

**GRAND JUNCTION CITY COUNCIL  
ADDITIONAL WORKSHOP AGENDA**

**MONDAY, SEPTEMBER 15, 2003, 11:30 A.M.  
CONSTRUCTION/ENGINEERING LAB  
2551 RIVER ROAD**

- 11:30 am    **Options for Undergrounding Existing Overhead Utilities:** Staff will present alternative policies to manage existing overhead utilities relative to requirements in the development review process. [Attach 1](#)
- 12:15 pm    **Facilities and Construction in the Rights-of-Way:** Staff will present options for considering an ordinance regulating street cuts and use of the public right of way. [Attach 2](#)
- 1:00 pm    **Adjourn**

There will be a tour of the facility and of the nearby Transportation Engineering Building following the meeting.

This agenda is intended as a guideline for the City Council. Items on the agenda are subject to change as is the order of the agenda.

**Attach 1  
Undergrounding of Overhead Utilities  
CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA							
<b>Subject</b>		Options for Undergrounding Existing Overhead Utilities for Developments					
<b>Meeting Date</b>		September 15, 2003					
<b>Date Prepared</b>		August 29, 2003			<b>File #</b>		
<b>Author</b>		Mike McDill		<b>City Engineer</b>			
<b>Presenter Name</b>		Mark Relph		<b>Director of Public Works</b>			
<b>Report results back to Council</b>		X	No		Yes	When	
<b>Citizen Presentation</b>			Yes	X	No	Name	
X	Workshop		Formal Agenda			Consent	Individual Consideration

**Summary:**

This issue is to present alternative policies to manage existing overhead utilities when half street improvements are required through the development review process on a street adjacent to a development project.

**Budget:**

Some of the alternatives could result in a fee, which could be allocated to a fund specifically dedicated to undergrounding either alone or in conjunction with other projects.

**Action Requested/Recommendation:**

City Council discussion and consideration of alternatives and direct staff to develop specific regulations to implement before the beginning of 2004. Staff recommends Alternative No. 5, because it parallels our current process for managing with portions of half-street improvements that could not be effectively constructed at the time of development and it corresponds with the City's franchise terms with XCEL and Grand Valley Power regarding undergrounding for City CIP projects.

**Attachments:** None

**Background Information:**

The City has always been consistent in requiring all new utilities serving lots within new subdivisions to be placed underground. This issue only relates to existing overhead utilities along streets adjacent to new developments.

This issue was briefly discussed at a Council meeting on March 5, 2003 under “Other Business” and as such no formal minutes were taken. Council asked staff to return in September with a series of alternatives for further consideration.

Placing existing overhead utilities along adjacent streets underground during the construction of development projects has been inconsistent due mostly to variations in the size of projects. Larger projects, like Rimrock Marketplace, have been required to pay to underground the adjacent utilities as a part of their development. However, small lot development, including site plan approvals with only 100 or 200 feet of frontage have very seldom been required to incorporate this work into their plans. The main reason for this discrepancy has been that the prices quoted by Xcel for undergrounding projects less than about 700 feet were always far beyond the proportional value to the project.

The City’s Zoning and Development Code has required undergrounding to occur as part of any development approval. Section 6.2 (A)(1)(h) states that “Utilities, including telephone, cable , t.v., electric, and natural gas shall be installed by, and paid for, by the developer. All utilities shall be installed underground, prior to street or alley surfacing or construction.”

In all City Capital Improvement Program projects, these costs are included in the work. Also included are the related costs of acquiring easements, contracting for a joint trench, coordinating conduit and pedestal installation and relocating facilities from poles to conduit systems. As noted, the franchises with both Xcel Energy and GVP require their participation in these projects via an undergrounding fund. Utilities without franchises are charged a proportional share of their costs for this work. While these activities add considerable time and cost to our CIP projects, it is much easier to place these facilities underground before curb, gutter and sidewalk are installed rather than sometime afterward. Property owners only have to negotiate with the City and endure construction once, rather than multiple times with the various utility providers. .

Historically, many developments have left existing power poles in place, even to the extent of pouring sidewalk around them. Acquiring easements, excavating the trench and installing conduit in these areas becomes very expensive once the adjacent properties are developed. In every case it means at least removing and replacing either landscaping or parking lots to do this work. Better planning and a better construction process will save the community both dollars and disruption in the long run.

The alternatives that staff has assembled for Council consideration are as follows:

1. Underground installation of utilities is only applicable to new facilities constructed within a development. The developer would not be responsible for any existing overhead utilities along adjacent streets.
2. Underground installation of existing facilities along streets adjacent to a development would be paid for on a “front foot” basis to an Underground Fund for the future relocation of those facilities as part of a larger project. This fee could be based on either an engineer’s estimate of the actual cost to perform the work at the particular site, or it could be based on the City’s latest experience performing this work on CIP projects.

3. Underground installation of existing facilities along streets adjacent to a development would be required in advance of the construction of any half street improvements.
4. Underground installation of existing facilities along streets adjacent to a development would be paid for on a “front foot” basis. The trench and conduit would be placed in advance of the construction of any half street improvements.
5. Any project with frontage along an existing overhead utility line of more than 700 feet will relocate those facilities underground. Projects with less than 700 feet of frontage along an existing overhead utility line will install conduit in advance of any half street improvements and pay a “per-foot” fee to the Underground Fund for the future relocation of those facilities as part of a larger project.

Provisions that should apply to any of the alternatives:

-City designated transmission lines could be exempted from these requirements based on a separate plan approved by the City for these special facilities.

-The City’s Infill and Re-Development Policy could give special consideration or support to whichever alternative is selected.

