

PARADISE TOWNSHIP, YORK COUNTY  
PENNSYLVANIA

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ORDINANCE NO. 2018-03

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**AN ORDINANCE SETTING FORTH REQUIREMENTS FOR OPENING OR CUTTING ANY  
PUBLIC STREET OF PARADISE TOWNSHIP, ESTABLISHING PERMIT APPLICATION  
PROCEDURES, AND ESTABLISHING FEES FOR INSPECTIONS AND ADMINISTRATION  
OF THE ORDINANCE.**

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WHEREAS, Paradise Township is a Pennsylvania municipality governed by the provisions of the Second Class Township Code, 53 P.S. § 65101 et seq. (the "Code"); and

WHEREAS, the Code authorizes the Township to enact ordinances for the purpose of protecting the public health, safety and welfare; and

WHEREAS, the Board of Supervisors finds that it is in the best interest of the Township to adopt an ordinance to manage the public rights-of-way in accordance with applicable law, to provide regulations for the occupation, opening, boring, or excavating in, upon, along, across, above, over, under or in any manner connected with the Township roads, streets, and public rights-of-way, as may now or in the future exist, and to provide for compensation for the occupation and use of the public rights-of-way and for the cost of regulating the providers of such telecommunications services, consistent with applicable law.

**BE IT ENACTED AND ORDAINED** by the Board of Supervisors of Paradise Township, York County, Pennsylvania, as follows:

**SECTION 1: TITLE.** This Article shall be known and may be cited as the "Paradise Township Right-of-Way Ordinance."

**SECTION 2: LEGISLATIVE INTENT.** The Board of Supervisors recognizes that the Rights-of-Way(s) of Paradise Township provide essential access to the residents of the Township and the traveling public, and the Township has worked diligently to maintain said Rights-of-Way(s) in good repair. Further it is recognized the design and construction of infrastructure within these Rights-of-Way(s) must be held to a reasonable standard in order to help ensure the long term maintenance and durability of infrastructure. And finally, it is recognized that uniform procedures and regulations are needed for the dedication by developers and acceptance by the Township of construction improvements.

**SECTION 3: STATUTORY AUTHORITY.** This Ordinance is adopted pursuant to Article XXIII of the Second Class Township Code (P.L. 350 No. 60).



#### **SECTION 4: ADOPTION OF REGULATIONS AND STANDARDS BY REFERENCE.**

a. Certain documents, being marked and designated as follows are hereby adopted as the design and construction specifications of the Township and each and all of the regulations contained in the said document are hereby adopted by the Township in accordance with this document:

- Pennsylvania Department of Transportation (PennDOT) Publication 408: Roadway Construction Standards
- Pennsylvania Department of Transportation (PennDOT) Publication 213: Temporary Traffic Control Guidelines
- Pennsylvania Department of Transportation (PennDOT) Publication 72M: Standards for Roadway Construction
- Pennsylvania Department of Transportation (PennDOT) Design Manual, Part 2: Highway Design
- Pennsylvania Code, Title 67, Chapter 459: Occupancy of Highways By Utilities
- Paradise Township Subdivision and Land Development Ordinance
- Paradise Township Stormwater Management Ordinance

In the event these specifications can be construed to encumber the Township with responsibility for supply of materials or work, the specifications are modified to make this the responsibility of the Applicant. It is the intent of the Board of Supervisors to adopt all subsequent amendments and revisions to the abovementioned documents. If such intent is found invalid by a court of competent jurisdiction, it is the intent of the Board of Supervisors to adopt the said Chapter(s) as they existed on the effective date of this Article.

This section represents the minimum requirements of certain types of activities within the Township or State rights-of-way(s). Activities associated with approved subdivision or land developments shall be subject to any additional requirements of the final plans as approved by Paradise Township and/or PennDOT. Any activity not regulated by the Paradise Township Subdivision and Land Development Plan (SALDO) shall be regulated by the requirements of this Ordinance.

