

**CITY OF MEMPHIS
CITY ENGINEER'S OFFICE
PROCEDURES FOR
STREET / UTILITY CUT PERMIT**

APPLICABILITY:

These procedures will apply where an individual desires to cut or dig into or open any pit trench or grade or excavate any pavement, gutter, sidewalk, neutral strip or any other portion of the City's right-of-way and/or public easement as allowed under "Article III, Street Cut" of Chapter 34 of the City of Memphis Code of Ordinance. The term "Applicant" hereafter shall mean developer, contractor, permit holder, or developer's engineer.

LIMITS:

This procedure will be limited to projects with total aggregate costs for public improvements less than \$15,000.00.

REQUIREMENTS & PROCEDURES:

1. The Applicant shall pick-up Street Cut Permit packet available from the Land Development Department of the City Engineer's Office located at 125 North Main, Room 644, Memphis, TN 38103 or retrieve the permit packet from the City of Memphis website (www.cityofmemphis.org) under the heading Government/Engineering/Links/Procedures for Street/Utility Cut Permit.
2. A preliminary plan of proposed construction will be presented to the Land Development Department of the City Engineer's Office for review. This plan will show the area of work to be performed in the City's right-of-way or easement.
3. The City Engineer's office will determine if this work can be performed under the Street Cut Permit or if a standard improvement contract procedure will be required.
4. If the permit procedure is applicable, the required construction plans and traffic control plan, prepared in accordance with the City's requirements by a Professional Engineer registered in the State of Tennessee, will be submitted to the Land Development Department for review.
5. Concurrent to the Construction Plans, the Applicant will submit a certificate of insurance, performance bond, executed memorandum of understanding and fees to the Land Development Department of the City Engineer's Office.

A. INSURANCE

The Applicant shall provide at no cost to the City the following insurance from insurance companies acceptable to the City and licensed in the State of Tennessee, which insurance shall be evidenced by certificates and/or policies as required by the City. Each certificate or policy shall require and state in writing that **"thirty(30) days prior to cancellation or material change in the policies, notice thereof shall be given to the City of Memphis by registered mail, return receipt requested"** for all the following stated insurance policies:

- 1) Worker's Compensation coverage in accordance with the statutory Requirements and Limits of the State of Tennessee. All State Endorsements are required or a Certificate of State Worker's Compensation Board showing proof of ability to pay compensation directly.
- 2) Comprehensive General Liability Insurance with minimum of limits of:
Bodily Injury (including death) and Property Damage \$1,000,000.00 each occurrence with \$2,000,000.00 Aggregate - Combined Single Limit.
- 3) Coverage to be included and **specifically noted** on the Certificate of Insurance provided to the City:
 - a) Premises and Operations
 - b) Independent Contractors
 - c) Products and Completed Operations
 - d) Blanket Contractual
 - e) XCU Coverage (Explosion, Collapse & Underground)
 - f) Broad Form Property Damage
 - g) Personal Injury
- 4) Comprehensive automobile liability insurance covering owned, hired and non-owned vehicles with minimum limits of:
Bodily Injury and Property Damage \$1,000,000.00 each accident - combined single limit.

- 5) **THE CITY OF MEMPHIS SHALL BE CONSPICUOUSLY NAMED ON THE CERTIFICATE (S) OF INSURANCE AS ADDITIONAL INSURED.**
- 6) The location of the project shall be specified on the Certificate (s) of Insurance.
- 7) The Applicant shall not commence work in the right-of-way until he has obtained or caused his subcontractor to obtain all insurance required under this Section and such insurance has been approved by the City.
- 8) The Certificate Holder shall be noted as:
CITY OF MEMPHIS ENGINEERING
LAND DEVELOPMENT OFFICE
125 NORTH MAIN, ROOM 644
MEMPHIS, TN 38103

B. PERFORMANCE BOND

1. The applicant shall execute a performance bond with good security or submit a substitute form of bond approved by the City of Memphis Engineer's Office. The amount of bond shall be in limits of \$5,000.00, \$10,000.00 or \$15,000.00 , whichever amount the City Engineer's Office deems appropriate for public improvements described in the street cut agreement.
2. The following three bonding options are acceptable to the City subject to the following conditions:
 - a. Shall be negotiable through a Shelby County Bank.
 - b. The performance bond form shall be signed by the permit holder and returned with the memorandum of understanding.

BONDING OPTIONS:

1. CASHIERS CHECK

If a cashiers check is posted in lieu of performance bond, the check must be made payable to the City of Memphis.

2. CERTIFICATE OF DEPOSIT

If a certificate of deposit is to be posted in lieu of performance bond, the original certificate must be assigned to and held by the City Engineer's Office and must remain automatically renewable. The amount must equal the original bond amount.