**Attach 2  
Facilities and Construction in Rights-of-Way  
CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA						
<b>Subject</b>		Staff Update on the Proposed Ordinance for Facilities and Construction in City Rights-of-way.				
<b>Meeting Date</b>		September 15, 2003				
<b>Date Prepared</b>		September 10, 2003			<b>File #</b>	
<b>Author</b>		Tim Moore & Dan Wilson		<b>Public Works Manager/ City Attorney</b>		
<b>Presenter Name</b>		Tim Moore & Dan Wilson		<b>Public Works Manager/City Attorney</b>		
<b>Report results back to Council</b>		X	No		Yes	When
<b>Citizen Presentation</b>			Yes	X	No	Name
X	<b>Workshop</b>		<b>Formal Agenda</b>			<b>Consent</b>
						<b>Individual Consideration</b>

**Summary:**

Staff will update the Council on our efforts to draft an ordinance, regulating street cuts and use of the public right of way. It is needed in response to current construction practices of some utility providers, changes in federal law and in the technology of locating and mapping underground facilities. Its purpose is to allow the City to manage street cuts, coordination of utilities and their construction with City capital projects, and give the City modern and accurate information on what utilities are located where. A key provision is that utility providers must now coordinate their construction efforts with the City's, and provide computer-compatible "as built" of their system, so that the City can incorporate such data into the City's GIS system. For instance, the ordinance requires that all utilities plan and coordinate the location and depth of underground utilities so that construction conflicts and expensive delays can be lessened.

Xcel, Grand Valley Power, Ute Water, Qwest, Bresnan and other utility providers have had, and in several instances have exercised, the opportunity to review and comment on the draft ordinance. The ordinance has been substantially changed to incorporate many of those comments.

**Budget:**

The 1996 Federal Telecommunications Act allows local governments to regulate their rights-of-way so long as the net effect of such regulatory efforts does not discriminate against the provision of service by any provider. A key section of the federal act allows cities to charge the actual costs of managing and regulation the city's streets, alleys and roads. This ordinance will require the various utilities and telecommunications providers to reimburse the City for its actual costs and expenses relating to the use, street cuts in, and construction in the various City rights of way. The net effect will be to require that utilities pay for the actual costs incurred by the City to issue permits, inspect

work and placement of utilities in the ROW, and the delays and increased costs incurred when City capital projects must accommodate the infrastructure of other utilities.

**Action Requested/Recommendation:**

Review and comment on the draft ordinance. If the Council agrees with the basic concepts, staff will coordinate a last round of comments and meetings with the affected utility providers, leading to an introduction of the ordinance sometime in November or December if all goes as expected.

**Attachments:**

Draft Ordinance

**Background Information:**

The City's franchises with Xcel Energy and Grand Valley Rural Power already require that those utilities must relocate their facilities when needed to accommodate City capital projects. However, even those franchises do not require that the providers give the City accurate "as built" once construction is completed, nor do the franchises require that the construction work of their crews be coordinated with the City's capital projects and other City values, such as road closures. The franchises were not intended, and do not deal, with the accuracy of "as built" that can be integrated into the City's GIS, nor do they specifically provide means to require that the construction projects of such utilities be coordinated with the City's to reduce disruptions, delays and costs.

But perhaps more importantly, with the advent of the internet, fiber optics and similar dramatic technological changes, outside entities have more and more frequently installed fiber optics or other underground facilities without much notice to the City or have done a poor job of construction or repairs to the street system. In recent years, the City has encountered substantial problems when utility companies have not removed their existing facilities in a timely or even on a predictable schedule. This has caused the City's street, sewer, storm sewer and other construction projects to incur significant delay costs. It is axiomatic that cities can require for-profit and other utilities to relocate their facilities to accommodate the City's utilities and public works projects, yet often time such utilities have not assigned the staff or budget to avoid real and costly increases in the City capital budgets, not to mention the delays to the public and disruptions to businesses and residents.

State law has always granted authority for cities to regulate others' use of City Rights-of-Way. Now federal law also specifically allows cities to require utilities to relocate their facilities so that the City doesn't incur additional costs and delays. Also, this ordinance will require right-of-way users to accurately indicate where their facilities are located so that the City, and other providers, can plan for repairs and construction without damaging the already buried facilities.

Over the last six months or so, staff has met with most of the potentially affected interest groups to explain the provisions of the draft, and especially why such an ordinance is needed. We have also met with members of the Associated Builders and

Contractors and Western Colorado Contracting Association to solicit their input. Both groups understand the City's efforts to better manage the future installation of underground utilities and support the ordinance. Additionally, utility providers including Xcel Energy, Grand Valley Power, Qwest, AT&T, Ute Water, Clifton Water, the three area sanitation districts and Grand Junction Drainage District have all had an opportunity to review and comment on the ordinance. While each has expressed operational concerns, we believe that each also understands why the City will benefit from the ordinance.

Problems and solutions addressed in the ordinance include the following:

1. Any street cut on existing roadways injures the driving surface to some degree. While the current practice of patching these cuts makes the road drivable for the short-term, the surface cannot be completely restored to its original condition until the road is overlaid or rebuilt. This ordinance encourages boring under the roadways.
2. Inadequate planning of and control over the placement of new facilities many times results in conflicts with other existing utilities and creates a nearly haphazard inter-twined series of pipes, cables and manholes, all of which can only be accurately located by digging up the right-of-way. The ordinance requires that the utility provider must show an overall plan for the use of the City's R-O-W, thus facilitating coordinated construction and ease of future repairs because an accurate location of the various pipes and conduits can now occur.
3. Certain providers do not remove or relocate their infrastructure when requested to do so by the City for capital construction projects. These delays are costly to the City and other providers and frequently inconvenience traveling public and adjacent businesses and residents. The ordinance establishes a systematic way of identifying and enforcing schedules, and establishes a mechanism for collecting damages associated with these delays.
4. Although Colorado's underground excavation statute requires providers to locate their utilities within 3 feet in advance of digging, it is not only not precise enough to be able to design on, the state law only requires that utilities locate their underground facilities in the horizontal alignment. Because of this deficiency, no depth information is provided resulting in increased design, and especially construction costs because work must progress slowly to avoid damaging the facilities. Also, the current state law does not require utility providers to locate their facilities when the City designs or plans a future capital project. The net effect is that the designing is frequently redone as utilities are "pot holed" or dug up, during construction. The City, and other providers for that matter, will save significant construction costs if this ordinance is adopted because right-of-way width, utility relocates and other construction coordination problems can be solved months before the actual construction begins, IF accurate horizontal and vertical location information is available.

