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OCT. 22, 2007 AT 10:00AM

TAMARA TRICAS  
COUNTY RECORDER  
PINE COUNTY, MN  
Fee Amount: \$46.00

TAMARA TRICAS  
COUNTY RECORDER  
PINE COUNTY, MN  
\$46.00

AN ORDINANCE REGULATING THE PUBLIC RIGHT-OF-WAY AND  
PROVIDING FOR ISSUANCE AND ADMINISTRATION OF RIGHT-OF-WAY  
PERMITS

STATE OF MINNESOTA )  
  ) ss.  
COUNTY OF PINE         )

Pokegama Township

I, Lisa A. Waggoner, Administrator/Clerk for Pokegama Township with and in for said County, do hereby certify that I have compared the foregoing copy of an Ordinance Regulating the Public Right-of-Way and Providing for Issuance and Administration of Right-of-Way Permits with the original record thereof preserved in the Office of the Pokegama Township Town Hall, and have found the same to be correct and true transcript of the whole thereof.

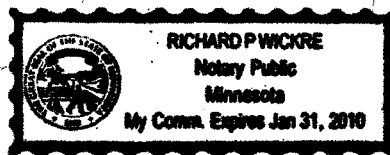
IN TESTIMONY WHEREOF, I have hereunto subscribed my hand at Pokegama Town Hall, Pine City, Minnesota, in the County of Pine on the 19<sup>th</sup> day of October, 2007.

Lisa Waggoner  
  
Administrator/Clerk  
Pokegama Township

This instrument was drafted by:  
Pokegama Township  
18336 Town Hall Road  
Pine City, Mn 55063

Subscribed and sworn to be before me  
This 19 day of October, 2007.

Notary Public  
Pokegama Township



**TOWNSHIP OF POKEGAMA  
COUNTY OF PINE  
STATE OF MINNESOTA**

**An Ordinance Regulating the Public Right-Of-Way and  
Providing for Issuance And Administration Of Right-Of-Way Permits**

**THE TOWNSHIP OF POKEGAMA ORDAINS AS FOLLOWS:**

**Right-of-Way Management**

**Sec. 1 Purpose and Authority.**

- a. Purpose.** The primary objectives of this ordinance is to protect the public safety, reduce interferences with public travel, protect the publics interest in the Right-Of-Way, and to provide for the efficient and uniformed administration of the Township’s road Right-Of-Way. The Board finds that the regulations, requirements, and restrictions, as set forth in this ordinance, are in the best interests of the health, safety, and welfare of the Town’s citizens.
- b. Authority.** As a road authority, the Board has broad authority to regulate what occurs within the Township’s road Right-Of-way. This authority is found in Minnesota Chapters 160, 164, 165, 169, 222, 237, and other chapters, as well as the rules associated with those chapters.

**Sec. 2. Definitions.**

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

- a. Applicant. "Applicant" means any Person requesting permission to excavate or obstruct a Right-of-Way.
- b. Approach. "Approach" means the area of the Right-Of-Way between the traveled surface of the road and the adjacent property that is intended to provide access for vehicles or equipment from the road to the adjacent property.
- c. Board. "Board" means the Township Board of Supervisors of Pokegama Township, Pine County, Minnesota.
- d. "Management Costs" means the actual costs the Township incurs in managing its 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 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 pursuant to Section 130 of this Ordinance.
- e. "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.
- f. "Department" means the Township Road Supervisor.
- g. "Delay Penalty" is the penalty imposed as a result of unreasonable delays in Right-of-Way construction.
- h. "Emergency" means a condition that (1) poses a clear and immediate 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.
- i. "Equipment" means any tangible asset used to install, repair, or maintain Facilities in any Right-of-Way.
- j. "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a Right-of-Way.
- k. "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.

- l. "Excavation Permit Fee" means money paid to the Township by an Applicant to cover the costs.
- m. "Facility or Facilities" means any tangible asset in the Right-of-Way required to provide Utility Service.
- n. "Inspector" means the Township Supervisor, or such other Person authorized by the Township Board resolution to carry out inspections related to the provisions of this Ordinance.
- o. "Local Representative" means a local Person or Persons, or designee of such Person or Persons, authorized by a Registrant to accept Service and to make decisions for that Registrant regarding all matters within the scope of this Ordinance.
- p. "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.
- q. "Patch or Patching" means a method of pavement replacement that is temporary in nature. A Patch consists of (1) the compaction of the sub-base 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 Township's five-year project plan.
- r. "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.
- s. "Person" means any natural or corporate Person, business association or other business entity including, but not limited to, a partnership of any kind, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
- t. "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 in the Right-of-Way.
- u. "Construction Performance Bond" means a performance bond, or other form of security posted to ensure the availability of sufficient funds to assure that Right-of-Way Excavation and Obstruction work is completed in accordance with the terms of the Right-of-Way Permit, or other applicable State law or local regulation.
- v. "Restore or Restoration" means the process by which a Right-of-Way is returned to the same condition and life expectancy that existed before excavation.
- w. "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 PUC rules.

x. "Right-of-Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the Township has an interest, including other dedicated rights-of-way 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.

