ARTICLE 3

Public Rights-of-Way

Division 1
Permits

Sec. 11-3-10. Purpose.

(a) Purpose. The purpose of this Article is to establish principles, standards and procedures for the placement of facilities, construction, excavation, encroachments and work activities within, under or upon any public right-of-way and to protect the integrity of the City's street system.

(b) Objectives. In the interests of the general welfare, public and private uses of public rights-of-way should be accommodated; however, the City must ensure that the primary purpose of the public right-of-way, passage of pedestrian and vehicular traffic, is protected. The use of the public rights-of-way by private users is secondary to these public objectives. This Article's objectives are to:

(1) Minimize public inconvenience.

(2) Protect the City's infrastructure investment by establishing repair standards for the pavement, facilities and property in the public rights-of-way.

(3) Standardize regulations and thereby facilitate work within the rights-of-way.

(4) Maintain an efficient permit process.

(5) Conserve and fairly apportion the limited physical capacity of public rights-of-way held in public trust by the City.

(6) Establish a public policy for enabling the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.

(7) Promote cooperation among permittees and the City in the occupation of the public rights-of-way, and work therein, in order to eliminate duplication of facilities that is wasteful, unnecessary or unsightly; lower the permittees' and the City's costs of providing services to the public; and minimize street cuts.

(8) Protect the public health, safety and welfare. (Prior code 12.04.010; Ord. 32 §1, 2011)

Sec. 11-3-20. Definitions.

For purposes of this Article, the following terms shall have the following meanings:

Access structure means any structure providing access to facilities in the public right-of-way.

Approved alignment means the designed horizontal and vertical alignment of facilities to be installed in the public right-of-way which is approved by the City at the time the permit is issued, plus

any alignment variance tolerances set forth in the Construction and Excavation Standards and any alignment variances approved by the City in accordance with the Construction and Excavation Standards.

Construction and Excavation Standards means the document entitled *Construction and Excavation Standards for Work in Public Rights-of-Way*, as adopted by resolution of the City Council and amended from time to time.

Contractor means a person, partnership, corporation or other legal entity which undertakes to construct, install, alter, move, remove, trim, demolish, repair, replace, excavate or add to any improvements or facilities in the public right-of-way, or that requires work, workers or equipment to be in the public right-of-way in the process of performing the above-named activities.

Developer means the person, partnership, corporation or other legal entity improving a parcel of land within the City and being legally responsible to the City for the construction of infrastructure within a subdivision or as a condition of a building permit.

Emergency means any event which may threaten public health or safety, or that results in an interruption in the provision of service, including but not limited to damaged or leaking water or gas conduit systems, damaged, obstructed or leaking sewer or storm drain conduit systems and damaged electrical and communications facilities.

Excavate or *excavation* means to dig into or in any way remove or penetrate any part of a public right-of-way, including trenchless excavation such as boring, tunneling and jacking.

Facilities means any pipe, conduit, wire, cable, amplifier, transformer, fiber optic cable, antenna, pole, streetlight, duct, fixture, appurtenance or other like equipment used in connection with transmitting, receiving, distributing, offering and providing utility and other services, whether above or below ground.

Infrastructure means any public facility, system or improvement, including water and sewer mains and appurtenances, storm drains and structures, streets, alleys, traffic signal poles and appurtenances, conduits, signs, landscape improvements, sidewalks and public safety equipment.

Landscaping means grass, ground cover, shrubs, vines, hedges, trees and nonliving natural materials commonly used in landscape development, as well as attendant irrigation systems.

Major installation means work in the public right-of-way involving an excavation exceeding five hundred (500) feet in length.

Permit means an authorization for use of the public rights-of-way granted pursuant to this Division.

Permittee means the holder of a valid permit issued pursuant to this Division.

Public right-of-way means any public street, way, place, alley, sidewalk, easement, park, square, median, parkway, boulevard or plaza that is dedicated to public use.

Routine maintenance means maintenance of facilities or landscaping in the public right-of-way which does not involve excavation, installation of new facilities, lane closures, sidewalk closures or damage to any portion of the public right-of-way.

Work means any labor performed within a public right-of-way or any use or storage of equipment or materials within a public right-of-way, including but not limited to excavation; construction of streets, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus loading pads, streetlights and traffic signal devices; construction, maintenance and repair of all underground facilities, such as pipes, conduit, ducts, tunnels, manholes, vaults, cable, wire or any other similar structure; maintenance of facilities and installation of overhead poles used for any purpose. Notwithstanding the foregoing, *work* shall not include routine maintenance. (Prior code 12.04.020; Ord. 32 §1, 2011)

Sec. 11-3-30. Authority.

(a) A permittee's rights hereunder shall at all times be subject to the authority of the City, which includes the power to adopt and enforce ordinances, including amendments to this Division, necessary for the safety, health and welfare of the public.

