

# HENNEPIN COUNTY

## MINNESOTA

### FINAL COMMITTEE AGENDA

#### BOARD OF HENNEPIN COUNTY COMMISSIONERS PUBLIC WORKS COMMITTEE

TUESDAY, AUGUST 28, 2018  
1:30 PM

Chair: Mike Opat, District 1

Vice-Chair: Peter McLaughlin, District 4

Members: Linda Higgins, District 2  
Marion Greene, District 3  
Debbie Goettel, District 5  
Jan Callison, District 6  
Jeff Johnson, District 7

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#### 1. Minutes From Previous Meeting

- A. 08/14/2018 Public Works Meeting Minutes

#### 2. New Business

##### Routine Items

- A. **18-0356**  
Establish a public hearing on Tuesday, October 2, 2018, at 1:30 p.m. to obtain public comment on proposed revisions to Ordinance 13 - Recycling
- B. **18-0357**  
Neg agmt PW 40-40-18 with MnDOT for consultant work on the reconstruction of a section of CSAH 152 in Minneapolis (CP 2111000) (est. county cost \$20,000—state aid)

##### Items for Discussion and Action

- C. **18-0358**  
Neg Agmts PW 42-20-18 and PW 45-20-18 with City of Minneapolis, PW 43-49-18 with City of Eden Prairie, and PW 44-05-18 with City of St. Louis Park for cost participation in Transportation Safety CP 2999973 and amend the project budget (county exp NTE \$175,000; est recv \$200,000)
- D. **18-0359**  
Agmts A189107 with the State of MN to accept a grant from the Outdoor Heritage Fund for acquisition of conservation easements, \$194,000 (recv); and A189108 with the MN Land Trust to enter into a MOU to establish processes for joint conservation easement work
- E. **18-0360**  
Adopt revisions to Ordinance 22 – County Road Right-Of-Way Use
- F. **18-0361**  
Amd 3 to Agmt A177882A with Met Council for the Blue Line Extension project (CP 1005877); extend end date to 12/31/18; no change to NTE

# HENNEPIN COUNTY

## MINNESOTA

### COMMITTEE MINUTES

### BOARD OF HENNEPIN COUNTY COMMISSIONERS PUBLIC WORKS COMMITTEE

TUESDAY, AUGUST 14, 2018  
1:30 PM

Chair: Mike Opat, District 1  
Vice-Chair: Peter McLaughlin, District 4

Members: Linda Higgins, District 2  
Marion Greene, District 3  
Debbie Goettel, District 5  
Jan Callison, District 6  
Jeff Johnson, District 7

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Commissioner Mike Opat, Chair, called the meeting of the Public Works Committee for Tuesday, August 14, 2018 at 2:40 PM. All Commissioners were present.

#### 1. Minutes From Previous Meeting

- A. 07/31/2018 Public Works Meeting Minutes

#### APPROVED

Commissioner Jeff Johnson moved to approve the Minutes, seconded by Commissioner Debbie Goettel and approved - 7 Yeas

#### 2. New Business

##### Routine Items

- A. **18-0334**

Establish a public hearing for comment on the program year 2017 Consolidated Annual Performance and Evaluation Report related to the HUD CDBG, HOME & ESG prgms in suburban Hennepin County on Tuesday, September 18, 2018 at 1:30 p.m.

#### CONSENT

Commissioner Jan Callison moved to approve, seconded by Commissioner Jeff Johnson and approved – 7 Yeas

- B. **18-0335**

Neg Agmt PW 39-17-18 with Crystal for cost participation for pedestrian ramp and accessible pedestrian signal improvements (CP 2180500) (county cost: NTE \$16,000– property tax)

#### **18-0335R1 Revised**

Neg Agmt PW 39-09-18 with Crystal for cost participation for pedestrian ramp and accessible pedestrian signal improvements (CP 2180500) (county cost: NTE \$16,000–property tax)

#### CONSENT

Commissioner Marion Greene moved to approve, seconded by Commissioner Debbie Goettel and approved - 7 Yeas

##### Items for Discussion and Action

- C. **18-0336**

Neg Agmts A189067 with ResCare MN, Inc; and A189068 with People Incorporated for the addition of 26 Intensive Residential Treatment Services beds, 08/21/18-09/30/29, combined total NTE of \$750,000

#### CONSENT

Commissioner Peter McLaughlin moved to approve, seconded by Commissioner Mike Opat and approved - 7 Yeas

- D. **18-0337**

Amendment to the City of Minnetonka 2015-2019 HUD Consolidated Plan; neg Subrecipient Agmt A189048 with the City of Minnetonka to perform housing rehab assistance, 08/21/18-06/30/27 (NTE \$13,000 plus program income)

## **CONSENT**

Commissioner Jan Callison moved to approve, seconded by Commissioner Debbie Goettel and approved - 7 Yeas

### **E. 18-0338**

Neg various agmts for award of 2018 Bikeway Discretionary (CP 2999958) \$53,007 and Bicycle Plan Implementation (CP 2999957) \$532,268 funds; establish project budgets, transfer funds; total combined NTE \$585,275

## **CONSENT**

Commissioner Marion Greene moved to approve, seconded by Commissioner Jan Callison and approved - 7 Yeas

### **Addendum**

### **F. 18-0340**

Authorize satisfaction of senior and subordinate loans to Hennepin County Housing and Redevelopment Authority; exercise purchase option for the acquisition of real estate within the Northwest Family Service Center

## **CONSENT**

Commissioner Jan Callison moved to approve, seconded by Commissioner Marion Greene and approved - 7 Yeas

### **G. 18-0344**

Amd 5 to Agmt A177881A with Met Council for the METRO Green Line Extension (Southwest LRT) (CP 1005876) to extend the grant activity period to October 31, 2018

## **NON-CONSENT**

Commissioner Peter McLaughlin moved to approve, seconded by Commissioner Jan Callison and approved - 6 Yeas  
1 Nays: Johnson

## **3. Adjourn**

There being no further business, the meeting of the Public Works Committee for Tuesday, August 14, 2018 was declared adjourned at 3:07 PM.

Yolanda C Clark  
Deputy Clerk to the Board

# HENNEPIN COUNTY

## MINNESOTA

### Board Action Request 18-0356

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#### Item Description:

Establish a public hearing on Tuesday, October 2, 2018, at 1:30 p.m. to obtain public comment on proposed revisions to Ordinance 13 - Recycling

#### Resolution:

BE IT RESOLVED, that a public hearing to obtain comment on revisions to Hennepin County Ordinance 13 - Recycling, be held before the Public Works Committee of the Hennepin County Board of Commissioners on Tuesday, October 2, 2018, at 1:30 p.m. or as soon thereafter as practicable in Room A-2400 of the Hennepin County Government Center, in the city of Minneapolis; and that the Clerk of the Board be directed to publish notice of the public hearing.

#### Background:

**History:** Ordinance 13 regulates recycling, which is the separation of recyclables and organic material from trash, by residents, businesses and other waste generators.

This ordinance was established in 1986 to create residential curbside recycling programs. Since then, recycling has expanded to serve residents everywhere, such as at work, school, and public spaces. New programs have been created to capture organic waste.

The county's 2018 Solid Waste Management Master Plan calls for revising the county's recycling ordinance to improve conventional recycling and require organics recycling for cities and businesses to meet the state goal of 75 percent recycling and the county goal of sending zero waste to landfills (Resolution 17-0479).

The county is proposing the following key revisions to Ordinance 13:

- Cities must make organics recycling service available to all households with curbside recycling service (single-family and dwellings up to eight units) by January 1, 2022. Cities of the fourth class (those with a population of 10,000 or less) that choose not to make curbside organics recycling service available to residents, must provide at least one organics recycling drop-off site by January 1, 2022.
- Multifamily properties must provide recycling education to residents, offer adequate service for the collection of recyclables (and organics if offered), increase service levels if insufficient, provide recycling containers in common areas where trash is being collected, and label recycling containers.
- Businesses that generate large quantities of food waste, such as restaurants, hotels, grocers, residential care facilities, office buildings with dining services and others, must implement food waste recycling by January 1, 2020. This requirements would apply to businesses in the identified sectors that generate one ton of trash or more per week or contract for weekly collection of eight or more cubic yards of trash.
- In addition to meeting state recycling requirements, businesses must offer adequate service for the collection of recyclables, increase service levels if insufficient and label recycling containers.

The state of Minnesota gives authority to counties to manage solid waste. The 75 percent recycling goal for metropolitan counties was established by the Minnesota Pollution Control Agency and mandated by Minnesota Statutes, section 115A.551, subdivision 2a. A final draft of the revised ordinance will be posted no later than September 17, 2018 for the public to review at [www.hennepin.us/solidwasteplanning](http://www.hennepin.us/solidwasteplanning). The county will notify city representatives, trade associations, waste haulers, property managers/owners and businesses by letter and electronic notices.

**Current Request:** This request is for the board to set a public hearing on Tuesday, October 2, 2018, before the Public Works Committee of the Hennepin County Board of Commissioners to obtain comment on proposed revisions to Ordinance 13.

**Impact/Outcomes:** The public hearing will allow constituents, businesses, city representatives, property owners/managers and haulers the opportunity to provide their feedback about the proposed revisions.

**ATTACHMENTS:**

| Description | Upload Date | Type            |
|-------------|-------------|-----------------|
| Notice      | 8/13/2018   | Backup Material |

# HENNEPIN COUNTY

## MINNESOTA

### Notice of Public Hearing

#### Hennepin County

Hennepin County has established a public hearing on *Tuesday, October 2, 2018 at 1:30 p.m.*, during the Public Works Committee meeting of the Hennepin County Board of Commissioners in the Board Room (A-2400) of the Hennepin County Government Center, 300 Sixth Street, Minneapolis, MN 55487.

The purpose of the meeting will be to receive comment on proposed revisions to Ordinance 13 regarding recycling by residents, businesses, and other waste generators.

Proposed revisions include:

- Requirements for cities to offer organics recycling service available to all households with curbside recycling service.
- Updates to the multifamily recycling requirements to add service level standards and education and labeling requirements.
- Requirements for businesses that generate large quantities of food waste to implement food waste recycling.
- Incorporate state recycling requirements for businesses and add service level standards and labeling requirements.

A final draft of the revised ordinance will be posted no later than September 17, 2018 for the public to review at [www.hennepin.us/solidwasteplanning](http://www.hennepin.us/solidwasteplanning). If you would like a printed copy of the proposed revisions, please call 612-348-7813.

Written comments will be accepted by mail or email ([environment@hennepin.us](mailto:environment@hennepin.us)) through October 1, 2018.

Hennepin County Environment and Energy Department  
Attn: David McNary  
701 Fourth Avenue South, Suite 700  
Minneapolis, MN 55415-1842

To request assistance, such as sign language interpreter or assisted hearing equipment, please call 612-348-7813 at least three days prior to the public hearing.

Hennepin County Environment and Energy

701 Fourth Avenue South, Suite 700, Minneapolis, Minnesota 55415-1842  
[hennepin.us/environment](http://hennepin.us/environment)



# HENNEPIN COUNTY

## MINNESOTA

### Board Action Request 18-0357

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#### Item Description:

Neg agmt PW 40-40-18 with MnDOT for consultant work on the reconstruction of a section of CSAH 152 in Minneapolis (CP 2111000) (est. county cost \$20,000–state aid)

#### Resolution:

BE IT RESOLVED, that the County Administrator be authorized to negotiate Agreement PW 40-40-18 with the Minnesota Department of Transportation to hire a consultant to perform an architectural history survey of 44th Avenue/Webber Parkway/Lyndale Avenue (County State Aid Highway 152) from Penn Avenue to 41st Avenue in Minneapolis at an estimated cost of \$20,000; that upon review and approval by the County Attorney's office, the Chair of the Board be authorized to sign the Agreement on behalf of the County; and that the Controller be authorized to disburse funds as directed.

#### Background:

**History:** Capital project (CP) 2111000, currently in the approved 2018–2022 Capital Improvement Program, will replace the pavement, traffic signals, curb and gutter, sidewalks, and storm water structures located on a portion of 44th Avenue, Webber Parkway and Lyndale Avenue in Minneapolis. The project will provide an opportunity to reconfigure intersections to improve operations and safety and incorporate bicycle facilities.

The project is partially funded with federal funds. The Federal Highway Administration (FHWA) requires that projects using federal funding comply with Section 106 of the National Historic Preservation Act and complete an archaeological history survey. The Minnesota Department of Transportation's (MnDOT) Cultural Resources Unit has requested completion of a Phase I and II architectural history investigation to comply with Section 106.

The Phase 1 investigation will identify architectural and historical properties that are potentially eligible for listing in the National Register of Historic Places within the Area of Potential Effect (APE). Should properties be identified at the Phase 1 level as being potentially eligible, further investigation at the Phase II level would be conducted. There appears to be approximately 220 properties within the APE. The work will be coordinated through MnDOT's Cultural Resources Unit.

Agreement PW 40-40-18 provides approval for MnDOT to hire a consultant to perform the architectural history survey of the corridor. MnDOT will pay 80 percent of the consultant cost and Hennepin County will pay 20 percent. The county's cost is estimated to be \$20,000. There is adequate funding in the project budget to cover the cost.