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

z. "Service" or "Utility Service" includes but is not limited to (1) those services provided by a public utility as defined in Minn. Stat. § 216B.02, subds. 4 and 6; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; (3) the services provided by a corporation organized for the purposes set forth in Minn. Stat. § 300.03; (4) the services provided by a district heating or cooling system; and (5) cable communications systems as defined in Minn. Stat. Chap. 238; and a (6) Telecommunication Right-of-Way User as defined in (kk).

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

bb. "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. 2381 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.

cc. "Unusable Facilities" means Facilities in the Right-of-Way which have remained unused for one year and for which the Registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the Facilities.

### **Sec. 1.3. Administration.**

The Road Supervisor is the principal Township official responsible for the administration of the Rights-of-Way, Right-of-Way Permits, and the ordinances related thereto. The Supervisor may delegate any or all of the duties hereunder.

### Sec. 1.4. Permit Requirement.

**Subd. 1. *Permit Required.*** Except as otherwise provided in this Code, no person may obstruct or excavate any Right-of-Way without first having obtained the appropriate Right-of-Way Permit from the Supervisor to do so.

(a) ***Excavation Permit.*** An Excavation Permit is required by an Individual or corporation to Excavate that part of the Right-of-Way described in such permit and to hinder free and open passage over the specified portion of the Right-of-Way by placing Facilities described therein, to the extent and for the duration specified therein.

**Subd. 2. *Permit Extensions.*** No Person may excavate 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. *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 Inspector.

### Sec. 1.5. Permit Applications.

Application for a permit is made to the Supervisor. 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) 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 Rights-Of-Way or any emergency actions taken by the Township;

(c) 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) When an Excavation Permit is requested for purposes of installing additional Facilities, and the posting of a Construction Performance Bond for the additional Facilities is insufficient, the posting of an additional or larger Construction Performance Bond for the additional Facilities may be required.

**Sec. 1.6. Issuance of permit; conditions.**

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

**Subd. 2. *Conditions.*** The Supervisor 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.

**Sec. 1.7. Permit Fees.**

**Subd. 1. *Excavation Permit Fee.*** The Excavation Permit Fee shall be established by the Township board in an amount sufficient to recover the following costs:

- (a) The Township Management Costs;
- (b) Degradation Costs, if applicable.

**Subd. 2. *Payment of Permit Fees.*** No Excavation Permit shall be issued without payment of Excavation Fees.

**Subd. 3. *Non refundable.*** Permit fees that were paid for a permit that the Supervisor has revoked for a breach as stated in Section 1.20 are not refundable.

**Sec. 1.8. Right-of-Way Patching and Restoration.**

**Subd. 1. *Patch and Restoration.*** Permittee shall Patch its own work.

- (a) ***Permittee Restoration.*** When the Permittee Restores the Right-of-Way, it may be required, at the time of application for an Excavation Permit, post a Construction Performance Bond in an amount determined by the Township Board to be sufficient to cover the cost of Restoration.

**Subd. 2. *Standards.*** The Permittee shall perform Patching and Restoration according to the standards and with the materials specified or approved by the Township Supervisor.

**Subd. 3. *Failure to Restore.*** If the Permittee fails to Restore the Right-of-Way in the manner and to the condition required by the Township Supervisor, or fails to satisfactorily and timely complete all Restoration required by the Township Supervisor, 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 exercise its rights under the Construction Performance Bond.

### **Sec. 1.9. 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. *With Township Projects.*** Registrants who join in a scheduled obstruction or excavation performed by the Township, whether or not it is a joint application by two or more Registrants or a single application, are not required to pay the obstruction and degradation portions of the permit fee.

### **Sec. 1.10. 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 fees 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. 1.11. Other Obligations.**

**Subd. 1. *Compliance With Other Laws.*** Obtaining a Right-of-Way Permit does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the Township or other applicable rule, law or regulation. A Permittee shall comply with all requirements of local, state and federal laws, including Minn. Stat. §§ 216D.01-.09 ("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 Supervisor, 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 or other waterways shall be interfered with.

**Subd. 4. *Traffic Warnings and Signage.*** When working in or obstructing Township Right-of-Way, the Applicant is required to erect proper signage and traffic control devices to warn the public that work is being performed in the Right-of-Way or that the Right-of-Way is obstructed. All signs and traffic warning devices shall be erected as prescribed by and in conformance with the Minnesota Manual on Uniform Traffic Devices.

**Sec. 1.12. Denial of permit.**

The Township Supervisor may deny a permit for failure to meet the requirements and conditions of this Ordinance or if the Township Supervisors 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 use.

**Sec. 1.13. Inspection.**

**Subd. 1. *Notice of Completion.*** When the work under any permit hereunder is completed, the Permittee shall furnish a Completion Certificate.

