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### Section 9.1: Street Excavations and Use of Public Right-of-Ways

**9.1.01. Election to Manage the Public Rights-of-Way.** Pursuant to the authority granted to the City of Cloquet under state and federal statutory, administrative and common law, the City hereby elects, pursuant to Minn. Stat. 237.163 Subd. 2(b), to manage rights-of-way within its jurisdiction.

**9.1.02. Definitions.** For the purposes of this Section, the following terms, phrases, words, and their derivations shall have the meaning given. When not inconsistent with the context, words used in the present tense shall include the future, words in the plural number shall include the singular number, and words in the singular number shall include the plural number. The word "shall" is always mandatory and not merely directory.

**Subd. 1.** "Abandoned Facility" means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

**Subd. 2.** "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.

**Subd. 3.** "City" means the City of Cloquet, Minnesota.

**Subd. 4.** "Commission" means the State Public Utilities Commission.

**Subd. 5.** "Congested Right-of-Way" means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes, Section 216D.04. Subdivision 3, over a continuous length in excess of 500 feet.

**Subd. 6.** "Department" means the Department of Public Works of the City of Cloquet.

**Subd. 7.** "Department Inspector" means any person authorized by the city to carry out inspections related to the provisions of this chapter.

**Subd. 8.** "Director" means the Director of the Department of Public Works of the City of Cloquet, or his or her designee.

**Subd. 9.** "Delay Penalty" is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

**Subd. 10.** "Emergency" means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

**Subd. 11.** "Equipment" means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

**Subd. 12.** "Excavate" or "Excavation" means any work in the surface or subsurface of the public right-of-way, including, but not limited to, opening the public right-of-way; installing, servicing, repairing or modifying any Facility (ies) in or under the surface or subsurface of the public right-of-way; restoring the surface and subsurface of the public right-of-way.

**Subd. 13.** "Excavation permit" means the permit which, pursuant to this chapter, must be obtained before a person may excavate in a right-of-way. An Excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

**Subd. 14.** “Facility” or “Facilities” shall include, but not limited to, any and all cables, cabinets, ducts, conduits, converters, equipment, fences, drains, handholes, manholes, parking areas, pipes, pedestals, spice boxes, surface location markers, tracks, tunnels, utilities, vaults and other appurtenances or tangible things owned, leased, operated, or licensed by a Person or company, that are located within the public right-of-way.

**Subd. 15.** “Hole” means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

**Subd. 16.** “Local Representative” means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

**Subd. 17.** “Obstruct” means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

**Subd. 18.** “Occupation Permit” means the permit which, pursuant to this chapter, must be obtained before a person may obstruct or occupy a public right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration of the permit. This would include the construction of any type of above ground facility located within a public right-of-way or easement.

**Subd. 19.** “Patch” or “Patching” means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city’s two-year project plan.

**Subd. 20.** “Pavement” means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

**Subd. 21.** “Permittee” means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.

**Subd. 22.** “Person” means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

**Subd. 23.** “Probation” means the status of a person that has not complied with the conditions of this chapter.

**Subd. 24.** “Probationary Period” means one year from the date that a person has been notified in writing that they have been put on probation.

**Subd. 25.** “Registrant” means any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

**Subd. 26.** “Restore” or “Restoration” means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

**Subd. 27.** “Public Right-of-Way” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, public sidewalk, or utility easements in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility installations of the City’s. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

**Subd. 28.** “Right-of-Way Permit” means either an excavation permit, an obstruction permit, or a utility franchise right-of-way permit, depending on the context, required by this section.

**Subd. 29.** “Right-of-Way User” means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

**Subd. 30.** “Service” or “Utility Service” includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subds. 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minn. Stat. Chapter. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stat., Chapter 308A; and (6) water, and sewer, including service laterals, steam, cooling or heating services.

**Subd. 31.** “Service Lateral” means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer’s premises.

**Subd. 32.** “Temporary Surface” means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city’s two-year plan, in which case it is considered full restoration.

**Subd. 33.** “Trench” means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

**Subd. 34.** “Telecommunication right-of-way user” means a person owning or controlling a facility in the right-of-way, or seeking to own or control a Facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this chapter.

