion Notification. When all permitted work has been completed, the Township Engineer shall issue notification thereof, in writing, to the Township and the Permittee, noting the date upon which the eighteen (18) month maintenance period has commenced.

(S) Road Restoration Details. All Restoration Work shall be constructed, performed and maintained in accordance with this Subpart, including but not limited to the Township's current engineering standards and specifications and current construction standards, as may be amended from time to time, and as specified on the Permit.

Section 106. Responsibility for Restoration Work.

(A) It shall be the responsibility of the Permittee to restore the applicable Road(s) to good order and repair in accordance with this Subpart and Township specifications.

(B) It shall be the responsibility of the Permittee to: (a) temporarily restore the permitted Road Cut and other affected facilities in proper order and repair in accordance with this Subpart immediately upon completion of such work; and (b) permanently restore the permitted Road Cut and other affected facilities: (1) within six (6) months of completion of such work if such work is completed during the months of October, November or December of any year, provided asphalt plants in Berks County open in March of the immediately following year, and within two (2) weeks of the opening of asphalt plants in Berks County if the asphalt plants in Berks County do not open in March of the immediately following year; and (2) within four (4) months of completion of such work if such work is completed during the months of January, February, March, April, May, June, July, August or September of any year; all in accordance with the this Subpart and the Township specifications and construction standards in effect at the time of such Restoration Work, as may be amended from time to time. In the event the Permittee fails to complete the Restoration Work within four (4) months or six (6) months, as applicable, of completing the utility work, the Permittee shall be assessed a penalty of One Hundred Dollars (\$100.00) per calendar day for each day past the four (4) month or

six (6) month, as applicable, deadline that the Restoration Work is not properly completed. When the Road Cut involves the use of a utility, the Permittee shall be the owner of the utility or the owner's legal agent or employee.

Section 107. Guaranty of Work. The Permittee shall guarantee and maintain the Road Cut, excavation and all related work for eighteen (18) months from the date of approval by the Township of completion of the final Restoration Work of the applicable Road. Within said eighteen (18) month period, the Permittee shall, at the Permittee's sole cost and expense, correct or cause to be corrected all Restoration Work in the manner determined necessary by the Public Works Department within five (5) calendar days of receipt by the Permittee of the notification of such required Restoration Work. Upon failure by the Permittee to perform said Restoration Work within said five (5) calendar days, such Restoration Work may be completed by the Township and invoiced to the Permittee for all costs and expenses incurred by the Township in the performance of such Restoration Work. Failure by the Permittee to remit to the Township payment in full for each such invoice within ten (10) days of the date of such invoice shall result in a citation being filed at the Magisterial District Court, including but not limited to all fees and costs involved in the collection thereof.

Section 108. Traffic Control Plan. The traffic control plan ("TCP") shall detail the method by which vehicular and pedestrian traffic will be affected and controlled during a permitted project. The TCP shall also include any barricades, signs, lights or other approved safety devices necessary to facilitate a closure, and where the work results in closing or diverting traffic into another lane, a flag Person shall at all times be posted while the work is actively being performed unless otherwise provided in PennDOT Publication 213, including any amendment thereto and any substitution or replacement thereof, and upon the approval of the Director of Public Works. For Road closures within the Township that also require PennDOT permits, the application must include a copy of the State-issued permit and the Permittee shall comply with all traffic control standards.

Section 109. Equipment Damaging Roadway.

(A) To protect the pavement and shoulders of all existing Road surfaces, all equipment utilized in performing any work pursuant to this Subpart shall have rubber wheels or runners and shall have rubber, wood or similar protective pads between the outriggers and the surface unless otherwise authorized by the Permit authorizing such work.

(B) In the event any equipment other than rubber-equipped equipment is authorized for use in performing any work pursuant to this Subpart, the pavement and shoulders of the Road shall be protected by the use of matting, wood or other suitable protective material having a minimum thickness of four inches (4"), unless the Permit authorizing such work requires the Permittee to repave the full width and Segment of such Road.

(C) If any equipment utilized in any work pursuant to this Subpart damages the pavement or shoulders of the Road, the Permittee shall be solely responsible, at the Permittee's sole cost and expense, to restore the damaged pavement and/or

shoulders of the Road, as applicable, to their former condition.

Section 110. Construction Standards.

