BALDWIN TOWN
SHERBURNE COUNTY, MINNESOTA

ORDINANCE NO. 100

AN ORDINANCE REGULATING TOWN ROAD RIGHTS-OF-WAY

The Board of Supervisors of the Town of Baldwin hereby ordains:

ARTICLE I
ADMINISTRATION

Section 1.00. Purpose, Authority and Scope.

1. **Purpose.** The primary objectives of this Article are to protect public safety, reduce interferences with public travel, protect the public's interest in its rights-of-way, and to provide for the efficient and uniform administration of the Town's road rights-of-way. The Town Board finds that the regulations, requirements, and restrictions, as set forth in this Article, are in the best interests of the health, safety, and welfare of the Town's citizens.

2. **Authority**. As a road authority, the Town Board has broad authority to regulate what occurs within the town's road rights-of-way. This authority is found in a variety of sections in chapters 160, 164, 165, 169, 222, 237, 609, and other chapters, as well as the rules associated with those chapters.

3. **Delegation of Authority**. This Article shall be administered and enforced by the Town Board. The Town Board may delegate to individuals the authority to administer and enforce this Article, or aspects thereof, on behalf of the Town. Such designees shall have full authority to carry out the duties delegated to them as well as such related powers and duties reasonably necessary to fully execute those delegated duties.

4. **Scope.** This Article applies to all Town road rights-of-way, including those dedicated to the public by plat, within the Town. The Town may, with respect to cartways, platted roads, and other dedicates roads that are not maintained by the Town, enforce this Ordinance to the extent the Town Board determines is necessary to preserve or protect its interests. However, any action taken by the Town on such roads shall not constitute its acceptance of the cartway or road for maintenance purposes. This Article does not apply to or otherwise regulate rights-of-way under the jurisdiction of another road authority.

Section 1.01. Definitions.

For the purposes of this Article, the following terms shall have the meaning given them in this section.

1. **Abandoned vehicle**. "Abandoned vehicle" means a motor vehicle, as defined in Minnesota Statutes, section 169.011, subdivision 42, located within a right-of-way that

lacks vital component parts or is in an inoperable condition such that it has no substantial potential for further use consistent with it usual functions.

2. **Approach.** "Approach" means the area of the right-of-way between the traveled surface of the road and the adjacent property that is intended to provide access for vehicles or equipment from the road to the adjacent property.

3. **Headwall.** "Headwall" means rock, concrete, masonry, metal, timber or other similar materials placed on the sides of an approach as support, to prevent erosion, or for decorative purposes.

4. **Junk.** "Junk" means old or scrap hazard signs, copper, brass, rope, rags, batteries, paper, synthetic or organic, trash, garbage, waste materials, rubbish, rubber debris, appliances, waste, or junked, dismantled, or wrecked automobiles or farm or construction machinery or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

5. **Motor Vehicle or Vehicle.** "Motor vehicle" or "vehicle" has the meaning given motor vehicle in Minnesota Statutes, section 169.011, subdivision 42.

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

7. **Parking enforcement officer.** "Parking enforcement officer" means a duly elected supervisor of the Town Board. Law enforcement officers shall have all the powers of a parking enforcement officer under this Article.

8. **Person.** "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.

9. **Right-of-Way.** "Right-of-way" means the entire width between boundary lines of any way or place under the jurisdiction of the Town, including publicly dedicated rights-of-way, when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic and is maintained by the Town.

10. **Towing Company.** "Towing company" means a person engaged in the business of towing or recovering vehicles by means of a crane, hoist, tow bar, tow line, or dolly.

11. **Town.** "Town" means Baldwin Township, Sherburne County, Minnesota.

12. **Town Board.** "Town Board" means the Board of Supervisors of Baldwin Township, Sherburne County, Minnesota.

Section 1.02. Cultivation and Landscaping.

1. **Cultivation.** No person may cultivate, plant, harvest, or maintain agricultural crops, trees, bushes, or shrubs within a right-of-way.