**Current Request:** This request is for authorization to negotiate agreement PW 40-40-18 with MnDOT for the required consultant review work on the reconstruction project located on 44th Avenue, Webber Parkway and Lyndale Avenue from Penn Avenue to 41st Avenue in Minneapolis.

**Impacts/Outcomes:** Completion of the archaeological history survey will fulfill FHWA requirements needed to move forward with the use federal funds on the project.

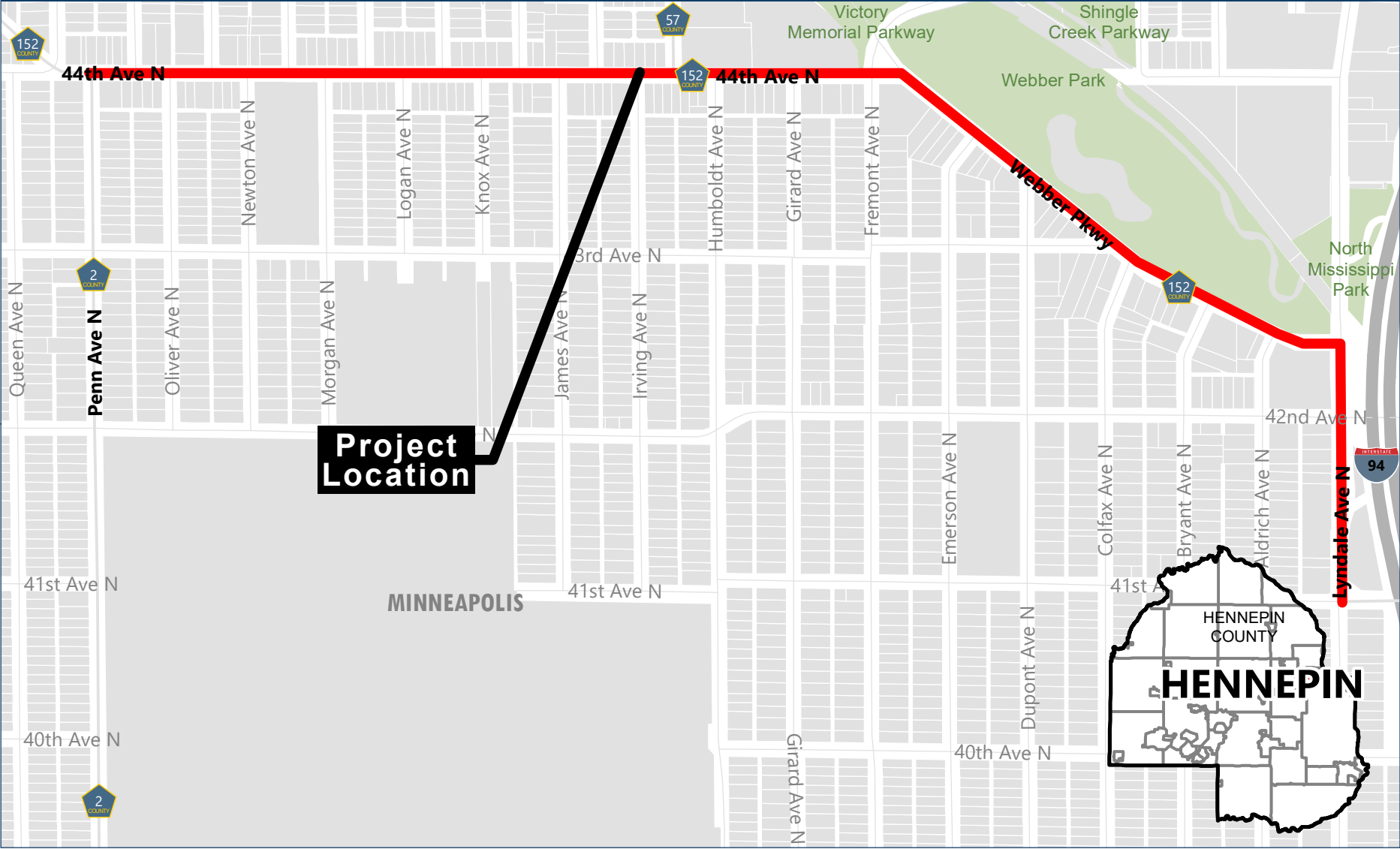
**ATTACHMENTS:**

| Description                    | Upload Date | Type            |
|--------------------------------|-------------|-----------------|
| Map of CSAH 152 in Minneapolis | 8/14/2018   | Backup Material |

# CSAH 152 Reconstruction

PW 40-40-18/CP-2-1110-00

HENNEPIN COUNTY  
MINNESOTA



# HENNEPIN COUNTY

## MINNESOTA

### Board Action Request 18-0358

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#### Item Description:

Neg Agmts PW 42-20-18 and PW 45-20-18 with City of Minneapolis, PW 43-49-18 with City of Eden Prairie, and PW 44-05-18 with City of St. Louis Park for cost participation in Transportation Safety CP 2999973 and amend the project budget (county exp NTE \$175,000; est recv \$200,000)

#### Resolution:

BE IT RESOLVED, that the County Administrator be authorized to negotiate Agreement PW 42-20-18 with the City of Minneapolis for cost participation in pedestrian crossing improvements with an amount not to exceed \$50,000; that following review and approval by the County Attorney's Office, the Chair of the Board be authorized to sign the Agreement on behalf of the County; and that the Controller be authorized to disburse funds as directed; and

BE IT FURTHER RESOLVED, that the County Administrator be authorized to negotiate Agreement PW 45-20-18 with the City of Minneapolis for cost participation in pedestrian crossing improvements with an estimated county cost of \$400,000 and estimated receivable of \$200,000; that the project budget for CP 2999973 be increased by \$200,000 to \$2,200,000, funded by the estimated receivable from the City of Minneapolis; that following review and approval by the County Attorney's Office, the Chair of the Board be authorized to sign the Agreement on behalf of the County; and that the Controller be authorized to disburse and receive funds as directed; and

BE IT FURTHER RESOLVED, that the County Administrator be authorized to negotiate Agreement PW 43-49-18 with the City of Eden Prairie for cost participation in pedestrian crossing improvements with an amount not to exceed \$75,000; that following review and approval by the County Attorney's Office, the Chair of the Board be authorized to sign the Agreement on behalf of the County; and that the Controller be authorized to disburse funds as directed; and

BE IT FURTHER RESOLVED, that the County Administrator be authorized to negotiate Agreement PW 44-05-18 with the City of Saint Louis Park for cost participation in pedestrian crossing improvements with an amount not to exceed \$50,000; that following review and approval by the County Attorney's Office, the Chair of the Board be authorized to sign the Agreement on behalf of the County; and that the Controller be authorized to disburse funds as directed.

#### Background:

**History:** Hennepin County has appropriated \$2,000,000 in the 2018-2022 Capital Improvement Program for Transportation Safety (CP 2999973). Funding is provided by \$500,000 in wheelage tax and \$1,500,000 in county bonds. With this funding, Public Works proposes participating with cities on safety projects expending \$175,000 and receiving an estimated \$200,000.

#### County Participation with Cities

The four projects with cities are described in the following paragraphs.

1. City of Minneapolis overlay project at the intersection of County State-Aid Highway (CSAH) 52

(locally known as First Avenue NE) and Fifth Street NE. Improvements will extend the curb and replace the pedestrian ramps. Construction is planned for 2018. As the lead agency, the city is responsible for developing the plans and constructing the project. The county's proportionate share of the estimated cost is \$50,000 (Agreement PW 42-20-18).

2. Pedestrian safety project along CSAH 3 (Lake Street) at Trunk Highway 55 (Hiawatha Avenue) in Minneapolis. Improvements will include reconstructing curb radii to reduce vehicle turning speeds, high visibility crosswalks, median refuge islands for pedestrians, and enhanced sidewalk buffer space. Construction is planned for 2019. The improvements are a result of near-term treatments identified as part of the Hi-Lake Intersection Study – Phase 2 efforts, undertaken as a partnership between the city and county. The county is leading the project, developing the plans and constructing the improvements. The estimated cost is \$400,000, with the city's proportionate share estimated at \$200,000 receivable (Agreement PW 45-20-18). The capital budget is being increased to account for the revenues received from the City of Minneapolis.

3. City of Eden Prairie pedestrian safety project at the intersection of CSAH 4 (Spring Road) at Prospect Road. Improvements will include a raised concrete refuge island in the median for pedestrians, striped crosswalk, signage, and a pedestrian actuated rapid rectangular flashing beacon (RRFB) to alert vehicles that pedestrians are present and waiting to cross the road. Construction is planned for 2018. As the lead agency, the city is responsible for developing the plans and constructing the project. The county's proportionate share of the estimated cost is \$75,000 (Agreement PW 43-49-18).

4. City of Saint Louis Park pedestrian safety project at the intersection of CSAH 17 (France Avenue) and 38th Street. Improvements will include a raised concrete pedestrian refuge median island, striped crosswalk, signage, and a RRFB. Construction is planned for 2018. As the lead agency, the city is responsible for developing the plans and constructing the project. The county's proportionate share of the estimated cost is \$50,000 (Agreement PW 44-05-18).

Projects being administered by a city will require county approval of the plans and specifications. The participation in these projects is in accordance with "Policies for Cost Participation between Hennepin County and Other Agencies for Cooperative Highway Projects" (Resolution 12-0058).

Public Works also plans to complete various safety projects on county roads expending \$1,625,000.

#### Safety Projects on County Roads (*informational; no board action needed*)

Using the remaining funds from Transportation Safety (CP 2999973), Public Works has identified various safety projects on county roads. These projects have been selected based on crash data and risk factors, and by identifying opportunities to enhance safety with other planned projects.

These projects will target crash reduction, enhance safety for pedestrians and bicyclists, and reduce the risk of serious and fatal crashes.

The projects will include improvements such as extending curbs (known as bumpouts), building raised concrete islands in the medians to serve as refuges for pedestrians, installing RRFB systems to alert drivers of pedestrians waiting to cross, marking bicycle lanes, and installing bicycle friendly drainage grates. The locations will be as follows.

- CSAH 15 (Shoreline Drive) at Arcola Lane in Minnetonka Beach,
- County Road 47 at Dallas Lane in Plymouth,
- CSAH 66 (Golden Valley Road) in Golden Valley,
- CSAH 2 (Penn Avenue) at 33rd and 34th Avenues in Minneapolis,
- CSAH 5 (Minnetonka Boulevard) in Saint Louis Park, and
- CSAH 52 (Hennepin and First Avenues) in Minneapolis.

Two projects will enhance vehicle safety by converting bypass lanes into dedicated left-turn lanes at the following locations:

- CSAH 12 (Dayton River Road) at Pineview Lane in Dayton and
- CSAH 3 (Excelsior Blvd) at Fairview Avenue in Minnetonka

Public Works will also use the funds to enhance routine operations and maintenance activities by widening shoulders for bicycle connections, adding turn lanes, installing dynamic speed signs, grinding in edge lines, and retrofitting signals with flashing yellow arrows.

**Current Request:** This request is for authorization to negotiate the following agreements for cost participation in pedestrian crossing improvements on county roadways:

1. PW 42-20-18 with the City of Minneapolis with an amount not to exceed \$50,000;
2. PW 45-20-18 with the City of Minneapolis with an estimated cost of \$400,000 and estimated receivable of \$200,000; and increasing the budget for CP 2999973 by \$200,000 from \$2,000,000 to \$2,200,000 to accommodate the receivable from the City of Minneapolis;
3. PW 43-49-18 with the City of Eden Prairie with an amount not to exceed \$75,000; and
4. PW 44-05-18 with the City of Saint Louis Park with an amount not to exceed \$50,000.

Budget Table: Transportation Safety (CP 2999973)

|                           | Budget to Date   | Current Request | Future CIP Requests | Total Project    |
|---------------------------|------------------|-----------------|---------------------|------------------|
| <b>Revenues:</b>          |                  |                 |                     |                  |
| Bonds – GO Roads          | 1,500,000        | -               | -                   | 1,500,000        |
| Transfer from other funds | 500,000          | -               | -                   | 500,000          |
| Minneapolis               |                  | 200,000         | -                   | 200,000          |
| <b>Total</b>              | <b>2,000,000</b> | <b>200,000</b>  | <b>-</b>            | <b>2,200,000</b> |
| <b>Expenditures:</b>      |                  |                 |                     |                  |
| Construction              | 2,000,000        | 200,000         | -                   | 2,200,000        |
| <b>Total</b>              | <b>2,000,000</b> | <b>200,000</b>  | <b>-</b>            | <b>2,200,000</b> |

**Impacts/Outcomes:** Participating in the costs of these improvements with municipal partners will improve the safety of our transportation system.

