

**GRAND JUNCTION CITY COUNCIL
WORKSHOP AND SPECIAL MEETING AGENDA**

**MONDAY, NOVEMBER 17, 2003, 7:00 P.M.
CITY HALL AUDITORIUM, 250 N. 5TH STREET**

MAYOR'S INTRODUCTION AND WELCOME

- 7:00 **COUNCILMEMBER REPORTS**
- 7:10 **REVIEW FUTURE WORKSHOP AGENDAS** [Attach W-1](#)
- 7:15 **CITY MANAGER'S REPORT**
- 7:25 **REVIEW WEDNESDAY COUNCIL AGENDA**
- 7:30 **UPDATE FROM YOUTH COUNCIL:** Members of the Youth Council will present the results of their work so far and ask the City Council for their input. [Attach W-2](#)
- 8:05 **UPCOMING APPOINTMENTS TO BOARDS & COMMISSIONS:** In anticipation of upcoming interviews for the Visitor and Convention Bureau Board of Directors and the Historic Preservation Board, City Council will discuss specific issues relating to each board. [Attach W-3](#)
- 8:15 **UTILITIES IN RIGHT-OF-WAY ORDINANCE UPDATE:** Public Works and Legal Staff will update Council on the status of the ordinance regulating utilities in the City's rights-of-way. [Attach W-4](#)
- 9:00 **CONVENE INTO SPECIAL SESSION
EXECUTIVE SESSION FOR DISCUSSION OF PERSONNEL MATTERS
UNDER C.R.S. 24-6-402(4)(f)(I) RELATIVE TO CITY COUNCIL
EMPLOYEES**
- 9:05 **ADJOURN TO EXECUTIVE SESSION**

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 W-1
Future Workshop Agenda

CITY COUNCIL WORKSHOP AGENDAS

**** DECEMBER 1, MONDAY 11:30 AM (at TRCC)***

11:30 LUNCH WITH GRAND JUNCTION ECONOMIC PARTNERSHIP

DECEMBER 1, MONDAY 7:00PM

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND REVIEW
FUTURE WORKSHOP AGENDAS

7:25 CITY MANAGER'S REPORT

7:30 AFFORDABLE HOUSING ISSUES UPDATE & DISCUSSION

8:10 STRATEGIC PLAN UPDATE

8:25 EXECUTIVE SESSION

**** ~~DECEMBER 15, MONDAY 11:30 AM~~--Canceled for Christmas Break***

~~DECEMBER 15, MONDAY 7:00PM~~-- Canceled for Christmas Break

**** January 5, MONDAY 11:30 AM***

11:30 OPEN

JANUARY 5, MONDAY 7:00PM

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND REVIEW
FUTURE WORKSHOP AGENDAS

7:25 CITY MANAGER'S REPORT

7:30 STRATEGIC PLAN UPDATE

**** JANUARY 19, MONDAY 11:30 AM***

11:30 LUNCH AT UTEC w/KERRY YOUNGBLOOD

JANUARY 19, MONDAY 7:00PM

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND REVIEW
FUTURE WORKSHOP AGENDAS

7:25 CITY MANAGER'S REPORT

7:30 UPCOMING APPOINTMENTS TO BOARDS & COMMISSIONS

**BIN LIST FROM CITY COUNCIL RETREAT (June 2003)
(and other reminders)**

1. Revisit the “Friendly Native” program
2. Update on Temporary Modification to Persigo Discharge Permit (1st quarter of 2004)
3. Transient update (January 5?)
4. Landscape Code
5. Chipeta Avenue traffic calming (December 1?)
6. Update on franchise discussions with Bresnan Communications (January 5?)

**Attach W-2
Youth Council Update**

CITY OF GRAND JUNCTION

CITY COUNCIL AGENDA						
Subject		City Youth Council Presentation				
Meeting Date		November 17, 2003				
Date Prepared		November 13, 2003			File #	
Author		Seth Hoffman		Administration Intern		
Presenter Name		Heather Ahuero		Chair, City Youth Council		
Report results back to Council		<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	Yes	When
Citizen Presentation		<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No	Name
<input checked="" type="checkbox"/>	Workshop	Formal Agenda			Consent	Individual Consideration

Summary: The newly formed Grand Junction City Youth Council has met several times to begin forming the organizational structure of their group and to set goals for the coming year. Members of the Youth Council will present the results of that work and ask the City Council for their input.

Budget: N/A

Action Requested/Recommendation: N/A

Attachments: Power Point Presentation describing proposed duties of officers, mission statement, and strategic goals.

Grand Junction City Youth Council



MISSION STATEMENT

- To better our community by providing a representative perspective to the City Council on issues concerning the young people of Grand Junction and inspiring a desire in youth to become responsible involved citizens who positively affect the future of the City.

OFFICERS

- Chairperson
- Vice-Chairperson
- Secretary
- Treasurer
- Historian
- Parliamentarian

- Chairperson
 - Presides at all meetings
 - Acts as official representative
 - Signs all CYC documents
- Vice-Chairperson
 - Performs duties of absent officer(s)
- Secretary
 - Keeps minutes
 - Prepares agendas
 - Takes attendance

- Treasurer
 - Keeps financial records
- Historian
 - Keeps records outside regular meetings
- Parliamentarian
 - Acts as resource for rules of order
- Staff Support
 - At least one member of city staff should be provided

- MEMBER CONDUCT**
- ALL MEMBERS MUST:
- Attend all regular meetings of CYC. After two unexcused absences during a one-year term, the Secretary will report the member to the CYC. The Chairperson makes the final decision on this matter, but this decision can be overruled by a majority vote of the CYC.
 - Take an oath of office

- MEETING CONDUCT**
- CYC shall meet a minimum of once a month during the academic year.
 - Ten minutes before each meeting is open to public input, however, no one person can speak longer than two minutes.
 - CYC will use Parliamentary Procedure during all meetings.

