

**CASS COUNTY
ORDINANCE
FOR THE MANAGEMENT
OF PUBLIC RIGHTS-OF-WAY**

Dated: August 8, 2017

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 FOR THE MANAGEMENT OF PUBLIC RIGHTS-OF-WAY

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CASS COUNTY, MINNESOTA
ORDINANCE
FOR THE MANAGEMENT OF THE PUBLIC
RIGHTS-OF-WAY
UNDER CASS COUNTY'S
JURISDICTION

An Ordinance to administer and regulate the public Rights-of-Way in the public interest, and to provide for the issuance and regulation of Right-of-Way Permits, pursuant to the powers granted under Minnesota Statutes 162.02, 222.37, and 237.16 through 237.163, and Minnesota Rules Chapter 7819.

THE CASS COUNTY BOARD OF COMMISSIONERS ORDAIN:

Rights-of-Way Management

Sec. 1.01. Findings, Purpose, and Intent.

To provide for health, safety and welfare of its citizens, and to ensure the integrity of its roads and streets and the appropriate use of the Rights-of-Way, the County strives to keep its Rights-of-Way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the County hereby enacts this Ordinance relating to Right-of-Way permits and administration. This Ordinance imposes regulation on the placement and maintenance of Facilities and Equipment currently within its Right-of-Way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Ordinance, Persons excavating and Obstructing the Right-of-Way will bear financial responsibility for their work. Finally, this Ordinance provides for recovery of out-of-pocket and projected costs from Persons using the public Right-of-Way.

Regulation of driveways and accesses to County roads is pursuant to the Cass County Highway Department Access Driveway or Entrance Approval Policy, and is not dealt with in this ordinance.

This Ordinance shall be interpreted consistently with Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, 238.086, 160.2715 and the other laws governing applicable rights of the County and users of the Right-of-Way. This Ordinance shall also be interpreted consistent with Minnesota Rules 7819 .0050 - 7819 .9950 where possible. To the extent any provision of this Ordinance cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This Ordinance shall not be interpreted to limit the regulatory and police powers of the County to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

Sec. 1.02. Election to Manage the Public Right-of-Way

Pursuant to the authority granted to the County under state and federal statutory, administrative and common law, the County hereby elects pursuant Minn. Stat. 237.163 subd2(b), to manage Right-of-Way under its jurisdiction.

"Manage the Right-of-Way" means the authority of the County to do any or all of the following:

1. require registration;
2. require construction performance bonds and insurance coverage;
3. establish installation and construction standards;
4. establish and define location and relocation requirements for Equipment and Facilities;
5. establish coordination and timing requirements;
6. require Right-of-Way users to submit henceforth required by the County project data reasonably necessary to allow the County to develop a right of way mapping system including GIS system information;
7. require Right-of-Way users to submit, upon request of the County, existing data on the location of user's Facilities occupying the public right of way within the County. The data may be submitted in the form maintained by the user in a reasonable time after receipt of the request based on the amount of data requested;
8. establish Right-of-Way permitting requirements for excavation and Obstruction;
9. establish removal requirements for abandoned Equipment or Facilities, if required in conjunction with other Right-of-Way repair, excavation or construction; and
10. impose reasonable penalties for unreasonable delays in construction.

Sec. 1.03. Definitions.

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

"Abandoned Facility" means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the Right-of-Way user.

"Applicant" means any Person requesting permission to excavate or Obstruct a Right-of-Way.

"Commission" means the State Public Utilities Commission.

"Congested Right-of-Way" means a crowded condition in the subsurface of the public Right-of-Way that occurs when the maximum lateral spacing between existing underground Facilities does not allow for construction of new underground Facilities without using hand digging to expose the existing lateral Facilities in conformance with Minnesota Statutes, section 216D.04, subd. 3, over a continuous length in excess of 500 feet.

"Construction Performance Bond" means any of the following forms of security provided at Permittee's option:

- A. Individual project bond;
- B. Cash deposit;
- C. Security of a form listed or approved under Minn. Stat. Sec. 15.73, subd. 3;
- D. Letter of Credit, in form acceptable to the County;
- E. Self-insurance in form acceptable to the County;
- F. Blanket bond for projects within the county or construction bond for a specified time and in a form acceptable to the County.

"County" means the County of Cass, Minnesota. For purposes of section 1.28 Indemnification and Liability, County means its elected and appointed officials, officers, employees and agents.

"Degradation" means a decrease in the useful life of the Right-of-Way caused by excavation in or disturbance of the Right-of-Way, resulting in the need to reconstruct such Right-of-Way earlier than would be required if the excavation did not occur.

"Degradation Cost" subject to Minnesota Rules 7819.1100 means the cost to achieve a level of restoration as determined by the County at the time the permit is issued, not to exceed the maximum restoration shown in Plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

"Delay Penalty" is the penalty imposed as a result of unreasonable delays in Right-of-Way excavation, Obstruction, Patching, or restoration as established by permit.

"Department" means the Department of Public Works or the Highway Department of the County.

"Department Inspector" means any Person authorized by the director to carry out inspections related to the provisions of this Ordinance.

"Director" means the County Highway Engineer of the County, or her or his designee.

"Emergency" means a condition that (1) poses danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of Facilities in order to restore service to a customer.

"Equipment" means any tangible asset used to install, repair, or maintain Facilities in any Right-of-Way.

"Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a public Right-of-Way.

"Excavation Permit" means the permit which, pursuant to this Ordinance, must be obtained before a Person may excavate in a Right-of-Way. An Excavation Permit allows the holder to excavate that part of the Right-of-Way described in such permit.

"Facility or Facilities" means any tangible asset in the Right-of-Way required to provide Utility Service.

"Five-year project plan" shows projects the County intends to construct within the next five years.

"High Density Corridor" means a designated portion of the public Right-of-Way within which Telecommunications Right-of-Way users having multiple and competing Facilities may be required to build and install Facilities in a common conduit system or other common structure.

"Hole" means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

"Local Representative" means a local Person or Persons, or designee of such Person or Persons, authorized by a Registrant to accept legal notice or service and to accept communications and to make decisions for that Registrant regarding all matters within the scope of this Ordinance.

"Management Costs" means the actual costs the County incurs in managing its public Rights-of-Way, including such costs, if incurred, as those associated with registering Applicants; issuing, processing, and verifying Right-of-Way Permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user Equipment and Facilities during public Right-of-Way work; determining the adequacy of Right-of-Way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking Right-of-Way Permits. Management costs do not include payment by a Telecommunications Right-of-Way user for the use of the Right-of-Way, the fees and cost of litigation relating to the interpretation of Minnesota Statutes or any ordinance enacted under those sections, or the County fees and costs related to appeals taken pursuant to Section 1.30 of this Ordinance.

"Obstruct" means to place any tangible object in a public Right-of-Way so as to hinder free and open passage over

that or any part of the Right-of-Way.

"Obstruction Permit" means the permit which, pursuant to this Ordinance, must be obtained before a Person may Obstruct any part of a Right-of-Way, allowing the holder to hinder free and open passage over the specified portion of that Right-of-Way by placing any tangible object therein for the duration specified.

