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°ALSO ADMITTED IN MASSACHUSETTS
□ALSO ADMITTED IN OKLAHOMA
ΔALSO ADMITTED IN ARIZONA

TO: Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: March 28, 2018
RE: Small Wireless Ordinance Amendments – April 3, 2018 Council Meeting;
Agenda Items 8(a) 1-5

Section 1. Background. At the February 21, 2018 Planning Commission meeting, a public hearing was held to discuss small wireless regulations. The Planning Commission voted 5-0 to regulate small wireless communications as a conditional use in the R-1 Single-Family District right-of-way; prohibit small cell wireless on private property in the R-1 District; require a conditional use permit for small cell wireless on private property in the INS Institutional District; and allow small wireless in the right-of-way in the INS Institutional District, with performance standards.

At the March 6, 2018 Council meeting, the Council reviewed and discussed the proposed small wireless ordinance amendments that had been reviewed by the Planning Commission by way of the public hearing. The ordinances and resolution reviewed by the City Council were as follows:

1. Ordinance Amending Sunfish Lake City Code Chapter 1241.05-1 to Include Small Wireless Facilities as a Conditional Use in the R-1 District;
2. Ordinance Amending Sunfish Lake City Code Chapter 1242.02 to Include Small Wireless Facilities as a Permitted Use in the Institutional District with Performance Standards;
3. Ordinance Amending Sunfish Lake City Code Chapter 1242.05-1 to Include Small Wireless Facilities as a Conditional Use in the Institutional District;
4. Ordinance Enacting Chapter 806 of the Sunfish Lake City Code Relating to Right of Way Management; and
5. Resolution Approving a Small Wireless Facility Collocation Agreement model form.

Section 2. Ordinance Amending Sunfish Lake City Code Chapter 1241.05-1 to Include Small Wireless Facilities as a Conditional Use in the R-1 District. This ordinance allows small wireless facilities in the right-of-way in the R-1 District with a conditional use permit. Since the zoning code does not otherwise allow small wireless facilities in the R-1 District, the location of such facilities in the R-1 District will be limited to public right-of-way and such facilities will continue to be prohibited on private property outside of the right-of-way.

Section 3. Ordinance Amending Sunfish Lake City Code Chapter 1242.02 to Include Small Wireless Facilities as a Permitted Use in the Institutional District with Performance Standards. This ordinance allows small wireless facilities as a permitted use in the public right-of-way in the Institutional District with performance standards. This ordinance only addresses the public right-of-way in the Institutional District.

Section 4. Ordinance Amending Sunfish Lake City Code Chapter 1242.05-1 to Include Small Wireless Facilities as a Conditional Use in the Institutional District. This ordinance allows small wireless facilities on private property outside of the public right-of-way in the Institutional District as a conditional use. This is similar to how the City treats antenna towers in the Institutional District.

Section 5. Ordinance Enacting Chapter 806 of the Sunfish Lake City Code Relating to Right of Way Management. The City does not currently have a right-of-way management ordinance in place. The right of way management ordinance governs the use of right-of-way space both above and below ground to manage the placement of utilities and who would pay to relocate them. The ordinance is based on the model ordinance that most suburban communities have adopted in the metropolitan area. It empowers the City to manage the public right-of-way and regulates the conditions under which utilities (electric and gas) can locate their lines within public right-of-way.

Section 6. Resolution Approving a Small Wireless Facility Collocation Agreement Model Form. The City has the authority to adopt rules by resolution or ordinance that allow wireless companies to use the government owned structures in the public right-of-way and to charge a fee for the placement. Most cities prefer to adopt the Collocation Agreement model form by resolution since it would be easier to change than an ordinance. Sunfish Lake does not own many structures in the public right-of-way, however, it is recommended that the City have the Collocation Agreement model form in place should the City need it.

Section 7. Council action. At the April 3, 2018 Council meeting the Council will be asked to consider the following:

1. Ordinance Amending Sunfish Lake City Code Chapter 1241.05-1 to Include Small Wireless Facilities as a Conditional Use in the R-1 District;
2. Ordinance Amending Sunfish Lake City Code Chapter 1242.02 to Include Small Wireless Facilities as a Permitted Use in the Institutional District with Performance Standards;
3. Ordinance Amending Sunfish Lake City Code Chapter 1242.05-1 to Include Small Wireless Facilities as a Conditional Use in the Institutional District;

4. Ordinance Enacting Chapter 806 of the Sunfish Lake City Code Relating to Right of Way Management; and
5. Resolution Approving a Small Wireless Facility Collocation Agreement model form.

The Planning Commission already held the public hearing. The City posted a Notice of Meeting (to consider the ordinance amendments) and placed a Notice of Meeting on the City website that the Council will be considering the five documents at the April 3rd meeting. The ordinance amendments and resolution are ready for Council action.

Attachments

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

ORDINANCE NO. _____

**AN ORDINANCE AMENDING SUNFISH LAKE CITY CODE CHAPTER 1241.05-1 TO
INCLUDE SMALL WIRELESS FACILITIES AS A CONDITIONAL USE
IN THE R-1 DISTRICT**

The City Council of Sunfish Lake hereby ordains:

Section One. **Amendment.** Chapter 1241.05-1 of the Sunfish Lake City Code is hereby amended to read as follows:

SECTION 1241.05-1 CONDITIONAL USES:

Subject to applicable provisions of this Ordinance, the following are conditional uses in an R-1 District. (Requires a conditional use permit based upon procedures set forth in and regulated by Section 1204 of this Ordinance.)

- A. Accommodations for horses as an accessory use, in accordance with the following provisions:
1. The minimum lot size for accommodating one horse shall be three (3) acres, plus two (2) acres of grazing land for each additional horse.
 2. All stables shall be located a minimum distance of two hundred (200) feet from any adjacent residential structure, excluding the residence of the applicant, and all corral areas shall be located a minimum distance of one hundred (100) feet from any adjacent residential lot, excluding the residence of the applicant.
 3. All accommodations for horses shall occur within the rear yard of a residential lot.
 4. Where an application for the boarding of a horse shall occur adjacent to a vacant lot, the City Council shall take into account a proper location of a future residence in considering the application.
 5. Only the horses of the property owner shall be kept on the property and there shall be no boarding of animals for other persons.
 6. The provisions of Section 1204.02.F of this Ordinance are considered and satisfactorily met.

B. Governmental and public related utility buildings, essential service structures as defined by Section 1201.02 of this Ordinance necessary for the health, safety and general welfare of the City, excluding public works type facilities, provided that:

1. When an abutting residential use or a residential use district, the property is screened and landscaped in compliance with Section 1218.03 of this Ordinance.
2. The provisions of Section 1204.02.F of this Ordinance are considered and satisfactorily met.

² C. Single satellite dish TVROs greater than one (1) meter in diameter as regulated by Section 1226 of this Ordinance.

³⁰ D. Ground mounted solar energy systems as regulated by Section 1230 of this Ordinance.

E. Small wireless facility in the public right-of-way, in accordance with the following provisions:

1. The small wireless facility shall only be located on a utility pole or wireless support structure, excluding stop lights. The utility pole or wireless support structure accommodating the small wireless facility shall not exceed fifty (50) feet in height.
2. The City may prohibit small wireless facility attachment to decorative public utility structures.
3. There shall be no interference with public safety communication or with the original use of the utility pole.
4. The small wireless facility shall not block light emanating from the utility pole.
5. If the small wireless facility is to be attached to a City-owned utility pole or wireless support structure, the applicant shall pay a rental fee to the City pursuant to the City's standard Collocation Agreement.
6. The small wireless facility shall, to the greatest extent possible match the utility pole or wireless support structure in color, material and design and the small wireless facility design shall, to the greatest extent possible minimize exposed cables, wires and other attachment hardware.
7. The small wireless facility shall not extend above the top of the existing utility pole by more than ten (10) feet and the maximum height of the utility pole or wireless support structure shall not be fifty (50) feet.

8. The small wireless facility shall be no larger than six (6) cubic feet.
9. The small wireless facility shall not extend outward from the utility structure by more than three (3) feet.
10. Unless otherwise agreed in a franchise or other agreement between the right-of-way user and the city, small wireless facilities in the right-of-way must be located or relocated and maintained underground in accordance and compliance with any requirements set forth in the right-of-way permit and City Code Chapter 806, Right of Way Management.
11. The small wireless facility applicant shall provide evidence that the utility pole or wireless support structure has adequate structural capacity to carry the additional equipment proposed.
12. The small wireless facility applicant must agree that the small wireless facility or any component of the small wireless facility equipment must be removed and relocated in compliance with any requirements set forth in the right-of-way permit and City Code Chapter 806, Right of Way Management, if the City or road authority for the public right-of-way in which it is located requires removal of/or relocation of the utility pole for a public project.
13. The small wireless facility applicant shall submit in writing to the City or obtain written approval from the utility pole or wireless support structure owner, if not the City, to which the small wireless facility will be attached.
14. The small wireless facility applicant shall obtain any and all permits and approvals from the road authority for the public right-of-way in which the small wireless facility is located.
15. The small wireless facility applicant must be a telecommunications right-of-way user as defined in Minn. Stat. § 237.162, Subd. 4.
16. The small wireless facility applicant shall obtain a right-of-way permit from the City's engineering department and comply with any requirements set forth in the right-of-way permit and City Code Chapter 806, Rights of Way Management.
17. A small wireless structure shall be at least nine hundred (900) feet in distance from any other small wireless structure.
18. All small wireless structures and small wireless facilities shall be installed two (2) feet from the edge of any trail, sidewalk, or pedestrian way so as not to obstruct or impede the trail, sidewalk or pedestrian way.

19. The small wireless facility shall be at least twelve (12) feet above the ground.
20. The small wireless facility shall be installed at the residential lot's corner in the right of way.
21. The small wireless facility applicant shall comply with all applicable local, state, and federal ordinances, statutes and regulations.

Section Two. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed this 3rd day of April, 2018.

Richard Williams, Mayor

ATTEST:

Catherine Iago, City Clerk

CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA

ORDINANCE NO. _____

**AN ORDINANCE AMENDING SUNFISH LAKE CITY CODE CHAPTER 1242.02 TO
INCLUDE SMALL WIRELESS FACILITIES AS A PERMITTED USE IN THE
INSTITUTIONAL DISTRICT WITH PERFORMANCE STANDARDS**

The City Council of Sunfish Lake hereby ordains:

Section One. Amendment. Chapter 1242.02 of the Sunfish Lake City Code is hereby amended to add the following:

SECTION 1242.02 PERMITTED USES:

C. Small wireless facilities, in the public right-of-way in accordance with the following provisions:

1. The small wireless facility shall only be located on a utility pole or wireless support structure, excluding stop lights. The utility pole or wireless support structure accommodating the small wireless facility shall not exceed fifty (50) feet in height.
2. The City may prohibit small wireless facility attachment to decorative public utility structures.
3. There shall be no interference with public safety communication or with the original use of the utility pole.
4. The small wireless facility shall not block light emanating from the utility pole.
5. If the small wireless facility is to be attached to a City-owned utility pole or wireless support structure, the applicant shall pay a rental fee to the City pursuant to the City's standard Collocation Agreement.
6. The small wireless facility shall, to the greatest extent possible match the utility pole or wireless support structure in color, material and design and the small wireless facility design shall, to the greatest extent possible minimize exposed cables, wires and other attachment hardware.
7. The small wireless facility shall not extend above the top of the existing utility pole by more than ten (10) feet and the maximum height of the utility pole or wireless support structure shall not be fifty (50) feet.

