

TOWN OF BOW MAR, COLORADO
ORDINANCE NO. 341

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF BOW MAR
AMENDING CHAPTER 11 OF THE BOW MAR MUNICIPAL CODE CONCERNING THE
TOWN'S RIGHT OF WAY CODE

WHEREAS, obstructions, boring, and excavations in the Town of Bow Mar (the "Town") rights of way disrupt and interfere with public use of the rights of way;

WHEREAS, obstructions, boring, and excavations in Town rights of way result in loss of parking and have the potential to negatively impact the public health, safety and welfare of the Bow Mar community;

WHEREAS, it is desirable to adopt policies and regulations which will enable the Town to gain greater control over the disruption and interference with the public use of public streets and rights of way, to provide for the health, safety and well-being of the Town's residents and users of Town streets;

WHEREAS, significant public funds have been invested to acquire, build, maintain and repair the streets within the Town and cuts and excavations in the streets reduce the useful life of the pavement infrastructure;

WHEREAS, significant public funds have been invested to place and maintain landscaping within public rights of way in the Town and cuts and excavations in the public rights of way cause damage to, and increase the costs of maintaining that landscaping;

WHEREAS, at the present time, the Town's Department of Public Works does not have a detailed map or database indicating the location, nature, or extent of the entire system underground utility and telecommunications facilities;

WHEREAS, the various public and commercial utilities, broadband and communications providers and similar entities which install, maintain, and operate facilities under the Town's streets are constrained, from time to time, to make excavation cuts which degrade the surfaces of these thoroughfares, thereby reducing their useful life;

WHEREAS, operators of motor vehicles (private and commercial) pay added gasoline taxes to compensate for the damage their vehicles cause to Town streets and roads. Part of these taxes are used by the federal government (the federal highway "trust fund") for construction and maintenance of interstate and federal highways. The State of Colorado annually transfers revenue from gasoline taxes to the Town for street maintenance. Public and commercial utilities, broadband and communications providers and similar entities which degrade the streets presently do not adequately pay for the direct costs of the damage done to the roadway surfaces;

WHEREAS, demand for access to broadband services is growing, and to fill such demand,

more broadband network infrastructure is being installed in Rights of Way;

WHEREAS, in nearby jurisdictions, the demand for access and the number of entities seeking to install Facilities has sometimes resulted in multiple, serial Excavations within the Rights of Way, which can and has resulted in traffic disruption, a weakening of pavement integrity, and a shortening of the useful life of paved surfaces, the effect of which can be mitigated with proper planning and oversight as set forth herein;

WHEREAS, while Colorado statutes, particularly, C.R.S. § 38-5.5-109, contains some procedures for addressing joint trenching in connection with broadband provider operations in the Rights of Way, at the present time there is no formal mechanism nor legal requirement that all public and commercial entities coordinate Excavation in the Rights of Way, and construct Facilities in a manner that will minimize future Excavations; and

WHEREAS, the Town intends to responsibly manage its Rights of Way by anticipating such demand and planning accordingly.

NOW, THEREFORE, be it enacted by the Town of Bow Mar as follows:

Section 1. Repeal and Replace Chapter 11, Article 1 of the Bow Mar Municipal Bode. Chapter 11, Article 1 of the Bow Mar Municipal Code is hereby repealed in its entirety and reenacted as follows:

Sec. 11-1. – Purpose and Objectives.

- A. *Purpose.* This Article provides principles, procedures and associated funding for the placement and coordination of Structures and Facilities, construction excavation encroachments and Work activities within or upon any Public Rights of Way, and to protect the integrity of the road system within the Town. To achieve these purposes, it is necessary to require permits of private users of the Public Rights of Way, to establish Permit procedures and to fix and collect fees and charges.
- B. *Objectives.* Public and private uses of Public Rights of Way for location of Facilities employed in the provision of public services should, in the interests of the general welfare, be accommodated; however, the Town must ensure that the primary purpose of the Rights of Way, the safe and efficient passage of pedestrian and vehicular traffic, is maintained to the greatest extent possible. In addition, the value of other public and private installations, roadways, Facilities and properties should be protected, competing uses must be reconciled, and the public safety preserved. The use of the Rights of Way corridors for location of Facilities is secondary to these public objectives. This Article is intended to strike a balance between the public need for efficient, safe transportation routes and the use of Rights of Way for location of Facilities by public and private entities. It thus has several objectives:

1. To ensure that the public safety is maintained and that public inconvenience is minimized.
2. To protect the Town's and other Public Infrastructure investment by establishing repair standards for the pavement, Facilities, and property in the Public Rights of way, when Work is accomplished.
3. To facilitate Work within the Rights of Way through the standardization of regulations.
4. To maintain an efficient Permit process.
5. To conserve and fairly apportion the limited physical capacity of the Public Rights of Way held in public trust by the Town.
6. To establish a public policy for enabling the Town to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.
7. To promote and incentivize cooperation among the Permittees (as defined herein) and the Town in the occupation of the Public Rights of Way, and Work therein, to (i) eliminate duplication of construction that is wasteful, unnecessary or unsightly, (ii) lower the Permittee's program costs and the Town's costs of providing services to the public, and (iii) minimize street cuts.
8. To assure that the Town can continue to fairly and responsibly protect the public health, safety, and welfare.

Sec. 11-2. – Definitions

For the purpose of this chapter the following words shall have the following meanings:

- A. "Applicant" means an Owner or duly authorized agent of such Owner, who has submitted an application for a Permit to Excavate in the Rights of Way.
- B. "Appurtenances" means transformers, switching boxes, gas regulator stations, terminal boxes, meter cabinets, pedestals, junction boxes, handholes substations, system amplifiers, power supplies, pump stations, manholes, valves and valve housings and other devices that are necessary to the function of electric, communications, cable television, water, sewer, storm water, natural gas, broadband, and other utilities and services.

- C. “Contractor” means A Person, partnership, corporation, or other legal entity who undertakes to construct, install, alter, move, remove, trim, demolish, repair, replace, Excavate, or add to any improvements covered by this Article, that requires work, workers, or equipment to be in the Public Right of Way in the process of performing the above named operations.
- D. “Department” means the Town of Bow Mar Department of Public Works.
- E. “Developer” means the Person, partnership, corporation, or other legal entity who is improving a parcel of land within the Town and who is legally responsible to the Town for the construction of improvements within a subdivision or as a condition of a building permit or other land use or development authorization.
- F. “Commissioner” means the Public Works Commissioner of the Town or their authorized representative.
- G. “Duct” or “Conduit” means a single enclosed raceway for cables, fiber optics or other wires.
- H. “Emergency” means any event which may threaten public health or safety, or that results in an interruption in the provision of services, including, but not limited to, damaged or leaking water or gas Conduit systems, damaged, plugged, or leaking sewer or storm drain Conduit systems, damaged electrical and communications Facilities, and advanced notice of needed repairs is impracticable under the circumstances.
- I. “Excavate” means any Work in the surface or subsurface of the Rights of Way, including, but not limited to opening the Rights of Way; boring; installing, servicing, repairing or modifying any Facility(ies) in or under the surface or subsurface of the Rights of Way, and restoring the surface and subsurface of the Rights of Way.
- J. “Facilities” means, including, without limitation, any pipes, Conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennae, poles, street lights, Ducts, fixtures and Appurtenances and other like equipment used in connection with transmitting, receiving, distributing, offering, and providing broadband, utility and other services.
- K. “Fence” means any artificially constructed barrier of wood, masonry, stone, wire, metal, or any other manufactured material or combination of materials erected to enclose partition, beautify, mark, or screen areas of land.
- L. “Infrastructure” means any public facility, system, or improvement including, without limitation, water and sewer mains and Appurtenances, storm drains and Structures, streets, traffic signal poles and Appurtenances,

Conduits, signs, landscape improvements, and public safety equipment.