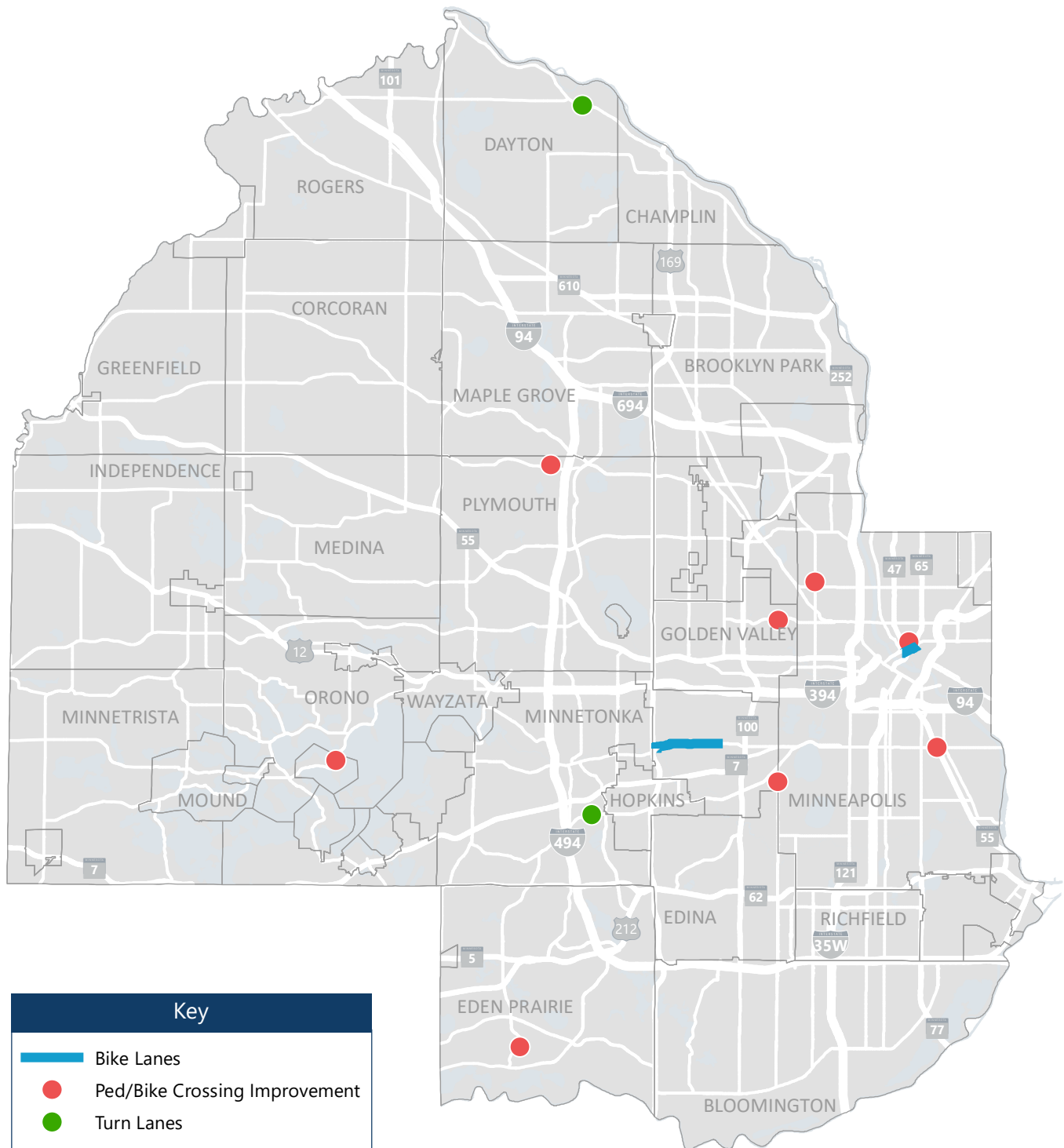
#### ATTACHMENTS:

| Description                            | Upload Date | Type |
|--|-------------|------|
| Map of 2018 safety projects CP 2999973 | 8/14/2018   | Map  |

# 2018 Safety CIP Projects

Transportation Planning | Hennepin County Public Works

HENNEPIN COUNTY  
MINNESOTA



**Disclaimer:** This map (i) is furnished "AS IS" with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this map.



# HENNEPIN COUNTY

## MINNESOTA

### Board Action Request 18-0359

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#### Item Description:

Agmts A189107 with the State of MN to accept a grant from the Outdoor Heritage Fund for acquisition of conservation easements, \$194,000 (recv); and A189108 with the MN Land Trust to enter into a MOU to establish processes for joint conservation easement work

#### Resolution:

BE IT RESOLVED, that Agreement A189107 with the State of Minnesota to accept the Outdoor Heritage Fund grant for acquisition of conservation easements and to restore natural resource corridors and ecologically significant natural areas and other existing permanently protected areas in the total receivable amount of \$194,000 be approved; that the Chair of the Board be authorized to sign the Agreement on behalf of the County; and that the Controller be authorized to accept and disburse funds as directed; and

BE IT FURTHER RESOLVED, that Agreement A189108 with the Minnesota Land Trust to enter into a Memorandum of Understanding to establish processes for joint conservation easement work, be approved; that the Chair of the Board be authorized to sign the Agreement on behalf of the County; and

BE IT FURTHER RESOLVED, that the sponsorship and acceptance of grant funding for this program by the Hennepin County Board of Commissioners does not imply a continued funding commitment by the county for this program when grant funds are no longer available.

#### Background:

**History:** In December 2017, the board authorized the submission of a grant application to the Lessard-Sams Outdoor Heritage Council for \$5 million to fund the acquisition of conservation easements and to restore natural resource corridors and ecologically significant natural areas and other existing permanently protected areas (Resolution 17-0181). The council recommended to the Minnesota Legislature that the county's proposal be funded at an amount of \$1.514 million in state fiscal year 2019. In May 2018, the Legislature appropriated \$1.514 million from the Outdoor Heritage Fund to the county's project.

Two parties, the Minnesota Land Trust and Hennepin County, will receive the grant funds and implement the project. The Minnesota Land Trust, a nonprofit conservation organization that protects natural and scenic land, is the county's land protection partner in this project. It will receive \$1.32 million of the grant funds to pay for the acquisition of conservation easements and associated professional services. The county will receive \$194,000 for habitat restoration and enhancement projects to be completed once conservation easements have been secured. As a match for the funding, Environment and Energy is hiring one limited duration outreach staff to market, develop, and manage conservation easement and restoration projects. Other county match contributions to this grant project are in-kind contributions of existing staff time as well as cash contributions for conservation easement stewardship fees and limited professional services. Reimbursable expenses may be incurred on or after July 1, 2018. Funds for restoration or enhancement are available until June 30, 2023.

A Memorandum of Understanding (MOU) between the county and the Minnesota Land Trust is needed to establish the processes to identify, select, and complete conservation easements. A conservation

easement is a set of development restrictions a landowner voluntarily places on his or her property in order to preserve the conservation value of the natural areas on the property. The landowner retains ownership of the land and continues to pay property taxes.

The actions are consistent with the Natural Resources Strategic Plan and the Hennepin County Conservation Easement Program, which together established a framework to pursue conservation easements and criteria for evaluating conservation easement opportunities (Resolution 16-0144R2).

**Current Request:** This request seeks approval of Agreement A189107 with the State of Minnesota to accept a grant from the Outdoor Heritage Fund for acquisition of conservation easements and to restore natural resource corridors and ecologically significant natural areas and other existing permanently protected areas, in the receivable amount of \$194,000; and approval of Agreement A189108 with the Minnesota Land Trust to enter into a MOU to establish processes for joint conservation easement work.

**Impact/Outcomes:** The grant will allow Hennepin County to permanently preserve some of its most unique and important natural areas as well as restore the natural areas and habitat on current and future easement properties.

Fully protected and restored natural areas benefits the county and its residents by facilitating groundwater recharge, aiding in stormwater management and flood control, protecting and improving air and water quality, providing wildlife habitat and recreational opportunities, and increasing the value of neighboring properties.

#### **ATTACHMENTS:**

| Description | Upload Date | Type |
|-------------|-------------|------|
|-------------|-------------|------|

# HENNEPIN COUNTY

## MINNESOTA

### Board Action Request 18-0360

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#### Item Description:

Adopt revisions to Ordinance 22 – County Road Right-Of-Way Use

#### Resolution:

BE IT RESOLVED, that the Hennepin County Board of Commissioners adopts the revisions to Hennepin County Ordinance 22–County Road Right-Of-Way Use; and that the Clerk of the Board be directed to publish the revised ordinance pursuant to Minnesota Statutes, section 375.51, subdivision 3.

#### Background:

**History:** Ordinance 22–County Road Right-Of-Way Use was established in 2000 and imposes reasonable regulations on the placement and maintenance of facilities within the county’s right-of-way. Minnesota Statutes authorize Hennepin County to manage use of the public right-of-way by utilities and others and provides for recovering the costs associated with managing the public right-of-way. The county strives to keep the right-of-way in a state of good repair and free from unnecessary encumbrances in order to maintain mobility for all modes of transportation.

A public hearing on the proposed revision to Ordinance 22 was held before the Public Works Committee of the Hennepin County Board of Commissioners on July 10, 2018. Utility companies, wireless providers, and cities were notified of the proposed revision to the ordinance and provided the opportunity to comment at the public hearing or in writing.

#### Current Request:

This request is to adopt the revisions to Ordinance 22–County Road Right-Of-Way Use. A summary of the proposed revisions to Ordinance 22 follows below.

#### Small cell wireless information added:

- Definitions to reflect new statutory language
- Permit terms and general requirements for small cell wireless facilities
- Requirements for new wireless support structures
- Fees associated with collocation of wireless facilities on county structures:
  - Collocation permit: \$1,500 per collocation on county-owned structures
  - Rent: \$150 per year, per facility collocated on a county-owned structure
  - Maintenance: \$25 per year, per facility collocated on a county-owned structure

#### New permit conditions added:

- Upcoming major projects must be mapped into the county’s Utility Infrastructure Integration (UI2) system.
- Right-of-way permits must be obtained for each municipality and for each mile of work.
- Extensions are no longer granted. If an applicant does not complete its work on time, the applicant must apply for a new permit.

#### Language clarified:

- Explicitly state that Hennepin County has priority use of county-owned infrastructure and county-

managed right-of-way.

**Impact/Outcomes:** The proposed revisions to Ordinance 22 will allow the county to continue to keep the right-of-way in a state of good repair and free from unnecessary encumbrances, so people and goods can continue to move safely and freely. The ordinance also provides for the county to recover costs for managing the right-of-way and collocation of wireless facilities.

**ATTACHMENTS:**

| Description           | Upload Date | Type            |
|-----------------------|-------------|-----------------|
| Ordinance 22 revision | 7/31/2018   | Backup Material |

# Ordinance 22

## COUNTY ROAD RIGHT-OF-WAY USE

Adopted by the Hennepin County Board of Commissioners  
November 14, 2000; Amended \_\_\_\_\_, 201\_\_

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Draft for communication to the board on August 7, 2018

## Section 1 Findings and Purpose

Hennepin County (county) holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. Under Minnesota law, the county is to manage the use of the right-of-way and other uses for public purposes, including use by public utilities. To provide for the health, safety and well-being of its citizens and to ensure the structural integrity of its roads and the appropriate use of rights-of-way, the county strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

This ordinance imposes reasonable regulations on the use, placement, and maintenance of facilities currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of all interested local, regional, state and federal agencies. Under this ordinance, persons disturbing and obstructing the rights-of-way will bear a share of the financial responsibility for their restoration and integrity. Finally, this Ordinance provides for partial recovery of the county's costs associated with managing its rights-of-way.

This ordinance shall be interpreted consistently with Minnesota Statutes, sections 237.16, 237.162, 237.163, 237.79, 237.81, 238.086 (the Act), and the other laws governing applicable rights of the county and users of the rights-of-way.

## Section 2 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 to Minnesota Statutes, section 237.163, subdivision 2(b), to manage rights-of-way under its jurisdiction.

(a) "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 to the county required project data reasonably necessary to allow the county to develop a right-of-way mapping system including geographic information system information;
7. Require right-of-way users to submit, upon request of the county, existing data on the location of users' facilities occupying the public right-of-way within the county;
8. Establish right-of-way permitting requirements for use, 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 or work conducted without having been issued the necessary permits.

## Section 3 Definitions

The following words, terms and phrases, as used herein, have the following meanings:

"Abandoned Facility" means (1) a facility no longer in service and physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service; or (2) A facility that is deemed abandoned by the right-of-way user.

"Aerial" means work done above any part of the right-of-way.

"Applicant" means any person requesting permission to access, excavate/grade, place a utility service, place a wireless support structure or small wireless facility, landscape, or obstruct a right-of-way, who has completed a right-of-way permit application and has paid the appropriate permit fees.

"APS" means Accessible Pedestrian Signal.

"Collocate or collocation" means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by a local government unit.

"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, subdivision 3, over a continuous length in excess of 500 feet.

"County" means Hennepin County, Minnesota.

"County Engineer" means the Hennepin County Highway Engineer or the county engineer's designee.

"County Management Costs" means the actual costs incurred by the county for public rights-of-way management; including, but not limited to, costs associated with registering applicants seeking permission to work within or obstruct a right-of-way; issuing, processing and verifying right-of-way or small wireless facility permit applications; inspecting job sites; maintaining, supporting, protecting or moving user equipment during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and opportunity to correct the work; mapping of "as built" locations of facilities located in rights-of-way; and revoking right-of-way or small wireless facility permits and performing all other functions required by this ordinance, including other costs the county may incur in managing the provisions of this ordinance. Management costs do not include: payment by a telecommunications right-of-way user for the use of the public right-of-way; unreasonable fees of a third-party contractor used by the county as part of

managing its public rights-of-way, including but not limited to any third-party contractor fee tied to or based upon customer counts, access lines, revenue generated by the telecommunications right-of-way user, or revenue generated for the county; or the fees and cost of litigation relating to the interpretation of this section or Minnesota Statutes, section 237.163, or any ordinance enacted under those sections, or the county's fees and costs related to appeals taken pursuant to Minnesota Statutes, section 237.163, subdivision 5.

