

**AGREEMENT FOR MAINTENANCE
OF EXISTING TUNNELS AND CONSTRUCTION
AND MAINTENANCE OF NEW TUNNEL
UNDER RAMSEY COUNTY STATE AID HIGHWAY 34
(UNIVERSITY AVENUE)
IN THE CAPITOL AREA**

THIS AGREEMENT is made and entered into by and between the State of Minnesota, acting by and through the Department of Administration, hereinafter "State", Ramsey County, a public corporation and political subdivision of the State of Minnesota, acting through the Ramsey County Department of Public Works, hereinafter "County", and the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota, hereinafter "Met Council" (collectively, the "Parties").

Witnesseth:

WHEREAS, the County has jurisdiction over Ramsey County State Aid Highway 34, which is known as University Avenue; and

WHEREAS, the State owns real estate situated in the City of St. Paul, County of Ramsey, which abuts the north and south right of way lines of University Avenue, consisting of office buildings, parking facilities, and grounds located in the Capitol Area; and

WHEREAS, the State owns and utilizes two existing tunnels beneath University Avenue, located between the Admin Ramp and the Minnesota State Capitol Building and between the Ford Building and Leif Erikson Park (hereinafter "Existing Tunnels") as shown on **Exhibit A**, attached hereto and made a part hereof thereby; and

WHEREAS, subject to availability of funding for this purpose, the State desires to design, construct, utilize and maintain a pedestrian and materials handling delivery tunnel beneath University Avenue to connect the State Capitol Building on the south side of University Avenue with a parking lot on the north side of University Avenue (hereinafter "New Tunnel"), as shown on **Exhibit B**, attached hereto and made a part hereof thereby (collectively Existing Tunnels and New Tunnel hereinafter "University Avenue Tunnels"); and

WHEREAS, the Met Council is responsible for design, construction and operation of the Central Corridor Light Rail Transit (hereinafter "CCLRT") Project, which will be located in part on University Avenue; and

WHEREAS, University Avenue will be, in part, reconstructed by the Met Council as part of the CCLRT Project; and

WHEREAS, in letter agreement dated October 11, 2010, the Met Council has agreed with the State to design and construct structural supports to protect the Existing Tunnels beneath University Avenue as part of the CCLRT Project; and

WHEREAS, in letter agreement dated October 11, 2010, the State and Met Council have agreed to coordinate the design and construction of the New Tunnel with the design and construction of the CCLRT Project; and

WHEREAS, in letter agreement dated October, 11 2010, the State has agreed to issue a notice to proceed to its contractor to undertake construction of the New Tunnel on or before June 2012, subject to the availability of funds; and

WHEREAS, the Parties desire to work cooperatively to facilitate the construction of the New Tunnel, minimize the impacts of the construction and maintenance activities for the New Tunnel, and minimize the impacts of maintenance activities for the Existing Tunnels, CCLRT and University Avenue as set forth herein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The foregoing recitals are hereby incorporated by reference.
2. **Construction of New Tunnel.**

A. The State shall submit design plans and specifications for construction of the New Tunnel to the County and Met Council for approval at each of the following stages: Schematic Design, Design Development and Final Design. The County and Met Council shall have approval authority over the design at each of the three phases. However, the Met Council's approval authority over the design is limited to impacts that the New Tunnel might have on CCLRT operations or the maintenance and repair of the CCLRT facilities. The State shall not undertake construction of the New Tunnel until the County and the Met Council have reviewed and approved the design plans and specifications at each design phase. The State's submission shall be deemed approved by the County and Met Council unless disapproved in writing by the County or Met Council within twenty (20) days after its receipt. If the State's submission is rejected, any rejection is to be made for a reason and the reason(s) shall be stated in writing. If either the County or the Met Council rejects a submission in whole or in part, the State may submit a revised submission. The provisions herein regarding approval, rejection and resubmission shall continue to apply until the State's submission is approved by both the County and the Met Council. Both the County and Met Council shall act reasonably with respect to its obligations under this Section. Elements of the design that have been approved in one design phase cannot be disapproved by the County or the Met Council in a later design phase unless the State has made a material modification to a design element that has been previously approved.

B. The State will construct the New Tunnel in accordance with the approved plans and specifications. Notwithstanding the foregoing, during the course of construction, the State may order field changes to the design to meet site conditions, provided that the field change does not negatively impact CCLRT operations or CCLRT facilities or University Avenue operations.

C. The State will obtain all permits necessary to construct the New Tunnel, including permits from the City of St. Paul.

3. Maintenance of University Avenue Tunnels.

A. Upon reasonable notice, the State will grant to the County the right to enter the University Avenue Tunnels, as necessary for inspection, at the discretion of the County Engineer.

B. All costs of maintaining or modifying the University Avenue Tunnels shall be borne by the State, subject to availability for funding for this purpose.

C. Any maintenance of or modifications to the University Avenue Tunnels that unreasonably interfere with traffic on or utilities beneath University Avenue right of way shall be approved by the County prior to commencing. Said approval shall be provided in a timely manner and in the sole discretion of the County Engineer shall not be unreasonably withheld. The County shall act reasonable with respect to its obligations under this section.

D. Any construction, maintenance or repair work conducted by the State or the County that is within twelve (12) feet from the centerline of either set of CCLRT tracks, two feet below the top of the CCLRT rail and above (the "LRT Work Area") must be approved by Met Council prior to the State's commencement of the work. Any construction, maintenance or repair work conducted by the County or the State within the LRT Work Area shall be conducted in accordance with the Met Council's written work permit procedures, as determined and reasonably applied by the Met Council from time to time, the purpose of which is to ensure that there are no safety hazards or service impacts to the Met Council's operations (the "Work Permit Procedures"). A true and complete copy of the Work Permit Procedures in effect on the effective date is attached hereto as **Exhibit C**. Met Council shall promptly deliver to the County and the State notice of any amendment or other modification to the Work Permit Procedures, along with a true and complete copy of the amendment or other modification. Met Council shall not unreasonably withhold, condition or delay the issuance of permits required under the Work Permit Procedures; and the Met Council's denial of any work permit must be based on specific and identifiable safety and operational concerns. The State and/or County shall be required to attend an on-track right-of-way safety training program (as referred to in the Work Permit Procedures) before commencing work. Met Council agrees that said training program shall be offered and available within five (5) business days after a permit request without charge.

Notwithstanding anything to the contrary, in no event shall the State or County be required to obtain or comply with the Work Permit Procedures for work done outside of the LRT Work Area or for routine maintenance of improvements, including, without limitation, care and maintenance of landscaping and snowplowing, if the persons performing the maintenance work have gone through the on-track right-of-way safety training program for that particular activity. The County and Met Council intend to enter into a separate operations and maintenance agreement addressing, in more specificity, maintenance issues along University Avenue.