In a current example, the City's Combined Sewer Elimination Project (CSEP) will spend approximately \$100,000 in 2003 just to accurately locate underground utilities so that the storm sewer construction plans will miss existing utilities and

will not have to constantly be revised in the field during the actual construction process. When the City's engineers are designing the project, they can know where the other utilities are located both horizontally and depth. This information allows the gravity storm sewer system to be designed with as few conflicts as possible. With the information provided if this ordinance passes, the conflict points of the various pipes, cables and conduits can be identified well in advance of the storm sewer construction, saving significant time and money.

Because of the need to accurately map the location of utilities within the City's Rights-of-way, this ordinance requires utility providers to give "as-built" data which can be blended into the City's GIS system. Over time, the City and the utility providers that use City right-of-way will benefit from a coordinated system of infrastructure that is buried in City right-of-way.



Ordinance No. \_\_\_\_\_

An Ordinance Adopting  
Regulations Concerning Facilities and  
Construction in City Rights-of-way

Recitals.

A. The City intends to exercise its police powers to the fullest extent possible under this City's home rule powers and authority, Colorado's constitution, the federal Telecommunications Act of 1996, §38-5.5-101, C.R.S., *et seq.*, and the guidance provided by *City and County of Denver v. Qwest Corp.*, 18 P. 3rd 748 (Colo. 2001).

B. Several problems are being addressed by this Ordinance. First, each instance of underground use of the City right-of-way ("ROW") has historically meant cutting the road surface. The best of repairs to such cuts still means that until the road is overlaid or rebuilt, the surface cannot be fully restored. Such roads are always more susceptible to water damage. Such roads cost more money to repair over time and are more inconvenient to City residents who use these roads, which reflects badly on the City due to the uneven surface of City streets.

C. Another problem being addressed is the increasing numbers of entities laying lines and other facilities to create a grid for that utility's or company's purposes. Without an overall plan or method, each entity's independent placement of facilities, and later repairs, extensions and maintenance, has led to a nearly haphazard inter-twined, both horizontally and vertically, series of pipes, conduits, manholes and similar facilities.

Not only does the City not know what lines and cables and pipes are located where, neither does any other Provider. Each foray below the surface of City ROW means surprise, all too frequent damage to buried infrastructure and consequential cost increases. The City has developed a sophisticated and very accurate geographical information system (GIS) system over the past decade, at a cost to its citizens of well over a million dollars—not counting associated labor costs. The City has invested large sums of money and labor to locate its water, sewer and other facilities on this modern GIS. The City, its citizens, and the various Providers and utilities will all benefit if this GIS can be used to help locate existing facilities, and to plan for the extension of future facilities. This Ordinance will allow this to occur.

D. Another problem is that certain Providers do not remove or relocate their infrastructure when requested by the City, so that the City can build new roads, expand existing streets, and install or upgrade or extend sewer lines and similar City facilities in the least costly and quickest fashion. Recent instances of failure to timely cooperate with the City and other Providers has directly increased the costs to the City and other Providers, the inconvenience to the public due to construction delays and nuisances. When one Provider promises to relocate its facilities, especially when necessary before another phase of construction can proceed, and then either does not do it on time, or not at all, the City's costs and delays are dramatic and frustrating. All other Providers are injured as well as is the public. Adding insult to injury, the offending party

frequently does not pay for the consequential costs incurred by other, innocent, parties.

E. Even with modern efforts to locate utilities in advance of digging, such as Colorado's underground excavation statute (§9-1.5-101, *et seq.*, C.R.S.), work in City ROW must go slowly, increasing labor and other costs, because the consequences of damaging the facilities of others in terms of loss of time, customer service, and increased costs are so significant. While in such circumstances it may be that no one is "at fault," the public, the Providers and the City will benefit from accurate information of the vertical and horizontal location of infrastructure, so that such data can be blended into the City's GIS, resulting in a coordinated system of use, repair and additions to infrastructure within City controlled ROW.

F. History teaches that as our society evolves, the buried utilities will increase in complexity and number. The City can help all concerned by creating a system that regulates and directs the ever-increasing myriad of cables, pipes, manholes, lines, fibers, conduits, utility boxes, culverts, ditches, canals, and many other structures and appurtenances in City streets and alleys. While the process of "getting there" will initially cost some money, the end result will be a much more efficient, and less expensive, ability to maintain existing, and add new, infrastructure. The City, developers, utilities and other Providers will save money during the design phase, during construction and when excavations are required for routine and emergency repairs.

G. Congress has dictated some rules, the General Assembly had added others, and the City has its own broad powers as a regulator of the health, welfare and safety of its citizens and visitors and ROW. The City's voters have authorized the use of City streets by Public Service Company of Colorado and Grand Valley Power, pursuant to franchises. The voters approved a cable operator's use of public ROW in 1966 pursuant to a revocable permit. Congress and other have directed, however, that the City cannot require that every Provider obtain a voter approved franchise, as once was required. However, the City is lawfully authorized to make reasonable regulations that can apply to Providers without franchises, so long as the net effect is not to discriminate or unreasonably burden modern telecommunications and similar functions.

This Ordinance adopts these reasonable rules to solve legitimate local problems, within the constraints imposed by evolving federal and state laws that preempt, if any, local control of City ROW.

H. Some Providers own hundreds of miles of infrastructure within City ROW. Others have fewer miles but larger facilities, such as large diameter pipes. Some Providers have installed facilities that parallel facilities of the City or others, in the same section of a street. The larger the pipe, facility or structure is, the easier it is to avoid in some ways when constructing in the same area of ROW. Yet, the administrative burden on the City to track "smaller" infrastructure is the same as it is for the larger facilities. Rather than attempt to categorize such facilities on the basis of size, the City chooses the rational method of measuring the length of such facilities.