(A) Road Cut Within Left and/or Right Half of Road. Subject to the provisions set forth in Subsection 104(B) of this Subpart, each Road Cut that is located solely within the left half or the right half of the applicable Road, and such Road Cut is more than five feet (5') from the centerline of such Road, shall require Restoration Work only to the half of such Road affected by such Road Cut, from curb to centerline. Subject to the provisions set forth in this Subpart, each Road Cut that extends into both the left half and the right half of the applicable Road and, whether or not it crosses over the centerline of such Road, shall require Restoration Work to the full width of such Road. In the event two (2) or more Road Cuts are made on the left half and/or the right half of the applicable Road within the same Segment and are located within one hundred feet (100') of each other and all such Road Cuts are more than five feet (5') from the centerline of such Road, such Road shall require Restoration Work from five feet (5') beyond the furthest Road Cut to five feet (5') beyond the furthest Road Cut in the opposite direction, in the left half and/or right half of the applicable Segment of such Road, from curb to centerline. See "Roadway Restoration Plan View" diagram, a copy of which is attached hereto and incorporated herein as Exhibit "A".

(B) Special Site Conditions.

(1) Where, in the opinion of the Public Works Department, in its sole discretion, site conditions are determined to involve construction work beyond that required for a single utility service connection, the Permittee shall provide additional information, and may be required to perform additional work and pay additional fees. All additional Restoration Work shall comply with the requirements of this Subpart, including but not limited to the Township's current engineering standards and specifications for Restoration Work, as may be amended from time to time by resolution of the Board of Supervisors, the construction standards, as may be amended from time to time, and as specified on the Permit, which shall include milling and overlaying of the wearing surface of the entire width of the entire Segment of said Road.

(2) Special site conditions include, but are not limited to, permanent Restoration Work of the Road surface by the Permittee, permanent Restoration Work of the Road beyond the area of the trench cut opening plus five feet (5') added to each side of the Road Cut, construction of features within the rights-of-way other than trench Restoration Work, and other special site construction work determined by the Public Works Department. Some examples of special site conditions are as follows:

(a) Multiple Emergency Openings in a Segment by Same Utility Within Eighteen Months. Where the same Person opens any paved and improved road surface of any single Segment of any Road two

(2) or more times within an eighteen (18) month period, such Person shall be required to repave (1) the full width and length of such Segment of such Road, or (2) repave the full length of the left half or right half, as applicable, of such Segment of such Road, from curb to centerline; all in accordance with the provisions of this Subpart; provided, however, in the event a Person opens any paved and improved road surface of any single Segment of any Road one time and a different Person opens the paved and improved road surface of the same Segment of the same Road one time within an eighteen (18) month period, the second opening by the different Person shall not be considered a special site condition and such Person shall not be required to perform the additional work and pay the additional fees as set forth in this Section.

(b) Curb Ramps.

(i) For conditions where the Permittee proposes an alteration to a Road crosswalk or other crosswalk within the Township's rights-of-way and where the existing curb ramps at that crosswalk do not meet the current requirements of the Americans with Disabilities Act ("ADA"), the Permittee shall be required to upgrade the crosswalk to meet current ADA standards, including but not limited to curb ramps for that crosswalk. Crosswalk and pedestrian access route alterations, as defined by the ADA and PennDOT, shall include any project that will affect or could affect the accessibility or use of the accessible route. Alteration projects that meet these conditions shall be determined by the Public Works Department on a case-by-case basis and shall follow the latest PennDOT guidance, including but not limited to Publication 13M, Chapter 6, including any amendment thereto and any substitution or replacement thereof. Township crosswalks are located at all Road intersections whether or not crosswalk markings are present. Crosswalks are also located along sidewalks where the sidewalks cross alleys and driveways. For crosswalks delineated by the outside curb radii and the lines drawn across the Roads that connect the termini of the curb radii, excluding the area of the interior rectangle. The interior rectangle is formed by projecting the curb lines into the intersection and the rectangle is defined by the corners of the intersecting projected curb lines. Unmarked crosswalks include the area that is defined by the projection of the sidewalk across the Road, alley or driveway. For Road Cuts proposed under these conditions the Permittee will be required to construct or reconstruct curb ramps at the crosswalk to meet the current ADA and PennDOT requirements. To facilitate the proper construction of the curb ramps, the Permittee shall include with such Permittee's permit application the following additional provisions:

a. An existing conditions survey that includes all of the curb ramps within the intersection, alley or other accessible route where the Road Cut is proposed to determine compliance and/or noncompliance with current ADA requirements.

b. Curb ramp designs for construction of each new and currently existing noncompliant curb ramp. The curb ramp designs must comply with the most current applicable PennDOT standards for curb ramps. The existing condition survey and the ramp designs must be sealed by a qualified engineer or surveyor registered in the Commonwealth of Pennsylvania.

c. A letter of agreement that states that the Permittee will construct or replace curb ramps within the intersection or alley that does not currently meet current ADA and PennDOT requirements.