8. The small wireless facility shall be no larger than six (6)-cubic feet.
9. The small wireless facility shall not extend outward from the utility structure by more than three (3) feet.
10. Unless otherwise agreed in a franchise or other agreement between the right-of-way user and the city, small wireless facilities in the right-of-way must be located or relocated and maintained underground in accordance and compliance with any requirements set forth in the right-of-way permit and City Code Chapter 407, Right of Way Management.
11. The small wireless facility applicant shall provide evidence that the utility pole or wireless support structure has adequate structural capacity to carry the additional equipment proposed.
12. The small wireless facility applicant must agree that the small wireless facility or any component of the small wireless facility equipment shall be removed and relocated in compliance with any requirements set forth in the right-of-way permit and City Code Chapter 407, Right of Way Management, if the City or road authority for the public right-of-way in which it is located requires removal of/or relocation of the utility pole for a public project.
13. The small wireless facility applicant shall submit in writing to the City or obtain written approval from the utility pole or wireless support structure owner, if not the City, to which the small wireless facility will be attached.
14. The small wireless facility applicant shall obtain any and all permits and approvals from the road authority for the public right-of-way in which the small wireless facility is located.
15. The small wireless facility applicant must be a telecommunications right-of-way user as defined in Minn. Stat. § 237.162, Subd. 4.
16. The small wireless facility applicant shall obtain a right-of-way permit from the City's engineering department and comply with any requirements set forth in the right-of-way permit and City Code Chapter 806, Rights of Way Management.
17. A small wireless structure shall be at least nine hundred (900) feet in distance from any other small wireless structure.
18. All small wireless structures and small wireless facilities shall be installed two (2) feet from the edge of any trail, sidewalk, or pedestrian way so as not to obstruct or impede the trail, sidewalk or pedestrian way.

19. The small wireless facility shall be at least twelve (12) feet above the ground.
20. The small wireless facility applicant shall comply with all applicable local, state, and federal ordinances, statutes and regulations.

Section Two. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed this 3rd day of April, 2018.

Richard Williams, Mayor

ATTEST:

Catherine Iago, City Clerk

CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA

ORDINANCE NO. _____

**AN ORDINANCE AMENDING SUNFISH LAKE CITY CODE CHAPTER 1242.05-1 TO
INCLUDE SMALL WIRELESS FACILITIES AS A CONDITIONAL USE IN THE
INSTITUTIONAL DISTRICT**

The City Council of Sunfish Lake hereby ordains:

Section One. Amendment. Chapter 1242.05-1 of the Sunfish Lake City Code is hereby amended to add the following:

SECTION 1242.05-1 CONDITIONAL USES:

I. Small wireless facilities, in accordance with the following provisions:

1. The small wireless facility shall only be located on a utility pole or wireless support structure, excluding stop lights. The utility pole or wireless support structure accommodating the small wireless facility shall not exceed fifty (50) feet in height.
2. The City may prohibit small wireless facility attachment to decorative public utility structures.
3. There shall be no interference with public safety communication or with the original use of the utility pole.
4. The small wireless facility shall not block light emanating from the utility pole.
5. If the small wireless facility is to be attached to a City-owned utility pole or wireless support structure, the applicant shall pay a rental fee to the City pursuant to the City's standard Collocation Agreement.
6. The small wireless facility shall, to the greatest extent possible match the utility pole or wireless support structure in color, material and design and the small wireless facility design shall, to the greatest extent possible minimize exposed cables, wires and other attachment hardware.
7. The small wireless facility shall not extend above the top of the existing utility pole by more than ten (10) feet and the maximum height of the utility pole or wireless support structure shall not be fifty (50) feet.
8. The small wireless facility shall be no larger than six (6)-cubic feet.

9. The small wireless facility shall not extend outward from the utility structure by more than three (3) feet.
10. Unless otherwise agreed in a franchise or other agreement between the right-of-way user and the city, small wireless facilities in the right-of-way must be located or relocated and maintained underground in accordance and compliance with any requirements set forth in the right-of-way permit and City Code Chapter 407, Right of Way Management.
11. The small wireless facility applicant shall provide evidence that the utility pole or wireless support structure has adequate structural capacity to carry the additional equipment proposed.
12. The small wireless facility applicant must agree that the small wireless facility or any component of the small wireless facility equipment shall be removed and relocated in compliance with any requirements set forth in the right-of-way permit and City Code Chapter 407, Right of Way Management, if the City or road authority for the public right-of-way in which it is located requires removal of/or relocation of the utility pole for a public project.
13. The small wireless facility applicant shall submit in writing to the City, or obtain written approval from the utility pole or wireless support structure owner, if not the City, to which the small wireless facility will be attached.
14. The small wireless facility applicant shall obtain any and all permits and approvals from the road authority for the public right-of-way in which the small wireless facility is located.
15. The small wireless facility applicant must be a telecommunications right-of-way user as defined in Minn. Stat. § 237.162, Subd. 4.
16. The small wireless facility applicant shall obtain a right-of-way permit from the City's engineering department and comply with any requirements set forth in the right-of-way permit and City Code Chapter 806, Rights of Way Management.
17. A small wireless structure shall be at least nine hundred (900) feet in distance from any other small wireless structure.
18. All small wireless structures and small wireless facilities shall be installed two (2) feet from the edge of any trail, sidewalk, or pedestrian way so as not to obstruct or impede the trail, sidewalk or pedestrian way.
19. The small wireless facility shall be at least twelve (12) feet above the ground.
20. The small wireless facility applicant shall comply with all applicable local, state, and federal ordinances, statutes and regulations.

Section Two. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed this 3rd day of April, 2018.

Richard Williams, Mayor

ATTEST:

Catherine Iago, City Clerk

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

ORDINANCE NO. 18-____

**AN ORDINANCE ENACTING CHAPTER 806 OF THE SUNFISH LAKE CITY CODE
RELATING TO RIGHT OF WAY MANAGEMENT**

The City Council of Sunfish Lake hereby ordains:

Section One. ENACTMENT. Chapter 806 of the Sunfish Lake City Code is hereby enacted as follows:

**CHAPTER 806
RIGHT OF WAY MANAGEMENT**

SECTION 806.01: FINDINGS, PURPOSE AND INTENT

SECTION 806.02: ELECT TO MANAGE PUBLIC RIGHTS OF WAY

SECTION 806.03: DEFINITIONS

SECTION 806.04: ADMINISTRATIVE OFFICIAL

SECTION 806.05: UTILITY COORDINATION COMMITTEE

SECTION 806.06: REGISTRATION AND RIGHT OF WAY OCCUPANCY

SECTION 806.07: PERMIT REQUIREMENTS

Subd. 1: PERMITS REQUIRED

Subd. 2: APPLICATION FOR PERMIT

Subd. 3: PERMIT FEES

Subd. 4: SECURITY

Subd. 5: ISSUANCE OF PERMIT; CONDITIONS

Subd. 6: DENIAL OF PERMIT

Subd. 7: DISPLAY OF PERMIT

Subd. 8: EXTENSION OF PERMIT

Subd. 9: JOINT AND INDIVIDUAL APPLICATIONS

Subd. 10: REVOCATION OF PERMITS

Subd. 11: SUPPLEMENTARY APPLICATIONS

SECTION 806.08: OTHER OBLIGATIONS

SECTION 806.09: ROUTINE OBSTRUCTION AND EXCAVATION

SECTION 806.10: DILIGENCE IN PERFORMING WORK; DELAY PENALTY

SECTION 806.11: WORK STANDARDS

SECTION 806.12: INSPECTIONS

SECTION 806.13: WORK WITHOUT PERMIT

SECTION 806.14: INSTALLATION REQUIREMENTS

SECTION 806.15: PATCHING AND RESTORATION OF RIGHT OF WAY

SECTION 806.16: MAPPING DATA

SECTION 806.17: UNDERGROUNDING

SECTION 806.18: LOCATION AND RELOCATION OF FACILITIES

SECTION 806.19: PREEXCAVATION FACILITIES LOCATION

SECTION 806.20: INTERFERENCE BY OTHER FACILITIES

SECTION 806.21: VACATION OF RIGHT OF WAY

SECTION 806.22: INDEMNIFICATION AND LIABILITY

SECTION 806.23: ABANDONED FACILITIES

SECTION 806.24: APPEALS

SECTION 806.25: RESERVATION OF REGULATORY AND POLICE POWERS

SECTION 806.26: SEVERABILITY

SECTION 806.01 FINDINGS, PURPOSE AND INTENT:

- A. To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights of way, the city strives to keep its rights of way in a state of good repair and free from unnecessary encumbrances.
- B. Accordingly, the city enacts this Chapter relating to right of way permits and administration. This Chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within the city rights of way or to be placed therein at some future time. This Chapter is intended to complement the regulatory roles of state and federal agencies. Under this Chapter, persons excavating and obstructing the rights of way will bear financial responsibility for their work through the recovery of out of pocket and projected costs from persons using the public rights of way.
- C. This Chapter shall be interpreted consistently with 1997 session laws, Chapter 123, substantially codified in Minnesota Statutes Sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "act") and 2017 session laws, Chapter 94 amending the Act and the other laws governing applicable rights of the city and users of the rights of way. This Chapter shall also be interpreted consistent with Minnesota Rules 7819.0050 through 7819.9950, where possible. To the extent that any provision of this Chapter cannot be interpreted consistently with the Minnesota Rules, the interpretation most consistent with the act and other applicable statutory and case law is intended.

SECTION 806.02 ELECT TO MANAGE PUBLIC RIGHTS OF WAY:

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city elects, pursuant to Minnesota Statutes Section 237.163 subdivision 2(b), to manage rights of way within its jurisdiction.

SECTION 806.03 DEFINITIONS:

The following definitions apply in this Chapter:

ABANDONED FACILITY: A facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right of way user.

APPLICANT: Any person requesting permission to excavate or obstruct a right of way.

CITY: The city of Sunfish Lake, Minnesota. For purposes of Section 806.22 of this Chapter, "City" means its elected officials, officers, employees and agents.

COLLOCATE OR COLLOCATION: To install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the City or other governmental unit.