(b) The City reserves the right to exercise its authority, notwithstanding any provision in this Division or any permit to the contrary. Any conflict between the provisions of any permit and any other present or future lawful exercise of the City's police power shall be resolved in favor of the latter. (Prior code 12.04.030; Ord. 32 §1, 2011)

Sec. 11-3-40. Developer ownership of infrastructure.

The construction of infrastructure in new developments is the responsibility of the developer. Once a public right-of-way has been dedicated to the City, all work in that public right-of-way, including the installation of new infrastructure by a developer, shall be subject to this Chapter. (Prior code 12.04.050; Ord. 32 §1, 2011)

Sec. 11-3-50. Permit required.

(a) No person except an employee or official of the City or a person exempted by contract with the City shall undertake or permit to be undertaken any work in a public right-of-way without first obtaining a permit from the City as set forth in this Division. Copies of the permit and associated documents shall be maintained on the work site and available for inspection upon request by any officer or employee of the City.

(b) No permittee shall perform work in an area larger or at a location different, or for a longer period of time than that specified in the permit. If, after work is commenced under an approved permit, it becomes necessary to perform work in a larger or different area or for a longer period of time than what the permit specifies, the permittee shall notify the City immediately and shall file a supplementary application for the additional work within twenty-four (24) hours.

(c) Permits shall not be transferable or assignable without the prior written approval of the City.

(d) Any person conducting any work within the public right-of-way without having first obtained the required permit shall immediately cease all activity and obtain a permit before work may be resumed, except for emergency operations performed pursuant to Section 11-3-260. (Prior code 12.04.040; Ord. 32 §1, 2011)

Sec. 11-3-60. Permit application.

(a) An applicant for a public right-of-way permit shall file a written application on a form furnished by the City, which includes the following information:

(1) The date of application.

(2) The name, address and telephone number of the applicant and any contractor or subcontractor which will perform any of the work.

(3) A plan showing the work site, the public right-of-way boundaries, all infrastructure in the area and all landscaping in the area.

(4) The purpose of the proposed work.

(5) A traffic control plan in accordance with the Construction and Excavation Standards.

(6) The dates for beginning and ending the proposed work, proposed hours of work and the number of actual work days required to complete the project.

(7) A copy of each contractor's license required by Chapter 6, Article 5.

(8) If applicable, documentation of the approval required by Subsection 11-3-180(c).

(b) The applicable permit fees as set by the Construction and Excavation Standards shall accompany the application when submitted.

(c) For any work in the public right-of-way which includes excavation, in addition to the information required by Subsection (a) hereof, the application shall include the following information:

(1) An itemization of the total cost of construction, including labor and materials but excluding the cost of any facilities being installed.

(2) Copies of all permits and licenses (including required insurance, deposits, bonds and warranties) required to do the proposed work, whether required by federal or state law or City resolution, ordinance or regulation.

(d) In addition to the information required by Subsections (a) and (c) hereof, an applicant for a public right-of-way permit for a major installation shall submit the following information:

(1) Field-verified locates of all existing facilities required to be located by the Construction and Excavation Standards, which locates shall be compiled and submitted according to the Construction and Excavation Standards and Section 11-3-170.

(2) Engineering construction drawings or site plans for the proposed work in a format acceptable to the City and signed by a professional engineer licensed in the State, except that an applicant expressly exempt from the signature requirement pursuant to Section 12-25-103, C.R.S., need not include the signature of a licensed professional engineer.

(e) An applicant shall update a permit application within ten (10) days after any material change occurs.

(f) Applicants may apply jointly for permits to work in public rights-of-way at the same time and place. Applicants who apply jointly for permits may share in the payment of the permit fees. Applicants must agree among themselves as to the portion each shall pay, and if no agreement is reached, payment in full shall be required of all applicants.

(g) The applicant for a public right-of-way permit and the eventual permittee shall be the owner of the facilities to be installed, maintained or repaired, rather than the contractor performing the work, except in the following circumstances:

(1) When the facilities being installed, maintained or repaired are service lines which provide water or sewer service to private property adjacent to the public right-of-way; in which case, the contractor or other person performing the work may be the applicant for the public right-of-way permit.

(2) When the work being performed in the public right-of-way is the installation, maintenance or repair of privately-owned landscaping or driveways; in which case, the contractor or other person performing the work may be the applicant for the public right-of-way permit.

(h) By signing an application, the applicant is certifying to the City that the applicant is in compliance with all other permits issued by the City and that the applicant is not delinquent in any payment due to the City for prior work. This certification shall not apply to outstanding claims which are honestly and reasonably disputed by the applicant, if the applicant and the City are negotiating in good faith to resolve the dispute. (Prior code 12.04.060; Ord. 32 §1, 2011)

Sec. 11-3-70. Blanket maintenance permits.

(a) A public right-of-way permit shall not be required for routine maintenance in the public right-of-way, as the term *routine maintenance* is defined in Section 11-3-20. However, other maintenance operations within the public right-of-way which involve traffic lane closures or sidewalk closures shall require a public right-of-way permit. To expedite the process for ongoing maintenance operations, owners of facilities within the public right-of-way may, at their sole option and in the alternative to obtaining individual public right-of-way permits, obtain a blanket maintenance permit pursuant to this Section.