(ii) Ramp designs will be reviewed by the Code Enforcement Department for approval prior to issuance of the Permit. For projects that involve state and/or federal funding, additional PennDOT approval shall be required.

(iii) Following completion of construction and installation of the curb ramps, the Permittee shall submit to the Public Works Department completed as-built (record) drawings of the work indicating that the curb ramps were properly inspected and were found to comply with the approved design.

(c) Striping and Marking. All pavement markings that are disturbed due to Road opening activity must be promptly restored. Pavement markings include but are not limited to parking space striping, crosswalk areas, school zones, handicap designations, stop bars, etc.

(1) Inspection. If the Township determines, in its sole discretion, that the permitted work is of sufficient magnitude or importance to warrant additional inspection beyond routine spot-inspection or due to noncompliance with the Permit conditions, the Permittee shall be charged for all expenses incurred by the Township for the additional inspection(s).

(C) Plan and Subsurface Drawings and Record Drawings. Each Applicant shall include with its/his/her application scale drawings that clearly and accurately show the location of the proposed work with respect to existing facilities within the vicinity of the proposed work that will be, or could be, affected by the work. The scope of the drawings shall include, as a minimum, in addition to the requirements set forth in

Subsection 105(E) of this Subpart, all adjacent underground utilities, curb lines, sidewalks, traffic control loops and similar features in both plan and cross-section view. Upon completion of such work, the Permittee shall furnish the Public Works Department record drawing(s) that indicates the as-constructed location, the size and type of utility or feature installed or altered, and its location with reference to the Road surface and the adjacent curb lines.

(D) Excavation Notice.

(1) Pennsylvania law (Act No. 187, as amended) requires those who intend to excavate or demolish to file certain notices (PA One Call) before commencing work. Each Applicant and each Permittee, if different from Applicant, for a Permit to break the pavement or surface of any legally opened Road shall comply with all of the requirements of said Act. Permits issued by the Township shall be deemed null and void if the requirements of said Act have not been followed.

(2) The Permittee shall deliver to the Township a construction schedule, in writing, specifying the date on which the Road Cut will commence, the estimated date when the Restoration Work of the trench will commence, and all other milestones that may be critical to the inspection of the work.

(E) Pavement Edges. The paved surface shall be cut to a neat edge using an asphalt/concrete saw. The Permittee shall take all necessary precautions to protect the neat edge, and is solely responsible to restore all edges that become broken.

(F) Barricades, Trench Covers and Lighting. Each Road Cut shall be properly barricaded and protected by the Permittee. Excavations shall not be left open at the end of the work shift or at any time when left unattended. The Permittee is solely responsible for the protection of the public within the construction area(s), and all work zones shall be marked in accordance with PennDOT's current work zone traffic control regulations until the permitted Road Cut is restored and approved. Nothing contained in this Subpart or in any other legislation of the Township shall release the Person or Persons opening the Road from any liability associated with any claim for injury or damage resulting therefrom.

(G) Steel Plates. When a temporary surface is required, the temporary construction, installation and maintenance thereof shall be the sole responsibility of the Permittee until the permanent surface is completed and accepted.

(1) Steel plates shall only be used to secure open excavations when the Permittee is unable to backfill on the same day excavation occurs, and may be utilized as permitted by the Township. In the event steel plates must be left unattended for a period exceeding five (5) business days without prior approval, the Permittee is required to notify the Public Works Department of the reason(s) and necessity of the steel plate(s), as well as the estimated time before resuming said work. Failure to provide notice, remove the steel plates,

or resume or complete excavation constitutes a violation of this Subpart and the appropriate fine shall be levied.

(2) All steel plates shall be properly marked with the utility and contractor name, and a twenty-four (24) hour contact phone number in the event of a disturbance. Additionally, the steel plates shall be of sufficient thickness to resist bending and vibration under traffic loads and shall be anchored securely to prevent movement. If all of these conditions are not met, the Permittee shall be required to backfill and pave the excavation, or use alternative methods sufficient to remedy the disruption.