- GOALS**
- Identify new opportunities for positive teen activities in City parks and Downtown Grand Junction, and work to raise awareness of existing drug and alcohol-free activities.
 - Identify and address negative perceptions adults have about teens, and also identify and address negative perceptions teens have about adults.

**Attach W-3
Upcoming Appointments**

CITY OF GRAND JUNCTION

CITY COUNCIL AGENDA									
Subject		Upcoming Appointments to Boards & Commissions – Visitor and Convention Bureau Board of Directors and Historic Preservation Board							
Meeting Date		November 17, 2003							
Date Prepared		December 16, 2011				File # NA			
Author		Stephanie Tuin			City Clerk				
Presenter Name		Stephanie Tuin			City Clerk				
Report results back to Council		X	No		Yes	When			
Citizen Presentation			Yes	X	No	Name			
X	Workshop		Formal Agenda				Consent		Individual Consideration

Summary: The City Council will be conducting interviews for the Board of Directors for the Visitor and Convention Bureau and considering appointments to the Historic Preservation Board. An interview date has not been set nor has the interview committee been selected. Applications close for these two boards on December 1.

Budget: NA

Action Requested/Recommendation: An opportunity for City Council to discuss the issues the boards are facing and/or any particular expertise needed on the board.

Attachments:

1. The current membership roster for each board being discussed
2. Ethical Standards Resolution No. 84-02, adopted on 9-4-02

Background Information:

Visitor and Convention Bureau

This is a nine-member board that has four positions expiring. All of the incumbents are eligible for reappointment but at this time, none have requested reappointment (they have until December 1). All of them have indicated to Executive Director Debbie

Kovalik that they are considering a request to be reappointed. We usually have a lot of interest in this board so I anticipate we will have quite a list of candidates. This Board of Directors advises the VCB staff on policies and marketing directions.

One of the key elements of being a good board member is regular attendance and I have been advised that this board has difficulty with that. The meetings are held the second Tuesday of each month at 3:00 p.m. The time commitment for this board runs around three hours per month plus a one-day annual retreat and one additional workshop requiring four hours of time.

The board has also indicated that a variety of backgrounds would be beneficial rather than just tourism backgrounds.

City Council has recently had the opportunity to exchange ideas with this board so current issues have been discussed.

Historic Preservation Board

This five to seven-member board has three seats expiring. All three incumbents are eligible for reappointment. One request for reappointment has been received but the deadline is not until December 1. The Historic Preservation Board is responsible for recommending designation of historic resources to City Council for listing on the City Register of Historic Sites, Structures and Districts. The Board also reviews proposed alterations to designated sites as necessary and generally promotes historic preservation in the Grand Junction community.

This board meets about six times per year the 1st Tuesday of the month at 4:00 p.m. for about one hour. Additional time requirements include involvement in activities during Historic Preservation month and presentations to City Council.

The City has just recently been awarded a grant to conduct the third phase of the historic resources survey and the board would like to be involved in selecting a consultant if it is the Council's pleasure. The board would also like to help in the administration of that grant. Another project the HPB is involved with is a research project on the work done by the Works Progress Administration (WPA) and the Civilian Conservation Corps (CCC) in the early 20th century.

The HPB is currently lacking an architect on the board and that expertise would be helpful. The board has also expressed a desire to have more interaction with the City Council such as an annual luncheon or even a liaison/member from City Council at their meetings.

In the past, City Council has selected members of the HPB based on applications submitted and any solicited recommendations received from the board.

Kristen Ashbeck, the staff contact, will be present to answer any additional questions Council may have.

**VISITOR AND CONVENTION BUREAU
BOARD OF DIRECTORS**

Nine Members

Three Year Terms

NAME	APPTED	REAPPTED	EXP	Occupation
Michael Somma	02-06-02	11-20-02	12-02 12-05	Gen. Mgr Redlands Mesa Golf Course
Linda Smith	02-02-00	02-07-01	12-00 12-03	retired
Jane Fine Foster	02-07-01		12-03	Nursing Instructor
Kevin Reimer	02-07-01		12-03	Owner - Hawthorn Suites Hotel
Steve Meyer	11-20-02		12-03	President/Owner Shaw Construction LLC
Jill Eckhardt	02-06-02		12-04	Mesa State Dir of Housing
Peggy Page	02-02-00	02-06-02	12-01 12-04	Owner - page Parson's Jewelers
Lynn Sorlye	11-20-02		12-05	General Manager – Holiday Inn
Alan Friedman (chair)	01-06-99	02-06-02	12-01 12-04	Self-employed - investments

