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Chapter 9

Street and Sidewalks

Section 900 - Construction

900.01. Permit Required. No sidewalk, curb or gutter shall be constructed on any street or public property within the City without first having obtained a permit from the Administrator on forms approved by the Council. No permit shall be required for work ordered done by the Council.

900.02. New Construction. In newly developed areas or in areas that do not have sidewalks, the developer or property owners shall construct sidewalks as ordered by the Council in the following manner:

- A. The Council shall pass a resolution ordering all developers or owners of real property abutting on the proposed sidewalks to construct the sidewalks according to standard specifications on file in the office of the Administrator.
- B. When any sidewalk ordered to be constructed under this chapter shall not be built by the developer or property owner within the time specified in the resolution, the sidewalk shall be constructed by the City as provided in this section.
- C. Upon expiration of the time set forth in the resolution, the Public Works Department Superintendent shall make a report with the names, addresses and legal descriptions of owners of all property which have completed the sidewalk construction and all who have not.
- D. Upon receipt of the report, the Council shall pass a resolution ordering the work to be done by a contractor to be employed by the City. The Council may in its discretion order the work done by its own crews or by day labor.
- E. Upon completion of the work contracted for, the total cost of the work shall be assessed against the real property adjacent to the sidewalks in proportion as the number of front feet abutting on the portion bears to the total number of lineal feet laid.

900.03. Special Assessments. Special assessments for street and sidewalk new construction, repairs or improvements shall be made pursuant to the provisions of Minn. Stat. § 429 et al.

900.04. Sidewalk Repairs. This section shall apply to installation and construction of new sidewalks and shall not affect any Code provisions adopted regarding repair and maintenance of

sidewalks.

Section 910 - Current Services

910.01. Current Services. The term "current service" as used in this section shall mean one or more of the following: rubbish removal from sidewalks, weed elimination from street grass plots adjacent to sidewalks or from private property, street cleaning, repair of sidewalks, care of trees, location of mailboxes or other obstructions to street.

910.02. Nuisance Declared. No grass, leaves, dirt, branches, debris or rubbish shall be deposited onto a public street, alley or sidewalk and shall be deemed a public nuisance. The owner and the occupant of any property adjacent to a public street, alley or sidewalk shall use due diligence to keep the walk safe for pedestrians.

910.03. Boulevard Tree Care.

Subd. 1. Determination of Need. The Council shall determine the boulevard trees that shall be trimmed and cared for, the kind of work to be done and what unsound trees shall be removed. Before any work shall be done, the Administrator shall give public notice of the proposed project. The Public Works Department may trim or remove trees that constitute an immediate hazard.

Subd. 2. Tree Planting. No person shall plant trees in the public boulevard or plant trees on private property in a location that may obstruct the view of street traffic without first obtaining a permit from the Administrator.

Subd. 3. Tree Removal. The Public Works Department shall, after notice to the adjacent property owner, remove any trees that do not comply with this section.

Subd. 4. Tree Planting and Removal Specifications. The Public Works Department Superintendent shall prepare and keep on file specifications for tree planting and removal, subject to the approval of the Council. The specifications shall provide for the type, species, size and location of trees.

Subd. 5. Tampering with or Damaging a Boulevard Tree. No person shall intentionally cause damage to, prune, or otherwise tamper with a boulevard tree without the consent of the Council, as provided for in this section.

910.04. Mailboxes.

Subd. 1. Installation and Replacement. Any mailbox installed or replaced after adoption

of this Code shall conform to City and United States Postal Service specifications.

Subd. 2. Snow Removal. The occupant or property owner shall be responsible for removal of snow around the property owner's mailbox.

Subd. 3. Specifications. The Public Works Department Superintendent shall prepare mailbox specifications, subject to the approval of the Council.

Subd. 4. City Liability.

A. The City shall be responsible for the repair or replacement of any mailbox damaged or destroyed when physically struck by the City snow removal equipment.

