

ORDINANCE NO. 98-06

AN ORDINANCE REGULATING EXCAVATION WITHIN RIGHTS-OF-WAY IN THE CITY OF WENDOVER, TOOELE COUNTY, UTAH.

Preamble

A. The City of Wendover, Tooele County, Utah is authorized by Utah Code Annotated Title 10, Chapter 8, and by other provisions of law to enact rules and regulations governing the use of public rights of way within the City, including excavation therein.

B. The Utah League of Cities and Towns, in conjunction with various public and private entities has prepared and proposed a model Excavation Permit Ordinance.

C. The City has reviewed the proposed model Excavation Permit Ordinance, and deems it in the best interest of the City to adopt the same, with revisions designed to meet the special needs of the City.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF WENDOVER, TOOELE COUNTY, UTAH AS FOLLOWS:

Section 1. Adoption of Ordinance. An Ordinance regulating the use of rights-of-way in the City for purposes of excavation therein is adopted, to read in its entirety as set forth in Exhibit "A."

Section 2. Penalty and Remedies. In addition to any remedies described in the ordinance attached as Exhibit "A," any person who violates the requirements of this Ordinance shall be guilty of a Class B misdemeanor, and subject to the penalties provided by law. The City is authorized to initiate a civil action to enforce the provisions hereof. In the event a civil action is filed to enforce the provision of this Ordinance, the City shall be entitled to recover its costs and attorney's fees.

Section 3. Severability. If any section, paragraph, clause or provision of this ordinance shall be held invalid, unlawful or unenforceable, the same shall not effect the validity or enforceability of the remaining provisions of this Ordinance.

City of Wendover, Utah
Excavation Permit Ordinance

Section 5. Effective Date. This ordinance shall become effective twenty days after publication or posting or 30 days after final passage by the governing body, whichever is closer to final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF WENDOVER, TOOELE COUNTY, UTAH THIS 4TH DAY OF FEBRUARY, 1998.

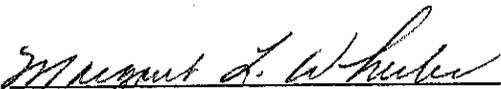
THE CITY OF WENDOVER

BY:



KENT PETERSON
MAYOR

ATTEST:



MARGARET WHEELER
CITY RECORDER

EXHIBIT "A"

CITY OF WENDOVER, UTAH
EXCAVATION PERMIT ORDINANCE

EXCAVATION PERMIT ORDINANCE

1. DEFINITIONS.

(1) "Applicant" means any Person who makes application for a permit.

(2) "Business" means any place in the City in which there is conducted or carried on principally or exclusively any pursuit or occupation for the purpose of gaining a livelihood.

(3) "City" means the City of Wendover, Tooele County, Utah, a municipal corporation of the State of Utah.

(4) "City Engineer" means the City Engineer, or his /her authorized representative.

(5) "Emergency" means any unforeseen circumstances or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of utility or public services.

(6) "Engineering Regulations," "Regulations," "Specifications," and/or "Design Standards" mean the latest version of the Engineering Regulations, specifications, design standards or criteria published or adopted by the City Engineer.

(7) "Failure" means a Work Site Restoration which fails to meet City Engineer Specifications, or which results in a deteriorated or substandard condition within the duration of the warranty period. Failure may be settlement of surfaces, deterioration of materials, or of their surface irregularities. Measurement of Failure shall be further defined in the Engineering Regulations.

(8) "Infrastructure Provider" means a Person providing to another, for the purpose of providing Telecommunication services to customers, all or part of the necessary System which uses the right-of-way.

(9) "Operator" means any Person who provides service over a Telecommunications System and directly or through one or more affiliates owns a controlling interest in such System, or who otherwise controls or is responsible for the operation of such a System.

(10) "Permittee" means any Person which has been issued a permit and thereby has agreed to fulfill the requirements of this Chapter.

