

**CASTLE ROCK TOWNSHIP
DAKOTA COUNTY, MINNESOTA**

ORDINANCE NO. 2009-2

**AN ORDINANCE REGULATING TOWNSHIP ROAD
RIGHT-OF-WAYS AND LARGE UTILITY PROJECTS
IMPACTING TOWNSHIP RIGHT-OF-WAYS**

The Board of Supervisors of Castle Rock Township hereby ordains as follows:

**ARTICLE ONE
USE OF RIGHT-OF-WAYS BY LOCAL UTILITY PROVIDERS**

100.1 Findings, Purpose and Intent.

It is the purpose of this Ordinance is to establish reasonable regulations, requirements, and restrictions regarding the use of Township right-of-ways in order to protect the health, safety and welfare of Township residents, those traveling on Township roads, and the general public. It is also the purpose of this Ordinance to protect the cumulative investment the public has made to construct, maintain, and improve the Township's roads by requiring those undertaking utility projects in and near the Township's right-of-ways to obtain a permit from the Township and to be responsible for restoring the right-of-ways directly or indirectly impacted by the project to at least the same or better condition they were in prior to the project. Finally, this Ordinance provides for the recovery by the Town of its actual expenses incurred related to such projects.

As the road authority for the Township's roads, the Town Board has the authority and responsibility to provide for safe and efficient local roadways and to establish regulations governing the use and maintenance of Town roadways and public right-of-ways. This Ordinance is adopted consistent with that authority as well as the authority provided the Town Board pursuant to 1997 Session Laws, Chapter 123, Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act"), Minnesota Statutes, sections 164.36, 169.832, 169.87, and the other laws governing applicable rights of the Township and users of the right-of-way. This Ordinance shall be interpreted consistent with those statutes as well as with Minnesota Rules, parts 7819.0050 – 7819.9950 where possible. This Ordinance shall not be interpreted to limit the regulatory and police powers of the Township to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

100.2. Election to Manage the Public Right-of-Way.

Pursuant to the authority granted the Township under state and federal statutory, administrative and common law, the Township hereby elects, pursuant to Minnesota Statutes, section 237.163, subdivision 2(b) to manage its right-of-ways within the Township.

100.3. Definitions.

For the purpose of this Ordinance, the following terms shall have the meaning given them in this Section.

- A. “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.
- B. “Applicant” means any person requesting permission to excavate or obstruct a right-of-way.
- C. “Commission” means the Minnesota Public Utilities Commission.
- D. “Construction Performance Bond” means any of the following forms of security provided at permittee’s option:
 - 1. Individual project bond;
 - 2. Cash deposit;
 - 3. Letter of Credit, in a form acceptable to the Township;
 - 4. Self-insurance, in a form acceptable to the Township; or
 - 5. A blanket bond for projects within the Township, or other form of construction bond, for a time specified and in a form acceptable to the Township.
- F. “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 or disturbance did not occur.
- G. “Degradation Cost” subject to Minnesota Rules, part 7819.1100 means the cost to achieve a level of restoration, as determined by the Township 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.
- H. “Degradation Fee” means the estimated fee established at the time of permitting by the Township to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

- I. "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.
- J. "Emergency" means a condition that (1) poses a 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.
- K. "Equipment" means any tangible asset used to install, repair, or maintain facilities in any right-of-way.
- L. "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
- M. "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.
- N. "Excavation permit fee" means money paid to the Township by an applicant to cover the costs as provided in this Ordinance.
- O. "Facility" or "Facilities" means any tangible asset in the right-of-way required to provide utility service.
- P. "Local Representative" means a local person or persons, or designee of such person or persons, authorized by an applicant to accept service and to make decisions for that registrant regarding all matters within the scope of this Ordinance.
- Q. "Management Costs" means the actual costs the Township incurs in managing its right-of-ways, 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 facilities during 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 Session Laws 1997, Chapter 123; Minnesota Statutes, sections 237.162 or 237.163; or any ordinance enacted under those sections, or the Township fees and costs related to appeals taken as provided in this Ordinance.
- R. "Obstruct" means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