A drainage control plan and analysis shall be submitted whenever an increase in flow water into a roadway or into existing drainage facilities will result from proposed activity. The design of all drainage facilities shall comply with the requirements of the Paradise Township Stormwater Management Ordinance.

All construction or excavation work, structures, paving, and facilities shall conform to the design standards of PennDOT Publications 408 and 72M, as amended. Work shall be done at such time and in such manner as shall be consistent with the safety of the public. Any work within Township or State rights-of-way(s) shall conform to all requirements and standards of PennDOT, except as otherwise supplemented or modified by this Ordinance. In the event regulations conflict, the most or more stringent regulations shall apply. If at any time it is found the work is not being done or has not been properly



performed, the permittee, upon being notified in writing by the Township or PennDOT, must immediately take necessary steps, at its own expense, to replace the work in a condition to conform to such requirements or standards. In case any dispute arises between the permittee and the representative of the owner of the right-of-way the owner's representative shall have the authority to suspend work until the question at issue can be decided by the Township and/or State of Pennsylvania.

The following PennDOT provisions shall regulate the occupancy of all Township and State rights-of-way(s), unless otherwise provided for by an approved subdivision or land development plan, this Ordinance, or the Township Engineer:

- Pennsylvania Code, Title 67, Chapter 459: Occupancy of Highways by Utilities

A traffic control plan must be submitted to either close any portion of a travel lane during construction, during the hours of darkness when no active work is in progress, or to detour traffic in order to perform the permitted work. All plans shall conform with Section 6123 of the Pennsylvania Motor Vehicle Code, as amended, and the applicable provisions of the Pennsylvania Code, Title 67, Chapter 203, as amended.

- b. From time to time, the Township may revise the design and construction standards as cited in this Section 4 through the adoption of Supplemental Requirements by Resolution.

**SECTION 5: DEFINITIONS.** For purposes of this Article, the following terms shall have the following meanings:

- a. "Applicant" shall mean any owner or duly authorized agent of such owner, who has submitted an application for a permit to excavate.
- b. "Ordinance" shall mean the Paradise Township Right-of-Way Ordinance.
- c. "Township" shall mean Paradise Township, York County, Pennsylvania.
- d. "Deposit" shall mean any bond, cash deposit, or other security provided by the applicant in accordance with Section \_\_\_\_\_ of this Ordinance.
- e. "Excavation" shall mean any work in the surface or subsurface of the public right-of-way, including, but not limited to opening the public right-of-way; installing, servicing, repairing or modifying any facility(ies) in or under the surface or subsurface of the public right-of-way, and restoring the surface and subsurface of the public right-of-way.
- f. "Facility" or "Facilities" shall include, but not be limited to, any and all cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tracks, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an owner or person, that are located or are proposed to be located in the public right-of-way.



- g. "Major Work" shall mean any reasonably foreseeable excavation that will affect the public right-of-way for more than fifteen (15) consecutive calendar days.
- h. "Moratorium street" shall mean any street that has been reconstructed, or resurfaced by the Township or any other owner or person in the preceding three (3) year period.
- i. "Municipal Excavator" shall mean any agency, board, commission, department, or subdivision of the Township that owns, installs, or maintains a facility or facilities in the public right-of-way.
- j. "Owner" shall mean any person, including the city, who owns any facility or facilities that are or are proposed to be installed or maintained in the public right-of-way.
- k. "Permit" or "Permit to Excavate" shall mean a permit to perform an excavation as it has been approved, amended, or renewed by the Township.
- l. "Permittee" shall mean the applicant to whom a permit to excavate has been granted by the Township in accordance with this Ordinance.
- m. "Person" shall mean any person, corporation, partnership, any municipal excavator, or any governmental agency.
- n. "Right-of-Way" shall mean the area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads, sidewalks, spaces, streets, and ways within the Township, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the Township.
- o. "Utility Excavator" shall mean any owner whose facility or facilities in the public right-of-way are used to provide electricity, gas, information services, sewer service, steam, storm drains, telecommunications, traffic controls, transit service, video, water, or other services to customers regardless of whether such owner is deemed a public utility by the Pennsylvania Public Utilities Commission.