**Subd. 35.** “Utility franchise right-of-way permit” means the permit which, pursuant to this section, must be obtained by all privately owned utility companies, which have been granted a franchise by the City of Cloquet to operate and occupy public right-of-ways within the City, or Telecommunications right-of-way users as defined by Minn. Stat. Chap. 237.162.

**9.1.03. Administration.** The Director is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The Director may delegate any or all of the duties hereunder.

#### **9.1.04 . Permit Requirements.**

**Subd. 1. Right-of-Way Permit Required.** No person, except an authorized city employee or a contractor performing work under a contract with the city, shall make any excavation in a street, alley, sidewalk, public ground or right-of-way, or obstruct or otherwise occupy any right-of-way with the construction or installation of any type of above ground facility, without first having obtained the appropriate permit from the City, as provided in this Section.

- a) **Excavation Permit.** An excavation permit is required before a person can excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- b) **Occupation Permit.** An occupation permit is required before a person can hinder free and open passage over the specified portion of public right-of-way, or to otherwise occupy a right-of-way by constructing or placing any type of above ground facility on or within the public right-of-way, to the extent and for the duration specified therein.
- c) **Utility Franchise Right-of-Way Permit.** A utility franchise right-of-way permit is required of all privately owned utility companies, which have been granted a franchise by the City of Cloquet to operate within and occupy public right-of-ways in the City, or Telecommunications right-of-way users as defined by Minn. Stat. Chap. 237.162. An excavation permit or occupation permit is not required if a person or company already possesses a valid utility franchise right-of-way permit as provided for by this section.

**Subd. 2. Trees, Plantings, Gardens and Other Exceptions.** Persons planting or maintaining trees, plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits under this Chapter. All such planting plans, however, must be reviewed and approved by the Director prior to installation. All trees or plantings are subject to removal by the City, without compensation to the owner, if they are deemed to interfere with the public's use of the right-of-way or the City's maintenance of any public utilities located within such right-of-ways or easements. Excavations in the boulevards for the purpose of installing utility poles, utility signs or utility markers shall not require a permit. The replacement of residential sidewalks or driveway aprons less than 250 square feet in total work area, shall not require a permit.

**Subd. 3. Storage Buildings Within Public Right-of-Ways.** No permanent storage buildings, nor any other type of permanent buildings or structures, may be constructed or located within a public right-of-way or easement. Temporary storage buildings may be allowed within a public right-of-way, but only after an Occupation Permit, as described in Section 9.1.04, Subd. 1(b) of this Chapter, has been obtained.

**Subd. 4. Fences Within Public Right-of-Ways or Easements.** Fences may be allowed across public right-of-ways, but only after an Occupation Permit, as described in Section 9.1.04, Subd. 1(b) of this Chapter, has been obtained. If a fence blocks access to a dedicated utility easement, the fence must be provided with a gate, to the width of the easement, at the point or points where it blocks the easement.

**Subd. 5. Permit Extensions.** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (i) makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

**Subd. 6. Denial of permit.** The city may deny a permit for a past permittee's failure to meet the requirements and conditions of this Chapter or if the City determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. Except in an emergency, the City further reserves the right to deny or delay the issuance of an Excavation Permit when such work would be seasonally prohibited or when conditions are unreasonable.

**Subd. 7. Permit Display.** Permits issued under this Chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

**9.1.05 Right-of-Way Permit Applications.** Applications for right-of-way excavation or occupation permits shall be made to the City for individual projects on forms prescribed by the Director and furnished by the City. Applications shall be in writing; shall state the name and address of the applicant; the nature, location and purpose of the excavation or work, the name and contact telephone number of a local representative, the date of commencement and the estimated date of completion and other data as may reasonably be required by the City to whom all applications shall be submitted. By his or her signature, the applicant shall agree to conform to the rules, regulations and requirements of this section and any others as established by the director.