- M. “Landscaping” means materials, including without limitation, grass, ground cover, shrubs, vines, hedges, or trees and non-living natural materials commonly used in landscape development, as well as attendant irrigation systems.
- N. “Major Work” or “Major Excavation Work” means any reasonably foreseeable Excavation that will affect the Rights of Way for more than five (5) consecutive calendar days.
- O. “Owner” means any Person, including the Town, who owns any Facilities that are or are proposed to be installed or maintained in the Rights of Way.
- P. “Permit” means any authorization for use of the Public Rights of Way granted in accordance with the terms of this Code, and the laws and policies of the Town.
- Q. “Permittee” means the holder of a valid Permit issued pursuant to this Article and other applicable provisions of applicable law for Excavation in the Rights of Way.
- R. “Person” means any person, firm, partnership, special, metropolitan, or general district, association, corporation, company, or organization of any kind.
- S. “Public Rights of Way” or “Rights of Way” or “Public Way” means any public street, way, place, public utility or similar easement, and Town-owned right of way dedicated to public use.
- T. “Routine Maintenance” means maintenance of Facilities or Landscaping in the Public Rights of Way which does not involve excavation, installation of new Facilities, lane closures, sidewalk closures or damage to any portion of the Public Rights of Way.
- U. “Specifications” means engineering regulations, construction specifications, and design standards adopted by the Town.
- V. “Stop Work Order” means the order directing that work cease as described in Section 11-25 of this Code.
- W. “Structure” means anything constructed or erected with a fixed location below, on, or above grade, including, without limitation, foundations, Fences, retaining walls, awnings, balconies, and canopies.
- X. “Surplus Ducts or Conduits” are Conduits or Ducts other than those

occupied by Permittee or any prior Permittee, or unoccupied Ducts held by Permittee as emergency use spares, or other unoccupied Ducts that Permittee reasonably expects to use within three (3) years from the date of a request for use.

- Y. “Traffic Control Supervisor” is a person who is responsible for implementing a traffic control plan, setting up, and operating traffic control devices as required by this Code and who has satisfied the training and certification requirements as established by the Colorado Department of Transportation’s Procedural Directive on Mandatory Traffic Control Training dated September 22, 2022, or as amended.
- Z. “Work” means any labor performed on, or any use or storage of equipment or materials, including without limitation, construction of streets and all related Appurtenances, fixtures, improvements, sidewalks, bus shelters, bus loading pads, street lights, and traffic signal devices. It shall also mean construction, maintenance, and repair of all underground structures such as pipes, Conduit, Ducts, tunnels, manholes, vaults, buried cable, wire, or any other similar structure located below surface, and installation of overhead poles used for any purpose. “Work” does not include the construction or replacement of a driveway as provided in Section 11-4(E), below.

Sec. 11-3. – Police Powers

The Permittee’s rights hereunder are subject to the police powers of the Town, which include the power to adopt and enforce ordinances, including amendments to this Article, necessary to the safety, health, and welfare of the public. The Permittee shall comply with all applicable laws, regulations, and ordinances enacted, or hereafter enacted, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town reserves the right to exercise its police powers, notwithstanding anything in this Article and the Permit to the contrary. Any conflict between the provisions of this Article or the Permit and any other present or future lawful exercise of the Town’s police powers shall be resolved in favor of the latter.

Sec. 11-4. – Permit Required

- A. No Person except a person exempted by contract with the Town shall undertake or permit to be undertaken any construction, excavation, or Work in the Public Rights of Way without first obtaining a Permit from the Town as set forth in this Article, except as provided in Section 11-24 of this Code. Each Permit obtained, along with associated documents, shall be maintained on the job site and available for inspection upon request by any officer or employee of the Town. Such a Permit shall be valid for one (1) year.

- B. *Construction, excavation or Work area.* No Permittee shall perform construction, excavation, or Work in an area larger or at a location different, or for a longer period of time than that specified in the Permit or Permit application. If, after construction, excavation, or Work is commenced under an approved Permit, it becomes necessary to perform construction, excavation, or Work in a larger or different area than originally requested under the application or for a longer period of time, the Permittee shall notify the Commissioner immediately and within twenty-four (24) hours shall file a supplementary application for the additional construction, excavation, or Work.
- C. *Permit transferability or assignability.* The Applicant may subcontract the Work to be performed under a Permit provided that the Permittee shall be and remain responsible for the performance of the Work under the Permit and all insurance and financial security as required. Permits are transferable and assignable if the transferee or assignee posts all required security pursuant to this Article and agrees to be bound by all requirements of the Permit and the Code.
- D. Except as provided in Section 11-24 of this Code, any Person or utility found to be occupying or conducting any excavation activity within the Public Rights of Way without having first obtained the required Permit(s) shall immediately cease all activity (exclusive of actions required to stabilize the area) and be required to obtain a Permit before Work may be restarted. A surcharge to be set by Board of Trustees resolution shall be required in addition to all applicable Permit fees.
- E. A Permit is not required for a homeowner seeking to make a curb cut or connect any driveway or other means of residential access to any Public Rights of Way within the Town, provided that no Work or Major Excavation Work, as defined in this Article, is required for such project. Prior to commencing such a project, a homeowner shall submit a Driveway Application, on forms furnished by the Commissioner.

Sec. 11-5. – Permit Application

- A. An Applicant for a Permit to allow construction, excavation, or Work in the Public Rights of Way under this section shall:
 - 1. File a written application on forms furnished by the Town which include the following: the date of application; the name and address of the Applicant; the name and address of the Developer, Contractor or subcontractor licensed to perform Work in the Public Rights of Way; the exact location of the proposed construction, excavation or Work activity; the type of existing public Infrastructure (street pavement, curb and gutter, sidewalks or utilities) impacted by the

construction, excavation or Work; the purpose of the proposed construction, excavation or Work; the dates for beginning and ending the proposed construction, excavation or Work; proposed hours of Work; itemization of the total cost of restoration if required, based upon R.S. Means Estimating Standards or at the discretion of the Commissioner, other published street repair cost estimating standards; and type of Work proposed.

