

COUNTY OF SANTA CRUZ

AGREEMENT FOR Pavement Life Performance Warranty

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the COUNTY OF SANTA CRUZ, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and _____, a public agency, public utility or district formed under the laws of the State of California, hereinafter referred to as "UTILITY".

RECITALS

WHEREAS, UTILITY will, from time-to-time, be required to make excavations in COUNTY streets as necessary for laying utility lines, maintenance, and for various purposes; and

WHEREAS, COUNTY has enacted Ordinance No. ____ adding Chapter 9.80 to Division II Roads of Title 9 to the Santa Cruz County Code, finding that any entity, including County owned utilities, making and benefiting from an excavation in County streets be required to pay the COUNTY a Trench Cut Cost Recovery Fee; and

WHEREAS, in-lieu of paying a Trench Cut Cost Recovery Fee the entity making an excavation in a COUNTY street may enter into an Agreement with COUNTY that provides a Pavement Life Performance Warranty for the trench influence area of all trenches that entity made or thereafter makes, and which provides that the UTILITY shall repair and restore the Public right of way in the event that subsurface material or pavement over or within the trench influence area becomes depressed, broken, or otherwise fails at any time after the excavation has been completed, unless the UTILITY demonstrates that the pavement damage is unrelated to the excavation;

WHEREAS, the entities signatory to the Pavement Life Performance Warranty, upon written notice of deteriorated pavement within the trench influence area, shall make repairs to the trench influence area affected in a timely fashion, in a manner meeting industry standards, and to the reasonable satisfaction of the County; and

WHEREAS, in accordance with Chapter 9.80 of the Santa Cruz County Code, trench cut cost recovery fees shall still apply to those companies participating in the Pavement Life Performance Warranty option when they trench into a new or newly resurfaced street within a three-year period from the construction or resurfacing to encourage advance planning; and

WHEREAS, the assessment of pavement damage fees for those entities that are signatory to the Pavement Life Performance Warranty shall be at the reasonable discretion of the Santa Cruz County Public Works Director based upon industry standards and the Public Works' pavement management system's assessment of the accelerated pavement deterioration for the trench influence area; and

WHEREAS, UTILITY is willing to provide a Pavement Life Performance Warranty for the quality of its trench restoration work in repairing and replacing the street within the trench influence area as near as may be to its former state or so as not to have impaired its usefulness after said trench excavation; and

WHEREAS, COUNTY is willing to accept such warranty from UTILITY in-lieu of trench cut cost recovery fees, as provided in, and subject to the limitations set forth in, Chapter 9.80 of the Santa Cruz County Code

NOW, THEREFORE, incorporating the foregoing recitals herein, COUNTY and UTILITY mutually agree as follows:

1. **WARRANTY.** In the event that subsurface material or pavement over or within the Trench Influence Area becomes depressed, broken, or otherwise fails at any time after an excavation (or joint operation excavation) has been completed by the UTILITY, or its agents, UTILITY hereby guarantees to repair, replace and restore that portion of the street pursuant to the procedure set forth in Santa Cruz County Code Section 9.80.095, for the life of the street. UTILITY is not obligated to repair subsurface or pavement damage if the UTILITY demonstrates to the satisfaction of the County Public Works Director that the pavement damage is unrelated to the excavation. Where trench excavations occur within the pavement influence area, COUNTY shall apportion the repair to the parties. Excavations and joint operation excavations made by UTILITY, whether prior or subsequent to the date of this Agreement, shall be subject to this warranty. Should UTILITY fail to repair, replace or restore the street at any time during the useful life of the street, after notice and demand by COUNTY, COUNTY may cause the repair to be made and charge the amount of the repair to the UTILITY and after three (3) failures to make repair on any warranted trenches countywide upon demand and notice within a twenty-four (24) month period, COUNTY may at its discretion terminate the Pavement Life Performance Warranty Agreement with UTILITY and enforce trench cut cost recovery fees.
2. **ACCEPTANCE OF WORK OR SERVICES.** The acceptance of work or services or payment for work or services by the COUNTY shall not constitute a waiver of any provisions of this Agreement.
3. **ASSIGNMENT.** This Agreement shall not be assigned by any party, or any party substituted, without prior written consent of all the parties.
4. **EXECUTION.** This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.
5. **FORUM.** UTILITY shall observe and comply with all applicable federal, state, and County statutes, ordinances, regulations, directives, and laws. This Agreement shall be deemed to be executed within the State of California and construed with and governed by the laws of the State of California. Any action arising out of this Agreement shall be filed in any appropriate Santa Cruz County Court having jurisdiction or, if appropriate, in the United States District Court for the Northern District of California.

6. **MERGER AND MODIFICATION.** This Agreement sets forth the entire Agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in writing approved by the County Counsel and signed by all the parties.
7. **NEGATION OF PARTNERSHIP.** COUNTY shall not become or be deemed a partner or joint venture with UTILITY or associate in any such relationship with UTILITY by reason of the provisions of this Agreement. UTILITY shall not for any purpose be considered an agent, officer or employee of COUNTY.
8. **NON-INTEREST.** No officer or employee of the COUNTY shall hold any interest in this Agreement (California Code section 1090).
9. **WAIVER OF DEFAULT.** The failure of any party to enforce against another a provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.
10. **TERMINATION.** This Agreement may be terminated by any party upon ten (10) days written notice, served by mail or personal service, to all other parties in which case trench cut cost recovery fee will begin to be assessed on new trenches, but the obligation to repair trenches constructed prior to termination shall survive termination.
11. **CONSISTENCY WITH APPLICABLE LAW.** The terms of this warranty are intended to conform to the obligations of UTILITY under State law with respect to UTILITY's use of COUNTY streets, and not to impose additional conditions or obligations not authorized by State law. In the event of a future dispute between COUNTY and UTILITY concerning UTILITY's obligations hereunder or with respect to UTILITY's use of COUNTY streets, nothing herein shall be deemed to constitute a waiver by UTILITY of any objection or challenge to any term or condition imposed by COUNTY on the basis that such term or condition is not authorized under State law or that regulation by the COUNTY is preempted by State law under Article XI Section 7 of the California Constitution. Nothing herein shall constitute a waiver by COUNTY of any defense in connection with such a challenge by UTILITY.
12. **DEFINITIONS.** The definitions set forth in Santa Cruz County Code Section 9.80.020 are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

COUNTY OF SANTA CRUZ, a political
subdivision of the State of California

By _____
Chairman of the Board of Supervisors
of the County of Santa Cruz
("COUNTY")

_____, a public utility or
district under the laws of the State of California

By _____

Title _____

"UTILITY "

(SEAL)

ATTEST: _____
Clerk of the Board of Supervisors

Approved as to form:

Assistant County Counsel