2. **Landscaping.** No person may cultivate, plant, or maintain grasses, flowers, vegetables, or other vegetation in any manner that obstructs visibility of a right-of-way or otherwise interferes with, obstructs, or renders dangerous for passage a right-of-way. No person may place watering systems or sprinkler heads within a right-of-way.

Section 1.03. Obstructions and Junk Prohibited as a Public Nuisance.

1. **Obstructions.** No person may place, maintain, or allow any obstruction in a right-of-way other than those specifically permitted by this Article, by state law or rule, or by written approval of the Town Board. Items prohibited by this section include, but are not limited to, fences, posts, structures, piled materials, hay bales, vehicles, trailers, campers, equipment, or any other items that interfere with the safe use or the maintenance of the right-of-way. No person shall park a functioning vehicle in a right-of-way in such a way as to unreasonably interfere with the safe use of a road or the maintenance of the right-of-way.

2. **Junk.** No person shall place, discard, deposit, or maintain Junk in a right-of-way.

Section 1.04. Alteration of Grade.

No person may alter or change the depth or contour of any portion of any ditch or embankment in a right-of-way without written approval of the Town Board.

Section 1.05. Unauthorized Maintenance.

No person may work, maintain, improve, or repair the traveled portion of a right-of-way without the written approval of the Town Board.

Section 1.06. Doing Damage.

No person shall cause damage to a right-of-way, whether by a willful act or a failure to exercise due care, without the written approval of the Town Board. Damage prohibited by this section includes obstructing a ditch, culvert, or any related drainage facilities. Any person doing work within a right-of-way with approval of the Town Board shall return the right-of-way to at least the same condition it was in prior to the damage.

Section 1.07. Mailboxes, Signs and Newspaper Boxes.

1. **Mailboxes.** Mailboxes and newspaper boxes are permitted within a right-of-way if they do not interfere with, obstruct, or render dangerous for passage in a right-of-way. Mailboxes placed within a right-of-way shall comply with all of the standards in Minnesota Rules, chapter 8818 regardless of the speed limit of the adjacent road. The Town Board may remove and replace mailboxes that do not comply with the standards at the owner's expense as provided in Minnesota Statute, section 169.072.

2. **Signs.** No sign of any nature may be placed or allowed to remain in any right-of-way except an official traffic sign placed by a governmental authority or other signage expressly permitted by state law.

Section 1.08. Approaches and Headwalls.

1. **Approaches (Driveways).** No person may construct or reconstruct any approach within a right-of-way without first obtaining a permit from the Town. A person may be required to submit a map or drawing of the existing or proposed approach when seeking approval.

    (a) A person shall be required to construct or reconstruct an approach that meets these minimum specifications for safety and for adequate drainage of the right-of-way. These specifications include, but are not necessarily limited to, the following standards:

        1. Culverts within approaches shall be a minimum of 15 inches in diameter and a minimum of 24 feet in length.

        2. Approach culverts must be constructed of 16 gauge corrugated metal pipe.

        3. Aprons are required.

        4. Approach inslope in the ditch at the Culvert shall be no greater than 4:1.

        5. Only one driveway per roadway is permitted for each residential lot.

        6. The minimum spacing between approaches connecting to a collector roadway is 150 feet.

        7. The maximum top width of a residential approach within the right-of-way shall be limited to 24 feet. The maximum top width of a commercial driveway within the right-of-way shall be limited to 30 feet.

        8. The full width of the right-of-way adjacent to the person's property shall be cleared and grubbed prior to the construction of the approach.

            i. All stumps, roots, logs, and brush shall be removed from the upper 24 inches of the approach roadbed embankment.
            ii. Oversized rock, broken concrete, and metals shall be removed from the upper 12 inches of the approach roadbed embankment.

    (b) **Variances.** A person may request a variance from any of the requirements of this section by submitting a written request explaining the standards from which a variance is sought and the reasons for the variance to the Town and appearing before the Town Board at a regular meeting.

    (c) **Non-Compliance.** A person who fails to comply with the requirements of this section may be required to remove and/or reconstruct the unapproved approach at that person's sole expense.