Structural modifications to the University Avenue Tunnels must be approved in accordance with Section 2 A.

E. Non-standard maintenance of or material modifications to CCLRT facilities or traffic on or utilities beneath University Avenue that interfere with the University Avenue

Tunnels shall be approved by State, which approval shall not be unreasonably, conditioned, delayed or withheld.

F. Should the State determine excavation of any portion of University Avenue becomes necessary to perform maintenance of the University Avenue Tunnels or to modify said tunnels in any way, all costs of traffic control and restoration of University Avenue to substantially the same condition as existed prior to such maintenance of or modification to the University Avenue Tunnels shall be borne by the State, and the work shall be done in accordance with the Ramsey County Public Works Right of Way Ordinance, 2001-287 and as amended by Ordinance 2010-044, attached hereto as **Exhibit D**.

G. Should the State determine to close any of the University Avenue Tunnels permanently, the method of closure shall be approved by the County. Said approval shall be provided in a timely manner and in the sole discretion of the County Engineer with input from the Met Council.

H. Should the State determine to remove any of the University Avenue Tunnels, all costs of removal, traffic control, and restoration of University Avenue shall be borne by the State and the work shall be done in accordance with the standards of the Ramsey County Public Works Right of Way Ordinance, 2001-287 and as amended by Ordinance 2010-044, attached hereto as **Exhibit D**. Any removal plan must be reviewed and approved by the County and the Met Council consistent with the process outlined in Section 2 A.

I. Should any maintenance of or modifications to the University Avenue Tunnels unreasonably interfere with or damage the CCLRT facilities, the State shall restore, at its cost, the CCLRT facilities to substantially the same condition as existed prior to such maintenance of or modification to the University Avenue Tunnels, as determined by the Met Council.

J. Should any maintenance of or modifications to CCLRT unreasonably interfere with or damage the University Avenue Tunnels, the Met Council shall restore, at its cost, the University Avenue Tunnels to substantially the same condition as existed prior to such maintenance of or modifications to CCLRT as determined by the State.

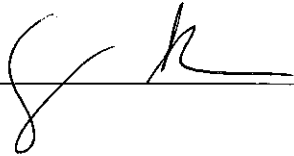
K. Each party shall be responsible for its own acts and the results thereof. The State's liability shall be governed by Minn. Stat. 3.736. The Met Council and Ramsey County's liability shall be governed by Minn. Stat. Chapter 466.

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IN WITNESS THEREOF, the parties have caused this agreement to be executed by their duly authorized officers on the dates set for below.

STATE OF MINNESOTA

In the presence of:

By:  _____

Its: COMMISSIONER, ADMINISTRATION

Date: 6.28.12

By: _____

Its: _____

Date: _____

IN WITNESS THEREOF, the parties have caused this agreement to be executed by their duly authorized officers on the dates set for below.

METROPOLITAN COUNCIL

By: 

Its: RA

Date: 8.22.12

IN WITNESS THEREOF, the parties have caused this agreement to be executed by their duly authorized officers on the dates set for below.

RAMSEY COUNTY

Approved as to Form:

By: 


Its: Julie Klanschmidt
County Manager

Date: 6/28/12

Recommended for Approval by:


Ramsey County Engineer 6/20/12

Approved As To Form

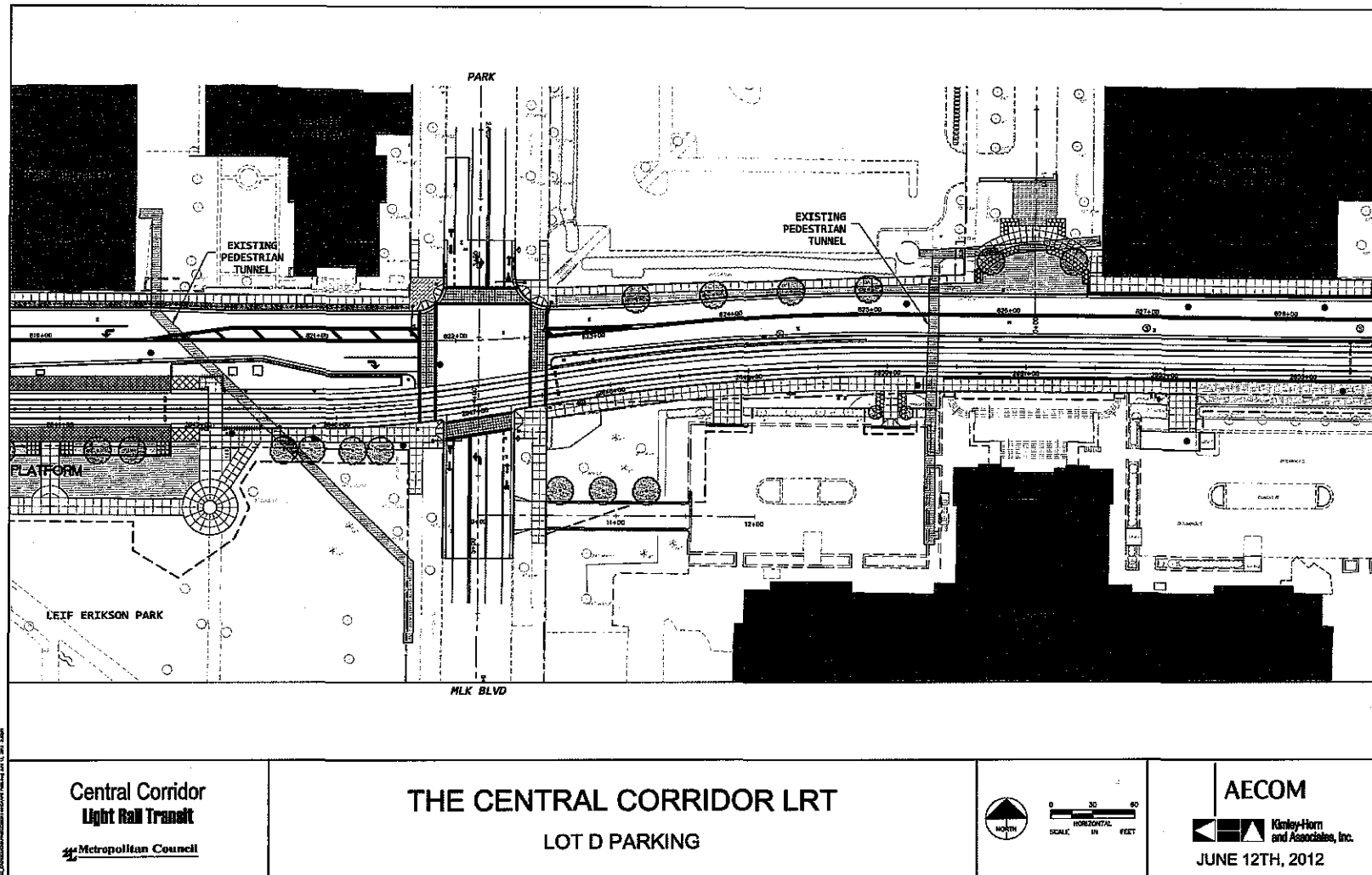

Harry D. McPeak
Assistant Ramsey County Attorney

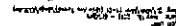
LIST OF EXHIBITS

Exhibit	Description
A	Existing Tunnels
B	New Tunnel
C	Work Permit Procedures
D	Ordinance 2010-044