COMMISSION: The Minnesota public utilities commission.

CONGESTED RIGHT OF WAY: A crowded condition in the subsurface of the public right of way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minnesota Statutes Section 216D.04, subdivision 3, over a continuous length in excess of five hundred feet (500').

CONSTRUCTION PERFORMANCE BOND: Any of the following forms of security provided at permittee's option:

- A. Individual project bond, including a license and permit bond.
- B. Cash deposit.
- C. Security of a form listed or approved under Minnesota Statutes Section 15.73, subdivision 2.
- D. Letter of credit, in a form acceptable to the City.
- E. Self-insurance, in a form acceptable to the City.
- F. A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.

DEGRADATION: 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.

DEGRADATION COST: Subject to Minnesota Rules 7819.1100, means the cost to achieve a level of restoration as determined by the City 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.

DEGRADATION FEE: The estimated fee established at the time of permitting by the City 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.

DELAY PENALTY: The penalty imposed as a result of unreasonable delays in right of way excavation, obstruction, patching, or restoration as established by permit.

DEPARTMENT INSPECTOR: Any person authorized by the City to carry out inspections related to the provisions of this Chapter.

ENGINEER: The City Engineer or his designee.

EMERGENCY: A condition that:

- A. Poses a danger to life or health, or of a significant loss of property; or
- B. Requires immediate repair or replacement of facilities in order to restore service to a customer.

EQUIPMENT: Any tangible asset used to install, repair, or maintain facilities in any right of way.

EXCAVATE: To dig into or in any way remove or physically disturb or penetrate any part of a right of way.

FACILITY OR FACILITIES: Tangible asset in the public right of way required to provide utility service.

HIGH DENSITY CORRIDOR: A designated portion of the public right of way within which telecommunications right of way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

HOLE: An excavation in the right of way, with the excavation having a length less than the width of the pavement or adjacent pavement.

LOCAL REPRESENTATIVE: 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 Chapter.

MANAGEMENT COSTS: The actual costs the City 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 or small wireless facility_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; mapping of as built location of facilities located in the right of way; revoking right of way or small wireless facility_permits; and performing all other tasks required by this Chapter, including other costs the City may incur in managing matters described in this Chapter. Management costs do not include payment by a telecommunications right of way user for the use of the right of way, unreasonable fees of a third-party contractor used by the City including fees tied to or based on customer counts, access lines, or revenues generated by the right of way or for the City, the fees and costs of litigation relating to the interpretation of Minnesota session laws 1997, Chapter 123; Minnesota Statutes Section 237.162 or 237.163 or any ordinance enacted under those Sections, or the City fees and costs related to appeals taken

pursuant to Section 806.24 of this Chapter.

OBSTRUCT: 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.

OBSTRUCTION PERMIT: The permit which, pursuant to this Chapter, 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, including a blanket permit for a period of time and for types of work specified by the Engineer, if deemed appropriate in his discretion.

OBSTRUCTION PERMIT FEE: Money paid to the City by a permittee to cover the costs as provided in Section 806.07, Subd. 3 of this Chapter.

PATCH OR PATCHING: A method of pavement replacement that is temporary in nature. A patch consists of:

- A. The compaction of the subbase and aggregate base; and
- B. The replacement, in kind, of the existing pavement for a minimum of two feet (2') beyond the edges of the excavation in all directions.

PAVEMENT: Any type of improved surface that is within the public right of way and that is paved or otherwise constructed with paver blocks, bituminous, concrete, aggregate, or gravel.

PERMIT: Has the meaning given "right of way permit" in Minnesota Statutes Section 237.162.

PERMITTEE: Any person to whom a permit to excavate or obstruct a right of way has been granted by the City under this Chapter.

PERSON: 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.

PUBLIC RIGHT OF WAY: Has the meaning given thereto in Minnesota Statutes Section 237.162, subdivision 3.

REGISTRANT: Any person who:

- A. Has or seeks to have its equipment or facilities located in any right of way; or
- B. In any way occupies or uses, or seeks to occupy or use, the right of way or place its facilities or equipment in the right of way.

RESTORE OR RESTORATION: 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.

RIGHT OF WAY PERMIT: Either the utility permit or the obstruction permit, or both, depending on the context, required by this Chapter.

RIGHT OF WAY USER: A. A telecommunications right of way user as defined by Minnesota Statutes Section 237.162, subdivision 4; or

C. 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.

SERVICE LATERAL: 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.

SERVICE OR UTILITY SERVICE: Means and includes:

- A. Those services provided by a public utility, as defined in Minnesota Statutes Section 216B.02, subdivisions 4 and 6;
- B. Services of a telecommunications right of way user, including transporting of voice or data information;
- C. Services of a cable communications system as defined in Minnesota Statutes Section 238.02, subdivision 3;
- D. Natural gas or electric energy or telecommunications services provided by the City;
- E. Services provided by a cooperative electric association organized under Minnesota Statutes Chapter 308A; and
- F. Water, sewer, including service laterals, steam, cooling or heating services.

SMALL WIRELESS FACILITY: A wireless facility that meets both of the following qualifications:

- A. Each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or could fit within such an enclosure; and
- B. All other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than twenty-eight (28) cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes,

battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

SUPPLEMENTARY APPLICATION: An application made to excavate or obstruct more of the right of way than allowed in, or to extend, a permit that has already been issued.

TELECOMMUNICATIONS RIGHT OF WAY USER: 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 providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this Chapter, a cable communication system, defined and regulated under Minnesota Statutes Chapter 238, and telecommunications 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 Chapter except to the extent such entity is offering wireless service.

TEMPORARY SURFACE: The compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation.

TRENCH: An excavation in the right of way, with the excavation having a length equal to or greater than the width of the pavement or adjacent pavement.

UTILITY PERMIT: The permit which, pursuant to this Chapter, must be obtained before a person may excavate in a right of way. A utility permit allows the holder to excavate that part of the right of way described in such permit.

UTILITY PERMIT FEE: Money paid to the City by an applicant to cover the costs as provided in Section 806.07, Subd. 3 of this Chapter.

UTILITY POLE: A pole that is used in whole or in part to facilitate telecommunications or electric service.

WIRELESS FACILITY: Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

WIRELESS SERVICE: Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided

using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.

WIRELESS SUPPORT STRUCTURE: A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the City.

SECTION 806.04 ADMINISTRATIVE OFFICIAL:

The Engineer is the principal City official responsible for the administration of the rights of way, right of way permits, and the ordinances related thereto. The Engineer may delegate any or all of the duties hereunder.

SECTION 806.05 UTILITY COORDINATION COMMITTEE:

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

SECTION 806.06 REGISTRATION AND RIGHT OF WAY OCCUPANCY:

A. Registration Required:

1. Each person who occupies, uses, or seeks to occupy or use the right of way or place any equipment or facilities in or on the right of way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the City. Registration will consist of providing application information and paying a registration fee. Registration shall be renewed annually. 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 City.
2. Nothing in this Chapter shall be construed to repeal or amend the provisions of a City ordinance establishing the rights of and limitations placed on 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 carrying out or requesting the following work shall not be deemed to use or occupy the right of way within the meaning of this Chapter, and shall not be governed by this Chapter:
 - a. Persons planting or maintaining vegetation in the boulevard.
 - b. Persons installing driveways.
 - c. Persons erecting fences over drainage or utility easements, subject to zoning restrictions.

d. Persons engaged in snow removal activities.

e. Persons installing mailboxes.

f. Persons installing irrigation systems.

g. Persons installing pet containment systems.

3. Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes Chapter 216D, gopher one call law.

B. Required Information: The registrant shall provide the following at the time of registration and shall promptly notify the City of changes in such information:

1. Registrant's name, address, telephone number, facsimile number and gopher one call registration certificate number if required by state law.

2. Name, address, telephone number, e-mail address, and facsimile number of the person responsible for fulfilling the obligations of the registrant.

3. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate in the City, where the person is lawfully required to have such authorization or approval from said commission or other state or federal agency.

a. A certificate of insurance from a company licensed to do business in the state of Minnesota providing coverage in the following amounts:

(1) General Liability: Public liability, including premises, products and complete operations:

Bodily injury liability	\$1,000,000.00 each person
	\$3,000,000.00 each occurrence

Property damage liability	\$3,000,000.00 each occurrence
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Bodily injury and property damage combined	\$3,000,000.00 single limit
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(2) Comprehensive: Automobile liability insurance, including owned, non-owned and hired vehicles:

Bodily injury liability	\$1,000,000.00 each person
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Property damage liability \$3,000,000.00 each occurrence

In lieu of the above, bodily injury
and property damage combined \$3,000,000.00 single limit

- b. Such certificate shall verify that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the: 1) use and occupancy of the right of way by the registrant, its officers, agents, employees and permittees; and 2) placement and use of equipment or 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 equipment and collapse of property. Such certificate shall also name the City 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. Such certificate shall require that the Engineer be notified thirty (30) days prior to cancellation of the policy.
- 4. Twenty four (24) hour emergency number.
- 5. An acknowledgment by the registrant of the indemnification pursuant to Section 806.22 of this Chapter.
- 6. Such other information the Engineer may require.
- C. Notice Of Changes: The registrant shall keep all of the information listed in Subsection B of this Section current at all times by providing to the City information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.
- D. Construction And Maintenance Plan:
 - 1. If requested by Engineer, each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the City. Such plan shall be submitted using a format designated by the City and shall contain the information determined by the City 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 locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year.
 - 2. Notwithstanding the foregoing, the City will not deny an application for a right of way permit for failure to include a project in a plan submitted to the City if the registrant has used commercially reasonable efforts to anticipate and plan for the project.

SECTION 806.08 PERMIT REQUIREMENTS:

Subd. 1 Permits Required:

Except as otherwise provided in this code, no right of way user may obstruct or excavate any right of way or install or place facilities in the right of way without first having obtained the appropriate right of way permit from the City to do so.

- A. **Utility Permit:** A utility permit is required by a registrant 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.
- B. **Obstruction Permit:** An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of the 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 utility permit for the same project.
- C. **Other Permits:** Other permits may be required for persons in accordance with this code.
- D. **Overhead Facilities:** Permits for installation, repair or other work on aboveground facilities within the meaning of Minnesota Statutes Section 237.163, subdivision 6(b)(4), will be obstruction permits, notwithstanding the need for excavation, provided the excavation is augered or hand dug for the purpose of placing a pole type structure.
- E. **Small Wireless Facility Permit:** A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

Subd. 2 Application For Permit:

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

- A. Registration with the City pursuant to this Chapter.
- B. Submission of a completed permit application form as provided by the City, including all required attachments, and five (5) copies of scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities owned or operated by the applicant. Plans must include scaled dimensions indicating the proposed location of the facility within the right of way and scaled dimensions of the facility from an existing physical topographic feature (such as "back of curb", "edge of bituminous road"). Plans must also show all existing physical topographic features (trees, shrubs, culverts, driveways, fences, street signs) that lie within ten feet (10') of the proposed facility location.

