

The undersigned hereby agrees and understands:

- (1) Obtaining a right-of-way permit does not relieve a permittee of its duty to obtain all other necessary permits, licenses, and to pay all fees required by the City or other applicable rules, laws, or regulations; and
- (2) Permittee is required to contact Gopher State one Call at (800) 252-1166 a minimum of 48 hours prior to commencing work and conducting all work in accordance with their rules and regulations; and
- (3) Permittee shall perform all work in conformance with all applicable Federal, State, and local codes and established rules and regulations; and
- (4) Permittee understands that issuance of this permit does not relieve them from obtaining approval from Jackson County or MNDOT for work proposed within their jurisdiction; and
- (5) Permittee shall return Right of Way to its original condition to the satisfaction of city departments and shall remove all rubbish and construction debris promptly following completion of the construction; and
- (6) Permittee is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work; and
- (7) Permittee understands that except in an emergency, and then only with the approval of the City, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are not suitable for such work.
- (8) Permittee shall not obstruct a right-of-way so as to interfere with the natural, free and clear passage of water through gutters or other waterways; and
- (9) Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with City parking regulations; and
- (10) For work involving trenchless excavation including but not limited to horizontal directional drilling or boring the permittee shall follow all requirements set forth in M.S. Ch. 216D and Minn. Rules Ch. 7560; and shall perform potholing or open cutting over existing underground utilities before excavating, as determined by the City; and
- (11) Any and all excavation, backfilling, patching and restoration and all other work in the right-of-way shall be done in conformance with all applicable State, Federal, and City rules and regulations; and
- (12) Installation of service laterals shall be performed in accordance with all application State, Federal, and City statutes and rules; such work is also subject to inspection by City staff; and
- (13) Permittee is responsible for complying with all OSHA and other safety rules and regulations; and
- (14) Permittee is responsible for complying with all other provisions of Chapter 96 of the Jackson Code of Ordinances not explicitly mentioned above; and
- (15) Permittee shall provide all barricades, flashers, etc, which may be required to protect the public.
- (16) Permittee will hold harmless the City of Jackson from all claims of personal injury liability, death liability, or property damage liability which might arise during the execution of the above-stated work.
- (17) City will bill the Permittee for any and all costs incurred by the City for non-compliance with any requirement of the City.
- (18) The City reserves the right to revoke any right-of-way permit without refunding the fees if there is a breach of the terms and conditions of any statute, ordinance, rule or regulation.

Applicant's Signature: _____ Application Date: _____

Permit Fee: \$ _____ Date paid: _____

Special Conditions/Notes:

Electric Department:

X _____

Public Works Director:

X _____

APPROVED _____ DISAPPROVED _____ this _____ day of _____, 20____

Note: City Council approval is required for all permits for the placement of a physical structure, wall, barrier, pole, tower, or electronic communications device in the right-of-way.

Mayor (signature if required)

Date: _____

CERTIFICATE OF COMPLETION

Please deliver, fax or mail this signed certificate when all work associated with permit specified above is complete, including restoration. Upon receiving this certificate, the City of Jackson will make a final inspection of the project site.

Did the project follow the approved route? Yes____ No____

Final completion date:_____

Contractor performing work:_____

Location:_____

*Local Representative or Designee Name:_____ Phone:_____

*Local Representative or Designee Email:_____

*Please note that the local representative or designee shall be available at all times.

I hereby certify that all work was performed in conjunction with said permit listed above has been completed according to the specifications and requirements of the City of Jackson.

Signed:_____ Date:_____

For City Use Only:

Final inspection date:_____ Permit OK to close out: Yes____ No____

Authorized Signature:_____

RIGHT-OF-WAY MANAGEMENT ORDINANCE

§ 96.20 FINDINGS, PURPOSE, AND INTENT.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city enacts this subchapter relating to right-of-way permits and administration.