No City Council rep since May, 1998

Created: November, 1989 – effective 1990

Meetings: Second Tuesday, 3:00 p.m., location varies

HISTORIC PRESERVATION BOARD

Three Year Terms

Five to Seven Members

NAME	APPTED	REAPPT'D	EXP	OCCUPATION
Dennis Pretti (L)	06-20-01		12-03	Purchasing Manager
Judy Prosser-Armstrong (E)	04-16-03		12-05	Curator of Archives, Librarian & Registrar
William C. Jones (E)	04-21-99	06-20-01	12-00 12-03	Teacher, trustee for Railroad museum
Louise Wagner (L)	06-20-01		12-03	Church secretary
Thomas C. Streff (E)	3-20-02		12-05	Retired History/Government Teacher
Doug Simons DDA	06-26-02		12-05	DDA rep, (also owner Enstrom Candies)
Bill Cort	04-16-03		12-05	Environmental/Safety Officer

The Board shall consist of a minimum of 5 members and not more than 7. When there are more than 5 members, at least 4 shall be professionals or have expertise in a preservation-related discipline including but not limited to history, architecture, planning, or archaeology. When there are 5 members, there shall be at least 3 such professionals. One member shall be a member of the DDA Board or employee of the DDA. (E) denotes expertise, (L) denotes layperson.

Created: August, 1994, membership amended January, 1995.

Meetings: First Tuesday of the month, 4:00 p.m. in the Community Development Conference Room.

Contact: Kristen Ashbeck, Community Development Dept.

CITY OF GRAND JUNCTION, COLORADO

RESOLUTION NO. 84-02

A RESOLUTION CLARIFYING THE ETHICAL STANDARDS FOR MEMBERS OF THE CITY'S BOARDS, COMMISSIONS AND SIMILAR GROUPS

Recitals.

- A. The various City boards, committees, commissions and other groups are similar in that: the members are typically appointed by the City Council; the mission of each is somehow supportive of the City; and from the perspective of the citizen, the actions and pronouncements of the members of such boards and commissions may be viewed as being the act or pronouncement of the City.
- B. The power and legal responsibilities of several of such City groups rise to the level that the City Council should provide additional guidance and rules, pursuant to the City charter, state and other law.
- C. Members of entities/boards who have one or more of the following powers, duties or opportunities, should be subject to higher scrutiny and care, and will be termed "Authoritative":
- spend money,
 - adopt a budget,
 - buy or sell property,
 - act for or bind the City,
 - sue and be sued,
 - hire/fire and supervise employee(s),
 - make land use decisions, including zoning and/or variances;
 - issue and regulate City licenses, including the power to suspend or revoke a right or privilege to do business with or within the City.
- D. The following are Authoritative:
- Grand Junction Downtown Development Authority
Walker Field Public Airport Authority (only for the three City appointees)
Grand Junction Housing Authority
Grand Junction Planning Commission
Grand Junction Planning Commission Board of Appeals
Building & Fire Code Board of Appeals
Contractor's Licensing Board
Parks Improvement Advisory Board (only for the City's appointee)
Public Finance Corporation
Riverview Technology Corporation
Grand Junction Forestry Board
Ridges Architectural Control Committee

- E. A member of a body with advisory powers and duties only could normally not make a decision that is an actual conflict of interest, although a question of appearance of impropriety might arise. Such groups that are normally acting through a City employee or another City group will be termed “Advisory” for this resolution. The following groups and boards are Advisory:

Commission on Arts and Culture
Parks and Recreation Advisory Board
Urban Trails Committee
Riverfront Commission
Historic Preservation Board
Growth Plan members
Study groups
Transit Committees/groups
Visitor & Convention Bureau Board of Directors
Other *Ad Hoc* Committees

- F. All members City’s boards and groups are encouraged to discuss such matters with the City Attorney or the Mayor as soon as the member determines that a situation or circumstances has arisen or is likely to.
- G. Some court cases from other jurisdictions have suggested that the ethical and conflict rules for Authoritative groups should be the same as the rules for the City Council. Based on those cases, initial drafts of these rules treated all members of Authoritative groups as being equivalent as members of the City Council.

While having one rule for the Council and all Authoritative groups has the benefit of simplicity, there are quite real and significant limitations. Namely such a rule would mean, for example, that the spouse of an appointee to a City board would be prohibited from bidding on a City job, even though the particular board has no other connection with the bid.

- H. Having considered the benefits and practical impacts of the earlier draft, the Council determines that the earlier draft rule should apply to the members of the Council. For authoritative boards, the rule should be to view each such board on its own, and not act as though totally unrelated boards and groups are the same for these purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

1. These rules supplement state and other applicable law, especially including §101 of the City charter.
2. The recitals are a substantive part of these rules.

3. A member of an Authoritative board is subject to the same rules as is a Council person, but only with regard to the particular board or group on which the member serves.
4. Rules for members of an Authoritative board are:
 - (a) With regard to the board or group on which the member serves, it is not allowed for the member, or immediate family or business associates of the member, to contract with or have a business relationship with such member's board or group.
 - (b) It is not allowed for a member to act or be involved in a decision or situation in which it could reasonably be perceived that the member's personal or financial interests could influence the decision-making.
 - (c) Regarding the board or group on which a member serves, such member shall not act, influence or be involved in a decision or situation in which the member's immediate family or business associate is involved.
 - (d) Regarding the board or group on which the member serves, it is not allowed for a member's immediate family or business associate to do business with the board or group.
 - (e) Each member must disclose the conflict or appearance of impropriety (including the potential of either) as soon as possible.
 - (f) If a conflict exists, the member must remove him or herself from further involvement in the decision or the process. If an appearance of impropriety exists, the member may remove him/her self or may seek the guidance of the other members of the board or group. In addition, if either a conflict or the appearance thereof reasonably exists, the member must avoid exercise of any attempt to influence any decision-maker.
5. Advisory boards and members are not subject to the rules that apply to Authoritative boards or groups, except that:
 - (a) A member of an advisory board or group must: as soon as possible disclose the conflict, appearance of impropriety, or potential thereof; and such member must absent him/herself from participation or influence regarding the matter.
6. There is no conflict, nor impropriety, for any member of any City Authoritative or Advisory board or group if the matter does not involve the board or group on which the member serves.
7. Some explanatory situations are described on the attached "Ethical Situations and Recommended Actions."