(11) "Person" means and includes any natural Person, partnership, firm, association, Provider, corporation, company, organization, or entity of any kind.

(12) "Pipe Driveway" means a driveway approach which uses a pipe or other means to bridge the gutter.

(13) "Property Owner" means Person or Persons who have legal title to property and/or equitable interest in the property, or the ranking official or agent of a company having legal title to property and/or equitable interest in the property.

(14) "Provider" means an Operator, Infrastructure Provider, Reseller, System Lessee, or Public Utility Company.

(15) "Public Utility Company" means any company subject to the jurisdiction of the Utah State Public Service Commission, or any mutual corporation providing gas, electricity, water, telephone, or other utility product or services for use by the general public.

(16) "Public Way" means and includes all public rights-of-way and easements, public footpaths, walkways and sidewalks, public streets, public roads, public highways, public alleys, and public drainage ways. It does not, however, include utility easements not within Public Ways of the City.

(17) "Private Drain Line" means a pipe installed solely for the transmission of water collected or generated on private property such as drainage, spring, or storm water, or condensate into the public drainage system.

(18) "Reseller" refers to any Person that provides service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission and does not install any System in the rights-of-way.

(19) "Resident" means the Person or Persons currently making their home at a particular dwelling.

(20) "Storm Drain" means a dedicated pipe, conduit, water way, or ditch installed in a right-of-way or easement for the transmission of storm and drainage water. This term does not include Private Drain Lines.

(21) "System Lessee" refers to any Person that leases a System or a specific portion of a System to provide services.

(22) "Telecommunications System" or "System" means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and Appurtenances owned, leased, or used by a Provider located in the construction, ownership, operation, use or maintenance of a Telecommunications System.

(23) "Work Site Restoration" means and includes the restoring of the original ground or paved hard surface area to comply with Engineering Regulations, and includes but is not limited to repair, cleanup, backfilling, compaction, and stabilization, paving and other work necessary to place the site in acceptable condition following the conclusion of the work, or the expiration or revocation of the permit.

2. PERMIT REQUIRED; BASIS FOR ISSUANCE.

Any Person desiring to perform work of any kind in a Public Way within the City, shall make application for a permit. The decision by the City to issue a permit shall include, among other factors determined by the City, the following:

a. The capacity of the Public Way to accommodate the facilities or structures proposed to be installed in the Public Way;

b. The capacity of the Public Way to accommodate multiple wire in addition to cables, conduits, pipes or other facilities or structures of other users of the Public Way, such as electrical power, telephone, gas, sewer and water;

c. The damage or disruption, if any of public or private facilities, improvements, or landscaping previously existing in the Public Way;

d. The public interest in minimizing the cost and disruption of construction from numerous excavations of the Public Way.

3. PERMIT APPLICATION REQUIREMENTS.

(1) Application for a permit shall be filed with the City Engineer on a form or forms to be furnished by the City. Property owners and/or tenants for whom work is being done shall be responsible for obtaining the permits, provided, however, contractors may obtain the permit in the contractor's name.

(2) No Person shall be eligible to apply for or receive permits to do work within the Public Ways of the City, save and except the following:

(a) Contractors licensed by the state as general contractors;

(b) Providers;

(c) Property owners installing, replacing, or maintaining less than five hundred square feet or one hundred linear feet of sidewalk, curb, and gutter, or driveway approach, or other work approved by the City Engineer, upon a portion of the Public Way adjacent to their residence; or

(d) Persons offering a service which requires occupation of the Public Way, such as scaffold or staging, staging of a crane, installation or maintenance of electric signs, glass, awnings, and painting or cleaning of buildings or sign boards or other structures.

(3) The City Engineer may deny the issuance of permits to contractors, utility companies, or other permit Applicants who have shown by past performance that in the opinion of the City Engineer they will not consistently conform to the Engineering Regulations, Specifications, Design Standards, or the requirements of this Chapter.