(A) This subchapter:

(1) Imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time;

(2) Is intended to complement the regulatory roles of state and federal agencies; and

(3) Provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

(B) Under this subchapter persons excavating and obstructing the rights-of-way will bear financial responsibility for their work.

(C) This subchapter:

(1) Shall be interpreted consistently with M.S. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the city and users of the right-of-way;

(2) Shall be interpreted consistent with Minn. Rules parts 7819.0050 through 7819.9950 where possible; and

(3) Shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

(D) To the extent any provision of this subchapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended.

(Ord. 85, 6th Series, passed 3-3-2015)

§ 96.21 ELECTION TO MANAGE THE PUBLIC RIGHT-OF-WAY.

Pursuant to the authority granted to the city under state and federal statutory, administrative, and common law, the city hereby elects to manage rights-of-ways within its jurisdiction, pursuant to M.S. § 237.163, Subd. 2(b).

(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.22 DEFINITIONS.

The following definitions apply in this subchapter. References hereafter to “sections” are, unless otherwise specified, references to sections in this subchapter. Defined terms remain defined terms, whether or not capitalized.

ABANDONED FACILITY. A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

APPLICANT. Any person requesting permission to excavate or obstruct a right-of-way.

CITY. The city of Jackson, Minnesota. For purposes of § 96.47, **CITY** means its elected officials, officers, employees and agents.

COMMISSION. The State Public Utilities Commission.

CONGESTED RIGHT-OF-WAY. A crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities, in conformance with M.S. § 216D.04, Subd.3, over a continuous length in excess of 500 feet.

CONSTRUCTION PERFORMANCE BOND. Any of the following forms of security provided at the permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under M.S. § 15.73, Subd. 3;
- (4) Letter of credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city;

(6) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

DEGRADATION. A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct the right-of-way earlier than would be required if the excavation or disturbance did not occur.

DEGRADATION COST. Subject to Minn. Rules part 7819.1100, the cost to achieve a level of restoration, as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minn. Rules parts 7819.9900 to 7819.9950.

DEGRADATION FEE. The estimated fee established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

DEPARTMENT. The Street Department of the city.

DEPARTMENT INSPECTOR. Any person authorized by the city to carry out inspections related to the provisions of this subchapter.

DIRECTOR. The City Administrator or the City Administrator's designee.

DELAY PENALTY. The penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

EMERGENCY. A condition that:

- (1) Poses a danger to life or health, or of a significant loss of property; or
- (2) Requires immediate repair or replacement of facilities in order to restore service to a customer.

EQUIPMENT. Any tangible asset used to install, repair, or maintain facilities in any right-of-way.

EXCAVATE. To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

EXCAVATION PERMIT. The permit that, pursuant to this subchapter:

- (1) Must be obtained before a person may excavate in a right-of-way; and
- (2) Allows the holder to excavate that part of the right-of-way described in the permit.

EXCAVATION PERMIT FEE. Money paid to the city by an applicant to cover the costs as provided in § 96.31.

FACILITY or FACILITIES. Any tangible asset in the right-of-way required to provide utility service.

FIVE-YEAR PROJECT PLAN. Shows projects adopted by the city for construction within the next five years.

HIGH DENSITY CORRIDOR. A designated portion of the public right-of-way within which telecommunications right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

HOLE. An excavation in the pavement, with the excavation having a length less than the

width of the pavement.

LOCAL REPRESENTATIVE. A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

MANAGEMENT COSTS. The actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. **MANAGEMENT COSTS** do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Ch. 123; M.S. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to § 96.49 of this subchapter.

OBSTRUCT. To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

OBSTRUCTION PERMIT. The permit that, pursuant to this subchapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

OBSTRUCTION PERMIT FEE. Money paid to the city by a permittee to cover the costs as provided in § 96.31.

PATCH or **PATCHING.** A method of pavement replacement that is temporary in nature. A **PATCH** consists of: (1) the compaction of the subbase and aggregate base; and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A **PATCH** is considered full restoration only when the pavement is included in the city's five-year project plan.