For this resolution:

- (a) "disclosure" or "disclose" means to write or email each member of the respective board or group, and to send a copy to the Mayor and to the City Attorney. The City Attorney shall deliver a copy of all such disclosures, along with any legal

opinion that is made available to the public, to the City Clerk who will keep a public record of all such disclosures;

- (b) “immediate family” means a person’s spouse/partner and the person’s children, siblings and others living together as a family unit. Cousins, aunts, uncles, and parents would not be deemed “immediate family” unless living with the person as a part of the same family unit;
- (c) “business associate(s)” means a person who is:
 - (i) an owner of ten percent (10%) or more of a firm, corporation, limited liability company, partnership or other legal entity; and/or
 - (ii) an officer or director of a corporation; a manager or general manager of a member of a limited liability company; a partner of a partnership or a similar position of authority in another entity.

PASSED and ADOPTED this 4th day of September, 2002.

/s/ Cindy Enos-Martinez
President of the Council

ATTEST:

/s/ Stephanie Tuin
Stephanie Tuin
City Clerk

Memo

To: City Council
From: Dan Wilson, City Attorney
CC: Law, Kelly Arnold, David Varley
Date: July, 2002
Re: Ethical Rules Scenarios

Scenario #1: An applicant for an authoritative board is the owner of a firm and routinely does business for the City, but not for the board for which he is applying. The historical sales to the City by the applicant have all been pursuant to public bid process.

Answer: The applicant would be able to do business with the City and with any board other than the authoritative board to which appointed.

Scenario #2: An applicant for an authoritative board is not the owner, but is the number three person in a ten person firm that routinely does business with the City, but not for the board for which he is applying. The sales to the City by the applicant's firm are pursuant to public bid process.

Answer: If the #3 person is not an owner of the firm nor an officer, manager or member of the firm but is in a support role to the CEO/owner, then there is no conflict of interest.

Does this second scenario involve an appearance of impropriety? Stated another way, would a member of the public view the connection of the applicant to the firm as being identical as that of the owner? If so, the #3 person should disclose his/her relationship with the firm during the application process.

Scenario #3 – If the applicant for the authoritative board was one of the primary workers for the ten person firm, but not in a management or supervisory role, would the result change?

Answer: The resolution would allow the arrangement. The person can serve because the person is not exercising decision making authority for the firm.

Scenario #4: – If an applicant for an authoritative board is the owner of a firm that provides services to another City authoritative board (rather than directly to the City), should the result change?

Answer: Because each authoritative board is viewed separately from other City authoritative boards, the applicant would be able to do business with the City and with any authoritative board except the one to which the person was appointed.

Scenario #5: If an applicant for an authoritative board is the husband of an owner of a firm that provides services to another City authoritative board, should the result change?

Answer: The owner/wife would only be barred from doing business with the particular authoritative board on which the husband served.

Scenario #6 – If an applicant for an authoritative board is the sibling of an owner of a firm that provides services to another City authoritative board, should the result change?

Answer: This depends on the relationship between the siblings. Unless the sibling was living in the same house as the owner of the firm, there is no conflict.

An individual applicant or board member might still recuse in a particular instance regarding other members of one's extended family if the relationship is such that it would be difficult to make an independent and objective decision.

Scenario #7: If an applicant's best friend does business with the City, but does not do business with the authoritative board itself, is that a problem?

Answer: No conflict exists. Nevertheless, because the public could reasonably perceive that the close personal relationship would influence decision-making, recusal is appropriate.

Scenario #8: If an applicant's ex-spouse is one of the prime contractors for the City from time to time, but not at the time that the applicant would be appointed, would the applicant's appointment bar another contract during his or her term?

Answer: No, because the "ex-spouse" does not fit within the definition of family or close business associate.

Scenario #9: May the child of a member of an advisory board bid on a City Public Works Department contract authorized by the City Council?

Answer: Because the requirement for members of advisory boards is disclosure, once that has been completed, there is no other bar to such a bid.

Scenario #10: Assume that the Arts Commission was expected to recommend to the Parks Director regarding the Director's purchase of a piece of art. If one of the members of the Commission was close friends with the creator of one of the pieces of art, the member should disclose the relationship and avoid further involvement with the process of making recommendations and acquiring the artwork.

-end-

Attach W-4
Utilities in the Rights-of-Way Ordinance
CITY OF GRAND JUNCTION

CITY COUNCIL AGENDA							
Subject		Draft Ordinance for Facilities and Construction in City Rights-of-Way.					
Meeting Date		November 17, , 2003					
Date Prepared		November 7, 2003			File #		
Author		Dan Wilson & Tim Moore		City Attorney/Public Works Manager			
Presenter Name		Tim Moore & Dan Wilson		Public Works Manager/City Attorney			
Report results back to Council		X	No		Yes	When	
Citizen Presentation		X	Yes		No	Name Ute Water	
X	Workshop		Formal Agenda			Consent	Individual Consideration

Summary: The attached draft ordinance is intended to aid the City in the long term management of public Rights-of-Way that are used by utility providers. Proper planning of the location and depth of underground utilities will ensure conflicts between utility providers and City utilities are minimized as the community grows. Most utility providers that have facilities in the City ROW's have had the opportunity to review and comment on the draft ordinance.