(4) When necessary, in the judgment of the City Engineer, to fully determine the relationship of the work proposed to existing or proposed facilities within the Public Ways, or to determine whether the work proposed complies with the Engineering Regulations, construction Specifications and Design Standards, the City Engineer may require the filing of engineering plans, Specifications and sketches showing the proposed work in sufficient detail to permit determination of such relationship or compliance, or both, and the application shall be deemed suspended until such plans and sketches are filed and approved.

(5) It shall be unlawful for any Person to commence work upon any Public Way until the City Engineer has approved the application and until a permit has been issued for such work, except as specifically approved to the contrary in this Chapter.

(6) The disapproval or denial of an application by the City Engineer may be appealed by the Applicant to the City Council by filing of a written notice of appeal within ten days of the action of the City Engineer. The City Council shall hear such appeal, if written request therefor be timely filed as soon as practicable, and render his/her decision within two weeks following notice of such appeal.

(7) In approving or disapproving work within any Public Way, or permits therefor, in the inspection of such work; in reviewing plans, sketches or Specifications; and generally in the exercise of the authority conferred upon him/her by this Chapter, the City Engineer shall act in such manner as to preserve and protect the Public Way and the use thereof, but shall have no authority to govern the actions or inaction of Permittees and Applicants or other Persons which have no relationship to the use, preservation or protection of the Public Way.

(8) It shall be lawful for a City, County, State, Federal or other government employee to perform routine maintenance work, not involving excavations, without first having obtained a permit therefor.

(9) A permit is not required from the City Engineer for hand digging excavations for installation or repair of sprinkler systems and landscaping within the non-paved areas of the Public Way. However, conformance to all City Specifications is required.

4. EMERGENCY WORK.

(1) Any Person maintaining pipes, lines, or facilities in the Public Way may proceed with work upon existing facilities without a permit when Emergency circumstances demand the work to be done immediately; provided a permit could not reasonably and practicably have been obtained beforehand.

(2) In the event that Emergency work is commenced on or within any Public Way of the City during regular business hours, the City Engineer shall be notified within one-half hour from the time the work is commenced. The Person commencing and conducting such work shall take all necessary safety precautions for the protection of the public and the direction and control of traffic, and shall insure that work is accomplished according to City Engineering Regulations, the Manual on Uniform Traffic Control Devices and other applicable laws, regulations, or generally recognized practices in the industry.

(3) Any Person commencing Emergency work in the Public Way during other than business hours without a permit shall immediately thereafter apply for a permit or give notice during the first hour of the first regular business day on which City offices are open for business after such work is commenced. A permit for such Emergency work may be issued which shall be retroactive to the date when the work was begun, at the discretion of the City Engineer.

5. PERMIT FEES.

(1) The City shall charge and the Permittee shall pay upon issuance of the permit, fees for costs associated with the work performed under the permit as outlined in the Consolidated Fee Schedule. Such costs could include costs for reviewing the project and issuing the permit, inspections of the project, deterioration of the Public Way or diminution of the useful life of the Public Way, and other costs to the City associated with the work to be done under the permit. All costs shall be assessed in a non-discriminatory manner.

(2) The City Engineer may waive permit fees or penalties or portion thereof provided for in this Chapter, when he/she determines that such permit fee or penalty:

(a) pertains to construction or rehabilitation of housing for Persons whose income is below the median income level for the City; or

(b) pertains to an encroachment on the Public Way involving a beautification project which furthers specific goals and objectives set forth in the City's strategic plan, master plans, or other official documents, including decorative street lighting, building facade lighting, flower and planter boxes, and landscaping.

(3) Additional charges to cover the reasonable cost and expenses of any required engineering review, inspection, and Work Site Restoration associated with each undertaking may be charged by the City to each Permittee, in addition to the permit fee.