PAVEMENT. Any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

PERMIT. Has the meaning given "right-of-way permit" in M.S. § 237.162.

PERMITTEE. Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this subchapter.

PERSON. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

PROBATION. The status of a person that has not complied with the conditions of this subchapter.

PROBATIONARY PERIOD. One year from the date that a person has been notified in writing that they have been put on probation.

PUBLIC RIGHT-OF-WAY. (1) The area on, below, or above a public roadway, highway, street, cartway, bicycle lane or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city; but (2) does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

REGISTRANT. Any person who:

- (1) Has or seeks to have its equipment or facilities located in any right-of-way: or
- (2) In any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

RESTORE or RESTORATION. The process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

RESTORATION COST. The amount of money paid to the city by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

RIGHT-OF-WAY PERMIT. Either the excavation permit or the obstruction permit, or both, depending on the context, required by this subchapter.

RIGHT-OF-WAY USER.

- (1) A telecommunications right-of-way user as defined by M.S. § 237.162, Subd. 4; or
- (2) A person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

SERVICE or UTILITY SERVICE. Includes:

- (1) Those services provided by a public utility as defined in M.S. §§ 216B.02, Subd. 4 and 216B.02, Subd. 6;
- (2) Services of a telecommunications right-of-way user, including transporting of voice or data information;
- (3) Services of a cable communications systems as defined in M.S. Ch. 238;
- (4) Natural gas, electric energy or telecommunications services provided by the city;

(5) Services provided by a cooperative electric association organized under M.S. Ch. 308A; and

(6) Water, and sewer, including service laterals, steam, cooling or heating services.

SERVICE LATERAL. An underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A **SERVICE LATERAL** is also an underground facility that is used in the removal of wastewater from a customer's premises.

SUPPLEMENTARY APPLICATION. An application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

TEMPORARY SURFACE. The compaction of subbase and aggregate base, and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

TRENCH. An excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

TELECOMMUNICATION RIGHT-OF-WAY USER. A person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this subchapter, a cable communication system defined and regulated under M.S. Ch. 238, and telecommunication activities related to providing natural gas or electric energy services, whether provided by a public utility as defined in M.S. § 216B.02, a municipality, a municipal gas or power agency organized under M.S. Chs. 453 and 453A, or a cooperative electric association organized under M.S. Ch. 308A, are not telecommunications right-of-way users for purposes of this subchapter.

TWO YEAR PROJECT PLAN. Shows projects adopted by the city for construction within the next two years.
(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.23 ADMINISTRATION.

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

(Ord. 85, 6th Series, passed 3-3-2015)

§ 96.24 UTILITY COORDINATION COMMITTEE.

The city may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the city in

obtaining information and, by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The city may determine the size of the committee and shall appoint members from a list of registrants that have expressed a desire to assist the city. (Note: This is not required as part of state or federal law, but is included as an option for the city.)

(Ord. 85, 6th Series, passed 3-3-2015)

§ 96.25 REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

(A) *Registration.* Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

(B) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof, in any right-of-way without first being registered with the city.

(C) *Exceptions.* Nothing herein shall be construed to repeal or amend the provisions of a city ordinance, if any, permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb.

(1) Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this subchapter.

(2) Nothing herein relieves a person from complying with the provisions of the M.S. Ch. 216D, the Gopher One Call Law.
(Ord. 85, 6th Series, passed 3-3-2015)

§ 96.26 REGISTRATION INFORMATION.

(A) *Information required.* The information provided to the city at the time of registration shall include, but not be limited to:

(1) Each registrant's name, Gopher One-Call registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(3) A certificate of insurance or self-insurance:

(a) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the city;

(b) Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the:

1. Use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees; and

2. Placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

(c) Naming the city as an additional insured as to whom the coverages required herein are in force and applicable, and for whom defense will be provided in connection with all such claims;

(d) Requiring that the city be notified in writing at least 30 days in advance of cancellation of the policy or material modification of a coverage term; and

(e) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this subchapter.