(3) The steel plates shall be secured to prevent any lateral movement. If movement occurs, the Permittee will be notified to re-secure the steel plating immediately; otherwise the Permittee shall pay to the Township an amount equal to one hundred fifteen percent (115%) of the total costs incurred by the Township to secure the Permittee's steel plate(s).

(4) All steel plated locations must utilize traffic control devices, as defined to include signs, signals and/or markings generally used to warn or guide vehicular traffic through Roads or private roads open to public travel, as regulated by the current Manual on Uniform Traffic Control Devices (MUTCD), including any amendment thereto and any substitution or replacement thereof.

(H) Backfilling. Materials excavated in conjunction with each Road Cut shall be promptly hauled away and shall be removed before nightfall. The Permittee shall arrange for the immediate repair of the affected utility and shall backfill the trench without delay. Backfill material shall consist of crushed stone placed and properly compacted in accordance with the details and specifications issued by the Township Engineer.

(I) Paving Restoration Work. Immediately following completion of the work, the Permittee shall backfill and compact the affected Road, and immediately thereafter apply temporary pavement Restoration Work in accordance with the provisions set forth in this Subpart and with the Township's Temporary/Permanent Trench Restoration Existing Paved Areas drawings and specifications. (See also the "Roadway Restoration Plan View" diagram attached as Exhibit "A"). The Permittee shall, as soon as possible, but: (1) in no event more than six (6) months from completion of such work if such work is completed during the months of October, November or December of any year, provided asphalt plants in Berks County open in March of the immediately following year, and within two (2) weeks of the opening of asphalt plants in Berks County if the asphalt plants in Berks County do not open in March of the immediately following year; and (2) in no event more than four (4) months from completion of such work if such work is completed during the months of January, February, March, April, May, June, July, August or September of any year; complete the permanent paving Restoration Work at the affected Road. The surface material shall be compacted with a gravity roller or vibrating compactor,

subject to the approval of the Township Engineer. The Permittee shall maintain the Restoration Work by re-excavating and/or applying additional surface material in order to provide a smooth-riding surface for a period of eighteen (18) months after the date of approval by the Township of completion of the final Restoration Work of the applicable Road. Repairs shall be made by the Permittee within the lesser of (i) five (5) working days, or (ii) seven (7) calendar days after the Township provides the Permittee with notice of the need for such repairs. The Permittee, at the sole cost and expense of the Permittee, is solely responsible for the continual protection and maintenance of the Road Cut, whether or not such Permittee is notified by the Township to perform such additional work.

(J) Sealing of Joints. Each sealing joint in paving shall be seal coated with crack sealants and polypatch sealants so that the Road Cut is not visible and the surface of such Road provides a driving surface that does not create bumps for the motoring public. (See the "Paved Street Permanent Trench Restoration" diagram attached as Exhibit "B").

(K) Emergency Cuts. Emergency Road Cuts and excavations that may potentially pose an eminent danger to the health, safety and/or welfare of the public, or bore holes required to search out a potential Emergency condition, may be made in advance of the issuance of a Permit therefor, at the discretion of the utility company conducting the investigation and/or repairs; provided, however, within two (2) hours of commencing such Emergency Road Cut or excavation, the Public Works Department shall be notified, as well as other potentially affected utilities, and the PA One Call System. An authorized representative of the responsible party(ies) shall notify the Public Works Department on or before the next business day, and a proper Permit application, accompanied by all appropriate fees and other required documents, shall be submitted to the Township upon the earlier of (a) within seven (7) business days of the commencement of such work, or (b) prior to placement of the final backfill material and permanent pavement Restoration Work.

(1) A Permittee shall perform Emergency work until the Emergency is eliminated, unless otherwise directed by the Township.

(2) Once obtained, the Emergency Permit shall be maintained on site and presented upon the request of any Township official authorized to enforce this Subpart.

(L) Remedy of Unsatisfactory Work. The work of resurfacing shall be examined and inspected by the Person designated by the Township for such purpose, and in the event such inspector shall find the same unsatisfactory, the Permittee shall be required to remedy such work to bring it into compliance. All additional costs therefor shall be paid to the Township by the Permittee; provided, however, no subsequent Permit shall be granted to any Person who shall not have, prior to the issuance of the later Permit, paid in full to the Township any and all such additional sums billed to such Person.

(M) Notice to Begin and End Work. The Public Works Department shall be notified at least three (3) business days prior to the start of the pavement cut, and shall be notified at least three (3) business days prior to the time the trench is to be backfilled and the Restoration Work is completed.