Exhibit A
Existing Tunnels

Contract No. 10I042







Light Rail SOP

Standard Operating Procedure: Rail Operations	Publication # 100.12 Reviewed 5-2009	Revision #2 Date: 5-2009	Page 1 of 2
Title: Work Permit Procedure			
Distribution: All Rail Operations, Maintenance, and Rail Facility Employees			
Issued by: Standard Operating Procedures Committee		Approved by: Vince Pellegrin Chief Operations Officer Metro Transit	
Supersedes: Standard Operating Procedures 2007 Edition			

PURPOSE

To obtain authorization to perform work on Metro Transit Light Rail Right-of-Way, Metro Transit Light Rail has a set protocol to ensure the safety of employees, workers, and passengers.

WHEN TO USE IT

This procedure is to be used anytime:

- Scheduled work will occur within 12-feet of centerline of the rails
- Scheduled work will occur within the adjacent roadway travel lane or the berthing lane
- Scheduled work occurs within any structure/premise that can affect train service (e.g. substation, communication signal house, passenger platforms)
- Scheduled work will affect the movement of passengers to or from trains

PROCEDURE AND RESPONSIBILITIES

The Metro Transit Light Rail Right-of-Way Allocation Request form (Work Permit) is to be completed by any Metro Transit employee or outside contractor desiring to do work, as described above, on Metro Transit Light Rail Right-of-Way.

Before work begins, any persons requesting Metro Transit Light Rail Right-of-Way access, must first attend the On-Track Right-of-Way safety training program. After completion of the Training Program the requestor must attend the Right-of-Way Track Allocation meeting and be prepared to discuss the work in full detail. In most instances approval will be given to the requestor at this meeting.

CONTRACTOR MUST

- Produce proof of insurance and the Metro Transit Light Rail Right-of-Way training card or certificate at the Track Allocation Meeting
- Not begin work on the Metro Transit Light Rail Right-of-Way until the request has been approved and a Right-of-Way Permit has been issued
- The Right-of-Way training card must be in the possession of all persons entering Metro Transit Light Rail Right-of-Way

Printed: 7/8/2009 9:47:33 AM © Metropolitan Council 20072009

Exhibit C
Work Permit Procedures

Contract No. 10I042

Publication Number: 100.12	Revision #2 Date:5-2009	Page: 2 of 2
Title: Work Permit Procedure		

— Understand the methods of worker protection

Internal departments must complete the form and attend the meeting one-week in advance of the work being requested.

Before work commences, on a daily basis, the On-Scene-Supervisor/Coordinator must call the Rail Control Center (612-341-5710) for daily activation of the Work Permit and notification on the Metro Transit Light Rail Right-of-Way.

The Metro Transit Light Rail Right-of-Way Track Allocation meetings will be held, unless otherwise specified, every Thursday at 2:00 pm, in the Operations and Maintenance Building (O & M) 3rd Floor, Conference Room. Completed forms should be faxed to 341-5677, Attention: Manager Rail Transportation.

RAMSEY COUNTY RIGHT-OF-WAY ORDINANCE FOR THE MANAGEMENT OF UTILITIES
IN THE PUBLIC RIGHT-OF-WAY

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**RAMSEY COUNTY RIGHT-OF-WAY ORDINANCE FOR THE MANAGEMENT OF UTILITIES
IN THE PUBLIC RIGHT-OF-WAY OF ROADS UNDER THE COUNTY'S JURISDICTION**

An ordinance to administer and regulate utilities in the public right-of-way in the public interest, and to provide for the issuance and regulation of Right of Way permits, pursuant to the powers granted under Minnesota Statutes sections 237.16 through 237.163, Minnesota Statutes Ch. 375, and the Ramsey County Home Rule Charter.

Right of Way Management Ordinance

Sec. 1.01. Findings, Purpose, and Intent.

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

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

This ordinance shall be interpreted consistently with 1997 Session Laws, Ch. 123, substantially codified in Minnesota Statutes sections 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and the other laws governing applicable rights of the County and users of the right of way. This ordinance shall also be interpreted consistently with Minnesota Rules 7819.0050 to 7819.9950 where possible. To the extent any provision of this ordinance cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This ordinance shall not be interpreted to limit the regulatory and police powers of the County to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

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

Pursuant to the authority granted to the County under state and federal statutory, administrative and common law, the County hereby elects pursuant Minnesota Statutes section 237.163, subd. 2(b), to manage right of way under its jurisdiction.

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

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

conjunction with other right of way repair, excavation or construction; and
10. impose reasonable penalties for unreasonable delays in construction.

Sec. 1.03. Definitions.

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

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

"Applicant" means any Person requesting permission to install any utility or to excavate or obstruct a right of way.

"Commission" means the Minnesota Public Utilities Commission.

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

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

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

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

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

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

"Degradation Fee" means the estimated fee established at the time of permitting by the County 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 Costs.

"Delay Penalty" is the penalty imposed as a result of unreasonable delays in right of way excavation, obstruction, patching, or restoration as established by permit.

"Department" means the Ramsey County Department of Public Works.

"Department Inspector" means any person authorized by the Director to carry out inspections related to the provisions of this ordinance.

"Director" means the County Engineer or Director of the Department of Public Works, as appropriate, or designee.

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

"Equipment" means any tangible asset used to install, repair, or maintain facilities in any right of way.

"Erosion controls" means measures taken to inhibit soils from eroding from a site and may include soil stabilization practices, limited grading, mulch, temporary erosion protection or permanent cover, and construction phasing.

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

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

"Excavation Permit Fee" means money paid to the County by an applicant to cover the costs as provided in section 1.12.

"Facility or Facilities" means any tangible asset in the right of way required to provide utility service.

"Five-year project plan" shows projects adopted by the County for construction within the next five years.

