

ORDINANCE #10-36

AN ORDINANCE AMENDING THE REVISED ORDINANCES OF SANDY CITY TITLE 13, "STREETS AND PUBLIC IMPROVEMENTS" RELATING TO CHAPTER 1, "EXCAVATION PERMIT"; ALSO PROVIDING A SAVING CLAUSE FOR THE ORDINANCE AND AN EFFECTIVE DATE.

WHEREAS, it is necessary to amend the Revised Ordinances of Sandy City Title 13, "Streets and Public Improvements" relating to Chapter 1, "Excavation Permit"; and

WHEREAS, Section 10-8-84, Utah Code Annotated, authorizes such amendment in order to protect the public health, safety and welfare of the City;

NOW, THEREFORE, BE IT ORDAINED by the City Council of Sandy City as follows:

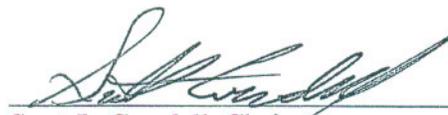
Section 1. Chapter 1 of Title 13 of the Revised Ordinances of Sandy City is hereby amended as set forth in Exhibit A which is attached to and incorporated in this ordinance.

Section 2. All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance or of the Code hereby adopted are hereby repealed.

Section 3. The provisions of this ordinance shall be severable; and if any provision thereof, or the application of such provision under any circumstances is held invalid, it shall not affect any other provision of this ordinance, or the application in a different circumstance.

Section 4. This ordinance shall become effective upon publication of a summary thereof and the City Recorder is hereby directed to publish such summary as soon as practically possible.

PASSED AND APPROVED by the Sandy City Council this 24 day of August, 2010.



Scott L. Cowdell, Chairman
Sandy City Council

PRESENTED to the Mayor this 27th day of August, 2010.

APPROVED by the Mayor this 27th day of August, 2010.



ATTEST:

Molly Spivey
City Recorder

Thomas M. Dolan
Thomas M. Dolan, Mayor

RECORDED this 30th day of August, 2010.

SUMMARY PUBLISHED this 2nd day of September, 2010.

TITLE 13

STREETS AND PUBLIC IMPROVEMENTS

Chapter 1 EXCAVATION PERMIT

13-1-1. Definitions.

- (a) **"Applicant"** means any Person who makes application for a permit.
- (b) **"Abutting Property Owner"** means the owner of a parcel of property that has a common property line with the property in question. The property is considered abutting regardless of the length of the common property line.
- (c) **"Business"** means (except where the context clearly suggests otherwise) any commercial, industrial, or not-for-profit enterprise.
- (d) **"City"** means Sandy City, a municipal corporation of the State of Utah.
- (e) **"Engineer"** means the City Engineer, or his/her authorized representative.
- (f) **"Emergency"** means any unforeseen circumstances or occurrence, the existence of which constitutes an immediate and substantial danger to persons or property, or which causes interruption of utility or public services.
- (g) **"Fee Schedule"** means the standard Fee Schedule adopted by the Sandy City Council as a part of its annual budget process.
- (h) **"MUTCD"** means the most recent edition of the "Manual on Uniform Traffic Control Devices" published by the U.S. Department of Transportation Federal Highway Administration.
- (i) **"No-Fee Permit"** means a permit issued which does not require the payment of a fee where the requirements for such a permit are met. when the Engineer determines that work being done in the Public Way is (1) being done by the private property owner in the Public Way adjacent to the owner's property; (2) non destructive in nature; or (3) is being done on a Public Works-sponsored project.
- (j) **"Operator"** means any person who provides service over a System, or who otherwise controls or is responsible for the operation of such a System.
- (k) **"Permittee"** means any person which has been issued a permit to work in the Public Way.
- (l) **"Person"** means and includes any natural person, partnership, firm, association, Provider, corporation, company, organization, or entity of any kind. **"His," "her," "its"** and similar possessive pronouns shall refer to a person.

(m) **“Property Owner”** means a person or persons who have legal title or equitable interest in the property.

(n) **“Provider”** means an Operator, a reseller of services through a System, a System lessee, or a Public Utility Company.

(o) **“Public Utility Company”** means any organization subject to the jurisdiction of the Utah State Public Service Commission, or any person or entity providing gas, electricity, water, telephone, telecommunications, or other similar utility product or service for use by the general public or businesses.