6. PERMIT - CONTENTS - DURATION AND EXTENSIONS.

(1) Each permit application shall state the starting date and estimated completion date. Work shall be completed within five days from the starting date or as determined by the City Engineer. Such determination shall be based upon factors reasonable related to the work to be performed under the permit. Such factors may include, in addition to other factors related to the work to be performed, the following:

(a) The scope of work to be performed under the permit;

(b) Maintaining the safe and effective flow of pedestrian and vehicular traffic on the Public Way affected by the work;

(c) Protecting the existing improvements to the Public Way impacted by the work;

(d) The season of the year during which the work is to be performed as well as the current weather and its impact on public safety and the use of the Public Way by the public;

(e) Use of the Public Way for extraordinary events anticipated by the City.

The City Engineer shall be notified by the Permittee of commencement of the work within twenty-four hours prior to commencing work. The permit shall be valid for the time period specified in the permit.

(2) If the work is not completed during such period, prior to the expiration of the permit, the Permittee may apply to the City Engineer for an additional permit or an extension, which may be granted by the City Engineer for good cause shown.

(3) The length of the extension requested by the Permittee shall be subject to the approval of the City Engineer. No extension shall be made that allows work to be completed in the winter period without payment of winter fees.

7. PERMIT - NO TRANSFER OR ASSIGNMENT.

Permits shall not be transferable or assignable, and work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a Permittee from subcontracting the work to be performed under a permit; provided, however, that the holder of the permit shall be and remain responsible for the performance of the work under the permit, and for all bonding, insurance and other requirements of this Chapter and under said permit.

8. COMPLIANCE WITH SPECIFICATIONS, STANDARDS, TRAFFIC-CONTROL REGULATIONS; SITE PERMITTEE IDENTIFICATION.

(1) The work performed in the Public Way shall conform to the requirements of the Engineering Regulations, Design Standards, construction Specifications and traffic control regulations of the City, copies of which shall be available from the City Engineer, kept on file in the office of the City Recorder and be open to public inspection during office hours.

(2) Where a job site is left unattended, before completion of the work, signage with minimum two inch high letters shall be attached to a barricade or otherwise posted at the site, indicating the Permittee's name, or company name, telephone number, and after hours telephone number.

(3) All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to Residents and Businesses fronting the Public Way shall be minimized. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or Persons. Barricades must be in place until all of the Permittee's equipment is removed from the site and the excavation has been backfilled and proper temporary gravel surface is in place, except where backfilling and resurfacing is to be done by the City; in which case the barricades, together with any necessary lights, flares or torches, must remain in place until the backfill work is actually commenced by the City. From sunset to sunrise, all barricades and excavations must be clearly outlined by adequate signal lights, torches, etc. The Police Department and Fire Department shall be notified at least 24 hours in advance of any planned excavation requiring street closure or traffic detour.

9. OTHER HIGHWAY PERMITS.

(1) Holders of permits for work on highways owned or under the jurisdiction of other government entities, but located within the City limits, shall not be required to obtain permits from the City under the provisions of this Chapter, unless the work extends beyond the back side of the curb, or beyond any other designated jurisdictional boundary. Any City permit shall not be construed to permit or allow work on a County road on a State highway within the City without an applicable County or State permit.

(2) The City Engineer, in his or her discretion, shall have the right and authority to regulate work under permits issued by other governmental entities with respect to hours and days of work, and measures required to be taken by the Permittee of said governmental entity for the protection of traffic and safety of Persons and property. Notwithstanding the foregoing, nothing in this Chapter shall be construed to impose any duty, implied or express, on the City or its employees, officers, agents or assigns, relative to the protection of traffic and safety of Persons or property, arising out of the issuance of any permit issued by government entities other than the City, or arising out of any work performed on any Public Way owned or within the jurisdiction of the City.