2. Include an affirmative statement that the Applicant or its Contractor is not delinquent in payments due to the Town on prior Work.
3. Attach copies of all Permits or licenses (including required insurance, deposits, bonding, and warranties) required to do the proposed Work, and to Work in the Public Rights of Way, if licenses or Permits are required under the laws of the United States, the State of Colorado, or the ordinances or regulations of the Town. If relevant permits or licenses have been applied for but not yet received, provide a written statement so indicating. Copies of any such permits or licenses shall be provided to the Town within forty-eight (48) hours after receipt.
4. Provide a satisfactory plan of Work acceptable to the Commissioner showing protection of the subject property and adjacent properties.
5. Provide a satisfactory plan for the protection of existing Landscaping acceptable to the Commissioner, when the Town determines that damage may occur.
6. Include a signed statement verifying that all orders issued by the Town to the Applicant, requiring the Applicant to correct deficiencies under previous Permits issued under this Code, have been satisfied. This verification shall not apply to outstanding claims which are honestly and reasonably disputed by the Applicant, if the Applicant and the Town are negotiating in good faith to resolve the dispute.
7. Include with the application engineering construction drawings or site plans including without limitation existing and proposed topography, drainage patterns, storm drainage features, and utility routes for the proposed construction, excavation, or Work.
8. Include with the application a satisfactory traffic control plan prepared by a certified Traffic Control Supervisor and erosion protection plan, prepared by an engineer licensed by the State of Colorado for the proposed construction, excavation, or Work.

9. Include a statement indicating any proposed joint use or ownership of the Facility; any known existing Facility or Permit of the Applicant at this location; any known existing Facility of others with which the proposed installations might conflict; and the name, address and telephone number of a representative of the Applicant available to review proposed locations at the site.
 10. Pay the fees prescribed by this Code.
- B. Applicants shall update any new information on Permit applications within ten (10) days after any material change occurs.
 - C. *Joint Applications.* Applicants may apply jointly for Permits to Work in Public Rights of Way at the same time and place. Applicants who apply jointly for Permits may share in the payment of the Permit fee. Applicants must agree among themselves as to the portion each shall pay.

Sec. 11-6. – Blanket Maintenance Permits

- A. A Public Rights of Way Permit shall not be required for Routine Maintenance in the Public Rights of Way. However, other maintenance operations within the Public Rights of Way which involve traffic lane closures shall require a Public Rights of Way Permit. To expedite the process for ongoing maintenance operations, owners of Facilities within the Public Rights of Way may, at their sole option and in the alternative to obtaining individual public Rights of Way permits, obtain a blanket maintenance Permit pursuant to this Section.
- B. A blanket maintenance Permit shall be valid from the date of issuance of the Permit for up to twelve (12) consecutive months. Under no circumstances shall a blanket maintenance Permit be valid for more than one (1) year.
- C. A blanket maintenance Permit shall not, under any circumstances, authorize any pavement disturbance or installation of new Facilities. Notwithstanding the foregoing, existing Facilities may be removed and replaced with new Facilities, if no Major Excavation Work or pavement disturbance is required.
- D. Any Person seeking a blanket maintenance Permit shall file an application on a form provided by the Town which includes the following information:
 1. The date of application.
 2. The name, address and telephone number of the Applicant.

3. A general description of the maintenance operations.
 4. Any location of maintenance operations known at the time of application.
 5. Traffic control plans as required by this Section and Section 11-14 of this Code.
 6. If applicable, documentation of the approval for Work required in landscaped medians.
- E. The applicable Permit fee as set by Section 11-7 of this Code, shall accompany the application when submitted.
- F. Blanket maintenance Permits shall be subject to all applicable provisions of this Code.
- G. A blanket maintenance Permit shall not require a performance bond, letter of credit or warranty. Work performed pursuant to a blanket maintenance Permit shall not be subject to the specific inspections set forth in Section 11-11 of this Code, but may be subject to random inspection by the Town to ensure compliance with the terms of the blanket maintenance Permit and applicable provisions of this Code.

Sec. 11-7. – Permit Fee

Before a Permit is issued pursuant to this Article, the Applicant shall pay to the Town a Permit fee, which shall be determined in accordance with a fee schedule adopted by the Town Board of Trustees by resolution. Fees will be reasonably related to the costs inherent in managing the Public Rights of Way. As used in this Article, these costs include without limitation the costs of permitting Rights of Way occupants, verifying Rights of Way occupation, mapping Rights of Way occupations, inspecting job sites and Rights of Way restorations, and administering this Article.

Sec. 11-8. – Insurance and Indemnification

- A. Unless otherwise specified in a franchise agreement between the Permittee and the Town, prior to the granting of any Permit, the Permittee shall file with the Town an insurance policy or certificate in a form satisfactory to the Town with coverage as follows:
1. The Permittee shall carry and maintain in full effect at all times a commercial general liability policy, including broad form property

damage, completed operations contractual liability, explosion hazard, collapse hazard, underground property damage hazard, commonly known as XCU, for limits not less than two million dollars (\$2,000,000.00) each occurrence for damages of bodily injury or death to one or more Persons; and one million dollars (\$1,000,000.00) each occurrence for damage to or destruction of property.

2. Workers compensation insurance as required by state law.
 3. Town departments shall be relieved of the obligation of submitting a certificate of insurance.
 4. Notwithstanding the foregoing, the Commissioner may waive any insurance requirement or other requirements addressing financial security for (i) a governmental entity, or (ii) other entity if such other entity is deemed to provide sufficient coverage through self-insurance, in their sole discretion.
- B. Whenever any Person has filed with the Town evidence of insurance or self-insurance as required, any additional or subsequent Permit holder in the employ of said initial Person may, at the discretion of the Town, be excused from depositing or filing any additional evidence of insurance if such employee is fully covered by the Permittee's insurance policy.
- C. Each Permittee shall construct, maintain, and operate its Facilities in a manner which provides protection against injury or damage to Persons or property.
1. The Permittee, for itself and its related entities, agents, employees, subcontractors, and the agents and employees of said subcontractors, shall save the Town harmless, defend, and indemnify the Town, its successors, assigns, officers, employees, agents, and appointed and elected officials from and against all liability or damage and all claims or demands whatsoever in nature unless caused by the negligent or intentional acts of the Town, and reimburse the Town for all its reasonable expenses, as incurred, arising out of the installation, maintenance, operation or any other Work or activity in the Public Rights of Way or by the Permittee related to its use thereof, including without limitation the actions of the Permittee, its employees, agents, Contractors, related entities, successors and assigns, or the securing of and the exercise by the Permittee of the Permit rights granted in the Permit, including any third party claims, administrative hearings, and litigation; whether or not any act or omission complained of is authorized, allowed, or prohibited by this Code or other applicable law.