**Subd. 2. *Site Inspection.*** Permittee shall make the work-site available to the Township Supervisor and to any other Township employees or agents and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

**Sec. 1.14. Work Done Without a Permit.**

**Subd. 1. *Emergency Situations.*** Each Registrant shall immediately notify the Township Supervisor of any event regarding its Facilities which 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, 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.

**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 pay double the normal fee for said permit, pay double all the other fees required by this Ordinance, deposit with the Township the fees necessary to correct any damage to the Right-of-Way and comply with all other requirements of this Ordinance.

**Sec. 1.15. Revocation of Permits.**

**Subd. 1. *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:

- (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 Township 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
- (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. 1.17.

**Subd. 2. *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.

**Sec. 1.16. Mapping Data.**

**Subd. 1. *Information Required.*** Each Permittee shall provide Mapping information required by the Township in accordance with PUC Rules.

**Subd. 2. *Trade Secret Information.*** At the request of any Permittee, any information requested by the Township, which qualifies as a "trade-secret" under Minn. Stat. § 13.37 (b) shall be treated as trade secret information as detailed therein.

**Sec. 1.17. Location of Facilities.**

**Subd. 1. *Undergrounding.*** Unless otherwise permitted by an existing franchise or Minnesota Stat. 216B.34, or unless existing above-ground Facilities is repaired or replaced, new construction and the installation of new Facilities and replacement of old Facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.

**Sec. 1.18. Pre-Excavation Facility and Facilities Location.**

In addition to complying with the requirements of Minn. Stat. §§ 216D.01-.09 ("One Call Excavation Notice System") before the start date of any Right-of-Way excavation, each Permittee who has Facilities or Equipment in the area to be excavated shall mark the horizontal and approximate vertical placement of all said Facilities.

**Sec. 1.18. Damage to Other Facilities.**

Each Permittee shall be responsible for the cost of repairing any Facilities in the Right-of-Way which it or its Facilities damages. Each Registrant shall be responsible for the cost of repairing any damage to the Facilities of another Registrant caused during the Township's response to an Emergency occasioned by that Registrant's Facilities.

**Sec. 1.19. Right-of-Way Vacation.**

**Subd. 1. *Reservation of Right.*** If the Township vacates a Right-of-Way which contains the Facilities of a Permittee, and if the vacation does not require the relocation of Permittee's Facilities, the Township shall reserve, to and for itself and all Registrants having Facilities in the vacated Right-of-Way, the right to install, maintain and operate any Facilities in the vacated Right-of-Way and to enter upon such Right-of-Way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

**Subd. 2. *Relocation of Facilities.*** If the vacation requires the relocation of Permittee's Facilities; and (i) if the vacation proceedings are initiated by the Permittee, the Permittee must pay the relocation costs; or (ii) if the vacation proceedings are initiated by the Township, the Permittee must pay the relocation costs unless otherwise agreed to by the Township and the Permittee; or (iii) if the vacation proceedings are initiated by a Person or Persons other than the Permittee, such other Person or Persons must pay the relocation costs.

**Sec. 1.20. Indemnification and Liability.**

By accepting a permit under this Ordinance, a Permittee agrees as follows:

**Subd. 1. *Limitation of Liability.*** By reason of the grant of a Right-of-Way Permit, the Township does not assume any liability (i) for injuries to Persons, damage to property, or loss of Service claims by parties other than the Registrant or the Township, or (ii) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Facilities by Registrants or activities of Registrants.

**Subd. 2. *Indemnification.*** A Permittee shall indemnify, keep, and hold the Township, its representatives, officers, employees or assigns free and harmless from any and all liability on account of injury to Persons or damage to property occasioned by the issuance of permits or by the construction, maintenance, repair, inspection, or operation of Permittee or Permittee's Facilities located in the Right-of-Way.

**Sec. 1.21. Appeal.**

a) A Right-of-Way User that: (1) has been denied a permit; (2) has had permit revoked; or (3) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the Township Board. The Township Board shall act on a written request in a timely manner. A decision by the Township Board affirming the denial, revocation, or fee imposition will be writing and supported by written findings establishing the reasonableness of the decision.

b) Upon affirmation by the Township Board of the denial, revocation, or fee imposition, the Right-of-Way User shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the Township Board and Right-of-Way User. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the Township, one arbitrator selected by the Right-of-Way User and one selected by the other two arbitrators.

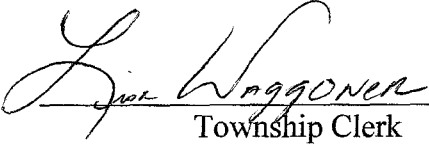
**Sec. 1.22. Severability.**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency 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. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this Ordinance or any portions of this Ordinance is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. 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.

**Sec. 1.23. Excavation Permit Fee Schedule: \$50.00**

**ADOPTED** this 27th day of September, 2007, by the Township Board of the Township of Pokegama.

**POKEGAMA TOWNSHIP**

  
Township Clerk

  
Township Chairperson