"Patch or Patching" means a method of pavement replacement that is temporary in nature. A Patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A Patch is considered full Restoration only when the pavement is included in the County's five-year project plan.

"Pavement" means any type of improved surface that is within the public Right-of-Way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

"Permit" has the meaning given "Right-of-Way permit" in Minnesota Statutes, section 237.162.

"Permittee" means any Person to whom a permit to Excavate or Obstruct a Right-of-Way has been granted by the County under this Ordinance.

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

"Pothing" means a term used for the method of exposing an existing underground facility, by the means of hand digging, for the purposes of determining the Facilities exact location.

"Probation" means the status of a Person that has not complied with the conditions of this Ordinance.

"Probationary Period" means one year from the date that a Person has been notified in writing that they have been put on Probation.

"Public Right-of-Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the County has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the County. A public Right-of-Way does not include the airwaves above a Right-of-Way with regard to cellular or other non-wire Telecommunications or broadcast service. The lands described by an easement, deed, dedication, title, law or occupation of a road, highway, street, cartway, bicycle lane, or sidewalk are included as Right-of-Way.

"Registrant" means any Person who (1) has or seeks to have its Equipment or Facilities located in any Right-of-Way, or (2) in any way occupies or uses, or seeks to occupy or use, the Right-of-Way or place its Facilities or Equipment in the Right-of-Way.

"Restoration Cost" means the amount of money paid to the County by a Permittee to achieve the level of restoration according to plates 1 to 13 of the Minnesota Public Utilities Commission rules.

"Restore or Restoration" means the process by which an excavated public Right-of-Way and surrounding area including pavement foundation is returned to the same condition (and life expectancy) that existed before excavation.

"Right-of-Way Permit" means either the Excavation Permit or the Obstruction Permit or both, depending on the context, required by this Ordinance.

"Right-of-Way User" means (1) a Telecommunications Right-of-Way User as defined by Minnesota Statutes, section 237.162, Subd. 4; or (2) a Person owning or controlling a facility in the Right-of-Way that is used or intended to be used for providing Utility Service, and who has a right under law, franchise, or ordinance to use the public Right-of-Way.

"Rural Roadway" means any roadway not meeting the definition of an urban section

"Service" or "Utility Service" includes (1) those services provided by a public utility as defined in Minn. Stat. 216B.02, subs. 4 and 6; (2) services of a Telecommunications Right-of-Way User, including transporting of voice or data information; (3) services of a cable communications system as defined in Minn. Stat. Chapter. 238; (4) natural gas or electric energy or Telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minn. Stat., Chapter 308A; and (6) water, sewer, steam, cooling or heating services.

"Supplementary Application" means an application made to excavate or Obstruct more of the Right-of-Way than allowed in, or to extend, a permit that had already been issued.

"Telecommunication Rights-of-Way User" means a Person owning or controlling a facility in the Right-of-Way, or seeking to own or control a facility in the Right-of-Way that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this Ordinance, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. Sec.216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not Telecommunications Right-of-Way Users for purposes of this Ordinance.

"Temporary Surface" means the compaction of subbase and aggregate base and replacement, in kind, of existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the County's two-year project plan, in which case it is considered full restoration.

"Trench" means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

"Two Year Project Plan" shows projects adopted by the County for construction within the next two years.

"Unusable or unused Equipment and Facilities" means Equipment and Facilities in the Right-of-Way which have remained unused for one year or for Facilities that are not registered or located by Gopher One Call; or 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 a potential purchaser or user of the Equipment or Facilities.

"Urban Section" means any roadway that has curbing.

“Warranty Bond” means a bond that the Permittee shall obtain (Construction Performance Bond) prior to starting any work on the County Right-of-Way; the bond will remain available through the warranty period.

Sec. 1.04. Administration.

The Director (County Engineer) is the principal County official responsible for the administration of the Rights-of-way, Right-of-Way Permits, and the ordinances related thereto. The Director may delegate any or all of the duties hereunder.

Sec. 1.05. Utility Coordination Committee

The County may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the County in obtaining information and by making recommendations regarding use of the Right-of-Way, and to improve the process of performing construction work therein. The Director may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the County. The County Board shall make any appointments to such a committee by resolution.

Sec. 1.06. Registration and Right-of-Way Occupancy.

Subd. 1. Registration. Each Person who occupies, uses, or seeks to occupy or use, the Right-of-Way or place any Equipment or Facilities in the Right-of-Way, including Persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the County. Registration will consist of providing application information and paying a registration fee. Registration fees shall be set by the County Board and may be amended by them at a public meeting.

Subd. 2. Registration Prior to Work. No Person may construct, install, repair, remove, relocate, or perform any other work on, or use any Facilities or any part thereof in any Right-of-Way without first being registered with the County.

Subd. 3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a County ordinance permitting Persons to plant or maintain boulevard plantings or gardens in the area of the Right-of-Way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the Right-of-Way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard Plantings or gardens under this Ordinance.

Private underground sprinkler and irrigation systems shall be allowed in the Right-of-Way by permit only, however owner and installers shall be exempt from registration. No compensation shall be made to owner if any sprinkler or irrigation system is required to be removed or if it is damaged by any County or municipal activity or by any permitted Right-of-Way activity

Persons installing turn and or bypass lanes shall be exempt from registration, however an access permit is required.

Resident owned sewer and water service lines to a city main and resident owned drain tile lines shall not be required to register, unless requested by the County, but shall be required to obtain permits for Excavation and Obstruction.

However, nothing herein relieves a Person from complying with the provisions of the Minn. Stat. Chap. 216D, "Gopher One Call" Law.

Sec. 1.07. Registration Information.

Subd 1. Information Required. The information provided to the Director at the time of registration shall include, and be on the form approved by the County or this Ordinance, but not be limited to:

- (a) Each Registrant's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.
- (b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- (c) A certificate of insurance or self-insurance:
 - 1) Verifying that an insurance policy has been issued to the Registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the Director;
 - 2) Verifying that the Registrant is insured against claims for Personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, and (ii) placement and use of Facilities in the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;
 - 3) Naming the County as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage;
 - 4) Requiring that the Director be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
 - 5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Director in amounts sufficient to protect the County and the public and to carry out the purposes and policies of this Ordinance.
- (d) The County may require a copy of the actual insurance policies.
- (e) If the Person is a corporation, a copy of the certificate required to be filed under Minn. Stat. 300.06 as recorded and certified to by the Secretary of State.
- (f) A copy of the Person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the Person is lawfully required to have such certificate from said Commission or other state or federal agency.

Subd. 2. Notice of Changes. The Registrant shall keep all of the information listed above current at all times by providing to the Director information as to changes within fifteen (15) days following the date on which the Registrant has knowledge of any change.

Sec. 1.08. Reporting Obligations.

