BALDWIN TOWNSHIP
SHERBURNE COUNTY, MINNESOTA
Ordinance No. 500

AN ORDINANCE AMENDING ORDINANCE NO. 100 RELATED TO USE OF RIGHTS-OF-WAY BY UTILITY PROVIDERS

The Board of Supervisors of the Town of Baldwin obtains:

SECTION I. Article II, Section 2.03 of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding the underscored language as follows:

25. **Registrant.** "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.

SECTION II. Article II of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding Section 2.031 as follows:

Section 2.031. Registration and Right-of-Way Occupancy.

1. **Registration.** Each person who occupies, uses, or seeks to occupy or use, the right-of-way for purposes of placing, maintaining or repairing 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 Town. Registration will consist of providing application information and paying a registration fee.

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 Town.

3. **Exceptions.** Nothing herein shall be construed to repeal or amend the provisions of a Town 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. However, nothing herein relieves a person from compliance with the provisions of the Minn. Stat. Chap. 216D, "One call" Law.

SECTION III. Article II of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding Section 2.032 as follows:

Section 2.032. Registration Information.

1. **Information Required.** The information provided to the Town at the time of registration shall include, but not be limited to:

   (a) Each of the following, if applicable; registrant's name, Gopher One-Call registration certificate number, address, e-mail address, 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 Town;

      (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 Town and its engineer as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;

      (4) Requiring that the Town 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 Town in amounts sufficient to protect the Town and the public and to carry out the purposes and policies of this Ordinance.

   (d) The Town 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 with 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.

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

SECTION IV. Article II of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding Section 2.033 as follows:

Section 2.033. Reporting Obligations.

1. **Operations.** Each registrant shall, at the time of registration and 60 days prior to construction, file a construction and major maintenance plan for underground facilities with the Town. Such plan shall be submitted using a format designated by the Town and shall contain the information determined by the Town to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

   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").

   The term "project" in this section shall include next-years projects.

SECTION V. Article II, Section 2.05 of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding the <u>underscored</u> language as follows:

<u>E.</u> <u>Registration with the Town pursuant to this Article.</u>

<u>F.</u> <u>Registrants who join in a scheduled obstruction or excavation performed by the Town, 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.</u>

<u>G.</u> <u>Registrants who apply for permits for the same obstruction or excavation, which the Town does not perform, may share in the payment of the obstruction or excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.</u>

SECTION VI. Article II, Section 2.08 of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by deleting the ~~stricken~~ language and adding the <u>underscored</u> language as follows:

3. **Standards.** ~~The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the Town and shall comply with~~

~~Minnesota Rule, part 7819.1100.~~ The permittee shall perform patching and restoration according to the standards and with the materials specified or approved by the Town engineer. The Town engineer 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 Town engineer in exercising this authority shall comply with the standards for right-of-way restoration in Minnesota Rule, part 7819.1100 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.

4. **Guarantees.** By choosing to restore the right-of-way itself, 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 Town, correct all restoration work to the extent necessary, using the method required by the Town engineer. Said work shall be completed within five (5) business days of the receipt of the notice from the Town, exclusive of weekends, legal holidays, periods during which work cannot be done because of circumstances beyond permittee's reasonable control or days when work is prohibited as unseasonal or unreasonable as provided in this Ordinance.

SECTION VII. Article II, Section 2.10 of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding the underscored language as follows:

5. **Traffic Warnings and Signage.** When working in or obstructing a Town 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 Control Devices.

SECTION VIII. Article II, Section 2.16 of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding the underscored language as follows:

5. **Cause for Probation.** From time to time, the Town may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one 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.

6. **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 full year, except for emergency repairs.

SECTION IX. Article II of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding Section 2.165 as follows:

Section 2.165. Mapping Data.

1. **Information Required.** Each registrant shall provide mapping information required by the Town in accordance with Minnesota Rules, part 7819.4100.

2. **Trade Secret Information.** At the request of any registrant, any information requested by the Town, which qualifies as a "trade-secret information" under Minnesota Statutes, section 13.37, subdivision 1(b), shall be treated as trade secret information by the Town.

SECTION X. Article II, Section 2.17 of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by deleting the ~~stricken~~ language and adding the underscored language as follows:

Section 2.17. 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 Towns.~~

1. **Undergrounding.** Unless otherwise permitted by an existing franchise or Minnesota Statutes, section 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.

2. **Corridors.** The Town engineer may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the Town engineer expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the Town involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

   Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the Town engineer 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 Town 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.

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 Town 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.

4. **Limitation of Space.** To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Town shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the Town 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 needs 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 Town plans for public improvements and development projects which have been determined to be in the public interest.

SECTION XI. Article II of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding Section 2.171 as follows:

Section 2.171. 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 Town for good cause requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The Town may make such request to prevent interference by the company's equipment or facilities with (i) a present or future Town use of the right-of-way, (ii) a public improvement undertaken by the Town, (iii) an economic development project in which the Town 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.

Notwithstanding the foregoing, 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 therefor.

SECTION XII. Article II of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding Section 2.172 as follows:

Section 2.172. Pre-Excavation Facility and Facilities Location.

In addition to complying with the requirements of Minnesota Statutes, Sections 216D.01-.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 approximate vertical placement of all said facilities. Any registrant whose facilities is less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

SECTION XIII. Article II of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding Section 2.173 as follows:

Section 2.173. Damage to Other Facilities.

When the Town does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the Town 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 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 Town's response to an emergency occasioned by that registrant's facilities.

SECTION XIV. Article II, Section 2.18 of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by deleting the ~~stricken~~ language and adding the underscored language as follows:

Section 2.18. Right-of-Way Vacation.

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

1. **Reservation of Right.** If the Town vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant's or permittee's facilities, the Town 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.