(N) Work to Conform to Township Standards. The work shall be performed at such time and in such manner as shall be consistent with the safety of the public, in accordance with this Subpart, including but not limited to the Township's current engineering standards and specifications and the construction standards as may be amended from time to time, and as specified on the Permit. If the Township discovers that the work has been discontinued or has not been properly performed, the Permittee shall, at the sole cost and expense of the Permittee, upon receipt of written notice from the Township, immediately take all necessary steps to cause the work to conform to the Township's requirements and standards. If a dispute arises between the Permittee and the Township's inspector, the Township's inspector shall have the authority to suspend all work until the matter can be referred to and reviewed by the Public Works Department for resolution.

(O) Materials and Installation. All materials and their installation shall be in accordance with the current PennDOT Specification Publication 408, latest edition and with all Township specifications, as amended from time to time.

[this space intentionally left blank]

Section 111. Form Agreement – Road Opening Agreement.**ROAD OPENING AGREEMENT**

THIS ROAD OPENING AGREEMENT (“Agreement”) is made as of the ____ day of _____, 20__, between the TOWNSHIP OF SPRING, BERKS COUNTY, PENNSYLVANIA, a Pennsylvania second class township with municipal offices at 2850 Windmill Road, Sinking Spring, Pennsylvania 19608 (“Township”), and _____, a _____ with a mailing address of _____ (“Permittee”).

Background

Permittee has applied to the Township for a road cut permit for the purpose of _____ in the bed of _____, a public road maintained by the Township (“Road”).

The Township has issued the requested road cut permit to the Permittee (“Permit”) conditioned and contingent upon and subject the execution and delivery of this Agreement in order to ensure that the Permittee’s encroachment upon the Road will be properly repaired and will be maintained for a period of eighteen (18) months from the date on which the encroachment repair is completed and inspected and approved by the Township.

NOW, THEREFORE, INTENDING TO BE LEGALLY BOUND HEREBY, and in consideration of the terms and conditions set forth in this Agreement, the legal sufficiency of which is hereby acknowledged by the Township and Permittee, the parties hereto agree as follows:

1. **Background.** The Background sections set forth above are true and correct and are incorporated herein by reference thereto.
2. **Conformance with Township Regulations.** All work to be performed pursuant to the Permit shall be performed in accordance with Subpart A, entitled “Street Occupancy and Excavations”, of Part 1, entitled “Streets”, of Chapter XXVI, entitled “Streets, Sidewalks, Driveways and Curbs”, of the Code of Ordinances of the Township of Spring.
3. **Township Costs and Expenses.** Permittee acknowledges and agrees that Permittee is executing and delivering this Agreement to the Township as a condition of the granting by the Township to Permittee of the Permit in order to ensure compliance with the terms and conditions of the performance, construction and maintenance as set forth below. Any and all costs and expenses incurred by the Township (collectively, “Expenses”) for inspection of the work to be performed, constructed and maintained under and pursuant to the Permit and/or to correct a breach by Permittee of the terms and conditions of this Agreement shall be due and payable in

full by Permittee to the Township within ten (10) days of each written notice from the Township to the Permittee therefor.

4. No Additional Permits. No additional Permits shall be issued to said Applicant or Permittee until all amounts due and owing by said Applicant or Permittee to the Township have been paid in full.

5. Cease Work for Nonpayment. In the event Permittee fails to deliver to the Township any amount due and owing by Permittee to the Township when due pursuant to this Agreement, the Township may cease any and all work authorized by the Permit until receipt by the Township of all such amounts due and owing by Permittee to the Township.

6. Extension of Excavation. No excavation in any Road shall extend from the edge of the cartway into the cartway a distance greater than one foot (1') beyond the centerline of the Road before being refilled and the surface of the Road restored to a condition that is safe for travel. A steel plate of adequate thickness and size may be used to cover the trench excavation for up to twenty-four (24) hours.

7. Precautions. During the making of any excavation in the Road, every necessary and reasonable precaution shall be taken by Permittee to keep the Road in a safe and passable condition, both day and night, by barriers, lights and other devices in accordance with PennDOT Publication 213, including any amendment thereto and any substitution or replacement thereof.