"High Density Corridor" means a designated portion of the public right of way within which telecommunications right of way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

"Hole" means an excavation in the pavement, with the excavation having a length less than the width of the pavement. "Local Representative" means a local person or persons, or designee of such person or persons, authorized by a registrant to accept legal notice

or service and to accept communications and to make decisions for that registrant regarding all matters within the scope of this ordinance.

"Management Costs" means the actual costs the County incurs in managing its public rights of way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right of way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment and facilities during public right of way work; determining the adequacy of right of way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right of way permits. Management costs do not include payment by a telecommunications right of way user for the use of the right of way, the fees and cost of litigation relating to the interpretation of 1997 Minnesota Laws, Ch. 123; Minnesota Statutes sections 237.162 or 237.163 or any ordinance enacted under those sections, or the County fees and costs related to appeals taken pursuant to section 1.31 of this ordinance.

"Obstruct" means to place any tangible object in a public right of way so as to hinder free and open passage over that or any part of the right of way.

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

"Obstruction Permit Fee" means money paid to the County by a Permittee to cover the costs as provided in section 1.12 and required to obtain the permit.

"Patch or Patching" means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in a project programmed by the County, or as approved by the Director.

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

"Permit" has the meaning given "right of way permit" in Minnesota Statutes section 237.162.

"Permittee" means any person to whom a permit to install a utility or to excavate or obstruct a right of way has been granted by the County under this ordinance.

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

"Probation" means the status of a person that has not complied with the conditions of this ordinance.

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

"Public Right of Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the County has an interest, including other dedicated rights of way for travel purposes and utility easements of the County. A public right of way does not include the airwaves above a right of way with regard to cellular or other nonwire telecommunications or broadcast service.

"Registrant" means any person who (1) has or seeks to have its equipment or facilities located in any right of way, or (2) in any way occupies or uses, or seeks to occupy or use, the right of way or place its facilities or equipment in the right of way.

"Restoration Cost" means the amount of money paid to the County by a permittee to achieve the level of restoration according to Minnesota Rules 7819.9900 to 7819.9950. "Restore or Restoration" means the process by which an excavated public right of way and surrounding area including pavement foundation and turf/vegetation are returned to the same condition (and life expectancy) that existed before excavation.

"Right of Way Permit" means a permit to perform work in a public right-of-way, whether to obstruct or excavate the right of way.

"Right of Way User" means (1) a telecommunications right of way user as defined by Minnesota Statutes section 237.162, subd. 4; or (2) a person owning or controlling a facility in the right of way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right of way; or (3) hazardous liquid or natural gas pipeline facilities.

"Sediment controls" means measures put in place to capture or contain sediment to prevent it from leaving the site. Sediment controls include silt fences, sediment traps, earth dikes, drainage swales, check dams, storm drain inlet protection, and temporary or permanent sediment basins.

"Service" or "Utility Service" includes (1) those services provided by a public utility as defined in Minnesota Statutes section 216B.02, subds. 4 and 6; (2) services of a telecommunications right of way user, including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statutes Ch. 238; (4) natural gas or electric energy or telecommunications services provided by the city; (5) services provided by a cooperative electric association organized under Minnesota Statutes Ch. 308A; and (6) water, sewer, steam, cooling or heating services.

"Supplementary Application" means an application made to excavate or obstruct more of

the right of way than allowed in, or to extend, a permit that had already been issued.

"SWPPP" means Stormwater Pollution Prevention Plan to include the erosion and sediment controls to be implemented to reduce erosion, sediment and pollutants in stormwater discharge.

"Telecommunication Rights-of-Way User" means a person owning or controlling a facility in the right of way, or seeking to own or control a facility in the right of way that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this ordinance, a cable communication system defined and regulated under Minnesota Statutes Ch. 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes Chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes Ch. 308A, are not telecommunications right of way users.

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

"Trench" means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement. "Two Year Project Plan" shows projects adopted by the County for construction within the next two years.

Sec. 1.04. Administration.

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

Sec. 1.05. Utility Coordination Committee.

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

Sec. 1.06. Registration and Right of Way Occupancy.

Subd. 1. Registration. Each person who occupies, uses, or seeks to occupy or use the right of way or place any equipment or facilities in the right of way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the County. Registration will consist of providing application information and paying a

registration fee. Registration fees shall be set by the County Board.

Subd. 2. Registration Prior to Work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right of way without first being registered with the County.

Subd. 3. Exceptions. Nothing herein shall be construed to repeal or amend the rights of persons to plant or maintain boulevard plantings or gardens in the area of the right of way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right of way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this ordinance. However, plantings must not violate applicable clear zone requirements nor obstruct visibility on the roadway, and the County may remove such plantings, if necessary for maintenance, safety, or construction purposes, with no compensation due the property owner.

Irrigation systems shall be allowed in the right of way without a permit and installers shall be exempt from registration. There shall be no compensation for removal necessary for any permitted utility project. No compensation shall be paid for any irrigation system if removal is required or if it is damaged by any County or municipal activity or by any permitted utility activity.

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

Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes Ch. 216D ("One Call Excavation Notice System").

Sec. 1.07. Registration Information.

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

- (a) Each registrant's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers.
- (b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- (c) A certificate of insurance or self-insurance:
 - (1) Verifying that an insurance policy has been issued to the registrant by an insurance company licensed or otherwise authorized to do business in the State of Minnesota, or a form of self insurance acceptable to the Director;
 - (2) Verifying that the registrant is insured against claims for bodily and personal injury, including death, as well as claims for property damage arising out of the

- (i) use and occupancy of the right of way by the registrant, its officers, agents, employees and permittees, and
 - (ii) placement and use of facilities in the right of way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
- (3) Naming the County as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage;
- (4) Requiring that the Director be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Director in amounts sufficient to protect the County and the public and to carry out the purposes and policies of this Ordinance.
- (d) The County may require a copy of the actual insurance policies.
- (e) If the person is a corporation, a copy of the certificate required to be filed under Minnesota Statutes section 302A.105 as recorded and certified to by the Secretary of State.
- (f) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said Commission or other state or federal agency.

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

Sec. 1.08. Reporting Obligations.

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

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

- (a) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "Next-Year Project");
- (b) How the registrant will accommodate the County plan;

(c) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a "Five-Year Project"). It is the registrant's responsibility to keep informed on available plans.

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

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

Sec. 1.09. Permit Requirement.

Subd. 1. Permit Required. Except as otherwise provided in this Code, no person may obstruct, or excavate any right of way without first registering and having obtained the appropriate right of way Excavation or Obstruction permit from the County to do so.

(a) **Excavation Permit.** An Excavation 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 Right of Way by placing Equipment described therein on the Right of Way, to the extent and for the duration specified therein. An Obstruction Permit is not required if a person already possesses a valid Excavation Permit for the same project.