Rather than attempt to distinguish between unlike Providers, the Council determines

that it is fair and equitable to adopt a standard "unit" to compare the burden on (and in some ways, the benefit to) the City and its residents, and their ROW. Without such a comparative scale, how can one equitably compare a Provider's thin but delicate wiring (that is subject to easy injury by other Providers) against a several foot wide drainage pipe that is easily located and hard to break? On the other hand, a larger pipe occupies more space within the limited ROW, and is less susceptible to being easily placed with other utilities in a common trench. Providing for rules and differences for all Providers based on a common "yard stick" or a "unit" of length is reasonable and equitable.

I. The City has the power and authority to provide a systematic method of permitting, standards, cost recovery and coordination, within the limits of any preemptive federal or state laws that may apply. The Council finds that it would be irresponsible not to do so because our citizens are being injured financially, without this Ordinance as are other utilities and Providers. Further, a systematic scheme protects the City's and the public's infrastructure.

It is noted that above-ground facilities within the City ROW are, for the most part, already adequately regulated pursuant to franchises, the PUC or pursuant to contracts between the affected parties.

J. These rules and regulations will benefit every Provider and utility, as well as the City and its citizens, because the overall costs to and time of each will be reduced. Thus, each utility and Provider will help make more efficient both inter- and intra-state commerce, the provision of services to the public and modern communications.

K. The rules in this Ordinance that require Providers to upgrade existing facilities, and relocate, in accordance with the City adopted rules at that time, will require some initial expense by the Providers. The alternatives are to have the City pay for such costs or to require the Provider's to come into compliance incrementally. The City does not have the resources to pay the costs caused by other Providers, nor would it be fair to citizens to subsidize such Providers, either overall or during periods when incremental improvements are made. Sometimes when the Provider must relocate its infrastructure, at the direction of the City, new easements or ROW must be obtained. The City finds it to be in the best interest of City residents if the City obtains such easements on behalf of the Provider, so that a citizen has to only deal with one entity obtaining ROW and so that a fair price is paid, thus reducing the burden on the citizen. However, the costs of such process and easement must be paid by the benefiting Provider(s).

L. As noted, although existing state law requires utilities to locate their facilities, that law and current local practice is such that the owner's of such facilities are not willing to routinely locate their facilities at the City's request, so that such information can be incorporated into the City's capital project design process. Even if such owner's do mark the location of their facilities, experience has shown that too frequently, such information is not accurate.

M. The City incurs significant costs by having to redesign, and to relocate during construction, when accurate information is available, too often not until the excavation process is well under way. Until information, as required herein, is readily available to

accurately locate, both horizontally and vertically, all such infrastructure, all Providers must field locate its infrastructure upon request by the City, both during construction but also at necessary stages of the City's design process.

N. Another key purpose to this Ordinance responds to the changing reality of utility Providers, especially telecommunications and cable industry entities, both old and new, that desire to lay new facilities in City ROW, and have installed miles of infrastructure in City ROW. There are now so many different utilities, in so many different horizontal and vertical locations that the City must plan for the years to come, so that inter- and intra-state communications, information and similar facets of the modern economy can continue to expand and bring the benefits to this City. An overall plan and systematic way to integrate all these activities, functions and facilities is absolutely required for the benefit of the City, its citizens, and the Providers and utilities that operate in, and have infrastructure that runs under and through, the City. This Ordinance addresses practical concerns regarding the use and work in ROW by all types of providers; including special districts, conservancy districts, telecommunications and existing franchises.

O. In general, this Ordinance does several important things. It requires that any entity must first give a specified notice before it may operate in any form in City controlled ROW. Each Provider must show its overall plan for use of the City's ROW; third, it establishes a systematic way of identifying and enforcing schedules, impacts, location and other technical standards. It requires that accurate information be provided to the City. It provides a mechanism whereby the entity causing delays and damages to the City is responsible to pay for such delays, and to reimburse for such damages so that this City's citizens do not inadvertently subsidize any wrongful or negligent activities of others.

P. The Telecommunications Act of 1996 (47 U.S.C. § 253) makes clear that cities such as Grand Junction are entitled to be reimbursed for the actual reasonable costs associated with the use of City ROW by utilities and providers of telecommunications. In addition, various cases around the country, such as the recent case of TCG New York, Inc. v. City of White Plains, 305 F3d 67 (Second Circuit, 2002), interpret applicable federal law as allowing cities to also receive compensation, equivalent to rent, of up to five percent (5%) per year of a telecommunication's provider's annual revenues generated in the cities' limits.

Q. This City determines that it would be irresponsible not to obtain such reimbursement. In addition, future City Council's and the City's voters may choose to receive a reasonable return on the investment in the ROW of the City, as allowed by cases such as the White Plains case.

R. The existing franchises between the City and its two power Providers, Grand Valley Power and Public Service Company of Colorado, provide for franchise fees, analogous to the compensation that may be charged relative to providers of telecommunications and other entities subject to the Telecommunications Act of 1996.

S. The Council acknowledges that federal law authorizes the City to collect such compensation, up to five percent (5%) of gross revenues, from telecommunications Providers.

T. The Council determines that it will not require such compensation, nor request voter approval at this time.

U. This Ordinance is intended to integrate with the City Code, Chapter 38, especially Article IV. References in this Ordinance to section numbers shall be to said Article IV.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE City of Grand Junction: The following is hereby adopted as an Ordinance of the City, as set forth, and shall be effective as of \_\_\_\_\_, 200\_\_. The City Clerk shall codify these provisions as Article V of Chapter 38 of the City Code.