2. **Culverts.** No person may place or replace a culvert within a right-of-way without first obtaining a permit from the Town. A person may be required to submit a map or drawing of the existing or proposed culvert when seeking approval. All new and replacement culverts shall be installed consistent with the Town's applicable standards. A person may be required

to install a culvert meeting the specifications set out by the Town Board if the Town Board determines a culvert is necessary for suitable approach to the road and to promote adequate drainage of the right-of-way. These specifications for culverts include, but are not limited to, the following standards:

(a) Safety aprons are required on all culverts located at the intersection of a Town road and a collector roadway;
(b) Culverts used in approaches shall be a minimum of 15 inches in diameter and a minimum of 24 feet in length; and
(c) Culverts used in approaches shall be constructed of 16 gauge corrugated metal pipe.

3. **Culvert Replacement.** Any person that damages a culvert shall be required to replace the damaged culvert with one sized to convey a discharge equal to or greater than the capacity of the damaged culvert.

4. **Costs.** A person constructing or reconstructing an approach to an existing road shall be responsible for paying all of the costs related thereto, including the cost of seeking all necessary approvals and the cost of a culvert if one is required. Property owners are responsible for maintaining, repairing, and replacing as needed all approaches and associated culverts on their property at their own cost.

5. **Headwalls.** No person may construct or reconstruct any headwall within a right-of-way without first obtaining a permit from the Town. All headwalls shall be constructed or reconstructed in a way that does not interfere with the safe use, maintenance, or damage of a right-of-way.

Section 1.09. Drainage Affecting Right-of-Way.

No person may install, connect, construct, or reconstruct any drainage system or facility including, but not limited to, ditches, drain tile, culverts, or pipes into, across, or that outlets into a right-of-way without first obtaining a permit from the Town. A person may be required to submit a map or drawing of the existing or proposed drainage system when seeking approval.

Section 1.10. Parking Restrictions. Every vehicle parked upon a right-of-way shall comply with the provisions of this section.

(a) Prohibitions. No person shall park a vehicle, whether attended or unattended, in a right-of-way in a way which violates any of the following:

1) In a place prohibited by Minnesota Statutes, section 169.32;
2) In a place prohibited by Minnesota Statutes, section 169.34, subdivision 1;
3) So as to interfere with the maintenance of a right-of-way by the town or its authorized contractors. For the purposes of this prohibition, maintenance includes, but is not limited to, snowplowing, grading, seal coating, and bituminous overlay;
4) For longer than 72 consecutive hours from April 1st through November 30th each year; or

5) In an area designated by Town Board resolution and marked by one or more signs as being a no parking area.

(b) Snow Season Parking. It is unlawful for a person to park a vehicle, whether attended or unattended, during the snow season in a way which violates this section.

1) No parking is allowed in a right-of-way when there is an accumulation of 2 or more inches of snow until after the Town has completed plowing it.
2) During periods when less than 2 inches of snow has accumulated, or after the snow has been plowed and snow event has ended, no vehicle may be parked in a right-of-way for more than 12 consecutive hours.

(c) Truck Parking. It is unlawful to park a truck in a right-of-way longer than 12 consecutive hours, except when loading or unloading is actively taking place.

Section 1.11. Abandoned Vehicles.

It shall be unlawful to park, store, leave, or to allow the parking, storage, or leaving of an abandoned vehicle in a right-of-way. Abandoned vehicles create an unsightly condition tending to reduce property values, interfere with the maintenance and safe use of rights-of-way, and constitute an attractive nuisance creating a hazard to the health, safety and welfare of minors.

Section 1.12. Towing and Impoundment Authorized.

The Town may tow and have impounded a vehicle parked or abandoned in violation of this Article as provided in this section.

(a) Parking Enforcement Officers. The duly elected supervisors of the Town Board are individually designated parking enforcement officers for the purposes of this Article and shall have all powers provided such officers under this Article, Minnesota Statutes, section 169.041, and are authorized to act on behalf of the Town, as a towing authority, for the purposes of Minnesota Statutes, Chapter 168B.