(p) **“Public Way”** means and includes all public rights-of-way, public footpaths, walkways and sidewalks, public streets, public roads, public highways, public alleys, and public drainage ways in the City. It does not, however, include utility easements not within Public Ways of the City.

(q) **“Resident”** means the person or persons currently making his or her home or having an office or physical place of business in Sandy City.

(r) **“Road Base”** means a uniform grade of base material suitable for use in the construction of roadways, sidewalks and other public improvements.

(s) **“Sandy City Standard Specifications”** or **“Standard Specifications,”** means the latest published version of the Sandy City Standard Specifications And Details For Municipal Construction.

(t) **“Stop-work Order”** means a suspension or revocation of a Permit, either oral or written, by the Engineer to the person performing the work in the Public Way.

(u) **“Storm Drain”** means a dedicated pipe, conduit, water way, or ditch and related facilities installed in a right-of-way or easement for the transmission of storm and drainage water. This term does not include Private Drain Lines.

(v) **“Subscriber”** means a person who has a contract for a service provided by a telecommunications Provider.

(w) **“System”** means all conduits, manholes, and all other equipment, cable, wire and appurtenances owned, leased, or used by a Provider in the construction, ownership, operation, use or maintenance of a telecommunications, cable television, or public utility system.

(x) **“Work”** when used in reference to the Public Way, means construction, reconstruction, excavation, drilling, trenching, paving, crack sealing, altering the Public Way, or constructing, installing, reconstructing, repairing, inspecting, removing, any public utility or telecommunications structure, appurtenance or facility, or other part of a System in the Public Way, or performing any act or service related thereto within the Public Way. “Work” shall not include the following when performed in the Public Way abutting real property of and performed

by or at the direction of a Property Owner with a real or equitable interest in real property: sweeping or blowing leaves, grass, trash, debris; shoveling, clearing or removing snow or ice; landscaping or landscape maintenance, including but not limited to planting, removing, mowing, edging, trimming of grass, bushes, or trees within a park strip or other non-traveled parts of the Public Way, or hand digging excavations for installation or repair of sprinkler systems.

(y) **“Work Site Restoration”** means the restoration of the original ground or paved hard surface, existing facilities or landscaped area to comply with Sandy City Standard Specifications, and includes but is not limited to repair, cleanup, backfilling, compaction, stabilization, paving and other work necessary to place the site in acceptable condition following the conclusion of the work, or the expiration or revocation of the permit.

13-1-2. Permit Required; Basis for Issuance.

Any person desiring to perform Work in a Public Way within the City shall make application for a permit. Acceptance of the permit issued by the City and Work in the Public Way constitute an acceptance of the terms of the permit and a promise to comply with the terms of this ordinance. The decision by the City to issue a permit shall be based on consideration of the following issues:

- (a) The capacity of the Public Way to accommodate the facilities or structures proposed to be installed.
- (b) The risk of damage or disruption to public or private facilities, improvements, or landscaping in the Public Way.
- (c) The public interest in minimizing the cost, and disruption of construction from excavations of the Public Way.
- (d) The public interest in maintaining a reserve capacity in the Public Way for the installation of public utilities and other facilities which may need to be placed in the Public Way in the future.
- (e) The extent that the proposed work will interrupt traffic.
- (f) The Applicant’s record in respect to safety, responsibility, and compliance with this ordinance or other municipal ordinances or State statutes respecting work in public rights of way during the previous five (5)-year period.
- (g) Other considerations relevant to work in the Public Way.

13-1-3. Permit Application Requirements.

Application for a permit shall be completed and signed by the Applicant and filed with the Engineer on a form furnished by the City. Property owners and /or tenants for whom work is being done shall be responsible for obtaining the permits, provided, however, that a contractor performing the work may obtain the permit in the contractor’s name.

(a) Allowed Permits. No person shall be eligible to apply for or receive permits to do Work within the Public Ways of the City, except the following:

- (1) Construction contractors licensed by the State of Utah as general contractors;
- (2) A Provider holding a Sandy City franchise to use the Public Way, or who is either licensed by the State of Utah as a general contractor, or which uses a general contractor licensed by the State of Utah to perform the Work;
- (3) A Property Owner who installs, replaces, or maintains sidewalk or driveway approach or other similar work approved by the Engineer upon a portion of the Public Way adjacent to real property in which the Property Owner has a legal or equitable interest;
- (4) A Person offering a construction-related or real property-related service which requires occupation of the Public Way in a way other than as normal vehicular traffic, such as work requiring the erection of scaffolding, staging of a crane, installation or maintenance of electric signs, glass or awnings, trimming of trees, and painting or cleaning of buildings or sign boards or other structures, or similar work.