1.
  - (a) The terms of voter approved franchises that are inconsistent with, or conflict with, the terms hereof shall control.
  - (b) Consistent with the requirements of the Federal Telecommunications Act of 1996, the City Council may approve variations from the terms of this Ordinance, as needed to implement specific technical needs of Providers, in the form of a revocable permit. Such revocable permit is the term used by the City Charter, although it is recognized that the Charter language that ostensibly would allow the Council to terminate such a permit without cause on thirty (30) days notice has been preempted by applicable federal laws; discrimination contrary to the Telecommunications Act of 1996; or regulate the provision of telecommunications services.
  - (c) A revocable permit, pursuant to the City's charter, ordinarily can only be issued by the City Council. Because the Telecommunications Act of 1996 preempts inconsistent local government provisions, and because quick administrative issuance of a permit or license to a telecommunications Provider would not violate any such preemptive law, the Council determines that the extraordinary step of delegating to the Director the power, and duty, to issue revocable permits pursuant to this ordinance is mandated by federal law, and is hereby authorized.
2.
  - (a) It shall be unlawful for any person, Provider, entity or telecommunications Provider as defined by the Telecommunications Act of 1996, within, under, in, through or on any City owned or controlled ROW within the limits of the City, to replace or dig as defined herein, unless such person is a franchisee, a local government authorized pursuant to Article IV of Chapter 38, has obtained a revocable permit as described herein, or is certified by Colorado's Public Utilities Commission and unless such replacing or digging is performed in compliance with the provisions of this Ordinance; and
  - (b) The terms of any permit, franchise and revocable permit, and the engineering standards of the City, including construction testing and inspection, and the other provision of this Ordinance shall apply to each such franchisee, local government, and revocable permittee.
  - (c) This Ordinance does not apply to service lines.
3. Notice.

- (a) Before beginning work, replacing, digging or making any use of any ROW, a Provider shall give written notice of its proposed work at least fifteen (15) City business days before beginning any such work or digging.
- (b) If due to workload or other considerations, fifteen (15) days is not sufficient to adequately evaluate the notice and address possible impacts on the City or other Providers, the Director may lengthen the advance notice period up to a total of ninety (90) days.
- (c) Advance notice for a new Provider shall be thirty (30) days, unless extended by the Director up to a total of one hundred and eighty (180) days.
- (d) For the notice to be adequate, the Provider shall supply the following information:
  - (i) For out-of-state Providers and contractors, proof of authority to do business in Colorado;
  - (ii) Proof of Colorado worker's compensation coverage;
  - (iii) The name and street address of the Provider;
  - (iv) Contact information for the Provider;
  - (v) The name, address and contact information for each contractor before such person(s) does any work or digs in any ROW;
  - (vi) The business telephone number of the president, chief executive officer or other decision-maker of each such Provider and contractor. The Provider or contractor may each designate another individual so long as such designee has the requisite authority to make decisions for the Provider or contractor regarding the matters regulated herein, and if the contact information for such designee is provided;

A proposed work plan showing:

what specific locations and segments of ROW will be effected;

when each such ROW will be used and effected;

the location, depth and width of any cuts, digging or other work within the ROW;

how, if at all, the proposed work or digging will interfere with any City work and how the Provider will mitigate or minimize the interference;

how warranty work will be secured;

how the Provider intends to repair or replace any damaged ROW, including any facilities and infrastructure located within the ROW;

Traffic control plan, as necessary.

#### 4. Boring is Encouraged.

It is the City's policy to discourage cuts and other breaks in the surface of any ROW. Boring is required unless the Provider can reasonably demonstrate to the Director that it is impracticable to bore, or the City determines the City may benefit, based on the particular circumstances, such as condition of the surface, topography, groundwater, or location of other facilities or structures.

#### 5. Construction Permit. Emergency.

- (a) Within any ROW no Provider shall dig, replace nor make any cuts nor occupy any City ROW until the Provider has obtained a construction permit issued by the Director, except in an emergency. Unless all or a part is prohibited by other applicable law, the Provider shall pay the cost of the permit which shall be equal to the City's reasonable estimate of the actual costs required to process, issue, review the proposed work, make inspections during the work, perform field and other tests, and generally monitor the activities pursuant to the permit. From time to time, the City Council may adopt a schedule of average actual costs, based on prior experience which sets the costs of such permits.
  - (b) If a Provider cannot first obtain a construction permit due to an emergency, the Provider shall take such "action as is reasonably required" and shall as soon thereafter as practical give oral notice to the Director, and thereafter comply with the rest of the requirements of this Ordinance.
6. Provider's proposed Plans. Director's Review.
- (a) No Provider shall begin any work, nor dig within any ROW nor make any cuts nor occupy any City ROW unless the Director has accepted the Provider's construction plans which shall comply with adopted City specifications and standards. "Adopted City specifications and standards" includes the specifications and standards of other Providers if substantially equivalent and if approved in writing by the Director or pursuant to written agreements between such other Provider and the Director.
  - (b) At the time of application for a construction permit, a Provider shall deliver three (3) sets of its proposed construction plans for use or digging in any ROW to the Director for the use of the City. Among other benefits such overall plans allow the City to coordinate its work with that of the Provider and other Providers. If the City's work load demands, or if the plans are complex or address many units, the Director may extend his review time in whole or for portions of the City and its ROW, by giving notice to the Provider of an extended review period not to exceed a total of 60 business days. The scales of such plans shall be not less than one inch (1") equal to forty feet (40').
  - (c) If the plans are complete and adequate, the Director will be deemed to have accepted the plans unless he rejects or amends the plans within ten (10) City business days by giving notice thereof to the Provider.
  - (d) The Provider may rely on the lack of rejection, amendment or otherwise of the plans until a contrary notice is given by the Director; thereafter the Provider shall make such changes as the Director requires, consistent with this Ordinance and the City's other standards and requirements.
  - (e) To reject or amend the Provider's plans, the Director shall give notice thereof: by sending an email or facsimile or by mailing a copy to the Provider's listed address, facsimile number or email address. Such notice by the Director is effective upon the earlier of sending the email, facsimile or mailing the notice first class via the U.S. Postal Service, postage pre-paid.
  - (f) If the Director rejects or amends the proposed plans, in whole or in part, the Provider shall not thereafter do any work in the ROW until it submits plans that the Director does not reject or amend; however, the Director may

approve a portion of the plans and thereafter the Provider may perform a portion of its proposed work in the locations or at such times as the Director directs.