Subd. 1. Operations. Each Registrant that provides Utility Service shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground Facilities with the Director. Such plan shall be submitted using a format designated by the Director and shall contain the information determined by the Director to be necessary to facilitate the coordination and reduction in the frequency of excavations and Obstructions of Rights-of-Way. The county shall maintain in the file a copy of the county's construction plan for construction projects. The utility facility plans shall be kept up-to-date by the Registrant. The plans shall be on file and available for public inspection.

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

- a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "Next-Year Project");
- b) How the Registrant will accommodate the county plan;
- c) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "Five-Year Project").

It is the Registrant's responsibility to keep informed on available plans.

The term "project" in this section shall include both next-year projects and five-year projects but does not include individual service line hookups and minor maintenance unless they are part of an area wide program.

Subd. 2. Additional Next-year Projects. Notwithstanding the foregoing, the Director will not deny an application for a Right-of-Way Permit for failure to include a project in a plan submitted to the County if the Registrant has used commercially reasonable efforts to anticipate and plan for the project.

Sec. 1.09. Permit Requirement.

Subd. 1. Permit Required. Except as otherwise provided in this Ordinance, no Person may Obstruct, or Excavate any Right-of-Way without first registering and having obtained the appropriate Right-of-Way Obstruction, or Excavation Permit from the County to do so.

Subd. 2. Permit Extensions. No Person may Excavate or Obstruct the Right-of-Way beyond the date or dates specified in the permit unless such Person (i) makes a Supplementary Application for another Right-of-Way Permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

Subd. 3. Delay Penalty. In accordance with Minnesota Rule 7819.1000 subp. 3 notwithstanding subd. 2 of this section, the County shall establish and impose a Delay Penalty for unreasonable delays in Right-of-Way excavation, Obstruction, Patching, or Restoration. The Delay Penalty shall be established from time to time by County Board resolution and shall include any delays or damages charged by the county's construction contractor and may include liquidated damages consistent with the contract.

Subd. 4. Permit Display. Permits issued under this Ordinance shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the County.

Sec. 1.10. Permit Applications.

Application for a permit is made to the Director. Right-of-Way Permit applications shall contain, and will be considered complete only upon compliance with the requirements of, the following provisions:

- a) Registration with the County pursuant to this Ordinance;
- b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed Facilities.
- c) Payment of money due the County for:
 - (1) construction performance bonds;
 - (2) any undisputed loss, damage, or expense suffered by the County because of Applicant's prior Excavations or Obstructions of the right-of way or any Emergency actions taken by the County;
 - (3) franchise fees or other charges, if applicable.
- d) Payment of disputed amounts due the County by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.
- e) Posting an additional or larger construction performance bond for additional Facilities when Applicant requests an Excavation or Obstruction permit to install additional Facilities and the County deems the existing construction performance bond inadequate under applicable standards.

Sec. 1.11. Issuance of Permit; Conditions.

Subd. 1. Permit Issuance. If the Applicant has satisfied the requirements of this Ordinance, the County shall issue a permit.

Subd. 2. Conditions. The Director may impose reasonable conditions upon the issuance of the permit and the performance of the Applicant thereunder to protect the health, safety and welfare or, when necessary, to protect the Right-of-Way and its current and future use.

Sec. 1.12. Construction Performance Bonds.

Subd. 1. Construction Performance Bond. The County shall establish a Construction Performance Bond amount sufficient to recover the following costs.

- a) Permittee shall obtain a Construction Performance Bond in an amount sufficient to recover potential County costs. This cost includes administrative, overhead, mobilization, material, labor, Equipment, and degradation should the permittee fail to maintain the requirements of this ordinance and the County be required to fix any deficiencies that occur during the warranty period. Construction performance bond amounts shall be established by the County Board and may be amended at any public meeting.
- b) *Road Crossing Activity.* The County shall require the permittee to obtain a Construction Performance Bond for the amount established in the Cass County fee schedule per road crossing

activity. The bond will remain with the County until the thirty-six (36) month warranty period has concluded.

- c) *Non-Road Crossing Activity.* The County shall require the permittee to obtain a Construction Performance Bond for the amount established in the Cass County fee schedule per mile of the excavation activity or per Obstruction. The bond will remain with the County until the thirty-six (36) month warranty period has concluded.

Sec. 1.13. Right-of-Way Patching and Restoration.

Subd 1. Timing. The work to be done under the Excavation Permit, and the Patching and restoration of the Right-of-Way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the Permittee or when work was prohibited as unseasonable or unreasonable under Section 1.15.

Suhd, 2. Temporary Surfacing, Patch and Restoration. Permittee shall Patch its own work.

- a) *County Restoration.* If the County restores any part of the Right-of-Way the Permittee shall pay the costs thereof to the County, within thirty (30) days of billing. If, the County restores only the surface of the Right-of-Way and during the eighteen (18) months following such restoration, the pavement settles, the Permittee shall pay to the County, within thirty (30) days of billing, all costs related to restoring the Right-of-Way or associated with having to correct the defective work, which may include removal and replacement of any or all work done by the Permittee. These costs shall include administrative, overhead mobilization, material, labor, and Equipment. If Permittee fails to pay as required, the County may exercise its rights under the Construction Performance Bond and pursue other legal means to cover its costs as listed above.
- b) *Permittee Restoration.* If the Permittee restores the Right-of-Way itself, it shall at the time of application for an Excavation Permit post a Construction Performance Bond in an amount determined by the Director to be sufficient to cover the cost of restoration. If, within eighteen (18) months after completion of the restoration of the Right-of-Way, the Director determines that the Right-of-Way has been properly restored, the surety on the Construction Performance Bond shall be released.

Subd 3. Standards. The Permittee shall perform temporary surfacing Patching and restoration including backfill, compaction, and landscaping according to the standards and with the materials specified by the Director. The Director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The Director in exercising this authority shall comply with PUC standards for Right-of-Way restoration and require conformance to MnDOT standard specifications and local government specifications and drawing and shall further be guided by the following considerations:

- a) The number, size, depth and duration of the excavations, disruptions or damage to the Right-of-Way;
- b) The traffic volume carried by the Right-of-Way; the character of the neighborhood surrounding the Right-of-Way;
- c) The pre-excavation condition of the Right-of-Way; the remaining life expectancy of the Right-of-Way affected by the excavation;

- d) Whether the relative cost of the method of restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the Right-of-Way that would otherwise result from the excavation, disturbance or damage to the Right-of-Way; and
- e) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the Right-of-Way that would otherwise take place.

Subd. 4. Guarantees. The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this 36-month period it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 1.16.

Subd 4(a). Duty to Correct Defects. The Permittee shall correct defects in Patching, or restoration performed by Permittee or its agents, Permittee upon notification from the County, shall correct all restoration work to the extent necessary, using the method required by the County. Said work shall be completed within five (5) calendar days of the receipt of the notice from the County, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 1.16.

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 Director, or fails to satisfactorily and timely complete all restoration required by the Director, the Director at its option may do such work. In that event the Permittee shall pay to the County, within thirty (30) days of billing, the cost of restoring the Right-of-Way. If Permittee fails to pay as required, the County may exercise its rights under the Construction Performance Bond.

Sec. 1.14. Joint Applications.