2. Following receipt of written notification of any claim the Permittee shall have the right to defend the Town regarding all third-party actions, damages and penalties arising in any way out of the exercise of any rights in the Permit. If at any time, however, Permittee refuses to defend, and the Town elects to defend itself regarding such matters, the Permittee shall pay all reasonable expenses incurred by the Town related to its defense.
3. If the Town institutes litigation against the Permittee for a breach of the Permit or for an interpretation of this Article and the Town is the prevailing party, the Permittee shall reimburse the Town for all costs related hereto, including reasonable attorney's fees. The Permittee shall not be obligated to hold harmless or indemnify the Town for claims or demands to the extent that they are due to the negligence, or any intentional or willful acts of the Town or any of its officers, employees, or agents.
4. In the event the Permittee is a public entity, the indemnification requirements of this section shall be subject to the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-102, *et seq.*

Sec. 11-9. – Performance Bond or Letter of Credit

- A. Unless otherwise specified in a franchise agreement between the Permittee and the Town, before any Permit required by this chapter shall be issued to an Applicant, the Applicant shall file with the Commissioner a bond or letter of credit in favor of the Town in an amount equal to the total cost of construction, including labor and materials, or five thousand dollars (\$5000.00), whichever is greater. The bond or letter of credit shall be executed by the Applicant as principal and by at least one surety upon whom service of process may be had in the state. The bond or letter of credit shall be conditioned upon the Applicant fully complying with all provisions of the Permit, and upon payment of all judgments and costs rendered against the Applicant for any violation of Permit provisions that may be recovered against the Applicant by any Person for damages arising out of any negligent or wrongful acts of the Applicant in the performance of Work done pursuant to the Permit. The Town may bring an action on the bond or letter of credit on its own behalf or on behalf of any Person so aggrieved as beneficiary. The bond or letter of credit must be approved by the Town's Finance Commissioner as to form and as to the responsibility of the surety thereon prior to the issuance of the Permit. However, the Town may waive the requirements of any such bond or letter of credit or may permit the Applicant to post a bond without surety thereon upon finding that the Applicant has financial stability and assets located in the state to satisfy any claims intended to be protected against the security required by this section.

- B. A letter of responsibility will be accepted in lieu of a performance bond or letter of credit from all public utilities, all franchised entities, and all metropolitan, water and sanitation districts operating within the Town.
- C. The performance bond, letter of credit or letter of responsibility shall remain in force and effect for a minimum of two (2) years after completion and acceptance of the street cut, excavation or lane closure.

Sec. 11-10. – Performance Warranty and Guarantee

- A. Any warranty made hereunder shall serve as security for the performance of Work necessary to repair the Public Rights of Way if the Permittee fails to make the necessary repairs or to complete the Work under the Permit.
- B. The Permittee, by acceptance of the Permit, expressly warrants and guarantees complete performance of the Work in a manner acceptable to the Town and warrants and guarantees all Work done for a period of two (2) years after the date of probationary acceptance, and agrees to maintain upon demand and to make all necessary repairs during the two (2) year period. This warranty 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; and
 - 6. Any other violation of this chapter or the ordinances of the Town.
- C. The two (2) year warranty period shall run from the date of the Town's probationary acceptance of the Work. If repairs are required during the two (2) year warranty period, those repairs need only be warranted until the end of the initial two (2) year period starting with the date of probationary acceptance. It is not necessary that a new two (2) year warranty be provided for subsequent repairs after probationary acceptance.
- D. At any time prior to completion of the two (2) year warranty period, the Town may notify the Permittee in writing of any needed repairs. Such repairs shall be completed within twenty-four (24) hours if the defects are determined by the Town to be an imminent danger to the public health,

safety and welfare. Non-Emergency repairs shall be completed within thirty (30) calendar days after notice.

The warranty described in this section shall cover only those areas of Work undertaken by a Permittee, and not directly impacted by the Work of any other Permittee or the Town. If a portion of Work warranted by Permittee is subsequently impacted by Work of another Permittee or the Town during the warranty period, that other Permittee or the Town shall assume responsibility for repair to the subsequently impacted section of Rights of Way.

Sec. 11-11. – Inspections

A minimum of three inspections shall take place. First, the Permittee shall request that the Town conduct a pre-construction inspection, to determine any necessary conditions for the Permit. Second, the Permittee shall request a post-construction inspection following the completion of the Work. Probationary acceptance will be made if all Work meets Town and Permit standards. Third, approximately thirty (30) days prior to the expiration of the two-year guarantee, the Permittee shall request that the Town conduct a final inspection of the completed Work. If the Work is still satisfactory the bond or letter of credit shall be returned or allowed to expire, with a letter of final acceptance, less any amounts needed to complete Work not done by Permittee. Upon review of the application for a Permit, the Commissioner shall determine how many additional inspections, if any, may be required. For Work which does not involve material disturbance in the Rights of Way, the Commissioner shall waive the final inspection and the performance bond or letter of credit.

Sec. 11-12. – Public Safety

The Permittee shall maintain a safe Work area, free of safety hazards. The Town may make any repair necessary to eliminate any safety hazards not performed as directed. Any such Work performed by the Town shall be completed and billed to the Permittee. The Permittee shall pay all such charges within 30 days of the statement date. If the Permittee fails to pay such charges within the prescribed time period, the Town may, in addition to taking other collection remedies, seek reimbursement through the warranty guarantee. The Town shall not issue any further Permits of any kind to said Permittee, until all outstanding charges (except those outstanding charges that are honestly and reasonably disputed by the Permittee and being negotiated in good faith with the Town) have been paid in full.

Sec. 11-13. – Time of Completion

All Work covered by the Permit shall be completed by the date stated on the application. Permits shall be void if Work has not commenced within forty-five (45) days after issuance, unless an extension has been granted by the Commissioner. Performance bonds, letters of credit or letters of responsibility

deposited as a performance warranty guarantee for individual Permits will be returned after voiding of the Permit, with administrative and any other Town costs deducted.