**Subd. 1. Required Insurance and Performance Bond.** Excavation Permit applications and Utility Franchise Right-of-Way Permit applications shall contain, and will be considered complete only upon the furnishing of and compliance with, the requirements of the following provisions:

a) A **certificate of insurance** or self-insurance:

- 1) Verifying that an insurance policy has been issued to the permittee by an insurance company licensed to do business in the State of Minnesota, or a form of self insurance acceptable to the City;
- 2) Verifying that the permittee is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the permittee, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the permittee, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
- 3) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
- 4) Requiring that the Director be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- 5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the director in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this Chapter, but in no case shall insured coverage be less than the following:

General Liability:	\$1,000,000 Each Occurrence.
Automobile Liability:	\$1,000,000 Combined Single Limit.
Workers Compensation:	Statutory.

- 6) A copy of the actual insurance policies shall be provided to the City at time of application.
- 7) If the person is a corporation, a copy of the certificate required to be filed under Minn. Stat. 300.06 as recorded and certified to by the Secretary of State.
- 8) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

b) **Surety Bond (Restoration Performance Bond).** Before an excavation permit as provided in this Section shall be issued, the applicant, other than public service corporations and utilities to whom a franchise has been issued by the City or a certificate or authorization to do business has been granted by some other governmental agency, shall deposit with the City, a surety bond in the amount of \$5,000.00 payable to the City. In special cases, the City may require the posting of an additional or larger surety bond when the City deems the existing bond to be inadequate under applicable standards. The required bond shall be:

- 1) With a surety company authorized to transact business in the State of Minnesota.

- 2) Satisfactory to the City Attorney in form and substance.
- 3) Conditioned upon the permittee's compliance with this Section and to the permittee's satisfactory performance to backfill, restore and place in good and safe condition as near as may be to its original condition, and to the satisfaction of the Director, all openings and excavations made in streets, and to maintain any street where excavation shall be made in as good condition for the period of 12 months after the work shall have been done, usual wear and tear excepted, as it was in before the work shall have been done. Any settlement of the surface within the one-year period shall be deemed conclusive evidence of defective back-filling by the permittee.

c) **Payment of money due the City for:**

- 1) Permit fees, estimated restoration costs and other management costs;
- 2) Prior past due right-of-way permit fees;
- 3) Any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;
- 4) Franchise fees or other charges, if applicable.

**9.1.06. Issuance of Permit; Conditions.**

**Subd. 1. Conditions.** The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, Section 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules Chapter 7560.

**Subd. 2. Trenchless Excavation.** As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to Horizontal Directional Drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the City.

**Subd. 3. No Advertising or Business Signs.** No private advertising or business signs shall be located within a public right-of-way, unless specifically authorized by city council resolution.

**9.1.07. Excavation Permit and Occupation Permit Fees.** A permit fee shall be paid to the City for each individual project, upon issuance of an excavation permit or occupation permit, in a sum which shall be established by resolution as adopted from time to time by the City Council. Said permit fees shall be in addition to all other fees for permits or charges relative to any proposed construction work. Utility franchise right-of-way permits will require the payment of one annual fee.

**Subd. 1. Excavation Permit Fee.** The city shall establish the excavation permit fee and shall be in an amount sufficient to recover the city's management costs.

**Subd. 2. Occupation Permit Fee.** The city shall establish the occupation permit fee and shall be in an amount sufficient to recover the city's management costs.

**Subd. 3. Utility Franchise Right-of-Way Permit Fee.** The city shall establish the utility franchise right-of-way permit fee and shall be in an amount sufficient to recover the city's management costs.

**Subd. 4. Delay Penalty.** In accordance with Minnesota Rule 7819.1000 subp. 3 and notwithstanding Section 9.1.04, Subd. 3 of this Chapter, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution.

**Subd. 5. Payment of Permit Fees.** No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within thirty (30) days of billing.

**Subd. 6. Non refundable.** Permit fees that were paid for a permit that the Director has revoked for a breach as stated in Section 9.1.13 are not refundable.

**Subd. 7.** All permit fees shall be established consistent with the provisions of Minnesota Rule 7819.100.

#### **9.1.08. Right-of-Way Patching and Restoration.**

**Subd. 1. Timing.** The work to be done under an excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee.

**Subd. 2. Patch and Restoration by Permittee.** The permittee shall patch all its own excavations and restore the right-of-way at its own expense. To guarantee satisfactory performance with this requirement the permittee shall, at the time of application for an excavation permit, post a construction surety (performance) bond in accordance with the provisions of Minnesota Rules 7819.3000 and Section 9.1.05, Subd. 1(b) of this Chapter.