(b) Designating a Towing Company. The Town Board may designate one or more towing companies that a parking enforcement officer may contact to tow a vehicle in accordance with this Article. If one or more towing companies are designated, a parking enforcement officer shall use a designated company to the extent reasonably possible under the circumstances. The Town board may enter into such agreements with the towing companies as it deems necessary to provide for the timely towing and storage of vehicles. A towing company towing or impounding a vehicle pursuant to this Article shall be responsible for impounding and properly storing and safekeeping the vehicle and its contents. Any towing company towing a vehicle upon order of a parking enforcement officer shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances in the towing, storage, and sale or other disposal of the vehicles it tows.

Section 1.13. Procedure for Towing Vehicles.

A parking enforcement officer shall comply with the following procedures before ordering a vehicle towed pursuant to this ordinance.

(a) Citation and Towing Report. A parking enforcement officer shall issue a citation and towing report ("Report") regarding the vehicle in violating of this ordinance. The Report shall describe the vehicle, the license plate number, and the reasons for towing. The citation and towing report may be on the same form. The parking enforcement officer and the tow driver shall both sign the Report.

(b) Waiting Period. If the vehicle is not moved or otherwise made to comply with this Article within four hours of the issuance of the Report, the parking enforcement officer may order the vehicle towed.

(c) Immediate Towing. A parking enforcement officer may order the immediate towing of a vehicle, upon the issuance of a Report and without allowing for a waiting period, if its parked or located so as to:

1) Violate the snow season parking prohibition contained in this Article;
2) Interfere with snowplowing the traveled portion of a right-of-way;
3) Block a driveway, alley, right-of-way, or fire hydrant;
4) Be within 30 feet of a stop sign and visually blocking the stop sign;
5) Be within a designated no parking area;
6) Constitutes an accident or traffic hazard to the traveling public as determined by a parking enforcement officer;
7) Prevent egress by a lawfully parked vehicle; or
8) Violate state law allowing the immediate towing of a vehicle.

(d) Notice. Within five days of towing a vehicle, the town or the towing company shall send or otherwise deliver written notice of the towing to the owner and lien holder of the vehicle. If the town provides the notice, it shall provide a copy of the notice to the towing company and if the towing company provides the notice it shall provide the town a copy. If the owner cannot be identified, the notice required by this paragraph shall be published at least once in the town's official newspaper. The notice shall include the following information:

1) The date the vehicle was towed;
2) The place the vehicle was towed from;
3) The year, make, model, and vehicle identification number of the vehicle;
4) Information about the right to reclaim the vehicle and who to contact; and
5) The failure to reclaim the vehicle constitutes a waiver by them of any right, title, and interest in the vehicle and its contents and consent to dispose of both.

Section 1.14. Retrieving Impounded Vehicles.

An owner shall contact the towing company directly in order to reclaim a vehicle towed and impounded pursuant to this ordinance. The towing company may charge the reasonable costs of services provided in the towing, storage, and inspection of the vehicle before releasing the vehicle. The towing company shall be responsible for requiring sufficient proof of ownership before releasing a vehicle or its contents. A registered owner of a vehicle may retrieve the

contents of a vehicle without charge and without retrieving the vehicles when authorized to do so pursuant to Minnesota Statutes, section 168B.07, subdivision 3.

Section 1.15. Disposal of Unclaimed Vehicles.

The towing company shall be responsible for properly disposing of the unclaimed vehicles impounded pursuant to this ordinance in accordance with the authority provided to impound lots under law to sell or otherwise dispose of impounded vehicles.

Section 1.16. Utilities in the Right-of-Way.

The installation, maintenance, replacement, and removal of utility lines, equipment, or related facilities within a right-of-way shall be regulated pursuant to Article II of this Ordinance.

Section 1.17. Town and Contractors.

The prohibitions, requirements, and restrictions contained in this Article do not apply to: the Town; Town officers, employees, or agents while operating within the course and scope of their duties for the Town; or contractors while performing services within the scope of a contract with the Town.

Section 1.18. Permissions and Permits.