- C. Scaled drawings showing the location of any public streets, alleys, sidewalks, or trails that will be disrupted by the work.
- D. Scaled drawings showing the location of any public streets, alleys, sidewalks, or trails that will be temporarily closed to traffic or obstructed by the work.
- E. A description of methods to be used for restoration of streets or boulevards.
- F. Payment of money due the City 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 City because of applicant's prior excavations or obstructions of the rights of way or any emergency actions taken by the City.
- G. Payment of disputed amounts due the City by posting security or depositing in an escrow account an amount equal to at least one hundred percent (100%) of the amount owing.
- H. Posting an additional or larger construction performance bond for additional facilities when the applicant requests a utility permit to install additional facilities and the City deems the existing construction performance bond inadequate under applicable standards.

Subd. 3 Permit Fees:

- A. Fee Schedule And Fee Allocation: The City permit fee schedule shall be available to the public and established in advance where reasonably possible. The permit fees shall be designed to recover the City's actual costs incurred in managing the right of way and shall be based on an allocation among all users of the right of way, including the City.
- B. Fees Established:
 - 1. Utility Permit Fee: The City shall establish a utility permit fee in an amount sufficient to recover the following costs:
 - a. City management costs.
 - b. Degradation costs, if applicable.
 - 2. Obstruction Permit Fee: The City shall establish the obstruction permit fee which shall be in an amount sufficient to recover the City management costs.

3. Small Wireless Facility Permit Fee: The City shall impose a small wireless facility permit fee in an amount sufficient to recover:
- a. City management costs.
 - b. City engineering, make-ready, and construction costs associated with collocation of small wireless facilities.
- C. Payment Of Fees: No utility permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees.
- D. Fees Nonrefundable: Permit fees that were paid for a permit that the City has revoked for a breach, as stated in Section 806.07, Subd. 10 of this Chapter are not refundable.
- E. Application To Franchises: Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right of way user in the franchise.

Subd. 4 Security:

A construction performance bond in an amount determined by the Engineer shall be required from each applicant. A surety bond shall be from a corporate surety authorized to do business in the state. Security required pursuant to this Section shall require that the holder will perform the work in accordance with this Chapter and applicable permits and regulations; will pay to the City any costs incurred by the City in performing work pursuant to this Chapter; and will indemnify and save the City and its officers, agents and employees harmless pursuant to this code. The construction performance bond shall be released by the City upon completion of the work and compliance with all conditions imposed by the permit. For permits allowing excavations within the public right of way, the construction performance bond shall be held for a period of twenty four (24) months to guaranty the adequacy of all restoration work.

Subd. 5 Issuance of Permit; Conditions:

- A. Issuance: If the applicant has satisfied the requirements of this Chapter, the City shall issue a permit within ten (10) business days of receiving a completed application. If the City issues a permit under this Chapter, the applicant shall not be required to obtain a permit for the same work under Chapters 801, 802 and 803.
- B. Conditions: The City 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. The permittee shall comply with all conditions contained in the permit.

C. Notice Of Work: Upon request by the Engineer, the permittee shall notify in writing, in a form approved by the Engineer, all residents specified by the Engineer whose property is adjacent to the right of way where the proposed work is to be done indicating start and completion dates. Written notification is not required for routine obstruction and excavation projects described in Section 806.09 of this Chapter.

D. Small Wireless Facility Conditions:

- a. In addition to conditions under Section 806.07, Subd. 5(B), the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions: A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
- b. No new wireless support structure installed within the right-of-way shall exceed fifty (50) feet in height without the City's written authorization, provided that the City may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding fifty (50) feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
- c. No wireless facility may extend more than ten (10) feet above its wireless support structure.
- d. Where an applicant proposes to install a new wireless support structure in the right-of-way, the City may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
- e. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the City may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.
- f. Where an applicant proposes to replace a wireless support structure, the City may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

E. Small Wireless Facility Agreement:

A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the City, or any other City asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the City. The City may require payment of the following in the standard collocation agreement:

- a. Up to \$150 per year for rent to collocate on the City structure.

- b. \$25 per year for maintenance associated with the collocation;
- c. A monthly fee for electrical service as follows:
 - 1. \$73 per radio node less than or equal to 100 maximum watts;
 - 2. \$182 per radio node over 100 maximum watts; or
 - 3. The actual costs of electricity, if the actual cost exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the City and applicant.

F. Action on Small Wireless Facility Permit Applications:

- a. Deadline for Action: The City shall approve or deny a small wireless facility permit application within ninety (90) days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the City fails to approve or deny the application within the review periods established in this Section.
- b. Consolidated Applications: An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to fifteen (15) small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:
 - 1. are located within a two mile (2) radius;
 - 2. consist of substantially similar equipment; and
 - 3. are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the City may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

G. Tolling of Deadline:

The 90-day deadline for action on a small wireless facility permit application may be tolled if:

- a. The City receives applications from one or more applicants seeking approval of permits for more than thirty (30) small wireless facilities within a seven-day period. In such case, the City

may extend the deadline for all such applications by thirty (30) days by informing the affected applicants in writing of such extension.

- b. The applicant fails to submit all required documents or information and the City provides written notice of incompleteness to the applicant within thirty (30) days of receipt the application. Upon submission of additional documents or information, the City shall have ten days to notify the applicant in writing of any still-missing information.
- c. The City and a small wireless facility applicant agree in writing to toll the review period.

Subd. 6 Denial of Permit:

The City may deny a permit for failure to meet the requirements and conditions of this Chapter; or if the City 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; or for the following specific violations:

- A. Failure to register pursuant to Section 806.06 of this Chapter.
- B. A proposed excavation within a street or sidewalk surface that has been constructed or reconstructed within the preceding seven (7) years, unless the Engineer determines that no other locations are feasible or when necessitated by emergency.
- C. The applicant is subject to revocation of a prior permit issued pursuant to this Chapter.
- D. The proposed schedule for the work would conflict or interfere with an exhibition, celebration, festival or any other similar event.
- E. The right of way would become unduly congested due to the proposed facilities and equipment when combined with other uses in the right of way, as provided in Section 806.18(F) of this Chapter.
- F. Businesses or residences in the vicinity will be unreasonably disrupted.
- G. The applicant failed to meet a reasonable schedule to participate in a mandated joint trench operation with other applicants, and the additional work will unreasonably disrupt the restored right of way, businesses or residences.
- H. The proposed schedule conflicts with scheduled reconstruction of the right of way.

Procedural Requirements: The denial or revocation of a permit must be made in writing and must document the basis for the denial. The City must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the City and

resubmit its application. If the application is resubmitted within thirty (30) days of receipt of the notice of denial, no additional application fee shall be imposed. The City must approve or deny the resubmitted application within thirty (30) days after submission.

Subd. 7 Display of Permit:

Permits issued under this Chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.

Subd. 8 Extension of Permit:

No person may excavate or obstruct the right of way beyond the date or dates specified in the permit unless: a) such person makes a supplementary application for another right of way permit before the expiration of the initial permit or requests a verbal extension; and b) a new permit or permit extension is granted. Verbal extensions may be granted by the Engineer for a period no greater than forty eight (48) hours or for emergencies.

Subd. 9 Joint and Individual Applications:

- A. Joint Trenching: The Engineer may require registrants to jointly apply for permits to excavate or obstruct the right of way at the same place and time.
- B. Fees: The registrant who applies for a joint utility permit shall pay the required permit fee.

Subd. 10 Revocation of Permits:

- A. Substantial Breach: The City reserves its right 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 City 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 a written notice issued pursuant to Section 806.14(E) of this Chapter.

- B. Written Notice Of Breach: If the City 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 City 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 in Subsection A of this Section, will allow the City to place additional or revised conditions on the permit to mitigate and remedy the breach.
- C. Response To Notice: Within a time established by the Engineer following permittee's receipt of notification of the breach, the permittee shall provide the City with a plan to cure the breach, acceptable to the City. The permittee's failure to submit a timely and acceptable plan, or the permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit.
- D. Reimbursement Of City Costs: If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorney fees incurred in connection with such revocation.

Subd. 11 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 who determines that an area greater than that specified in the permit must be obstructed or excavated must, before working in that greater area: 1) make application for a permit extension and pay any additional fees required thereby; and 2) be granted a new permit or permit extension.
- B. Limitation On Dates:
 - 1. A right of way permit is valid only for the dates specified in the permit. No permittee may begin work before the permit start date or, except as provided herein, continue working after the end date. Except in the case of verbal extensions, 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.
 - 2. If the obstruction or excavation of the right of way begins later or ends sooner than the date given on the permit, the permittee shall notify the City by supplementary application of the accurate information as soon as this information is known.

SECTION 806.08 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 City 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 to 216D.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, or with the approval of the City, 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, unless otherwise approved by the Engineer. 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 City parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.
- D. Traffic Control: A permittee shall implement traffic control measures in the area of the work and shall use traffic control procedures in accordance with the most recent manuals on uniform traffic control, traffic control devices and traffic zone layouts published by the state of Minnesota.
- E. 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 and Minnesota Rules Chapter 7560, and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Engineer.

SECTION 806.09 ROUTINE OBSTRUCTION AND EXCAVATION:

Routine excavations and obstructions are permitted without separate notice and separate compensation for such projects. Projects that do not involve excavation of paved surface and that last less than a continuous eight (8) hour period in duration between seven o'clock (7:00) A.M. and seven o'clock (7:00) P.M., Monday through Friday, excluding holidays, may, in the Engineer's discretion, be considered routine obstruction and excavation and include, by way of example, switching, replacing fuses, replacing transformers, placing line guards, animal protection, leak surveys, anode installations and inspections, or to repair facilities due to public damage or accident.

SECTION 806.10 DILIGENCE IN PERFORMING WORK; DELAY PENALTY:

Work shall progress in an expeditious manner as permitted by weather conditions until completion in order to avoid unnecessary inconvenience. In the event that the work is not performed in accordance with applicable regulations, excavations and utility connections, or the work is not done in an expeditious manner, or is abandoned without due cause, the City may, after seventy two (72) hours' notice to the permit holder, correct and fill the excavation or repair the street. The entire cost of such work shall be paid by the permit holder upon demand made by the City. In accordance with Minnesota Rule 7819.1000, Subpart 3, the City shall establish and impose a delay penalty for unreasonable delays in right of way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City council resolution. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.