Budget: The net effect will be to require that utilities pay for the actual costs incurred by the City to issue permits, inspect work for the placement of utilities in the ROW, and the compensate the City for delays and increased costs incurred when City capital projects must be delayed or altered to accommodate the infrastructure of other utilities.

Action Requested/Recommendation:

Review and comment on the draft ordinance. If the Council so chooses, the ordinance could be scheduled for a public hearing on December 3rd.

Attachments: Draft Ordinance and maps

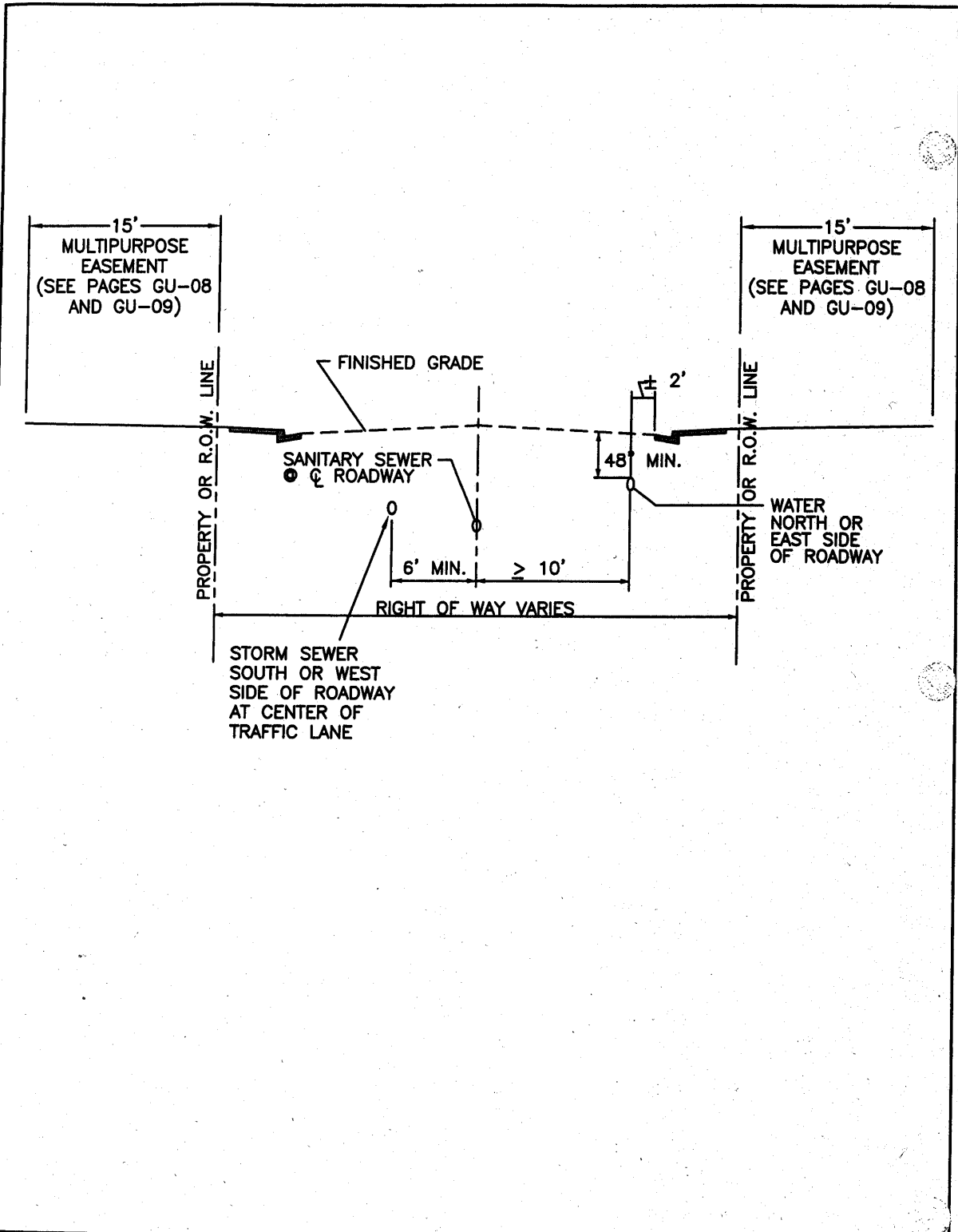
Background Information:

This is the first update of the City's ordinance regulating street cuts and use of the public right of way in many years. 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 reduced.