- S. "Obstruction Permit" means the permit which, pursuant to this Ordinance, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.
- T. "Obstruction Permit Fee" means money paid to the Township by a permittee to cover the costs as provided in this Ordinance.
- U. "Patch" or "Patching" means a method of pavement replacement or roadway repair 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 on roads the Town Board has scheduled to be overlaid within five years.
- V. "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.
- W. "Permit" has the meaning given "right-of-way permit" in Minnesota Statutes, section 237.162.
- X. "Permittee" means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the Township under this Ordinance.
- Y. "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.
- Z. "Restore" or "Restoration" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.
- AA. "Restoration Cost" means the amount of money paid to the Township by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.
- BB. "Right-of-Way" means the area on, below, or above a public road, highway, street, cartway, bicycle lane or public sidewalk in which the Township has an interest, including other publicly dedicated right-of-ways for travel purposes and utility easements of the Township. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

- CC. "Right-of-Way Permit" means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Ordinance.
- DD. "Right-of-Way User" means (1) a telecommunications right-of-way user as defined by Minnesota Statutes, section 237.162, subdivision 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.
- EE. "Service" or "Utility Service" includes (1) those services provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 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 systems as defined in Minnesota Statutes, Chapter 238; (4) services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A; and (5) water, and sewer, including service laterals, steam, cooling or heating services.
- FF. "Service Lateral" means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.
- GG. "Temporary Surface" means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the Township's two-year plan, in which case it is considered full restoration.
- HH. "Trench" means an excavation in the traveled surface of a road, with the excavation having a length equal to or greater than the width of the traveled surface.
- II. "Telecommunication right-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 Minnesota Statutes, Chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes, section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes, Chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes, Chapter 308A, are not telecommunications right-of-way users for purposes of this Ordinance.
- JJ. "Town Board" means the Board of Supervisors of Castle Rock Township, Dakota County, Minnesota.

- KK. "Township" means Castle Rock Township, Dakota County, Minnesota.
- LL. "Township Representative" means a Township supervisor or other person designated by the Town Board to conduct inspections or to otherwise oversee work done within right-of-ways, whether such work is done by permit or otherwise.

100.4. Permit Requirement.

- A. Permit Required. Except as otherwise provided in this Ordinance, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the Township to do so.
- (1) Excavation Permit. An excavation permit is required to excavate within a right-of-way related to the installation, repair, replacement, or removal of facilities.
 - (2) Obstruction Permit. An obstruction permit is required to obstruct a right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
 - (3) Combination Permit. If a proposed utility project involves both the excavation and obstruction of a right-of-way, a person may apply for a combination excavation/obstruction permit.
- B. Exclusions. The Township, its agents, and contractors performing work for the Township shall not be required to obtain permits from the Township to excavate or obstruct a right-of-way. Contractors performing work for the Township shall be required to erect and maintain such signs and other traffic control devices as are necessary to warn of the work and to protect public safety.
- C. Permit Extensions. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless: (i) such person 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.
- D. Delay Penalty. In accordance with Minnesota Rule, part 7819.1000, subpart 3, the Township may establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration.
- E. 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 Township.

100.5. Permit Applications.

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

- A. 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.
- B. Payment of money due the Township for:
 - (1) permit fees, estimated restoration costs and other management costs;
 - (2) any outstanding amounts related to prior obstructions or excavations;
 - (3) any undisputed loss, damage, or expense suffered by the Township because of applicant's prior excavations or obstructions of the right-of-ways or any emergency actions taken by the Township; and
 - (4) franchise fees or other charges, if applicable.
- D. Payment of disputed amounts due the Township 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 permit to install additional facilities and the Township deems the existing construction performance bond inadequate under applicable standards.

100.6. Issuance of Permit; Conditions.

- A. Permit Issuance. If the applicant has satisfied the requirements of this Ordinance, the Township shall issue a permit.
- B. Conditions. The Township 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 use.