Subd 1. Joint Application. Registrants may jointly apply for permits to excavate or Obstruct the Right-of-Way at the same place and time.

Subd. 2. Shared Bonds. Registrants who apply for permits for the same Obstruction or excavation, which the Director does not perform, may share in the payment of the Construction Performance Bond. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Subd. 3. With County Construction Projects. Registrants who join in a scheduled Obstruction or Excavation coordinated with a County construction project by the Director, whether or not it is a joint application by two or more Registrants or a single application, are not required to obtain a Construction Performance Bond, but a permit is still required.

Sec. 1.15. Supplementary Applications.

Subd 1. Limitation on Area. A Right-of-Way Permit is valid only for the area of the Right-of-Way specified in the permit. No Permittee may do any work outside the area specified in the permit, except as provided herein. Any Permittee which determines that an area greater than that specified in the permit must be Obstructed or Excavated must before working in that greater area (i) make application for a permit extension and pay any additional bonds required thereby, and (ii) be granted a new permit or permit extension.

Subd. 2. Limitation on dates. A Right-of-Way Permit is valid only for the dates specified in the permit. No Permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a Permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date.

Sec. 1.16. Other Obligations.

Subd. 1. Compliance With Other Laws. The Applicant must notify and obtain a permit from any township or city through which it passes if said township or city so requires. Obtaining a Right-of-Way Permit does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority, pay any necessary fees, and to obtain the bonds required by the County or other applicable rule, law or regulation. Permittee shall comply with other local Ordinances and with road load restrictions. A Permittee shall comply with all requirements of local, state and federal laws, including Minn. Stat. 216D.01-.09 ("Gopher 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 County, no Right-of-Way Obstruction or Excavation may be done when seasonally 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, culverts, ditches tiles or other waterways shall be interfered. Private vehicles of those doing work in the Right-of-Way may not be parked within or next to a permit area, unless parked in conformance with county or applicable township and city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

Traffic control shall conform to the MNMUTCD and its field manual and any directions of the County Engineer.

Subd. 4. Verify Location of Facility. At the written request of the County, a Person shall determine the exact location of their facility, both vertically and horizontally, by means of "potholing" or some other acceptable method, to expose the facility. Reasons to verify shall include, but are not limited to:

- a) To verify that the facility was installed at the proper depth and horizontal location per the permit.
- b) To verify actual depth and location for (i) a present or future County use of the Right-of-Way, (ii) a public improvement undertaken by the County or by a city or town under a cooperative agreement with the County, (iii) a public improvement undertaken by a private landowner, as authorized or required by the County, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way.

All costs to expose the facility shall be done at the permittee's expense or the County may upon written notice to the permittee, expose the facility, at the permittee's expense.

Verification of Facilities, both vertical and horizontal, shall be completed within seven (7) calendar days of written notification.

Sec. 1.17. Denial of Permit.

The County may deny a permit for failure to meet the requirements and conditions of this Ordinance or if the County determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the Right-of-Way and its current and future use. The county may deny a permit if the utility has failed to comply with previous permit conditions. The county may withhold issuance of a permit until conditions of previous permit are complied with.

Sec. 1.18. Installation Requirements.

The excavation, backfilling, Patching and restoration, and all other work performed in the Right-of-Way shall be done in conformance with Minnesota Rules 7819 .1100 and 7819 .5000 and shall conform to MnDOT standard specifications and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes Sections 237.162 and 237.163.

Sec. 1.19. Inspection.

Subd. 1. Notice of Completion. When the work under any permit hereunder is completed, the Permittee shall furnish a Completion Certificate in accordance with Minnesota Rule 7819.1300.

Subd. 2. Site Inspection. Permittee shall make the work-site available to the County 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 County.

- a) At the time of inspection the Director may order the immediate cessation and correction of any work which poses a serious threat to the life, health, safety or wellbeing of the public.
- b) The Director may issue an order to the Permittee for any work which does not conform to the terms of the permit or other applicable standards, rules, laws, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the Permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Sec. 1.22.
- c) The cost of any action required by the County shall be paid by the permittee.

Sec. 1.20. Work Done Without a Permit

Subd. 1. Emergency Situations. Each Registrant shall immediately notify the Director of any event regarding its Facilities that it considers to be an emergency. The Registrant may proceed to take whatever actions are necessary to respond to the Emergency. Within two business days after the occurrence of the Emergency the Registrant shall apply for the necessary permits, obtain the Construction Performance Bond associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Ordinance for the actions it took in response to the Emergency.

If the County becomes aware of an Emergency regarding a Registrant's Facilities, the County will attempt to contact the local representative of each Registrant affected, or potentially affected, by the Emergency. In any event, the County may take whatever action it deems to the Emergency, the cost of which shall be

borne by the Registrant whose Facilities 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, and as a penalty obtain a Construction Performance Bond for double the standard amount for said permit and deposit with the County the fees necessary to correct any damage to the Right-of-Way and comply with all of the requirements of this Ordinance.

Sec. 1.21. 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 County of the accurate information as soon as this information is known.

Sec. 1.22. Revocation of Permits.

Subd. 1. Substantial Breach. The County reserves its right, as provided herein, to revoke any Right-of-Way Permit, without the bond refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit including a threat to the safety of workers, or the Right-of-Way user, or the utility users. 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 County or its citizens;
- c) Any material misrepresentation of fact in the application for a Right-of-Way Permit;
- d) The failure to complete the work in a timely manner; unless a permit extension is obtained, or unless the failure to complete work is due to reasons beyond the Permittee's control, or failure to relocate existing Facilities as specified in Sec. 1.24; or
- e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an Order issued pursuant to Sec. 1.19
- f) Failure of the utility to pay any required costs, fees, or charges billed by the county.
- g) Failure to provide traffic control that conforms to the provisions of the MNMUTCD, including the Temporary Traffic Control Zones Field Manual.

Subd. 2. Written Notice of Breach. If the County 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 County 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. A substantial breach, as stated above, will allow the County, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3. Response to Notice of Breach. Within twenty-four (24) hours of receiving notification of the breach, Permittee shall provide the County with a plan, acceptable to the County, that will cure the breach. Permittee's failure to so contact the County, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of

the permit. Further, Permittee's failure to so contact the County, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall automatically revoke the permit and may include placing the Permittee on Probation for one (1) full year.

Subd. 4. Cause for Probation. From time to time, the County may establish a list of conditions of the permit, which if breached will automatically place the Permittee on Probation for one (1) full year, such as, but not limited to, working out of the allotted time period or working on Right-of-Way grossly outside of the permit authorization.

Subd. 5. Automatic Revocation. If a Permittee, while on Probation, commits a breach as outlined above, Permittee's permit will automatically be revoked and Permittee will not be allowed further permits for one (1) full year, except for Emergency repairs.

Subd. 6. Reimbursement of County Costs. If a permit is revoked, the Permittee shall also reimburse the County for the County's reasonable costs, including Restoration Costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Subd. 7. Revoked Permit. If the County revokes a utility's permit for breach of this Ordinance, the utility will not be allowed to Obstruct or Excavate within the county Right-of-Way until the breach situation is corrected to the satisfaction of the Director and the permit is reissued.