Utility companies including Xcel, Grand Valley Power, Ute Water, Qwest, Bresnan and other utility providers have had the opportunity to review and comment on the draft ordinance. Some of the concerns include:

1. The requirement to locate utility lines and infrastructure both horizontally and vertically during the design phase of City CIP projects. Currently, State Locate Law requires a utility provider to locate their infrastructure horizontally only. In most cases, the ordinance will require the utility provider to physically dig up or "pothole" their infrastructure within the ROW. Most utility companies recognize this requirement will add a cost to the utility provider.
2. The ordinance requires utility providers to remove or relocate their facilities as necessary to accommodate City CIP projects or other City uses. This provision is consistent with the terms of our franchise agreements with Xcel Energy and Grand Valley Power (GVP). The City currently experiences good cooperation with local providers like Xcel, GVP, Ute Water and the Grand Junction Drainage District concerning removal/relocation of their facilities, but has experienced unacceptable levels of cooperation from others. Again, most utility companies are concerned that this requirement could add an additional cost to operating their utility.
3. Most providers have mentioned the requirement to bore street crossings. As a result, the ordinance now recognizes that certain circumstances may exist that precludes boring.
4. The development of "as-built" plans that are compatible with the City's GIS system was an initial concern; however, this issue has largely been addressed for most utility providers at this point.