2. **Relocation of Facilities.** If the vacation requires the relocation of registrant's or permittee's facilities; and (i) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or (ii) if the vacation proceedings are initiated by the Town, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the Town and the registrant or permittee; or (iii) if the vacation proceedings are initiated by a person or persons other than the registrant or permittee, such other person or persons must pay the relocation costs.

SECTION XV. Article II, Section 2.19 of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by deleting the ~~stricken~~ language and adding the underscored language as follows:

Section 2.19. Indemnification and Liability.

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

By registering with the Town, or by accepting a permit under this Ordinance, a registrant or permittee agrees as follows:

1. **Limitation of Liability.** By reason of the acceptance of a registration or the grant of a right-of-way permit, the Town 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 Town, 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.

2. **Indemnification.** A registrant or permittee shall indemnify, keep, and hold the Town, 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 registrant's or permittee's facilities located in the right-of-way.

   The Town shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the local government unit's negligence as to the issuance of permits or inspections to ensure permit compliance. The Town shall not be indemnified if the injury or damage results from the performance in a proper manner of acts that the registrant or permittee reasonably believes will cause injury or damage, and the performance is nevertheless ordered or directed by the Town after receiving notice of the registrant's or permittee's determination.

3. **Defense.** If a suit is brought against the Town under circumstances where the registrant or permittee is required to indemnify, the registrant or permittee, at its sole cost and expense, shall defend the Town in the suit if written notice of the suit is promptly given to the registrant or permittee within a period in which the registrant or permittee is not prejudiced by the lack or delay of notice.

   If the registrant or permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permittee may not settle the litigation without the consent of the Town. Consent will not be unreasonably withheld.

   This part is not, as to third parties, a waiver of any defense, immunity, or damage limitation otherwise available to the Town.

   In defending an action on behalf of the Town, the registrant or permittee is entitled to assert in an action every defense, immunity, or damage limitation that the Town could assert in its own

behalf.

SECTION XVI. Article II, Section 2.20 of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by deleting the ~~stricken~~ language and adding the underscored language as follows:

Section 2.20. Abandoned and Unusable Facilities.

~~1. **Discontinued Operations.** A right-of-way user who has determined to discontinue all or a portion of its operations in the Town must provide information satisfactory to the Town that the right-of-way user's obligations for its facilities in the right-of-way under this Article have been lawfully assumed by another person.~~

~~2. **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 Town.~~

1. **Discontinued Operations.** A registrant who has determined to discontinue its operations in the Town must either:

   (a) Provide information satisfactory to the Town that the registrant's obligations for its facilities in the right-of-way under this Ordinance have been lawfully assumed by another registrant; or

   (b) Submit to the Town a proposal and instruments for transferring ownership of its facilities to the Town. If a registrant proceeds under this clause, the Town may, at its option:

      (1) purchase the facilities; or

      (2) require the registrant, at its own expense, to remove it; or

      (3) require the registrant to post a bond in an amount sufficient to reimburse the Town for reasonably anticipated costs to be incurred in removing the facilities.

2. **Abandoned Facilities.** Facilities of a registrant who fails to comply with subd. 1 of this Section, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. The Town may exercise any remedies or rights it has at law or in equity, including, but not limited to, (i) abating the nuisance (ii) taking possession of the facilities and restoring it to a useable condition, or (iii) requiring removal of the facilities by the registrant, or the registrant's successor in interest.

3. **Removal.** Any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, unless this requirement is waived by the Town.

SECTION XVII. Article II of Ordinance No. 100 Regulating Town Road Rights-of-Way is amended by adding Section 2.21 as follows:

Section 2.21. Reservation of Regulatory and Police Powers.

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

SECTION XVIII. Incorporation of Amendments. The Town Clerk/Treasurer is hereby authorized and directed to, with the Town Attorney's assistance if needed, incorporate these amendments into the text of the Ordinance No. 100, including renumbering sections and subsections as needed, to produce an updated and complete copy of the amended Ordinance No. 100.

SECTION XIX: This ordinance shall become effective on the first day of publication after its adoption.

Adopted on this 7 day of 11, 2011.

BY THE TOWN BOARD

Town Chairperson

Attest: Cathy Stevens
Town Clerk/Treasurer

(stamp)

For Office Use Only

Permit # _____

BALDWIN TOWNSHIP
PO BOX 25
PRINCETON, MN 55371
PHONE 763-389-8931 FAX 763-389-2751

APPLICATION AND AGREEMENT FOR EXCAVATION AND/OR OBSTRUCTION PERMIT UNDER ORDINANCE # 500

Application is hereby made for permission to place, excavate, or obstruct the right-of-way with a _____ (along or across) Baldwin Township Road (property address) _____ **in accordance with the sketch attached hereto.**

Business/Contractor Name: _____
Applicant: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Email: _____

Contact Person: _____ **Telephone #** _____
Email: _____

Certificate of Insurance Provided to Baldwin Township: From _____ to _____
(Dates of coverage)

Construction Location (describe):

_____
_____

From/to: (Address/Intersection) _____

Purpose/Type of Construction (check all that apply)

New_____ Replacement_____ Repair _____ Other _____

Trench _____ Hole _____ Chamber _____ Boring _____

Other _____

Excavation Size: Length _____ Width _____ Depth _____

Construction Schedule
Number of Construction Days: _____ Construction Dates: _____

Applicant acknowledges receipt of and is familiar with the provisions of Ordinance #500. Applicant agrees to return Township Right-of-Way to original condition when project is complete.

Signed: _____ Name (Print) _____
Date: _____

COMPLETE & RETURN A COPY OF PERMIT AFTER PROJECT COMPLETION

Permit Number: _____
Date Completed: _____

Send to: Baldwin Township
PO Box 25
Princeton, MN 55371

Name of Applicant: _____