(b) Plans, Drawings, Specifications. When necessary, in the judgment of the Engineer, to assess the relationship of the Work proposed to existing or proposed facilities within the Public Way, or to determine whether the work proposed complies with the Specifications, the Engineer may require the filing of engineering plans, specifications and drawings, and may suspend the work in the Public Way or delay issuance of a permit until such items are received and the Work is approved.

(c) Approved Application Required. It shall be unlawful for any person to commence Work upon any Public Way until the Engineer has approved the application and until a permit has been issued for such work, except as specifically approved to the contrary pursuant to this ordinance, or in the Specifications.

(d) Traffic Plan. Prior to the City issuing a permit, a traffic plan must be submitted by the Permittee for review and approval by the City Traffic Engineer or his designee. The traffic plan shall, at a minimum, conform to the current MUTCD, and must be approved prior to performing work in, or any occupation of the Public Way.

(e) Appeal. The disapproval, denial, suspension or revocation of an application or permit, or the imposition of conditions by the Engineer may be appealed by the Applicant to the Public Works Director by filing of a written notice of appeal within ten days of the action of the Engineer setting out the Applicant's name, mailing address, daytime telephone number, the decision appealed from, the relief sought, and facts, documents or evidence supporting the appeal, and a short statement of the reasons and legal authority in support of the appeal. The City shall notify the Applicant of the date and time of the appeal hearing, at which the Applicant shall have an opportunity to be heard. The Public Works Director or his designee shall hear such appeal, and shall render his or her decision promptly, but in any case within 10 days of the hearing, or if no hearing is requested, then within ten days of the City's receipt of such written appeal.

(f) Protect the Public Health, Safety and Welfare. In approving or disapproving work within any Public Way, or permits therefor, in the inspection of such work; in reviewing plans, drawings or Specifications; and generally in the exercise of the authority conferred upon him/her, the Engineer or his designee shall act in such manner as to preserve and protect the public health, safety and welfare, the Public Way, and the use thereof.

(g) Preconstruction Meeting. At the discretion of the Engineer, when trench length will equal or exceed three hundred fifty (350) linear feet within the Public Way, the Permittee may be required to schedule and attend a meeting with the City Engineer or his or her designee at the job site prior to construction.

(h) Exception - Hand-digging. A permit from the Engineer is not required for hand digging excavations for installation or repair of sprinkler systems and landscaping within the non-traveled areas of the Public Way, as defined in the Sandy City Standard Specifications, however, non-individual business entities must provide prior notification of time and location of work.

13-1-4. Emergency Work.

(a) Any person lawfully maintaining pipes, lines, or facilities in the Public Way may proceed with work upon existing facilities without a permit when Emergency circumstances require the work to be done immediately; provided a permit could not reasonably and practicably have been obtained beforehand.

(b) In the event that Emergency work is commenced on or within any Public Way during regular business hours, the Engineer shall be notified within one hour from the time the work is commenced. The person commencing and conducting such work shall take all necessary safety precautions for the protection of the public and the direction and control of traffic, and shall be responsible for assuring that work is accomplished according to the City Standard Specifications, the MUTCD, and generally recognized safe practices in the road construction industry.

(c) Any person commencing Emergency work in the Public Way during any time other than business hours without a permit must immediately notify the City by calling the Valley Emergency Communications Center (VECC) at its telephone number, which is currently (801) 840-4000. The person must thereafter submit an application for a permit during the first hour of the first regular business day on which City offices are open for business after such work is commenced. A permit for such Emergency work may be issued and shall be retroactive to the date when the work was begun, at the discretion of the Engineer.

13-1-5. Permit Fees.

(a) The Permittee shall, before issuance of the permit, pay fees for costs associated with the work performed by the City under the permit as outlined in the Fee Schedule adopted by the City Council. Fees include the cost for reviewing the project and issuing the permit, inspections of the project, deterioration of the Public Way or diminution of the useful life of the Public Way, and other costs to the City associated with the work to be done under the permit.