(b) A blanket maintenance permit shall be valid from the date of issuance of the permit through December 31 of the same year. Under no circumstances shall a blanket maintenance permit be valid for more than one (1) year.

(c) A blanket maintenance permit shall not, under any circumstances, authorize any pavement disturbance or installation of new facilities. Notwithstanding the foregoing, existing facilities may be removed and replaced with new facilities, if no excavation or pavement disturbance is required.

(d) Any person seeking a blanket maintenance permit shall file an application on a form provided by the City which includes the following information:

(1) The date of application.

(2) The name, address and telephone number of the applicant.

(3) A general description of the maintenance operations.

(4) Any location of maintenance operations known at the time of application.

(5) Traffic control plans as required by this Section and the Construction and Excavation Standards.

(6) If applicable, documentation of the approval required by Subsection 11-3-180(c).

(e) The applicable permit fee as set by the Construction and Excavation Standards shall accompany the application when submitted.

(f) Blanket maintenance permits shall be subject to applicable provisions of the Construction and Excavation Standards.

(g) A blanket maintenance permit shall not require a performance bond, letter of credit or warranty. Work performed pursuant to a blanket maintenance permit shall not be subject to the specific inspections set forth in Section 11-3-140, but may be subject to random inspection by the City to ensure compliance with the terms of the blanket maintenance permit and applicable provisions of the Construction and Excavation Standards. (Prior code 12.04.070; Ord. 32 §1, 2011)

Sec. 11-3-80. City review and approval.

(a) An application for a public right-of-way permit shall be reviewed by the City for completeness within five (5) working days of submission. If the application is not complete, the City shall notify the applicant of all missing information within the five-day time period.

(b) Once an application is deemed complete by the City, the City shall review the application to determine whether the application complies with this Division and the Construction and Excavation Standards. The time for such review shall be as follows:

(1) For a public right-of-way permit which does not include excavation, within five (5) working days.

(2) For a public right-of-way permit which includes excavation but is not a major installation, within ten (10) working days.

(3) For a public right-of-way permit for a major installation, within fifteen (15) working days.

(c) At the conclusion of the review period, the City shall either approve the permit, approve the permit with conditions or deny the permit. If the permit is denied, the City shall send a written notice of denial to the permittee at the address listed on the application, via first-class mail, postage prepaid. The notice shall include the reason for denial. (Prior code 12.04.080; Ord. 32 §1, 2011)

Sec. 11-3-90. Permit fees.

(a) Before a public right-of-way permit is issued, the applicant shall pay to the City a permit fee, which shall be determined in accordance with the fee schedule contained in the Construction and Excavation Standards. Permit fees shall be reasonably related to the costs of managing the public rights-of-way. These costs include, but are not limited to, the costs of issuing right-of-way permits, verifying right-of-way occupation, mapping right-of-way occupation, inspecting work, administering this Division and, if applicable, costs relating to restoration of the public right-of-way to remedy degradation of that public right-of-way caused by the permittee.

(b) Restoration fees.

(1) Restoration fees shall only be charged to the applicant if the applicant chooses not to perform the required restoration of the public right-of-way to the City's standards, making the City responsible for performing the required restoration. The applicant shall decide at the time of application whether the applicant will perform the required restoration, and the applicant's decision shall be final.

(2) No restoration fees shall be required for a public right-of-way permit which does not include excavation.

(3) Restoration fees collected by the City shall be placed in a separate account for general street maintenance and construction.

(4) Restoration fees may be waived in the City's discretion when additional circumstances exist which would make restoration unnecessary, such as poor street quality or proposed street resurfacing or construction by the City. These circumstances are outlined in more detail in the section of the Construction and Excavation Standards addressing permit fees. (Prior code 12.04.090; Ord. 32 §1, 2011)

Sec. 11-3-100. Insurance.

(a) Unless otherwise specified in a franchise agreement or median maintenance agreement between a permittee and the City, prior to the granting of any permit, the permittee shall carry and maintain in full effect at all times the following insurance coverage:

(1) Commercial general liability insurance, including broad-form property damage, completed operations contractual liability, explosion hazard, collapse hazard, underground property damage hazard, commonly known as XCU, for limits not less then one million dollars ($1,000,000.00) each occurrence for damages of bodily injury or death to one (1) or more persons; and five hundred thousand dollars ($500,000.00) each occurrence for damage to or destruction of property.

(2) Workers compensation insurance as required by state law.

(b) The permittee shall file with the City proof of such insurance coverage in a form satisfactory to the City.

(c) Upon prior written approval of the City, a permittee may provide self-insurance with the minimum coverage limits set forth in Paragraphs (a)(1) and (a)(2) hereof. (Prior code 12.04.100; Ord. 32 §1, 2011)

Sec. 11-3-110. Indemnification.