Subd. 2. Permit Extensions. No person may excavate or obstruct the right of way beyond the date or dates specified in the permit unless such person (i) makes a supplementary application for another right of way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

Subd. 3. Delay Penalty. In accordance with Minnesota Rules 7819.1000 subp. 3 notwithstanding subd. 2 of this section, the County shall establish and may impose a delay penalty for unreasonable delays in right of way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by County Board resolution and shall include any delays or damages charged by the County's construction contractor and may include liquidated damages consistent with the contract. A delay penalty will not be imposed if the delay in project completion is due to circumstances beyond the control of the applicant including, without limitation, inclement weather, acts of God, or civil strife.

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

Sec. 1.10. Permit Applications.

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

- (a) Registration with the County pursuant to this ordinance;
- (b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
- (c) Submission of SWPPP for all Excavation Permit applications.
- (d) Payment of money due the County 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 County because of applicant's prior excavations or obstructions of the right of way or any emergency actions taken by the County;
- (e) Payment of disputed amounts due the County for prior disputed fees, penalties or other charges by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.
- (f) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation or obstruction permit to install additional facilities and the County deems the existing construction performance bond inadequate under applicable standards.

Sec. 1.11. Issuance of Permit; Conditions.

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

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

Sec. 1.12. Permit Fees.

Subd. 1. Excavation Permit Fee. The County shall establish an Excavation right of way permit fee schedule specifying fees that are adequate to recover the following costs. Permit fees shall be established by the County Board and may be amended at any public meeting.

- (a) the County Management Costs;
- (b) Degradation Costs, if applicable;

(c) Mapping Costs;

Subd. 2. Payment of Permit Fees. No right of way permit shall be issued without payment of any and all applicable permit fees unless the County allows applicants to pay such fees within thirty (30) days of billing.

Subd. 3. Non refundable. Permit fees that were paid for a permit that the Director has revoked for a breach as stated in section 1.23 are not refundable. Permit fees paid for work that is subsequently cancelled are not refundable.

Sec. 1.13. Right of Way Patching and Restoration.

Subd. 1. Timing. The work to be done under the excavation permit, and the patching and restoration of the right of way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonable or unreasonable under section 1.17

Subd. 2. Temporary Surfacing. Patch and Restoration. Permittee shall patch its own work.

(a) County Restoration. If the County restores any part of the right of way, permittee shall pay the costs thereof within thirty (30) days of billing. If the County restores only the surface of the right-of-way and during the twenty-four (24) months following such restoration, the pavement settles due to improper backfilling, the permittee shall pay to the County, within thirty (30) days of billing, all costs related to restoring the right of way or associated with having to correct the defective work, which may include removal and replacement of any or all work done by the permittee, provided, however, that the County will first give the permittee notice of the pavement defect and reasonable opportunity to correct the defect. These costs shall include administrative overhead, mobilization, material, labor, and equipment.

(b) Permittee Restoration. If the permittee restores the right of way itself, it shall, at the time of application for a permit, post a Construction Performance Bond in an amount determined by the Director to be sufficient to cover the cost of restoration. If, within twenty-four (24) months after completion of the restoration of the right of way, the Director determines that the right of way has been properly restored, the surety on the Construction Performance Bond shall be released.

(c) Degradation Fee and Patching in Lieu of Restoration to PUC Standards. In lieu of right of way restoration, a right of way user may elect to pay a degradation fee. However, the right of way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.

Subd. 3. Standards. The permittee shall perform temporary surfacing, patching and restoration including backfill, compaction, and landscaping according to the standards and with the materials specified by the Director. The Director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The Director in exercising this authority shall comply with PUC standards for right of way restoration and require conformance to MN/DOT standard specifications.

Subd. 4. Guarantees. The permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion. During this 24-month period it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director. Said work shall be completed within five (5) business days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under section 1.17.

Subd. 4(a). Duty to Correct Defects. The permittee shall correct defects in patching, or restoration performed by permittee or its agents. Permittee, upon notification from the County, shall correct all restoration work to the extent necessary, using the method required by the County. Said work shall be completed within five (5) business days of the receipt of the notice from the County, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under section 1.17.

Subd. 5. Failure to Restore. If the Permittee fails to restore the right of way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the County, at its option, may do or sub-contract such work. In that event the permittee shall pay to the County, within thirty (30) days of billing, the cost of restoring the right of way. If permittee fails to pay as required, the County may exercise its rights under the Construction Performance Bond.

Sec. 1.14 Storm Water Pollution Prevention Plan (SWPPP).

Subd. 1. Site Plan. Include a site plan for the project area identifying the erosion controls and sediment controls to be used and their location,

Subd. 2. Sediment Controls. The permittee shall implement and maintain sediment controls.

- (a) Timing. Perimeter sediment controls shall be installed prior to beginning work.
- (b) Installation. Sediment controls shall be installed to applicable industry standards.
- (c) Maintenance and Replacement. Sediment controls shall be maintained. The permittee shall inspect sediment controls weekly and within 24 hours of a rain event exceeding 0.5 inch. Sediment controls shall be repaired and/or replaced within 24 hours of discovery.
- (d) Removal. Perimeter sediment controls shall not be removed until 70% permanent vegetative cover has been established.
- (e) Tracking of sediment off the site shall be minimized. Tracked sediment shall be removed from the road surface on a daily basis to the satisfaction of the County.

Subd. 3. Erosion Controls. The permittee shall implement erosion controls.

- (a) Open soil areas shall be minimized in the phasing of construction activities.
- (b) Storm water drainage originating off-site shall be directed away from the work area.

- (c) Disturbed soil areas will be seeded and mulched or blanketed, or sod will be placed, immediately upon final grading.

Subd. 4. Failure to Implement Erosion and Sediment Controls. If the Permittee fails to implement or maintain required erosion and sediment controls, the County, at its option, may do or sub-contract such work. In that event, the permittee shall pay to the County, within thirty (30) days of billing, the cost of the work. If permittee fails to pay as required, the County may exercise its rights under the Construction Performance Bond.

Subd. 5. Dewatering. The permittee shall not discharge off the site sediment during dewatering activities, including pump discharges and trench/ditch cuts for drainage,

- (a) Temporary sediment basins or other practices shall be used to ensure sediment-laden water is not discharged downstream.
- (b) Discharge points shall be protected from erosion through the use of rock riprap, sand bags, plastic sheeting or other accepted energy dissipation measures.

Subd. 6. Site Waste Controls. The permittee shall control waste that may negatively impact water quality.

- (a) Solid wastes including asphalt, millings, paper and other wastes must be disposed of properly.
- (b) Oil, gasoline and any hazardous substance must be stored properly to prevent spills or leaks.
- (c) All solid or liquid wastes from concrete washout activity must be contained in a leak-proof containment structure or impermeable liner.