A No-Fee Permit may be granted by the Engineer when one or more of the following conditions occurs:

- (1) When an abutting property owners are replacing or repairing any kind of existing public facility, such as drive approaches, sidewalk, or any combination thereof;
- (2) When the Engineer determines that the work covered by the permit is an obstruction only, and will not have a detrimental effect on the existing street improvements; or
- (3) Work is being done for a project sponsored by the City Public Works Department.

(b) Additional charges to cover the reasonable cost and expenses of any required engineering review, inspection, and Work Site Restoration associated with each **construction project** may be charged by the City to each Permittee, in addition to the permit fee, in the City Engineer's reasonable discretion.

13-1-6. Permit, Contents, Duration and Extensions.

(a) Each permit application shall state the starting date, and estimated completion date of the Work in the Public Way, based upon factors reasonably related to the work to be performed under the permit, which may include, in addition to other factors related to the work to be performed, the following factors:

- (1) The scope of work to be performed under the permit;
- (2) The need to maintain the safe and effective flow of pedestrian and vehicular traffic on the Public Way affected by the work in conformity with the MUTCD;
- (3) Protecting the existing improvements to the Public Way;
- (4) The season of the year during which the work is to be performed, as well as the expected weather its impact on public safety, and the use of the Public Way by the public;
- (5) Use of the Public Way by public travelers, including for extraordinary events anticipated by the City.

(b) The Engineer shall be notified by the Permittee of commencement of the work at least twenty-four hours prior to commencing work.

(c) The permit shall be valid for the time period specified in the permit. If the work is not completed during such period, prior to the expiration of the permit, the Permittee may apply to the Engineer for an extension.

(d) If the Engineer determines that the request for extension is reasonable, he or she may extend the permit for a period of time necessary to complete the project.

13-1-7. Permit - No Transfer or Assignment.

Permits shall not be transferable or assignable except to a parent company or a wholly-owned subsidiary of a permittee, and Work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a Permittee from subcontracting the work to be performed under a permit; provided, however, that the holder of the permit shall be and remain responsible for the performance of the work under the permit, and for all bonding, insurance and other requirements of this ordinance and under the permit. The Permittee must list all subcontractors as "additional insureds" on the Permittee's certificate of liability insurance, or provide the City with certificates of liability insurance for all of the Permittee's subcontractors, in accordance with Section 114 herein.

13-1-8. Compliance with Specifications, Standards, Traffic-Control Regulations; Site Permittee Identification.

(a) The Work performed in the Public Way shall conform to the requirements of the Standard Specifications and the MUTCD, copies of which shall be available from the Engineer, kept on file in the office of the Engineer and shall be open to public inspection during office hours.

(b) Where a job site is left unattended, before completion of the work, signs with minimum two-inch-high letters shall be attached to a barricade or otherwise clearly posted at the site, indicating the Permittee's name, or company name, telephone number, and after-hours telephone number.

(c) All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to Residents and businesses fronting on the Public Way shall be minimized. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or persons. Barricades must be in place until all of the Permittee's equipment is removed from the site and the excavation has been properly backfilled and a permanent surface or a proper temporary road base surface is in place meeting the Standard Specifications. From sunset to sunrise, all barricades and excavations must be clearly visible by use of adequate signal lights, torches, or other means permitted under the MUTCD. The Police Department and Fire Department shall be notified at least 48 hours in advance of any planned excavation requiring a street closure or traffic detour.

(d) Construction operations shall be conducted in a manner that a practical minimum amount of interference or interruption of roadway traffic will result, except during emergency conditions or unless authorized by the Engineer. Construction operations, such as excavation, backfill and pavement restoration on collector or arterial streets are prohibited during peak traffic hours of 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m. weekdays and holidays or other hours set by the Traffic Engineer. Construction operations in the Public Way scheduled to start before 7:00 a.m. or to finish after 9:00 p.m. require prior approval from the Public Works Director and Salt Lake Valley Health Department. All provisions of the current "Manual on Uniform Traffic Control Devices" (MUTCD) shall be followed.

(e) Except as otherwise allowed in emergency or road closure situations, the Public Works Department shall be notified by the Permittee not less than forty-eight (48) hours prior to commencing work in the Public Way. The phone number for such calls is (801) 568-2999.

The following information may be provided by phone or in writing: permit number, name, and telephone number of the Permittee, date/time Work is to commence and cease, and location of Work.