SECTION 806.11 WORK STANDARDS:

The permit holder shall comply with the following standards when engaging in the work:

- A. Observe and comply with all laws, Rules and regulations of the state.
- B. Conduct the operation and perform the work in a manner as to ensure the least obstruction and interference to traffic.
- C. Take adequate precautions to ensure the safety of the general public and those who require access to abutting property.
- D. If required by the Engineer, notify adjoining property owners prior to the commencement of work which may disrupt the use of and access to such adjoining properties.
- E. In all cases where construction work interferes with the normal use of the construction area, provide for closing the construction area to traffic or to afford restricted use of the area and comply with MUTCD traffic safety signing requirements.
- F. Exercise precaution at all times for the protection of persons, including employees and property.
- G. Protect and identify excavations and work operations with barricade flags and, if required, by flagmen in the daytime and by warning lights at night.
- H. Provide proper trench protection as required by OSHA when necessary and, depending upon the type of soil, in order to prevent cave-ins endangering life or tending to enlarge the excavation.
- I. Protect the root growth of trees and shrubbery.

- J. Installation of pipe (utility conductors) under concrete or bituminous pavements shall be done by jacking, auguring or tunneling as directed by the Engineer unless otherwise authorized.
- K. All backfilling must be placed in six inch (6") layers at optimum moisture and compacted with the objective of attaining one hundred percent (100%) of standard proctor density. Compaction shall be accomplished with hand, pneumatic or vibrating compacters, as appropriate.
- L. No metal tracked or other lugged equipment is allowed to be driven on the public right of way.

SECTION 806.12 INSPECTIONS:

- A. Site Inspection: Permittee shall make the work site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- B. Authority Of Engineer:
 - 1. At the time of inspection, the Engineer 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 Engineer may issue an order to the permittee to correct any work that does not conform to the terms of the permit or other applicable standards, conditions, or code. If the work failure is a "substantial breach", within the meaning of Minnesota Statutes Section 237.163, subdivision 4(c), the order shall state that failure to correct the violation will be cause for revocation of the permit after a specified period determined by the Engineer. The permittee shall present proof to the Engineer that the violation has been corrected within the time period set forth by the Engineer in the order. Such proof shall be provided no later than the next business day following the day of completion. If such proof has not been presented within the required time, the Engineer may revoke the permit pursuant to Section 806.07, Subd. 10 of this Chapter.

SECTION 806.13 WORK WITHOUT PERMIT:

- A. Emergency Situations:
 - 1. Each registrant shall immediately notify the Engineer of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to state gopher one call regarding an emergency situation does not fulfill this requirement. Within two (2) 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 Chapter for the actions it took in response to the emergency.

2. If the City becomes aware of an emergency regarding a registrant's facilities, the City will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned 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 this code, deposit with the City the fees necessary to correct any damage to the right of way, and comply with all of the requirements of this Chapter.

SECTION 806.14 INSTALLATION REQUIREMENTS:

The excavation, backfilling, patching and restoration, and all other work performed in the right of way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and other applicable local requirements, insofar 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 Section. Service lateral installation is further subject to those requirements and conditions set forth by the City in the applicable permits and/or agreements referenced in Section 806.16(B) of this Chapter.

SECTION 806.15 PATCHING AND RESTORATION OF RIGHT OF WAY:

- A. Timing: The work to be done under the utility 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 as unseasonal or unreasonable under Section 806.08(B) of this Chapter or if the permittee is granted a new permit.
- B. Performing Work: Permittee must patch its own work. The City may choose either to have the permittee restore the surface and sub-grading portions of right of way or to restore the surface portion of right of way itself.
1. Permittee Restoration: If the permittee restores the right of way itself, it shall, at the time of application for a utility permit, post a construction performance bond in accordance with the provisions of Section 806.07, Subd. 4 of this Chapter, and Minnesota Rules 7819.3000.
 2. City Restoration: If the City restores the surface portion of right of way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles or otherwise fails for reasons not caused by the City's failure to properly restore, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with correcting the defective work.

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 replacing and compacting the subgrade and aggregate based material in the excavation, and the degradation fee shall not include the cost to accomplish these responsibilities.
- C. Standards: The permittee shall perform patching and restoration according to the standards and with the materials specified by the City and shall comply with Minnesota Rules 7819.1100. In exercising authority over restoration, the Engineer shall be guided by the following standards and considerations:
1. The number, size, depth and duration of the excavations, disruptions or damage to the right of way;
 2. The traffic volume carried by the right of way and the character of the neighborhood surrounding the right of way;
 3. The pre-excavation condition of the right of way and the remaining life expectancy of the right of way affected by the excavation;
 4. Whether the relative cost of the method of restoration to the permit holder 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
 5. 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.
- D. Duty To Correct Defects: The permittee shall correct defects in patching or restoration performed by permittee or its agents. Upon notification from the City, permittee shall correct all restoration work to the extent necessary, using the method required by the City. Unless otherwise agreed to by the Engineer, said work shall be commenced within two (2) days of receipt of the notice from the City and shall be completed within fourteen (14) days of commencement of work, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under Section 806.08(B) of this Chapter.
- E. Failure To Restore: If the permittee fails to restore the right of way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all restoration required by the City, the City shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee five (5) days from receipt of said written notice to cure said failure or failures, unless otherwise extended by the Engineer. In the event the permittee fails to cure, the City may, at its option, perform the necessary work, and the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right of way. If the permittee fails to pay as required, the City, in addition to other remedies provided by law, may exercise its rights under the construction performance bond.

SECTION 806.16 MAPPING DATA:

- A. Information Required: Each registrant and permittee shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4000 and 7819.4100. Within ninety (90) days following completion of any work pursuant to a permit, the permittee shall provide the Engineer accurate maps and drawings certifying the as built location of all equipment installed, owed, and maintained by the permittee. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the City's electronic mapping system, when practical or as a condition imposed by the Engineer. Failure to provide maps and drawings pursuant to this Subsection shall be grounds for revoking the permit holder's registration.
- B. Service Laterals: All permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150, Subpart 2, shall require the permittee's use of appropriate means of establishing the horizontal locations of installed service laterals and the service lateral vertical locations in those cases where the Engineer reasonably requires it. Permittees or their subcontractors shall submit to the Engineer evidence satisfactory to the Engineer of the installed service lateral locations. Compliance with this Subsection and with applicable state gopher one call law and Minnesota Rules governing service laterals installed after December 31, 2007, shall be a condition of any City approval necessary for: 1) payments to contractors working on a public improvement project including those under Minnesota Statutes Chapter 429; and 2) City approval of performance under development agreements or other subdivision or site plan approval under Minnesota Statutes Chapter 462. The Engineer shall reasonably determine the appropriate method of providing such information to the City. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the offending permittee or its subcontractors.

SECTION 806.17 UNDERGROUNDING:

- A. Purpose: The purpose of this Section is to promote the health, safety and general welfare of the public and is intended to foster: 1) safe travel over the right of way; 2) non-travel related safety around homes and buildings where overhead feeds are connected; and 3) orderly development in the City. Location and relocation, installation and reinstallation of facilities in the right of way or in or on other public ground must be made in accordance with this Section and is intended to be enforced consistently with state and federal law regulating right of way users, specifically including, but not limited to, Minnesota Statutes Sections 161.45, 237.162, 237.163, 301B.01, 222.37, 238.084 and 216B.36 and the telecommunications act of 1996, title 47, USC Section 253.
- B. New Facilities: Facilities newly installed, constructed or otherwise placed in the public right of way or in other public property held in common for public use must be located and maintained underground pursuant to the terms and conditions of this Section and in accordance with applicable construction standards, subject to the exceptions below. Aboveground installation, construction, modification, or replacement of meters, gauges,

transformers, street lighting, pad mount switches, capacitor banks, re-closers and service connection pedestals shall be allowed. These requirements shall apply equally outside of the corporate limits of the City coincident with City jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law.

- C. Permanent Replacement, Relocated Or Reconstructed Facilities: If the City finds that one or more of the purposes set forth in Subsection A of this Section would be promoted, the City may require a permanent replacement, relocation or reconstruction of a facility to be located and maintained underground, with due regard for seasonal working conditions. For purposes of this Subsection, "reconstruction" means any substantial repair of or any improvement to existing facilities. Undergrounding may be required whether a replacement, relocation or reconstruction is initiated by the right of way user owning or operating the facilities, or by the City in connection with: 1) the present or future use by the City or other local governmental unit of the right of way or other public ground for a public project; 2) the public health or safety; or 3) the safety and convenience of travel over the right of way. Subject to Subsection D of this Section, all relocations from previously placed underground facilities shall be to another underground location.
- D. Exceptions: The following exceptions to the strict application of this Section shall be allowed upon the conditions stated:
 - 1. Technical/Economic Feasibility; Promotion Of Policy: Aboveground installation, construction, or placement of facilities shall be allowed in residential, commercial and industrial areas where the council, following consideration and recommendation by the planning commission, finds that:
 - a. Underground placement would place an undue financial burden upon the landowner, rate payer, or right of way user, or would deprive the landowner of the preservation and enjoyment of substantial property rights; or
 - b. Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground facilities placement; or
 - c. Failure to promote the purposes of undergrounding. The right of way user clearly and convincingly demonstrates that none of the purposes under Subsection A of this Section would be advanced by underground placement of facilities on the project in question, or the City determines on its own review that undergrounding is not warranted based on the circumstances of the proposed undergrounding.
 - 2. Temporary Service: Aboveground installation, construction, or placement of temporary service lines shall only be allowed:
 - a. During new construction of any project for a period not to exceed three (3) months.
 - b. During an emergency in order to safeguard lives or property within the City.

- c. For a period of not more than seven (7) months when soil conditions make excavation impractical.
- E. Developer Responsibility: All owners, platters, or developers are responsible for complying with the requirements of this Section and, prior to final approval of any plat or development plan, shall submit to the Engineer written instruments from the appropriate right of way users showing that all necessary arrangements with said users for installation of such facilities have been made.

SECTION 806.18 LOCATION AND RELOCATION OF FACILITIES:

- A. Compliance With State Regulations: Placement, location and relocation of facilities must comply with the act, with other applicable rights of the City under its police power, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the Rules do not limit authority otherwise available to cities.
- B. Relocation Notification Procedure: The Engineer shall notify the utility owner at least three (3) months in advance of the need to relocate existing facilities so the owner can determine if relocation or replacement is required and plan any required work. The City should provide one notification, provide the date work will start on the City's project and, if different, provide the date by which the relocation must be completed. To the extent technically feasible and limited by seasonal constraints, all utilities shall be relocated within one month or in a time frame determined by the Engineer. The Engineer may allow a different schedule if it does not interfere with the City's project. The utility owner shall diligently work to relocate the facilities within the above schedule.
- C. Delay To City Project: If the owner fails to meet the relocation schedule due to circumstances within the utility's control, the City may charge the utility owner for all costs incurred by the City because the relocation is not completed in the scheduled time frame.
- D. Joint Trenching: All facilities shall be placed in appropriate portions of right of way so as to cause minimum conflict with other underground facilities. When technically appropriate and no safety hazards are created, all utilities shall be installed, constructed or placed within the same trench. Notwithstanding the foregoing, gas and electric lines shall be placed in conformance with Minnesota Rules Part 7819.5100, Subpart 2, governing safety standards.
- E. Corridors:
 - 1. The City may assign a specific area within the right of way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the City expects will be located within the right of way. All utility, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. A typical cross Section of the location for utilities may be on file at the Engineer's office. This Section is not intended to establish "high density corridors".