100.7. Permit Fees.

- A. Excavation Permit Fee. The Township shall establish an Excavation permit fee in an amount sufficient to recover the following costs:
 - (1) the Township management costs;
 - (2) degradation costs, if applicable.

- B. Obstruction Permit Fee. The Township shall establish the obstruction permit fee and shall be in an amount sufficient to recover the Township management costs.
- C. Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The Township may allow applicant to pay such fees within thirty (30) days of billing.
- D. Non-Refundable. Permit fees that were paid for a permit that the Township has revoked for a breach as provided in this Ordinance are not refundable.
- E. Fees. All fees provided for in this Ordinance shall be determined by Town Board and shall be designed to recover the actual costs the Township incurs related to the particular project and in managing its right-of-ways.

100.8. Right-of-Way Patching and Restoration.

- A. 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 circumstances beyond the control of the permittee or when work was prohibited due to unseasonal or other weather conditions which reasonably prohibit the work.
- B. Patch and Restoration. Permittee shall patch its own work. The Township may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
 - (1) *Township Restoration.* If the Township restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the roadway settles due to permittee's improper backfilling, the permittee shall pay to the Township, within thirty (30) days of billing, all costs associated with correcting the defective work.
 - (2) *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 accordance with the provisions of Minnesota Rule, part 7819.3000.
 - (3) *Degradation Fee in Lieu of Restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
- C. Standards. The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the Township and shall comply with Minnesota Rule, part 7819.1100.

- D. Duty to Correct Defects. The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the Township, shall correct all restoration work to the extent necessary, using the method required by the Township. Said work shall be completed within five calendar days of the receipt of the notice from the Township, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited by unreasonable weather conditions.
- E. Failure to Restore. If the permittee fails to restore the right-of-way in the manner and to the condition required by the Township, or fails to satisfactorily and timely complete all restoration required by the Township, the Township at its option may do such work. In that event, the permittee shall pay to the Township, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the Township may immediately exercise its rights under the construction performance bond.

100.9. Supplementary Applications.

- A. 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 fees required thereby; and (ii) be granted a new permit or permit extension.
- B. 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 submitted before the permit end date.

100.10. Other Obligations.

- A. Compliance With Other Laws. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the Township or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including but not limited to Minnesota Statutes, sections 216D.01-.09 (Gopher One Call Excavation Notice System) and Minnesota Rules, Chapter 7560. 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.

- B. Prohibited Work. Except in an emergency, and with the approval of the Township, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- C. Interference with Right-of-Way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles 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 Township parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- D. Trenchless Excavation. As a condition of all applicable permits, permittees employing trenchless excavation methods including, but not limited to, horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D, Minnesota Rules, Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Township.

100.11. Denial of Permit.

The Township may deny a permit for failure to meet the requirements and conditions of this Ordinance if the Township determines that the denial is necessary to protect the health, safety, and welfare, or if the Township determines such denial is necessary to protect the right-of-way and its current use.

100.12. 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, parts 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules, Chapter 7560 and this Ordinance.

100.13. Inspection.

- A. Notice of Completion. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules, part 7819.1300.
- B. Site Inspection. Permittee shall make the work-site available to the Township and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

C. Authority of Township Representative.

- (1) At the time of inspection, the township representative may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
- (2) The township representative may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, 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 township representative that the violation has been corrected. If such proof has not been presented within the required time, the township representative may revoke the permit as provided herein.

100.14. Work Done Without a Permit.

- A. Emergency Situations. Each right-of-way user shall immediately notify the township representative of any event regarding its facilities that it considers to be an emergency. The right-of-way user may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the right-of-way user shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this Ordinance for the actions it took in response to the emergency.
- B. 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, pay double the normal fee for said permit, pay double all the other fees required by the Township, deposit with the Township the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this Ordinance.

100.15. 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 Township of the accurate information as soon as this information is known.