10. RELOCATION OF STRUCTURES IN PUBLIC WAYS.

(1) The City Engineer may direct any Person owning or maintaining facilities or structures in the Public Way to alter, modify or relocate such facilities or structures as the City Engineer may require as set forth herein. Sewers, pipes, drains, tunnels, conduits, Pipe Driveways, vaults, trash receptacles and overhead and underground gas, electric, telephone, telecommunication and communication facilities shall specifically be subject to such directives. The Person owning or maintaining the facilities or structures shall, at their own cost and expense and upon reasonable written notice by the City, promptly protect, or promptly alter or relocate such facilities or structures, or part thereof, as directed by the City. In the event that such Person refuses or neglects to conform to the directive of the City, the City shall have the right to break through, remove, alter or relocate such part of the facilities or structures without liability to such Person. Such Person shall pay to the City all costs incurred by the City in connection with such work performed by the City, including also design, engineering, construction, materials, insurance, court costs and attorneys fees.

(2) Any directive by the City Engineer shall be based upon of the following:

(a) The facility or structure was installed, erected or is being maintained contrary to law, or determined by the City Engineer to be structurally unsound or defective;

(b) The facility or structure constitutes a nuisance as defined under State statute;

(c) The permit under which the facility or structure was installed has expired or has been revoked;

(d) The Public Way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction; or

(e) The grades or lines of the Public Way are to be altered or changed.

(3) Any directive of the City Engineer under this Section shall be under and consistent with the City's police power. Unless an emergency condition exists, the City Engineer shall make a good faith effort to consult with the Person regarding any condition that may result in a removal or relocation of facilities in the Public Way to consider possible avoidance or minimization of removal or relocation requirements and provide the directive as far enough in advance of the required removal or relocation to allow the Person a reasonable opportunity to plan and minimize cost associated with the required removal or relocation.

(4) This obligation does not apply to facilities or structures originally located on private property pursuant to a private easement, which property was later incorporated into the Public Way, if that prior private easement grants a superior vested right.

(5) Any Person owning or maintaining facilities or structures in the Public Way who fails to alter, modify or relocate such facilities or structures upon notice to do so by the City Engineer shall be guilty of a class B misdemeanor. All costs of alteration, modification or relocation shall be borne by the Person owning or maintaining the facilities or structures involved.

(6) The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Public Way, in which event the City shall not be liable therefor to a Person. The City shall notify a Person in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this subsection.

11. IMPACT OF EXCAVATION ON EXISTING IMPROVEMENTS.

(1) If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel and convenient for users, and consistent with City standards for such.

(2) Where excavations are made in paved areas, the surface shall be replaced with a temporary gravel surface until such time as the permanent repairs are completed.

(3) (a) At any time a Permittee disturbs the yard, residence or the real or Personal property of a private Property Owner or the City, such Permittee shall insure that such property is returned, replaced and/or restored to a condition that is comparable to the condition that existed prior to the commencement of the work.

(b) The costs associated with the disturbance and the return, replacement and/or restoration shall be borne by the Permittee. Further, a Permittee shall reimburse a Property Owner or the City, for any actual damage caused by the Permittee, its subcontractor, or its independent contractor, in connection with the disturbance of such property. However, nothing in this Subsection shall require the Permittee to pay a subscriber or private Property Owner when that subscriber or private Property Owner requests that the Permittee remove, replace or relocate improvements associated with the service provided by the Permittee to the Property Owner and when the Permittee exercises due care in the performance of that service, or when the subscriber or

private Property Owner provided false information to the Permittee on which the Permittee relied to its detriment.

(4) Examples of types of acts specifically included in this Section are the following:

(a) Removal of sod, lawn, shrubbery, flowers, trees, driveways, or fence, to install, trench, repair, replace, remove or locate, equipment, cable or other Appurtenances of the Permittee;

(b) Installation or removal of equipment or other Appurtenances of the Permittee's System within a private Property Owner's property or residence which requires drilling, excavating, plastering, or the like on the part of the Permittee;

(c) Temporarily relocating or moving a piece of personal property or a fixture of a private Property Owner (such as a motor vehicle, fence, air conditioning, heating unit, or the like) in order to perform some sort of construction, maintenance or repair by the Permittee; or

(d) Permanently removing a Permittee's equipment or other Appurtenances due to the revocation, termination or non-renewal of the franchise (if applicable).