"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.

"Degradation Cost" means the cost to achieve a level of restoration as determined by the county at the time the permit is issued.

"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 cost.

"Delay Penalty" means 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 Hennepin County Public Works Transportation Operations Department.

"Director" means the Hennepin County Transportation Operations Department Director or, unless the context indicates otherwise, the director's designees.

"Emergency" means a condition that: (1) Poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) Requires immediate repair, replacement, or relocation in order to restore service to a customer.

"Emergency Hole" means the excavation of a hole necessitated by a condition creating a clear and immediate threat to life, health, safety or property or requiring immediate repair, replacement, or relocation in order to restore service to a customer.

"Engineer" means the Transportation Operations Department Permits Office Engineer/Supervisor or the engineer's designee whose office is located at 1600 Prairie Drive, Medina, Minnesota.

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

"Facility or Facilities" means any tangible asset in or above the right-of-way required to provide related service to citizens or businesses within or adjacent to the county.

"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 right-of-way, with the excavation having a length less than the width of the corresponding lane of traffic or boulevard for the section of the roadway corridor where the work is occurring.

"Local Government Unit" means a county, home rule charter or statutory city, town, or the Metropolitan Council.

"Micro wireless facility" means a small wireless facility that is no larger than 24 inches long, 15 inches high, and whose exterior antenna, if any, is no longer than 11 inches.

"Moratorium" means the period of time following a road surfacing project where excavations in the paved surface are prohibited, except for emergency repairs.

"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 for an aggregate period of one-half (1/2) hour or more in conjunction with the issuance of a right-of-way permit.

"Patch or Patching" means a method of pavement or boulevard replacement that is temporary in nature. A patched pavement 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 patched boulevard may include the above definition if the disturbed surface is a paved walk, trail, or property access, or may consist of earthen backfill without turf if the disturbed surface is turf.

"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 Holder" means any person to whom a right-of-way permit to work or place equipment or facilities in 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. Examples include, but are not limited to: A business or commercial enterprise organized as any type or combination of corporation, limited liability company, partnership, limited liability partnership, proprietorship, association, cooperative, joint venture, carrier or utility, and any successor or assignee of any of them; A social or charitable organization; and Any type or combination of political subdivision, which includes the executive, judicial or legislative branch of the state, a local government unit, or a combination of any of them.

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

"Restore or Restoration" means the process by which the right-of-way and surrounding area, including pavement, turf and other county facilities, are returned to the same condition and useful life that existed before intrusion or encroachment by a person's facilities.

"Restoration Cost" means the amount of money paid to the county by a permit holder to achieve the level of restoration according to Hennepin County standards.

"Right-of-Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle trail or lane, boulevard, and public walk in which the county has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the county.

"Right-of-Way Permit" means a permit which must be obtained before a person may work in a right-of-way. A right-of-way permit allows the permit holder to work in that part of the right-of-way described in the permit. The right-of-way permit must be obtained before a person may obstruct a right-of-way. The permit allows the permit holder to hinder free and open passage over the specified portion of that right-of-way by placing equipment, constructing an excavation, or installing aerial facilities described therein on the right-of-way for the duration specified in the right-of-way permit.

"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 public right-of-way that is used or is intended to be used for providing utility service, and who has a right under the law, franchise or ordinance to use the public right-of-way.

"Service or Utility Service" includes but is not limited to: (1) Those services provided by a public utility as defined in Minnesota Statutes, section 216B.02, subdivisions 4 and 6; (2) Telecommunications, pipeline, community antenna television, fire and alarm communications, water, sewer, electricity, light, heat, cooling energy, or power services; (3) The services provided by a corporation organized for the purposes set forth in Minnesota Statutes, section 300.03; (4) The services provided by a district heating or cooling system; (5) Cable communication systems as defined in Minnesota Statutes, chapter 238; and (6) Telecommunications right-of-way user as defined in this section.

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

"Telecommunications 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 providing wireless service, transporting telecommunications or other voice or data information. For purposes of this ordinance, a cable communications system defined and regulated under Minnesota Statutes, chapter 238, and telecommunications activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes, section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes, chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes, chapter 308A, are not telecommunications right-of-way users, except to the extent these entities are offering wireless service.

"Trench" means an excavation in the right-of-way, with the excavation having a length equal to or greater than the width of the corresponding lane of traffic or boulevard for the section of the roadway corridor where the work is occurring. For the purpose of this ordinance the definition shall include directional boring and/or plowing.

"Utility pole" means a pole that is used in whole or in part to facilitate telecommunications or electric service.

"Wireless facility" (a) means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including: (1) equipment associated with wireless service; (2) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and (3) a small wireless facility. "Wireless facility" does not include (1) wireless support structures; (2) wireline backhaul facilities; or (3) coaxial or fiber-optic cables (i) between utility poles or wireless support structures, or (ii) that are not otherwise immediately adjacent to or directly associated with a specific antenna.

"Wireless service" means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including a cable service under United States Code, title 47, section 522, clause (6).

"Wireless support structure" means a new or existing structure in a public right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by a local government unit.

"Wireline backhaul facility" means a facility used to transport communications data by wire from a wireless facility to a communications network.

"Work" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way, or encroachment into the right-of-way including above ground.

## **Section 4 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 the 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.

## Section 5 Registration

(a) **Registration.** Each person who occupies or uses, or seeks to occupy or use, or seeks to place any equipment or facilities, small wireless facilities, or wireless support structures in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the county. The county requires registration using the county's e-permitting system to perform permitted work in the county managed public right-of-way. In order for the registration to remain active, the certificate of insurance for the registered user must be updated annually by submitting a certificate of insurance to the department's Permits Office.

(b) **Registration Required Prior to Work.** (1) No person shall construct, install, repair, remove, relocate or perform any work within any right-of-way without first being registered pursuant to this section; and (2) Registration shall be required on an annual basis.

(c) **Exceptions.** The following are not subject to the requirements of this section:

1. Persons planting or maintaining boulevard surface plantings or gardens. Planting shrubs or trees requires registration prior to obtaining a right-of-way permit;
2. Residents or businesses owning sanitary sewer and water service lines to a city main or owning drain tile lines shall not be required to register unless requested by the county, but shall be required to register in order to obtain a right-of-way permit for excavation and obstruction when said lines are installed, repaired, removed or relocated within the right-of-way; and
3. Persons acting as agents, contractors, or subcontractors for a registrant who has properly registered in accordance with this section.

However, nothing herein relieves a person from complying with the provisions of the Minnesota Statutes, chapter 216D, "Gopher State One Call" law.

(d) **Registration Information.** The registrant shall provide the following at the time of registration and shall promptly notify the county of changes in such information:

1. Registrant's name, address, telephone number and e-mail address;
2. Name, address, telephone number and e-mail address of the person responsible for fulfilling the obligations of the registrant;
3. A certificate of insurance from a company authorized to do business in the State of Minnesota or proof of self-insurance providing minimum coverage as stated on the right-of-way permit application form;
4. 24-hour emergency telephone number of a local representative who shall be available at all times;

5. An acknowledgment by the registrant of the indemnification of the county pursuant to section 24.0 of this ordinance; and
6. Such additional information as the county may require.

The registrant shall keep all the information listed above current at all times by providing to the engineer information as to changes within 15 days following the date on which the registrant has knowledge of any change.

## Section 6 Mapping Data

(a) **Information Required.** Each registrant and permit holder shall provide mapping information required by the county in accordance with Minnesota Rules 7819.4000 and 7819.4100.

Therefore, in managing the use of its public rights-of-way, the county may establish, develop, and implement a right-of-way mapping system as follows. The purpose of a mapping system is to:

1. Allow flexibility in its use by the county as an effective management tool;
2. Enhance public safety and user facility safety;
3. Provide for long-term cost savings;
4. Improve public right-of-way design quality;
5. Limit disruptions to traffic which inconvenience the traveling public; and
6. Allow for better information collection and cooperative usage among local government units, telecommunications companies, and other users of the public right-of-way.

(b) **Application Required.** When the county requires a right-of-way permit for work in its right-of-way, a person wishing to undertake a project within the public right-of-way shall submit a right-of-way permit application, which may require the filing of mapping information pursuant to subsection (c).

(c) **Information.** The county may require as part of its permit application the filing of all the following information:

1. Location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities, with the location based on:
  - Offsets from property lines, distances from the centerline of the public right-of-way, and curb lines as determined by the county;
  - Coordinates derived from the coordinate system being used by the county; or
  - Any other system agreed upon by the right-of-way user and the county.
2. The type and size of the facility;
3. A description showing above ground appurtenances;

4. A legend explaining symbols, characters, abbreviations, scale, and other data shown on the map;
5. The location of other utilities within the proposed work zone, the location of which established with a Gopher State One Call design locate, as required; and
6. Any facilities to be abandoned, if applicable, in conformance with Minnesota Statutes, section 216D.04, subdivision (d).
7. Confirmation that proposed attachments and/or structures meet current state and national roadside safety requirements (for example, crash worthiness).

(d) **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 subsection (c), items 1 to 5.

(e) **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 by changing the status of the permit to "Ready for Inspection."

(f) **Manner of Conveying Permit Data.** A right-of-way user is required to provide or convey mapping information or data in a format approved by the engineer. If the right-of-way user cannot provide the information in a format approved by the engineer, a right-of-way 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.

(g) **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 is made, if available.

## Section 7 Reporting Obligations

Each registrant shall, at the time of registration and by January 1 of each year, file a construction and major maintenance plan for all work within the county right-of-way for the upcoming year with the engineer. Such plan shall be submitted using a format designated by the engineer and shall contain the information determined by the engineer to be necessary to facilitate coordination and reduction in the frequency of excavations and obstructions of right-of-way.

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

(a) To the extent known, the tentative locations and the estimated beginning and ending dates of all projects contemplated for the five years following the next calendar year.

The engineer will have available for inspection in the department's Permits Office a composite list of all projects of which the engineer has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Each registrant must notify the engineer immediately of any change in its list of projects.

In addition, the registrant shall map electronically upcoming major projects onto the county's established mapping application. Information on the mapping application can be obtained by contacting the department's Permits Office. As of 2017, the county's established mapping application is Utility Infrastructure Integration, UI2.

## Section 8 Permit Requirements

(a) **Permit Required.** Except as otherwise provided in this ordinance, no person may obstruct or work in any right-of-way without first having been issued the right-of-way permit pursuant to this section.

Exceptions are as follows:

1. Metro Transit signing, plus red/white "T" signs on existing posts;
2. Crosswalk painting and pavement markings desired by the city and authorized by the county (county policy provides that the county install the initial pavement markings on new surfacing. Subsequent pavement marking maintenance is the responsibility of the city);
3. Install and maintain Metro Transit bus benches (not bus shelters);
4. Snowplow sidewalks;
5. Street and sidewalk sweeping;
6. Install and maintain street name signs, ground mount;
7. Sewer cleaning;
8. TV sewer-line inspection;
9. Flush water mains;
10. Pump water (across road) with hose in street;
11. Surveying operations;
12. Movement of maintenance equipment (city equipment) which is over-dimensioned/overweight;
13. Mailbox installation; and
14. Utility company (routine maintenance) in rights-of-way, along with similar city maintenance which do not disrupt a surface or through lane of traffic. Sewer lining which requires temporary divergence piping requires a permit.

A right-of-way permit is required for the permit holder to work in that part of the right-of-way described in each permit to the extent and for the duration specified in the permit.

(b) **Permit Extension.** No person may work in or obstruct the rights-of-way beyond the date specified as the end date the permit application or do any work beyond that date specified in the permit. The engineer, at the county's discretion, may extend the completion date or scope of the work if the specified work could not be done because of circumstances beyond the control of the permit holder.

(c) **Penalty for Violation of Ordinance.** A person shall be subject to a penalty for violation of the ordinance as stipulated in section 26.

## Section 9 Permit Application

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

**Application and Fee.** An application for a right-of-way permit shall be made using the county's current e-permitting system and shall be accompanied by fees for: (1) permit application (Appendix A); (2) prior work in the rights-of-way; and (3) any undisputed loss, damage, or expense suffered by the county because of prior work in the rights-of-way or any emergency action taken by the county in regard to facilities comprehended in the permit application (4) other fees as allowed by applicable statutes.

A separate right-of-way permit is required for work within each county road right-of-way for each municipality where work will take place. For work that extends greater than one mile, a separate right-of-way permit is required for each mile of work. Small Wireless Facilities are subject to Minnesota Statutes, section 237.163, subdivision 3(a)4(b)(1). Please see section 27(a) of this ordinance.