#### **SECTION 5: PERMIT REQUIRED.**

It shall be unlawful for any Person or entity to open or make any excavation of any kind in any Right-of-Way of the Township without first securing a Permit therefore in accordance with this Ordinance and other Township regulations.

The requirement to obtain a permit is hereby waived for Municipal Excavators.

#### **SECTION 6: PERMIT APPLICATION STANDARDS AND PROCEDURES.**

- a. Applications shall be submitted in format and manner specified by the Township, specifically on the "Application for Driveway Permit" form for driveway permit requests,



and on the "Township Road Occupancy Application" form for Excavation and other work within the Right-of-Way, and shall contain:

- i. The name, address, telephone, and facsimile number of the applicant where an Applicant is not the owner of the Facility to be installed, maintained, or repaired in the Right-of-Way. The application also shall include the name, address, telephone, and facsimile number of the Owner.
- ii. A description of the location, purpose, method of Excavation, and surface and subsurface area of the proposed Excavation.
- iii. A plan showing the proposed location and dimensions of the Excavation and the Facilities to be installed, maintained, or repaired in connection with the Excavation, and such other details as the Township may require, specifically including, but not limited to, clear and demonstrable compliance with those applicable provisions of the most recently amended Paradise Township Subdivision and Land Development Ordinance (SALDO), the Paradise Township Stormwater Management (SWM) Ordinance, and this Ordinance.
- iv. A copy or other documentation of the franchise, easement, encroachment permit, license, or other legal instrument that authorizes the applicant or owner to use or occupy the Right-of-Way for the purpose described in the application. Where the applicant is not the owner of the Facility or Facilities to be installed, maintained, or repaired, the applicant must demonstrate in a form and manner specified by the Township that the Applicant is authorized to act on behalf of the Owner.
- v. The proposed start date of Excavation.
- vi. The proposed duration of the Excavation, which shall include the duration of the restoration of the Right-of-Way physically disturbed by the Excavation.
- vii. Written acknowledgment that the Applicant and Owner are not subject to any outstanding assessments, fees, penalties that have been finally determined by the Township or a court of competent jurisdiction.
- viii. Evidence of insurance as required by Section 23 of this Ordinance.
- ix. A bond as required by Section 13 of this Ordinance.
- x. A traffic control plan, if necessary, in accordance with Section 6123 of the Pennsylvania Motor Vehicle Code, as amended, and the applicable provisions of the Pennsylvania Code, Title 67, Chapter 203, as amended..
- xi. Any other information that may reasonably be required by the Township.



- b. The Township may allow an applicant to maintain documents complying with Subsections (iv), (viii), (ix), and (x) on file with the Township rather than requiring submission of such documents with each separate application.

#### **SECTION 7: ACTION ON PERMITS.**

- a. After receipt of an application for a Permit to Excavate, the Township, within a reasonable time period, shall determine whether an application is complete.
- b. If the application is deemed to be incomplete, the Township promptly shall advise the Applicant in a written, electronic, or facsimile communication of the reasons for rejecting the application as incomplete.
- c. If the application is deemed to be complete, the Township, in its discretion, may deny, approve, or conditionally approve the application.
  - i. If the application is approved or conditionally approved, the Township shall issue a Permit to the Applicant. The Township may condition a Permit with specified requirements that preserve and maintain the public health, safety, welfare, and convenience. The Township shall inform the Permittee of the basis for such requirements.
  - ii. If the application is denied, the Township shall advise the Applicant in a written, electronic, or facsimile communication of the basis for denial.

**SECTION 8: ACTION ON PERMITS.** The Permit shall specify the location, extent, and method of the Excavation, the start date and duration of the Excavation, the Permittee to whom the Permit is issued, and any conditions placed on the Permit.

#### **SECTION 9: DURATION AND VALIDITY.**

Permits shall be void if the Excavation has not begun within ninety (90) calendar days of the start date specified in the Permit, if the Excavation is not prosecuted diligently to its conclusion, or if the Excavation, including restoration, has not been completed within the specified duration; provided, however, that the Township, in its discretion, may issue extensions to the start date, the duration of Excavation, or both upon request from the Permittee.