(5) Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for approval by the City Engineer prior to the blockage of the channel.

(6) The requirements imposed upon the Permittee extend to any subcontractor or independent contractor that the Permittee might employ to perform the tasks pursuant to the permit.

(7) The requirements of this Section shall not apply to the removal by a Permittee, of a permanent structure placed by a Property Owner in a Public Way, unless such Property Owner has received prior written permission from the City granting the Property Owner the right to install a permanent structure on a Public Way, and such written permission has been recorded in the office of the County Recorder.

12. RESTORATION OF PUBLIC PROPERTY.

(1) The Permittee shall, at its own expense, restore the surface of any Public Way to its original condition and replace any removed or damaged pavement with the same type and depth of pavement as that which is adjoining, including the gravel base material. All restoration shall conform to the Engineering Regulations, Design Standards and Specifications promulgated by the City and shall be accomplished within the time limits set forth in the permit, unless additional time is granted in writing by the Department.

(2) At its option, the Permittee doing the actual excavation work may request that the City restore the surface to its original condition. The fee for such resurfacing shall be determined by the City Engineer in accordance with its reasonable costs for such work and shall be charged to the

Person, firm, or corporation making the excavation. Payment for said work shall be received by the City prior to the release of the bond.

13. INSURANCE REQUIREMENTS.

(1) Before a permit is issued, the Applicant shall furnish to the City evidence that such Applicant has a comprehensive general liability and property damage policy that includes contractual liability endorsed with the following limits and provisions or with such alternative limits and provisions as may be approved by the City:

(a) A minimum of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage and not less than One Million Dollars (\$1,000,000) in the aggregate. The general aggregate limit shall apply separately to the permit, or the general aggregate limit shall be two times the required occurrence limit. The coverage shall be in the nature of Broad Form Commercial General Liability coverage. The City Attorney may increase or decrease minimum insurance limits, depending on the potential liability of any project.

(b) All policies shall include the City, its employees, officers, officials, agents, volunteers and assigns, as insureds. Any reference to the "City" shall include the City, its employees, officers, officials, agents, volunteers and assigns.

(c) The coverage shall be primary insurance as respects the City, its employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the City, its employees, officers, officials, agents, volunteers, and assigns shall be in excess of the Permittee's insurance and shall not contribute to or with it.

(d) Any Failure to comply with reporting provisions of the policy shall not effect coverage provided to the City, its employees, officers, officials, agents, volunteers, and assigns.

(e) Coverage shall state that the Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(f) Underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

(g) The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy.

(h) Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested sent to the City.

(i) Each policy shall be endorsed to indemnify, save harmless and defend the City and its officers and employees against any claim or loss, damage or expense sustained on account

of damages to Persons or property occurring by reason of permit work done by the Permittee, his/her subcontractor or agent, whether or not the work has been completed and whether or not the right-of-way has been opened to public travel.

(j) Each policy shall be endorsed to indemnify, hold harmless and defend the City, and its officers and employees against any claim or loss, damage or expense sustained by any Person occurring by reason of doing any work pursuant to the permit including, but not limited to falling objects or failure to maintain proper barricades and/or lights as required from the time work begins until the work is completed and right-of-way is opened for public use.

(2) Insurance is to be placed with insurers with an AM Best rating of no less than an A carrier, with a rating of "7" or higher.

(3) The Permittee shall furnish the City with certificates of insurance and original endorsements affecting coverage required by the permit. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The City expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, the Permittee shall be prepared to provide such copies prior to the issuance of the permit.