7. City laws.

Each Provider has the duty to see that its work, and that of its contractors, complies with this ordinance, other adopted City standards and specifications, and other applicable law. Other City adopted standards and requirements include: the Transportation, Engineering and Design Standards; the City's standard contract documents as applicable; the City's ordinances including the Zoning and Development Code; and the City's Administrative Regulations.

8. Infrastructure Standards.

- (a) From time-to-time, the Director may adopt additional or supplemental standards as Administrative Regulations to which each Provider shall thereafter conform its infrastructure in the City ROW whenever the infrastructure is replaced.
- (b) The Director shall adopt standards regulating and guiding the vertical, horizontal and placement of Provider infrastructure relative to the City's infrastructure, the facilities of other Providers and other facilities in the ROW. The Director shall solicit the public input of Providers and other affected interests when considering such standards.
- (c) The City's standard cross section for "wet" & "dry" infrastructure is **attached**. All work shall conform with such standard cross section, unless the Director has approved a variation established by the Provider as reasonable and necessary.

9. Oversizing. Relocate Facilities.

- (a) Whenever a Provider's dry infrastructure in the City ROW is dug up, exposed or repaired, if the Provider desires to re-bury, replace, or install dry infrastructure in that unit, or a portion of a unit as the Director determines is reasonable, the Provider shall within all of such unit:
  - (i) Either upsize conduit or pipe, or at the election of the City, and if the City provides the pipe or conduit, install separate conduit.
  - (ii) Pay the costs required to rebury, replace or install such infrastructure in such unit, in accordance with the City's then adopted standards and requirements.
- (b) If a Provider's infrastructure is dug up, exposed or replaced, or if such infrastructure must be reinstalled or replaced, at the direction of the City or to accommodate work directed by the City, each Provider shall bear the costs and expenses required to reinstall or replace the infrastructure. The City may require a Provider to reinstall or replace the Provider's infrastructure in one or more units on behalf of Mesa County or a political subdivision of the State of Colorado.
- (c) If a Provider's infrastructure must be dug up, replaced or relocated at the direction of a Provider other than the City, such Providers shall determine how to allocate such expenses between or among themselves.
- (d) For all replacements and infrastructure made, the Provider shall deliver "as



built" information as required herein to the Director within 60 days of completion of the replacement or infrastructure work.

- (e) The Provider shall deliver the as-built information in a format and medium specified by the Director so that the City may incorporate the information into its existing software, programs and GIS.

10. Joint Use of Provider Infrastructure.

The City may require that a Provider locate and maintain one or more of its facilities in a common trench and/or common pipe, conduit or similar facility, in which the infrastructure of other Providers and/or the City is also located. Until the Director adopts different standards regarding the vertical and horizontal separation of facilities, the Standards of the American Waterworks Association shall apply.

11. Upsizing Conduit Installation for City Benefit.

- (a) When a Provider places dry infrastructure in the City ROW or replaces such infrastructure, the City may require that such Provider acquire and install larger pipes, conduits, culverts, *et cetera*, for the benefit of the City and, if approved by the City and the pro rata costs are paid, for the benefit of other Providers. The Director may require a (first) Provider to install larger dry facilities at the (first) Provider's initial cost; however, in such event, the Director shall also make reasonable provision for such (first) Provider to be reasonably reimbursed by any other Provider for a *pro rata* share of the incremental costs of such upgrades or upsizing, based on the number of units if applicable, of the benefits received. The City's sewer and/or road reimbursement agreements and policies shall govern such reasonable reimbursement, until the City Council directs otherwise by Resolution.
- (b) The City may pay the incremental costs required to install larger or higher capacity infrastructure upon request of the Provider; in such event, the City may require that another Provider that receives the benefit of such larger or higher capacity shall reimburse the City a proportionate share of the City's costs, as reasonably determined by the Director based on the benefit received.
- (c) Anytime any Provider opens a trench, digs or bores in City ROW, the City may provide conduit or piping which the Provider shall install therein at no cost to the City.

12. City Costs and expenses.

- (a) Each Provider shall pay to the City the costs and expenses incurred by the City and its officers, officials, employees and agents regarding oversight, inspection, regulation, permitting and related activities ("City Costs"). City costs may be calculated or extrapolated on a per unit cost.
- (b) City costs include the actual wages, plus benefits, paid by the City for the Work of each City employee and/or agent, including clerical, engineering, management, inspection, enforcement, and similar functions.
- (c) City costs include the expenses and costs for computer-aided design programs, maps, data manipulation and coordination, scheduling software, surveying expenses, copying costs, computer time, and other supplies or

materials or products required to implement this Ordinance and to regulate Providers hereunder.

- (d) Unless the Director requires a Provider to re-surface a part of a unit, portion of a City block or similar segment of ROW disturbed by the Provider, City costs include the present value of the cost to replace and resurface the damaged asphalt, concrete or other ROW surface.
- (e) The Director shall establish an average per unit cost for the calendar year in question, based on bids the City accepted for City projects in the previous one (1) or two (2) calendar years.

13. Provider Payments to the City. Collections.

If a Provider fails to pay City Costs, or any other money or fee or compensation required by a City law or regulation, in full within 30 days of the City's mailing a claim therefore, the City is entitled to, in addition to the amount of the claim: Interest on all unpaid amounts at the statutory rate or the City's return on investment as reported in the City's then current adopted budget.