#### **SECTION 10: NON-TRANSFERABILITY OF PERMITS.**

Permits are not transferable from Owner to Owner or Permittee to Permittee.

#### **SECTION 11: PRECONSTRUCTION MEETING/INSPECTION.**

The Applicant/Permittee shall schedule a preconstruction conference with the Township a minimum of two (2) business days prior to the start of Excavation. The Applicant/Permittee shall



provide the contact information of at least one point of contact of a Person who is responsible or in charge of the Excavation.

#### **SECTION 12: NOTICE FOR MARKING OF SUBSURFACE FACILITIES.**

No Excavation shall begin until all utility companies having facilities in the area of the Excavation have been notified by means of the Pennsylvania One-Call System, Inc. The Excavation shall be conducted to so as not to interfere with water mains, sewers, or their connections with any house or any other subsurface lines or construction, until permission of the proper authorities in connection with such subsurface lines or construction has been obtained. Any damage to such lines or construction shall be repaired immediately and shall be reported to the owner thereof.

#### **SECTION 13: BONDING.**

The Permittee shall obtain and maintain, at its sole cost and expense, and file with the Township, a corporate surety bond with a surety company authorized to do business in the Commonwealth of Pennsylvania in the amount of One Hundred Ten percent (110%) of the established Excavation cost to secure the Permittee's performance of its obligations and faithful adherence to all requirements of this Ordinance.

No action, proceeding, or exercise of a right with respect to such bond shall affect the Township's right to demand full and faithful performance pursuant to this Ordinance or limit the Permittee's liability for damages.

Bonding shall include, at a minimum, the costs for materials and installation, compaction, compaction testing, restoration, as-built drawings, survey, and Excavation inspection.

#### **SECTION 14: PERMIT TO BE AVAILABLE AT EXCAVATION SITE.**

The Permit or a photo duplicate shall be available for review at the site of the Excavation for the duration of the Excavation and shall be shown, upon request, to any police officer or any employee of a Township agency, board, commission, or department with jurisdictional responsibility over activities in the Right-of-Way.

#### **SECTION 15: CONSTRUCTION IN COMPLIANCE WITH PERMIT.**

All Excavation and other infrastructure improvements shall be constructed in strict accordance with the approved Permit. Notwithstanding the provisions of this Ordinance, the Township reserves the right to approve any Permit changes during Excavation. All Permit changes shall be documented in writing and attached as an addendum or amendment to the original Permit. If the changes are of a nature to be significant and/or extensive in scope, as determined in the sole discretion of the Township, the Township may require the Applicant/Permittee to submit a new plan and application. Any significant and/or extensive changes may require an adjustment to the bonding outlined in Section 13 of this Ordinance.



Prior to placement of any stone sub-base the subgrade shall be tested by standard proctor and shown to achieve a 95% compaction. After placement of stone sub-base the Permittee shall proof roll the area per standard. All areas of deflection shall be over-excavated, filled with coarse aggregate in six (6) inch lifts, and fully compacted. These areas shall be proof rolled again. In the event proof rolling is not appropriate, such as in certain trench Excavations, nuclear density testing shall be used. The Permittee shall provide the Township with copies of all testing results and material certificates.

All work shall be of first class quality, free of any and all defects.

#### **SECTION 16: DRIVEWAY CONSTRUCTION PERMITS.**

Any driveway construction which will affect the Right-of-Way shall be consistent with and in compliance with the Paradise Township SALDO, Section 507(D) or any amendments thereto. As stated earlier, all applications for driveway Permits shall be submitted on the "Application for Driveway Permit" form.

#### **SECTION 17: AS-BUILT PLAN.**

Within thirty (30) days of completion, and prior to any offer of dedication, the Applicant/Permittee shall submit one (1) as-built drawing and one (1) digital file copy in AutoCAD format of the constructed Facilities and/or Excavation which accurately depicts the constructed infrastructure and/or Excavation and is legible in every detail. All as-built drawings shall accurately describe the vertical elevations of drainage Facilities, including invert elevations, and show limits of embankments, easement, and Right-of-Way locations. In case where grading is critical (such as for detention ponds), contours must be shown.