Sec. 1.15. Joint Applications.

Subd. 1. Joint Application. Registrants may jointly apply for permits to excavate or obstruct the right of way at the same place and time.

Subd. 2. Shared Fees. Registrants who apply for permits for the same obstruction or excavation may share in the payment of the permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Subd. 3. With County Construction Projects. Registrants who join in a scheduled utility installation or obstruction or excavation coordinated with a County construction project by the Director, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the obstruction and degradation portions of the permit fee, but a permit is still required.

Sec. 1.16. Supplementary Applications.

Subd. 1. Limitation on Area. A right of way permit is valid only for the area of the right of way

specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must, before working in that greater area, (1) make application for a permit extension and pay any additional fees required thereby, and (2) be granted a new permit or permit extension.

Subd. 2. Limitation on dates. A right of way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date. Permits for non-emergency work shall be submitted at least three business days prior to the planned start of work.

Sec. 1.17. Other Obligations.

Subd. 1. Compliance with Other Laws. The applicant must notify and obtain a permit from any township or city through which it passes if said township or city so requires. Obtaining a right of way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the County or other applicable rule, law or regulation. Permittee shall comply with other local codes and with road load restrictions. A permittee shall comply with all requirements of local, state and federal laws, including Minnesota Statutes Ch. 216D ("One Call Excavation Notice System"). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right of way pursuant to its permit, regardless of who does the work.

Subd. 2. Prohibited Work. Except in an emergency, and with the approval of the County, no right of way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Subd. 3. Interference with Right of Way. A permittee shall not so obstruct a right of way that the natural free and clear passage of water through the gutters, culverts, ditches, tiles or other waterways shall be interfered with. Private vehicles of those doing work in the right of way may not be parked within or next to a permit area, unless parked in conformance with County or applicable township or city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

Traffic control shall conform to the Minnesota Manual on Uniform Traffic Control Devices, including the Temporary Traffic Control Zones Field Manual and any directions of the County Engineer.

Sec. 1.18. Denial of Permit.

The County may deny a permit for failure to meet the requirements and conditions of this ordinance or if the County determines that the denial is necessary to protect the public health, safety, and welfare or when necessary to protect the right of way and its current and future use.

The County may deny a permit if the applicant has failed to comply with previous permit conditions. The County may withhold issuance of a permit until conditions of previous permit(s) are complied with.

Sec. 1.19. Installation Requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right of way shall be done in conformance with Minnesota Rules 7819.1100 and 7819.5000 and shall conform to MN/DOT standard specifications and other applicable local requirements, in so far as they are not inconsistent with Minnesota Statutes sections 237.162 and 237.163.

Sec. 1.20. Inspection.

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

Subd. 2. Site Inspection. Permittee shall make the work-site available to the County and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subd. 3. Authority of County.

- (a) At the time of inspection the Director may order the immediate cessation and correction of any work which poses a serious threat to the life, health, safety or well being of the public.
- (b) The Director may issue an order to the permittee to correct any work which does not conform to the terms of the permit or other applicable standards, rules, laws, conditions, or codes, so long as the nonconformance constitutes a "substantial breach" as set forth in Minnesota Statutes section 237.163, subd. 4(c)(1)-(5). The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to section 1.23.
- (c) The cost of any action required by the County shall be paid by the permittee.

Sec. 1.21. Work Done Without a Permit.

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

If the County becomes aware of an emergency regarding a registrant's facilities, the County will attempt to contact the local representative of each registrant affected, or

potentially affected, by the emergency. In any event, the County may take whatever action it deems necessary to correct the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

Subd. 2. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right of way must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by this ordinance, and deposit with the County the fees necessary to correct any damage to the right of way and comply with all of the requirements of this Ordinance.

Sec. 1.22. Supplementary Notification.

If the obstruction or excavation of the right of way begins later or ends sooner than the date given on the permit, permittee shall notify the County of the accurate information as soon as this information is known.

Sec. 1.23. Revocation of Permits.

Subd. 1. Substantial Breach. The County reserves its right, as provided herein, to revoke any right of way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit including a threat to the safety of workers, or the right of way user or the utility users. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (a) The violation of any material provision of the right of way permit;
- (b) An evasion or attempt to evade any material provision of the right of way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the County or its citizens;
- (c) Any material misrepresentation of fact in the application for a right of way permit;
- (d) The failure to complete the work in a timely manner; unless a permit extension is obtained, or unless the failure to complete work is due to reasons beyond the permittee's control, or failure to relocate existing facilities as specified in section 1.25;
- (e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 1.20;
- (f) Failure of the utility to pay any required costs, fees, or charges billed by the County; or
- (g) Failure to provide traffic control that conforms to the provisions of the Minnesota Manual on Uniform Traffic Control Devices, including the Temporary Traffic Control Zones Field Manual.

Subd. 2. Written Notice of Breach. If the County determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the County shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the County, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

Subd. 3. Response to Notice of Breach. Within three (3) business days of receiving notification of the breach, permittee shall provide the County with a plan, acceptable to the County, that will cure the breach. Permittee's failure to so contact the County, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the County, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically revoke the permit and may include placing the permittee on probation for one (1) full year. No plan will be unreasonably rejected.

Subd. 4. Cause for Probation. From time to time, the County may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right of way grossly outside of the permit authorization.

Subd. 5. Reimbursement of County Costs. If a permit is revoked, the permittee shall also reimburse the County for the County's reasonable management costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Subd. 6. Revoked Permit. If the County revokes a utility's permit for breach of this ordinance, the utility will not be allowed to install any utility or to obstruct or excavate within the County right of way until the breach situation is corrected to the satisfaction of the Director and the permit is reissued.

Sec. 1.24. Mapping Data.

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

Subd. 2. Information. The County requires as part of its permit application the filing of all the following information:

A. location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities, with the location based on:

(1) offsets from property lines, distances from the centerline of the public right of way, and curb lines as determined by the County;

(2) coordinates derived from the coordinate system being used by the County; or

(3) any other system agreed upon by the right of way user and County;

B. the type and size of the utility facility;

C. a description showing above ground appurtenances;

D. a legend explaining symbols, characters, abbreviations, scale, and other data shown on the map; and

E. any facilities to be abandoned, if applicable, in conformance with Minnesota Statutes, section 216D.04, subd. 3.

Subd. 3. Changes and corrections. The application must provide that the applicant agrees to submit "as built" drawings, reflecting any changes and variations from the information provided under subd. 2, items A to E.

Subd. 4. Additional construction information. In addition, the right of way user shall submit to the County at the time the project is completed a completion certificate according to Minnesota Rules 7819.1300.