3. LETTER OF CREDIT

- a. If a letter of credit is posted in lieu of performance bond, it must be irrevocable and automatically renewable.
- b. Any letter of credit not drawn on a Shelby County Bank is required to be "Advised and Confirmed" or "Advised and Negotiated" by a Shelby County Bank. (Please obtain appropriate language from the City Engineer's Office if this option is chosen.)

3. Executed performance bond shall be attached to and made a part of this street cut agreement guaranteeing the faithful performance of work described in the street cut agreement.
4. Performance bonds with fixed terms of expiration shall not be acceptable.
5. a. The performance bond submitted as security shall be retained for a period of one year following completion of the work in accordance with the street cut agreement and approved plans.
- b. It shall be the responsibility of the permit holder to notify this office upon completion of the work performed under the street cut agreement.

C. MEMORANDUM OF UNDERSTANDING

1. Prior to the City's issuance of a street cut permit, the applicant shall execute a memorandum of understanding and submit to the City Engineer's Office, along with construction plans and fees.
2. Execution of the memorandum of understanding shall confirm applicant's commitment to the terms and conditions of the street cut permit.

D. FEES

1. The Applicant shall submit a check payable to the City of Memphis in the amount of \$10.00 per linear foot of street cut.
 2. The applicant shall submit an additional fee of \$200.00 each for proposed installations of public manholes, inlets and headwalls and \$100.00 each for connections to an existing public drainage and/or sanitary sewer structure, whichever is applicable.
 3. The minimum fee chargeable under a street cut shall be \$300.00.
6. Once the Certificate of Insurance, Memorandum of Understanding, Bond and fees are received and the Construction Plans and Traffic Control Plan have met the Engineering Department's criteria, the Plans will be signed by the City Engineer.
 7. Upon approval by the City Engineer, the Applicant shall return seven (7) copies and the original of the approved plans to the City Engineer's Office and shall contact the City Construction Inspection Office at (901) 636-2462 prior to proceeding with the work permitted.
 8. The permit with construction plans will be sent to Construction Code Enforcement, Traffic Engineering and Construction Inspection, to notify them that the street cut has been approved by the City Engineer.
 9. The bond submitted as security for required improvements shall be retained by the City Engineer and will be released upon successful completion of said improvements.
 10. Upon completion of the required work, the permit holder's engineer shall submit a statement verifying that the improvements were constructed in accordance with the approved construction plans and that there are no significant changes in the vertical and horizontal alignment of any improvements. The permit holder's engineer shall provide and certify clearly identifiable "as-built" information on the original mylar of the construction plans by reflecting the exact flow line elevation of all pipes at all manholes and structures. The revision block on each mylar shall be noted as "Revised to reflect as-built conditions."
 11. Any improvements installed without approved plans or which were not inspected are subject to removal and replacement if required by the City. All costs of certification as required by the City are to be borne by the Applicant.
 12.
 - a. The City, in its governmental functions, is not and could not be expected to oversee, supervise, and/or direct the construction of all improvements, and the excavation incident thereto.
 - b. The City Engineer is neither vested with the original design responsibility nor the means to formally survey elevations or the locations of improvements at every stage of the construction process.
 - c. The Applicant now has and shall retain the responsibility to properly anticipate, survey, design and construct the improvements of the Project and give full assurance that same shall not adversely affect any other property.
 - d. In providing technical assistance, plans and design review, the City does not and shall not relieve or accept any liability from the Applicant.
 13. All public improvements will be performed by a contractor licensed in the State of Tennessee. The contractor must possess a license classification or classifications which covers the work being performed under this permit.

MEMORANDUM OF UNDERSTANDING

Project Name: _____
Permit No: _____
Date of Issue: _____
Fee Amount: _____

Pursuant to my request for a Partial Street Cut Permit to occupy a portion of the City's Right-of-way at the following location, _____ and during the following period of time, from _____ to _____, and for the following purpose of _____ . I, the Applicant, agree to the following requirements:

1. To conform at all times and to all aspects of the approved engineering construction plans and traffic control plan as approved by the City Engineer, and to the satisfaction of the City Engineer or his representative. All public improvement work shall be performed by a contractor licensed in the State of Tennessee possessing a license classification that pertains to the work covered under this permit.
2. When cited for non-conformance with the approved plans by a representative of the City Engineer, to stop all work and take the necessary action required to conform to the approved plan. If, for whatever reason, conformance cannot be accomplished to the approved plan, I will vacate the site, leaving it in the condition it existed when I initially occupied such site.
3. To repair any and all damages inside the City's right-of-way caused by my occupation of the right-of-way to the satisfaction of the City Engineer or his representatives. Such repairs shall consist of, but not be limited to, patching of pavement, repair of failed pavement base, replacing striping, repair of curb and gutter, repair of sidewalks, replacement of damaged or removed signs, repair of manholes, etc.
4. To be totally responsible for any damages or injuries of any kind to persons or properties caused by my occupation of the City's right-of-way. To assume the obligation to protect, defend, indemnify and hold the City, its officers, employees, and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of any kind and character in connection with or arising directly or indirectly out of this agreement and/or the performance hereof by act or omission of, by me or my subcontractor, or anyone either: 1) directly or indirectly employed or, 2) under the supervision of any of them in the prosecution of the work to be performed in the City's right-of-way.
5. To pay to the City any fees which by policy or ordinance are required due to my occupancy of the City's right-of-way.
6. At such time that the City Engineer or his authorized representative determines that my need to occupy the City's right-of-way no longer exists, I shall vacate the site, leaving it in the condition it existed when I initially occupied such site.
7. City Engineer shall retain the bond submitted as security for the work described in the street cut permit until successful completion and acceptance of the improvements.
8. To provide as-built plans and certification letter prepared by my engineer according to City standards mentioned in item 10 of the street cut permit procedures.
9. I, the undersigned Applicant, acknowledge that these are bargained for considerations, and that I shall be liable to the maximum extent permitted by law, and regardless of the participation of the City in this project.
10. I have read, and understood the conditions of approval as described in the street cut permit procedures.

For Corporations Only:

Attest:

Corporate Secretary

Company: _____

Address: _____

City: _____

State: _____ **Zip:** _____

Phone: (_____) _____

Applicant: _____

Title: _____

Signature: _____

EXHIBIT "B"

PERFORMANCE BOND

STATE OF TENNESSEE
COUNTY OF SHELBY

KNOW ALL MEN BY THESE PRESENTS, that we _____
(herein called the "Applicant" and/or "Applicant's Contractor" of _____,
a county organized and existing under and by virtue of the laws of the State of _____,
as principal, and _____,
as Surety, do hereby acknowledge ourselves to be indebted and firmly bound and held unto
the City of Memphis, Tennessee (herein called the "City"), a corporation existing under and
by the virtue of the laws of the State of Tennessee, for the use and benefit of those entitled
thereto, in the penal sum of _____ (\$ _____)
for the payment of which will and truly to be made, in lawful money of the United States, we
do hereby bind ourselves, our heirs, personal representatives, successors and assigns firmly
by these presents.

BUT the condition of the foregoing Obligation or Bond is this:

WHEREAS, the Applicant and/or Applicant's Contractor desires to perform a Street Cut in
the City's Right-of-way at the following locations: _____

Street Cut Permit No. _____ as more fully appears in the Memorandum
of Understanding prepared for Permit No. _____, a copy of which
said Memorandum is referenced hereby and made a part hereof, and it is the desire of the said
City that the said Applicant and/or Applicant's Contractor shall assure and protect all
laborers and furnishers of material on said work as required by Tennessee Code Annotated
Sections 12-4-201 through 12-4-208 and any amendments thereto, and also independently of
said statutes;

NOW THEREFORE, if said Applicant or Applicant's Contractor shall fully and faithfully
perform all undertakings and Obligations under the conditions of the Permit herein before
referred to and shall fully indemnify and save harmless the said City from all costs on the
part of said Applicant or Applicant's Contractor so to do, and shall fully reimburse and repay
the said City any and all outlay and expense which it may incur in making good any such
default, and shall fully pay for all of the labor, material, and work used by said Applicant
and/or Applicant's contractor or any immediate or remote "Contractor" or furnishers of
material under them the performance of said permitted work, in lawful money of the United
States, as the same shall become due, then this Obligation or Bond shall be null and void,
otherwise to remain in full force and effect.

And, for value received, it is hereby stipulated and agreed that no change, extension of time,
alteration or addition to the terms of the said Permit or to the work to be performed there
under or the specifications accompanying the same shall in anywise affect the obligations
under this Obligation or Bond, and notice is hereby waived of any such change, extension of
time, alteration or addition to the terms of the Permit or the work or to the specifications.

In witness whereof, the said Applicant or Applicant's Contractor has hereunto affixed his Signature and said Surety has hereunto caused to be affixed its Corporate Signature and Seal, by its duly authorized officers, on this _____ day of _____, .

Applicant and/or Applicant's Contractor

Surety Name:

By: _____
Print Name

Surety Address:

Signature

Title

For Corporations Only:

By Surety:

Attest: _____

Corporate Secretary

Tennessee Resident Agent Name:

Applicant or Applicant's Contractor
Address:

Tennessee Resident Agent Address:

By Tennessee Resident Agent:

*Note: If Bond is executed by a surety with Officers outside the State of Tennessee, the above counter signature by an agent within the State of Tennessee is **REQUIRED** By the City of Memphis. Please attach a copy of the Power of Attorney to the Bond.*

Attorney: _____