(4) If any of the required policies are, or at any time become, unsatisfactory to the City as to form or substance, or if a company issuing any such policy is, or at any time becomes, unsatisfactory to the City, the Permittee shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit verification of coverage as required by the City. Upon failure to furnish, deliver and maintain such insurance as provided herein, the City may declare the permit to be in default and pursue any and all remedies the City may have at law or in equity, including those actions outlined in this Chapter.

(5) The Permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(6) Any deductibles or self-insured retentions shall be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its employees, officers, officials, agents, volunteers or assigns, or the Permittee shall procure a bond, in a form acceptable to the City, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(7) A Property Owner performing work adjacent to his/her residence may submit proof of a homeowner's insurance policy in lieu of the insurance requirements of this Section.

(8) A Provider may be relieved of the obligation of submitting certificates of insurance under the following circumstances:

(a) if such company shall submit satisfactory evidence in advance that:

(i) It is insured in the amounts set forth in this Chapter, or has complied with State requirements to become self insured. Public utilities may submit annually evidence of insurance coverage in lieu of individual submissions for each permit; and

(ii) Said coverage provides to the City the same scope of coverage that would otherwise be provided by a separate policy as required by this Chapter; or

(b) The work to be performed under the permit issued to the Applicant is to be performed by the City, in which case insurance or other risk transfer issues shall be negotiated between the City and the Applicant by separate agreement.

14. BOND - WHEN REQUIRED, CONDITIONS, WARRANTY.

(1) Except as noted in this Chapter, each Applicant, before being issued a permit, shall provide the City with an acceptable security (this may include a corporate surety bond, cash bond or letter of credit, as determined by the City) in the amount of one-hundred thirty percent (130%) of the total anticipated cost of the project to guarantee faithful performance of the work authorized by a permit granted pursuant to this Chapter. The amount of the security required may be increased or decreased at the discretion of the City Engineer whenever it appears that the amount and cost of the work to be performed, and not satisfactorily completed, may vary from the amount of security otherwise required under this Chapter. The form of the security and the entity issuing the security shall be subject to the approval of the City Attorney.

(2) Public utilities franchised by the City shall not be required to file any security if such requirement is expressly waived in the franchise documents.

(3) The security required by this Section shall be conditioned as follows:

(a) That the Permittee shall fully comply with the requirements of the City ordinances and Regulations, Specifications and standards promulgated by the City relative to work in the Public Way, and respond to the City in damages for failure to conform therewith;

(b) That after work is commenced, the Permittee shall proceed with diligence and expedition and shall promptly complete such work and restore the Public Way to construction Specifications, so as not to obstruct the public place or travel thereon more than is reasonably necessary;

(c) That the Permittee shall guarantee the materials and workmanship for a period of two years from completion of such work, with reasonable wear and tear excepted; and

(d) That unless authorized by the City Engineer on the permit, all paving, resurfacing or replacement of street facilities on major or collector streets shall be done in conformance with the regulations contained herein within three calendar days, and within seven calendar days from the time the excavation commences on all other streets, except as provided for during excavation in winter or during weather conditions which do not allow paving according to Engineering Regulations. In winter, a temporary patch must be provided. In all excavations, restoration or pavement surfaces shall be made immediately after

backfilling is completed or concrete is cured. If work is expected to exceed the above duration, the Permittee shall submit a detailed construction schedule for approval. The schedule will address means and methods to minimize traffic disruption and complete the construction as soon as reasonably possible.

15. HOLD HARMLESS AGREEMENT; LIMITATIONS ON CITY LIABILITY.

(1) The Permittee agrees to save the City, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under the permit. The issuance and acceptance of any permit under this Chapter shall constitute such an agreement by the Permittee to this Section.

(2) This Chapter shall neither be construed as imposing upon the City, its officers, employees and agents, any liability or responsibility for damages to any Person injured by or by reason of the performance of any work within the Public Way, or under a permit issued pursuant to this Chapter; nor shall the City, its officers, officials, employees, agents, volunteers or assigns thereof be deemed to have assumed any such liability or responsibility by reason of inspection authorized hereunder, the issuance of any permit, or the approval of any work.