(a) Each permittee, for himself or herself and his or her related entities, agents, employees, subcontractors and the agents and employees of said subcontractors shall hold the City harmless and defend and indemnify the City, its successors, assigns, officers, employees, agents and appointed and elected officials from and against all liability or damage and all claims or demands whatsoever in nature and reimburse the City for all its reasonable expenses, as incurred, arising out of any work or activity in the public right-of-way, including but not limited to the actions or omissions of the permittee, its employees, representatives, agents, contractors, related entities, successors and assigns or the securing of and the exercise by the permittee of any rights granted in the permit, including any third-party claims, administrative hearings and litigation, whether or not any act or omission complained of is authorized, allowed or prohibited by this Division or other applicable law. A permittee shall not be obligated to hold harmless or indemnify the City for claims or demands to the extent that they are due to the negligence or willful and wanton acts of the City or any of its officers, employees or agents.

(b) Following the receipt of written notification of any claim, the permittee shall have the right to defend the City with regard to all third-party actions, damages and penalties arising in any way out of the exercise of any rights in the permit. If at any time, however, a permittee refuses to defend the City, and the City elects to defend itself with regard to such matters, the permittee shall pay all expenses incurred by the City related to its defense, including reasonable attorney fees and costs.

(c) If a permittee is a public entity, the indemnification requirements of this Section shall be subject to the provisions of the Colorado Governmental Immunity Act.

(d) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the permittee and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement.

(e) If any provision of this Section conflicts with any provision of a valid, effective median maintenance agreement between a special district and the City, the conflicting provision of this Section shall not apply to the special district, and the special district shall instead honor the provision of the median maintenance agreement. (Prior code 12.04.110; Ord. 32 §1, 2011)

Sec. 11-3-120. Performance bonds and letters of credit.

(a) Before a public right-of-way permit is issued, the applicant shall file with the City a bond or letter of credit in favor of the City in an amount equal to the total cost of construction, including labor and materials but excluding the cost of any facilities being installed, or five thousand dollars ($5,000.00), whichever is greater. The bond or letter of credit shall be executed by the applicant as principal and by at least one (1) surety upon whom service of process may be had in the State. The bond or letter of credit shall be conditioned upon the applicant fully complying with all provisions of City ordinances,

resolutions and regulations and upon payment of all judgments and costs rendered against the applicant for any violation of any City resolution, regulation or ordinances or state law arising out of any negligent or wrongful acts of the applicant in the performance of work pursuant to the permit.

(b) The City may bring an action on the bond or letter of credit on its own behalf or on behalf of any person so aggrieved as beneficiary.

(c) The bond or letter of credit shall be approved by the City prior to the issuance of the permit. The City may waive the requirements of any such bond or letter of credit or may permit the applicant to post a bond without surety thereon, upon finding that the applicant has financial stability and assets located in the State to satisfy any claims intended to be protected against by the security required by this Section.

(d) A letter of responsibility, in a form acceptable to the City, shall be accepted from special districts and governmental agencies in lieu of a performance bond or letter of credit.

(e) A blanket bond of sufficient amount to cover all proposed work during the upcoming year may be filed with the City on an annual basis in lieu of the project-specific performance bonds or letters of credit required by Subsection (a) hereof. The form and amount of the blanket bond shall be subject to the prior review and approval of the City. Should the blanket bond be deemed insufficient by the City based on the work to date, the City may require additional, project-specific performance bonds or letters of credit pursuant to Subsection (a) hereof.

(f) The performance bond, blanket bond, letter of credit or letter of responsibility shall remain in force and effect for a minimum of two (2) years after completion and acceptance of the street cut, excavation or lane closure.

(g) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the applicant and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement.

(h) If any provision of this Section conflicts with any provision of a valid, effective median maintenance agreement between a special district and the City, the conflicting provision of this Section shall not apply to the special district, and the special district shall instead honor the provision of the median maintenance agreement. (Prior code 12.04.120; Ord. 32 §1, 2011)

Sec. 11-3-130. Warranty.

(a) A permittee, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in a manner acceptable to the City and in accordance with this Division and the Construction and Excavation Standards and warrants and guarantees all work done for a period of two (2) years after the date of probationary acceptance.

(b) Under the warranty, the permittee shall, at its own expense, repair or replace, at the discretion of the City, any portion of the work that fails, is defective, is unsound or is unsatisfactory because of design, engineering, materials or workmanship.

(c) The warranty period shall begin on the date of the City's probationary acceptance of the work. If repairs are required during the warranty period, those repairs need only be warranted until the end of the initial two-year period starting with the date of probationary acceptance.

(d) At any time prior to completion of the warranty period, the City may notify the permittee in writing of any needed repairs. If the defects are determined by the City to be an imminent danger to the public health, safety and welfare, the permittee shall begin repairs within twenty-four (24) hours of receipt of the written notice and continue the repairs until completion. Nonemergency repairs shall be completed within thirty (30) days after notice.