Subd. 5. Manner of conveying permit data. A right of way user is not required to provide or convey mapping information or data in a format or manner that is different from what is currently utilized and maintained by that user. A permit application fee may include the cost to convert the data furnished by the right of way user to a format currently in use by the County. These data conversion costs, unlike other costs that make up permit fees, may be included in the permit fee after the permit application process.

Subd. 6. Data on existing facilities. At the request of the County, a right of way user shall provide existing data on its existing facilities within the public right of way in the form maintained by the user at the time the request was made, if available.

Sec. 1.25. Location and Relocation of Facilities.

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

Utility poles and guy anchors, and any other equipment, shall conform to NCHRP 350 standards for crashworthiness or must be located outside of applicable clear zones. Any installation that does not conform to Minnesota Department of Transportation clear zone standards must be approved by the Director and the facility owner shall indemnify and hold harmless the County.

Subd. 2. Relocation of Facilities. A registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right of way whenever the Director for good cause requests such removal and relocation, and shall restore the right of way consistent with PUC standards, local regulations, and MN/DOT standard specifications. The Director may make such request to prevent interference by the company's equipment or facilities with (i) a present or future County use of the right of way, (ii) a public improvement undertaken by the County, (iii) an economic development project in which the County has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the right of way.

Relocation Notification Procedure: The Director shall notify the utility owner at least six (6) months in advance of the need to relocate existing facilities so the owner can plan the relocation. The Director shall provide a second notification one (1) month before the owner needs to begin the relocation. The utility owner shall begin relocation of the facilities within one (1) week of the expiration of the six (6) month notice. All utilities shall be relocated within one (1) month of the expiration of the six (6) month notice. When emergency, natural disaster, or unforeseen changes to a programmed project necessitate relocation of a facility, the County shall notify the utility owner as soon as possible, but shall be exempt from the notification schedule described above.

In the event that emergency work by the County or by a municipality in the County right of way requires relocation of a utility, the notification requirements above are waived. The County and utility shall coordinate efforts to minimize delay. The Director may allow a different schedule if it does not interfere with the County's project.

Delay to County Project: The Director shall notify the utility owner if the owner's progress will not meet the relocation schedule. If the owner does not take action to insure the relocation will be completed in accordance with the above schedule and the Director determines this delay will have an adverse impact on a County project, the Director may hire a competent contractor to perform the relocation. In that event, the County may charge the utility owner all costs incurred to relocate the facility. The County may charge the utility owner for all costs incurred and requested by a contractor working for the County that is delayed because the relocation is not completed in the scheduled timeframe and for all other additional costs incurred by the County due to the delay.

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

Sec. 1.26. Pre-excavation Facilities Location.

In addition to complying with the requirements of Minnesota Statutes Ch. 216D ("One Call Excavation Notice System") before the start date of any right of way excavation, each registrant that has facilities or equipment in the area to be excavated shall mark the horizontal placement of all said facilities. Any registrant's facilities or equipment that are in the area of work shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation to protect the safety of workers and right of way users and other utility users. If the utility is not at the approved location, it shall be exposed at the permittee's expense or by the County upon written notice to the permittee. The County may, upon said notice, locate said utility at the permittee's expense.

Sec. 1.27. Damage to Other Facilities.

When the County does work in the right of way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the Director shall notify the local representative as early

as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right of way that it or its facilities damage. When the registrant does damage to County facilities in the right of way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, it shall correct the damage immediately. If it does not, the County may make such repairs as necessary and charge all of the expenses of the repair to the registrant, which shall be paid within 30 days of billing. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the County's response to an emergency occasioned by that registrant's facilities.

Sec. 1.28. Right of Way Vacation.

Reservation of Right. If the County vacates a right of way that contains the facilities of a registrant, the registrant's rights in the vacated right of way are governed by Minnesota Rules 7819.3200 and other applicable laws.

Sec. 1.29. Indemnification and Liability.

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

Sec. 1.30. Abandoned or Unusable Facilities.

Subd. 1. Discontinued Operations. A registrant who has determined to discontinue all or a portion of its operations in the County must provide information satisfactory to the County that the registrant's obligations for its facilities in the right of way under this Ordinance have been lawfully assumed by another registrant.

Subd. 2. Removal. Any registrant that has abandoned or unusable facilities in any right of way shall remove them from that right of way if required in conjunction with other right of way repair, excavation, or construction, unless the County waives this requirement.

Sec. 1.31. Appeal.

A right of way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, in accordance with the provisions of the Ramsey County Administrative Ordinance relating to the suspension or revocation of a license.

Sec. 1.32. Reservation of Regulatory and Police Powers.

A Permittee's or Registrant's rights are subject to the regulatory and police powers of the County

to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

Sec. 1.33. Severability.

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

Sec. 1.34. Penalty for Violation.

Violation of this ordinance shall result in the assessment of a penalty of \$500 per occurrence per site per mile per day as long as may be applicable unless a penalty or fine is otherwise specifically designated in this ordinance.

DOCUMENT EXECUTION COVER SHEET

DATE: 8/8/2012
TO: Patrick Born, Regional Administrator
FROM: Micky Gutzmann, Director, Contracts and Procurement
THROUGH: Mark Fuhrmann, New Starts Program Director; Brian Lamb, GM, Metro Transit
SUBJECT: Contract 10I042, Agreement for Maintenance of Existing Tunnels and Construction and Maintenance of New Tunnel Under Ramsey County State Aid Highway 34 (University Avenue) in the Capitol Area.

I recommend and request that you execute the attached document on behalf of the Metropolitan Council. If you require further information please contact:

Name: Auburn Dees
Phone/extension: 1346

TYPE OF DOCUMENT:

Construction and Maintenance Agreement between the Council, Ramsey County and the State of Minnesota

FISCAL COMMITMENT

None

DELEGATION

The Regional Administrator is authorized to enter into contracts with other governmental entities for the expenditure of amounts not exceeding \$250,000.

COUNCIL BOARD ACTION

None Required.


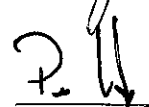
AUTHORIZATION

The Regional Administrator is authorized to execute agreements up to \$250,000.00.