14. City Required Utility Locates for Design.

- (a) In addition to locates required pursuant to §9-1.5-101, C.R.S., *et seq.* ("Locate Law"), each Provider shall locate its infrastructure in City ROW during a prescribed work week as directed by the Director. The Director shall give a Provider at least 14 calendar days advance notice of the work week in which such locates shall be completed. The Director shall establish the same work week for all Providers to do the work required by the Locate Law within the specified unit or units.
- (b) The City may require that a Provider provide three (3) different "stages" of locate information:
  - (i) As needed by the City for preliminary design of infrastructure in ROW. Generally, at this stage the vertical datum, the City may require vertical information, and pot holing, in specific locations and depths, so that interference with the City's work and the facilities in the ROW can be minimized.
  - (ii) As the final construction plans are completed, and during construction as needed, accurate locate information may be required at additional points and areas.
- (c) Any Provider who fails to comply with the Director's notice to comply with the Locate Law within the specified work week is responsible and liable for all consequential damages that result from either the failure to comply with the Locate Law or from inaccurate information regarding the vertical and/or horizontal location of such Provider's infrastructure.
- (d) Any Provider may avoid claims for such consequential damages pursuant to this ordinance if such Provider "pot holes" in such locations and to such depths as such Provider determines is needed to provide accurate information to the City regarding the horizontal and vertical location of such Provider's infrastructure in the specified unit(s).
- (e) The Provider shall locate in such additional areas in unit(s) as specified by the City as the City's design progresses and information from various Providers, and elsewhere is available.

- (f) Each Provider that does not accurately locate its infrastructure shall pay the City the costs incurred by the City in changing any design, relocating City infrastructure, and delay and similar costs incurred as a result of inaccurate Locates.
- (g) A Provider may avoid having to perform locates in one (1) or more unit(s) if it delivers to the City accurate, as defined herein, information that is compatible with the City's GIS that establishes the location of such Provider's infrastructure in the unit(s) in question.

15. Incentives.

- (a) Notwithstanding the amount of City costs which a Provider must otherwise pay, the Council may adopt a Resolution that establishes the financial incentives to Providers to obtain the results and to implement the policies described herein.
- (b) The City costs payable by each Provider for each unit may be reduced by one-quarter (1/4) if a Provider installs City provided conduit, pipe or other infrastructure within the unit, at no additional cost to the City when the Provider repairs or installs its infrastructure.
- (c) A Provider may only obtain a construction or revocable permit for multiple units if and while the Provider is in compliance with all City rules and requirements and if the Provider has not delayed the City or City contractors regarding City ROW in the previous six (6) months.
- (d) The Provider must deliver its bill of sale to the City for all infrastructure, to be owned by the City free and clear of liens and the claims of others.

16. Planning. Provider to remove its Facilities at City Request. Provider appeal.

- (a) If the Director posts notice at City Hall of the nature and location of the City's construction plans involving City ROW, each Provider shall plan for and remove its facilities as required by the City in compliance with the City's plan and schedule for the work, and each phase of the work. In general, the City's capital plans can be identified more than one (1) year in advance by reference to the capital plans and budgets.
- (b) Unless the Provider's appeal of such City plans as provided herein is granted, a Provider shall complete the work, replacements as necessary to avoid delay or interference with such City plans.
- (c) A Provider is not in violation of this Ordinance for failure to coordinate with the City's plans, as provided in this section, if the Director accepts the Provider's written appeal which proposes reasonable alternatives regarding timing and/or methods, or other mitigation of the City's damages or increased costs.
- (d) Without affecting the City's rights under the foregoing provision, the Director may extend the time for performance by a Provider, if the Provider justifies such extension in writing to the Director.

17. Provider Must Relocate.

- (a) For any City project and any City use of City ROW, each Provider shall complete its removal of its infrastructure or replacement in accordance with the City's plans, and the City's most current posted schedule, so that the City and other Providers are not delayed in their use of City ROW in the particular

- unit or ROW segment.
- (b) Adoption of the City's budget which includes the City's plans for capital projects or other use of City ROW shall constitute notice to all Providers of the City's plans regarding ROW, so long as the City's schedule for use of the particular ROW or unit(s) is also posted.
  - (c) The City may acquire additional or other easements for use by such Providers at the Provider's written request so long as the City's work will not be delayed. The Provider shall reimburse the City for the City's Costs incurred in obtaining such ROW and for the costs and expenses of obtaining the ROW and/or easement(s).
  - (d) If such easements or ROW are to be used by more than one (1) Provider, including the City, each Provider, including the City, shall pay a *pro rata* share of the total of the City costs.
  - (e) Providers who are franchisees, pursuant to the City's code, are subject to the Underground Construction and Overhead Conversion Sections (currently Article 10). The City may require that the franchisee move additional facilities of such franchisee underground, at the City's expense as provided (currently Section 10.2) in such franchises.
  - (f) A Provider that is not a franchisee shall relocate its facilities at such time and from such unit(s) as the Director shall direct from time-to-time, at the cost of such Provider, subject only to the requirement that the Director shall give such Provider at least 90 days advance notice thereof.

18. Other.

- (a) A construction or revocable permit authorized under this Ordinance shall be void during all times that any provision of this Ordinance or other City law is not fully complied with. In the event that such permit is later not void, within a week thereof, the Provider shall give the notice required by section 4, and shall apply for a permit as though the Provider was a new Provider.
- (b) A permit to dig or excavate under this Ordinance is void if the Provider supplies materially false or deceptive information to the City at any time.

19. Violations.

- (a) The provisions of Chapter 1 of the City code apply to any violation hereof.
- (b) It is a violation of this Ordinance if a Provider misrepresents any fact in any information provided to the City or to the Director, or the Director's employees or agents.
- (c) A Provider violates this Ordinance if the contact person of such Provider, or the Provider, fails to amend or update the information and documentation supplied to the City pursuant to this Ordinance within 60 days of any change, error, mistake or misstatement.

20. Security.

- (a) If the Provider has violated any provision of this Ordinance within the previous five (5) years, before the Provider is authorized to perform work in the ROW, the Director may require that a Provider post a letter of credit or equivalent security in the greater of:
  - (i) The dollar value of any damage to the City or other Provider's infrastructure that has occurred in said five (5) year period.