(e) The warranty shall cover only those areas of work performed by the permittee which provided the warranty and not directly impacted by the work of any other permittee or the City. If a portion of work warranted by a permittee is subsequently impacted by work of another permittee, another user of the right-of-way or the City during the warranty period, the other permittee or the City, as applicable, shall assume responsibility for repair to the subsequently impacted portion of the public right-of-way. (Prior code 12.04.130; Ord. 32 §1, 2011)

Sec. 11-3-140. Inspections.

(a) At a minimum, the following four (4) inspections shall take place:

(1) Preconstruction inspection. The permittee shall request that the City conduct a preconstruction inspection, to determine any necessary conditions for the permit.

(2) Completed work inspection. The permittee shall notify the City immediately after completion of work. The City shall inspect the work within twenty-one (21) days of the permittee's notification. Probationary acceptance shall be made if all work complies with this Division, the Construction and Excavation Standards and any other applicable City regulation, ordinance or resolution. Written notice of probationary acceptance shall be mailed by first-class mail, postage prepaid, to the permittee's address as listed on the permit application.

(3) Warranty inspection. Approximately thirty (30) days prior to the expiration of the two-year warranty period, the City shall conduct a final inspection of the work. If the work is still satisfactory, the bond or letter of credit shall be returned or allowed to expire, and the City shall issue a letter of final acceptance.

(4) Utility marking inspection. The City shall conduct a utility marking inspection pursuant to Division 2.

(b) Upon review of the application for a permit, the City shall determine how many additional inspections, if any, may be required. Required inspections shall be listed on the permit. For a permit which does not include excavation, the City may waive any or all of the above-listed inspections. (Prior code 12.04.140; Ord. 32 §1, 2011)

Sec. 11-3-150. Time of completion.

(a) All work covered by the permit shall be completed within the time period stated on the permit, unless an extension has been granted by the City in writing; in which case, all work shall be completed within the time period stated in the written extension.

(b) Permits shall be void if work has not commenced within thirty (30) days after issuance, unless an extension has been granted by the City in writing. The permittee shall request such an extension in writing, and the City shall either grant or deny the request within five (5) days of receipt of the request. (Prior code 12.04.150; Ord. 32 §1, 2011)

Sec. 11-3-160. Joint planning and construction.

(a) Permittees shall make reasonable efforts to attend and participate in meetings of the City, of which the permittee is notified, regarding public right-of-way issues that may impact its facilities, including planning meetings to anticipate joint trenching and boring.

(b) Each permittee owning, operating or installing facilities in public rights-of-way shall meet annually with the City, at the City's request, to discuss the permittee's planned major excavations in the City. As used in this Subsection, the term *planned major excavations* means any major excavations planned by the permittee that will affect any public right-of-way for more than five (5) days per year during the next three (3) years. Between the annual meetings to discuss planned major excavations, the permittee shall use his or her best effort to inform the City of any substantial changes in the planned major excavations discussed at the annual meeting.

(c) Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, a permittee shall meet and cooperate with other providers, licensees, permittees and franchisees so as to reduce as much as possible the number of street cuts within the City and the amount of pedestrian and vehicular traffic that is obstructed or impeded. Should two (2) permittees refuse to joint trench or share bores or street cuts, the City may require each permittee to submit written evidence detailing why such joint trenching or sharing would be impossible or impractical. Such evidence may include the potential impact of joint trenching or sharing on the timing of the initiation or completion of the work. The City shall consider the evidence submitted. Should the permittee fail to provide evidence satisfactory to the City that joint trenching or sharing is impossible or impractical, the City may deny a permit on that basis. (Prior code 12.04.160; Ord. 32 §1, 2011)

Sec. 11-3-170. Locate information.

(a) Any person owning facilities in the public right-of-way shall provide field locate information to the City and any other permittee with a valid public right-of-way permit which authorizes locate pothole excavation or other excavation work. Within seven (7) days of receipt of a written request from the City or such a permittee, the facility owner shall field locate facilities in the public right-of-way in which the work will be performed.

(b) For major installations, a permittee shall obtain a public right-of-way permit to locate other existing facilities as provided in the Construction and Excavation Standards. The location of such facilities shall be field-verified in a manner approved by the City.

(c) Before beginning excavation in any public right-of-way, a permittee shall contact the Utility Notification Center of Colorado (UNCC) and, to the extent required by Section 9-1.5-102, et seq., C.R.S., make inquiries of all ditch companies, utility companies, districts, local governments and all other agencies that might have facilities in the area of work to determine possible conflicts. The permittee shall contact the UNCC and request field locates of all facilities in the area pursuant to UNCC requirements. Field locates shall be marked prior to commencing work. (Prior code 12.04.170; Ord. 32 §1, 2011)

Sec. 11-3-180. Minimal interference with other property.