8. Notification. The Permittee shall notify:

- (a) The Township at least three (3) days in advance of breaking the Road;
- (b) the Township Engineer at least forty-eight (48) hours in advance of any backfill or Restoration Work so the work may be inspected as it is performed;
- (c) the Township office, the Wilson School District the Township Fire Department, the Township Police Department and the Township Engineer at least forty-eight (48) hours in advance of commencement of any work in a Road; provided, however, in the case of an Emergency Road opening, verbal notification shall be provided to the aforementioned entities as soon as possible.

9. Barricade; Detour. No Road shall be entirely barricaded or detoured without the prior written approval of the Township.

10. Pipe Laying Within Four Feet of Road Surface. No pipe shall be laid within four feet (4') of the Road surface without the prior written approval of the Township.

11. Trench Area Even with Existing Road Grade During Maintenance Period. Permittee is solely responsible for keeping the trench area even with the existing Road grade throughout the required eighteen (18) month maintenance period.

12. Compliance. All authorized Work to be performed by Permittee under and

pursuant to the Permit shall be constructed and performed in full compliance with all of the terms, conditions, provisions, requirements and standards set forth in Subpart A, entitled "Road Occupancy and Excavations", of Part 1, entitled "Streets", of Chapter XXVI, entitled "Streets, Sidewalks, Driveways and Curbs", of the Code of Ordinances of the Township of Spring.

13. Indemnification. Permittee hereby agrees to indemnify, defend and hold harmless the Township, its elected and appointed officials, officers, supervisors, managers, employees, servants, agents, attorneys, engineers, independent consultants and other representatives, and their respective heirs, representatives, successors and assigns (collectively, "Indemnitees") from and against any and all losses, damages, actions, causes of action, suits, claims, demands, liabilities, costs and expenses, including reasonable attorneys', engineers' and other professional fees and costs, of whatever nature or kind, whether founded or unfounded, suffered by Indemnitees which is caused by, arises out of or pertains to: (a) the work performed, constructed and/or maintained, or to be performed, constructed and/or maintained, under and pursuant to the Permit; (b) any leak, explosion or other injury from any pipe, apparatus, conduit or any other facility in connection with such work; (c) any damage to property or injury or death to any person caused by such work or caused by Permittee or any owner, officer, manager, director, employee, servant, contractor, subcontractor, agent or representative of Permittee or anyone otherwise acting on behalf of Permittee or any owner, officer, manager, director, employee, servant, contractor, subcontractor, agent or representative of Permittee in any fashion or for which Permittee, its successors and assigns are or may be responsible; together with all costs, fees and expenses, including but not limited to attorneys' fees and costs, and expert witness fees and costs, as may be incurred by Indemnitees in connection with any such loss, damage, action, cause of action, suit, claim, demand, liability, costs and expenses pertaining thereto.

14. Notice. All notices, requests, demands and other communications permitted or required to be given pursuant to the provisions of this Agreement shall be in writing and delivered in person or sent by certified mail, return receipt requested, postage prepaid, or sent by nationally recognized overnight courier to the parties hereto at their respective addresses set forth above, or to such other addresses as the respective parties shall have last designated by written notice to the other party.

15. Parties Bound; Entire Agreement; Amendment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns. This Agreement constitutes the entire understanding between the parties with regard to the subject matter hereof. This Agreement may be amended only by a writing signed by both parties.

16. Waiver. No remedy conferred upon any party by this Agreement is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission by any party hereto in exercising any right, remedy or power hereunder or existing at law or in equity shall be construed as a waiver thereof, and any such right, remedy or power may be exercised by such party from time to time and as often may be deemed expedient or necessary by such party.

17. Time. Time shall be of the essence of this Agreement.

18. Governing Law; Jurisdiction. This Agreement shall be deemed to be made under and shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania without regard to its principles of conflicts of law. Each of the parties hereto irrevocably and unconditionally (a) agrees that any suit arising out of this Agreement shall be brought and adjudicated in the Court of Common Pleas of Berks County, Pennsylvania, (b) submits to the exclusive jurisdiction of the said Court of Common Pleas for the purpose of any such suit, and (c) waives and agrees not to assert by way of motion, as a defense or otherwise in any such suit, any claim that such party is not subject to the jurisdiction of the said Court of Common Pleas, that such suit is brought in an inconvenient forum or that the venue of such suit is improper.

IN WITNESS WHEREOF, AND INTENDING TO BE LEGALLY BOUND HEREBY, the parties hereto have executed this Agreement as of the day and year first above written.