#### **SECTION 18: RESTORATION OF RIGHT-OF-WAY.**

##### **a. Backfilling**

- (i) All backfilling shall be in compliance with PennDOT Publication 408: Roadway Construction Standards, Section 220, Flowable Backfill.

##### **b. Temporary Restoration**

- (i) All Excavations within the Right-of-Way shall be backfilled with 2A modified crushed stone, compacted in six (6) inch layers and topped with two (2) inches of cold patch material. This temporary restoration shall remain in place for a minimum of two (2) months, but not more than six (6) months to allow for settlement and shall be maintained in a smooth condition through the laying of additional cold patch as necessary within 24 hours of verbal or written notification from the Township.



- (ii) All Excavations within the Right-of-Way of subdivision roads which have been dedicated to the Township shall also be backfilled with 2A modified crushed stone, compacted in six (6) inch lifts.

c. Final Restoration

- (i) For final restoration, the cold patch shall be excavated and the edges of the Excavation cut straight. All undermined areas shall also be cut. Final restoration of the paved surface shall be five (5) inches of 19mm Superpave as a base course, and two and one half (2 ½) inches of 9.5mm Superpave as the top wearing course. All edges shall then be sealed. All final restorations shall be completed within six (6) months of temporary restoration.
- (ii) Where deemed necessary, in the sole discretion of the Township, Township officials may require that an eight (8) inch thick cap or slab of three thousand pound (3000 lb.) concrete be installed extending one (1) foot over each side of the roadway to allow 9.5mm Superpave wearing course.

d. Incomplete Excavation and Completion by Township

- (i) In any case where an Excavation is not completed or restored in the time and manner specified in the Permit, this Ordinance, or other regulations and specifications of the Township, the Township shall order the Owner or Permittee to complete the Excavation as directed within twenty-four (24) hours. If the Owner or Permittee should fail, neglect, or refuse to comply with the order, the Township may complete or cause to be completed such Excavation in such manner as the Township deems expedient and appropriate. The Owner or Permittee shall compensate the Township for any costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the Township or other agencies, boards, commissions, departments of the Township that were made necessary by said Excavation, though the use of the bond required in Section 13 of this Ordinance. The Township's determination as to the cost of any work done or repairs made shall be final.
- (ii) Completion of an Excavation or restoration by the Township in accordance with Subsection (d) shall not relieve the Owner or Permittee from liability for future pavement failures at the Excavation site.

**SECTION 19: INSPECTION.**

- a. During and upon completion of the Excavation authorized by the Permit, the Township shall have the right to inspect the Excavation at any time, when necessary, to ensure compliance with the conditions, restrictions, and regulations prescribed by the Permit.



- b. Inspection of the Excavation does not constitute acceptance of the Excavation during construction or obligate the Township to accept dedication of the Excavation or other infrastructure improvements.
- c. The Applicant shall be responsible for any costs incurred as a result of, or related to, the Excavation inspections.

## **SECTION 20: DEDICATION.**

The Permittee may offer infrastructure for dedication, pursuant to Section 618 of the Paradise Township SALDO once all work/Excavation has been completed, finally inspected by the Township, and any and all defected items have been corrected pursuant to the standards set forth by this Ordinance. The Township Board of Supervisors shall act on all offers of dedication.

The acceptance of any infrastructure via dedication shall not exempt the Permittee from responsibility for any corrective or remedial work due to settlement or defect in the work for a period of two (2) years follow the completion of the original Excavation and/or construction, pursuant to Section 21(a)(i) of this Ordinance.

Release from bonding shall be at the discretion of the Township Board of Supervisors pursuant to any recommendations of the Township engineer and solicitor, as described in Section 616 of the Paradise Township SALDO.