**Subd. 3. Duty to correct defects.** The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee upon notification from the Director, shall correct all restoration work to the extent necessary, using the method required by the Director. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable.

**Subd. 4. Failure to Restore.** If the permittee fails to restore the right-of-way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the Director at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) days of billing, 100% the cost of restoring the right-of-way plus a 25% administrative fee plus any delay penalties as may be assessed under Section 9.1.07, Subd. 4 of this Chapter. If permittee fails to pay as required, the city may exercise its rights under the construction surety (performance) bond. In addition, the City may also deny future permit applications by the permittee for failure to correct all defects in a timely manner.

**9.1.09. Excavation, Installation, Patching and Restoration Standards and Practices.** The permittee shall perform all excavations, installations, patching and restoration in compliance with Minnesota Rule 7819.1100 and in accordance with the following requirements and standards:

**Subd. 1. Backfilling and Compaction of Excavations.** Backfilling of any excavations in any street, pursuant to an excavation permit issued under this Chapter, shall be compacted to a degree equivalent to that of the undisturbed ground in which the trench was dug. Backfill shall be placed in uniform layers and shall be tamped by acceptable vibratory, mechanical compactors, as required by the soil materials and sound engineering practices generally recognized in the construction industry. Compaction by backhoe bucket and/or vehicle tires is not considered an acceptable compaction method and under no circumstances will this method be approved as the sole method of compaction.

When and where acceptable backfill material is not available from the job site, which is conducive to proper and uniform compaction, the permittee shall furnish, from other sources, acceptable granular backfill material as approved by the Director.

**Subd. 2. Restoration of Pavement Surfaces.** The permittee shall restore the surface of all streets, cut into or damaged as a result of any excavation work, in accordance with the specifications of the Director. The permittee may be required to place a temporary surface over openings made in paved traffic lanes. Except when the pavement shall be permanently replaced before the opening of the cut to traffic, the fill above the bottom of the pavement slab shall be made with suitable material well tamped into place and this fill shall be topped with a minimum of at least two inches of bituminous mixture, which shall be suitable to maintain the opening in good condition until permanent pavement restoration can be made. The crown of the temporary restoration shall not exceed one inch above the adjoining pavement. The permittee shall exercise special care in making the temporary restorations and shall maintain the excavation in safe traveling condition, until such time as permanent restorations shall be made. All temporary or permanent pavement materials shall be in accordance with the specifications of the City.

Permanent restoration of the street shall be made by the permittee in strict accordance with the specifications prescribed by the City to restore the street to its original condition as to both material type and pavement thickness. Prior to the replacement of the permanent pavement restoration, the edges of the pavement opening shall be squared up by saw-cutting or an acceptable means of neat-lining for a minimum of two feet beyond the edges of the excavation in all directions.

Acceptance or approval of any excavation work by the City shall not prevent the City from asserting a claim against the permittee and his, her or its surety under the surety bond required by Section 9.1.05, Subd. 1(b), for incomplete or defective work if discovered within 12 months from the completion of the excavation work. The City's presence during the performance of any excavation work shall not relieve the permittee of its responsibilities under this Section.

**Subd. 3. Routing of Traffic.** The permittee shall take appropriate measures to assure that, during the performance of the excavation work, traffic conditions are maintained as nearly normal as practicable so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public. The Director may permit the closing of streets to all traffic for a period of time prescribed by him or her if in his or her opinion it shall be necessary. The permittee shall route and control traffic, except in the case of an emergency, during which time the permittee shall take every reasonable precaution to provide for the safety and convenience of the people using the street, including its own vehicles, by taking the following steps before any roadway shall be closed or restricted to traffic:

- (a) The permittee shall receive the approval of all street closures and detours from the Director.
- (b) The permittee shall notify the Cloquet Fire Department of any streets so closed to traffic.
- (c) Upon completion of the construction work the permittee shall notify the Director before traffic shall be moved back to its normal flow so that any necessary adjustments may be made.
- (d) Where flag persons shall be deemed necessary by the City they shall be furnished by the permittee at his or her own expense. Where possible, through traffic shall be maintained without the aid of detours. In instances where this would not be feasible the Director shall designate detour routes. The permittee shall be responsible for any unnecessary damage caused to any roadway by the operation of his or her equipment.