MANAGER/CITY STANDARDS STANDARD DRAWING DETAIL GENERAL UTILITY DETAIL S.dwg 06/17/2003 0746522 AM MDT



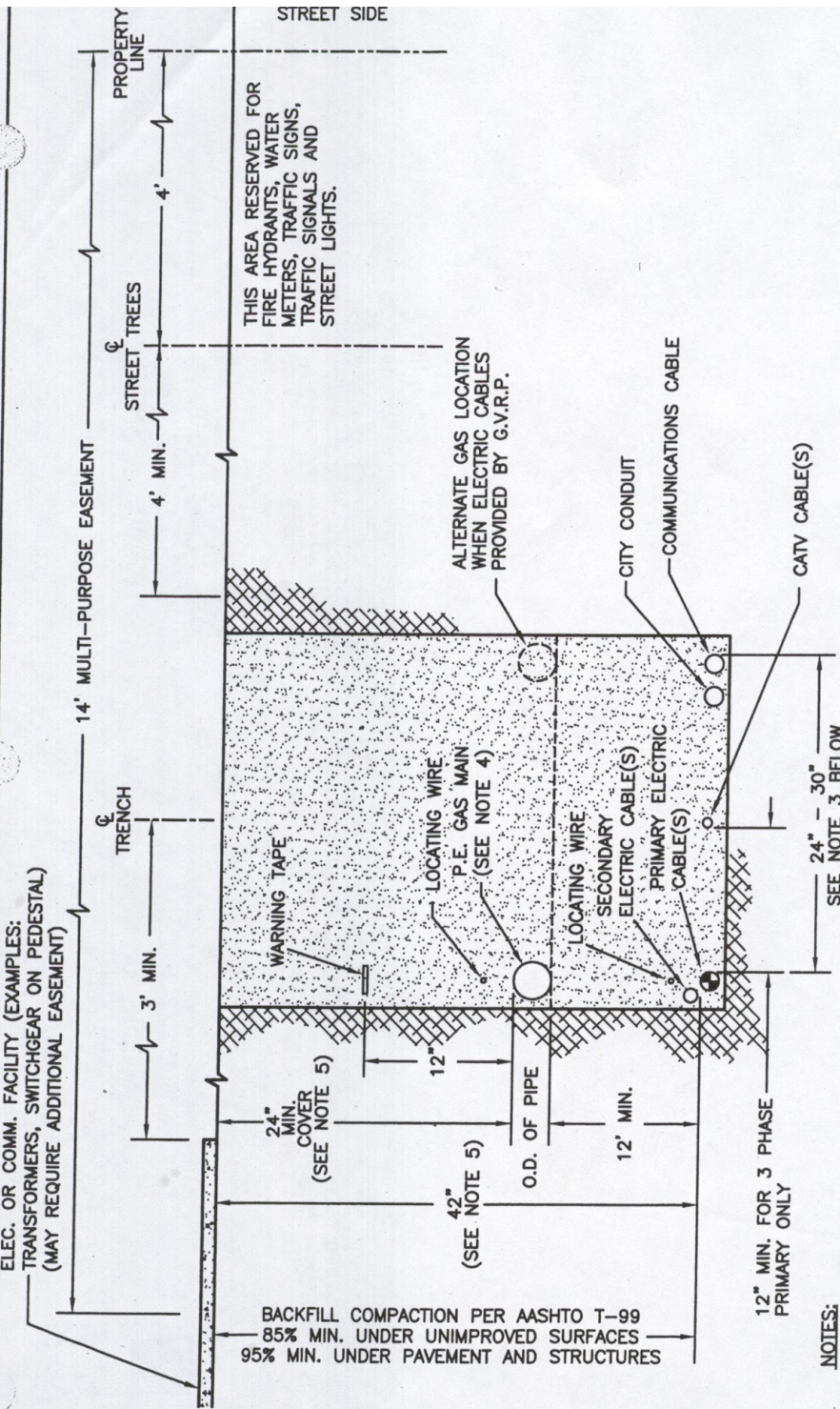
TYPICAL STREET CROSS SECTION / UTILITY LOCATIONS

DEPARTMENT OF PUBLIC WORKS AND UTILITIES
ENGINEERING AND TECHNICAL SERVICES DIVISIONS
CITY OF GRAND JUNCTION, COLORADO

GENERAL UTILITY
DETAIL

APPROVED: *DN*
DATE: *JUN 17 2003*
DRAWN: *TOP/DEW*

PAGE
GU-02



- NOTES:**
1. FOR EASE OF CONSTRUCTION AND MAINTENANCE, PRIMARY CABLE SHOULD BE 12" TO 24" FROM COMMUNICATION CABLES. HOWEVER, NESC REQUIREMENTS PERMIT "SUPPLY AND COMMUNICATION CABLES TO BE BURIED TOGETHER AT THE SAME DEPTH WITH NO DELIBERATE SEPARATION BETWEEN FACILITIES PROVIDED ALL PARTIES ARE IN AGREEMENT."
 2. ONLY SINGLE PHASE SUPPLY CABLES CAN BE BURIED AT THE SAME DEPTH WITH NO DELIBERATE SEPARATION WITH COMMUNICATION CABLES. THREE PHASE CABLES MUST BE SEPARATED BY A MINIMUM OF 1 FOOT (REFERENCE NESC 354.D.3A).
 3. 30" TRENCH WIDTH SHOULD BE USED WHEN ALL FOUR UTILITIES ARE INCLUDED.
 4. STEEL GAS PIPE OR STEEL DUCT IS NOT ALLOWED FOR JOINT TRENCH CONSTRUCTION.
 5. WHERE TRENCH CROSSES CITY STREETS ALL UTILITIES SHALL BE INSTALLED 12" DEEPER THAN SHOWN ABOVE.

JOINT TRENCH DETAILS

DEPARTMENT OF PUBLIC WORKS AND UTILITIES
ENGINEERING AND TECHNICAL SERVICES DIVISIONS
CITY OF GRAND JUNCTION, COLORADO

GENERAL UTILITY
DETAIL

APPROVED: DN
DATE: MAY 2003
DRAWN: DNW

PAGE
GU-09

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 number 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 intertwined, both horizontally and vertically, series of pipes, conduits, manholes and similar facilities.

Not only does the City not know what lines, 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") 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 most expeditious 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 public has been inconvenienced due to construction delays and nuisances. When one Provider promises to relocate its facilities, especially when necessary before another phase of construction can proceed, then either does not do it on time, or not at all, the City's costs and delays are dramatic and frustrating, and other Providers and the public are injured. 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 the 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 has 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 others 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.

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

K. 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.

L. 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).

M. 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.

N. 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 underway. 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 and at necessary stages of the City's design process.

O. 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.

P. 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. Second, 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.

Q. The Federal 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 F.3d 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 telecommunications provider's annual revenues generated in the cities' limits.

R. 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.

S. 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.

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

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

V. This Ordinance is intended to integrate with the City Code, Chapter 38, especially 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) If the terms of a voter approved franchise are inconsistent with or conflict with the terms of this Ordinance, the terms of the voter approved franchise 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 telecommunication 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, 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.
3. Notice. Construction Permit. Emergency. Before beginning work within the ROW, replacing, digging or making any use of any ROW, a Provider shall give written notice of its proposed work and apply for a construction permit at least fifteen (15) City business days before beginning any such work or digging.
 - (a) 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 before granting a construction permit.

- (b) 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.
- (c) 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 within the 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;
 - (vii) A proposed work plan showing:
 - a. what specific locations and segments of ROW will be effected;
 - b. when each such ROW will be used and effected;
 - c. the location, depth and width of work within the ROW;
 - d. how, if at all, the proposed work within the ROW will interfere with any City work and how the Provider will mitigate or minimize the interference;
 - e. how performance/warranty work will be secured;
 - f. how the Provider intends to repair or replace any damaged ROW, including any facilities and infrastructure located within the ROW;
 - (viii) Traffic control plan in accordance with §38-172.
- (d) The Director shall issue the construction permit. 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.

- (e) If a Provider cannot first provide notice and 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.

4. Boring.

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. Performance/Warranty Guarantee for Permits and Insurance.

A performance/warranty guarantee and insurance shall be required for work within the ROW under the same terms and conditions as set forth in §§38-167 and 38-170 as amended herein.

6. Provider's Proposed Plans. Director's Review.

- (a) No Provider shall begin any work within the 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 or before the time of application for a construction permit, a Provider shall deliver three (3) sets of its proposed construction plans for work within the ROW to the Director for use by the City. Among other benefits such overall plans allow the City to coordinate its work with that of all Providers. If the City's workload demands, or if the plans are complex or address many units, and if the Provider has not attended nor provided the necessary notice and information at the most recent City planning meeting, 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 scale of such plans shall not be 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 prepaid.
- (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 Planning Meetings. At least once per calendar year, and up to four times per calendar year, the City shall give notice to each Provider who so requests of a City sponsored and coordinated meeting among the City and Providers ("City planning meeting(s)"). At the City planning meeting, each Provider which delivers to the City copies of its construction plans for the subsequent twelve (12) months, and for future years as available, with the same detail, format and information otherwise required by this ROW Ordinance, shall not be required to provide the information, and at the times, required by §§ 3(b) and 3(c) of this Ordinance.

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 proposed by the Provider.

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 rebury, 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 resurface 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"), during the design phase of City Capital Improvement Projects ("CIP") each Provider shall locate its infrastructure in City ROW during a work week, designated by the Director during the project. The Director shall give a Provider at least fourteen (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. The purpose of this section is to be able to identify all infrastructure of all Providers at one (1) time in a particular unit.
- (b) The City may require that a Provider provide two (2) different "stages" of locate information:
 - (i) As needed by the City for preliminary design of infrastructure in ROW. Generally, at this stage the City will normally only require horizontal data and pot holing, in specific locations and depths when obvious conflicts exist, 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 for both horizontal and vertical data 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 which are franchisees pursuant to the City's charter, are subject to the Underground Construction and Overhead Conversion Sections (currently Article 10) of the respective franchises.¹The 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 construction permit under this Ordinance is void if the Provider supplies materially false or deceptive information to the City at any

¹ The franchises of Public Service Company of Colorado and Grand Valley Rural Power Lines, Inc. are codified in Appendix B of the City Code.