100.16. Revocation of Permits.

- A. Substantial Breach. The Township reserves its right, as provided herein, to revoke any right-of-way permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material

condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of the right-of-way permit;
 - (2) 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 Township or its citizens;
 - (3) Any material misrepresentation of fact in the application for a right-of-way permit;
 - (4) 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
 - (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued by a township representative.
- B. Written Notice of Breach. If the Township 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 Township 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 Township, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
- C. Response to Notice of Breach. Within 24 hours of receiving notification of the breach, permittee shall provide the Township with a plan, acceptable to the Township, that will cure the breach. Permittee's failure to so contact the Township, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
- D. Reimbursement of Township costs. If a permit is revoked, the permittee shall also reimburse the Township for the Township's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

100.17. Location and Relocation of Facilities.

Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules, parts 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to townships.

100.18. Right-of-Way Vacation.

If the Township vacates a right-of-way that contains the facilities installed pursuant to a permit issued by the Township, the rights of the owner of the installed facilities in the vacated right-of-way are governed by Minnesota Rules, part 7819.3200.

100.19. Indemnification and Liability.

By accepting a permit under this Ordinance, permittee agrees to defend and indemnify the Township in accordance with the provisions of Minnesota Rule, part 7819.1250.

100.20. Abandoned and Unusable Facilities.

- A. Discontinued Operations. A right-of-way user who has determined to discontinue all or a portion of its operations in the Township must provide information satisfactory to the Township that the right-of-way user's obligations for its facilities in the right-of-way under this Ordinance have been lawfully assumed by another person.
- B. Removal. Any right-of-way user who has abandoned 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 this requirement is waived by the Township.

100.21. Appeal.

A right-of-way user that: (1) has been denied a permit; (2) has had a permit revoked; (3) believes that the fees imposed are not in conformity with Minnesota Statutes, sections 237.163, subdivision 6; or (4) disputes a determination of the township representative regarding compliance with this Ordinance or of permit conditions may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the Town Board. The Town Board shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the Town Board affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

ARTICLE TWO

PERMIT REQUIREMENTS FOR LARGE UTILITY PROJECTS

110.1. Findings, Purpose and Intent.

The Town Board has experience with large utility projects and the impacts they can have on the Township, its residents, and the Township's infrastructure. Large utility projects include those issued a permit by the Minnesota Public Utilities Commission for the siting or routing of

pipelines, overhead lines or other facilities across multiple governmental jurisdictions within the state to one or more redistribution or refining sites. The facilities installed as part of these projects do not provide utility services directly to the homes and business along its route, but instead are a means of conveying the resource to a particular location for refinement or for redistribution. The Town Board recognizes the value and need for these projects, but must also act to mitigate the impacts large utility projects can have both in the crossing of Township roads and well as the related heavy hauling and construction traffic that occurs on Township roads as these facilities are installed. Many of the Township's roads and bridges were not constructed to handle the weight of the vehicles that may be utilized for these projects. In some cases, it may be possible to improve the roads to enhance their ability to accommodate the vehicles, but even in such cases the roads must be carefully monitored and inspected to identify any resulting damage or degradation that must be repaired. The purpose of this Article of the Ordinance is to require a permit and place reasonable requirements and restrictions on such projects to mitigate their negative effects on the Township. It is also the purpose of this Article to ensure the Township is fully reimbursed for the costs it incurs related to the project in order to protect the Township's taxpayers and the limited funds the Town Board has available to it to adequately maintain the Township's roads and bridges.

110.2. Definitions.

The following definitions shall apply to this Article in addition to those contained in Section 100.3 of this Ordinance to the extent they are not inconsistent with the following:

- A. "Haul Road" means all public right-of-ways located within the Township proposed to be used, or which are actually used, for the hauling of materials or equipment related to a large utility project, including construction access routes. Haul road shall also include any public right-of-ways used as a detour for public travel to avoid right-of-ways temporarily closed or obstructed for a large utility project.
- B. "Large Utility Project" means the installation, extension, or expansion of a large energy facility as defined in Minnesota Statutes, section 216B.2421, subdivision 2 conducted pursuant to a routing or siting permit issued by the Minnesota Public Utilities Commission.
- C. "Permittee" means any person to whom a project permit has been granted by the Township under this Ordinance.
- D. "Project Permit" means a permit issued by the Town Board for a large utility project and which must be obtained before any such project may occur within the Township.