(f) Permittee shall control mud, dust and debris at the work site according to the Storm Water Ordinance, Development Code and Standard Specifications, and Public Ways at all times and shall prevent mud, dust and debris from entering roads and neighborhoods near the work site. Permittee or its contractor shall provide containers for and collect and remove debris, and wet down dusty areas with water. The Engineer or storm water inspector may issue a Stop-work Order if dust and debris is not controlled. A citation may be issued for tracking mud, soil or debris into a public way or for washing any contaminant or debris into any storm drain, ditch, channel, pipe or gutter. To rescind the Stop-work Order, the Engineer or storm water inspector may require facilities to be installed to prevent further tracking of soil or debris into any Public Way.

(g) Any work performed from October 15 until the following April 15 shall be subject to conditions for winter work outlined in the Specifications, including the installation of a temporary patch during this period, and removal and replacement with a permanent patch promptly after April 15 as soon as conditions allow permanent patching.

13-1-9. Other Highway Permits.

Holders of permits for work on roads or highways controlled by other government entities, but located within the City limits, shall not be required to obtain permits from the City under the provisions of this ordinance, unless the work extends outside of the Public Way beyond the back side of the curb of such roads, or beyond any other designated jurisdictional boundary. No City permit shall be construed to permit or allow work on another jurisdiction's roadway.

13-1-10. Work by Other Government Entities.

Work performed by another government entity (e.g., sewer districts, water conservancy districts, Salt Lake County, Utah State agencies, such as the Utah Department of Transportation, or other municipalities) shall be required to obtain a permit before performing Work in the Public Way. If the work is being done by a Subcontractor, normal bonding and insurance requirements apply, as set out in sections 13-1-14 and 13-1-15 herein. No permit will be required if working on City-owned facilities or structures (e.g., traffic signals).

13-1-11. Relocation of Structures in Public Ways.

Any relocation of utilities shall be accomplished in accordance with applicable franchise agreements, ordinances, or license agreements with the City, or if no franchise ordinance or license agreement applies to such relocation, then as directed by the City Engineer. If such facilities are not so moved, then the City may in its discretion do so by its own forces, or by contract, the cost of which shall be promptly reimbursed by the owner of such facilities.

13-1-12. Disturbance and Repair of Excavation on Existing Improvements.

The following requirements shall be followed in all work affecting existing improvements in the Public Way:

(a) If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel, convenient for users, and constructed according to Standard Specifications. Clearly visible signs shall be placed on site at appropriate locations consistent with the MUTCD if a public walkway is closed.

(b) Where excavations are made in paved areas, the surface damaged by the Permittee's Work by the work shall be replaced with a temporary road base surface as soon as the permanent repairs can be properly completed.

(c) Any time that a Permittee disturbs or damages the yard, residence or the real or personal property of a Property Owner or of the City, such Permittee shall promptly restore the property disturbed or damaged to a condition that is equal to or better than the condition that existed prior to the commencement of the work, at the Permittee's expense. If the Permittee fails to promptly perform such replacement or repair, then the Property Owner, or the City in its discretion, may perform the work itself or by a contractor, for which the Permittee shall promptly reimburse the party which paid for the restoration of the property for the costs of such work.

(d) After having properly notified Blue Stakes and having the area marked, nothing herein shall require the Permittee to pay a Subscriber or Property Owner when the Permittee, in removing, replacing, or relocating any part of its System at the request of the Subscriber or private Property Owner which causes damage to the Property Owner or Subscriber due to incorrect information from the Property Owner or Subscriber.

(e) Examples of types of acts specifically included in this Subsection are the following:

- (1) Removal of sod, lawn, shrubbery, flowers, trees, driveways, or fence, to install, trench, repair, replace, remove or locate, equipment, cable or other appurtenances of the Permittee;
- (2) Installation or removal of equipment or other appurtenances of the Permittee's System within a private Property Owner's property or residence which requires drilling, excavating, surface restoration, or the like on the part of the Permittee;
- (3) Temporarily relocating or moving a piece of personal property or a fixture of a private Property Owner (such as a motor vehicle, fence, hard-scape, mail box, trees, or the like) in order to perform some sort of construction, maintenance or repair by the Permittee; or
- (4) Permanently removing a Permittee's equipment or other appurtenances due to the revocation, termination or non-renewal of the franchise.