1. **Conditions.** The Town may place reasonable conditions and impose reasonable regulations on any permission or permit it issues to do work within a right-of-way. Failure to comply with any condition or regulation may result in the revocation of the Town's permission or permit if the deficiency is not immediately corrected upon notice from the Town.

2. **Limitations.** Any person receiving permission or a permit from the Town Board as provided in this Article must comply with all applicable federal, state, and local laws and rules as well as all applicable Town ordinances, resolutions, specifications, regulations, and policies. The person shall also comply with all conditions, requirements, and limitations the Town Board expresses as part of the permission or permit. Any person doing work within a right-of-way shall be responsible for posting such signs, barricades, or other warning signs as may be required to notify the traveling public of any hazards created by the work and shall take such other measures as may reasonably be required to protect public safety.

3. **Indemnification.** Any person doing work within a right-of-way with permission or upon a permit issued by the Town agrees, as a condition of such permission or permit, to indemnify, defend, and hold the Town, its officers, employees, and agents harmless from all claims, suits, penalties and costs, including defense costs, the Town, its officers, employees, or agents may incur or be required to pay arising out of or in any way related to the work. Nothing in this ordinance shall constitute or be deemed a waiver of the limitations on or exemptions from liability available to the Town under Minnesota Statutes, Chapter 466 or otherwise. Additionally, the granting of permission or a permit shall not constitute a joint venture or joint enterprise between the person and the Town.

Section 1.19. Dedications.

The Town shall not assume the responsibility to maintain any right-of-way dedicated to the Town or the public, whether by plat or otherwise, until it is built to Town specifications, all conditions the Town Board may have imposed related to the acceptance of the road have been complied with to the satisfaction of the Town Board, and the Town Board passes a resolution determining that spending the Town's funds to maintain the road is in the public interest.

Section 1.20. Fees.

The Town Board shall establish, by resolution, fees for all permits required by this Article. The Town Board may amend its fee schedule by resolution at any regular meeting.

Section 1.21. Enforcement and Penalty.

1. **Violation.** A violation of any section or requirement of this Article is prohibited and shall constitute a public nuisance. The person or persons violating this Article shall be subject to the penalties provided herein and shall be responsible for abating the nuisance, including the reimbursement of all costs the Town may incur to abate or otherwise respond to the nuisance.

2. **Correction Order.** Upon discovery of a violation of this Article, the Town Board may issue a correction order to the violator, in person or by U.S. Mail, ordering the person to correct the violation by a time certain. If the address of the violator is not known, or if the property is not occupied, the Town will provide notice of the order by posting same on the property. If the violator fails to comply with the correction order by the time indicated in the order, which in no case shall exceed 30 days, the Town Board may provide for the correction of the violation. Issuance of a correction order does not preclude imposition of the penalties set forth in this Article.

3. **Immediate Correction.** If the Town Board determines that the violation creates an immediate threat to public safety, the Town Board will make a good faith effort to notify the violator to immediately correct the situation. If the Town Board is not able to promptly contact the violator, or if the violator fails to immediately correct the situation upon notification, the Town Board may provide for the correction of the violation as it determines is appropriate.

4. **Cost of Correction.** The cost of correcting a violation shall be the responsibility of the violator. If the Town Board provides for the correction of the violation, all expenses incurred, including reasonable attorney's fees shall be billed to the violator. If the bill is not paid in full by the due date, the Town Board may exercise any options available to it under law to collect the amount due including, but not limited to, imposing the costs on the violator's property as a service charge pursuant to Minnesota Statutes, section 366.012.

5. **Penalty.** Any person who violates this Article shall be guilty of a misdemeanor and subject to the penalties for such as provided in State law, except that a violation of the parking restrictions contained herein shall be a petty misdemeanor. Each day of existence of such violation shall constitute a separate offense. If convicted, the person may be assessed costs of prosecution as allowed by Minnesota Statutes, section 366.01, subdivision 10.

Section 1.22. Savings Clause.