110.3. Permit Required.

No person may undertake a large utility project in the Township without first having obtained a project permit from the Township. A project permit is limited to large utility projects, is intended to be inclusive in that it shall contain all the permissions and agreements required from the Township, it shall set out or reference all conditions and requirements imposed by the

Township for the particular project, and shall be the only permit an applicant is required to obtain from the Township for the project. A project permit shall include any right-of-way obstruction or excavation permit that would otherwise be required by this Ordinance and shall also address all hauling, construction traffic, overweight vehicles, and other potential impacts the project may have on the Township.

110.4. Application Process.

An application for a project permit shall be submitted, and complete applications will be processed, in accordance with the terms of this Section.

- A. Pre-Application Meeting and Road Inspection. A proposed applicant shall meet with the Township at least once prior to submitting an application to discuss the project, proposed route of the utility line, proposed location of related facilities, proposed haul roads, proposed construction accesses, review the requirements of this Ordinance, and to discuss such other matters as may be relevant to the project and its impact on the Township. The Township and the proposed applicant shall conduct an inspection of any Township roads identified as potential haul roads. The purpose of the inspection is to assess the current condition of the roads, bridges, and related facilities and to determine whether they are sufficient, or can reasonably be made sufficient, to handle the anticipated truck traffic. The Township may, at the applicant's sole expense, have the proposed haul roads inspected by an engineer to assist in determining the adequacy of the roads and bridges to serve as haul roads, to assess and document the present conditions of the proposed haul roads, and to determine whether any pre-project improvements are required in order to make one or more roads or bridges sufficient to serve as haul roads. The Township may recommend to the proposed applicant alternative haul roads that the Township determines will be better able to accommodate the anticipated truck traffic and minimize safety and maintenance concerns. If the Township determines a right-of-way or bridge cannot safely accommodate the anticipated truck traffic to serve as a haul road, and determines it cannot be reasonably improved to safely accommodate such traffic, the proposed applicant shall not designate or use the right-of-way as a haul road.
- B. Application. An applicant shall apply for a project permit from the Township on an application form approved by the Town Board. The application shall be submitted to the Town Clerk together with the application fee and a construction performance bond in an amount the Township determines is sufficient to cover all costs associated with any pre-construction improvements of haul roads, additional maintenance during the project, and restoring the haul roads to at least the same condition they were in prior to the project. The applicant shall also provide the Township a cash escrow in an amount determined by the Town Board to defray its out-of-pocket and professional costs associated with processing and administering compliance with the project permit including, but not limited to, engineering, legal, and administrative costs.

The application shall, at a minimum, include the following information:

- (1) A detailed written description of the proposed utility work, detailed plans for construction activities within Township right-of-ways and the timetable for the project; and
- (2) Identification of proposed haul roads related to the project including whether any detours of public traffic will be required. The applicant shall identify all Township roads which are proposed to be used in the delivery of utility construction materials, the delivery of utility construction equipment, and all company or contract employee access routes. The applicant shall also identify off-road construction staging areas, material and equipment loading and unloading areas, and employee parking areas for the duration of the proposed utility construction within the Township.

C. Township Review of Applications. The Town Board may hold one or more public hearings on the proposed project permit. The Town Board shall consider the information provided by the applicant and such other information as it deems relevant in reviewing the application. The Town Board shall also consider the potential impacts of the project on the Township and the conditions it determines are necessary to place on a permit in order to address the identified impacts. The Township may impose reasonable conditions upon the issuance of a project permit and the performance of the applicant thereunder to protect the public health, safety, and welfare, and to protect the right-of-ways and their use. The Town Board shall, at a minimum, consider the following when reviewing an application for a project permit:

- (1) Pre-Project Road Improvements. The Township shall determine, in its reasonable discretion, if any pre-project improvements are required on any of the right-of-ways proposed to serve as haul roads for the project. Pre-project improvements may include, but are not limited to, sub-grade correction, base repair, re-surfacing, culvert replacement, and bridge stabilization or replacement. Any such improvements shall be performed in accordance with the standards, specifications and requirements identified by the Township. The Township shall specifically identify in the project permit the pre-project improvements required to be completed before the right-of-ways may be used as haul roads. The Township will perform the pre-project improvements at the applicant's expense unless the Town Board and the applicant agree the applicant shall perform the improvements; and
- (2) Additional Maintenance Needs. The Township shall determine if any additional maintenance work is required on the haul roads during the project to accommodate the additional traffic and the resulting impacts on the public such as grading, re-graveling, dust control, and ditch repair. The required additional maintenance work shall be described within the project permit.

110.5. Escrow.

At the time of application, the applicant shall be required to place cash in escrow with the Township. The Town Board shall determine the required amount of escrow after the pre-application meeting, which shall be an amount sufficient to guarantee all engineering, planning, and legal expenses related to the project incurred by the Township before and after the application for the review and issuance of the project permit, monitoring of the permit conditions, inspections of all right-of-way improvements, and enforcement of the permit. The Township shall withdraw funds from the escrow as needed to reimburse itself for the costs it incurs. If at anytime the Town Board determines the amount of the escrow will not be sufficient to fully reimburse the Township's costs, the permittee shall escrow such additional amounts with the Township as determined by the Town Board within 15 days of the Township providing written notice of the need for additional escrow. Costs incurred for improving, maintaining and restoring right-of-ways shall be billed as provided in Section 110.8 of this Ordinance.

110.6. Construction Performance Bond.

At the time of application, the applicant shall be required to provide the Township a construction performance bond in an amount the Town Board determines is sufficient to cover at least 110% of the anticipated costs to improve, provide additional maintenance, and restore the right-of-ways identified as haul roads for the project.

110.7. Issuance of Project Permit; Conditions.

If an applicant provides the required application information, pays the application fee, provides the required escrow, participates in the inspections required hereunder, and agrees to comply with the conditions imposed on the permit, the Town Board shall issue the requested project permit. All hauling and work performed in the Township's right-of-ways by the applicant, its agents, contractors, assigns, or successors shall be limited to those areas and the haul roads identified in the project permit. All project permits are subject to, and are conditioned upon, the permittee's compliance with all reasonable requirements and conditions stated in the permit as well as the requirements of this Ordinance including, but not limited to, the following:

- A. Escrow. The permittee shall fully reimburse the Township for all reasonable out-of-pocket costs and fees it incurs related to the project including, but not limited to, costs incurred to improve, maintain, and repair haul roads and right-of-ways crossed by the applicant's facilities. The Township shall deduct its expenses from the escrow provided and replenished as required by Section 110.5 of this Ordinance;
- B. Indemnification. By accepting a project permit under this Ordinance, permittee agrees to defend indemnify, and hold the Township, its officers, employees and agents harmless, including attorneys fees and defense costs, from all losses,

liability or claims for bodily injury or death, property damage, or otherwise arising from or related to the project. The permittee is not required to indemnify the Township for losses or liability arising directly from the Township's own negligence or wrongful acts or omissions;

- C. Compliance with Other Laws. The permittee is responsible for obtaining all such other permits or permissions related to the project as may be required by law, except that no other permits shall be required from the Township once it issues a project permit, provided the project does not change in any material way with respect to its impacts on the Township after the project permit is issued. If such a material change does occur, the permittee shall immediately apply for an amended project permit. Without limiting the foregoing, the addition or alteration of a haul road not designated in the project permit shall constitute a material change in the project requiring an amended project permit; and
- D. Improvement, Maintenance, and Restoration. The permittee shall be responsible for the costs for pre-project improvements, additional maintenance, and restoration of the right-of-ways as provided in Section 110.8 and elsewhere in this Ordinance.