Sec. 1.23. Mapping Data.

Subd. 1. Information Required. Each Registrant and Permittee shall provide mapping information required by the County in accordance with Minnesota Rules 7819.4000 and 7819.4100.

Therefore, in managing the use of its public rights-of-way, a local government unit may establish, develop, and implement a Right-of-Way mapping system as follows. The purpose of a mapping system is to:

- A. allow flexibility in its use by the local government as an effective management tool;
- B. enhance public safety and user facility safety;
- C. provide for long-term cost savings;
- D. improve public Right-of-Way design quality; and
- E. allow for better information collection and cooperative usage among local government units, Telecommunications companies, and other users of the public Right-of-Way.

Subd. 2. Application required. When a local government unit requires a permit for Excavation in or Obstruction of its public Right-of-Way, a Person wishing to undertake a project within the public Right-of-Way shall submit a Right-of-Way permit application, which may require the filing of mapping information pursuant to subdivision 3.

Subd. 3. Information. The local government unit may require as part of its permit application the filing of all the following information:

- A. location and approximate depth of Applicant's mains, cables, conduits, switches, and related Equipment and Facilities, with the location based on:
 - (1) offsets from property lines, distances from the centerline of the public Right-of-Way, and curb lines as determined by the local government unit;
 - (2) coordinates derived from the coordinate system being used by the local government unit;
 - or
 - (3) any other system agreed upon by the Right-of-Way user and local government unit;

- B. the type and size of the utility facility;
- C. a description showing aboveground appurtenances;
- D. a legend explaining symbols, characters, abbreviations, scale, and other data shown on the map, and
- E. any Facilities to be abandoned, if applicable, in conformance with Minnesota Statutes, Sec. 216D.04, subd. 3.

Subd. 4. Changes and corrections. The application must provide that the Applicant agrees to submit "as built" drawings, reflecting any changes and variations from the information provided under subd. 3, items A to E.

Subd. 5. Additional construction information. In addition, the Right-of-Way user shall submit to the local government unit at the time the project is completed a completion certificate according to part 7819.1300.

Subd. 6. Manner of conveying permit data. A Right-of-Way user is not required to provide or convey mapping information or data in a format or manner that is different from what is currently utilized and maintained by that user. However, the data needs to be provided in a manner that can be printed and submitted with the permit application.

Subd. 7. Data on existing Facilities. At the request of a local government unit, a Right-of-Way user shall provide existing data on its existing Facilities within the public Right-of-Way in the form maintained by the user at the time the request was made, if available.

Sec. 1.24. Location and Relocation of Facilities.

Subd. 1. Placement, Location, and Relocation. Placement, location, and relocation of Facilities must comply with the Act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000, and 7819.5100, to the extent the rules do not limit authority otherwise available to cities and counties. By submitting a request for a permit, the Person recognizes they must conform to the existing Ordinances and codes of other units of government related to underground placement regardless of how the application is written or permit granted.

Utility poles and guy anchors, and any other Equipment, shall conform to the National Cooperative Highway Research Program (NCHRP) Report 350 standards for crashworthiness or must be located outside of applicable clear zones. Any installation that does not conform to the Minnesota Department of Transportation clear zone standards must be approved by the Director and the facility owner shall indemnify and hold harmless the County. All above ground structures shall be placed at or as near as possible to the Right-of-Way line.

Subd.2 Corridors. The County may assign specific corridors within the Right-of-Way, or any particular segment thereof as may be necessary, as a best management practice for each type of facility that is, or, pursuant to current technology, the County expects will someday be, located within the Right-of-Way. All Excavation, Obstruction, or other permits issued by the County involving the installation or replacement of Facilities shall designate the proper corridor for the Facilities at issue. A typical cross section of the location for utilities may be on file at the Director's office. This section is not intended to establish "high density corridors".

Any Registrant who has Facilities in the Right-of-Way in a position at variance with the corridors established by the County shall, no later than at the time of the next reconstruction or excavation of the area where the Facilities are located, move the Facilities to the assigned position within the Right-of-Way, unless this requirement is waived by the County for good cause shown, upon consideration of such factors

as the remaining economic life of the Facilities, public safety, customer service needs and hardship to the Registrant.

Subd. 3. Nuisance. One year after the passage of this Ordinance, any Facilities found in a Right-of-Way that have not been registered shall be deemed to be a nuisance. The County may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the Facilities and restoring the Right-of-Way to a useable condition and requiring payment to the County for the costs involved.

Subd. 4. Limitation of Space. To protect health, safety, and welfare or when necessary to protect the Right-of-Way and its current use, the County shall have the power to use best management practices to prohibit or limit the placement and location of new or additional Facilities within the Right-of-Way. In making such decisions, the County shall strive to the extent possible to accommodate all existing and potential users of the Right-of-Way, but shall be guided primarily by considerations of the public interest, the public's need for the particular Utility Service, the condition of the Right-of-Way, the time of year with respect to essential utilities, the protection of existing Facilities in the Right-of-Way, and future County plans for public improvements and development projects which have been determined to be in the public interest.

Subd. 5. Relocation of Facilities. A Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its Facilities in the Right-of-Way whenever the Director for good cause requests such removal and relocation, and shall restore the Right-of-Way consistent with PUC standards, local regulations and MnDOT standard specifications. The Director may make such request to prevent interference by the Company's Equipment or Facilities with (i) a present or future County use of the Right-of-Way, (ii) a public improvement undertaken by the County, (iii) an economic development project in which the County has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way.

Relocation Notification Procedure: The Director shall notify the utility owner at least six (6) months in advance of the need to relocate existing Facilities so the owner can plan the relocation. The Director shall provide a second notification to the owner one (1) month before the owner needs to begin the relocation. The utility owner shall begin relocation of the Facilities within one (1) week of the second notification. All utilities shall be relocated within one (1) month. The Director may allow a different schedule if it does not interfere with the County's project. The utility owner shall diligently work to relocate the Facilities within the above schedule.

In the event that emergency work by the County or municipality in the County Right-of-Way requires relocation of a utility, the notification requirements above are waived. The County and utility shall coordinate efforts to minimize delay.

Delay to County Project: The Director shall notify the utility owner if the owner's progress will not meet the relocation schedule. If the owner does not take action to insure the relocation will be completed in accordance with the above schedule and the Director feels this delay will have an adverse impact to a county project, then the Director may hire a competent contractor to perform the relocation. In that event, the county may charge the utility owner all costs (plus 20%) incurred to relocate the facility.

The county may charge the utility owner for all costs incurred and requested by a contractor working for the county who is delayed because the relocation is not completed in the scheduled timeframe and for all costs incurred by the county due to the delay.

Notwithstanding the foregoing, according to the PUC rules, a Person shall not be required to remove or relocate its Facilities from any Right-of-Way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the Person. However, this does not exempt the utility company from paying for the value of any taking of said property by occupation without compensation.