Application shall include:

1. Appropriate engineering scale drawings showing the location of all facilities and improvements proposed;
2. Location and approximate depth of the subject and related facilities and any other facilities in the immediate vicinity;
3. A description of the methods that will be used in the work;
4. The Hennepin County road and associated right-of-way affected by the work;
5. Offset distances from the roadway centerline to the back of curb or edge of pavement surface and the associated right-of-way line;
6. A legend explaining symbols, characters, abbreviations, scale, north arrow, and other data;
7. The location of any public streets, trails, walks or alleys and private property accesses that will be temporarily closed to use during the work;
8. Any facilities to be abandoned, if applicable, in conformance with Minnesota Statutes, section 216D.04, subdivision 3; and
9. The location and approximate depth of all other utility in the vicinity of the project shall be included following a design Gopher State One Call locate request.
10. Confirmation that proposed attachments and/or structures meet current state and national roadside safety requirements (for example, crash worthiness).
11. Any other information reasonably required by the county.

## Section 10 Issuance of Permit

(a) **Permit Issuance.** The engineer shall issue a right-of-way permit upon finding the work will comply with the requirements of this ordinance.

(b) **Conditions.** The engineer may impose reasonable conditions upon the issuance of the permit and the performance of the permit holder thereunder to protect the public health, safety and welfare; to ensure the structural integrity of the rights-of-way; to ensure completion of the rights-of-way restoration within a specified period; to protect the property and safety of other users of the rights-of-way; to minimize the disruption and inconvenience to the public; or when necessary to protect the right-of-way and its current and future use. The county may require, in its discretion, that a right-of-way applicant install additional, related fiber-optic infrastructure, at county's reasonable expense, for use by the county and its partners. The engineer and the applicant shall collaboratively develop infrastructure specifications, additional cost estimates and documentation necessary to transfer right, title and interest to the county. In addition, the permittee shall comply with all requirements of local, state, and federal laws, including but not limited to Minnesota Statutes, chapter 216D (Excavation Notice System) and Minnesota Rules chapter 7560.

(c) **Small wireless facility conditions.** See section 27 of this ordinance.

## Section 11 Timeliness of Work

The work to be done under the right-of-way permit and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit. Work progress shall be continuous and completed as promptly as weather permits. At no time shall an excavation be open for more than three calendar days without continuing work unless prior authorization has been received from the engineer. Restoration of an excavation in the road surface shall commence with 24 hours of work completion. Restoration of an excavation outside of the road surface shall commence within seven calendar days of work completion. Lane closure restrictions shall be specified by the county.

## Section 12 Standards for Construction or Installation

The requirements and standards for facility construction or installation are contained in Appendix B.

By accepting the right-of-way permit from the county, the permittee acknowledges receipt of sections 216D.03 to 216D.07 of Minnesota State Law chapter 216D, Excavation Notice System, which is contained in Appendix C.

## Section 13 Restoration of Right-of-Way

The county may choose either to have the permit holder restore the surface portion of the rights-of-way or to restore the surface portion of the rights-of-way itself.

(a) **County Restoration.** If the county restores the rights-of-way, the permit holder shall pay the costs thereof within 30 days of billing. If, during the 24 months following such restoration, the restored surface settles due to the permit holder's improper back filling, the permit holder shall pay to the county, within 30 days of billing, all costs associated with the county having to correct the settlement.

(b) **Permit Holder Restoration.** If the permit holder is to restore the right-of-way, at the time of application, the county may require the perspective permit holder to post a construction performance bond, letter of credit or cash deposit in an amount determined by the engineer to be sufficient to cover the cost of restoration. The construction performance bond or letter of credit must be approved by the County Attorney's Office. If, within 24 months after completion of restoration of the right-of-way, and acceptance by the engineer, the engineer determines the right-of-way has been properly restored, the posted security will be released.

(c) **Degradation Fee in Lieu of Restoration.** In lieu of right-of-way restoration, a permit holder may elect to pay a degradation fee. However, the permit holder shall remain responsible for replacing and compacting the subgrade and aggregate base material in the excavation and the degradation fee shall not include the cost to accomplish these responsibilities.

(d) **Standards.** The permit holder shall perform temporary surfacing, patching and restoration including backfill, compaction, and landscaping according to the standards and with the materials specified by the engineer. The engineer shall have the authority to prescribe the manner and extent of the restoration and may do so in written procedures of general application or on a case-by-case basis. The engineer, in exercising this authority, shall comply with Public Utilities Commission (PUC) standards for right-of-way restoration and require conformance to Minnesota Department of Transportation (MnDOT) standard specifications and local government specifications and shall further be guided by the following considerations:

1. The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;
2. The traffic volume carried within the right-of-way and the character of the neighborhood surrounding the right-of-way;
3. The pre-existing condition of the right-of-way and the remaining useful life of the right-of-way affected by the excavation;
4. Whether the relative cost of the method of restoration to the permit holder is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the work, disturbance or damage to the right-of-way; and

5. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

(e) **Guarantees.** If the permit holder performs the restoration, the permit holder shall guarantee such work and its maintenance for 24 months following its completion and acceptance by the engineer. During this 24-month period it shall, upon notification from the engineer, correct all defective restoration to the extent necessary within five business days of the receipt of notice, using the method required by the engineer. If the defective work is not corrected by the permit holder, and the county does such work and sends a bill to the permit holder, who fails to pay for such work, the county may exercise its rights under the construction performance bond.

## Section 14 Other Obligations

(a) **Compliance With Other Laws.** The permit holder must obtain all other necessary permits, licenses, and approvals and pay all fees required. The permit holder shall comply with all requirements of local, regional, state and federal laws, including Minnesota Statutes, chapter 216D (Excavation Notice System). A permit holder shall perform all work in conformance with all applicable codes and established rules and regulations and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(b) **Prohibited Work.** Except in an emergency, and with the approval of the engineer, no work within the paved surfaces of the right-of-way may be done when seasonally prohibited or when conditions are unreasonable for such work.

(c) **Maintenance of Drainage Within Right-of-Way.** A permit holder shall not so obstruct a right-of-way that the natural free and clear passage of water along the gutters or other waterways shall be interfered with. If surface drainage is to be affected, the permit holder must be responsible for the proper disposition of the runoff.

(d) **Excavation Moratorium.** Except in an emergency, and with the approval of the engineer, no excavations within the paved surface are allowed for a period of five years following new pavement surfacing of the roadway.

## Section 15 Denial of Permit

The engineer may deny a permit based on any of the following grounds:

- (a) Failure to register pursuant to section 5.0 of this ordinance;
- (b) The proposed schedule for work would conflict or interfere with a previously issued permit for an exhibition, celebration, festival or any other similar event;
- (c) The applicant and/or prospective permit holder fails to comply with the requirements of this ordinance;
- (d) The proposed work violates local zoning regulations; and

(e) The engineer determines that denial is necessary to protect the health, safety and welfare of the public or protect the right-of-way and its current use.

The engineer 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.

Small Wireless Facilities Permit Denial or Revocation. See section 18 and section 27 of this ordinance.

## **Section 16 Emergencies and Work Done Without a Permit**

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

If the engineer becomes aware of an emergency regarding a registrant's facilities, the engineer shall attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The engineer may take whatever action deemed necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

## **Section 17 Inspection**

The permit holder shall contact the department's Permits Office a minimum of one business day in advance prior to the site inspection.

(a) **Site Inspection.** The permit holder shall make the work site available to the engineer and to all others authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(b) **Authority of Engineer.** At the time of inspection, the engineer may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public. The engineer may issue an order to the permit holder for any work which 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 nonconformity within a stated deadline will be cause for revocation of the permit. The engineer will send written notice to a Small Wireless Facility permit holder no later than the third business day after giving a verbal stop work order, which will identify the alleged violation. If the violation is not corrected at the permit holder's sole expense within the stated deadline, the engineer may revoke the permit and coordinate the county's correction of the nonconformity.

## Section 18 Revocation of Permits

(a) **Substantial Breach.** The engineer may revoke a right-of-way permit, without a fee refund, if there is a substantial breach of the terms or conditions of any applicable statute, this ordinance, rule or regulation, or any condition of the permit. A substantial breach of a permit shall include, but not limited to, the following:

1. The violation of any material provision of the right-of-way permit;
2. Any material misrepresentation of fact in the application for a right-of-way permit;
3. The failure to maintain the required bonds or other security and insurance;
4. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permit holder's control;
5. The failure to correct, in a timely manner, work that does not conform to applicable standards, conditions or codes, upon inspection and notification by the county of the faulty condition;
6. 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 Hennepin County or its citizens; and
7. The failure to comply with the terms and conditions of any applicable federal, state, regional and local laws, rules and regulations, including any provision of this ordinance.

(b) **Notice of Breach.** If the engineer determines that a permit holder has committed a substantial breach of a term or condition of any statute, this ordinance, rule or regulation or any condition of the permit, the engineer shall make a written demand upon the permit holder to remedy such breach within a reasonable period of time or be subject to potential revocation of the permit. The engineer may impose additional or revised conditions on the permit to mitigate or remedy the breach.

(c) **Reimbursement of County Costs.** If a permit is revoked, the permit holder shall reimburse the county for its reasonable costs, including nonconformity correction and/or restoration costs and the costs of collection and reasonable attorney fees incurred in connection with the revocation. Such reimbursement shall be made within 30 days of billing.

## Section 19 Appeal

**Filing of Appeal.** A right-of-way user that: (1) has been denied registration; (2) has been denied a right-of-way permit; (3) has had right-of-way permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the county engineer. The county engineer shall act timely on the written request. Should the matter not be resolved to the satisfaction of the right-of-way user after timely review by the county engineer, the right-of-way user may submit the denial,

revocation, or fee imposition for review to the County Board of Commissioners. The board shall act on a timely written request at its next regularly scheduled meeting. A decision by the board affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

## **Section 20 Authority Over County-Owned Infrastructure and County Managed Public Rights-Of-Way, Placement, Location, and Relocation of Facilities**

(a) **Priority of Use.** The county has priority of use of county-owned infrastructure, and county managed public right-of-way.

1. To the extent consistent with applicable federal, state, and local law, the county engineer may determine that certain classes of county-owned infrastructure or specific units of county-owned infrastructure are necessary for the county's exclusive use due to legal, mechanical, structural, safety, environmental, service, or other requirements and are unavailable for use by any other person.

(b) **Placement, Location, and Relocation.** Placement, location, and relocation of facilities must comply with the Act, other applicable law, and Minnesota Rules 7819.3100, 7819.5000, and 7819.5100. By submitting a request for a permit, the applicant recognizes the work must conform to the existing ordinances and codes of other units of government related to facility placement regardless of how the application is written or permit granted.

(c) **Limitation of Space.** To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the county shall have the power to use best management practices to prohibit or limit the placement and location of new or additional facilities within the rights-of-way.

(d) **Relocation of Facilities.** The registrant must promptly and at its own expense, with due regard for seasonal working conditions, move and relocate its facilities in the right-of-way whenever it is necessary to prevent interference, and not merely for the convenience of the county, in connection with: (1) a present or future use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of ordinary travel over the right-of-way. This relocation applies to temporary as well as permanent relocations of the registrant's facilities.

(e) **Relocation Notification Procedure.** The county engineer shall notify the registrant at least six months in advance of the need to relocate existing facilities so the registrant can plan the relocation. The director shall provide a second notification to the registrant one month before the registrant needs to begin the relocation. The registrant shall begin relocation of the facilities within one week of the second notification. All facilities shall be relocated within one month. The county engineer may allow a different schedule if it does not interfere with the county's project. The registrant shall diligently work to relocate the facilities within the above schedule.

(f) **Private infrastructure.** The county engineer shall notify the owner of infrastructure occupying the county managed public right-of-way anytime private infrastructure or its

technology interferes with, or causes degradation to, the county's existing or future public infrastructure or technology. The owner of the private infrastructure shall coordinate with the county to resolve the identified issue(s) within one month of notification. A resolution that addresses the issue(s) shall be implemented within one month, weather permitting. The owner of the private infrastructure is responsible for all costs associated with the resolution. All private infrastructure and its associated technology must meet all federal, state, and local requirements, and must adhere to all state and federal roadside safety requirements.

(g) **Delay to County Project.** The county engineer shall notify the registrant if the registrant's progress will not meet the relocation schedule.

(h) **Unauthorized attachments and facilities prohibited.**

1. No person shall knowingly affix, install, place, attach, maintain, or fail to remove an unauthorized attachment or other facility to county-owned infrastructure or in the county managed public right-of-way or other property of the county on demand by the county or any authorized representative thereof.
2. No person shall use an attachment or other facility on county-owned infrastructure of county managed public right-of-way or other property of the county to provide a service not authorized by a permit, license, or other authority.
3. Each unauthorized attachment or use is a separate offense. Each day a violation of this ordinance continues is a separate offense.

## **Section 21 Interference by Other Facilities**

When the county does work in the right-of-way as part of its governmental right-of-way management function and finds it necessary to maintain, support, or move a registrant's facilities to carry out the work without damaging the registrant's facilities, the director shall notify the registrant's local representative as early as is reasonably possible. The county costs associated therewith will be billed to the registrant and must be paid within 30 days from the date of billing.

Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damage.

## **Section 22 Right-of-Way Vacation**

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 Rule 7819.1250 and other applicable laws.