B. The City shall not be liable for repair or replacement of any mailbox due to normal snow plowing operations when:

1. The mailbox does not conform to specifications; or
2. The mailbox is not readily visible and is damaged or destroyed by pushed, bladed or flying snow or chunks of snow or ice from the snow plowing equipment.

910.05. Assessment. On or before October 1 of each year, the Administrator shall list the total unpaid charges for each type of current service against each separate lot or parcel to which they are attributable under this section. The Council may then spread the charges against property benefited as a special assessment under Minn. Stat. §429.101 and other pertinent statutes for certification to the county auditor prior to October 10 in each year for collection the following year with current taxes as provided in Minn. Stat. §429.061.

Section 920 - Alterations or Defacement

920.01. Permit Required. No person shall alter or deface any street, sidewalk, street curbing, or driveway approach without first obtaining a permit from the Administrator.

Subd. 1. Exceptions. Franchised utilities such as telephone, electric or cable companies need not secure a permit but shall give twenty-four (24) hours' notice in writing to the Public Works Department Superintendent of work proposed to be done. All work must comply with City specifications.

920.02. Permit Fee. The permit fee shall be as established by resolution of the Council.

920.03. Driveway Approach Requirements. Breaking out of curbs for driveways and construction of driveway approaches shall be in accordance with specifications on file in the office of the Public Works Department. Each lot which abuts one or more public street shall be entitled

to at least one access to a public street. Lots in R-1 zoning districts as defined in Code Section 12 shall be limited to one (1) driveway access per lot.

920.04. Street and Sidewalks.

- A. The application for a permit to cut across, dig holes or break any street or sidewalk shall contain a drawing showing in detail the proposed alteration.
- B. After the permit has been issued and prior to cutting, digging or breaking into any Street or sidewalk, the area shall be marked and shall be approved by the Public Works Department Superintendent.
- C. All work on streets shall be in accordance with specifications on file in the office of the Public Works Department.
- D. The applicant shall be responsible for erecting barricades and rerouting traffic where necessary, subject to the approval of the Public Works and Police Departments.

920.05. Inspection.

A. All street, sidewalk and street curbing alterations and driveway approach construction completed under this Chapter shall be inspected by the Public Works Department Superintendent. The first inspection shall be made prior to breaking out curbing or street. A second inspection shall be made after all forming is installed prior to pouring concrete or resurfacing the street.

B. Compliance. If the installation does not comply with the specifications and the terms of this Chapter, the inspector shall order the necessary corrections. If the correction is not made within thirty (30) days from date of written notice to the property owners, the City may make the necessary corrections and charge the cost thereof to the property owner.

920.06. Variance. In cases of undue hardship or unusual circumstances, the Council or its authorized representative may in its discretion issue a permit authorizing a variance from the provisions of this section.

920.07. Snow Removal.

Subd 1. Restrictions.

- A. No person shall deposit snow upon the property of another without the consent of the property owner or upon the City streets or sidewalks.
- B. No person shall push, dump, hand shovel or blow snow into or onto City streets or sidewalks or onto the property of others without the consent of the property owner.

Subd 2. Regulations and Enforcement. The Public Works Superintendent, with

approval of the Council, shall prescribe snow removal rules and regulations. The Public Works Department, after notice to any person who has refused or failed to comply with this section and the rules hereunder, shall remove and dispose of any improperly deposited snow and charge the cost for such removal to the person in violation.

Subd. 3. City Liability.

A. The City shall use due care in snow plowing and snow removal.

B. The City will not be liable for damage to personal property caused by City snow plowing or snow removal equipment when:

1. Garbage cans are placed on the boulevard, Street or sidewalk that are not readily visible to the operator of the equipment; or,
2. Any other personal property is placed on the boulevard, Street or sidewalk that is not readily visible to the operator of the equipment.