TOWNSHIP:

TOWNSHIP OF SPRING,
BERKS COUNTY, PENNSYLVANIA

By: _____
Title: _____

Attest: _____
Title: _____

PERMITTEE:

By: _____
Title: _____

Attest: _____
Title: _____

OR

Witness:

_____	_____ (SEAL)
_____	_____ (SEAL)

Section 112. Violations, Penalties and Fees.

(A) Any Person who fails to obtain a Permit from the Public Works Department prior to commencement of breaking of the pavement or surface of any Road shall pay to the Township a penalty as follows:

(1) For the first (1st) failure to obtain a Permit: Five Hundred Dollars (\$500.00)

(2) For the second (2nd) failure to obtain a permit: Two Thousand Five Hundred Dollars (\$2,500.00)

(3) For the third (3rd) failure and each failure thereafter to obtain a permit: Five Thousand Dollars (\$5,000.00)

(B) Any Person who violates or permits a violation of this Subpart shall, upon being found liable therefor, pay a fine of not more than Six Hundred Dollars (\$600.00), plus court costs and reasonable attorneys' fees incurred by the Township in the enforcement proceedings. If the penalty is not paid, the Township shall initiate a civil action for collection in accordance with the Pennsylvania Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense. In addition to or in lieu of enforcement under this Section, the Township may enforce this Subpart in equity in the Court of Common Pleas of Berks County, Pennsylvania."

(C) All Penalties and Fees set forth in this Ordinance may be amended from time to time by Resolution of the Township Board of Supervisors.

Section 2. All ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance.

Section 3. If any provision, sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Board of Supervisors of the Township of Spring that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section or part thereof had not been included herein.

Section 4. The Code of Ordinances of the Township of Spring, as amended, shall be and remain unchanged and in full force and effect, except as amended, supplemented and modified by

[this space intentionally left blank]

this Ordinance. This Ordinance shall become a part of the Code of Ordinances of the Township of Spring, as amended, upon adoption.

Section 5. This Ordinance shall become effective in accordance with the law.

ENACTED AND ORDAINED this 22nd day of March, 2021.