(4) The city may require a copy of the actual insurance policies.

(5) If the person is a corporation, a copy of the certificate that is required to be filed under M.S. § 300.06, as recorded and certified to by the Secretary of State.

(6) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have the certificate from the Commission or other state or federal agency.

(B) *Notice of changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within 15 days following the date on which the registrant has knowledge of any change.

(Ord. 85, 6th Series, passed 3-3-2015)

§ 96.27 REPORTING OBLIGATIONS.

(A) *Operations.* At the time of registration and by December 1 of each year, each registrant shall file a construction and major maintenance plan for underground facilities with the city.

(1) The plan shall be submitted using a format designated by the city, and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

(2) The plan shall include, but not be limited to, the following information:

(a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a *NEXT-YEAR PROJECT*); and

(b) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a *FIVE-YEAR PROJECT*).

(3) The term *PROJECT* in this section shall include both next-year projects and five-year projects.

(4) By January 1 of each year, the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

(5) By February 1 of each year, each registrant may change any project in its list of next-year projects, and must notify the city and all other registrants of all such changes in its list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.

(B) *Additional next-year projects.* Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city, if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

(Ord. 85, 6th Series, passed 3-3-2015)

§ 96.28 PERMIT REQUIREMENT.

(A) *Permit required.* Except as otherwise provided in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate permit from the city to do so.

(1) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in the permit, and to hinder free and open passage over the specified portion of the right-of-way by placing therein facilities described in the permit, to the extent and for the duration specified therein.

(2) *Obstruction permit.* An obstruction permit is required by a registrant to hinder free

and open passage over the specified portion of right-of-way by placing on the right-of-way equipment described in the permit, to the extent and for the duration specified therein; provided, that obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(B) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless:

(1) The person makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and

(2) A new permit or permit extension is granted.

(C) *Delay penalty.* In accordance with Minn. Rules part 7819.1000 subp. 3, and notwithstanding division (B) of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution

(D) *Permit display.* Permits issued under this subchapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city. (Am. Ord. 85, 6th Series, passed 3-3-2015) Penalty, see § 10.99

§ 96.29 PERMIT APPLICATIONS.

Application for a permit shall be made to the city and shall contain – and will be considered complete only upon compliance with – the requirements of the following provisions:

(A) Registration with the city pursuant to this subchapter;

(B) Submission of a completed permit application form, including all required attachments and scaled drawings, showing the location and area of the proposed project and the location of all known existing and proposed facilities;

(C) Payment of money due the city for:

(1) Permit fees, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

(3) Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the right-of-way or any emergency actions taken by the city;

(4) Franchise fees or other charges, if applicable;

(D) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing;

(E) Posting an additional or larger construction performance bond for additional facilities when the applicant requests an excavation permit to install additional facilities, and the city deems the existing construction performance bond inadequate under applicable standards. (Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.30 ISSUANCE OF PERMIT; CONDITIONS.

(A) *Permit issuance.* If the applicant has satisfied the requirements of this subchapter, the city shall issue a permit.

(B) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit, and the performance of the applicant thereunder, to protect the health, safety, and welfare, or when necessary to protect the right-of-way and its current use. (Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.31 PERMIT FEES.

(A) *Excavation permit fee.* The city shall establish an excavation permit fee in an amount sufficient to recover the following costs:

- (1) The city management costs; and
- (2) Degradation costs, if applicable.

(B) *Obstruction permit fee.* The city shall establish an obstruction permit fee in an amount sufficient to recover the city management costs.

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

(D) *Non-refundable.* Permit fees that were paid for a permit that the city has revoked for a breach (see § 96.41) are not refundable.

(E) *Application to franchises.* Unless otherwise agreed in a franchise, management costs may be charged separately from, and in addition to the franchise fees imposed on a right-of-way user in the franchise. (Ord. 85, 6th Series, passed 3-3-2015)

§ 96.32 RIGHT-OF-WAY PATCHING AND RESTORATION.