Section 930 - Public Right-of-Ways

930.01. Findings and Purpose. To provide for the health, safety and well-being of its citizens and to ensure the structural integrity of its Street and the appropriate use of the right-of-way's, the City strives to keep its right-of-way's in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the right-of-way's, a primary cause for the early and excessive deterioration of its right-of-way's is frequent excavation. Right-of-way obstruction is a source of frustration for merchants, business owners and the general population which must avoid these obstructions or change travel or shopping plans because of them. This has a detrimental effect on commerce. Persons whose equipment is within the right-of-way are the primary cause of these frequent obstructions. The City holds the right-of-way within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested substantial public funds to build and maintain the right-of-way's. It also recognizes that some persons, by placing their equipment in the right-of-way and charging the citizens of the City for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property. This section imposes reasonable regulations on the placement and maintenance of equipment currently within its right-of-way's or to be placed therein at some future time. It is intended to complement

the regulatory roles of state and federal agencies. Under this section, persons disturbing and obstructing the right-of-way's will bear a fair share of the financial responsibility for their integrity. Finally, this section provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-ways.

930.02. Definitions. The following definitions apply in this section of this Code.

- A. "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.
- B. "Business District" means the Shopping Center, Outer Drive and Highway 61, or any area where there is a business section.
- C. "City" means the City of Silver Bay, Minnesota, its elected officials, officers, employees and agents.
- D. "City Cost" means the actual cost incurred by the City for public rights-of-way management: including but not limited to: costs 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 equipment during public right-of-way work; determining the adequacy of right-of-way permits and performing all other tasks required by this section, including other costs the city may incur in managing the provisions of this section.
- E. "Degradation" means the accelerated depreciation of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.
- F. "Degradation Cost" means money paid to the city to cover the cost associated with a decrease in the useful life of a public right-of-way caused by excavation or disturbance.
- G. "Department" means the Public Works Department.
- H. "Department Inspector" means any person authorized by the Public Works Department Superintendent to carry out inspections related to the provisions of this section.
- I. "Superintendent" means the Public Works Department Superintendent or designee.
- J. "Emergency" means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property, or requires immediate repair or replacement to restore service to a customer.
- K. "Equipment" means any tangible thing in any right-of-way, but shall not include

boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the Street curb.

L. "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way except horticultural practices of penetrating the boulevard area to a depth of less than twelve (12) inches.

M. "In" when used in conjunction with "right-of-way," means over, above, in, within, on or under a right-of-way.

N. "Local Representative" means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this section.

O. "Obstruct" means to place any object in a right-of-way to hinder free and open passage over that or any part of the right-of-way.

P. "Permit" means the permit which, pursuant to this section, must be obtained before a person may excavate or obstruct in a right-of-way.

Q. "Permit Fee" means money paid to the City by an applicant.

R. "Permittee" means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this section.

S. "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assignee of any of the foregoing, or any other legal entity which has or seeks equipment in any right-of-way.

T. "Registrant" means any person who has, or seeks, its equipment located in any right-of-way or in any way occupies or uses, or seeks to occupy or use the right-of-way or any equipment in the right-of-way.

U. "Repair" means temporary construction work necessary to make the right-of-way useable for travel.

V. "Restore or Restoration" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition that existed before the commencement of the work.

W. "Right-of-Way" means the surface and space above and below a public roadway,

highway, street, cartway, bicycle lane, public sidewalk, other dedicated rights-of-way for travel purposes, and utility easements of the City.

X. "Right-of-Way Permit" means either the excavation permit or the obstruction permit or both, depending on the context, required by this section.

Y. "Service" or "Public Utility" includes but is not limited to those services provided by a public utility as defined in Minn. Stat. § 216B.02, Subd. 4 and 6; telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; and cable communications systems as defined in Minn. Stat. § 238 et al.

Z. "Telecommunications Rights-of-Way User" means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information.

ZZ. "Unusable Equipment" means equipment in the right-of-way which has remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or has a potential purchaser or user of the equipment within the next twelve (12) months.

930.03. Permit Requirement.

Subd. 1. Permit Required. Except as otherwise provided in this section, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the Administrator.

Subd. 2. Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless that person makes an application for and is granted an extension.

930.04. Permit Fees.

Subd. 1. Permit Fee. The Permit Fee shall be established by the Council by resolution.

Subd. 2. Non-refundable. Permit fees that were paid for a permit that the Administrator has revoked for a breach pursuant to Section 930.12 are not refundable.

