

RESOLUTION NO. _____

REGULATIONS GOVERNING THE USE OF THE COUNTY RIGHT-OF-WAY

WHEREAS, the Tennessee Code allows utilities to be placed within the county right-of-way, and

WHEREAS, the Tennessee Code, although varying in particulars concerning specific types of utilities, generally requires that permission be obtained from the county legislative body, county highway commission or the chief administrative officer of the highway department prior to entering upon the county right-of-way to perform work, and

WHEREAS, the Tennessee Code also generally requires that work performed within the county right-of-way be performed under the direction and control of the chief administrative officer of the county highway department, and

WHEREAS, it is impractical for permission to be granted on a case-by-case basis by the county highway commission or the county legislative body, and

WHEREAS, it is necessary to establish clear procedures and rules, to be administered and enforced by the chief administrative officer of the highway department, for the use of the county right-of-way by utilities, so as to minimize interference with vehicular traffic, minimize damage to the county right-of-way, minimize risks to the public safety and convenience, and minimize damage to utilities, and

NOW THEREFORE, BE IT RESOLVED, by the County Highway Commission of _____ County, Tennessee, meeting in regular session on this day ____ of _____, 20__ and the Board of County Commissioners of _____ County, Tennessee, meeting in regular session on this day ____ of _____, 20__, that the following regulations shall apply to the use of county rights-of-way by utilities in _____ County:

SECTION 1. The following regulations apply to all utilities. "Utilities" includes any line, system or facility, either underground or overhead, used for producing, storing, conveying, transmitting or distributing communications, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam or sewerage and other underground or overhead facilities and appliances. The regulations apply to all persons performing work within the county right-of-way. "Persons" includes, but is not limited to, individuals, utility districts, authorities, governmental entities and companies. "Persons" may also be referred to herein as "applicants". The regulations apply to the installation, maintenance and removal of utilities unless otherwise provided.

SECTION 2. Except in cases of an emergency as defined herein, persons must obtain a permit from the county highway department prior to performing any work within the county right-of-way. The permit request shall state the nature and purpose of the work to be performed, the date, location and estimated time of the beginning and end of the work at each site, and the name and contact information of the company or party to be performing the work. The permit request

shall be accompanied by construction plans detailing the work to be performed. Applicants shall also provide copies of any permit(s) required by other governmental agencies. Persons making requests to perform work in the county right-of-way shall use the permit request form designated as Attachment A to this resolution. The permit may include special conditions, as determined in the sole discretion of the chief administrative officer of the county highway department, for the protection of the county's property, roads and rights-of-way, as well as the welfare and safety of the general public. Acknowledgment of receipt of a copy of these regulations shall be a part of the permit request. By issuance of a permit, applicants will be required to conform to these regulations as well as any additional conditions set forth in writing by the chief administrative officer of the county highway department. Once physical work has commenced within the right-of-way, applicants, as recipients of a permit, agree to perform the work in accordance with these regulations and the permit issued hereunder, as well as all other applicable permits, regulations, laws, agency rules, resolutions and ordinances. _____ County assumes no responsibility for any damage to utilities installed after the effective date of these regulations and that are not installed in accordance with the provisions and conditions of the permit and these regulations. _____ County assumes no responsibility for any damage to utilities not maintained or removed in accordance with the provisions and conditions of the permit and these regulations.

SECTION 3. Applicants shall submit a permit fee in the amount of _____ along with their permit request. The fee will be used to offset the county administrative and personnel cost related to the enforcement of these regulations.

SECTION 4. All utility installations, maintenance and removals shall be done in accordance with the applicable technical specifications set forth in Attachment B to this resolution and any subsequent specifications adopted by the county legislative body and the county highway commission. Persons shall pay the salary and expenses for any inspector(s) that the county highway department may see fit to place upon the work site to ensure compliance with such technical specifications while any such inspector(s) may be assigned to the work site. The chief administrative officer of the county highway department, before incurring any expenses expected to be charged to the applicant, shall advise the applicant in writing of this fact.

SECTION 5. The Department of Commerce and Insurance of the State of Tennessee (the "department") requires that all persons contracting to perform construction work within the state be qualified and licensed by the department if the work is equal to or in excess of twenty-five thousand dollars (\$25,000). Requirements for obtaining such a license are determined by the commissioner of the department and may be obtained by contacting the Regulatory Boards Division. All persons and/or the company for which they are employed shall be duly licensed by the department, the state of Tennessee, and any other appropriate governmental agency. Proof of a currently valid Tennessee contractor's license shall be presented when request for a permit is made.

SECTION 6. As a condition of the issuance of a permit, applicants must provide proof of liability insurance with a minimum policy in the amount of one million dollars (\$1,000,000).

