
RESOLUTION NO. 2022-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF DURANGO WEST METROPOLITAN DISTRICT NO. 2 ESTABLISHING RULES AND REGULATIONS FOR EXCAVATIONS WITHIN STREETS AND EASEMENTS IN THE DISTRICT.

WITNESSETH:

WHEREAS, the Durango West Metropolitan District 2 (the "District") is a Colorado Special District organized pursuant to the Colorado Special District Act, C.R.S. § 32-1-101, *et seq.* (the "Act"); and

WHEREAS, the District owns, operates and maintains streets located in dedicated rights of way within the District (the "District Street System"); and

WHEREAS, the Act authorizes the Board of Directors (the "Board") of the District to adopt, amend, and enforce rules and regulations within the District for carrying on the business, objects, and affairs of the Board and of the District; and

WHEREAS, the Board has determined that to ensure that any excavation activity within the streets or easements of the District is conducted in a manner which will protect the integrity of the District Street System it is necessary to establish the procedures set forth herein for the regulation of excavation activity.

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Durango West Metropolitan District No. 2:

1. Permit Required.

A. No person or utility provider, except an employee or subcontractor of the District, shall undertake or allow to be undertaken any construction, excavation, or work in the District Street System without first obtaining a permit from the District. A copy of each permit obtained, along with associated documents, shall be maintained on the job. Nothing within this resolution shall preclude an owner or lessee (with the permission of the owner) of property from maintaining private property located in the District right-of-way fronting his property, between the roadway asphalt or curb and the property line, including landscaping, water or sewer service lines, irrigation lines and ornaments.

B. Any person or utility provider found to be conducting or have conducted any construction, excavation, or work within the District Street System 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 resume. A surcharge of two hundred fifty dollars (\$250.00) shall be required in addition to all applicable permit fees in cases where construction, excavation, or work has proceeded without a permit.

2. Permit application and contents.

A. An applicant for a permit to allow construction, excavation, or work in the District Street System under this section shall:

(1) File a written application on forms furnished by the District which include the following:

-
- a. The date of application;
 - b. The name and address of the applicant;
 - c. The name and address of the contractor;
 - d. The exact location of the proposed construction, excavation or work activity by street address;
 - e. The type of existing public infrastructure (street pavement, curb and gutter, sidewalks or utilities) impacted by the construction, excavation or work;
 - f. The purpose of the proposed construction, excavation or work activity;
 - g. The dates for beginning and ending the proposed construction, excavation or work activity;
 - h. Proposed hours of work;
 - i. Itemization of the total cost of restoration;
 - j. Description of work proposed; and

(2) Provide a plan of work showing protection of the subject property and adjacent properties, including landscaping, which is satisfactory to the District.

(3) Submit, as part of the application, engineering drawings or site plans for the proposed construction, excavation, or work activity.

(4) If required by the District, include with the application a satisfactory traffic control plan and/or an erosion protection plan for the proposed construction, excavation, or work.

(5) Include a statement indicating any existing facility or permit of the applicant at this location; any existing facility of others with which the proposed construction, excavation or work activity might conflict; and the name, address and telephone number of a representative of the applicant available to review proposed locations at the site.

(6) Pay the fees prescribed by this resolution, or any subsequent amendment thereto.

Applicant shall update any new information on permit applications within ten (10) days after any change occurs. 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.

3. Permit fee.

Before a permit is issued, the applicant shall pay a permit fee which shall be determined in accordance with a fee schedule attached hereto. Fees will be reasonably related to the costs inherent in managing the District Street System. These costs include, but are not necessarily limited to, the costs of permitting, inspecting job sites and restorations, and costs relating to the degradation of the District Street System.

4. Insurance and indemnification.

A. Prior to the granting of any permit, the permittee shall file with the District an insurance policy or certificate in a form satisfactory to the District reflecting coverage as follows:

(1) A comprehensive general liability policy, including broad form property damage, completed operations and contractual liability, for limits not less than one million dollars (\$1,000,000.00) each occurrence for damages of bodily injury or death to one (1) or more persons; and five hundred thousand dollars (\$500,000.00) each occurrence for damage to or destruction of property;

(2) Insurance coverage for special hazards, such as, but not limited to, property damage as a result of explosion hazard, collapse hazard, underground property damage hazard (commonly known as XCU) shall all be specifically added by endorsement to the liability policy required herein;

(3) Workers compensation insurance as required by state law.