DOCUMENT PREPARATION

☒ This document was prepared and reviewed by the Procurement office.
(Box will be checked by Procurement upon final review)

☒ This document was reviewed by the Office of General Counsel.
(Box will be checked by OGC upon final review)


Procurement

Office of General Counsel

RETURN ROUTING

Please return the executed document to: Auburn Dees, Robert Street

Date: July 10, 2012

To: Pat Born, Regional Administrator

Via: Brian Lamb, General Administrator

From: Mark Fuhrmann, Program Director
Dan Soler, Director Transit Systems Design and Construction

Subject: CCLRT Maintenance of Tunnel Agreement – University Avenue Tunnels

Purpose:

Approve the Agreement for maintenance of existing tunnels and construction and maintenance of new tunnel under Ramsey County State Aid Highway 34 (University Avenue) in the Capitol Area – University Avenue Tunnels with Ramsey County (RC) and Department of Administration (DOA) for maintenance of the existing and new tunnels under University Avenue.

Discussion:

RC and DOA have worked closely with the Central Corridor Project Office (CCPO) on various activities regarding the development of the Central Corridor Light Rail Transit (CCLRT) Project, specifically Civil East Construction which includes the work along University Avenue.

During the course of University Avenue reconstruction, the State desires to design, construct, utilize and maintain a pedestrian and materials handling delivery tunnel beneath University Avenue to connect the State Capitol Building on the south side of University Avenue with a parking lot on the north side of University Avenue.

The agreement outlines the responsibilities for each of the parties of the new tunnel under University Avenue. The agreement also outlines the maintenance responsibilities for each of the parties for the new and existing tunnels.

Council action is not required as the agreement is a no cost agreement.

Alternatives/Impacts:

Do nothing. Not recommended as the tunnels are required as part the construction.

Funding Sources:

No funding source needed. No cost agreement.

Recommendation/Conclusion:

Staff recommends approving the Agreement as submitted.

Dees, Auburn

From: Lessard, Stephanie
Sent: Wednesday, August 08, 2012 8:32 AM
To: Dees, Auburn
Subject: FW: Tunnel Maintenance Agreement

FYI... We can proceed.

From: Waslaski, Wayne (ADM) [<mailto:wayne.waslaski@state.mn.us>]
Sent: Wednesday, August 08, 2012 8:31 AM
To: Lessard, Stephanie
Cc: Soler, Dan
Subject: RE: Tunnel Maintenance Agreement

Stephanie,

No other state signatures are required to have a legally binding contract.

Wayne

From: Lessard, Stephanie [<mailto:Stephanie.Lessard@metc.state.mn.us>]
Sent: Wednesday, August 08, 2012 8:30 AM
To: Waslaski, Wayne (ADM)
Cc: Soler, Dan
Subject: RE: Tunnel Maintenance Agreement

Wayne,

There are spaces for another signature and a witness on the signature block page for the State of MN. Do you know if these are required for the State to consider the contract legally binding or were the spaces left in in error? I just want to make sure before we receive our final signature.

Thank you,
Stephanie

From: Waslaski, Wayne (ADM) [<mailto:wayne.waslaski@state.mn.us>]
Sent: Friday, June 29, 2012 6:26 AM
To: Lessard, Stephanie; 'Lux, Joseph'
Cc: Soler, Dan
Subject: RE: Tunnel Maintenance Agreement

Commissioner Cronk has signed three signature pages, which we will forward to Stephanie.

Thanks, Wayne

From: Lessard, Stephanie [<mailto:Stephanie.Lessard@metc.state.mn.us>]
Sent: Thursday, June 28, 2012 2:08 PM
To: 'Lux, Joseph'; Waslaski, Wayne (ADM)

Cc: Soler, Dan
Subject: RE: Tunnel Maintenance Agreement

This change is okay with the Council. Attached is a revised agreement for signature. Let me know if you have any questions.

Thank you,
Stephanie

From: Lux, Joseph [<mailto:Joseph.Lux@CO.RAMSEY.MN.US>]
Sent: Thursday, June 28, 2012 12:59 PM
To: Waslaski, Wayne (ADM); Lessard, Stephanie
Cc: Soler, Dan
Subject: RE: Tunnel Maintenance Agreement

No objections here.

Joe Lux

Joseph Lux
Planning Specialist
Ramsey County Public Works
1425 Paul Kirkwold Drive
Arden Hills, MN 55112-3933
651-266-7114



From: Waslaski, Wayne (ADM) [<mailto:wayne.waslaski@state.mn.us>]
Sent: Thursday, June 28, 2012 11:54 AM
To: Stephanie Lessard; Lux, Joseph
Cc: Soler, Dan
Subject: RE: Tunnel Maintenance Agreement

Joe and Dan,

Would you be open to the following technical correction on the first page, fourth whereas clause, last parenthesis:

- Insert "Existing Tunnels and New Tunnel" so it would read: (collectively Existing Tunnels and New Tunnel hereinafter "University Avenue Tunnels")

This is consistent with the intent, which wasn't clear to those that reviewed the document on this end.

If ok, I would propose the Met Council make the change and insert a new page 1.

Thanks, Wayne

From: Lessard, Stephanie [<mailto:Stephanie.Lessard@metc.state.mn.us>]
Sent: Friday, June 15, 2012 8:05 AM
To: 'joseph.lux@co.ramsey.mn.us'; Waslaski, Wayne (ADM)
Cc: Soler, Dan
Subject: Tunnel Maintenance Agreement

Joe and Wayne,

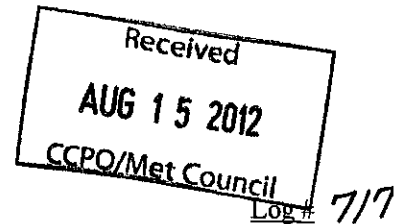
Attached is the final tunnel maintenance agreement for your signatures. Please print three copies, sign, and return to my attention. Send additional copies, if you need more than one original. Let me know if you have any questions.

Thank you,
Stephanie Lessard
Central Corridor Project Office
540 Fairview Avenue North
Suite 200
St. Paul, MN 55104

612-272-7424

stephanie.lessard@metc.state.mn.us

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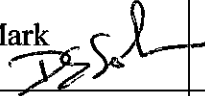



**DOCUMENT ROUTING
CONTRACTS AND PROCUREMENT**

DATE: 8/8/2012

**RE: Agreement for Maintenance of Existing Tunnels and Construction and Maintenance of New Tunnel
Under Ramsey County State Aid Highway 34 (University Avenue) in the Capitol Area**

TYPE OF DOCUMENT: Contract 10I042

Please route to the staff members below:

NAME	ACTION	INITIAL/DATE
Micky Gutzmann	Sign DECS 	8/8/12
Peter Hanf	Sign DECS 	8/13/12
Dan Soler (CCPO)	Hand carry to Mark 	8/15/12
Mark Fuhrmann	Initial DECS 	8.17.12
Brian Lamb	Initial DECS 	8/20/12
Pat Born	Sign Agreement (3 copies) 	8.22.12

PLEASE RETURN TO: Auburn Dees, Contracts and Procurement, Robert Street (x1346)