Sec. 1.25. Pre-excavation Facilities Location.

In addition to complying with the requirements of Minn. Stat. 2160.01-216D.09 ("One Call Excavation Notice System") before the start date of any Right-of-Way excavation, each Registrant who has Facilities or Equipment in the area to be excavated shall mark the horizontal and vertical placement of all said Facilities. Any Registrant whose Facilities are in the area of work shall notify and work closely with the excavation contractor to establish the exact location of its Facilities and the best procedure for excavation to protect the safety of workers and Right-of-Way users and other utility users. If the utility is not at the approved depth or location, it shall be exposed at the Permittee's expense or by the county upon written notice to the Permittee. The county may, upon said notice, locate said utility at the Permittee's expense.

Sec. 1.26. Damage to Other Facilities.

When the County does work in the Right-of-Way and finds it necessary to maintain, support, or move a Registrant's Facilities to protect it, the Director 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 Facilities in the Right-of-Way that it or its Facilities damages. When the Permittee does damage to county Facilities in the Right-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, they shall correct the damage immediately. If they do not, the county may make such repairs as necessary and charge all of the expenses of the repair to the Permittee. The Permittee shall pay for said repairs within 30 days of billing. Each Registrant shall be responsible for the cost of repairing any damage to the Facilities of another Registrant caused during the County's response to an emergency occasioned by that Registrant's Facilities. If Permittee fails to pay as required, the County may exercise its rights under the Construction Performance Bond.

Sec. 1.27. Right-of-Way Vacation.

Reservation of Right. If the County vacates a Right-of-Way that contains the Facilities of a Registrant, the Registrant's rights in the vacated Right-of-Way are governed by Minnesota Rule 7819.1250 and other applicable laws.

Sec. 1.28. Indemnification and Liability.

By registering with the County, or by accepting a permit under this Ordinance, a Registrant or Permittee agrees to defend and indemnify the county in accordance with the provisions of Minnesota Rule 7819.1250. All permits are granted subject to the ownership rights the County may have in the property involved and to the extent that state, federal local laws, rules and regulations allow and said permit is subject to all such laws and rules.

Sec. 1.29. Abandoned or Unusable Facilities.

Subd. 1. Discontinued Operations. A Registrant who has determined to discontinue all or a portion of its operations in the county must provide information satisfactory to the county that the Registrant's

obligations for its Facilities in the Right-of-Way under this Ordinance have been lawfully assumed by another Registrant.

Subd. 2 Removal. Any Registrant who has abandoned or unusable Facilities in any Right-of-Way shall remove it from that Right-of-Way if required in conjunction with other Right-of-Way repair, excavation, or construction, unless the county waives this requirement.

Sec. 1.30. Appeal.

A Right-of-Way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the Construction Performance Bond imposed is invalid, may have the denial, revocation, or Construction Performance Bond imposition reviewed, upon written request, by the County Board. The County Board shall act on a timely written request at its next regularly scheduled meeting. A decision by the County Board on the denial, revocation, or Construction Performance Bond imposition will be in writing and supported by written findings establishing the reasonableness of their decision.

Sec. 1.31. Reservation of Regulatory and Police Powers.

A Permittee's or Registrant's rights are subject to the regulatory and police powers of the County to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

Sec. 1.32. Severability.

If any portion of this Ordinance is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this Ordinance precludes the County from requiring a franchise agreement with the Applicant, as allowed by law, in addition to requirements set forth herein.

Sec. 1.33. Penalty for Violation.

Subd. 1. Violations. In addition to any costs, penalties, or bonds discussed in any prior section of this Ordinance, any violation of any provision of this Ordinance or the violation of the conditions or provisions of any permit issued pursuant to this Ordinance shall be a misdemeanor.

Subd. 2. Civil Penalty. In addition to any costs, penalties, or bonds discussed in any prior section of this ordinance the Director may also impose a civil penalty for each violation of this Ordinance as established by the County Board fee schedule per occurrence per site per mile per day as long as may be applicable unless a penalty or fine is otherwise specifically designated in this Ordinance.

Subd. 3. Separate Offense. Unless otherwise provided, each act of violation and every day on which such violation occurs shall constitute a separate offense.

Subd. 4. In the event of a violation of this Ordinance, the Director may request that the County Attorney institute appropriate actions or proceedings, including the seeking of injunctive relief, to prevent, restrain, correct or abate such violations. All costs incurred for such enforcement action may be recovered by the County in a civil action in any court or competent jurisdiction. These remedies may be imposed upon the permittee or other responsible Person either in addition to or separate from other enforcement action.

Sec. 1.34. Drainage System Crossings

Subd. 1. Drainage Permits for utility crossings involving drainage systems of record shall be administered by the appropriate drainage authority in accordance with the regulations and permit application.

DRAFT

**COUNTY OF CASS, MINNESOTA
APPLICATION FOR UTILITY PERMIT
DRAINAGE SYSTEM RIGHT-OF-WAY**

Board of Commissioners for
Drainage System Authority
Cass County, Minnesota

Application is hereby made for permission to place, construct and thereafter maintain:

_____ (description of utility), across, under, along or on

_____ (name of drainage system(s)) right-of-way

in Cass County, Minnesota in accordance with the sketch shown herein or attached to.

Rules and Regulations for Utilities on Public Drainage System Right-of-Way

DEFINITIONS

Utility. Under this order "utility" shall mean and include all privately, publicly, or cooperatively owned communication lines and facilities, any systems, lines and facilities for the distribution and transmission of electrical energy produced and furnished to others, oil, gas, water, sewer, steam and other pipelines, railways, ditches, flumes or other structures constructed, placed or maintained across, under, along or on public drainage system right-of-way. Dependent upon the meaning intended in the context, "Utility" shall also mean the utility company, inclusive of any wholly owned subsidiary.

GENERAL

I. Except as otherwise permitted, utility construction and relocation on drainage system right-of-way shall not be commenced until an application for a Permit has been made and the Permit granted. The Permit sketch and/or aerial photo shall show the location of the proposed utility with reference to drainage system center line, slopes, depth and other pertinent information regarding the drainage system right-of-way.

II. Burning or disking operations and/or the use of chemicals to control or kill trees, brush, and other vegetation is prohibited without prior approval from the County Engineer.

III. All open ditches and lines of drainage shall remain operative.

IV. Wherever topsoil and sod are disturbed they shall be replaced and maintained satisfactorily until the turf is established.

V. The utility facility and installation shall not interfere with any existing utility facilities on the drainage system right-of-way.

VI. When necessary, barricades, warning devices and flagmen shall be provided by the Utility during all phases of construction and maintenance operations on drainage system right-of-way.

VII. At the time of construction of the utility and at the times of subsequent maintenance, prior approval shall be obtained from the Drainage Authority for the cutting and trimming of trees within the drainage system right-of-way. Wherever trees are cut the resulting stumps shall be removed unless otherwise provided in the Special Provisions of the Permit. Any holes caused by

stump removal shall be backfilled, the area leveled and all materials associated therewith disposed of outside the drainage system right-of-way. The Utility shall advise the Drainage Authority at least 48 hours in advance of its intent to start clearing and grubbing operations so that proper supervision can be provided.