B. Each permittee shall construct, maintain, and operate its facilities in a manner which provides protection against injury or damage to persons or property. The permittee, for itself and its related entities, agents, employees, subcontractors, and the agents and employees of said subcontractors, shall save the District harmless, defend, and indemnify the District, 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, and reimburse the District for all its reasonable expenses, as incurred, arising out of the installation, maintenance, operation or any other work or activity in the District Street System or by the permittee related to its use thereof, including, but not limited to, 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 resolution or other applicable law.

C. The terms of each contract awarded by the permittee for activities pursuant to a permit shall contain indemnity provisions requiring the contractor to indemnify the District to the same extent as described above. The permittee shall have the right to defend the District with regard to 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, the District elects to defend itself with regard to such matters, the permittee shall pay all actual expenses incurred by the District related to its defense. In the event the District institutes litigation against the permittee for a breach of the permit or for an interpretation of this resolution, and the District is the prevailing party, the permittee shall reimburse the District for all costs related hereto, including reasonable attorney's fees. The permittee shall not be obligated to indemnify the District for claims or demands to the extent that they are due solely to the gross negligence, or any intentional and/or willful acts of the District or any of its officers, employees, or agents. 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.

5. Performance bond/letter of credit.

Before any permit required by this resolution shall be issued to an applicant, the applicant shall file a bond or letter of credit in favor of the District in an amount equal to the total cost of construction, including labor and materials, or five thousand dollars (\$5,000.00), whichever is greater. The bond or letter of credit shall be executed by the applicant, as principal, and by at least one (1) 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 District resolutions, rules and regulations, and upon payment of all judgments and costs rendered against the applicant for any violation of District resolutions or state statutes 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. Action on the bond or letter of credit may be brought by any person so aggrieved as beneficiary. The District may waive the requirements of any such bond or letter of credit or may permit the applicant to post a bond without surety thereon or a cash bond in the form of a cashier's check payable to the District.

A letter of responsibility will be accepted in lieu of a performance bond or letter of credit from all public utilities.

The performance bond, letter of credit or letter of responsibility shall remain in force and effect for a minimum of one (1) year after completion and acceptance of the construction, excavation, or work in the District Street System

6. Performance warranty/guarantee.

Any warranty made hereunder shall serve as security for the performance of work necessary to repair the District Street System if the permittee fails to make the necessary repairs or to complete the work under the permit. The permittee, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in a manner acceptable to the District, warrants and guarantees all work done for a period of one (1) year after the date of acceptance, and agrees to maintain the work upon demand and to make all necessary repairs during the one-year period. This warranty shall include all repairs and actions needed as a result of defects in workmanship, settling of fills or excavations, unauthorized deviations from the approved plans and specifications, failure to provide approved traffic control measures, failure to clean up during and after performance of the work, or any other violation of this resolution or other resolutions of the District. The warranty period shall run from the date of the District's acceptance of the work. If repairs are required during the one-year warranty period, those repairs need only be warranted until the end of the original warranty period starting with the date of initial acceptance of the work. At any time prior to completion of the one-year warranty period, the District may notify the permittee of any needed repairs. Such repairs shall be completed within twenty-four (24) hours if the defects are determined by the District to be an imminent danger to the public health, safety and welfare. Nonemergency repairs shall be completed within thirty (30) calendar days after notice.

7. Inspections.

The permittee shall be required to make written request for and obtain inspection from the District, as required pursuant to the terms of the permit.

8. Effective Date. This Resolution shall be effective immediately upon its adoption and approval.

ADOPTED this 27 day of May, 2022.

DURANGO WEST METROPOLITAN DISTRICT NO. 2

By: Carly Van Houten
President

Jane Loney
Secretary