## **Section 23 Abandoned Facilities**

A registrant shall notify the county when facilities are to be abandoned in county right-of-way. A registrant that has abandoned facilities in a county 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 this requirement is waived by the director.

## Section 24 Indemnification and Liability

By registering with the county, or by accepting a permit under this ordinance, a registrant or permit holder agrees to defend and indemnify the county in accordance with the provisions of Minnesota Rule 7819.1250.

## Section 25 Severability

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

## Section 26 Penalty or Fee for Violation

A person shall be subject to a fee or penalty for violation of this ordinance when a person is obstructing the right-of-way beyond the date specified in the permit is performing non-emergency work in the right-of-way without having been issued a permit or when a person causes the county to incur costs as a result of actions or inactions of the person.

(a) **Delay Penalty.** The county hereby establishes a delay penalty for unreasonable delay in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be reviewed from time to time by the County Board or Commissioners. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, civil strife, acts of God, or other circumstances beyond the control of the permit holder.

The delay penalty for violation of this ordinance will be levied daily as long as the violation occurs. The amount of the delay penalty will be based upon the following calculation, which reflects the unnecessary inconvenience and hazard exposure to the public.

$$\text{AADT/TL} \times \text{LO} \times 0.0167 \times \$6.81$$

Where:

AADT is the most recent annual average daily traffic reported for the county road segment along which the work site is located.

TL is the number of through lanes within the county road segment along which the work site is located.

LO is the number of lanes obstructed (wholly or in part) by the work site.

0.0167 is the delay in hour measurement, vehicles experience along the county road segment in which the work site is located.

\$6.81 (2017 rate) is the hourly value of a person's time in a vehicle as determined by the county.

The minimum penalty for delay shall be \$100.00 per day and the maximum penalty for delay shall be \$1000.00 per day.

(b) **Fee for Violation.** A fee for violation of this ordinance shall be imposed when a person is performing non-emergency work in the right-of-way without having been issued a permit or when a person causes the county to incur costs as a result of actions or inactions of the person. The fee shall be based on the actual costs incurred by the county to correct the violation.

## Section 27 Small Wireless Facilities

(a) **Small Wireless Facility Permits.** A telecommunications right-of-way user seeking to place a new wireless support structure or collocate a small wireless facility in any county managed public right-of-way must obtain a permit or permits pursuant to this ordinance and all other applicable laws. An applicant may file a consolidated small wireless facility collocation permit application addressing the proposed collocation of no more than 15 small wireless facilities provided that all small wireless facilities in the application are on county owned structures and:

- (1) are located within a two-mile radius;
- (2) consist of substantially similar equipment; and
- (3) are placed on similar types of wireless support structures.

*Exemptions.* No small wireless facility collocation permit is required to conduct the following activities in the right-of-way:

- (1) routine maintenance of a small wireless facility;
- (2) replacement of a small wireless facility that is substantially similar or smaller in size, weight, height, and wind, or structural loading than the small wireless facility being replaced; or
- (3) Installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes.

If any of the above activities will obstruct the right-of-way, the user must obtain a right-of-way use permit.

(b) **Permission from Owner.** If the applicant seeks to collocate a small wireless facility on an existing wireless support structure that is not owned by the county, the applicant must, at the time of application, provide the county with proof that it has obtained the necessary authority from the owner of the wireless support structure to collocate the small wireless facility on the structure.

(c) **Approval of small wireless facility permits.**

*Deadline for action.* The engineer and all other county officials and departments have 90 days after the receipt of a small wireless facility permit application to issue or deny the permit. In rendering a decision on a consolidated permit application, the county may

approve some small wireless facilities and deny others, but may not use the denial of one or more attachments as a basis to deny all small wireless facilities in the application.

If the county receives applications within a single seven-day period from one or more applicants seeking approval for 30 or more small wireless facilities, the county may extend the 90-day deadline by an additional 30 days. The county will send written notifications to any applicant whose application will be subject to the extension.

*Conditions for approval.* The engineer will condition approval of a small wireless facility permit on compliance with; (1) generally applicable and reasonable health, safety, and welfare regulations consistent with the county's right-of-way management; (2) reasonable accommodations for decorative wireless support structures or signs; and (3) any reasonable restocking, replacement, or relocation requirements when a new wireless support structure is placed in a public right-of-way.

*Tolling the deadline.* The deadline for action on a small wireless facility permit may be tolled if:

1. The engineer issues a written notice of incompleteness to the applicant within 30 days of receipt of the application, which clearly and specifically delineates all missing documents and information. Information delineated on the notice is limited to documents or information publicly required as of the date of application and reasonably related to the county's determination whether the proposed equipment falls within the definition of a small wireless facility and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon submission of additional documents or information the county will have 10 days to notify the application of any still-missing information that was outlined in the original written notice. Second or subsequent notices of incompleteness may not specify documents or information that were not delineated in the original notice of incompleteness. Any missing information that was not clearly and specifically delineated in the initial written notice of incompleteness does not toll the 90-day clock.
2. The county and applicant mutually agree in writing to toll the review period.

(d) **Permit denial or revocation.** The engineer may deny any application for a right-of-way or small wireless facility permit if the telecommunications right-of-way user does not comply with a provision of this ordinance to the extent consistent with law or if the permit would be contrary to generally applicable and reasonable health, safety, and welfare regulations. The county must notify the applicant in writing within three business days of its decision to deny the permit. Upon denial, the applicant may cure the deficiencies identified by the county and resubmit its application. If the applicant resubmits the application within 30 days of receiving written notice of the denial, an additional filing or processing fee must not be required. The county must approve or deny the revised application within 30 days after the revised application is submitted.

Generally applicable health, safety, and welfare regulations for the purposes of this section specifically includes, but is not limited to, the following:

1. The engineer may require the applicant to submit a structural engineering analysis by a Minnesota registered professional engineer certifying that the pole or other structure that is proposed to support the attachment can reasonably support the proposed attachment considering the conditions of the street, the anticipated hazards from traffic to be encountered at the location and considering the wind, snow, ice, and other conditions reasonably anticipated at the proposed location.
2. If the engineer determines based upon reasonable engineering judgment that a user's attachment impairs the safety, purpose, or structural integrity of county-owned infrastructure, the engineer may require the user, at the user's sole expense and risk, to change, move, remove, or rearrange the attachments.
3. The engineer may inspect, at any time, the construction or installation of a user's attachments on county-owned infrastructure. If the engineer determines that a user's installation or construction may violate applicable regulations, including, but not limited to, this ordinance, the National Electric Code, the National Electric Safety Code, the county's standards for the county-owned infrastructure involved, or the conditions of the user's application or permit, the engineer may suspend the user's construction or installation activities.
4. The engineer may deny an application if:
  - a. The engineer determines, based upon reasonable engineering judgment, that the proposed attachment does not comply with the definition of a Small Wireless Facility or if the county-owned structure fails a structural engineering analysis.
  - b. The engineer reasonably determines, based upon reasonable engineering judgment, that the proposed attachment would likely jeopardize the reliability or integrity of the electrical system or of individual units of county-owned infrastructure, or would likely violate generally applicable electrical or engineering principles.
  - c. The proposed attachment would present an unreasonable safety hazard as specifically and reasonably identified by the engineer.
  - d. Approval would impair the county's ability to operate or maintain county-owned infrastructure in a reasonable manner considering reasonable goals or standards for operating the infrastructure involved.
  - e. There is insufficient capacity on the county-owned structure or placement of the attachment would violate the National Electric Safety Code or the county's standard design criteria, and the county infrastructure cannot reasonably be modified, enlarged, or replaced at the cost of the applicant.

**Revocation.** The engineer may revoke a right-of-way or small wireless facility permit granted to a telecommunications right-of-way user without refund pursuant to section 18 of this

ordinance in the event of a substantial breach, of the terms and conditions of statute, ordinance, rule, or regulation or any material condition of the permit.

*Denial Procedural Requirements.* The engineer will notify a telecommunications right-of-way user in writing within three business days of the decision to deny a permit and will document the basis for denial.

(e) **Term.** The term of a small wireless facility permit will be equal to the length of time that the small wireless facility is in use, unless earlier revoked under this section.

(f) **Requirements for New Wireless Support Structures.** New wireless support structures that comply with the following requirements may be placed in the right-of-way after the issuance of a small wireless facility right-of-way permit:

1. A new wireless support structure must not exceed 50 feet above ground level, subject to local zoning regulation, and must be separated from other wireless support structures by a minimum of 600 feet.
2. A wireless support structure that replaces an existing wireless support structure that is higher than 50 feet above ground level may be placed at the height of the existing wireless support structure and is subject to local zoning regulation and county approval. A height greater than the existing structure is also subject to local zoning regulation and county approval.
3. The diameter of a wireless support structure that replaces an existing wireless support structure must not exceed the diameter of the existing wireless support structure by more than fifty percent.
4. Wireless facilities constructed in the right-of-way after May 31, 2017 must not extend more than 10 feet above an existing wireless support structure in place as of May 31, 2017.

(g) **Requirements for Small Wireless Facilities.** A small wireless facility that complies with the following requirements may be collocated on a wireless support structure within the right-of-way after the issuance of a small wireless facility permit:

1. The small wireless facility must have limited exposed cabling and mounting hardware. It must also match the wireless support structure it is attached to in color and, as close as practicable, in material and design.
2. The small wireless facility must not interfere with public safety wireless telecommunications.
3. Small wireless facilities in the right-of-way must be removed and relocated at the county's request and at no cost to the county when the engineer reasonably determines that removal and relocation is necessary to prevent interference with the following, which includes but is not limited to: present or future county use of the right-of-way for a public project; the public health, safety, or welfare; or the safety and convenience of travel over the right-of-way.

4. A small wireless facility attached to an existing wireless support structure must not block light emanating from the wireless support structure and must not otherwise interfere with the original use of the wireless support structure.
5. Ground-mounted equipment associated with small wireless facility is prohibited unless the applicant can show that ground-mounted equipment is necessary for operation of the small wireless facility. If ground-mounted equipment is necessary, it must meet the following standards:
  - a. Ground-mounted equipment must not disrupt traffic or pedestrian circulation and must not interfere with vehicle or pedestrian intersection sight lines or operation of existing utilities or access to them;
  - b. Ground-mounted equipment must not create a safety hazard;
  - c. The ground-mounted equipment minimizes impacts on adjacent property;
  - d. If placed above grade, ground-mounted equipment must be limited to three feet in height and 28 cubic feet in cumulative size;
  - e. If placed above grade, be separated from a sidewalk or other existing utilities, (for example, hydrants) by a minimum of three feet;
  - f. If placed above grade, screening compatible with the surrounding area must be provided around the ground-mounted equipment must be provided if deemed necessary by the engineer.

## Appendix A: Fees and Right-of-Way Permit Application Web Site

### PERMIT AND OTHER FEES:

| Activity  | Fee   |
|---|---|
| Permit Fee  | \$330 per application (2017 rate)   |
| Penalty or fee for violation  | Delay Penalty: Minimum \$100 per occurrence per day<br>Maximum \$1,000 per occurrence per day<br>Fee for violation: actual county cost to correct |
| Small wireless facility rent  | \$150 per year per facility collocated on a county-owned structure  |
| Small wireless facility maintenance                                   | \$25 per year for maintenance associated with collocation on a county-owned structure   |
| Small wireless facility collocation permit fee                        | \$1,500 per collocation on county-owned structures  |
| Monthly fee for electricity used to operate a small wireless facility | The county will not supply electricity for the operation of small wireless facilities. Electricity must be purchased directly from a utility.     |

Note that fees are periodically adjusted by the Hennepin County Board.

### RIGHT-OF-WAY PERMITS:

Right-Of-Way and Utility permit applications are available at  
<https://roadpermits.co.hennepin.mn.us>

### Contact Information

#### Hennepin County Transportation Operations Permits Office

Phone: 612-596-0339

Fax: 612-321-3410

Hours: Monday – Friday 7 a.m. to 3:30 p.m.

Email: [roadpermits@hennepin.us](mailto:roadpermits@hennepin.us)

## Appendix B: Requirements for a Right-Of-Way Permit

### GENERAL REQUIREMENTS FOR RIGHT-OF-WAY PERMIT

All warning devices and barricades shall conform to the Minnesota Manual on Uniform Traffic Control Devices (MNMUTCD), current edition, and any and all updates or supplements thereto.

All warning devices, barricades, flagmen and equipment shall be provided by parties or organizations performing the work. Said devices shall be removed from the job site promptly upon completion of work.

Standard warning devices and barricades and safety vests shall be kept clean and in good repair at all times.

Detour on a county roadway requires 10 working days' advance notice to the Hennepin County Permits Office.

Excavations shall be cribbed, sheeted, and/or fenced when necessary, or as required by Hennepin County.

Inclement weather shall be reason for delay of the work start or suspension of the work as determined by Hennepin County.

Safety vests shall be worn by ANYONE occupying county managed public right-of-way.

**Right-of-Way Permit on Job** - Permits or copies shall be kept on the work site, while work is in progress, in the custody of the individual in charge, and shall be exhibited upon request by any county official.

**Provisions and Specifications** - These general permit requirements and specifications shall be considered as forming an integral part of each and every permit issued for operations on county roadways. The work authorized by this permit shall be done at such time and in such manner as shall be consistent with the safety of the public and shall conform to all requirements and standards of the county as herein specified. If at any time, the county finds that the work is not being, or has not been, properly performed, the permit holder, upon being notified, shall immediately take the necessary steps, at its expense, to place the work in conformance to said requirements or standards.