(f) Existing City drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for his or her approval to the Engineer prior to the blockage of the channel.

(g) The requirements imposed upon the Permittee in this section also extend to any subcontractor or independent contractor that the Permittee employs to perform the tasks pursuant to a permit issued or granted by the City to perform work in a Public Way.

(h) The requirements of this ordinance shall apply to the installation or removal by a Permittee of a structure placed by a Property Owner in a Public Way.

(i) All repairs and restoration work by a Permittee under this section shall be commenced promptly, and shall be diligently pursued to completion.

13-1-13. Restoration of Public Property.

(a) The Permittee shall, at its own expense, restore any and all improvements in the Public Way as outlined in the Sandy City Standard Specifications within the time limits set forth in the permit, unless additional time is granted in writing by the Engineer. Once commenced, all Work shall be diligently pursued to completion.

(b) Work shall not proceed until the schedule is approved by the Engineer. The City Engineer may issue a Stop-work Order to a Permittee, or the Engineer may revoke the Permittee's permit, or take other action if the Permittee fails to follow the schedule. In the event that the construction schedule or resurfacing time limit is exceeded, or if the Work site is hazardous to citizens, or impedes traffic, the City may take the necessary steps to make the Work site safe and impose penalties as outlined in the fee schedule. In addition, the City may charge the Permittee the actual cost to the City to correct the condition.

(c) Laboratory testing for materials, compliance, densities, and strength are the responsibility of the Permittee. Testing must be in accordance with Sandy City Standard Specifications. The Engineer may require additional inspection or material testing as needed. All materials shall be tested for conformity to the Sandy City Standard Specifications for any trench equal to or longer than 50 linear feet. The City may, in its discretion, choose to require testing to assess compliance with the Standard Specifications, and the City shall charge the Permittee the cost of such additional testing performed should the testing reveal noncompliance with City Specifications. The charge shall include the cost of employee time and equipment to conduct the testing and the cost of hiring contractors or consultants. The Engineer shall not charge Permittee for the testing if the testing confirms that the Permittee has complied with the Standard Specifications unless the Permittee failed or refused to share test results with the Engineer when requested.

13-1-14. Insurance Requirements.

(a) Before a permit is issued, the Applicant shall furnish to the City evidence that the Applicant has a comprehensive general liability and property damage policy that includes contractual and general liability coverage endorsed with the following limits and provisions:

- (1) A minimum of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage and not less than Two Million Dollars (\$2,000,000) in the aggregate. The coverage shall be in the nature of Broad Form Commercial General Liability coverage. The City may increase or decrease minimum insurance limits, if reasonably required by the City Risk Manager based upon the potential liability of a project.

- (2) All policies shall include the City, its employees, officers, officials, agents, volunteers and assigns, as additional insureds. Any reference to the "City" in respect to the indemnification for acts by the Applicant in this Section shall include the City, its employees, officers, officials, agents, volunteers and assigns.
- (3) The coverage shall be primary insurance as to any other policy of insurance. Any insurance or self-insurance maintained by the City, its employees, officers, officials, agents, volunteers, and assigns shall be in excess of the Applicant's insurance and shall not contribute to it.
- (4) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its employees, officers, officials, agents, volunteers, and assigns.
- (5) Coverage shall state that the Applicant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (6) Underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- (7) The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy.
- (8) Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested sent to the City Engineer.
- (9) Each policy shall be endorsed to indemnify, hold harmless and defend the City and its employees, officers, officials, agents, volunteers, and assigns against any claim or loss, damage or expense sustained on account of damages to persons or property occurring by reason of permit work done by the Applicant's subcontractor or agent, whether or not the work has been completed, and whether or not the right-of-way has been opened to public travel.
- (10) Each policy shall be endorsed to indemnify, hold harmless and defend the City, and its employees, officers, officials, agents, volunteers against any claim or loss, damage or expense sustained by any person occurring by reason of doing any work pursuant to the permit including, but not limited to falling objects or failure to maintain proper barricades and/or lights as required from the time work begins until the work is completed and right-of-way is opened for public use.

(b) All insurance shall be placed with insurers with an AM Best rating of not less than B+VIII.

(c) The Applicant's shall furnish the City with certificates of insurance and original endorsements affecting coverages required by the permit. The certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The City expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, the Applicant shall be prepared to provide such copies prior to the issuance of the permit.