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/City laws.

- (a) 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.
- (b) 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 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 Director decision, including but not limited to adoption of an Administrative Regulation or order to relocate facility per §9, pursuant to this Ordinance to the City Council as follows:

- (a) Approval Criteria. In granting an appeal, the City Council shall determine whether the Director's action(s) were in accordance with the intent and requirements of this Ordinance.
- (b) Decision-Maker. The City Council may affirm, reverse or remand the decision. In reversing or remanding the decision back to the Director, the City Council shall state the rationale for its decision. The decision of the City Council shall be final.
- (c) Application and Review Procedure.
 - (i) To perfect any such appeal, the appellant shall provide a written statement to the Director citing the specific provision(s) of the Ordinance that the appellant relies upon for the basis of appellant's appeal.
 - (ii) Director shall give notice of the hearing to the appellant.
 - (iii) The Director shall compile all material as may be requested by the City Council necessary to fully review the Director's Decision.

The Director may also provide a written report.

- (iv) The Director shall set the appeal before the City Council within thirty (30) days of receipt of the application.
- (v) At the hearing, the City Council may limit testimony and other evidence as it deems appropriate.

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. Any Provider aggrieved or claimed to be aggrieved by the Director's interpretation of this Ordinance may request an appeal of the interpretation as provided in §23 of this Ordinance.

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, except as exempted by C.R.S. §12-25-103.
 - (d) Dig: means to cut, excavate, move any earth, remove any earth by any means, auger, backfill, bore, ditch, drill, grade, plow-in, pull-in, rip, scrape, 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 operating under a franchise agreement or the like with the City of Grand Junction pursuant to §38-196 and Appendix B of the Code, local irrigation providers, including but not limited to Grand Valley Irrigation Company, Grand Valley Water Users Association, Orchard Mesa Irrigation District, and Redlands Water & Power, and any political subdivision of the state of Colorado that is a Provider, such as Ute Water Conservancy District, Clifton Water District, the Grand Junction Drainage District, Orchard Mesa Sanitation District, Central Grand Valley Sanitation District, or a title 32 sanitation 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 infrastructure 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 obtained a construction permit to the City under this Ordinance.
- (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.
- (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, right of way owned or controlled 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 within the ROW: means without limitation any change to any facility, Infrastructure or portion of any ROW, including digging, altering, excavating, cutting, constructing, reconstructing, repairing, maintaining, tunneling, installation, and replacements.

28. Other Code Amendments.

- (a) §§ 38-163, 38-168, and 38-181 of Article IV, Chapter 38 of the Code is hereby repealed in its entirety and reenacted as follows:

Sec. 38-163. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City manager means the city manager or his authorized representative.

District means any metropolitan, water, and/or sanitation district formed under C.R.S. title 32, art. 1, as amended, and any conservancy district formed under C.R.S. title 37, art. 45, as amended.

Permittee means the holder of a valid permit.

Person means any person, firm, partnership, district, corporation, municipal department, company or organization of any kind.

Public way means any public place, sidewalk, easement, park, square, plaza or any other public property owned or controlled by the city and dedicated to public use, including without limitation, easements dedicated solely for utility purposes, other than such property owned or controlled by the City within the City's right-of-way.

Service provider means any person other than the city providing potable water or sewer services.

Specifications means the engineering regulations, design standards, construction specifications and construction testing and inspection specifications adopted by the city by resolution.

Utility means waterworks, wastewater systems, pipelines, gas lines, electrical lines, telephone and telegraph lines, transportation systems, cable television and fiber optics systems, and any district or person providing the same for public use.

Work in the public way means, without limitation, construction, reconstruction, repair, alteration of openings, excavation, tunneling, or any other work within or under public ways, including construction, maintenance, and repair of all underground structures such as pipes, conduits, ducts, tunnels, manholes, vaults, buried cable, wire, or any other similar structure located below the surface of any public way, and installation of overhead poles used for any purpose.

Sec. 38-168. Purpose of performance/warranty guarantee.

(a) The permittee, by acceptance of the permit, expressly guarantees complete performance of the work acceptable to the city under this article and guarantees all work done by him for a period of one year after the date of acceptance, and agrees upon demand to maintain and to make all necessary repairs during the one-year period. This guarantee shall include all repairs and actions needed as a result of:

- (1) Defects in workmanship;
- (2) Settling of fills or excavations;
- (3) Any unauthorized deviations from the approved plans and specifications;
- (4) Failure to barricade;
- (5) Failure to clean up during and after performance of the work;
- (6) Any other violation of this article.

(b) Any guarantee made under this article shall serve as security for the performance of work necessary to repair the public way if the permittee fails to make the necessary repairs or to complete the work under the permit.

Sec. 38-181. Boring.

Boring or other methods to prevent cutting of the pavement will be required upon request of the city manager. It is the city's intent to require boring

only when necessary on arterial and major and minor collector streets with high volumes of traffic and/or serious accident potential.

(b) §38-167 of Article IV, Chapter 28 of the Code is hereby repealed.

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