Sec. 11-14. – Traffic Control

- A. When it is necessary to obstruct traffic, a traffic control plan shall be submitted to the Town prior to starting construction. No Permit will be issued until the plan is approved by the Town. No Permittee shall block access to and from private property, block emergency vehicles, block access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing Structures, or any other vital equipment unless the Permittee provides the Town with written verification of written notice delivered to the Owner or occupant of the facility, equipment or property at least 48 hours in advance. If a street closing is desired, the Applicant will request the assistance and obtain the approval of the Commissioner. It shall be the responsibility of the Permittee to notify and coordinate all Work in the Public Way with police, fire, ambulance, other government entities, and transit organizations.
- B. When necessary for public safety, the Permittee shall employ flag persons whose duties shall be to control traffic around or through the construction site. The use of flag persons may be required by the Commissioner.
- C. Unless approved by the Commissioner, the Permittee shall not impede rush hour traffic during the morning or evening rush hours. No construction shall be performed, nor shall any traffic lane be closed to traffic during the hours of 7:00 a.m. to 9:00 a.m. or 3:30 p.m. to 6:00 p.m. without the approval of the Commissioner.
- D. Traffic control devices, as defined in Part VI of the Manual on Uniform Traffic Control Devices, must be used whenever it is necessary to close a traffic lane or sidewalk. Traffic control devices are to be supplied by the Permittee. If used at night, they must be reflectorized and must be illuminated or have barricade warning lights if requested by the Commissioner.
- E. Oil flares or kerosene lanterns are not allowed as means of illumination. Nighttime Work area flood lighting shall not be allowed to spill out of the construction area in such a way as to disturb, annoy, or endanger the comfort, health, or peace of others.
- F. Part VI of the Manual on Uniform Traffic Control Devices or any successor publication thereto shall be used as a guide for all maintenance and construction signing. The Permittee shall illustrate on the Permit the warning and control devices proposed for use. At the direction of the

Commissioner, such warning and control devices shall be modified.

- G. *Maintenance and Construction Signing.* The Contractor shall be responsible for maintaining all Work area signing and barricading during construction operations as well as any signs and barricades that are needed to protect roadway users and pedestrians during non-work hours. During non-work hours, all construction Work area signs that are not appropriate shall be removed, covered, or turned around so that they do not face traffic. Any deficiencies noted during non-work hours by the Town shall be corrected immediately by the Contractor. For purposes of this section “immediately” means 30 minutes from verbal notification. If Contractor is not available or cannot be found, the Town may make such corrections and the Contractor shall pay the actual costs plus a penalty of fifty percent (50%) of the amount thereof.

Sec. 11-15. – General Rights of Way Use and Construction

- A. *Minimal Interference.* Work in the Rights of Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Permittee’s Facilities shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Town, or with any other pipes, wires, Conduits, pedestals, Structures, or other Facilities that may have been laid in the Rights of Way by, or under, the Town’s authority. The Permittee’s Facilities shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the Town may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights of Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic, except as approved under a traffic control plan or as provided under Section 11-24 of this Code.
- B. *Underground Construction and Use of Poles.*
1. When required by general ordinances, resolutions, regulations or rules of the Town or applicable state or federal law, Permittee’s Facilities shall be placed underground at no cost to the Town. Placing Facilities underground does not preclude the use of ground-mounted Appurtenances.
 2. Where all Facilities are installed underground at the time of Permittee’s construction, or when all such Facilities are subsequently placed underground, all Permittee Facilities that by their nature can function underground, shall also be placed

underground at no expense to the Town unless funding is generally available for such relocation to all users of the Rights of Way. Related equipment, such as pedestals, must be placed in accordance with the Town's applicable code requirements and rules.

3. Should the Town desire to place its own Facilities in trenches or bores opened by the Permittee, the Permittee shall cooperate with the Town in any construction by the Permittee that involves trenching or boring, provided that the Town has first notified the Permittee in some manner that it is interested in sharing the trenches or bores in the area where the Permittee's construction is occurring. The Permittee shall allow the Town to place its Facilities in the Permittee's trenches and bores, provided the Town incurs any incremental increase in cost of the trenching and boring. Should the Town desire to install Facilities such as Ducts or Conduit for the possible use of other entities, then the Permittee shall allow the Town to place these Facilities in the Permittee's trenches and bores, provided the Town shares proportionally in the cost of trenching and boring. The Town shall be responsible for maintaining its respective Facilities buried in the Permittee's trenches and bores under this paragraph.

D. *Use of Conduits by the Town.* Unless otherwise restricted by tariff, the Town may install or affix and maintain its own Facilities for Town purposes in or upon any of Permittee's Ducts, Conduits or equipment in the Rights of Way and other public places, at a charge to be negotiated between the parties, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. For the purposes of this subsection, "Town purposes" include without limitation the use of the Structures and installations for Town fire, police, traffic, water, telephone, or signal systems.

E. *Common Users.*

1. The Rights of Way have a finite capacity for containing Facilities. Therefore, whenever the Town determines it is impracticable to permit construction of an underground Conduit system by any other entity which may at the time have authority to construct or maintain Conduits or Ducts in the Rights of Way, but excluding entities providing services in competition with Permittee, and unless otherwise prohibited by federal or state law or regulations, the Town may require Permittee to afford to such entity the right to use Permittee's Surplus Ducts or Conduits in common with Permittee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Permittee and the other

entity. Nothing herein shall require Permittee to enter into an agreement with such entity if, in Permittee's reasonable determination, such an agreement could compromise the integrity of the Permittee's Facilities.

2. All Facilities shall meet any applicable local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Permittee and the other common user. Permittee may, at its option, correct any attachment deficiencies and charge the common user for its costs. Each common user shall pay Permittee for any fines, fees, damages or other costs the common user's attachments cause Permittee to incur.

Sec. 11-16. – Joint Planning and Construction Coordination of Excavations

- A. Excavations in Town Rights of Way disrupt and interfere with the public use of Town streets and can either damage the pavement and Landscaping or preclude future Landscaping or other installations in the Right of Way. The purpose of this Section is to reduce this disruption, interference and damage of the Right of Way by promoting and incentivizing better coordination among Permittees making excavations and the Town. Better coordination will assist in minimizing the number of excavations being made wherever feasible, and will ensure the excavations in Town Rights of Way are, to the maximum extent possible, combined or performed before, rather than after, the resurfacing of the streets by the Town.
- B. Any Permittee owning, operating or installing Facilities in Town Rights of Way, providing water, sewer, gas, electric, broadband, communication, video or other utility services, shall meet and present at the request of the Town (but not more frequently than once per year) with the Commissioner, at the Commissioner's request, the Permittee's infrastructure master plan, and discuss any issues of concern regarding Permittee's infrastructure located within Town Rights of Way. At such intervals, to the extent not already in possession of the Town, Permittee shall submit documentation, in a form required by the Commissioner, showing a location of the Permittee's existing, currently proposed, and future to be proposed Facilities in the Town Rights of Way, and any Facilities in Town Rights of Way that may be or are planned to be taken out of use. Permittee shall discuss with the Commissioner, its infrastructure master plan, and identify planned Major Excavation Work in the Town. The Commissioner may make their own record on a map, drawing or other documentation, of each Permittee's planned Major Excavation Work in the Town; provided, however, that no such document prepared by the Commissioner shall identify a particular entity, or the planned Major Excavation Work of that particular entity.