**Subd. 4. Traffic Control Devices.** All barricades, warning devices, detour signs and flagman shall be provided and maintained by the permittee, at their expense, during all phases of the excavation and restoration operations for as long as they may be necessary. All traffic control and warning devices shall be in accordance with the Minnesota Manual on Uniform Traffic Control Devices, current edition.

**Subd. 5. Clearance for Fire Equipment.** The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Passageways leading to fire escapes or firefighting equipment shall be kept free of piles of material or other obstructions.



**Subd. 6. Protection of Traffic.** The permittee shall erect and maintain suitable barriers to confine earth from trenches or other excavations in order to encroach upon highways as little as possible. The permittee shall construct and maintain adequate and safe crossings over excavations and across roadways under improvement to accommodate vehicular and pedestrian traffic at all street intersections where possible.

**Subd. 7. Gopher State One Call.** In accordance with MN Rules Chapter 7560, prior to any excavation work, the permittee shall contact Gopher State One Call at (800) 252-1166 to have all utilities properly located.

**Subd. 8. Removal and Protection of Utilities.** The permittee shall not interfere with any existing utility without the written consent of the Director and the utility company or person owning the utility. If it shall become necessary to remove an existing utility this shall be done by its owner. No utility owned by the City shall be moved to accommodate the permittee unless the cost of the work is borne by the permittee. The cost of moving privately owned utilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the utility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them under, over, along or across the work. In case the pipes, conduits, poles, wires or apparatus should be damaged, they shall be repaired by the agency or person owning them and the expense of the repairs shall be charged to the permittee, and his or her bond shall be liable for the cost. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility and its bond shall be liable therefor.

**Subd. 9. Protection of Adjoining Property.** The permittee shall at all times and at his or her own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of the property it shall be necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain written permission from the owner of the private property for such purpose and if he or she cannot obtain written permission from the owner the director may authorize him or her to enter the private premises solely for the purpose of making the property safe. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavations work and shall be responsible for all damages to public or private property or roadways resulting from its failure to properly protect and carry out the work. Whenever it may be necessary for the permittee to trench through any lawn area, the sod shall be carefully cut and rolled and replaced after ditches have been back-filled as required in this Section. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before the work began. The permittee shall not remove even temporarily any trees or shrubs which exist in parking strip areas or easements across private property without first having notified and obtained the consent of the property owner, or in the case of public property the appropriate City Department or the City officials having control of the property.

**Subd. 10. Protective Measures.** The permittee shall erect adequate fences, railing or barriers about the site of the excavation work as shall prevent danger to persons using the City street or sidewalks, and the protective barriers shall be maintained until the work shall be completed or the danger removed. At twilight there shall be placed upon the place of excavation and upon any excavated materials or structures or other obstructions to streets suitable and sufficient lights which shall be kept burning throughout the night during the maintenance of the obstructions. It shall be unlawful for anyone to remove or tear down the fence or railing or other protective barriers or any lights provided there for the protection of the public.

**Subd. 11. Attractive Nuisance.** It shall be unlawful for the permittee to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment or other device having the characteristics of an attractive nuisance likely to attract children and be hazardous to their safety or health.

**Subd. 12. Care of Excavated Material.** All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible shall be caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the Director shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of back-filling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

**Subd. 13. Damage to Existing Improvements.** All damages done to existing improvements during the progress of the excavation work shall be repaired by the permittee. Materials for such repair shall conform with the requirements of any applicable code or ordinance. If upon being ordered the permittee fails to furnish the necessary labor and materials for the repairs, the director shall have the authority to cause the necessary labor and materials to be furnished by the City and the cost shall be charged against the permittee, and the permittee shall also be liable on his or her surety bond for the cost.