(d) If any of the required policies are, or at any time become, unsatisfactory to the City because they fail to meet the requirements of this section, or if a company issuing any such policy is, or at any time becomes insolvent or is otherwise unable to meet its obligations, or if there is an order for relief in respect to the insured in a bankruptcy proceeding, the Applicant shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit verification of coverage as required by the City. Upon failure to furnish, deliver and maintain such insurance as provided herein, the City may declare the permit to be in default and the City may pursue any and all remedies the City may have at law or in equity, including those actions outlined in this ordinance.

(e) The Applicant shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(f) Any deductibles or self-insured retentions shall be clearly specified on the certificates of insurance and shall be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its employees, officers, officials, agents, volunteers or assigns, or the Applicant shall procure a bond, in a form acceptable to the City, guaranteeing payment of self-insured retention losses and related investigations, claim administration, and defense expenses.

(g) A Property Owner performing work in the Public Way adjacent to his/her residence may submit proof of a homeowner's insurance policy with the coverage limits specified above in lieu of the insurance requirements of this Section.

(h) An Applicant may be relieved of the obligation of submitting certificates of insurance under the following circumstances:

- (1) if such company shall submit satisfactory evidence in advance that:
 - (a) It is insured in the amounts set forth herein, or has complied with State requirements to become self insured. Public utilities may submit annually evidence of insurance coverage in lieu of individual submissions for each permit; and
 - (b) Said coverage provides to the City the same scope of coverage that would otherwise be provided by a separate policy as required by this Section; or
- (2) The work to be performed under the permit issued to the Applicant is to be performed by the City, in which case insurance or other risk transfer issues shall be negotiated between the City and the Applicant by separate agreement.

13-1-15. Bond - When Required, Conditions, Warranty.

(a) Except as noted in this ordinance, each Applicant, before being issued a permit, shall provide the City with an acceptable excavation bond in the minimum amount of \$10,000 to guarantee faithful performance of the work authorized by a permit granted pursuant to this ordinance. The amount of the bond required may be increased or decreased at the discretion of the Engineer whenever it appears that the amount and cost of the work to be performed, and not satisfactorily completed, may vary from the amount of \$10,000. The form of the bond and the company issuing the bond shall be subject to the approval of the City.

(b) Public utilities franchised by the City shall not be required to file a corporate surety bond if such requirement is expressly waived or is otherwise provided for in the franchise ordinance or agreement currently in force.

(c) The bond required by this Section shall meet the following conditions:

- (1) The Applicant shall fully comply with the requirements of the Specifications relative to work in the Public Way, and shall respond to the City in damages for failure to conform therewith;
- (2) After work is commenced, the Permittee shall proceed with diligence and expedition and shall promptly complete such work and restore the Public Way in accordance with Specifications, so as not to obstruct the public place or travel thereon more than is reasonably necessary;
- (3) The Permittee shall guarantee the materials and workmanship for a period of one year from completion of such work, reasonable wear and tear excepted; and
- (4) Unless otherwise authorized by the Engineer on the permit, all paving, resurfacing or replacement of street facilities on all City streets shall be done in conformity to the Sandy City Standard Specifications.

13-1-16. Indemnity; Limitations on City Liability.

(a) Each excavation permit application shall contain substantially the following language, to which each Applicant shall agree in writing prior to issuance of a Permit: "The Permittee agrees to indemnify defend and hold the City, its officers, employees and agents harmless from any and all costs, expenses, including attorneys fees, damages and liabilities which may accrue or be claimed to accrue by reason of any negligence or other wrongful act or omission of Permittee, its officers, agent, employees or subcontractors performing work under any permit issued to Permittee pursuant to this Ordinance."

(b) This ordinance shall neither be construed as imposing upon the City, its officers, employees and agents, any liability or responsibility for damages to any person injured by or by reason of the performance of any work within the Public Way, or under a permit issued pursuant to this ordinance; nor shall the City, its officers, officials, employees, agents, volunteers or assigns be deemed to have assumed any such liability or responsibility by reason of inspection authorized hereunder, the issuance of any permit, or the approval of any work.

13-1-17. Work without Permit - Penalty.

(a) A Stop-work Order may be issued by the Engineer directed to any person or persons doing or causing any work to be done in the public way without a permit.