- (ii) The amount of increased costs or price payable to a contractor or similar entity due to the Provider's violation; or
- (iii) The amount of gross profit the Provider realized due to the violation.

(b) The City may convert such security to cash and use such cash to pay for any warranty work or to correct any injury or damage caused to the City's infrastructure or property, or other damages, by the Provider's actions or failure to act or to improve the City's infrastructure.

21. Construction Standards.

Each Provider has the affirmative duty to see that the City's construction standards, such as soil density testing of repaired ROW, are complied with.

22. Suspension and/or Revocation of a Permit.

The Director may order that a Provider immediately cease and desist any further use or work within the City's ROW, and suspend all permits and previously granted City approvals for all units, at any time based on reasonable grounds to believe that a violation of this Ordinance, or other City rules or specifications, has occurred and that the public health, safety or welfare, or the property or rights of another Provider, are at substantial risk of irreparable harm.

23. Appeal.

A Provider may appeal any City or Director decision pursuant to this Ordinance as provided in City Code section 38-68, as though the Director were the City Manager.

During such appeal process, the Director has the discretion to allow the Provider to use and/or operate within one (1) or more units, as determined by the Director, with conditions as the Director deems reasonable including the posting of reasonable cash or other security, such as a letter of credit.

24. Administrative Regulations.

The Director may implement this Ordinance by adopting Administrative Regulations.

25. Severability.

If a court of competent jurisdiction declares one (1) or more provision(s) or terms of this Ordinance to be unenforceable or unconstitutional, the rest of the provisions and terms shall be severed therefore and shall remain enforceable.

26. Civil Remedies. If any person or Provider violates any order of the Director, a hearing board or the Council, or otherwise fails to comply with the provisions of this Ordinance, the provisions and remedies provided for in section 38-69 (b) of the City Code shall apply, and shall be available to the City.

27. Definitions.

(a) City Work: Capital projects of the City, or other City digging or excavating in ROW, according to the schedule adopted by the Director, notice of which can be obtained at the Director's office at City Hall.

- (b) Contact Information: Name, title, email address, physical address, and telephone number of each person to whom inquiries and requests for decisions may be directed and who has decision-making authority to bind the Provider, pursuant to this Ordinance. If more than one (1) person must be identified so that the City may locate a contact person at all reasonable times in response to emergencies, the Provider must supply the Director with a prioritized list containing contact information for each person on the list.
- (c) Construction Plans: The Provider supplied P.E. stamped standards for all Provider work in the ROW.
- (d) Dig: means to dig, cut, excavate, move any earth, remove any earth by any means, auger, backfill, bore, ditch, drill, grade, plow-in, pull-in, rip, scrap, trench and/or tunnel.
- (e) Director: The Director of Public Works and Utilities, the Public Works Manager, the City Engineer and each designee of each.
- (f) Dry: Wires, pipes other than wet, cables, fiber optics, electrical lines.
- (g) Franchisee: Any Provider who has a franchise with Public Service Company and with Grand Valley Power or pursuant to an agreement, such as Ute Water Conservancy or Clifton Water District of the Grand Junction Drainage District.
- (h) Infrastructure: includes the wires, pipes (of metal, plastic, pvc or otherwise), valves, connections, conduits, gas lines, water lines, sewer lines, fiber optics, irrigation pipes and canals and conveyancing devices, cable television, and the various connecting junctions/connectors and other marvels. Infrastructure includes publicly and privately owned and operated facilities. Unless the Director finds another reasonable basis, based on an industry standard, to measure or determine a "unit" of a Provider's Infrastructure for purposes of determining City costs, or a duty to upgrade, or a duty to replace to meet standards, four hundred (400) meters of length of Infrastructure shall constitute one (1) unit or element of infrastructure.
- (i) Locate or Locates: Means to establish the location of within three inches (3") both vertically and horizontally, and in compliance with the Locate Law and the terms of this Ordinance; except that with regard to wet infrastructure the vertical location must only be established within twelve inches (12").
- (j) New Provider: A person or entity of whatever form who has not previously given notice to the City under this Ordinance, or who has otherwise been made subject to the requirements of a new Provider.
- (k) Overall Plan: The Provider's overall map or maps of the City ROW, with explanatory text, indicating which streets, alleys and other ROW the Provider desires to use, and when, to place the Provider's facilities. Explanatory text must describe what specific facilities are proposed, what services the Provider expects to offer to what customers.
- (l) P.E.: means a Colorado licensed professional engineer, pursuant to §12-25-101, *et seq.*, C.R.S., or a successor statute.
- (m) Pot Hole: To dig or to excavate in order to locate infrastructure or other facility.
- (n) Provider: A public utility, a provider of services to the public, a governmental subdivision or another person or entity who has, or desires to have, infrastructure or other pipes in City ROW, including homeowner and similar association, but excluding service lines for individual structures.

- (o) Replace or Replacing or Replacement: Dig, expose, fix or reconstruct in whole or part, upgrade, patch or similar activities performed with the goal of gaining use or reuse; except that repairs ordinary to the Provider's work, and routine maintenance, is not within this definition.
- (p) Revocable Permit: For this Ordinance only, a revocable permit may be issued by the Director, for the reasons set forth in the recitals and legislative history of this Ordinance.
- (q) ROW: Streets, alleys, highways, boulevards, avenues, roads, ROW owned or other ROW controlled or owned by the City within the limits of the City.
- (r) Unit: A discrete segment of City ROW between intersections, or 400 feet of ROW, as determined by the Director.
- (s) Utility Work: as indicated on Attachment A.
- (t) Wet: Water, sanitary sewer, storm sewer, drainage, natural gas and other fluids or gases.
- (u) Work: any change to any facility, Infrastructure or portion of any ROW, including digging and excavating and replacements.

INTRODUCED for FIRST READING and PUBLICATION this \_\_\_\_\_ day of \_\_\_\_\_, 2003

PASSED on SECOND READING this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President of City Council