**Annulment** - In the event of failure or neglect, willfully or not, by the permit holder or permit holder's employees, to perform and comply with the prescribed conditions restrictions and regulations, the director may revoke and annul this permit and order the permit holder to immediately remove any and all structures of property belonging to the permit holder from the legal limits of the roadway or county property.

**Execution** - The permit holder shall use due diligence in the execution of the work authorized under this permit in order not to endanger or unnecessarily obstruct travel along the county road corridor. Operations shall be so conducted at all times as to permit safe and reasonably free travel over the roads within the limits of the work herein prescribed. All

safety measures for the free movement of traffic shall be provided by the permit holder at its own cost.

**Conformity to Laws** - The installation shall be made in conformity with all applicable laws, regulations and codes covering said installations. All installations shall be made in conformity with regulations of governmental agencies for the protection of the public.

**Americans with Disabilities Act (ADA)** – Pedestrian facilities on public rights-of-way are required to be accessible to persons with disabilities through the following federal statutes:

- Section 504 of the Rehabilitation Act of 1973 (section 504) (29 U.S.C. 5794) and
- Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 59 12131-12164)

Title II of the ADA governs all state and local governments and their agencies and facilities, regardless of the funding source. All pedestrian facilities within the public rights-of-way designed, constructed, and/or altered on behalf of or for the use of a public entity must be readily accessible to and usable by persons with disabilities.

**Removal** - If at any time the permitted structure or facility shall fail from any cause whatsoever, the permit holder shall have the same removed or repaired immediately upon receipt of written notice to do so.

**Existing Facilities** - The permit holder must protect all existing installations.

**Private Property** - The permit as issued does not in any way imply an easement on private property or grant a right to encroach on private property.

**Damage to Roadway** - If pavement, roadway or right-of-way is damaged, same shall be restored, in a timely manner to its original or better condition, at the sole expense of the permit holder. Permit holder's failure to correct such damage in a timely manner will result in Hennepin County, through its own forces or contractors, making said repairs and billing permit holder for all costs and expenses related thereto. Permit holder shall make payment to Hennepin County within 30 days of receipt of said bill. Permit holder agrees that if it fails to make payment of said amounts within the specified time, to Hennepin County, it shall pay all costs relating to debt collection, including, but not limited to, court costs, fees, interest and attorneys' fees.

**Quality of Work** - Finished surface, base and sub-base of road upon completion of work shall be equal to or better than specifications for the original roadway surface.

**Cutting of Trees** - The permission herein granted does not confer upon the permit holder the right to cut, remove or destroy trees or shrubbery within the legal limits of the roadway or relieve permit holder from obtaining any consent otherwise required from the owner of the property adjacent thereto. A tree replacement plan must be included with the permit application for any project that includes the removal of trees within the county road right-of-way. Tree replacements plans will be submitted by the department's Permits Office to Hennepin County's Department of Environment and Energy for approval.

**Boring or Jacking** - Installation of cable and pipe under roadways, shall be jacked or bored as designated by the engineer. No road or driveway, including field accesses, may be crossed with a vibratory plow.

**Liner or Casing Pipe** - Liner or casing pipe shall be required for jacking installations exceeding four inches in diameter unless a certified Minnesota Department of Transportation (MnDOT) "jacking" reinforced concrete pipe is utilized for storm drainage applications. MnDOT specifications shall govern placement. The casing shall be filled with sand or pea rock and the ends shall be grouted and or bricked shut. Pressure grouting shall be required as designated by Hennepin County.

**Drainage** - The existing drainage patterns shall not be altered unless approved by Hennepin County. Watershed District approval and drainage calculations are required if the work alters existing drainage patterns. Post-construction flow rates entering Hennepin County's drainage system, overland or through pipes, shall not exceed pre construction rates for the two, 10 and 100-year events.

**Pole Anchors** - No pole anchors, anchors, braces or construction shall occur on the right-of-way except by permit authorization.

**Driving Limitations** - No driving onto highway from ditch or driving on shoulders or over curbs shall occur where damage will occur.

**Lugs on equipment** - No lugs shall be used on equipment traversing Hennepin County roadways.

**Clean-up** - Street surface and roadside shall be kept clean, neat and presentable throughout construction as determined by the department.

**Erosion, Sediment, and Dust Control** – The permit holder will be responsible for utilizing Best Management Practices in managing storm water. Erosion, sediment control and water quality practices that are most effective and practicable means controlling, preventing, and minimizing degradation of waters of the state, including avoidance of impacts, general housekeeping practices, pollution prevention practices, operating and maintenance procedures and other applicable management practices shall be utilized. Erosion, sediment, and dust control shall be provided upon request of the department.

**Trees and Vegetation** - Burning or disking operations and or the use of chemicals to control or kill trees, brush, and other vegetation is prohibited without the engineer's approval.

**Restoration** - It shall be further understood that the permit holder will be responsible for maintenance or repair of any and all failures due to settlement, erosion, lack of vegetation growth, rutting or other job related problems for a period of two years after project completion and Notice of Work Completion form has been received by the county. The permit holder shall perform all said maintenance immediately after it has been notified of said deficiency. The permit holder shall be responsible for all costs and expenses related to said maintenance. The permit holder's failure to immediately perform maintenance will result in Hennepin County, through its own forces or its contractor, performing said

maintenance and billing the permit holder for all costs and expenses related thereto. The permit holder shall pay the county within 30 days of receipt of said bill. The permit holder agrees, that if it fails to make payment of said amounts within the specified time the permit holder shall pay all costs related to debt collection, including, but not limited to, court costs, fees, interest and attorneys' fees.

**Manholes** - All manhole covers, valve covers, etc. shall be placed one-half inch lower than finished grade.

**Winter Restoration** – Permanent restoration plans must be submitted to the department's Permits Office prior to starting construction or temporary restoration/winter stabilization for work occurring between November 1 and April 30.

### **SPECIAL PROVISIONS FOR RIGHT-OF-WAY PERMIT**

**Communication:** The permit holder shall call the Permits Office at 612-596-0339 or the number listed in the special provisions of the permit prior to construction. The permit holder shall provide a representative on site at all times and an emergency contact available, 24 hours per day, seven days per week.

**Work Hours:** The permit holder shall not work within the Hennepin County roadway surface during AM or PM traffic rush hour periods, nor before sunrise or after sunset, unless authorized by the engineer.

**NO WORK PERMITTED WITHIN ROADWAY SURFACE DURING:** Winter (November 15 through April 15), or Saturdays, Sundays, or holidays unless daily "Special Permission" is obtained from the engineer.

**Notification:** The applicant shall be responsible for obtaining permits from any affected municipality or MnDOT. The applicant shall notify all affected emergency personnel, public transit officials, local residents or any other affected group. The applicant shall utilize the "Gopher State One Call" excavation notice system as required under Minnesota Statutes, chapter 216D, 48 hours prior to performing any excavation by submitting a request electronically at [www.gopherstateonecall.org/submit](http://www.gopherstateonecall.org/submit) or by calling one of the following Gopher State One Call numbers: 811 (Call Before You Dig); 651-454-0002 or 800-252-1166.

**Specifications:** The MnDOT Standard Specifications for Construction, current edition, shall govern all installations performed under this permit.

**Survey:** The installations shall be surveyed by the applicant to ensure correct placement within the right-of-way. The applicant is required to preserve all existing survey monuments. If the county determines survey monuments have been disturbed during construction activities, the applicant shall accept full responsibility for all costs incurred to re-establish these monuments.

**Traffic Control:** The permit holder shall furnish, install, and maintain all required traffic control devices according to the MNMUTCD, "Temporary Traffic Control Zone Layouts Field Manual", current edition; the MNMUTCD, current edition; the MnDOT Standard

Specifications for Construction, current edition; and the MnDOT Traffic Engineering Manuals, current editions. As the Road Authority, the county retains the right to require additional traffic control at its discretion. Detour routing shall require a minimum 10 working days advance notice to the county.

**Tree Removal:** No tree or substantial shrub shall be removed from existing or dedicated right-of-way unless written permission is obtained. This permit will not serve as permission to remove vegetation from county property. The permit holder will be responsible for obtaining written permission from any property owner prior to removing any vegetation. All plants or trees removed or damaged shall be replaced in kind by the permit holder. A tree replacement plan must be included with the permit application for any project that includes the removal of trees within the county road right-of-way. Tree replacements plans will be submitted by the engineer to the Department of Environment and Energy for approval.

**Trenching:**

- Trenches for all utilities shall be located as approved by the county. Trenches, located parallel with the county road, shall not be left opened for a distance greater than 300 feet.
- Excavated materials shall be placed or stored on the side of the operation farthest from the traveled roadway and an adequate distance from the edge of the excavation to prevent trench collapse. The material shall not impede any existing drainage.
- After the work has been completed, the excavation may be backfilled with the original excavated material unless it consists of peat, muck, soft or unstable soil, boulders or large rock. If the excavated material is unsuitable, it shall be disposed of off county managed public right-of-way and replaced with granular or suitable clay soils as approved by the county.
- All trenching shall be backfilled by the "Quality Compaction Method" as defined in the current edition of the MnDOT Standard Specifications for Construction.
- The use of flow-able fill as a backfilling material is prohibited unless prior permission is received from the engineer.
- The backfill, compaction, and restoration shall occur immediately after the installation of the underground facility.

**Gravel Aggregate Base:** Aggregate base shall meet "Class 5" requirements as stated in the current edition of MnDOT Standard Specifications for Construction.

**Gravel Aggregate Surfacing:** Aggregate surface shall meet "Class 2" requirements as stated in the current edition of MnDOT Standard Specifications.

**Directional Boring:** All hard surfaced roadways and entrances shall be jacked or bored. All bored pipe installed perpendicular to county roadways, larger than four inch diameter, shall be pulled through a larger diameter carrier pipe as directed by the engineer. If a casing is used, the internal pipe shall be adequately supported throughout the entire length of the

carrier pipe. The end openings shall be grouted and/or bricked shut. Prior to pulling, the fused pipe shall not impede any walkway or roadway facilities. The cutter head shall be sized as close as possible to the diameter of the outer pipe to avoid excessive voids surrounding the bored hole. The bored hole shall be reinforced with a bentonite slurry. The permit holder shall limit the amount of slurry utilized to perform the boring operation. All excessive slurry shall be vacuumed from the bore pits. Any slurry that extrudes through the pavement or sidewalk surfaces shall immediately be removed.

Jacking: A casing pipe is required on all jacking installations, unless a certified MnDOT "jacking," reinforced concrete pipe is utilized for storm drainage applications. MnDOT Specifications shall govern placement. The auger shall not extend substantially beyond the casing pipe. The casing shall be filled with sand or pea rock and the ends shall be grouted and/or bricked shut.

Bore/Jacking Pits: The pit shall be located a minimum of five feet from the back of curb in an urban area or at least 10 feet from the nearest edge of the traveled lane in a rural area. All pits shall be protected with tight orange "snow" fence, flashers, barrels, Jersey barrier, sheeting, cribbing, etc. or as required by the county. The contractor shall take every precaution feasible to protect open excavations at all times. Whenever possible, the excavation shall be backfilled and properly compacted at the conclusion of the work shift. No excavation shall be made in advance of the actual work within the excavation.

#### Bituminous Pavement:

- No opening shall be made in bituminous pavements unless certified hot mix asphalt is available, except for emergencies.
- Permits Office staff shall determine the pavement opening dimensions.
- The pavement shall be sawed or milled in a neat, straight vertical line. The sides of the pavement shall be smooth, to insure a uniform bond to the new patch.
- A bituminous tack coat meeting the requirements of MnDOT specifications shall be applied to all bituminous or concrete adjacent surfaces prior to placing bituminous mix. If an emulsified tack coat is utilized, adequate time shall be given to ensure the "breakdown" of the tack coat prior to mix placement.
- Bituminous surfaces shall be replaced with mix conforming to MnDOT specifications.
- The permit holder shall remove and deliver all bituminous pavements to a bituminous recycling facility.
- Any pavement that has been scarred by equipment, lugs, cleats, teeth, etc. shall be repaired or replaced as directed by the engineer.

#### Concrete Pavement:

- No opening shall be made in concrete pavements during winter months, except for emergencies.
- The pavement shall be sawed the full depth of the concrete, removed, and delivered to a concrete recycling facility.
- Concrete surfaces shall be replaced with High Early concrete conforming to MnDOT specifications.
- The concrete pavement installation shall conform to MnDOT specifications.

- If the concrete pavement replacement is within three feet of a construction joint, the removal shall include all pavement to the joint.
- A minimum of 72 hours curing time is required prior to placement of traffic on patch.
- Reference shall be made to "Hennepin County Concrete Repair Plate A" requirements for proper rebar placement.