110.8. Improvement, Maintenance and Restoration of Haul Roads.

The Township shall provide for the improvement, additional maintenance, and the restoration of the right-of-ways identified as haul roads in the project permit unless the Township and permittee agree otherwise. The permittee shall be responsible for fully reimbursing the Township for all costs it incurs to perform this work and shall pay the Township within thirty (30) days of billing for such costs. Permittee shall also be responsible for reimbursing the Township for all costs it may incur to repair and restore any other right-of-ways damaged as a result of the project regardless of whether they were identified as a haul road in the project permit. If permittee fails to pay as required, the Township may revoke the permit upon prior notice to the permittee and may immediately exercise its rights under the construction performance bond to recover its costs, including the costs it incurs to collect under the bond. The Township may also draw upon any funds in the cash escrow and pursue any other options available to it under law to recover its costs including all costs incurred to seek such recovery.

110.9. Performance Standards and Requirements.

Permittees shall comply with the following standards, requirements, and limitations.

- A. Road Crossings. Any underground utilities crossing a right-of-way shall be constructed without open cuts in the roadway when practicable. The permittee shall furnish detailed construction plans for all utility crossings within the right-of-way. The Township Engineer shall recommend to the Town Board whether the crossing(s) can be completed without disturbing the existing roadway. In the event an open road cut crossing is necessary, the permittee shall provide detailed cross sections of the existing Township road at the point of the crossing and

detailed restoration plans. The Township Engineer shall recommend to the Town Board what detailed road cut restoration plans will be required as a condition of the road crossing.

- B. Construction Access Route Signage. The permittee shall be required to post signs for all construction access, according to Township specifications, that clearly identify authorized construction access routes for materials delivery, equipment delivery, and construction employees. The permittee shall inform and instruct all contractors and sub-contractors, including equipment and material suppliers, of the restrictions for construction access and identify all authorized haul roads.
- C. Heavy Construction Equipment Usage on Township Roads. The operation of heavy construction equipment on Township roads, including but not limited to backhoes, cranes, and bulldozers, shall be prohibited, except as specifically authorized in the project permit.
- D. Construction Inspection, Damage and Repair. The Township shall monitor and inspect all Township roads used by the permittee, including the permittee's use of any unauthorized access routes, during the approved utility construction and shall identify any damages. In the event any Township road is damaged by the permittee's construction activity, the permittee shall be liable for the cost of repair and restoration of the road, including but not limited to sub-grade correction, base repair, re-surfacing, culvert replacement, bridge repair and ditch restoration.
 - (3) Financial Surety. The Township shall require a financial surety in a form acceptable to the Township to guarantee performance of the right-of-way improvement, maintenance and restoration requirements. The surety shall also be sufficient to guarantee all engineering, planning, and legal expenses to be incurred by the Township for the review and issuance of the right-of-way permit, monitoring of the permit conditions, inspections of all right-of-way improvements, and enforcement of the permit. The amount and form of the financial surety shall be determined by the Town Board. Upon completion of the required improvements and a recommendation of the Township Engineer to accept the improvements, the financial surety shall be released by the Town Board.
 - (4) Obstructions Prohibited. No equipment, materials, vehicles, or facilities related to the project shall be placed, parked, or otherwise located within a right-of-way in a way that obstruct the maintenance or safe pedestrian or vehicular usage of the right-of-ways.
 - (5) Parking and Loading. Vehicle parking and loading and unloading of vehicles related to the project is prohibited within the right-of-ways in areas unless expressly allowed in the project permit.

110.10. Revocation of Permit.

The Township may revoke a project permit following the procedures set out in Section 100.16 of this Ordinance.

110.11. Application of Articles.

The provisions of Article One of this Ordinance generally apply to large utility projects except to the extent they contradict an express provision of Article Two. Right-of-way users are not required to comply with the requirements of Article Two except to the extent they engage in a large utility project.

120.1. 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 Township from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

130.1. Effective Date.

This Ordinance shall be effective upon its passage and the first day of publication.

Adopted this 12th day of May, 2009.

BY THE TOWN BOARD

Pete Schaffer
Pete Schaffer, Chair

ATTEST:

Jane Bistodeau
Jane Bistodeau, Clerk

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