2. Any registrant who has facilities in the right of way in a position at variance with the corridors established by the City may remain at that location until the City requires facilities relocation to the corridor pursuant to relocation authority granted under Minnesota Rules 7819.3100 or other applicable law.
- F. Limitation Of Space: To protect the public health, safety, and welfare, or when necessary to protect the right of way and its current use, the City 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 City 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 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 City plans for public improvements and development projects which have been determined to be in the public interest.

SECTION 806.19 PREEXCAVATION FACILITIES LOCATION:

In addition to complying with the requirements of Minnesota Statutes Sections 216D.01 to 216D.09 (one call excavation notice system) before the start date of any right of way excavation, each registrant who has facilities or equipment in the area to be excavated shall be responsible to mark the horizontal placement of all said facilities, to the extent technically feasible. To the extent its records contain such information, each registrant shall provide information regarding the approximate vertical location of its facilities, at the time of installation, to excavators upon request. Nothing in this Section is meant to limit the rights, duties and obligations of the facility owners or excavators as set forth in Minnesota Statutes Sections 216D.01 to 216D.09.

SECTION 806.20 INTERFERENCE BY OTHER FACILITIES:

When the City does work in the right of way, in its governmental right of way management function, and finds it necessary to maintain, support, or move a registrant's facilities to carry out the work without damaging the registrant's facilities, the City shall notify the local representative as early as is reasonably possible. The City 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 damage.

SECTION 806.21 VACATION OF RIGHT OF WAY:

- A. Reservation Of Right: If the City vacates a right of way which contains the equipment of a registrant, and if the vacation does not require the relocation of registrant facilities and equipment, the City shall reserve, to and for itself and all registrants having facilities and equipment in the vacated right of way, the right to install, maintain and operate any facilities and equipment in the vacated right of way and to enter upon such right of way at any time for the purpose of reconstruction, inspecting, maintaining or repairing the same.

- B. Relocation Of Equipment: If the vacation requires the relocation of registrant facilities and equipment, and: 1) if the vacation proceedings are initiated by the registrant, the registrant must pay the relocation costs; or 2) if the vacation proceedings are initiated by the City, the registrant must pay the relocation costs unless otherwise agreed to by the City and the registrant; or 3) if the vacation proceedings are initiated by a person or persons other than the registrant or permit holder, such other person or persons must pay the relocation costs.

SECTION 806.22 INDEMNIFICATION AND LIABILITY:

By registering with the City, or by accepting a permit under this Chapter, a registrant or permittee agrees to defend and indemnify the City in accordance with the provisions of Minnesota Rules 7819.1250.

SECTION 806.23 ABANDONED FACILITIES:

- A. Discontinued Operations: A registrant who has decided to discontinue all or a portion of its operations in the City must provide information satisfactory to the City that the registrant's obligations for its facilities in the right of way under this Chapter have been lawfully assumed by another registrant.
- B. Removal: Any registrant who has abandoned facilities in any right of way shall remove them from that right of way pursuant to Minnesota Rules 7819.3300, unless the requirement is waived by the Engineer. A facility is not abandoned unless declared so by the operator.

SECTION 806.24 APPEALS:

A right of way user that: a) has been denied registration; b) has been denied a permit; c) has had a permit revoked; d) believes that the fees imposed are not in conformity with Minnesota Statutes Section 237.163, subdivision 6; or e) disputes a determination of the Engineer regarding Section 806.16(B) of this Chapter may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City council. The City council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

SECTION 806.25 RESERVATION OF REGULATORY AND POLICE POWERS:

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

SECTION 806.26 SEVERABILITY:

If any Section, Subsection, sentence, clause, phrase, or portion of this Chapter 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 hereof. 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 Chapter or any portions of this Chapter 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 Chapter precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Section Two. Effective Date. This ordinance amendment shall be effective from and after its passage and publication according to law.

Passed this 3rd day of April, 2018.

CITY OF SUNFISH LAKE

By: _____
Richard Williams, Mayor

ATTEST:

By: _____
Catherine Iago, City Clerk

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 18-_____

**RESOLUTION APPROVING A MODEL FORM SMALL WIRELESS FACILITY
COLLOCATION AGREEMENT**

WHEREAS, the City of Sunfish Lake desires to have in place a model Small Wireless Facility Collocation Agreement in the event a small wireless facility operator chooses to collocate a small wireless facility on a wireless support structure owned by the City within public right of way.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNFISH LAKE AS FOLLOWS:

1. The City Council hereby approves and adopts as a model form the attached Small Wireless Facility Collocation Agreement in the event a small wireless facility operator chooses to collocate a small wireless facility on a wireless support structure owned by the City within public right of way.
2. The attached Small Wireless Facility Collocation Agreement may be modified by the Council to particularize the agreement when a specific small wireless facility is identified and the operator thereof wishes to locate such small wireless facility on a wireless support structure owned by the City in public right of way.

Passed this 3rd day of April, 2018.

Richard A. Williams, Mayor

Attest:

Catherine Iago, City Clerk

City of Sunfish Lake, Minnesota
Small Wireless Facility Collocation Agreement

This Small Wireless Facility Collocation Agreement (the "Agreement") is made this _____ day of _____, 2018, between the City of Sunfish Lake, a Minnesota municipal corporation, with its principal office located at 7378 Jordon Avenue S., Cottage Grove, MN 55016, ("City") and _____, with its principal offices located at _____ ("Tenant"). City and Tenant are collectively referred to as the "Parties" or individually as a "Party."

WHEREAS, the Federal Communications Act of 1934, as amended, authorizes City to manage and control access to and use of public rights-of-way within city limits; and

WHEREAS, City has elected to manage its rights-of-way as authorized by Minnesota Statutes, Sections 237.162-.163 and Sunfish Lake City Code (the "Code"); and

WHEREAS, this Agreement shall apply to the collocation of Small Wireless Facilities (as hereinafter defined). "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing Wireless Support Structure (as hereinafter defined) that is owned privately or by a local government unit; and

WHEREAS, a "Small Wireless Facility" means: (1) a wireless facility, as defined by Minnesota Statutes, Section 237.162, subd. 13, that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume; or (2) a micro wireless facility as defined by Minnesota Statutes, Section 237.162, subd. 14; and

WHEREAS, City owns or controls existing structures in the public right-of-way that are designed to support or determined by City as capable of supporting a Small Wireless Facility ("Wireless Support Structure"), which are located within the geographic area of a license held by Tenant to provide wireless services; and

WHEREAS, City has elected to set forth the terms and conditions of collocation on its Wireless Support Structures, and Tenant desires to install, maintain and operate Small Wireless Facilities on City's Wireless Support Structures; and

WHEREAS, City and Tenant desire to enter into this Agreement to define the general terms and conditions which will govern their relationship with respect to the particular sites at

which Tenant will collocate its Small Wireless Facilities on City's Wireless Support Structures; and

WHEREAS, Tenant shall compensate City for the collocation of Small Wireless Facilities on City's Wireless Support Structures. The fees imposed by City are (1) based on the actual costs incurred by City in managing the public rights-of-way; (2) based on an allocation among all users of the public rights-of-way, including City, which shall reflect the proportionate costs imposed City by each of the various types of uses of the public rights-of-way; (3) imposed on a competitively neutral basis; and (4) imposed in a manner so that above ground uses of public rights-of-way do not bear costs incurred by the local government unit to regulate underground uses of public rights-of-way; and

WHEREAS, City and Tenant acknowledge that they will enter into an agreement supplement ("Supplement") in substantially the form attached hereto as Exhibit A, with respect to each particular Wireless Support Structure on which Tenant will collocate; and

WHEREAS, this Agreement is not exclusive and City reserves the right to grant permission to other eligible and qualified entities to collocate Small Wireless Facilities in City's rights-of-way.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. PREMISES. Pursuant to all of the terms and conditions of this Agreement and the applicable Supplement, City agrees to lease to Tenant certain space described in the applicable Supplement (the "Premises") upon City's Wireless Support Structure (City's Wireless Support Structure, personal property, public right-of-way and adjacent real property are hereinafter sometimes collectively referred to as the "Property"), for the installation, operation and maintenance of Small Wireless Facilities and related equipment (Small Wireless Facilities and related equipment shall be referred to as "Communications Equipment"); together with the non-exclusive right of ingress and egress seven (7) days a week, twenty four (24) hours a day, over, under and through the Property to and from the Premises for the purpose of installation, operation and maintenance of Tenant's Small Wireless Facilities. The Premises may include, without limitation, certain space underground (the "Equipment Space") on the Property, and space on the Wireless Support Structure sufficient for the installation, operation and maintenance of antennas and other equipment (the "Antenna Space"). Notwithstanding anything in the Supplement to the contrary, the Premises under each Supplement shall include such additional space necessary for the installation, operation and maintenance of wires, cables, conduits, and pipes (the "Cabling Space") running between and among the various portions of the Premises and to all necessary electrical and telephone utility, cable, and fiber sources located within the Property. If there are insufficient electric and telephone utility, cable, or fiber sources located on the Property, City agrees to grant Tenant, or the local utility, or fiber or cable provider, upon Tenant's approval, the right to install any utilities, cable, and fiber on, through, over, and under other properties owned or controlled by the City necessary for Tenant to operate its Communications Equipment, provided the location of those utilities, cable, and fiber shall be approved by City, which shall not be unreasonably withheld.

2. PLANS AND DRAWINGS. Before receiving approval from City to install a Small Wireless Facility on City's Wireless Support Structures in public rights-of-way, Tenant shall submit to the City Engineer or the Engineer's designee ("Engineer"), a right-of-way permit accompanied by detailed construction plans and drawings for each individual location, together with maps, showing specifically the Wireless Support Structures to be used, the number and character of the attachments to be placed on such Wireless Support Structures, equipment necessary for the use, proposed replacement of existing Wireless Support Structures, any additional Wireless Support Structures which may be required and any new installations for transmission conduit, pull boxes, and related appurtenances. The Engineer shall determine whether to give Tenant permission to proceed with the work as proposed by Tenant. Any plans and drawings that do not comply with the City's right-of-way ordinance or zoning ordinance shall be rejected. Tenant shall perform all work at its own expense and make attachments in such manner as to not interfere with the services of City.