VIII. The Utility shall notify the Drainage Authority of its intent to perform service and maintenance operations which will interfere with the flow of surface water in drainage system rights of way, and shall obtain approval prior to performing such operations. However, the Company may perform service and maintenance operations on drainage system right-of-way including opening and disturbing the surface of the right-of-way without prior approval in those instances where an emergency exists that is dangerous to the life or safety of the public and which requires immediate repair. The Utility shall take all necessary and reasonable safety measures to protect the traveling public and shall notify the Drainage Authority as soon as possible.

IX. If at any time the Drainage Authority shall deem it necessary to make any improvements or changes on all or any part of the right-of-way of the drainage system which affects a utility located on drainage system right-of-way, then and in such event, the owner of the utility shall within 15 days after written notice from the Drainage Authority, or its authorized agent, proceed to alter, change, vacate or remove said utility from the drainage system right-of-way so as to conform to said drainage system changes and as directed by the Drainage Authority. Such work shall be done without any cost whatsoever to the drainage system and shall be completed within the date specified in the written notice. The Utility shall assume all liability and save the Drainage Authority harmless from any and all claims of damage of any nature whatsoever occasioned by reason of not having removed said utility within the time specified in said notice.

X. The Utility shall assume all liability for, and save the Drainage Authority, its agents and employees, harmless from, any and all claims for damages, actions or causes of action arising out of the work to be done herein and the continuing uses by the Utility, including but not limited to the placing, constructing, reconstructing, maintaining and using of said utility under this application and Permit.

XI. The Drainage Authority may require the Utility, or its contractor, to furnish a deposit in the form of a certified check, a surety bond or corporate undertaking, in favor of the Drainage Authority, for any expense incurred in the granting of the crossing permit, and the repairing of damage to any portion of the drainage system right-of-way caused by work performed under a Permit, including any out of the ordinary engineering supervision and inspection expense provided by the Drainage Authority. In those instances wherein a deposit is required, the amount of the deposit shall be specified in the Special Provisions of the Permit. If a check is furnished, any monies remaining over and above such expense shall be returned to the applicant.

XII. The Permit as issued does not in any way imply an easement on private property.

XIII. The installations shall be made in conformity with all applicable laws, regulations and codes covering said installations. All installations shall be made in conformity with regulations of governmental agencies for the protection of the public and the environment. This Permit shall be contingent upon the Utility obtaining any and all applicable local, state, and federal permits.

XIV. Upon completion of an installation, the Utility shall restore the drainage system right-of-way to near as practical its original condition. The Utility shall then notify the office of the County Engineer of the completion of the work so that inspection can be made to determine its acceptability.

The applicant in carrying on any and all of the work herein above mentioned or referred to in its application and in the Permit issued hereto, shall strictly conform to the terms of such Permit, and the regulations of the Drainage Authority, as set forth herein together with the Special Provisions, all of which are made a part hereof. The applicant specifically agrees to be bound hereby. The applicant shall also comply with the regulations of all other governmental agencies for the protection of the public and the environment. The work shall be accomplished in a manner that will not be detrimental to the drainage system right-of-way and that will safeguard the public and the environment.

UNDERGROUND

I. All utility crossings of drainage systems shall be a minimum of 4 feet below the existing bottom of open ditch and/or bottom of subsurface tile. Open ditches can be open cut. All subsurface tile lines and other structures of the drainage system must be bored.

II. The underground utilities shall be installed to avoid future disturbance of ditch structures to perform maintenance operations.

BRIDGES AND CULVERTS

All new bridges and culverts must be designed according to current hydraulic and hydrologic conditions. The Drainage Authority may require complete as-built plans with size and elevations when installation is complete. Any other requirements unique to the bridge or culvert will be set forth under the Special Provisions of this Permit.

Date _____

Name of Company making application

Signature _____

By _____

Title

Address _____

Telephone _____

CASS COUNTY, MINNESOTA

UTILITY PERMIT ON DRAINAGE SYSTEM RIGHT-OF-WAY

Reference: _____

In accordance with the application herein, a Utility Permit is granted to _____ to place, construct and thereafter maintain _____ across, under, along or on the right-of-way of _____ in the location shown on the sketch, which is a part of said application, or in such locations as may be specified by the Drainage Authority in the Special Provisions herein.

SPECIAL PROVISIONS:

Approved _____
(date)

Board of County Commissioners
for Drainage Authority
Cass County, Minnesota

Permit No. _____
Certified Check No. _____
Surety Bond No. _____
Date of S. Bond or C. Check _____
Bank or Bonding Co. _____
Deposit Made by _____

Signed:

Chairperson

Attest:

County Administrator/Clerk

COUNTY OF CASS
DEPARTMENT OF HIGHWAYS

APPLICATION FOR UTILITY PERMIT ON
COUNTY HIGHWAY RIGHT OF WAY

Board of County Commissioners
Walker, Minnesota
Attn: County Highway Engineer

C.S.A.H. _____
C.R. _____

Application is hereby made for permission to place, construct and thereafter maintain a _____
_____ along or across County Highway No. _____ from
_____ to _____
_____ feet from centerline on the _____ (east, west, north or south) side of the County Highway in accordance with the sketch
shown on the inside hereof, or attached thereto.

I AERIAL CONSTRUCTION

- | | |
|--|---|
| <input type="checkbox"/> Single Pole | <input type="checkbox"/> Open wire |
| <input type="checkbox"/> H-frame | <input type="checkbox"/> Cable |
| <input type="checkbox"/> Single pole and H-frame | <input type="checkbox"/> Vertical |
| <input type="checkbox"/> Steel Tower | <input type="checkbox"/> Cross-arm |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Vertical and cross-arm |

Voltage _____ Number of Conductors _____ Size of Conductors _____

Minimum height of conductor: _____ ft. along highway _____ ft. at crossing over highway

Extent and location of Tree Trimming and/or Clearing _____

II. UNDERGROUND CONSTRUCTION CONDUIT

- | | |
|--|---|
| <input type="checkbox"/> Multiple tile | <input type="checkbox"/> Sectional concrete |
| <input type="checkbox"/> Transite | <input type="checkbox"/> Steel pipe |
| <input type="checkbox"/> Clay tile | <input type="checkbox"/> Other _____ |

CASING

- Steel pipe Sectional concrete Other _____

SIZE _____ DEPTH _____

VOLTAGE _____ NUMBER OF CONDUCTORS _____ SIZE OF CONDUCTORS _____

METHOD OF INSTALLING UNDER ROADBEDS (if open trench, explain why necessary)

- Open trench _____
 Jacking Boring Pneuma Gopher

EXTENT AND LOCATION OF TREE CLEARING _____

New Facility Replacement Facility

III. Work to start on or after _____ and to be completed on or before _____.

IV. The applicant in carrying on any and all of the work herein above mentioned and referred to in its application and in the Permit issued herefore, shall strictly conform to the terms of such Permit, and the regulations of the Board of County Commissioners, as set forth herein together with the Special Provisions, all of which are made a part hereof. The applicant specifically agrees to be bound hereby. The applicant shall also comply with the regulations of all other governmental agencies for the protection of the public. The work shall be accomplished in a manner that will not be detrimental to the highway and that will safeguard the public.