The failure of the Town Board to exercise, and any delay in exercising, any right under this Article, including enforcement, shall not operate as a waiver thereof and shall not constitute a waiver of the Town's interest, however created, in any right-of-way, easement, or any other type of property interest.

Section 1.23. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Article is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 1.24. Effective Date.

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

ARTICLE II
USE OF RIGHTS-OF-WAY BY UTILITY PROVIDERS

Section 2.00. Purpose and Authority.

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

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

Section 2.02. Election to Manage the Public Right-of-Way.

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

Section 2.03. Definitions.

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

1. **Abandoned Facility**. "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.

2. **Applicant**. "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.

3. **Commission**. "Commission" means the Minnesota Public Utilities Commission.

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

    a. Individual project bond;
    b. Cash deposit;
    c. Letter of Credit, in a form acceptable to the Town;
    d. Self-insurance, in a form acceptable to the Town; or
    e. A blanket bond for projects within the Town, or other form of construction bond, for a time specified and in a form acceptable to the Town.

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

6. **Degradation Cost**. "Degradation Cost" subject to Minnesota Rules, part 7819.1100, means the cost to achieve a level of restoration, as determined by the Town 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.

7. **Degradation Fee**. "Degradation Fee" means the estimated fee established at the time of permitting by the Town 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.

8. **Delay Penalty**. "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.

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

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

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

12. **Excavation Permit**. "Excavation Permit" means the permit which, pursuant to this Article, 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.

13. **Excavation Permit Fee**. "Excavation Permit Fee" means money paid to the Town by an applicant to cover the costs as provided in this Article.

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

15. **Local Representative**. "Local Representative" means a local person or persons, or designee of such person or persons, authorized by an applicant to accept service and to make decisions for that registrant regarding all matters within the scope of this Article.

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

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

18. **Obstruction Permit**. "Obstruction Permit" means the permit which, pursuant to this Article, 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.

19. **Obstruction Permit Fee**. "Obstruction Permit Fee" means money paid to the Town by a permittee to cover the costs as provided in this Article.

20. **Patch**. "Patch" or "Patching" means a method of pavement replacement or roadway repair that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only on roads the Town Board has scheduled to be overlaid within five years.

21. **Pavement.** "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.

22. **Permit.** "Permit" has the meaning given "right-of-way Permit" in Minnesota Statutes, section 237.162.

23. **Permittee.** "Permittee" means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the Town under this Article.

24. **Person.** "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.

25. **Restore.** "Restore" or "Restoration" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

26. **Restoration Cost.** "Restoration Cost" means the amount of money paid to the Town by a permittee to achieve the level of restoration according to plates 1 to 13 of Minnesota Public Utilities Commission rules.

27. **Right-of-Way.** For purposes of this Article, "right-of-way" means the area on, below, or above a public road, highway, street, cartway, bicycle lane or public sidewalk in which the Town has an interest, including other publicly dedicated rights-of-way for travel purposes and utility easements of the Town. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

28. **Right-of-Way Permit.** "Right-of-way permit" means either the excavation permit or the obstruction permit, or both, depending on the context, required by this Article.

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

30. **Service.** "Service" or "Utility Service" includes (1) those services provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 4 and 6; (2) services of a telecommunications right-of-way user, including transporting of voice or data information; (3) services of a cable communications systems as defined in Minnesota Statutes, Chapter 238; (4) services provided by a cooperative electric association organized under Minnesota Statutes, Chapter 308A; and (5) water, and sewer, including service laterals, steam, cooling or heating services.

31. **Service Lateral.** "Service Lateral" means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an

end-use customer. A service lateral is also an underground facility that is used in the removal of wastewater from a customer's premises.

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

33. **Trench.** "Trench" means an excavation in the traveled surface of a road, with the excavation having a length equal to or greater than the width of the traveled surface.

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

35. **Town Board.** "Town Board" means the Board of Supervisors of Baldwin Township, Sherburne County, Minnesota.

36. **Town.** "Town" means Baldwin Township, Sherburne County, Minnesota.

37. **Town Representative.** "Town Representative" means a Town supervisor or other person designated by the Town Board to conduct inspections or to otherwise oversee work done within rights-of-way, whether such work is done by permit or otherwise.