**Subd. 14. Property Lines and Easements.** Property lines and limits of easements shall be indicated on the plan of excavation submitted with the application for the excavation permit and it shall be the permittee's responsibility to confine excavation work within these limits.

**Subd. 15. Cleanup.** As the excavation work progresses, all streets and private properties shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All clean-up operations at the location of the excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the City Engineer. From time to time as may be ordered by the director, and in any event immediately after completion of the work, the permittee shall at this or its own expense clean up and remove all refuse and unused materials of any kind resulting from the work and upon failure to do so within 24 hours after having been notified to do so by the director, the work may be done by the City and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided under this section.

**Subd. 16. Protection of Water Courses.** The permittee shall provide for the flow of all water courses, sewers or drains intercepted during the excavation work and shall replace the same in as good condition as they were found or shall make provisions for them as the Director may require. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provisions to take care of all surplus water, muck, silt, slickings or other run-off pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide.

**Subd. 17. Erosion and Sediment Control.** Erosion and sediment control within and around work sites shall be in accordance with the City's Storm Water or Erosion and Sediment Control Ordinance. In the absence of a local Storm Water or Erosions and Sediment Control Ordinance, recommended Best Management Practices shall be utilized as identified in the "MINNESOTA STORMWATER MANUAL" as prepared by the Minnesota Pollution Control Agency. Inlet protection should be provided at curb inlets and yard drains where necessary. Under no circumstances shall material be allowed to enter the storm drain or storm sewer systems of the City. Excess material/sediment shall be removed by sweeper or shoveling and then be hauled away. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both, and discharged in a manner that does not adversely affect adjacent property.

**Subd. 18. Tunnels.** Tunnels under pavement shall not be permitted, except by permission of the director and if permitted shall be adequately supported.

**Subd. 19. Trenches in Pipe Laying.** Except by special permission from the Director, no trench shall be excavated more than 50 feet in advance of pipe laying nor left unfilled more than 100 feet where pipe has been laid. The length of the trench that may be opened at any one time shall not be greater than the length of pipe and the necessary accessories which shall be available at the site ready to be put in place. Trench excavations shall be carried out, braced and/or sheathed according to generally accepted safety standards for construction work as prescribed by OSHA Excavation standards. No timber bracing, lagging, sheathing or other lumber shall be left in any trench.

**Subd. 20. Prompt Completion of Work.** The permittee shall proceed with diligence and expedite all excavation work covered by the excavation permit and shall promptly complete the work and restore the street to its original condition, or as near as may be, as soon as practicable and in any event not later than the date specified in the excavation permit therefor.

**Subd. 21. Urgent Work.** If in his or her judgment traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the director shall have full power to order, at the time the permit shall be granted, that a crew of workers and adequate facilities be employed by the permittee 24 hours a day to the end that the excavation work may be completed as soon as possible.

**Subd. 22. Emergency Action.** In the event of any emergency in which a sewer, main, conduit or utility in or under any street breaks, bursts or otherwise shall be in such condition as to immediately endanger the property, life, health or safety of any individual, the person owning or controlling the sewer, main, conduit or utility, without first applying for and obtaining an excavation permit under this Chapter, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, any person owning or controlling the facility shall apply for an excavation permit not later than the end of the next succeeding day during which the director's office shall be open for business, and shall not proceed with permanent repairs without first obtaining an excavation permit under this Chapter.

**Subd. 23. Noise, Dust and Debris.** Each permittee shall conduct and carry out the excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris and during the hours of 10:00 p.m. and 7:00 a.m. The permittee shall not use, except with the express written permission of the Director or in case of an emergency as otherwise provided in this Section, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

**Subd. 24. Preservation of Monuments.** The permittee shall not disturb any property survey monuments or hubs found on the line of excavation work until ordered to do so by the Director. Any survey monuments disturbed or removed by the permittee as a result of any excavations shall be replaced at the permittee's expense.

**Subd. 25. Safe Excavation Practices.** The permittee shall be solely responsible to see that all excavations take place in conformance with OSHA Standard 1926.652, that employees are properly trained with regards to safe excavation practices as they relate to the construction industry and that suitable protective methods are utilized to protect its employees and the general public.