3. CONDITION OF PROPERTY; ENGINEERING STUDY. Any expenses necessary to make the Premises ready for Tenant's construction of its Small Wireless Facilities and related appurtenances shall be the responsibility of Tenant. Tenant must obtain and submit to City a structural engineering study carried out by a qualified structural engineer showing the Wireless Support Structure and foundation is able to support the proposed Small Wireless Facility. City makes no warranties or representations, express or implied, including warranties of merchantability or fitness for a particular use, except those expressly set forth in this Agreement.

4. USE OF PUBLIC RIGHTS-OF-WAY.

A. City hereby grants to Tenant the right to use the City's public right-of-way for the installation, maintenance and operation of Tenant's Communications Equipment in and on the Wireless Support Structure located within the public right-of-way, pursuant to this Agreement, for as long as the City owns and operates the public right-of-way.

B. All communications equipment shall be installed in accordance with applicable Laws (as hereinafter defined) and Tenant shall comply with all laws, ordinances, rules and regulations adopted by City. Within the public rights-of-way, the location of the communications equipment shall be subject to the reasonable and proper regulation, direction and control of the City. Tenant shall have no ownership interest in any Wireless Support Structure owned by City.

C. Tenant and its authorized contractors shall give City at least 72-hours' notice of the dates, location, and nature of all work to be performed on its Communications Equipment within the public rights-of-way. This Agreement shall allow Tenant to perform all work on Tenant's Communications Equipment within the public rights-of-way when necessary for the installation, replacement, abandonment, operation or maintenance of Tenant's Communications Equipment. Following completion of work in the public rights-of-way, Tenant shall repair any affected public rights-of-way as soon as possible, but no later than the time frame established in the applicable Supplement. No street, alley, highway, or public place shall be encumbered for a longer period than shall

be reasonably necessary to execute the work authorized by the applicable Supplement and this Agreement. Tenant shall pay for all of the City's costs associated with interference with the right-of-way, including traffic control, caused by its work under this section.

D. Any damages to City's Wireless Support Structures, equipment thereon or other infrastructure caused by Tenant's installation or operations shall be repaired or replaced at Tenant's sole cost and to City's reasonable satisfaction.

E. If the City vacates the right-of-way in which the Premises is located or determines to remove the City's Wireless Support Structure, at City's sole discretion, City shall provide Tenant 90 days' notice. City shall provide a replacement Supplement to lease space at a new location mutually agreed to by the Parties. The annual rent payable under the new replacement Supplement will not be greater than the annual rent payable under the terminated Supplement. If the Parties cannot agree on a new replacement Supplement, Tenant, at its sole option, shall have the right to terminate the applicable Supplement.

5. STRUCTURE RECONDITIONING, REPAIR, REPLACEMENT.

A. From time to time, if City paints, reconditions, or otherwise improves or repairs the Wireless Support Structure in a substantial way (painting, reconditioning, improving, repairing or replacing shall collectively be referred to as "Reconditioning Work"), City shall reasonably cooperate with Tenant to carry out Reconditioning Work activities in a manner that minimizes interference with Tenant's use of the Premises.

B. Except in cases of emergency, in which case the City shall make a good faith effort to notify Tenant, prior to commencing any scheduled Reconditioning Work, City shall provide Tenant with not less than ninety (90) days' prior written notice. Upon receiving that notice, it shall be Tenant's sole responsibility to provide adequate measures to cover or otherwise protect Tenant's Communication Equipment from the consequences of the Reconditioning Work, including but not limited to paint and debris fallout. City reserves the right to require Tenant to remove all of Tenant's Communications Equipment from the Wireless Support Structure and Premises during Reconditioning Work at Tenant's sole expense, provided the requirement to remove Tenant's equipment is contained in the written notice required by this Section.

C. During City's Reconditioning Work, Tenant may maintain a temporary location for its Communication Equipment on the Property, or after approval by City, on any land owned or controlled by City in the vicinity of the Property. If the Property will not accommodate Tenant's temporary Communications Equipment, or if the Parties cannot agree on a temporary location, the Tenant, at its sole option, shall have the right to terminate the applicable Supplement upon thirty (30) days written notice to City.

G. If Tenant's installation requires a new Wireless Support Structure to be constructed or an existing Wireless Support Structure to be removed and replaced by

Tenant, all at Tenant's sole cost, (the "Replacement Wireless Support Structure") then, upon completion of the installation, any such Replacement Wireless Support Structure shall be deemed to be a fixture on the Property and the Replacement Wireless Support Structure shall become the property of the City, without further consideration to or from City. The City shall thereafter be responsible for any and all costs relating to the operation, maintenance, and repair of the Replacement Wireless Support Structure, unless such costs are due to the improper or negligent removal or installation by Tenant or any contractor hired by Tenant.

6. TERM; RENTAL.

Each Supplement shall be effective as of the date of execution by both Parties (the "Effective Date"), at which time rental payments shall commence and be due at a total annual rental of \$175.00 (the "Annual Rental") for each Supplement, representing \$150.00 per year for rent to occupy space on a Wireless Support Structure and \$25.00 per year for maintenance associated with the space occupied on a wireless support structure. Consistent with Minnesota Statutes Sections 237.162 – 237.163, the term of each Supplement shall be equal to the length of time that the Small Wireless Facility is in use (the "Term") on that Wireless Support Structure, unless the Supplement is terminated pursuant to this Agreement. The Annual Rental for each Supplement shall be due and payable on January 1 each year.

7. ELECTRICAL.

City shall, at all times during the Term of each Supplement, provide electrical service and telephone service access within the Premises. As provided by Minnesota Statutes, Sections 237.162 – 237.163, unless otherwise amended, in which case, the new rates shall be automatically adjusted, a monthly fee for electricity used to operate the Small Wireless Facility, if not purchased directly from a utility, shall be added to the Annual Rent due under each Supplement at the rate of:

- A. \$73.00 per radio node less than or equal to 100 max watts;
- B. \$182.00 per radio node over 100 max watts; or
- C. The actual costs of electricity, if the actual costs exceed the amount in item (A) or (B).

The amount of any such annual fee shall be set forth in each Supplement.

Tenant shall be permitted at any time during the Term of each Supplement, to install, maintain, and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source and a temporary installation of any other services and equipment required to keep Tenant's Communications Equipment operational, along with all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by City. Tenant shall have the right to install conduits connecting the temporary power source, and the temporary installation of any other services and equipment required to keep Tenant's Communications Equipment operational, and related appurtenances to the Premises.

Alternatively, Tenant may purchase electricity directly from a utility provider.

8. ENGINEERING COSTS. The Parties acknowledge and agree that, pursuant to Minnesota Statutes, Sections 237.162-.163, City may charge the actual costs of the initial engineering and preparatory construction work associated with Tenant's collocation in the form of a onetime, nonrecurring, commercially reasonable, nondiscriminatory, and competitively neutral charge. Tenant shall pay such reasonable costs within sixty (60) days of receipt of an invoice that itemizes the costs.

9. USE. Tenant shall use the Premises for the purpose of constructing, maintaining, repairing and operating Small Wireless Facilities and uses incidental thereto. Tenant shall have the right, without any increase in rent, to replace or repair its utilities, fiber or cable, equipment, antennas and/or conduits or any portion thereof, and the frequencies over which the equipment operates. Any additions or material modifications shall require City's approval and may be subject to an increase in rent if allowed by law.

10. GOVERNMENTAL APPROVALS; PERMITS. It is understood and agreed that Tenant's ability to use the Premises is contingent upon Tenant obtaining all of the certificates, permits and other approvals (collectively the "Government Approvals") that may be required by any Federal, State or Local authorities, as well as a satisfactory structural analysis that will permit Tenant use of the Premises as set forth above. City shall cooperate with Tenant in its effort to obtain the Governmental Approvals, and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by Tenant. Tenant shall have the right to terminate the applicable Supplement if: (i) any of the applications for Governmental Approvals is finally rejected; (ii) any Governmental Approval issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Tenant determines that the Governmental Approvals may not be obtained in a timely manner; (iv) Tenant determines that the Premises is no longer technically compatible for its use; or (v) Tenant, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary. Notice of Tenant's exercise of its right to terminate shall be given to City in accordance with the notice provisions set forth in Paragraph 19 and shall be effective upon the mailing of that notice by Tenant, or upon such later date as designated by Tenant. All rentals paid to the termination date shall be retained by City. Upon such termination, the applicable Supplement shall be of no further force or effect except to the extent of the representations, warranties, and indemnities made by each Party to the other thereunder. Otherwise, the Tenant shall have no further obligations for the payment of rent to City for the terminated Supplement.

11. INDEMNIFICATION. To the fullest extent permitted by law, Tenant agrees to defend, indemnify and hold harmless City, and its employees, officials, and agents from and against all claims, actions, damages, losses and expenses, including reasonable attorney fees, arising out of Tenant's negligence, misconduct, or Tenant's failure to perform its obligations under this Agreement. Tenant's indemnification obligation shall apply to Tenant's contractors, subcontractors, or anyone directly or indirectly employed or hired by Tenant, or anyone for whose acts Tenant may be liable. City will provide Tenant with prompt, written notice of any written claim covered by this indemnification provision; provided that any failure of City to

provide any such notice, or to provide it promptly, shall not relieve Tenant from its indemnification obligations in respect of such claim, except to the extent Tenant can establish actual prejudice and direct damages as a result thereof. City will cooperate with Tenant in connection with Tenant's defense of such claim. Tenant shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of City and without an unconditional release of all claims by each claimant or plaintiff in favor of City. The indemnity obligation shall survive the completion or termination of this Agreement.

12. INSURANCE.

A. Waiver of Subrogation. To the extent allowed by law, Tenant hereby waives and release any and all rights of action for negligence against City which may hereafter arise on account of damage to Tenant's property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by Tenant. This waiver and release shall apply between the Parties and shall also apply to any claim asserted as a right of subrogation. All such policies of insurance obtained by Tenant concerning its property shall waive the insurer's right of subrogation against City.

B. General Liability. Tenant agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits not less than \$2,000,000 per occurrence; \$4,000,000 annual aggregate, for bodily injury (including death) and for damage or destruction to property. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. Tenant shall add the City as an additional insured.

C. Automobile Liability. Tenant shall maintain commercial automobile liability Insurance, including owned, hired, and non-owned automobiles, with a minimum combined single liability limit of \$2,000,000 per occurrence.

D. Workers' Compensation. Tenant agrees to provide workers' compensation insurance for all its employees in accordance with the statutory requirements of the State of Minnesota. City shall also carry employers' liability insurance with minimum limits as follows: \$500,000 for bodily injury by disease per employee; \$500,000 aggregate for bodily injury by disease; and \$500,000 for bodily injury by accident.

E. Additional Insurance Conditions.

(i) Tenant shall deliver to City a certificate of insurance as evidence that the above coverages are in full force and effect.

(ii) Tenant's policies shall be primary insurance and non-contributory to any other valid and collectible insurance available to City with respect to any claim arising under this Agreement.