SECTION 7. If the work that is the subject of the permit request is not of an emergency nature, the chief administrative officer of the county highway department may refuse or delay approval of the permit request if approval would unduly interfere with the work of the county highway department or would cause undue inconvenience to the public. However, the chief administrative officer's approval of the permit request shall not be unreasonably withheld. In the event of an emergency, persons will not be required to comply with the regular permitting requirements set forth herein. For purposes of these regulations, "emergency" means an imminent danger to life, health, or property, whenever there is a substantial likelihood that loss of life, health or property will result before the procedures in these regulations can be fully complied with. In the event of an emergency, notice of any work within the county right-of-way shall be given to the chief administrative officer of the county highway department in writing in the manner provided by Section 2 or by telephone, within two (2) hours of the beginning of any such activity. If notice is given by telephone, the agent of the person making the call shall enter the date and time of the call, the nature, purpose, and location of the work to be performed, the estimated beginning and ending times of the work, and the name and contact information of the company or party to be performing the work, on a standard permit request form and deliver it to the chief administrative officer of the county highway department by the next business day.

SECTION 8. The chief administrative officer of the county highway department may require an applicant to post collateral to ensure that the county road and right-of-way will be repaired to the same quality as before the excavation or other work was performed. The chief administrative officer will determine the form, amount and sufficiency of the collateral. Should the chief administrative officer of the county highway department execute settlement of the collateral, the proceeds from such execution shall be payable to the _____ County Highway Fund. In the event of an emergency, as defined herein, the chief administrative officer of the county highway department may require the person to post collateral as provided herein for non-emergency work as a condition for continuing work in the county right-of-way. In the event work is abandoned for a period of thirty (30) consecutive days or a time period specified in the permit, whichever is less, then the chief administrative officer of the county highway department shall be authorized to execute settlement of the collateral in his sole discretion. The proceeds from such execution shall be used to finish the project and to pay all other reasonable costs associated with the project. Any leftover proceeds will be returned to the applicant.

SECTION 9. (a) Persons shall replace or repair any portion of the pavement, shoulders, bridges, culverts, or any other part of the county right-of-way that may be disturbed or damaged as a result of their work performed in the right-of-way. The county right-of-way shall be repaired following installation, maintenance and/or removal of utilities. The right-of-way shall also be repaired if damaged as a result of future line failure or leakage. The chief administrative officer of the county highway department shall be notified prior to any backfilling or bedding of any utility. In the event a person covers, conceals or obscures work in violation of these regulations or in violation of a directive from the chief administrative officer of the county highway department, such work shall be uncovered and displayed for the county's inspection upon request and shall be reworked at no cost in time or money to the county.

(b) Whenever practical, the chief administrative officer of the county highway department, upon the county highway department receiving a permit request, shall inspect the site before the work begins and shall inspect the site after the work is completed. Inspection by an engineering firm, paid for by the applicant and hired or approved by the county, shall be required, at the discretion of the chief administrative officer of the county highway department, for extensive construction or work within the county right-of-way as a condition to issuance of the permit. In addition, persons shall reimburse the county for all testing, inspections, reasonable attorney and professional fees, and other expenses incurred as a result of any deficient work within ninety (90) days of receipt of an invoice from the county highway department.

(c) After such inspection(s), if, in the opinion of the chief administrative officer of the county highway department, the condition of the roadway or right-of-way has been damaged and has not been properly repaired, the chief administrative officer of the county highway department shall determine the nature of the work necessary to return the roadway or right-of-way to a condition substantially equal to its condition before the work was performed, and shall give persons written notice of such deficiency in returning the roadway or right-of-way to its proper condition. As part of such notice, the chief administrative officer shall inform the persons as to whether he/she has elected, in his/her sole discretion, to immediately execute settlement of the collateral and use the proceeds to repair the damage or to allow the persons to repair the damage themselves. If the chief administrative officer elects to allow the persons to repair the damage themselves, such repairs must be completed to the satisfaction of the chief administrative officer within thirty (30) days of receipt of the notice of deficiency. If the damage is not satisfactorily repaired within the thirty-day period, the chief administrative officer shall execute settlement of the collateral and use the proceeds to repair the damage. Regardless of which option is initially chosen by the chief administrative officer, if the collateral is not sufficient to complete the necessary repairs, the chief administrative officer shall facilitate the necessary repairs and persons shall reimburse the county highway department for the cost of such repairs within ninety (90) days of receipt of an invoice from the county highway department.