930.05. Right-of-Way Repair and Restoration.

Subd. 1. Timing. The work to be done under the excavation permit, and the repair 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 extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable.

Subd. 2. Repair and Restoration. The Permittee shall repair the street and right-of-way to the condition it was in prior to its work. However, in its application for an excavation permit, the permittee may choose either to have the City restore the right-of-way or to restore the right-of-way itself.

A. City Restoration. If the permittee chooses to have the City restore the right-of-way, it shall pay the costs thereof within thirty (30) days of billing. If during the thirty-six (36) months following such restoration the pavement settles due to permittee's improper backfilling the permittee shall pay to the City the cost of repairing said pavement within thirty (30) days of billing.

B. Permittee Restoration. If the permittee chooses to restore the right-of-way itself, it shall be restored to the condition it was before any work was done. All repair and restoration work shall be subject to the approval of the Superintendent.

Subd. 3. Standards. The permittee shall perform repairs and restoration per the standards and materials specified by the Superintendent. The Superintendent shall have the authority to prescribe the manner and extent of the restoration, by written procedures of general application or on a case-by-case basis.

Subd. 4. Guarantees. By choosing to restore the right-of-way itself, the permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this thirty-six (36) month period it shall, upon notification from the Superintendent, correct all restoration work to the extent necessary, using the method required by the Superintendent. The work shall be completed within five (5) calendar days of the receipt of the notice from the Superintendent, 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.

Subd. 5. Failure to Restore. If the Permittee fails to restore the right-of-way in the manner and to the condition required by the Superintendent, or fails to satisfactory and timely complete all restoration required by the Superintendent, the Public Works Department at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way.

930.06. Other Obligations.

Subd. 1. Compliance with Other Laws. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other city, county, state, or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Stat. §§ 216D, et al. ("One Call Excavation Notice System"). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

Subd. 2. Prohibited Work. Except in an emergency, and with the approval of the Superintendent, no right-of-way obstruction or excavation may be done when seasonably prohibited or when conditions are unreasonable for such work.

Subd. 3. Interference with Right-of-Way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles may not be parked within or next to a permit area. The loading or unloading of trucks next to a permit area is prohibited unless specifically authorized by the permit.

930.07. Denial of permit.

Subd. 1. Mandatory Denial. If in the discretion of the Administrator the issuance of a permit for the date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event, the Administrator shall deny the permit.

Subd. 2. Permissive Denial. The Administrator may deny a permit to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users.

930.08. Installation Requirements. The excavation, backfilling, repair and restoration, and all other work performed in the right-of-way shall be done in conformance with the standards and materials specified by the Superintendent. The Superintendent shall have the authority to prescribe the manner and extent of the restoration, by written procedures of general application or on a case-by-case basis.

930.09. Inspection.

Subd. 1. Notice of Completion. When the work under any permit hereunder is completed, the permittee shall notify the Administrator and Superintendent.

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

Subd. 3. Authority of Public Works Superintendent. At the time of inspection, the Superintendent may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public. The Superintendent may issue an order to the registrant for any work which does not conform to the applicable standards, conditions or codes. Within ten (10) days after issuance of the order, the registrant shall present proof to the Superintendent that the violation has been corrected. If such proof has not been presented within the required time, the Superintendent may revoke the permit.

930.10. Work Done Without a Permit.

Subd. 1. Emergency Situations. Each registrant shall immediately notify the Administrator of any event regarding its equipment which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this section for the actions it took in response to the emergency. If the Superintendent becomes aware of an emergency regarding a registrant's equipment, the Superintendent may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the Superintendent may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose equipment occasioned the emergency.

Subd. 2. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by the Code, deposit with the Administrator the fees necessary to correct any damage to the right-of-way and comply with the requirements of this section.