**9.1.10. Inspections.** The Director may make any inspections as shall be reasonably necessary in the enforcement of this Section. The Director shall have the authority to promulgate and cause to be enforced any rules and regulations as may be reasonably necessary to enforce and carry out the intent of this Section

**Subd. 1. Notice of Completion.** Upon completion of all work and the restoration of the street surface, the permittee shall notify the Director's office to arrange for a final inspection and return to the City a certification of completion signed by the permittee in accordance Minnesota Rules 7819.1300.

**Subd. 2. Site Inspection.** Permittees shall make the work-site available to city personnel and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

**Subd 3. Authority of Director.**

- (a) At the time of inspection the director may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or well being of the public.
- (b) The Director may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Sec. 9.1.13 or this Chapter.

**9.1.11. Work Done Without a Permit.**

**Subd. 1. Emergency Situations.** Each person with facilities in the right-of-way shall immediately notify the city of any event regarding its facilities that it considers being an emergency. The owner of the facilities may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the owner shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this section for the actions it took in response to the emergency.

If the city becomes aware of an emergency regarding facilities, the city will attempt to contact the local representative of each facility owner affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

**Subd. 2. Non-Emergency Situations.** Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit and comply with all of the requirements of this section.

**9.1.12. Supplementary Notification.** If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the Director of the accurate information as soon as this information is known.

**9.1.13. Revocation of Permits.**

**Subd. 1. Substantial Breach.** The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (a) The violation of any material provision of the right-of-way permit;
- (b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (c) Any material misrepresentation of fact in the application for a right-of-way permit;
- (d) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittees control; or

- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 9.1.10, Subd. 3(b).

**Subd. 2. Written Notice of Breach.** If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations might be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

**Subd. 3. Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, which will cure the breach. Permittee's failure to so contact the city, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

**Subd. 4. Reimbursement of City Costs.** If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

#### 9.1.14. Mapping Data.

**Subd. 1. Information Required.** Each permittee shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the Director accurate maps and drawings certifying the "as-built" location of all equipment installed, owned and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the City's mapping standards. Failure to provide maps and drawings pursuant to this subsection shall be grounds for denying the permittee's future permit applications.

**Subd. 2. Service Laterals.** All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150 subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals, and the service lateral vertical locations in those cases where the city reasonably requires it. Permittees or their subcontractors shall install a locating wire or have an equally effective means of marking the location of each nonconductive underground facility within the public right-of-way. This requirement does not apply when making minor repairs to an existing nonconductive facility.

Permittees or their subcontractors shall submit to the city evidence of the installed service lateral locations. Compliance with this subdivision 2 and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005, shall be a condition of any city approval necessary for 1) payments to contractors working on a public improvement project including those under Minnesota Statutes, Chapter 429, and 2) City approval of performance under development agreements, or other subdivision or site plan approval under Minnesota Statutes, Chapter 462. The city shall reasonably determine the appropriate method of providing such information. Failure to provide prompt and accurate location information on service laterals installed may result in the revocation of the permit issued for the work or may result in the denial of future permits to the offending permittee or its subcontractors.

**Subd. 3. Maintain Drawings.** Users of sub-surface street space shall maintain accurate drawings, plans, and profiles showing the location and character of all underground structures including abandoned installations. Corrected maps shall be filed with the Director within 60 days after new installations, changes or replacements are made.

**9.1.15. Location of Facilities.**

**Subd. 1.** Placement, location, and relocation of facilities must comply with this Chapter, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to the city.

**Subd. 2. Buried Telecommunication Facilities.** Buried telecommunication cables and buried fiber facilities must be placed at a minimum of 36 inches below the surface and at a maximum depth of 48 inches, unless otherwise altered or approved by the director on a case-by-case basis.

**Subd. 3. Corridors.** The City may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

**Subd. 4. Limitation of Space.** To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the director shall have the power to prohibit or the director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

**9.1.16. Damage to Other Facilities.** When the city does work in the right-of-way and finds it necessary to maintain, support, or move facilities to protect it, the director shall notify the local representative as early as is reasonably possible and placed as required. The costs associated therewith will be billed to that facility owner and must be paid within thirty (30) days from the date of billing. Each facility owner shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each facility owner shall be responsible for the cost of repairing any damage to the facilities of another caused during the city's response to an emergency occasioned by that owner's facilities.