- C. For Permittees that have not previously installed any Facilities in Town Rights of Way, Permittee shall meet with the Commissioner to discuss its initial infrastructure master plan no later than sixty (60) days after submitting its first Permit application. Thereafter, each Permittee shall submit annually, on the first regular business day of January, a revised and updated infrastructure master plan. Such revised and updated plan shall be submitted in both hard copy and digital format. Between the annual meetings to discuss planned Major Excavation Work, Permittee shall use its best efforts to inform the Commissioner of any substantial changes in the planned Major Excavation Work discussed at the annual meeting.
- D. The Commissioner shall review the infrastructure master plan and identify conflicts and opportunities for coordination of Excavations. Following receipt of the Permittee's existing currently proposed, and future Major Work mapping information, the Commissioner may electronically post the information so that it can be reviewed by affected Owners and Permittees of such conflicts and opportunities to the extent necessary to maximize coordination of Excavation. Each Applicant for a Permit shall coordinate, to the extent practicable, with planned Town operations and each potentially affected Owner and Permittee to minimize disruption in the Rights of Way, regardless of whether such coordination was initiated by the Commissioner.
- E. The Town may disclose information contained in a Permittee's infrastructure master plan to any public or private entity planning on conducting Excavation activities in the Rights of Way only on a need-to-know basis to facilitate coordination among excavators and to avoid unnecessary Excavation in the Rights of Way. To the maximum extent permissible under the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, as amended, the Town shall not otherwise disclose to the public any information contained in mapping information submitted by a Permittee that is proprietary, trade secret or is otherwise protected from disclosure; provided, however that the Town shall have no duty to decline to disclose any information that the Permittee has not identified on its face as proprietary, trade secret or otherwise protected from disclosure. The Town shall notify a Permittee of any request for inspection of public records that calls for disclosure of any infrastructure master plan on which any information has been identified as proprietary, trade secret or otherwise protected from disclosure. The Town shall consult with the Town Attorney regarding any such request and shall inform the affected Permittee either that the Town will refuse to disclose the protected information or, if there is no proper basis for such refusal, that the Town intends to disclose the requested information unless ordered otherwise by a court.
- F. The Commissioner shall prepare a Repaving Plan showing the street resurfacing planned by the Town. For purposes of this Section, the

Repaving Plan shall include a landscaping or other right of way improvement plan. The Repaving Plan shall be revised and updated on an annual basis after meeting to discuss the Permittee's and Town Department's master plans and updates. The Commissioner shall make the Town's Repaving Plan available for public inspection. In addition to any other form of communication, after determining the street resurfacing Work that is proposed for each year, the Commissioner shall post a notice of the proposed Work on the Town's website or other designated electronic location, to provide notice of the proposed street resurfacing Work to all Permittees that have had an annual meeting with the Commissioner, and those broadband providers that are identified on the list maintained by the Colorado Department of Transportation pursuant to C.R.S. § 38-5.5-109 (1)(b).

- G. Prior to applying for a Permit, any Person planning to Excavate in the Town's Rights of Way shall review the Town's Repaving Plan on file with the Commissioner and shall coordinate, to the extent practicable, with the utility and street Work shown on such plans to minimize damage to, and avoid undue disruption and interference with the public use of such Rights of Way. Without such coordination, future Work within Repaved areas may be limited in the discretion of the Commissioner, to prevent premature disturbance of newly paved surfaces.
- H. Prior to undertaking any Work in the Rights of Way or related Landscaping, the Town may notify all Permittees of the Town Work to be performed. Upon such notification, all Permittees shall, within seven (7) days, locate their Facilities in the Rights of Way in which the Work will be performed, and provide documentation in a format acceptable to the Commissioner of the Permittee's Facilities in that Rights of Way.

Sec. 11-17. – Joint Excavation

- A. *Private Entity Excavators.* Whenever two or more Permittees propose Major Work in the same block within a one-year period, such Work shall be performed by one private entity excavator. For purposes of this subsection, the private entity excavators shall coordinate all permits as a single Permit Applicant and shall submit one application.
- B. *Public Entity Excavator and Private Entity Excavator.* Whenever a public entity excavator(s) and a private entity excavator(s) propose Major Work in the same block within a three-year period, the Department shall condition Permits for such Work in a manner that maximizes coordination and minimizes the total period of construction.
- C. *Excavations Not Identified on Major Work Plans.* When an Applicant

seeks a Permit for an Excavation, and such Excavation has not been identified on a Major Excavation Plan so as to allow the Town to coordinate joint Excavation prior to application as set forth in subsections A through B of this section, an Applicant may, in the discretion of the Commissioner, be required to circulate a description of the proposed Excavation to other Permittees and parties described in Section 11-16(E) to determine whether any Persons have construction requirements or opportunities for coordinating joint Excavations along the proposed route.

1. The Persons notified should be provided with the Applicant's proposed route plan, the target commencement date and the estimated completion date.
2. Within ten (10) working days after the notification required by this subsection, any interested Person must notify the Applicant of their requirements so that the Applicant may incorporate these requirements, where reasonable, in its Permit application. The Applicant should summarize the responses it receives from other Persons in its Application.
3. If the Applicant believes that it is not reasonably feasible to entertain the requests made by another Person(s) for conditions of joint Excavation, it should notify Town and the other Person(s) within ten (10) working days from the date of receiving the requirements from the other Person(s) and provide reasons why it is considered not reasonable to do so. The parties are expected to endeavor to resolve any technical or commercial concerns among themselves, and the Applicant shall report the results of these efforts together with its application for a Permit.

D. *Waiver of Joint Excavation Requirements.* Permit Applicants may seek a waiver of the joint Excavation requirements with respect to a particular Excavation.

1. Except in cases of Emergencies, within thirty (30) calendar days of receipt of a written request for a waiver, the Commissioner, in their discretion, may grant a waiver to the joint Excavation requirements for good cause. In making their decision on the request for waiver, the Commissioner shall consider the impact of the proposed Excavation on the neighborhood, the Applicant's need to provide services to a property or area, facilitating the deployment of new technology and improved services, and the public health, safety, welfare, and convenience. The Commissioner shall indicate in written, electronic, or facsimile communication the basis for granting any waiver pursuant to this subsection.

2. The Commissioner may waive the requirements for joint Excavation in cases where Emergency conditions exist.
3. The Commissioner may place additional conditions on any Permit(s) subject to a waiver, including, without limitation, the charging of additional fees. The Commissioner's decision regarding waivers of the joint Excavation requirements shall be final.