(a) Work in the public right-of-way or on or near other public or private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Facilities shall be located, constructed and maintained in such manner as not to interfere with sewers, water pipes or any City property, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the public rights-of-way by the City or its authority.

(b) Facilities shall not unnecessarily hinder or obstruct the free use of the public rights-of-way or other public property, interfere with the travel and use of the public rights-of-way by the public during the construction, repair, operation or removal thereof or obstruct or impede traffic.

(c) No permit shall be granted for work in a landscaped median, unless the applicant demonstrates that his or her plans, specifications and a proposed schedule of work have been submitted to and approved by the special district or other entity responsible for the median landscaping. (Prior code 12.04.180; Ord. 32 §1, 2011)

Sec. 11-3-190. Underground construction and use of poles.

(a) When an existing underground facility is required by the City, and in locations where all existing facilities are located underground, all of a permittee's facilities shall be installed underground at no cost to the City.

(b) In areas where existing facilities are above ground, the permittee may install aboveground facilities.

(c) For aboveground facilities, a permittee shall use existing poles wherever possible. (Prior code 12.04.190; Ord. 32 §1, 2011)

Sec. 11-3-200. Use of trenches and bores by City.

Should the City desire to place its own facilities in trenches or bores opened by a permittee, the permittee shall cooperate with the City in any construction by the permittee that involves trenching or boring, provided that the City has first notified the permittee, in writing, that it is interested in sharing the trenches or bores in the area where the permittee's construction is occurring. The permittee shall allow the City to place its facilities in the permittee's trenches and bores, provided that the City incurs any incremental increase in cost of the trenching and boring, the City's installation does not unreasonably delay the permittee's work and the City's facilities are used solely for noncommercial, City purposes. The City shall be responsible for maintaining its respective facilities buried in the permittee's trenches and

bores. If requested by the permittee, the City shall have separate access structures and shall not use the permittee's access structures. (Prior code 12.04.200; Ord. 32 §1, 2011)

Sec. 11-3-210. Construction and excavation standards.

(a) Each permittee shall comply with the 2002 Construction Manual as adopted by Resolution for all work in the public right-of-way, including the location of the work and facilities within the public right-of-way.

(b) Except as otherwise provided in this Division, the permittee shall be fully responsible for the cost and actual performance of all of its work in the public rights-of-way.

(c) All restoration shall result in a work site condition equal to or better than that which existed prior to the commencement of the work performed. (Prior code 12.04.210; Ord. 32 §1, 2011)

Sec. 11-3-220. Newly resurfaced and constructed streets.

(a) For newly resurfaced and constructed streets, no excavation in the pavement shall be permitted within two (2) years of the completion of the resurfacing or construction.

(b) The City shall publish once, in a newspaper of general circulation in the City each year, a list of those streets that will be resurfaced or constructed in that year. The list shall also be published on the City's website.

(c) Exemption. In rare circumstances, the City may grant an exemption from this Section in accordance with the following procedures:

(1) A request for exemption shall be in writing on a form acceptable to the City and shall contain the following information, at a minimum:

a. A detailed and dimensional engineering plan that identifies and accurately represents all public rights-of-way and other property that will be impacted by the proposed work and the method of construction.

b. The location, width, length and depth of the proposed excavation.

c. A statement as to how any of the criteria set forth in Paragraph (c)(2) hereof apply to the proposed work.

(2) Criteria for approval. In determining whether an exemption should be granted, the City shall consider the following criteria:

a. Whether alternative utility alignments that do not involve excavating in the street are available.

b. Whether the proposed excavation can reasonably be delayed until after the two-year period has elapsed.

c. Whether duct, conduit or other facilities are reasonably available from another user of the public right-of-way.

d. Whether the proposed work involves joint trenching or joint use and the number of users to share in the trenching or use.

e. Whether the proposed work is to be by horizontal boring, tunneling or open trenching.

f. Whether applicable law requires the applicant to provide service to a particular customer and whether denial of the exemption would prevent the applicant from providing such service.

g. Whether the purpose of the proposed work is to provide service to a particular building or a customer within a building who has requested such service and whether denial of the exemption would prevent the applicant from providing such service.

h. Whether the work is limited to locate potholing to provide locate information required by Section 11-3-170.

(d) Exemptions for emergency operations. Emergency operations in newly resurfaced or constructed streets shall be permitted pursuant to Section 11-3-260. (Prior code 12.04.230; Ord. 32 §1, 2011)

Sec. 11-3-230. Relocation of facilities.

(a) If the relocation of any facilities in the public right-of-way becomes necessary to allow the City to make any public use of the public right-of-way, or because of the improvement, repair, construction or maintenance of any public right-of-way, or because of traffic conditions, public safety or installation of any type of public improvement by the City or other public agency or special district, or if the City implements any general program for the undergrounding of such facilities, the City may request a permittee to relocate facilities within or adjacent to public rights-of-way, either temporarily or permanently. The City shall notify the affected permittee at least ninety (90) days in advance, except in the case of emergencies, of the reason for the relocation and the projected start date of the project necessitating the relocation. The City shall provide the affected permittee with such notice at least one hundred twenty (120) days in advance, if the relocation will be considered a major installation. The permittee shall thereupon, at its own cost, accomplish the necessary relocation within a reasonable time from the date of the notification, but in no event later than three (3) working days prior to the date listed in the notice as the proposed start date, or immediately in the case of emergencies.