## **SECTION 21: FAILURE.**

- a. Repair and Maintenance Obligation of Permittee.
  - i. Each Owner and Permittee that Excavates or causes to be made an Excavation in the Right-of-Way shall be responsible to maintain, repair, or reconstruct the site the Excavation so as to maintain a condition acceptable to the Township for a period of (2) years following completion and restoration of the Excavation or dedication of the infrastructure or Excavated area, whichever is later in time.
- b. Subsurface or Pavement Failures.
  - i. In the event that subsurface material or pavement over or immediately adjacent to any Excavation should become depressed, broken, or fail in any way at any time after the has been completed, the Township shall exercise his or her best judgment to determine the Person(s) responsible, if any, for the failure in the subsurface or surface of the Right-of-Way and shall designate such person as the responsible party. The Director shall notify said Person(s) of the condition, its location, and the required remedy, and such Person(s) shall repair or restore, or cause to be repaired or restored, such condition to the satisfaction of the Township within seventy-two (72) hours of the notification. The Township may extend the time for the responsible party to repair or restore the affected Right-of-Way.



c. Repair by the Township.

- i. In the event that any Person(s) fails, neglects, or refuses to repair or restore any condition pursuant to the Township's notice as set forth in Section 21(b), the Township may repair or restore, or cause to be repaired or restored, such condition in such manner as the Township deems expedient and appropriate. The Person(s) identified by the Township as the responsible party shall compensate the Township for any costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the Township that were made necessary by reason of the repair or restoration undertaken by the Township. The cost of such work also may be deducted from the Permittee's bond required by Section 13 of this Ordinance. The Township's determination as to the cost of the repair or restoration performed shall be final.
- ii. Subject to the Limitation set forth in Section 21(a), repair or restoration by the Township in accordance with this Section shall not relieve the Person(s) from liability for future pavement failures at the site of the repair or restoration.

d. Emergency Remediation by the Township.

- i. If, in the judgment of the Township, the site of an Excavation is considered hazardous or if it constitutes a public nuisance, public emergency, or other imminent threat to the public health, safety, or welfare that requires immediate action, the Township may order the condition remedied by a written, electronic, or facsimile communication to the Person(s) responsible, if any, for remedying the condition and shall designate such Person as the responsible party.
- ii. If the responsible party is inaccessible or fails, neglects, or refuses to take immediate action to remedy the condition as specified in said communication, the Township may remedy the condition or cause the condition to be remedied in such manner as the Township deems expedient and appropriate. The Person(s) identified by the Township as the responsible party shall compensate the Township for any reasonable costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the Township or other agencies, boards, commissions, departments of the Township that were made necessary by reason of the emergency remediation undertaken by the Township. The cost of such work also may be deducted from the Permittee's bond required by Section 13 of this Ordinance. The Township's determination as to the cost of any remediation performed shall be final.
- iii. Subject to the Limitation set forth in Section 21(a), repair or restoration by the Township in accordance with this Section shall not relieve the Person(s) from liability for future pavement failures at the site of the repair or restoration.



## **SECTION 22: STOP WORK ORDER, PERMIT MODIFICATION, AND PERMIT REVOCATION.**

When the Township has determined that a Person has violated this Ordinance or that an Excavation poses a hazardous situation or constitutes a public nuisance, public emergency, or other threat to the public health, safety, or welfare, or when the Township determines that there is a paramount public purpose, the Township is authorized to issue a stop work order, to impose new conditions upon a Permit, or to suspend or revoke a Permit by notifying the Permittee of such action in a written, electronic, or facsimile communication.

## **SECTION 23: LIABILITY AND INDEMNIFICATION.**

Each Permit, except one obtained by a municipal excavator, shall incorporate by reference and require the Permittee and Owner to comply with the liability, indemnity, insurance, and taxable possessory interest provisions set forth below in this Section; provided, however, the Township may modify the indemnity and insurance provisions as they pertain to a particular Permit.

### **Liability upon Owner and Permittee.**

Each Owner and Permittee is wholly responsible for the quality of the Excavation performed in the Right-of-Way and both the Owner and Permittee are jointly and severally liable for all consequences of any condition of such Excavation and any facilities installed in the Right-of-Way. The issuance of any Permit, inspection, repair, or suggestion, approval, or acquiescence of any person affiliated with the Township shall not excuse any Owner or Permittee from such responsibility or liability.