Sec. 11-18. – Minimizing the Impacts of Work in the Rights of Way

- A. *Relocation and Protection of Utilities.* Before beginning excavation in any Public Way, a Permittee shall contact the Utility Notification Center of Colorado (UNCC) and, to the extent required by C.R.S. § 9-1.5-101 *et seq.*, make inquiries of all ditch companies, utility companies, broadband providers, districts, local government departments, and all other agencies that might have Facilities in the area of Work to determine possible conflicts. The Permittee shall contact the UNCC and request field locations of all Facilities in the area pursuant to UNCC requirements. Field locations shall be marked prior to commencing Work. Additionally, Permittee shall provide the Town with information concerning the field locations of all Facilities in a graphical and verified format acceptable to the Commissioner. If the Permittee fails to provide the locate information requested by the Town, the Town may obtain this information and charge the Permittee the actual costs for obtaining the information. The Permittee shall support and protect all pipes, Conduits, poles, wires, or other apparatus which may be affected by the Work from damage during construction or settlement of trenches subsequent to construction.
- B. *Noise, Dust, Debris, Hours of Work.* Each Permittee shall conduct Work in accordance to all applicable laws and in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. In the performance of the Work, the Permittee shall take appropriate measures to reduce noise, dust, and unsightly debris. No Work shall be done between the hours of 7:00 p.m. and 7:00 a.m., Monday through Friday, nor between 5:00 p.m. and 8:00 a.m. on weekends or holidays, except with the written permission of the Commissioner, or in case of an Emergency.
- C. *Trash and Construction Materials.* Each Permittee shall maintain the Work site so that:
 1. Trash and construction materials are contained so that they are not blown off of the construction site.
 2. Trash is removed from a construction site often enough so that it

does not become a health, fire, or safety hazard.

3. Trash dumpsters and storage or construction trailers are not placed in the street without specific approval of the Commissioner.
- D. *Deposit of Dirt and Material on Roadways.* Each Permittee shall utilize their best efforts to eliminate the tracking of mud or debris upon any street or sidewalk. Streets and sidewalks shall be cleaned of mud and debris at the end of each day. All equipment and trucks tracking mud and debris into the Right of Way shall be cleaned of mud and debris at the end of each day or as directed by the Commissioner.
- E. *Protection of Trees and Landscaping.* Each Permittee shall protect trees, landscape, and landscape features as required by the Town. All protective measures shall be provided at the expense of the Permittee.
- F. *Protection of Paved Surfaces From Equipment Damage.* Backhoe equipment outriggers shall be fitted with rubber pads whenever outriggers are placed on any paved surface. Tracked vehicles that will damage pavement surfaces are not permitted on paved surface unless specific precautions are taken to protect the surface. The Permittee will be responsible for any damage caused to the pavement by the operation of such equipment and, shall repair such surfaces. Failure to do so will result in the use of the Applicant's performance/warranty guarantee by the Town to repair any damage, and, possibly, the requirement of additional warranty(s).
- G. *Protection of Property.* Each Permittee shall protect from injury any adjoining property by providing adequate support and taking other necessary measures. The Permittee shall, at its own expense, shore up and protect all buildings, walls, Fences or other property likely to be damaged during the Work, and shall be responsible for all damage to public or private property resulting from failure to properly protect and carry out Work in the Public Way.
- H. *Clean-Up.* As the Work progresses, all Public Rights of Way and private property shall be thoroughly cleaned of all rubbish, excess dirt, rock, and other debris. All clean-up operations shall be done at the expense of the Permittee.
- I. *Preservation of Monuments.* A Permittee shall not disturb any surface monuments, property marks or survey hubs and points found on the line of Work unless approval is obtained from the Commissioner. Any monuments, hubs, and points disturbed will be replaced by a Colorado Registered Land Surveyor at the Permittee's expense.
- J. Each Permittee shall make provisions for employee and construction

vehicle parking so that neighborhood parking adjacent to a Work site is not impacted.

- K. Each Permittee shall maintain an adequate and safe unobstructed walkway around a construction site in conformance with Town Code.
- L. Each Permittee shall clear all snow and ice hazards from public Rights of Way at the Work site by noon following a snowfall in conformance with Town Code.
- M. Each Permittee shall provide necessary sanitary facilities for workers. The location of such facilities shall be approved by the Town in the Permit.
- N. No open excavations shall remain overnight without written approval from the Town.

Sec. 11-20. – Standards for Repairs and Restoration

- A. *Permittee Responsibility.* The Permittee shall be fully responsible for the cost and actual performance of all Work in the Public Rights of Way. The Permittee shall do all Work in conformance with any engineering regulations, Specifications, and design standards adopted by the Town. These standards shall apply to all Work in the Public Rights of Way unless otherwise indicated in the Permit.
- B. All restoration shall result in a Work site condition equal to or better than that which existed prior to construction. In addition to the regulations, Specifications and standards referred to in subsection (A) the following provisions shall apply to Work in the Public Rights of Way of the Town.
 - 1. Pavement cuts and trenches shall be backfilled in conformance with the Municipal Government Pavement Engineers Council (“MGPEC”) Pavement Design Standards and Construction Specification Manual.
 - 2. The new asphalt thickness shall be five inches (5”) minimum or match existing, and be compacted upon placement. Asphalt depths will be governed by the existing cross section of the street but not less than five (5) inches of full deep asphalt shall be used to fill a street cut regardless of the existing cross section. Concrete meeting or exceeding the MGPEC Pavement Design Standards and Construction Specification Manual shall be used to replace concrete pavement or flatwork wherever it occurs.
 - 3. Asphalt that meets or exceeds Grade SX PG64-22 shall be used for

the top layer of asphalt. For any layers below the top layer, asphalt that meets or exceeds Grade S PG 64-22 shall be used.

Sec. 11-21. – Construction and Restoration Standards for Newly Overlayed Streets

No Person shall cause an open trench excavation or potholing of utilities in the pavement of any Public Rights of Way for a period of three (3) years from the completion of construction or resurfacing except in compliance with the provisions of this Section.

- A. *Application.* Any application for a Permit to Excavate in Public Rights of Way subject to the requirements of this section shall contain the following information:
1. A detailed and dimensional engineering plan that identifies and accurately represents the Town Rights of Way or property that will be impacted by the proposed excavation, as well as adjacent streets, and the method of construction.
 2. The street width including curb and gutter over the total length of each Town block that will be impacted by the proposed excavation.
 3. The location, width, length, and depth of the proposed excavation.
 4. The total area of existing street pavement in each individual Town block that will be impacted by the proposed excavation.
 5. A written statement addressing the criteria for approval.
- B. *Criteria for Approval.* No Permit for excavation in the Rights of Way of newly overlaid streets shall be approved unless the Commissioner finds that all of the following criteria have been met:
1. Boring or jacking without disturbing the pavement is not practical due to physical characteristics of the street or other utility conflicts.
 2. Alternative utility alignments that do not involve excavating the street are found to be impracticable.
 3. The proposed excavation cannot reasonably be delayed until after the three (3) year deferment period has lapsed.
- C. *Exemptions for Emergency Operations.* Emergency maintenance operations shall be limited to circumstances involving the preservation of life, property, or the restoration of customer service. Persons with prior

authorization from the Town to perform Emergency maintenance operations within the Public Rights of Way, shall be exempted from this section. Any Person commencing Emergency maintenance operations shall submit detailed engineering plans, construction methods and remediation plans no later than three Working days after initiating the Emergency maintenance operation.