Section 2.04. Permit Requirement.

1. **Permit Required.** Except as otherwise provided in this Article, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the Town to do so.

   (a) Excavation Permit. An excavation permit is required to excavate within a right-of-way related to the installation, repair, replacement, or removal of facilities.

   (b) Obstruction Permit. An obstruction permit is required to obstruct a right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

   (c) Combination Permit. If a proposed utility project involves both the excavation and obstruction of a right-of-way, a person may apply for a combination excavation/obstruction permit.

2. **Exclusions.** The Town, its agents, and contractors performing work for the Town shall not be required to obtain permits from the Town to excavate or obstruct a right-of-way. Contractors performing work for the Town shall be required to erect and maintain such signs and other traffic control devices as are necessary to warn of the work and to protect public safety.

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

4. **Delay Penalty**. In accordance with Minnesota Rule, part 7819.1000, subpart 3, the Town may establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration.

5. **Permit Display**. Permits issued under this Article shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Town.

Section 2.05. Permit Applications.

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

A. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.

B. Payment of money due the Town for:

(1) permit fees, estimated restoration costs and other management costs;
(2) any outstanding amounts related to prior obstructions or excavations;
(3) any undisputed loss, damage, or expense suffered by the Town because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the Town; and
(4) franchise fees or other charges, if applicable.

C. Payment of disputed amounts due the Town by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.

D. Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the Town deems the existing construction performance bond inadequate under applicable standards.

Section 2.06. Issuance of Permit; Conditions.

1. **Permit Issuance**. If the applicant has satisfied the requirements of this Article, the Town shall issue a permit.

2. **Conditions**. The Town 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.

Section 2.07. Permit Fees.

1. **Excavation Permit Fee**. The Town shall establish an excavation permit fee in an amount sufficient to recover the following costs:

   (a) the Town management costs; and
   (b) degradation costs, if applicable.

2. **Obstruction Permit Fee**. The Town shall establish an obstruction permit fee and it shall be in an amount sufficient to recover the Town management costs.

3. **Payment of Permit Fees**. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The Town may allow applicant to pay such fees within thirty (30) days of billing.

4. **Non-Refundable**. Permit fees that were paid for a permit that the Town has revoked for a breach as provided in this Article are not refundable.

5. **Fees**. All fees provided for in this Article shall be determined by resolution of the Town Board and shall be designed to recover the actual costs the Town incurs related to the particular project and in managing its rights-of-way.

Section 2.08. Right-of-Way Patching and Restoration.

1. **Timing**. The work to be done under an excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited due to unseasonal or other weather conditions which reasonably prohibited the work.

2. **Patch and Restoration**. Permittee shall patch its own work. The Town may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.

   (a) Town Restoration. If the Town restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the roadway settles due to permittee's improper backfilling, the permittee shall pay to the Town, within thirty (30) days of billing, all costs associated with correcting the defective work.

   (b) Permittee Restoration. If the permittee restores the right-of-way, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minnesota Rule, part 7819.3000.

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

3. **Standards**. The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the Town and shall comply with Minnesota Rule, part 7819.1100.

4. **Duty to Correct Defects**. The permittee shall correct defects in patching or restoration performed by permittee or its agents. The permittee upon notification from the Town, shall correct all restoration work to the extent necessary, using the method required by the Town. Said work shall be completed within five calendar days of the receipt of the notice from the Town, not including days during which work cannot be done because of circumstances constituting *force majeure* or days when work is prohibited by unreasonable weather conditions.

5. **Failure to Restore**. If the permittee fails to restore the right-of-way in the manner and to the condition required by the Town, or fails to satisfactorily and timely complete all restoration required by the Town, the Town at its option may do such work. In that event, the permittee shall pay to the Town, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the Town may immediately exercise its rights under the construction performance bond.

Section 2.09. Supplementary Applications.

1. **Limitation on Area**. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area: (i) make application for a permit extension and pay any additional fees required thereby; and (ii) be granted a new permit or permit extension.