### **Indemnification, defense, and hold harmless.**

Each Owner and Permittee shall agree on its behalf and that of any successor or assign to indemnify, defend, protect, and hold harmless the Township, including officers, agents, and employees from and against any and all actions, claims, costs, damages, demands, expenses, fines, injuries, judgments, liabilities, losses, penalties, or suits including, without limitation, attorneys' fees and costs (collectively, "claims") of any kind allegedly arising directly or indirectly from:

1. any act by, omission by, or negligence of, owner or permittee or its subcontractors, or the officers, agents, or employees of either, while engaged in the performance of the Excavation authorized by the Permit, or while in or about the property subject to the Permit for any reason connected in any way whatsoever with the performance of the Excavation authorized by the Permit, or allegedly resulting directly or indirectly from the maintenance or installation of any equipment, Facilities, or structures authorized under the Permit;
2. any accident, damage, death, or injury to any contractor or subcontractor, or any officer, agent, or employee of either of them, while engaged in the



performance of the Excavation authorized by the Permit, or while in or about the property for any reason connected with the performance of the Excavation authorized by the Permit, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the Excavation authorized by the Permit;

3. any accident, damage, death, or injury to any person(s) or accident, damage, or injury to any real or personal property in, upon, or in any way allegedly connected with the Excavation authorized by the Permit from any cause or claims arising at any time; and,
4. any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Permittee about, in, on, or under the Excavation site subject to the Permit or the environment. As used herein, "hazardous material" means any gas, material, substance, or waste which, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Release" when used with respect to materials shall include any actual or imminent disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking, pumping, pouring, or spilling.

Upon the request of the Township, the owner or permittee, at no cost or expense to the Township must indemnify, defend, and hold harmless the Township against any claims, regardless of the alleged negligence of the Township or any other party, except only for claims directly from the sole negligence or willful misconduct of the Township. Each Owner and Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Township from any claims which actually or potentially fall within the indemnity provision, even if the allegations are or may be groundless, false, or fraudulent, which obligation arises at the time such claim is tendered to owner or permittee by the Township and continues at all times thereafter. In addition, the Township shall have a cause of action for indemnity against each Owner and Permittee for any costs the Township may be required to pay as a result of defending or satisfying any claims that arise from or in connection with the Permit, except only for claims resulting directly from the gross negligence or willful misconduct of the Township. Owner and Permittee agree that the indemnification obligations assumed under the Permit shall survive expiration of the Permit or completion of Excavation.

#### Insurance.

- . Each owner or permittee shall maintain in full force and effect, throughout the term of the permit, an insurance policy or policies issued by an insurance company or companies satisfactory to the Township's engineer and solicitor. Policy or policies shall afford insurance covering all operations, vehicles, employees, as follows:

- i. Workers Compensation and Statutory Employers Liability



I. \$100,000/\$500,000/\$100,000

ii. Commercial General Liability

I. Combined single limit of bodily injury and property damage of \$2,000,000 per occurrence or its equivalent

II. Must include coverage for the following where the Township, in its sole discretion, finds exposure exists:

- a. Premises Operation
- b. Independent Contractors
- c. Products/Completed Operations
- d. Personal Injury
- e. Contractual Liability
- f. Explosion, Collapse, and Underground Property Damage

iii. Comprehensive Vehicle Insurance Coverage for loading and unloading hazards:

I. Combined single limit of bodily injury and property damage of \$1,000,000 per occurrence or its equivalent. Coverage must include:

- a. Owned/Leased Vehicles
- b. Non-Owned Vehicles
- c. Hired Vehicles

- a. Said policy or policies shall include the Township and its officer and employees jointly and severally as additional insureds, shall apply as primary insurance, shall stipulate that no other insurance effected by the Township will be called on to contribute to a loss covered thereunder, and shall provide for severability of interests. Said policy or policies shall provide that an act or omission of one insured, which would void or otherwise reduce coverage, shall not reduce or void the coverage as to any other insured said policy or policies shall afford full coverage for any claims based on acts, omissions, injury, or damage which occurred or arose, or the onset of which occurred or arose, in whole or in part, during the policy period. Said policy or policies shall be endorsed to provide thirty (30) calendar days advance written notice of cancellation or any material change to the Township.
- b. Should any of the required insurance be provided under a claims-made form, the insured Owner or Permittee shall maintain such coverage continuously throughout the term of the permit, and, without lapse, for a period of three (3) years beyond the expiration or termination of the Permit, to the effect that,



should occurrences during the term of the Permit give rise to claims made after expiration or termination of the Permit, such claims shall be covered by such claims-made policies.

- c. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified above in Subsection (c)(i).
- d. Such insurance shall in no way relieve or decrease Permittee's and Owner's obligation to indemnify the Township under Subsection (b) or any other provision of this Ordinance.
- e. Certificates of insurance, in the form satisfactory to the Township, evidencing all coverages above, shall be furnished to or maintained on file with the Township before issuance of a Permit, with complete copies of policies furnished promptly upon the Township's request.
- f. Where a Permittee who is an owner is self-insured, and such insurance is no less broad and affords no less protection to the Township than the requirements above in Subsection (c), the Township, in consultation with the Township's engineer and solicitor, may accept such insurance as satisfying the requirements of Subsection (c). Evidence of such insurance shall be provided in the manner specified in Subsection (c)(vi).
- g. Companies issuing insurance policies shall have no recourse against the Township for payment of any premiums or assessments which are all set at the sole risk of the Permittee. Insurance policies obtained by the Permittee shall provide that the issuing company waives all right of recovery by way of subrogation against the Township in connection with any damage covered by these policies. All expenses related to the above-described insurance shall be borne by the Permittee.

#### **SECTION 24: EMERGENCY EXCAVATION.**

Nothing contained in this Ordinance shall be construed to prevent any person from taking any action necessary for the preservation of life or property or for the restoration of interrupted service provided by a municipal or utility excavator when such necessity, arises during days or times when the Township is closed. In the event that any person takes any action to Excavate or cause to be Excavated the Right-of-Way pursuant to this Section 24, such person shall apply for an emergency Permit within twenty-four hours after the Township's offices first open. The Applicant for an emergency Permit shall submit a written statement the basis of the emergency action and describe the Excavation performed and work remaining to be performed.



**SECTION 25: BLANKET PERMITS.**

The Township may issue blanket permits to any person to make Excavations for utility service connections, for the location of trouble in utility conduits or pipes and for making repairs thereto, or for emergency purposes. Blanket permits shall be issued on a yearly basis only, and shall authorized only Excavations referred to in this Section 25. Except as specifically provided otherwise in this Ordinance, Excavations authorized by this Section 25 shall be subject to all fees and requirements of this Ordinance.

**SECTION 26: BLASTING.**

Blasting within the Right-of-Way is prohibited. Blasting for the construction of infrastructure associated with proposed development where the development plans indicate the intent to offer dedication of the Right-of-Way to the Township is also prohibited.

**SECTION 27: REPEALER.** The passage of this Ordinance shall in no way be deemed to invalidate or repeal any provisions of any ordinance except as specifically provided for herein.

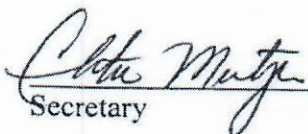
**SECTION 28: SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and an independent provision, and such holding shall not affect the validity of the remaining portions hereof. It is hereby declared to be the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid section, subsection, sentence, clause, phrase or portion not been included herein.


**SECTION 29: EFFECTIVE DATE.** This Ordinance shall become effective five (5) days after the adoption thereof.

**ENACTED AND ORDAINED**, this 8<sup>th</sup> day of October 2018.

**Attest:**

**PARADISE TOWNSHIP BOARD  
OF SUPERVISORS**

  
Secretary

By:   
Chairman