BOARD OF SUPERVISORS OF
THE TOWNSHIP OF SPRING,
BERKS COUNTY, PENNSYLVANIA


George W. Stuck, III, Chairperson

Patti J. Smith, Vice Chairperson

Barry W. Ulrich

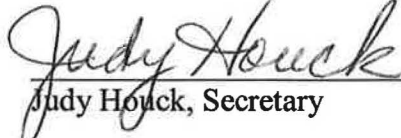

Robert M. Myer


Michael Kocher

Attest: 
Judy Houck, Secretary

MUNICIPAL CERTIFICATION

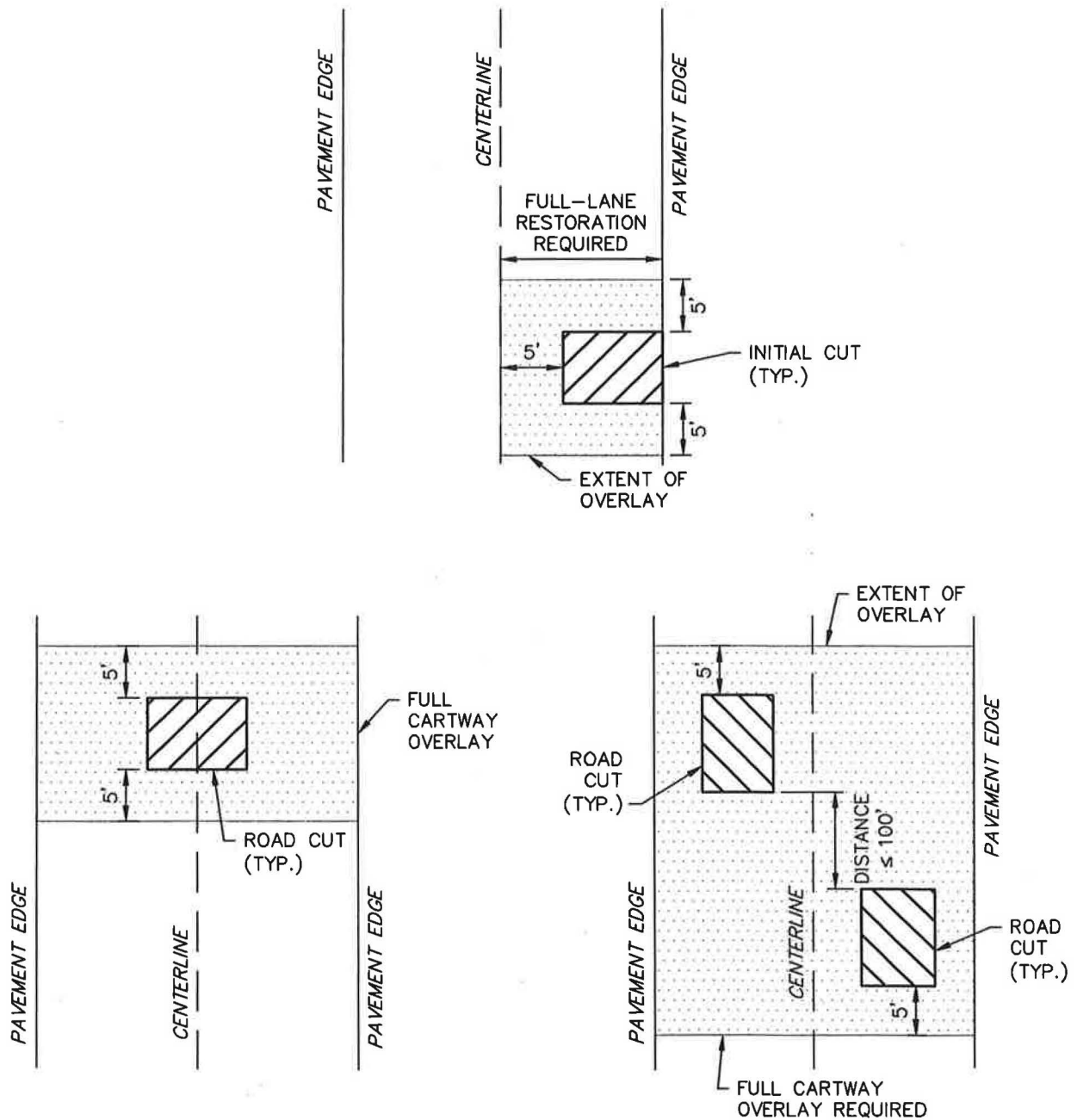
I, JUDY HOUCK, Secretary of the TOWNSHIP OF SPRING, BERKS COUNTY, PENNSYLVANIA, do hereby certify that the foregoing Ordinance No. 447 was advertised in the *Reading Eagle*, a daily newspaper of general circulation in the Township of Spring, on Saturday, March 13, 2021 and was duly enacted and approved as set forth at a regular meeting of the Board of Supervisors held on Monday, March 22, 2021.


Judy Houck, Secretary

(SEAL)

EXHIBIT “A”

ROADWAY RESTORATION PLAN VIEW



ROADWAY RESTORATION PLAN VIEW
 (PER ROAD CUT ORDINANCE, SEC. 110 A)

SCALE: NONE

TOWNSHIP OF SPRING
STANDARD DETAIL 02324-7

01/21
 SPRING\STD SPECS\02324-7

EXHIBIT “B”

PAVED STREET PERMANENT TRENCH RESTORATION

MIN. 4" 25mm SUPERPAVE
BASE COURSE COURSE FOR
LOCAL STREETS, 5" FOR COLLECTOR
STREETS

MIN. 1.5" OF 9.5mm SUPERPAVE
WEARING COURSE, SRL M

12" WIDE PG 64-22
BITUMINOUS SEAL

EXISTING PAVEMENT

12" ADDITIONAL 1' WIDE
MILLED PAVING NOTCH
1.5" DEEP.

12" 1' CUT BACK 5.5" DEEP
(FOR LOCAL STREETS)
OR 6.5" DEEP (FOR
COLLECTOR STREETS).

BEDDING AND BACKFILL
AS REQUIRED BY THE
SPECIFICATIONS.

TRENCH EXCAVATION AND
BACKFILL IN ACCORDANCE
WITH SPECIFICATIONS.

NOTES:

1. UNLESS OTHERWISE SPECIFIED, ALL SUPERPAVE MIXTURES SHALL BE PG64-22, 0.3 TO 3 MILLION ESAL'S. ALL WEARING COURSE SHALL HAVE SRL-M
2. A BITUMINOUS TACK COAT SHALL BE APPLIED TO ALL VERTICAL PAVEMENT SURFACES BEFORE PAVING.

PAVED STREET PERMANENT TRENCH RESTORATION

SCALE: NONE

TOWNSHIP OF SPRING
STANDARD DETAIL 02324-5

12/06
SPRING\STD SPECS\02324-5