Dated this _____ day of _____, 20____

Name of Company making application

Signature _____

By _____ Title _____

Address _____

Rules and Regulations of Board of County Commissioners for Utilities on County Highways

DEFINITIONS

Utility. Under this over "utility" shall mean and include all privately, publicly or co-operatively owned communication lines and facilities, any systems, lines and facilities for the distribution and transmission of electrical energy, oil, gas, water, sewer, steam and other pipe lines, railways, ditches, flumes or other structures which under the laws of this State or the ordinance of any town or city may be constructed, placed or maintained across, along or on county highway right of way. Dependent upon the meaning intended in the context, "utility" shall also mean the utility company, inclusive of any wholly owned subsidiary.

GENERAL

I. Except as otherwise permitted, utility construction and relocation on county highway right of way shall not be commenced until an application for a permit has been made and such permit granted. The permit sketch shall show the location of the proposed utility with reference to county highway centerline. A copy of the sketch shall be provided for each copy of such permit.

II. Burning or disking operations and/or the use of chemicals to control or kill trees, brush and other vegetation is prohibited without prior approval from the County Highway Engineer.

III. All waterways and lines of drainage shall remain operative.

IV. Wherever topsoil and sod are disturbed they shall be replaced and maintained satisfactorily until the turf is established.

V. The utility facility and installation shall not interfere with any existing utility facilities on the county highway right of way.

VI. When necessary, barricades, warning devices and flagmen shall be provided by the utility during all phases of their construction and maintenance operations on county highway right of way.

VII. At the time of construction of the utility and at the times of subsequent maintenance, prior to approval shall be obtained from the County Highway Engineer for the cutting and trimming of trees within the county highway right of way. The utility shall advise the County Highway Engineer at least 48 hours in advance of its intent to start clearing and grubbing operation so that proper supervision can be provided.

VIII. The Utility shall notify the County Highway Engineer of its intent to perform service and maintenance operations which will interfere with the flow of traffic on county highways, and shall obtain his approval prior to performing such operations. However, the Company may perform service and maintenance operations on county highways including opening and disturbing the surface of the right of way without prior approval in those instances where an emergency exists that is dangerous to the life or safety of the public and which requires immediate repair. The Utility shall take all necessary and reasonable safety measures to protect the traveling public and shall notify the County Highway Engineer at the earliest possible moment.

IX. If any time Cass County, acting through its Board of County Commissioners, shall deem it necessary to make any improvements or changes on all or any part of the right of way of the County Highway which affect a utility located on county highway right of way, then and in such event, the owner of the utility shall within 15 days after written notice from the Board of County Commissioners, or its authorized agent, proceed to alter, change, vacate or remove said utility from the county highway right of way so as to conform to said county highway changes and as directed by the Board of County Commissioners. Such work shall be done without any cost whatsoever to Cass County and shall be completed within the date specified in said written notice. The Utility shall assume all liability and save Cass County harmless from any and all claims of damage of any nature whatsoever occasioned by reason of not having removed said utility within the time specified in said notice.

X. The Utility shall assume all liability for, and saves the County, its agents and employees, harmless from any and all claims for damages, actions or causes of action arising out of the work to be done herein and the continuing

uses by the Utility, including but not limited to the placing, constructing, reconstructing, maintaining and using of said utility under this application

and Permit.

XI. The Board of County Commissioners may require the Utility, or its contractor, to furnish a deposit in the form of a certified check, a surety bond or corporate undertaking, in favor of the Board of County Commissioners of Cass County, for an expense incurred by the County in the repairing of damage to any portion of the county highway right of way caused by work performed under a Permit, including any out of the ordinary engineering supervision and inspection expense provided by the county. In those instances wherein a deposit is required, the amount of the deposit shall be specified in the Special Provisions of a permit. If a check is furnished, any monies remaining over and above such expense shall be returned to the applicant.

XII. The Permit as issued does not in any way imply an easement on private property.

XIII. The installations shall be made in conformity with all applicable laws, regulations and codes covering said installations. All installations shall be made in conformity with regulations of governmental agencies for the protection of the public.

XIV. Upon completion of an installation, the Utility shall restore the county highway right of way to its original condition. The Utility shall then notify the office of the County Highway Engineer of the completion of the work so that inspection can be made to determine its acceptability.

AERIAL

I. There shall be only a single pole line on the county highway right of way on either side of the center line thereof.

II. Longitudinal installations on county highways shall normally be located in the outer five feet of the right of way. At crossing of the county highway, poles shall be placed at a minimum of thirty feet from the shoulder lines of the through roadbeds unless right of way widths are prohibitive to such location.

III. The location of all brace poles, anchors and anchor poles within the limits of the county highway right of way shall be approved by the County Highway Engineer.

IV. In those instances in which a Utility is issued a Permit or Permits for construction on both sides of the county highway right of way in a given area, such Permit is conditioned upon the Utility subsequently providing joint use to other Utilities upon reasonable terms mutually agreeable to the Utilities.

UNDERGROUND

I. All crossings of the roadbeds of the county highways shall be made by boring inside a casing or carrier pipe, or by jacking, unless this procedure is modified in the Special Provisions of the Permit. The auger shall not lead the casing or carrier pipe by more than one inch. Open trenching shall be restricted to the area from 5 feet beyond the shoulder to the right of way line except as modified in the Special Provisions of the Permit

II. When pipes with bells or flanges are installed, the crossings of the roadbeds of the county highway shall be made by boring inside a conduit as provided in paragraph I of this section or jacking a conduit of sufficient diameter to permit threading the carrier pipe through it.

III. All voids caused by jacking or boring shall be filled by pressure grouting. The grout materials shall consist of a sand-cement slurry of at least two sacks of cement per cubic yard and a minimum of water to assure satisfactory placement.

IV. The underground utilities shall be so installed as virtually to preclude any necessity for disturbing the roadbeds to perform maintenance operations.

V. Underground installations shall be accomplished without damaging or destroying the principal root structure of specimen trees.

LOCATION SKETCH

Show location of proposed facility in relation to the centerline of the county highway and other pertinent features such as right of way line, shoulder line, curb line and edge of surfacing. The facility should also be referenced to adjacent land lines.

CASS COUNTY
DEPARTMENT OF HIGHWAYS

UTILITY PERMIT

Reference: Project _____
C.S.A.H. _____
C.R. _____

In accordance with the application herein, a Utility Permit is granted to _____
_____ to place, construct and thereafter maintain _____
_____ on or across, or under the right of way of County Highway No. _____ in the location
shown on the sketch which is a part of said application, or in such location as may be specified by the Department of
Highways in the Special Provisions hereof.

SPECIAL PROVISIONS:

Approved _____ Permit No. _____

Board of County Commissioners,
Walker, Minnesota

By _____
County Highway Engineer