16. WORK WITHOUT PERMIT - PENALTY.

(1) A stop order may be issued by the City Engineer directed to any Person or Persons doing or causing any work to be done in the public way without a permit. The abutting Property Owner shall be responsible for causing work to be done.

(2) Any Person found to be doing work in the Public Way without having obtained a permit, as provided in this Chapter, shall be required to pay a permit fee equal to two times the normal permit fee. For replacement work, where a fee is not normally charged, the normal fee for new construction shall apply.

17. FAILURE TO COMPLY; DEFAULT IN PERFORMANCE.

(1) Any permit may be revoked or suspended and a stop order issued by the City Engineer, after notice to the Permittee for:

(a) Violation of any condition of the permit, the security, or of any provision of this Chapter;

(b) Violation of any provision of any other ordinance of the City or law relating to the work; or

(c) Existence of any condition or the doing of any act which does constitute, may constitute, or cause a condition endangering life or property.

(2) A suspension or revocation by the City Engineer, and a stop order, shall take effect immediately upon entry thereof by the City Engineer and notice to the Person performing the work in the Public Way. Notice to the Person performing the work shall be accomplished when the City

Engineer has posted a stop work order at the location of the work and written notice has been mailed, return receipt requested, to the address indicated by the Permittee on the permit.

(3) Whenever the City Engineer finds that a default has occurred in the performance of any term or condition of the permit, written notice thereof may be given to the principal and to the surety on the bond, if there is a surety bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the City Engineer to be reasonably necessary for the completion of the work.

(4) In the event that the surety (or principal), within a reasonable time following the giving of such notice (taking into consideration the exigencies of the situation, the nature of the work, the requirements of public safety and for the protection of Persons and property), fails either to commence and cause the required work to be performed with due diligence, or to indemnify the City for the cost of doing the work, as set forth in the notice, the City may perform the work, at the discretion of the City Engineer, with City forces or contract forces or both, and suit may be commenced by the City Attorney against the contractor and bonding company and such other Persons as may be liable, to recover the entire amount due to the City, including attorney fees, on account thereof. In the event that cash has been deposited, the cost of performing the work may be charged against the amount deposited, and suit brought for the balance due, if any.

18. FAILURE TO CONFORM TO DESIGN STANDARDS - PENALTY.

For failure to conform to the Design Standards and Regulations, the City Engineer may:

- (1) Suspend or revoke the permit;
- (2) Issue a stop order;
- (3) Order removal and replacement of faulty work;
- (4) Require an extended warranty period; and/or
- (5) Negotiate a cash settlement to be applied toward future maintenance costs.

19. APPEAL OF SUSPENSION, REVOCATION, OR STOP ORDER.

Any suspension, revocation or stop order by the City Engineer may be appealed by the Permittee to the City Council by filing a written notice of appeal within ten days of the action of the City Engineer. The City Council shall hear such appeal, if written request therefor be timely filed, as soon as practicable, and render his/her decision within a reasonable time following filing of notice of appeal.

20. TAMPERING WITH TRAFFIC BARRICADES.

It shall be unlawful for any Person to maliciously or wantonly or without authorization and legal cause, extinguish, remove or diminish any light illuminating any barricade or excavation, or to tear down, remove or in any manner alter any rail, fence or barricade protecting any excavation or other construction site.

21. CONFLICT WITH GOVERNING PROVISIONS.

Should there be a conflict between the provisions of this Chapter and the provisions of any other ordinance, agreement, franchise, or other document governing the excavation of a Public Way, the more restrictive provisions of the aforesaid documents shall apply.

22. VIOLATION - PENALTY.

Unless otherwise specified in this Chapter, a violation of any provision of this Chapter, or failure to comply with an order of suspension, revocation or stop work, shall be a class B misdemeanor. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the Person from otherwise complying with the provisions of this Chapter.