SECTION 10. Persons performing work within the county right-of-way shall be responsible for road damages, personal injury, property damages or any other damages caused by any negligence on their part, including but not limited to, the improper placing of or failure to display construction signs, danger signs and other required signage and will bear any expense proximately caused by their operation on the right-of-way. This applies whether the applicant or someone acting on the applicant's behalf performs the work. Persons shall provide proper signage, flaggers, barricades, flashing lights or other methods to warn the public of open trenches, obstructions or other impediments to travel. Signage shall conform to the most current edition of the Manual on Uniform Traffic Control Devices. Persons shall keep all traveled ways clear of obstructions and equipment not directly connected with the project or operation. Any inspection or control exercised by the chief administrative officer of the county highway department shall in no way relieve the applicant from any duty or responsibility to the general public nor shall such services and/or control by the chief administrative officer of the county highway department relieve the applicant from any liability for loss, damage, or injury to persons or adjacent properties.

SECTION 11. For all utilities located above ground, including location signage, persons shall maintain sufficient weed and brush control within a 10-foot radius such that said utilities are easily visible. _____ County assumes no responsibility for any damage to any utility that is improperly located, signed or maintained for visibility.

SECTION 12. If, at any future time, it should become necessary in the maintenance, construction or reconstruction of a county highway to have applicant's utilities removed in order that said highway may be properly maintained, constructed or reconstructed or in the event said utilities should, at any time, interfere with the use of said highway, the applicant agrees, upon being requested so to do by the highway department, to remove said utilities promptly, at its own expense and without cost to the highway department, unless any requested removal should be contrary to any law of the State.

SECTION 13. Applicant shall be responsible for any conflicts with other utilities or appurtenances that are on the county highway right-of-way and shall notify the respective owner(s) of any conflicts and secure the owner's permission for any alterations.

SECTION 14. By approving the applicant's permit request, the _____ County Highway Department does not grant the applicant any right, title or claim to any highway right-of-way and in granting this permission to go upon the right-of-way does not, in any way, assume the maintenance of the applicant's utilities.

SECTION 15. Approval of an applicant's permit request shall become void if the work that is the subject of the request is not commenced within thirty (30) days of the date of the permit request.

SECTION 16. The chief administrative officer of the county highway department may employ the county attorney, or other attorney as provided in Tennessee Code Annotated Section 54-7-110, to seek an injunction against any party in violation of these regulations. The chief administrative officer of the county highway department may issue a stop work order if work is being performed in violation of these regulations. Any person violating these regulations shall also be subject to a fine of up to five hundred dollars (\$500) per violation, pursuant to Tennessee Code Annotated Section 5-1-121. A "violation" is defined as each day a person is in non-compliance with these regulations.

SECTION 17. A permit may be denied, suspended or revoked by the chief administrative officer of the county highway department when the chief administrative officer has determined that the operation is not being and/or will not be conducted in a manner as prescribed by applicable regulations, rules, resolutions, ordinances or laws. Any violations deemed of a significant nature by the chief administrative officer of the county highway department, or unwarranted damages done to the highway system, may result in a permit being denied, suspended or revoked. The chief administrative officer of the county highway department shall report all such actions to the county highway commission and county attorney. Failure to obtain a permit, abandoning the project, conducting work which is not in accordance with the plans approved by the chief administrative

officer of the county highway department or obtaining a permit under the emergency provision when no emergency exists, may also be grounds for denial of future permit requests.

SECTION 18. Pursuant to the Competitive Cable and Video Services Act, Tennessee Code Annotated Section 7-59-310, as a condition of the issuance of a permit allowing for open trenching, the applicant shall provide at least fifteen (15) days' notice prior to the initiation of any work in the county right-of-way to all providers of cable or video services within the county. The notice shall include the particular dates in which the trenches will be available for such cable or video service providers for the installation of conduit, pedestals or vaults, and laterals. This requirement shall be limited to new construction or property development in which utilities will be laid in the county right-of-way.

SECTION 19. In addition to complying with the regulations set forth herein, applicants shall also comply with any and all applicable subdivision and storm water regulations.

SECTION 20. In the event of the occurrence of extraordinary circumstances, the chief administrative officer of the county highway department may modify provisions of these regulations to address the particular situation. The burden of proving such extraordinary circumstances rests with the individual seeking relief. Monetary hardship shall not constitute extraordinary circumstances. Any such approval of a variance from these regulations and any modified conditions or specifications issued by the chief administrative officer shall be in writing.

SECTION 21. These regulations shall be effective from and after _____, 20__.
Acknowledgment of receipt of a copy of these regulations shall be a part of the permit request.

SECTION 22. This resolution shall be effective from and after its passage, the public welfare requiring it.

APPROVED: _____, Chair, _____ County Highway Commission

ATTEST: _____, Secretary, _____ County Highway Commission

DATE: _____

APPROVED: _____, _____ County Mayor

ATTEST: _____, _____ County Clerk

DATE: _____