(b) Should the permittee fail to perform the relocation, the City may perform such relocation at the permittee's expense, and the permittee shall reimburse the City as provided in Section 11-3-260.

(c) Following relocation, the permittee shall, at the permittee's own expense, restore all affected property to, at a minimum, the condition which existed prior to the commencement of the work performed. A permittee may request additional time to complete a relocation project, and the City may grant an extension if, in its sole discretion, the extension will not adversely affect the City's project or the public use of the affected public rights-of-way. (Prior code 12.04.240; Ord. 32 §1, 2011)

Sec. 11-3-240. Abandonment and removal of facilities.

(a) Notification. A permittee that intends to discontinue use of any facility within the public right-of-way shall notify the City, in writing, of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than fifteen (15) days from the date such notice is submitted to the City, and the method of removal and restoration. The permittee may not remove, destroy or permanently disable any such facilities during said fifteen-day period without written approval of the City. After fifteen (15) days from the date of such notice, the permittee may commence removal and disposal of such facilities as set forth in the notice, as the notice may be modified by the City. The permittee shall complete such removal and disposal within one hundred eighty (180) days, unless additional time is requested from and granted by the City.

(b) Abandonment of facilities in place. Upon prior written approval of the City, a permittee may either:

(1) Abandon the facilities in place and immediately convey full title and ownership of such abandoned facilities to the City. The only consideration for the conveyance shall be the City's permission to abandon the facilities in place. The permittee shall be responsible for all obligations and liabilities until the conveyance to the City is completed; or

(2) Abandon the facilities in place, but retain ownership and responsibility for all liabilities associated therewith.

(c) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the permittee and the City, the conflicting provision of this Section shall not apply to the franchisee, and the franchisee shall instead honor the provision of the franchise agreement. (Prior code 12.04.250; Ord. 32 §1, 2011)

Sec. 11-3-250. Emergency procedures.

(a) Any person maintaining facilities in the public right-of-way may proceed with repairs upon existing facilities without a permit when emergency circumstances demand that the work be done immediately. The person doing the work shall apply to the City for a permit on the first working day after such work has commenced. All emergency work shall require prior telephone notification to the City's engineering department, the City's police department and the appropriate fire protection agency.

(b) If any damage occurs to an underground facility or its protective covering, the contractor or permittee responsible shall notify the facility's owner promptly. When the facility's owner receives a damage notice, he or she shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any inflammable, toxic or corrosive gas or liquid or endangers life, health or property, the contractor or permittee responsible shall immediately notify the facility's owner and 911 and take immediate action to protect the public and nearby properties. (Prior code 12.04.260; Ord. 32 §1, 2011)

Sec. 11-3-260. Reimbursement of City costs.

(a) The City may make any repairs necessary to eliminate any imminent danger to the public health or safety without notice to any permittee, at the responsible permittee's expense.

(b) For any work not performed by a permittee as directed by the City, but not constituting imminent danger to the public health or safety, the City shall provide written notice to the permittee, ordering that the work be corrected within ten (10) days of the date of the notice. If the work is not corrected within the ten-day period, the City may correct the work at the permittee's expense.

(c) Costs of any work performed by the City pursuant to this Section shall be billed to the permittee. The permittee shall also be responsible for any direct costs incurred by the City. The permittee shall pay all such charges within thirty (30) days of the statement date. If the permittee fails to pay such charges within the prescribed time period, the City may, in addition to taking other collection remedies, seek reimbursement through the performance bond or letter of credit. Furthermore, the permittee may be barred from performing any work in the public right-of-way, and under no circumstances will the City issue any further permits of any kind to said permittee, until all outstanding charges (except those outstanding charges that are honestly and reasonably disputed by the permittee and being negotiated in good faith with the City) have been paid in full. (Prior code 12.04.270; Ord. 32 §1, 2011)

Sec. 11-3-270. Permit revocation and stop work orders.

(a) A public right-of-way permit may be revoked or suspended by the City for any of the following:

(1) Violation of any condition of the permit or any provision of this Division or the 2002 Construction Standards Manual as adopted.

(2) Violation of any other City ordinance or state law relating to the work.

(3) Existence of any condition or performance of any act which, in the City's determination, constitutes or causes a condition endangering life or property.

(b) Stop work orders. A stop work order may be issued by the City to any person or persons performing or causing any work to be performed in the public right-of-way for:

(1) Performing work without a permit, except for emergency repairs to existing facilities as provided for in this Division.

(2) Performing work in violation of this Division, any other City resolution, ordinance or regulation or state law relating to the work.