Restoration:

- The right-of-way shall be left in original or better condition.
- Restoration shall be continuous with job progress.
- Urban boulevards shall be sodded and rural ditch areas shall be seeded, conforming to MnDOT specifications unless otherwise directed by the engineer.
- A minimum of three inch depth of topsoil meeting MnDOT specifications shall be placed in either application.
- All trees or substantial shrubs removed must be replaced as approved by the engineer.
- The permit holder shall be responsible for maintenance of any failures due to settlement, erosion, lack of vegetation growth, rutting, or other job related problems for a period of 24 months after completion of project and the county has received Notice of Work Completion.
- The permit holder shall be responsible for immediate replacement of any damaged sign within county right-of-way.

Draft for communication to the board on August 7, 2018

## Appendix C: Minnesota Statutes, sections 216D.03 – 216D.07

1

MINNESOTA STATUTES 2017

216D.03

### 216D.03 NOTIFICATION CENTER.

Subdivision 1. **Participation.** An operator shall participate in and share in the costs of one statewide notification center operated by a vendor selected under subdivision 2.

Subd. 2. **Establishment of notification center; rules.** (a) The notification center services must be provided by a nonprofit corporation approved in writing by the commissioner. The nonprofit corporation must be governed by a board of directors of up to 20 members, one of whom is the director of the Office of Pipeline Safety. The other board members must represent and be elected by operators, excavators, and other persons eligible to participate in the center. In deciding to approve a nonprofit corporation, the commissioner shall consider whether it meets the requirements of this paragraph and whether it demonstrates that it has the ability to contract for and implement the notification center service.

(b) The commissioner shall adopt rules:

- (1) establishing a notification process and competitive bidding procedure for selecting a vendor to provide the notification service;
- (2) governing the operating procedures and technology needed for a statewide notification center; and
- (3) setting forth the method for assessing the cost of the service among operators.

(c) The commissioner shall select a vendor to provide the notification center service. The commissioner may advertise for bids as provided in section 16C.06, subdivisions 1 and 2, and base the selection of a vendor on best value as provided in section 16C.06, subdivision 6. The commissioner shall select and contract with the vendor to provide the notification center service, but all costs of the center must be paid by the operators. The commissioner may at any time appoint a task force to advise on the renewal of the contract or any other matter involving the center's operations.

(d) An operator may submit a bid and be selected to contract to provide the notification center service under paragraph (a) or (c). The commissioner shall annually review the services provided by the nonprofit corporation approved under paragraph (a) or the vendor selected under paragraph (c).

Subd. 3. **Cooperation with local government.** In establishing operating procedures and technology for the statewide notification center, the board of directors or the commissioner must work in cooperation with the League of Minnesota Cities, the Association of Minnesota Counties, and the Township Officers' Association. The purpose of this cooperation is to maximize the participation of local governmental units that issue permits for activities involving excavation to assure that excavators receive notice of and comply with the requirements of sections 216D.01 to 216D.07.

Subd. 4. **Notice to local government.** The notification center shall provide local governmental units with a master list, by county, of the operators in the county who are participants in the notification center, and the telephone number and mailing address of the notification center.

**History:** 1987 c 353 s 9; 1997 c 187 art 1 s 15; 1998 c 386 art 2 s 69

**216D.04 EXCAVATION; LAND SURVEY.**

Subdivision 1. **Notice required; contents.** (a) Except in an emergency, an excavator shall and a land surveyor may contact the notification center and provide notice at least 48 hours, excluding Saturdays, Sundays, and holidays and not more than 14 calendar days before beginning any excavation or boundary survey. An excavation or boundary survey begins, for purposes of this requirement, the first time excavation or a boundary survey occurs in an area that was not previously identified by the excavator or land surveyor in the notice.

(b) The notice may be oral or written, and must contain the following information:

- (1) the name of the individual providing the notice;
- (2) the precise location of the proposed area of excavation or survey;
- (3) the name, address, and telephone number of the individual or individual's company;
- (4) the field telephone number, if one is available;
- (5) the type and extent of the activity;
- (6) whether or not the discharge of explosives is anticipated;
- (7) the date and time when the excavation or survey is to commence; and
- (8) the estimated duration of the activity.

Subd. 1a. **Plans for excavation.** (a) Any person, prior to soliciting bids or entering into a contract for excavation, shall provide a proposed notice to the notification center to obtain from the affected operators of underground facilities the type, size, and general location of underground facilities. Affected operators shall provide the information within 15 working days. An operator who provides information to a person who is not a unit of government may indicate any portions of the information which are proprietary and may require the person to provide appropriate confidentiality protection. The information obtained from affected operators must be submitted on the final drawing used for the bid or contract and must depict the utility quality level of that information. This information must be updated not more than 90 days before completion of the final drawing used for the bid or contract.

(b) This subdivision does not apply to bids and contracts for:

- (1) routine maintenance of underground facilities or installation, maintenance, or repair of service lines;
- (2) excavation for operators of underground facilities performed on a unit of work or similar basis; or
- (3) excavation for home construction and projects by home owners.

(c) A person required by this section to show existing underground facilities on its drawings shall conduct one or more preliminary design meetings during the design phase to communicate the project design and coordinate utility relocation. Affected facility operators shall attend these meetings or make other arrangements to provide information.

(d) A person required by this section to show existing underground facilities on its drawings shall conduct one or more preconstruction meetings to communicate the project design and coordinate utility relocation. Affected facility operators and contractors shall attend these meetings or make other arrangements to provide information.

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(e) This subdivision does not affect the obligation to provide a notice of excavation as required under subdivision 1.

**Subd. 2. Duties of notification center; regarding notice.** The notification center shall assign an inquiry identification number to each notice and retain a record of all notices received for at least six years. The center shall immediately transmit the information contained in a notice to every operator that has an underground facility in the area of the proposed excavation or boundary survey.

**Subd. 3. Locating underground facility; operator.** (a) Prior to the excavation start time on the notice, an operator shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator and provide readily available information regarding the operator's abandoned and out-of-service underground facilities as shown on maps, drawings, diagrams, or other records used in the operator's normal course of business, without cost to the excavator. The excavator shall determine the precise location of the underground facility, without damage, before excavating within two feet of the marked location of the underground facility.

(b) Within 96 hours or the time specified in the notice, whichever is later, after receiving a notice for boundary survey from the notification center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the land surveyor and operator, an operator shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator, without cost to the land surveyor.

(c) For the purpose of this section, the approximate horizontal location of the underground facilities is a strip of land two feet on either side of the underground facilities.

(d) Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American Public Works Association.

(e) If the operator cannot complete marking of the excavation or boundary survey area before the excavation or boundary survey start time stated in the notice, the operator shall promptly contact the excavator or land surveyor.

(f) After December 31, 1998, operators shall maintain maps, drawings, diagrams, or other records of any underground facility abandoned or out-of-service after December 31, 1998.

(g) An operator or other person providing information pursuant to this subdivision is not responsible to any person, for any costs, claims, or damages for information provided in good faith regarding abandoned, out-of-service, or private or customer-owned underground facilities.

**Subd. 4. Locating underground facility; excavator or land surveyor.** (a) The excavator or land surveyor shall determine the precise location of the underground facility, without damage, before excavating within two feet on either side of the marked location of the underground facility.

(b) If the excavator or land surveyor cancels the excavation or boundary survey, the excavator or land surveyor shall cancel the notice through the notification center.

(c) The notice is valid for 14 calendar days from the start time stated on the notice. If the activity will continue after the expiration time, then the person responsible for the activity shall serve an additional notice at least 48 hours, excluding Saturdays, Sundays, and holidays, before the expiration time of the original notice, unless the excavator makes arrangements with the operators affected to periodically verify or refresh the marks, in which case the notice is valid for six months from the start time stated on the notice.

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(d) The excavator is responsible for reasonably protecting and preserving the marks until no longer required for proper and safe excavation near the underground facility. If the excavator has reason to believe the marks are obliterated, obscured, missing, or incorrect, the excavator shall notify the facility operator or notification center in order to have an operator verify or refresh the marks.

**History:** 1987 c 353 s 10; 1992 c 493 s 5; 1993 c 341 art 1 s 21; 1997 c 196 s 1; 1998 c 348 s 1-3; 2004 c 163 s 2-6

Draft for communication to the board on August 7, 2018

**216D.05 PRECAUTIONS TO AVOID DAMAGE.**

An excavator shall:

- (1) plan the excavation to avoid damage to and minimize interference with underground facilities in and near the construction area;
- (2) use white markings for proposed excavations except where it can be shown that it is not practical;
- (3) maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility;
- (4) provide support for underground facilities in and near the construction area, including during backfill operations, to protect the facilities; and
- (5) conduct the excavation in a careful and prudent manner.

**History:** 1987 c 353 s 11; 1998 c 348 s 4; 2004 c 163 s 7

Draft for communication to the board on August 7, 2018

**216D.06 DAMAGE TO FACILITY.**

Subdivision 1. **Notice; repair.** (a) If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator promptly. When the operator receives a damage notice, the operator shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid or endangers life, health, or property, the excavator responsible shall immediately notify the operator and the 911 public safety answering point, as defined in section 403.02, subdivision 19, and take immediate action to protect the public and property. The excavator shall also attempt to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and completed their assessment. The 911 public safety answering point shall maintain a response plan for notifications generated by this section.

(b) An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.

(c) An excavator who knowingly damages an underground facility, and who does not notify the operator as soon as reasonably possible or who backfills in violation of paragraph (b), is guilty of a misdemeanor.

Subd. 2. **Cost reimbursement.** (a) If an excavator damages an underground facility, the excavator shall reimburse the operator for the cost of necessary repairs, and for a pipeline the cost of the product that was being carried in the pipeline and was lost as a direct result of the damage.

(b) Reimbursement is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with section 216D.04, subdivision 3.

Subd. 3. **Prima facie evidence of negligence.** It is prima facie evidence of the excavator's negligence in a civil court action if damage to the underground facilities of an operator resulted from excavation, and the excavator failed to give an excavation notice under section 216D.04 or provide support as required by section 216D.05.

**History:** 1987 c 353 s 12; 1999 c 43 s 1

**216D.07 EFFECT ON LOCAL ORDINANCES.**

- (a) Sections 216D.01 to 216D.07 do not affect or impair local ordinances, charters, or other provisions of law requiring permits to be obtained before excavating.
- (b) A person with a permit for excavation from the state or a public agency is subject to sections 216D.01 to 216D.07. The state or public agency that issued a permit for excavation is not liable for the actions of an excavator who fails to comply with sections 216D.01 to 216D.07.

**History:** 1987 c 353 s 13

Draft for communication to the board on August 7, 2018

# HENNEPIN COUNTY

## MINNESOTA

### Board Action Request 18-0361

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#### Item Description:

Amd 3 to Agmt A177882A with Met Council for the Blue Line Extension project (CP 1005877); extend end date to 12/31/18; no change to NTE

#### Resolution:

BE IT RESOLVED, that the Hennepin County Board of Commissioners authorizes negotiation of Amendment 3 to Agreement A177882A (Counties Transit Improvement Board Capital Grant Agreement #02-2017-01) with the Metropolitan Council for the Blue Line Extension project (Bottineau Light Rail Transit), as assumed and amended by Hennepin County, extending the grant activity period to December 31, 2018, with no change to the not to exceed amount, and approving a revised disbursement schedule; and

BE IT FURTHER RESOLVED, the Board authorizes the Chair to execute Amendment 3 after review and approval by the County Attorney's Office; and

BE IT FURTHER RESOLVED, the Board authorizes the Controller to transfer and disburse funds as necessary to carry out the intent of this Resolution.

#### Background:

**History:** Resolution 17-0207, on June 13, 2017, approved the assumption of certain not-yet-paid funding commitments for the Blue Line Extension project (Capital Project 1005877), the assumption of the 2017 Counties Transit Improvement Board (CTIB) Capital Grant Agreement (CTIB #02-2017-01/Met Council #17I001) with the Metropolitan Council for the Blue Line Extension project, and the imposition of the 0.5% sales and use tax and \$20 motor vehicle excise tax that will be a source of funds for Hennepin County contributions to the project. Through these and other actions, the county agreed to take responsibility for the 60 percent share of project funding formerly committed by CTIB and the 20 percent share formerly anticipated from the State of Minnesota.

Resolution 17-0493R1, on November 28, 2017, approved Amendment 1 to the 2017 CTIB Capital Grant Agreement. Amendment 1 authorized technical and conforming changes to reflect the county becoming the grantor under the assignment, authorized the county to provide \$11,087,084 in funding for a 20 percent share of project costs, and extended the contract period to April 30, 2018. As a result of Amendment 1, the HCRRRA share of project costs decreased from 40 percent to 20 percent.

Resolution 18-0150, on April 24, 2018, approved Amendment 2 to the 2017 CTIB Capital Grant Agreement. Amendment 2 extended the contract term to September 30, 2018, and authorized the county to provide an additional \$19,800,000 million in funding for the project after CTIB funds are exhausted. In total, the county will provide \$30.8 million to the project through this agreement.

Amendment 3 will extend the contract term from September 30, 2018 to December 31, 2018, with no change to the not to exceed amount. Approximately \$5.5 million of CTIB grant funding remains available. This funding is currently anticipated to last until February 2019.

**Current Request:** Authorize negotiation of Amendment 3 to Agreement A177882A with the Metropolitan Council for the Blue Line Extension project (CP 1005877), extending the grant activity period from September 30, 2018 to December 31, 2018, with no change to the not to exceed amount and approving a revised disbursement schedule.