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

beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under § 96.35.

(B) *Patch and restoration.* The permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

(1) *City restoration.* If the city restores the right-of-way, the permittee shall pay the costs thereof within 30 days of billing. If, following the restoration, the pavement settles due to the permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with correcting the defective work.

(2) *Permittee restoration.* If the permittee restores the right-of-way, it shall be at the time of application for an excavation permit to post a construction performance bond or a deposit in accordance with the provisions of Minn. Rules part 7819.3000.

(3) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee; provided, however, that the right-of-way user shall remain responsible for patching, and the degradation fee shall not include the cost to accomplish those responsibilities.

(C) *Standards.* The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. Rules part 7819.1100.

(D) *Duty to correct defects.* The permittee shall correct defects in patching or restoration performed by the permittee or its agents.

(1) Upon written notification from the city, the permittee shall correct all restoration work to the extent necessary, using the method required by the city.

(2) The work shall be completed within 5 calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under § 96.35.

(E) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, (1) the city – at its option – may do such work; and (2) in that event, the permittee shall pay to the city the cost of restoring the right-of-way within 30 days of billing therefor. If the permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.33 JOINT APPLICATIONS.

(A) *Joint application.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

(B) *Shared fees.* Registrants who apply for permits for the same obstruction or excavation, which the city does not perform:

- (1) May share in the payment of the obstruction or excavation permit fee; and
- (2) Must indicate on their joint application the portion that each will pay.

(C) *With city projects.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by 2 or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit would still be required.

(Ord. 85, 6th Series, passed 3-3-2015)

§ 96.34 SUPPLEMENTARY APPLICATIONS.

(A) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit.

(1) No permittee may do any work outside the area specified in the permit, except as provided herein.

(2) Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area:

(a) Make application for a permit extension and pay any additional fees required thereby; and

(b) Be granted a new permit or permit extension.

(B) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit.

(1) No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date.

(2) If a permittee does not finish the work by the permit end date, it must:

(a) Before the end date of the original permit, apply for a new permit for the additional time needed; and

(b) Receive the new permit or an extension of the old permit before working after the end date of the previous permit.

(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.35 OTHER OBLIGATIONS.

(A) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve a permittee of its duty to obtain all other necessary permits, licenses, and authority, and to pay all fees required by the city or other applicable rule, law or regulation.

(1) A permittee shall comply with all requirements of local, state and federal laws, including but not limited to, M.S. §§ 216D.01 through 216D.09 (Gopher One Call Excavation Notice System) and Minn. Rules Ch. 7560.

(2) A permittee:

(a) Shall perform all work in conformance with all applicable codes and established rules and regulations; and

(b) Is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.

(B) *Prohibited work.* Except in an emergency, and then only with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(C) *Interference with right-of-way.*

(1) A permittee shall not obstruct a right-of-way so as to interfere with the natural, free and clear passage of water through the gutters or other waterways.

(2) Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations.

(3) Unless otherwise specifically authorized by the permit, the loading or unloading of trucks in connection with the project must be done solely within the defined permit area.

(D) *Trenchless excavation.* As a condition of all applicable permits, permittees employing trenchless excavation methods, including but not limited to, horizontal directional drilling or boring:

(1) Shall follow all requirements set forth in M.S. Ch. 216D and Minn. Rules Ch. 7560; and

(2) Shall perform potholing or open cutting over existing underground utilities before excavating, as determined by the Director.
(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.36 DENIAL OF PERMIT.

The city may deny a permit:

(A) For failure to meet the requirements and conditions of this subchapter;

(B) If the city determines that the denial is necessary to protect the health, safety, and welfare; or

(C) When necessary to protect the right-of-way and its current use.
(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.37 INSTALLATION REQUIREMENTS.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. Rules parts 7819.1100 and 7819.5000, and other applicable local requirements, in so far as they are not inconsistent with M.S. §§ 237.162 and 237.163.