(b) Any person found to be doing work in the Public Way without having obtained a permit, as provided in this ordinance, shall be required to pay a permit fee, as well as penalties outlined in the Fee Schedule adopted by the City Council.

13-1-18. Failure to Comply; Default in Performance.

(a) Any permit may be revoked or suspended and a Stop-work Order issued by the Engineer, after notice to the Permittee for:

- (1) Violation of any condition of the permit, the bond, or of any provision of this ordinance;
- (2) Violation of any provision of any other ordinance of the City or law relating to the work; or
- (3) Existence of any condition or the doing of any act which constitutes or causes a condition endangering life or property.

(b) A suspension or revocation by the Engineer, and a Stop-work Order, shall take effect immediately upon entry thereof by the Engineer and notice to the person performing the work in the Public Way.

(c) Whenever the Engineer finds that a default has occurred in the performance of any term or condition of the permit, or that the Permittee has materially violated any provision of this ordinance, written notice thereof may be given to the principal and to the surety on the bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the Engineer to be reasonably necessary for the completion of the work. The Permittee shall complete the work within the time set by the Engineer unless Permittee appeals that decision according to the terms of this ordinance.

(d) In the event that the surety (or principal), within a reasonable time following the giving of such notice (taking into consideration the exigencies of the situation, the nature of the work, the requirements of public safety and for the protection of persons and property), fails either to commence or cause the required work to be performed with due diligence, the City may perform the work, at the discretion of the Engineer, with City forces or contract forces, or both. The Permittee shall promptly pay the City for the cost of the work upon presentation of a statement for it. The City may pursue such remedies against the defaulting party as allowed by law including suit against the contractor and bonding company, and such other persons as may be liable to recover the entire amount due to the City, including attorney fees, on account thereof. In the event that cash has been paid or deposited to cover any liability under this section, the cost of performing the work may be charged against the amount deposited, and suit may be brought for the balance due, if any.

(e) Stop-work orders take effect immediately upon issuance by the Engineer.

- (1) The City Transportation Engineer and City Traffic Control Supervisor

have the authority to issue a Stop-work Order on behalf of the City Engineer for any violations of the MUTCD.

- (2) The Public Works inspectors and Public Works Engineering Technician have the authority to issue a Stop-work Order on behalf of the City Engineer for any violations of the MUTCD or OSHA Safety Regulations.

13-1-19. Failure to Conform to Sandy City Standard Specifications.

Should the Permittee fail to conform to the Standard Specifications, the Engineer may take one or more of the following acts:

- (a) Suspend or revoke the permit;
- (b) Issue a Stop-work Order;
- (c) Order removal and replacement of faulty work;
- (d) Require an extended warranty period; and/or
- (e) Negotiate a cash settlement to be applied toward future maintenance costs.

13-1-20. Appeal of Suspension, Revocation, or Stop-work Order.

Any suspension, revocation or Stop-work Order by the Engineer may be appealed by the Permittee to the City Public Works Director by filing a written notice of appeal within five days of the action of the Engineer. The Public Works Director shall hear such appeal, if written request therefor is timely filed, as soon as practicable, and shall render his or her decision and shall give notice thereof to the appellant promptly, but no later than three business days following filing of the notice of appeal.

13-1-21. Tampering with Traffic Control Devices.

It shall be unlawful for any person to maliciously or wantonly or without authorization from the Sandy Public Works Department extinguish, remove or diminish any light-illuminating device, any barricade or excavation, or tear down, remove or in any manner alter any rail, fence, barricade or other traffic control device protecting any excavation or other construction site in the Public Way.

13-1-22. Conflict with Governing Provisions.

Should there be a conflict between the provisions of this ordinance and the provisions of any other ordinance, agreement, franchise, or other document governing the excavation of a Public Way, the more restrictive provisions of the aforesaid documents shall apply unless the result is clearly unreasonable.

13-1-23. Violation - Penalty.

Unless otherwise specified in this ordinance, a violation of any provision of this ordinance, or failure to comply with an order of suspension, revocation, Stop-work Order, or failure to move or remove facilities in a Public Way as required by Section 13-1-11 of this

ordinance, shall be a class B misdemeanor. Each day any permit violation exists shall be a separate offense. No criminal conviction shall excuse the person from otherwise complying with the provisions of this ordinance. Penalties will be assessed against the Permittee according to the Fee Schedule for each day the violation exists.