(iii) Tenant's policies and certificate of insurance shall contain a provision that coverage afforded under the policies shall not be cancelled without

at least thirty (30) days' advanced written notice to City, or ten (10) days' written notice for non-payment of premium.

13. LIMITATION OF LIABILITY. Except for indemnification obligations pursuant to Paragraph 11, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

14. INTERFERENCE. Tenant shall obtain a radio frequency interference study carried out by an independent professional radio frequency engineer showing that Tenant's intended use will not interfere with any current communication facilities which are located on or near a Wireless Support Structure. Tenant shall not transmit or receive radio waves at the Premises until such evaluation has been satisfactorily completed and approved by City. Tenant agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of City or other tenants of the Property which existed on the Property prior to the date the applicable Supplement is executed by the Parties. In the event any after-installed Tenant's equipment causes such interference, and after City has notified Tenant of such interference, Tenant will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at Tenant's option, powering down such interfering equipment and later powering up such interfering equipment for intermittent testing. If the interference continues for a period in excess of 48 hours following such notification, City shall have the right to require Tenant to reduce power, and/or cease operations until such time Tenant can make repairs to the interfering equipment. In no event will City be entitled to terminate a Supplement or relocate the Equipment as long as Tenant is making a good faith effort to remedy the interference issue. City agrees that City and/or any other users of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Tenant. If Tenant determines, in its reasonable discretion, that City's equipment or any other user's equipment permitted by City is causing interference, City shall, upon written communication from Tenant to City take all reasonable steps necessary to correct and eliminate the interference, including causing other users causing such interference to correct and eliminate the interference. If the interference continues for a period in excess of 48 hours following the notification, City shall, or shall require any other user to, reduce power and/or cease operations until such time as City, or the other user, can make repairs to the interfering equipment. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

15. REMOVAL. Tenant shall, within sixty (60) days after expiration of the Term, or any earlier termination of a Supplement, or an abandonment of it facilities, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear excepted, at Tenant's sole cost and expense. City agrees and

acknowledges that all of the equipment, conduits, fixtures and personal property of Tenant shall remain the personal property of Tenant and Tenant shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If the time for removal causes Tenant to remain on the Premises after termination of the Supplement, Tenant shall pay rent at the then-existing monthly rate, until such time as the removal of the equipment, fixtures and all personal property are completed. If Tenant fails to remove its facilities within the required time period, City reserves the right to remove the facilities and charge Tenant for the full cost of the removal and storage charges.

17. QUIET ENJOYMENT AND REPRESENTATIONS. City covenants that Tenant, on paying the rent and performing the covenants herein and in a Supplement, shall peaceably and quietly have, hold and enjoy the Premises. City represents and warrants to Tenant as of the execution date of each Supplement, and covenants during the Term, that City is has good and sufficient title and interest to the Property, and has full authority to enter into and execute the Supplement. City further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting City's title to the same and that there are no covenants, easements or restrictions that prevent or adversely affect the use or occupancy of the Premises by Tenant as provided in this Agreement and in the applicable Supplement(s).

18. ASSIGNMENT. Tenant shall notify Landlord upon any sale, assignment or transfer of the Small Wireless Facilities. Although this Agreement and each Supplement under it may be sold, assigned or transferred by the Tenant without any approval or consent of the City, so long as such sale, assignment or transfer is to the Tenant's principal, affiliates, subsidiaries of its principal, or to any entity that acquires all or substantially all of Tenant's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization, as to other parties, this Agreement and each Supplement may not be sold, assigned or transferred without the written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned.

19. NOTICES. All notices hereunder must be in writing and are validly given if sent by certified mail, return receipt requested, or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows or to any other address that the Party to be notified may have designated:

City: City of Sunfish Lake
c/o City Engineer
701 Xenia Avenue South, Suite 300
Minneapolis, MN 55416

Tenant: _____

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

20. DEFAULT. If there is a breach by a Party with respect to any of the provisions of this Agreement, or under the provisions of an individual Supplement, the non-breaching Party shall give the breaching Party written notice of that breach. After receipt of the written notice, the breaching Party shall have thirty (30) days in which to cure the breach, provided the breaching Party shall have such extended period as may be required beyond the thirty (30) days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion, but in no event more than ninety (90) calendar days after receipt of written notice. The non-breaching Party may not maintain any action or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement, or under an individual Supplement if City fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by City, and if the failure to perform that obligation interferes with Tenant's ability to conduct its business in the Premises; provided, however, that if the nature of City's obligation is such that more than five (5) days after notice is reasonably required for its performance, then it shall not be a default under this Agreement or the applicable Supplement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion, but in no event more than fifteen (15) calendar days after receipt of written notice. City and Tenant agree that a default under an individual Supplement does not constitute a default under this Agreement

21. DISPUTE RESOLUTION. Subject to the provisions of Paragraph 20, the Parties shall cooperate and use their best efforts to ensure that the various provisions of the Agreement are fulfilled. The Parties agree to act in good faith to undertake resolution of disputes, in an equitable and timely manner and in accordance with the provisions of this Agreement. If disputes cannot be resolved informally by the Parties, the following procedures shall be used:

A. Whenever there is a failure between the Parties to resolve a dispute on their own, the Parties shall first attempt to mediate the dispute. The parties shall agree upon a mediator, or if they cannot agree, shall obtain a list of court-approved mediators from the Dakota County District Court Administrator and select a mediator by alternately striking names until one remains. City shall strike the first name followed by Tenant, and shall continue in that order until one name remains.

B. If the dispute is not resolved within thirty (30) days after the end of mediation proceedings, the Parties may pursue any legal or equitable remedy.

22. CASUALTY. In the event of damage by fire or other casualty to the Property that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Tenant's operations at the Premises for more than forty-five (45) days, then Tenant may, at any time following such fire or other casualty, provided City has not completed the restoration required to permit Tenant to resume its operation at the Premises, terminate the Supplement upon fifteen (15) days' prior written notice to City. Any such notice of termination shall cause the Supplement to expire with the same force and effect as though the date set forth in such notice

were the date originally set as the expiration date of the Supplement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due under the Supplement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which Tenant's use of the Premises is impaired.

23. APPLICABLE LAWS. Laws means any and all laws, regulations, ordinances, resolutions, judicial decisions, rules, permits and approvals applicable to the subject of this Agreement or Tenant's use that are in force during the term of this Agreement, as lawfully amended including, without limitation, City's city Code. Tenant and City shall comply with all applicable Laws. This Agreement does not limit any rights Tenant may have in accordance with Laws to install its own poles in the right of way or to attach Tenant's equipment to third-party poles located in the right of way. This Agreement shall in no way limit or waive either party's present or future rights under Laws. If, after the date of this Agreement, the rights or obligations of either Party are materially altered, preempted, or superseded by changes in Laws, the parties agree to amend the Agreement and/or Supplement to reflect the change in Laws.

24. GOVERNMENT DATA. The Parties acknowledge and agree that this Agreement is considered public data not on individuals and is accessible to the public under Minnesota Statutes, Section 13.03. Tenant and City agrees to abide by the applicable provisions of the Minnesota Government Data Practice Act, Minnesota Statutes, Chapter 13, and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality.

25. GENERAL PROVISIONS.

A. Entire Agreement. This Agreement supersedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties and contains the entire agreement.

B. Captions. Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement.

C. Ambiguities. If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

D. Amendments. Any modification or amendment to this Agreement shall require a written agreement signed by both Parties.

E. Third Party Rights. This Agreement is not a third party beneficiary contract and shall not in any respect whatsoever create any rights on behalf of any person or entity not expressly a party to this Agreement.

F. Nondiscrimination. In the hiring of employees or contractors to perform work under this Agreement, Tenant shall not discriminate against any person by reason of any characteristic or classification protected by State or Federal law.

G. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota. The venue for all proceedings related to this Agreement shall be in Dakota County, Minnesota.

H. Waiver. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or the waiver by either Party of any breach or failure to comply with any provision of this Agreement by the other Party shall not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

I. Force Majeure. Except for payment of sums due, neither Party shall be liable to the other or deemed in default under this Agreement, if and to the extent that a Party's performance is prevented by reason of force majeure. "Force majeure" includes war, an act of terrorism, fire, earthquake, flood and other circumstances which are beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent.

J. Further Assurances. From and after the execution of this Agreement, the parties shall fully cooperate with each other and perform any further act(s) and execute and delivers any further documents which may be necessary in order to carry out the purposes and intentions of this Agreement.

K. Savings Clause. If any court finds any portion of this Agreement to be contrary to law, invalid, or unenforceable, the remainder of the Agreement will remain in full force and effect.

L. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, and which taken together shall be deemed to be one and the same document.

IN WITNESS WHEREOF, the Parties, have caused this Agreement to be approved on the date above.

City:
City of Sunfish Lake

By: _____

Name: Richard Williams

Its: Mayor

Date: _____

By: _____

Name: Catherine Iago

Its: City Clerk

Date: _____

Tenant:

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT A
COLLOCATION AGREEMENT SUPPLEMENT

This Collocation Agreement Supplement ("Supplement") is made this ____ day of _____, 2018, between the City of Sunfish Lake, a Minnesota municipal corporation, with its principal office located at 7378 Jordon Avenue S., Cottage Grove, MN 55016, ("City") and _____, with its principal offices located at _____ ("Tenant"). City and Tenant are collectively referred to as the "Parties" or individually as a "Party."

1. SMALL WIRELESS FACILITY COLLOCATION AGREEMENT. This Supplement is a Supplement as referenced in that certain Small Wireless Facility Collocation Agreement between the City of Sunfish Lake and _____, dated _____, 2018, (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. PREMISES. City hereby leases to Tenant certain spaces on and within City's Property located at _____, Sunfish Lake, Minnesota, including the location of the Wireless Support Structure on the Property is shown on Exhibit 1 attached hereto and made a part hereof. The Equipment Space, Antenna Space and Cabling Space are as shown on Exhibit 2, attached hereto and made a part hereof.

3. TERM. The Effective Date and the Term of this Supplement shall be as set forth in the Agreement.

4. CONSIDERATION. Rent under this Supplement shall be \$175.00 per year, payable to the City of Sunfish Lake at the City's address set forth above.

If City is providing electricity pursuant to Paragraph 7 of the Agreement, an annual electrical service fee shall be added to the annual rent due under this Supplement.

5. SITE SPECIFIC TERMS.

In this section include any site-specific terms, including whether Tenant will be installing a Replacement Wireless Support Structure.

IN WITNESS WHEREOF, the Parties, have caused this Agreement to be approved on the date above.

City:
City of Sunfish Lake

By: _____

Name: Richard Williams

Its: Mayor

Date: _____

By: _____

Name: Catherine Iago

Its: City Clerk

Date: _____

Tenant:

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT 1
Site Plan of Property

EXHIBIT 2

Equipment Space (if any), Antenna Space and Cabling Space