- D. *Exemptions for Non-Emergency Operations.* A Permittee may apply to the Commissioner for an exemption under this section when the construction is necessary in the public interest or to provide a public service. By way of example, but not by limitation, an exemption could be requested to provide services to a part of the Town where no service would be available without construction. If a non-Emergency exemption is granted to disturb a Public Way within the three (3) year period, the Commissioner may, in their sole discretion, impose additional restoration requirements, including but not necessarily limited to, repaving of a larger area, such as an entire block in which the construction occurs.
- E. *Construction and Restoration Standards for Newly Overlaid Streets.* The streets shall be restored and repaired in conformance with the MGPEC Design Standards and Construction Specification Manual and guaranteed in accordance with Section 11-10 of this Code.

Sec. 11-22. – Relocation of Facilities

If at any time the Town requests the Permittee to relocate its Facilities, to allow the Town to make any public use of Rights of Way, or if at any time it shall become necessary because of a change in the grade or for any other purpose by reason of the improving, repairing, constructing, or maintaining of any Rights of Way, or reason of traffic conditions, public safety or by reason of installation of any type of Structure of public improvement the Town or other public agency or special district, and any general program for the undergrounding of such Facilities, to move or change the Permittee's Facilities within or adjacent to Rights of Way in any manner, either temporarily or permanently, the Town shall notify the Permittee at least ninety (90) days in advance, except in the case of emergencies, of the Town's intention to perform or have such Work performed. The Permittee shall thereupon, at no cost to the Town, accomplish the necessary relocation, removal or change within a reasonable time from the date of the notification, but in no event later than three (3) working days prior to the date the Town has notified the Permittee that it intends to commence its Work or immediately in the case of emergencies. Upon the Permittee's failure to accomplish such Work, the Town or other public agencies or special district may perform such Work at the Permittee's expense and the Permittee shall reimburse the Town or other agency within thirty (30) days after receipt of a written invoice. Following relocation, all affected property shall be restored to, at a minimum, the condition which existed prior to construction by Permittee at the Permittee's expense. Notwithstanding the requirements of the

Section, a Permittee may request additional time to complete a relocation project. The Commissioner shall grant a reasonable extension if in their sole discretion, the extension will not adversely affect the Town's project.

Sec. 11-23. – Abandonment and Removal of Facilities

- A. *Notification of Abandoned Facilities.* Any Permittee that intends to discontinue use of any Facilities within the Public Rights of Way shall notify the Commissioner in writing of the intent to discontinue use. Such notice shall describe the Facilities for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than thirty (30) days from the date such notice is submitted to the Commissioner and the method of removal and restoration. The Permittee may not remove, destroy or permanently disable any such Facilities during said thirty (30) day period without written approval of the Commissioner. After thirty (30) days from the date of such notice, the Permittee shall remove and dispose of such Facilities as set forth in the notice, as the same may be modified by the Commissioner, and shall complete such removal and disposal within six (6) months, unless additional time is requested from and approved by the Commissioner.
- B. *Conveyance of Facilities.* At the discretion of the Town, and upon written notice from the Commissioner within thirty (30) days of the notice of abandonment, the Permittee may abandon the Facilities in place, and shall further convey full title and ownership of such abandoned Facilities to the Town. The consideration for the conveyance is the Town's permission to abandon the Facilities in place. The Permittee is responsible for all obligations as Owner of the Facilities, or other liabilities associated therewith, until the conveyance to the Town is completed.
- C. *Abandonment of Facilities in Place.* At the discretion of the Town, and upon written notice from the Commissioner the Permittee may abandon the Facilities in place, but the Permittee still retains the responsibility for all obligations as Owner of the Facilities, or other liabilities associated therewith.

Sec. 11-24. – Emergency Procedures

- A. Any Person maintaining Facilities in the Public Way may proceed with repairs upon existing Facilities without a Permit when Emergency circumstances demand that the Work be done immediately. The Person doing the Work shall apply to the Town for a Permit on or before the third Working day after such Work has commenced. All Emergency Work will require prior telephone notification to the Town Police Department and South Metro Fire Rescue.

- B. *Notifications.* If any damage occurs to an underground Facility or its protective covering, the Contractor shall notify the Facility's operator promptly. When the Facility's operator receives a damage notice, the Facility's operator shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any inflammable, toxic, or corrosive gas or liquid or endangers life, health, or property, the contractor responsible shall immediately notify the Facility's operator and emergency services and take immediate action to protect the public and nearby properties.

Sec. 11-25. – Revocation of Permits and Stop Work Orders

- A. Any Permit may be revoked or suspended by the Commissioner, after written notice to the Permittee for:
1. Violation of any material condition of the Permit or of any material provision of this Code.
 2. Violation of any material provision of any other ordinance of the Town or state law relating to the Work.
 3. Existence of any condition or performance of any act which the Town determines constitutes or causes a condition endangering life or damage to property.
- B. *Stop Work Orders.* A Stop Work Order may be issued by the Commissioner to any Person or Persons doing or causing any Work to be done in the Public Way for:
1. Working without a Permit except for Routine Maintenance or Emergency repairs to existing Facilities as provided for in this Code.
 2. Doing Work in violation of any provisions of this Code, or any other ordinance of the Town, or state law relating to the work.
 3. Performing any act, which Town determines constitutes or causes a condition that either endangers life or property.
- C. A suspension or revocation by the Commissioner, and a Stop Work Order, shall take effect immediately upon notice to the Person performing the Work in the Public Way, or to the Permittee's last known address.
- D. Any suspension or revocation or Stop Work Order may be appealed by the Permittee in accordance with this Chapter by filing a written notice of appeal within thirty (30) days of the action.

Sec. 11-26. – Appeals Procedure

Any decision rendered by the Commissioner pursuant to this Code may be appealed within thirty (30) days by the Permittee to the Town Board of Trustees in accordance with the rules and procedures established by that body.

Sec. 11-27. – Penalty

If any Person violates or cause the violation of any of the provisions of this Chapter, they shall be guilty of a separate offense for each day or portion thereof during which a violation is committed, continues or is permitted, and upon conviction of any such violation such Person shall be punished as provided in Section 1-72 of this Code for each such violation.

Sec. 11-28—11-30 – Reserved.

Section 3. Safety Clause. The Board of Trustees hereby finds, determines, and declares that this ordinance is necessary and proper for the health, safety, and welfare of the Town and its residents.

Section 4. Severability. If any part, section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Board of Trustees hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more part, section, subsection, sentence, clause, or phrase is declared invalid.

Section 5. Repealer. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 6. Codification Amendments. The codifier of the Town's Municipal Code, Municipal Code Corporation, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Bow Mar Municipal Code.

INTRODUCED, READ, APPROVED, AND ORDERED PUBLISHED this 18th day of March, 2024.

ATTEST


Signed by:

2EE89ED6300D4EC...

By: _____

Sue Blair, Town Clerk

TOWN OF BOW MAR:

Signed by:

2255D7D8F43342F...

By: _____

Bryan Sperry, Mayor