(A) Installation of service laterals shall be performed in accordance with Minn. Rules Ch. 7560 and these ordinances.

(B) Service lateral installation is further subject to those requirements and conditions set forth by the city in the applicable permits and/or agreements referenced in § 96.42(B) of this subchapter.
(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.38 INSPECTIONS.

(A) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. Rules part 7819.1300.

(B) *Site inspection.* At all reasonable times during the execution of and upon completion of the work, the permittee shall make the work-site available for inspections by the city and by all others as authorized by law to make inspections.

(C) *Authority of the Director.*

(1) At the time of inspection, the Director may order the immediate cessation of any work that poses a serious threat to the life, health, safety or well-being of the public.

(2) The Director may issue an order to the permittee regarding any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes.

(a) The order shall state that failure to correct the violation will be cause for revocation of the permit.

(b) Within 10 days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected.

(c) If such proof has not been presented within the required time, the Director may revoke the permit pursuant to § 96.41.
(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.39 WORK DONE WITHOUT A PERMIT.

(A) *Emergency situations.* Each registrant shall immediately notify the Director of any event regarding its facilities that it considers to be an emergency.

(1) The registrant may take whatever actions are necessary to respond to the emergency.

(2) An excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement.

(3) Within 2 business days after the occurrence of the emergency, the registrant shall:

(a) Apply for the necessary permits;

(b) Pay the fees associated therewith; and

(c) Fulfill the rest of the requirements necessary to bring itself into compliance with this subchapter for the actions taken in response to the emergency.

(B) *City aware.* If the city becomes aware of an emergency regarding a registrant's facilities, the city:

(1) Will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency; and

(2) May take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

(C) *Non-emergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently:

(1) Obtain a permit, and as a penalty:

(a) Pay double the normal deposit for the permit; and

(b) Pay double all the other fees required by the city code;

(2) Deposit with the city the fees necessary to correct any damage to the right-of-way;
and

(3) Comply with all of the requirements of this subchapter.
(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.40 SUPPLEMENTARY NOTIFICATION.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the city of the accurate information as soon as it is known.

(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.41 REVOCATION OF PERMITS.

(A) *Substantial breach.* The city reserves its right to revoke any right-of-way permit without refunding the fees, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by the permittee shall include, but shall not be limited, to the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to § 96.38.

(B) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the city shall make a written demand upon the permittee to remedy that violation.

- (1) The demand shall state that continued violations may be cause for revocation of the permit.
- (2) A substantial breach, as stated above, will allow the city, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(C) *Response to notice of breach.*

- (1) Within 24 hours of receiving notification of the breach, the permittee shall provide to the city a plan, acceptable to the city, that will cure the breach.
- (2) The permittee's failure to so contact the city, or the permittee's failure to timely

submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan:

- (a) Shall be cause for immediate revocation of the permit; and
- (b) Shall automatically place the permittee on probation for 1 full year.

(D) *Cause for probation.* From time to time, the city may establish a list of conditions of the permit that, if breached, will automatically place the permittee on probation for 1 full year. Those conditions may include, but are not limited to, working out of the allotted time period or working on right-of-way outside of the permit authorization.

(E) *Automatic revocation.* If while on probation a permittee commits a breach as outlined above:

- (1) The permittee's permit will automatically be revoked; and
- (2) The permittee will not be allowed further permits for 1 full year, except for emergency repairs.

(F) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with the revocation.

(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.42 MAPPING DATA.

(A) *Information required.* Each registrant shall provide mapping information required by the city in accordance with Minn. Rules parts 7819.4000 and 7819.4100.

(1) Within 90 days following completion of any work pursuant to a permit, the permittee shall provide the Director accurate maps and drawings certifying the as-built location of all equipment installed, owned or maintained by the permittee.