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 submitted before the permit end date.

Section 2.10. Other Obligations.

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

Rules, Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the Right-of-Way pursuant to its permit, regardless of who does the work.

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

3. **Interference with Right-of-Way**. A permittee shall not so obstruct a right-of-way so as to interfere with the natural free and clear passage of water through culverts, ditches, or other waterways or drainage structures within the right-of-way. 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 Town parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

4. **Trenchless Excavation**. As a condition of all applicable permits, permittees employing trenchless excavation methods including, but not limited to, horizontal directional drilling, shall follow all requirements set forth in Minnesota Statutes, Chapter 216D; Minnesota Rules, Chapter 7560; and shall require potholing or open cutting over existing underground utilities before excavating, as determined by the Town.

Section 2.11. Denial of Permit.

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

Section 2.12. Installation Requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minnesota Rules, parts 7819.1100 and 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with the Minnesota Statutes, sections 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules, Chapter 7560, and this Article.

Section 2.13. Inspection.

1. **Notice of Completion**. When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minnesota Rules, part 7819.1300.

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

3. **Authority of Town Representative**.

(a) At the time of inspection, the Town Representative may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.

(b) The Town Representative may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the Town Representative that the violation has been corrected. If such proof has not been presented within the required time, the Town Representative may revoke the permit as provided herein.

Section 2.14. Work Done Without a Permit.

1. **Emergency Situations**. Each right-of-way user shall immediately notify the Town Representative of any event regarding its facilities that it considers to be an emergency. The right-of-way user may proceed to take whatever actions are necessary to respond to the emergency. Excavators' notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two business days after the occurrence of the emergency, the right-of-way user shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this Article for the actions it took in response to the emergency.

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

Section 2.15. Supplementary Notification.

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

Section 2.16. Revocation of Permits.

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

(a) The violation of any material provision of the right-of-way permit;

(b) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the Town or its citizens;

(c) Any material misrepresentation of fact in the application for a right-of-way permit;

(d) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or

(e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued by a Town Representative.

2. **Written Notice of Breach**. If the Town 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 Town 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 Town, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

3. **Response to Notice of Breach**. Within 24 hours of receiving notification of the breach, permittee shall provide the Town with a plan, acceptable to the Town, which will cure the breach. Permittee's failure to so contact the Town, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

4. **Reimbursement of Town costs**. If a permit is revoked, the permittee shall also reimburse the Town for the Town's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Section 2.17. Location and Relocation of Facilities.

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

Section 2.18. Right-of-Way Vacation.

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

Section 2.19. Indemnification and Liability.

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

Section 2.20. Abandoned and Unusable Facilities.

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

2. **Removal**. Any right-of-way user who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the Town.

Section 2.21. Appeal.

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

Section 2.22. Savings Clause.

The failure of the Town Board to exercise, and any delay in exercising, any right under this Article, including enforcement, shall not operate as a waiver thereof and shall not constitute a waiver of the Town's interest, however created, in any right-of-way, easement, or any other type of property interest.

Section 2.23. Severability.

If any portion of this Article 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 Article precludes the Town from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Section 2.24. Effective Date.

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

Adopted this 15th day of September, 2009.

BY THE TOWN BOARD

Jeff Holm, Chair

ATTEST:

Cathy Stevens, Clerk-Treasurer

Published in the Princeton Union-Eagle on the 1st day of October, 2009.

BE IT FINALLY RESOLVED, that the Town Clerk is hereby authorized and directed to:

- Post a copy of the full Ordinance on the Town Hall bulletin board;
- Place a copy of the full Ordinance at the Princeton Public Library;
- Place a copy of the full Ordinance at the Sherburne County Law Library; and
- Within 20 days place a copy of the full Ordinance in the Town's Ordinance Book along with a copy of this Resolution and a copy of the affidavit of having published the approved summary language.

Adopted on this 15th day of September, 2009 by at least a two-thirds vote of the Town Board.

BY THE TOWN BOARD

Town Chairperson

Attest: Cathy Stevens
Town Clerk-Treasurer