**9.1.17. Right-of-Way Vacation.**

**Subd. 1. Reservation of Right.** If the city vacates a right-of-way that contains facilities, the facility owner's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

**9.1.18. Indemnification and Liability.** By applying for and accepting a permit under this chapter, a permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

**9.1.19. Removal of Abandoned Facilities.** Any person who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the director waives this requirement.

**9.1.20. Appeal.** A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; (4) believes that the fees imposed are invalid; or (5) disputes a determination of the city regarding this Chapter, may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

**9.1.21. Reservation of Regulatory and Police Powers.** A permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

**9.1.22. City Work.** The provisions of this Section shall not be applicable to any excavation work under the direction of competent City authorities by employees of the City or by any contractor of the City performing work for and in behalf of the City necessitating openings or excavations in streets.

**9.1.23. Liability of City.** This Section shall not be construed as imposing upon the City or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit shall be issued under this Section; nor shall the City or any official or employee thereof be deemed to have assumed any liability or responsibility by reason of inspections authorized under this Section, the issuance of any permit or the approval of any excavation work.

**9.1.24. Penalties.** Any person, firm or corporation violating any of the provision of this section shall be deemed guilty of a misdemeanor. Each day such violation shall be committed or permitted to continue, shall constitute a separate offense and shall be punishable as such under this section.

**Section 9.2: Project Labor Agreements**

**9.2.01 Policy.** The City, as a purchaser of construction services, has a compelling interest in ensuring that the City construction contracts proceed in a timely, cost-effective manner with the highest degree of quality and with minimal delays and disruptions. City contracts should be performed with the highest degree of safety for workers and the public, and in a manner, that provides meaningful training and employment opportunities for residents. Throughout the state and country, public and private construction owners regularly utilize and require project labor agreements for billions of dollars' worth of construction each year. Project labor agreements that establish uniform terms and conditions of employment for the contractors and other parties working on a project have been shown to provide an effective mechanism for construction management because they allow project owners to:

- (1) Predict their labor costs and requirements, and, therefore, more accurately estimate actual total project costs;
- (2) Promote cost-efficient, timely and safe construction project delivery, by providing access to a reliable supply of properly trained and skilled construction craft personnel for all aspects of the project;
- (3) Assure greater productivity and workmanship quality from construction craft personnel, thereby yielding high quality, cost-efficient projects, while also reducing maintenance and repair costs over the life of the project;
- (4) Integrate work schedules and standardize work rules for the project to provide a well-coordinated, efficiently functioning construction worksite that will minimize delays, promote quality, and maintain project safety; and
- (5) Assure that construction will proceed without interruption from staffing shortages, high employee turnover, safety incidents, and labor disputes by providing reliable project staffing, contractual guarantees against work stoppages and mutually binding procedures for resolving disputes.

**9.2.02 Project Labor Agreement Required.** A project labor agreement, is substantially the form adopted by resolution of the Council from time to time and kept by the city clerk as a public document, shall be required to be used on each city construction project, as Project is defined below, with a total project cost of \$175,000 or more. Any project labor agreement entered into by the City shall be made binding on all contractors and subcontractors working on the project. The City shall implement the project labor agreement by requiring adherence to the agreement in the bid specifications in all relevant bid documents. No contractor shall be required to be or become a party to a collective bargaining agreement on any other construction project in order to qualify to work under a project labor agreement implemented for a particular city project.

**Project Defined.** For purposes of this Section, "Project" shall mean work performed under Contract with the City or work performed where the City provides any financial assistance or payment (including but not limited to Contract payments, grants, loans, loan guaranties, tax increment financing, tax abatements, tax payments, lease payments, loan payments, contract for deed payments or revenue for bonds) for the erection, destruction, demolition, painting, remodeling or repairing of any building, highway, sidewalk, bridge, water or gas line, sewer and sewage treatment facility or other similar work.