(2) Such maps and drawings shall:

- (a) Include the horizontal and vertical location of all facilities and equipment; and
- (b) Be provided consistent with the city's electronic mapping system, when practical, or as a condition imposed by the Director.

(3) Failure to so provide maps and drawings shall be grounds for revoking the permit holder's registration.

(B) *Service laterals.* Each permittee issued a permit for the installation or repair of service

laterals, other than minor repairs as defined in Minn. Rules part 7560.0150 subp. 2, shall use appropriate means to establish: [i] the horizontal locations of installed service laterals; and [ii] service lateral vertical locations in cases where the Director reasonably requires it.

(1) Permittees or their subcontractors shall submit to the Director evidence satisfactory to the Director of the location of installed service laterals.

(2) Compliance with this division (B) and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005, shall be a condition of any city approval necessary for: [i] payments to contractors working on a public improvement project, including those under M.S. Ch. 429; and [ii] city approval of performance under development agreements, or other subdivision or site plan approval under M.S. Ch. 462.

(3) The Director shall reasonably determine the appropriate method of providing such information to the city.

(4) Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work, and in denial of future permits to the offending permittee or its subcontractors.

(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.43 LOCATION AND RELOCATION OF FACILITIES.

(A) *Compliance required.* Placement, location, and relocation of facilities must comply with the Act, with other applicable laws, and with Minn. Rules parts 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

(B) *Corridors.* The city may assign a specific area or corridor within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way.

(1) All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

(2) Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

(C) *Nuisance.* One year after the passage of this subchapter:

(1) Any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance; and

(2) The city may exercise any remedies or rights it has at law or in equity, including but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

(D) *Limitation of space.* The city:

(1) Shall strive, to the extent possible, to accommodate all existing and potential users of the right-of-way; but

(2) May prohibit or limit the placement of new or additional facilities within the right-of-way in order to protect health, safety, and welfare, or when necessary to protect the right-of-way and its then existing uses; and

(3) Shall be guided primarily by considerations of the public interest, the public's need for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.44 PRE-EXCAVATION FACILITIES LOCATION.

In addition to complying with the requirements of M.S. §§ 216D.01 through 216D.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall:

(A) Mark the horizontal and vertical placement of all such facilities; and

(B) Notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation, if its facilities are less than 20 inches below a concrete or asphalt surface.

(Ord. 85, 6th Series, passed 3-3-2015)

§ 96.45 DAMAGE TO OTHER FACILITIES.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities, the city shall notify the local representative as early as is reasonably possible.

(A) The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing.

(B) Each registrant shall be responsible for the cost of repairing:

(1) Any facilities in the right-of-way that it or its facilities damage; and

(2) Any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.
(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.46 RIGHT-OF-WAY VACATION.

Reservation of right. If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. Rules part 7819.3200.
(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.47 INDEMNIFICATION AND LIABILITY.

By registering with the city, or by accepting a permit under this subchapter, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. Rules part 7819.1250.
(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.48 ABANDONED AND UNUSABLE FACILITIES.

(A) *Discontinued operations.* A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this subchapter have been lawfully assumed by another registrant.

(B) *Removal.* Any registrant who has abandoned facilities in any right-of-way shall remove them from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.
(Am. Ord. 85, 6th Series, passed 3-3-2015)

§ 96.49 APPEAL.

(A) A right-of-way user that: [i] has been denied registration; [ii] has been denied a permit; [iii] has had a permit revoked; [iv] believes that the fees imposed are not in conformity with M.S. § 237.163, Subd. 6; or [v] disputes a determination of the Director regarding § 96.42(B) of this subchapter, may, upon written request, have the denial, revocation, fee imposition, or decision reviewed by the City Council.

(B) The City Council shall act on a timely written request at its next regularly scheduled meeting, provided, that the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item.

(C) The City Council shall issue in writing its order affirming the denial, revocation, or fee imposition, supported by written findings establishing the reasonableness of the decision.

(Am. Ord. 85, 6th Series, passed 3-3-2015)