(3) Performing any act which, in the City's determination, endangers life or property.

(c) A suspension, revocation or stop work order shall take effect immediately upon delivery of verbal or written notice to the person performing the work or to the permittee. If neither the person performing the work nor the permittee can be located on the work site on the day of issuance of the suspension, revocation or stop work order, the suspension, revocation or stop work order shall take effect upon mailing of the written notice via first-class mail, postage prepaid, to the permittee's last known address. (Prior code 12.04.280; Ord. 32 §1, 2011)

Sec. 11-3-280. Penalties.

(a) If any contractor or permittee is found guilty of or pleads guilty to a violation of this Division, he or she shall be punished as provided in Chapter 1, Article 4. Each and every day or portion thereof during which a violation is committed, continues or is permitted shall be deemed a separate offense.

(b) In addition to or in lieu of the penalties set forth in Subsection (a) hereof, the City may impose the following monetary penalties:

(1) For any occupancy of a travel lane or any portion thereof beyond the time periods or days set forth in the traffic control plan approved by the City:

a. In arterial and collector streets (as defined in the City of Greenwood Village Transportation Plan) during the hours of 6:30 a.m. through 8:30 a.m. and 3:30 p.m. through 6:00 p.m., Monday through Friday: one hundred dollars ($100.00) for each fifteen (15) minutes, or portion thereof, for a maximum of three thousand dollars ($3,000.00) per day.

b. In arterial and collector streets during any time other than the times specified in Subparagraph (b)(1)a. hereof, or in local streets at any time: fifty dollars ($50.00) for each fifteen (15) minutes, or portion thereof, for a maximum of one thousand five hundred dollars ($1,500.00) per day.

(2) For commencing work without a valid permit: five hundred dollars ($500.00), plus twice the applicable permit fee.

(3) For facilities installed outside of the approved alignment: ten dollars ($10.00) per linear foot. This penalty shall not be imposed if the facilities are removed or relocated to comply with the approved alignment or the facilities are abandoned pursuant to Subsection 11-3-240(c).

(4) For any other violation of a permit: two hundred fifty dollars ($250.00) per violation, with no maximum amount.

(c) The penalties set forth in this Section shall not be the City's exclusive remedy for violations of this Division and shall not preclude the City from bringing a civil action to enforce any provision of a public right-of-way permit or to collect damages or recover costs associated with any use of the public rights-of-way. Furthermore, the enforcement of one (1) penalty shall not preclude the City from enforcing any other penalty. (Prior code 12.04.290; Ord. 32 §1, 2011)

Division 2
Utility Markings

Sec. 11-3-410. Definitions.

For the purposes of this Division, the following terms shall have the following meanings:

Permittee means the holder of a valid permit issued pursuant to this Division.

Public right-of-way means any public street, way, place, alley, sidewalk, easement, park, square, median, parkway, boulevard or plaza that is dedicated to public use.

Utility marking means a mark made of colored or metallic paint or similar material or utilizing any adhesive material of whatever description or a flag or similar removable device or item used by a public utility or its agent in a public right-of-way to mark the existing or future location of pipelines, cables, poles, wires or other similar features. (Prior code 12.06.010; Ord. 32 §1, 2011)

Sec. 11-3-420. Removal of utility markings required.

All utility markings shall be fully and completely removed or camouflaged from public rights-of-way utilizing a method that is least destructive to the existing improvements, and which method has been approved by the City. The removal shall occur no later than forty-five (45) days after completion of the work. The right-of-way permittee or other persons (not under a City permit) that originally caused the utility markings to be placed shall be solely responsible for removal of the utility marking. (Prior code 12.06.020; Ord. 32 §1, 2011)

Sec. 11-3-430. Penalty.

Any person who is convicted of a violation of this Division shall, upon conviction, be punished by a fine not to exceed nine hundred ninety-nine dollars ($999.00). Each day such violation is committed or continues shall constitute a separate offense. As an additional means of enforcement, and not as an alternative to or substitute for prosecution for violation of this Division, the City may remove or eradicate any utility markings which are not removed pursuant to this Division and bill the party responsible for such removal the full cost incurred by the City to effect such removal. Any such costs incurred shall be immediately due and payable, and failure to pay such costs in full within thirty (30) days of billing therefor by the City shall subject the responsible party to interest on the unpaid balance at the rate of twelve percent (12%) per annum, compounded monthly. Any requests for future permits by such permittee shall be denied until all unpaid balances are paid in full. (Prior code 12.06.030; Ord. 32 §1, 2011)

ARTICLE 4

Underground Relocation of Overhead Facilities

Sec. 11-4-10. Definitions.

For purposes of this Article, the following terms shall have the following meanings:

Facility means all wires, cables, poles or other equipment for the transmission or distribution of electrical current impulses, sounds, voices, data or communications within, over or upon a public right-of-way.

Owner means any person, firm, corporation, association, partnership or any other form of association or organization, which has an ownership or leasehold interest in a facility.