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

930.12. Revocation of Permits.

Subd. 1. Substantial Breach. Registrants hold permits issued pursuant to this section as a privilege and not as a right. The City reserves its right to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, code, rule or regulation, or any condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- A. The violation of any material provision of the right-of-way permit;
- B. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- C. Any material misrepresentation of fact in the application for a right-of-way permit;
- D. The failure to maintain the required bonds and/or insurance;
- E. The failure to complete the work in a timely manner; or,
- F. The failure to correct a condition indicated on an order issued pursuant to this section.

Subd. 2. Written Notice of Breach. If the Administrator 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 Administrator shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. Further, a substantial breach, as stated above, will allow the Administrator at his or her discretion, to place additional or revised conditions on the permit.

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

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

930.13. Mapping Data - Telecommunication Equipment. Information on existing facilities and equipment of telecommunications right-of-way users need only be supplied in the form maintained by the telecommunications right-of-way user.

930.14. Location of Equipment.

Subd. 1. Corridors. The Superintendent may assign specific corridors within the right-of-way, or any segment thereof as may be necessary, for each type of equipment that is or, pursuant to current technology, the Superintendent expects will someday be located within the right-of-way.

Subd. 2. Nuisance. Any equipment found in a right-of-way that has not been registered shall be deemed to be a nuisance. 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 equipment and restoring the right-of-way to a useable condition.

Subd. 3. Limitation of Space. To protect health and safety, the Superintendent shall have the power to prohibit or limit the placement of new or additional equipment within the right-of-way if there is insufficient space to accommodate all the requests of registrants or persons to occupy and use the right-of-way. In making such decisions, the Superintendent shall strive to the extent possible to accommodate all existing and potential users of the right-of-way. The Superintendent shall be guided primarily by considerations of the public interest, the public's needs for the utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing equipment 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.

930.15. Relocation of Equipment. A Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its equipment and facilities in the right-of-way whenever the Superintendent requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation.

930.16. Damage to Other Equipment. When the Superintendent does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's equipment to protect it, the Superintendent shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any damage to the equipment of another registrant caused during the City's response to an emergency occasioned by that registrant's equipment.

930.17. Right-of-Way Vacation.

Subd. 1. Reservation of Right. If the City vacates a right-of-way which contains the equipment of a registrant, and if the vacation does not require the relocation of registrant or

permittee equipment, the City shall reserve to and for itself and all registrants having equipment in the vacated right-of-way, the right to install, maintain and operate any equipment in the vacated right-of-way and to enter upon such right-of-way at any time for reconstructing, inspecting, maintaining or repairing the same.

Subd. 2. Relocation of Equipment. If the vacation requires the relocation of registrant or permittee equipment, and if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs. If the vacation proceedings are initiated by the city, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the city and the registrant or permittee. If the vacation proceedings are initiated by a person or persons other than the registrant or permittee, such other person or persons must pay the relocation costs.

930.18. Indemnification and Liability.

Subd. 1. Limitation of Liability. Due to the issuance of a registration or the grant of a right-of-way permit, the City does not assume any liability for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the City, or for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.

Subd. 2. Indemnification. By registering with the Administrator, a registrant agrees, or by accepting a permit under this section a permittee is required, to defend, indemnify, and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a right-of-way permit.

It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City for any claim, nor for any award arising out of the presence, installation, maintenance or operation of its equipment, or any activity undertaken in or near a right-of-way, whether the act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence where such negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said equipment by the registrant or on the registrant's behalf,

including, but not limited to, the issuance of permits and inspection of plans or work. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the registrant or to the City; and the registrant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

930.19. Abandoned and Unusable Equipment. Any registrant who has unusable and abandoned equipment in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, unless this requirement is waived by the Superintendent.

930.20. Reservation of Regulatory and Police Powers. The City by the granting of a right-of-way permit, or by registering a person under this section, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights which it has now or may be hereafter granted under the Constitution and statutes of the State of Minnesota (or the Municipal Code of the City) to regulate the use of the right-of-way by the permittee; and, the permittee by its acceptance of a right-of-way permit or of registration under this section, agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise by the City at any time. A permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of a registration or of a right-of-way permit and any other present or future lawful exercise of the City's regulatory or police powers shall be resolved in favor of the latter.