

**City of Village of Minnetonka Beach (City)  
2945 Westwood Rd. - P.O. Box 146  
Minnetonka Beach, MN 55361**

***Application/Permit***

**To install, construct, repair, or maintain utilities/or other uses within the Street Right-of-Way or on Other Public Grounds as defined in Section 403 of the City Code of Ordinances of the City of Minnetonka Beach and for landscaping and fencing in the Street Right-of-Way by private adjacent owners as provided for in City Council Resolution Number 2008-40**

Applicant \_\_\_\_\_

Address \_\_\_\_\_  
*Street City State Zip code*

Phone (\_\_\_\_) \_\_\_\_\_ Cell/Mobile (\_\_\_\_) \_\_\_\_\_

Fax (\_\_\_\_) \_\_\_\_\_

Contact(s) (designated person) \_\_\_\_\_ Contact(s) phone \_\_\_\_\_

e-mail \_\_\_\_\_ Fax \_\_\_\_\_

**Location and Description of Work:** (attach additional if necessary)

\_\_\_\_\_  
\_\_\_\_\_

**Method of Installation or Construction:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Plans and Specifications Attached including:** Plan and Profile, Specification of the Work: 1) if Storm Sewer, Water Main or Sanitary Sewer, Street other public improvement to be owned by the City erosion control plan, restoration plan and specification and safety plan; 2) if private utilities plans as specified by the Public Works director, 3) if landscaping or fences plans as provided for in City Council Resolution Number 2008-40, plans and specifications.

**Area to be disturbed:**

Traveled Surface

- Concrete     Curb & Gutter
- Bituminous     Sidewalk

Shoulder

- Bituminous     Culverts
- Gravel

Boulevard

- Sod     Trees/Shrubs
- Grass
- Other \_\_\_\_\_

Permit Fee \_\_\_\_\_ Check Number \_\_\_\_\_ Received by: \_\_\_\_\_

Security Fee: \_\_\_\_\_ Check Number \_\_\_\_\_ Received by \_\_\_\_\_

All work done under this permit, including restoration, is expected to be completed on or before:

\_\_\_\_\_  
Date

If work cannot be completed by the above date, please notify the City of Minnetonka Beach. All work must be completed within 3 months of issuing this permit.

**This permit is issued with the following conditions. By signing the Applicant and other signature(s) Agree to the following:**

**Facilities** Applicant shall install and pay for all remodeling, reconstruction or other construction activity on the Public Ground pursuant to this Permit (the "Facilities"). Applicant shall install the Facilities and conduct all construction activity (including demolition) in accordance with this Permit and including the Plans, any Conditions (the conditions contained in the resolution(s) permitting the Facilities), the Building Permit, this Permit, the City Ordinances, the Building Code, City Standard Specifications for Utilities and Street Construction, and all other applicable ordinances or laws including erosion and drainage control (collectively "Construction Requirements").

Applicant or his engineer shall schedule a pre-construction meeting, to be held at the City offices with all parties and contractors concerned, including the City Public Works Director, at a mutually agreeable time, to review the plans and the timing of the construction work.

Applicant shall obtain any other permits necessary for construction of the Facilities. Applicant shall instruct its engineer, builder or other designated person, to make available adequate field inspection personnel to enable the City to properly and fully inspect the work.

If the work is landscaping or fence, the Applicant, in accord with Resolution Number 2008-40, shall enter into this Agreement with Attachment A and made part of the permit, to remove the same should the City or a utility Company require the landscaping or fence to be removed at the Applicants or then property owners sole cost.

As a condition to the City's acceptance of the Facilities not owned by a private utility company as complying with any Conditions, the Permit, and the Plans, Applicant's licensed engineer shall certify that the Facilities have been constructed substantially in accordance with any such Conditions, the Permit, and the Plans, and the Construction Requirements and shall supply the City with a complete set of reproducible "as built" Plans, and an updated survey showing the location of all Facilities on the Property, including elevation and details of the Facilities and an electronic file thereof in a auto CAD.DWG file or a DXF file, all prepared in accordance with reasonable City standards.

Applicant shall be responsible for the complete and correct performance of this Permit by all those working through or under Applicant including all contractors, builders, architects, engineers, surveyors or the like.

**Erosion Control.** Prior to initiating grading and/or excavation, Applicant shall implement erosion control measures, as specified in the Plans, which implementation shall be inspected and approved by the City Planning and Zoning Administrator. At any time during the construction of the Facilities, the City may impose additional erosion control requirements as reasonably needed by the circumstances. All areas disturbed by the grading or excavation, with the exception of those areas to be covered by an impervious surface or built upon, shall be reseeded immediately (weather permitting) after the completion of work in such areas. Except as otherwise provided in the erosion control plan, seed shall be rye grass or other fast growing seed suitable to the existing soil to provide a temporary ground cover as rapidly as possible. All seeded areas shall be mulched and disc anchored as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion. If at any time the City determines that Applicant is not complying with the approved erosion control plan, the City may cause its agents to take appropriate erosion control actions, at Applicant's expense.

**Clean Up.** All areas in the Public Grounds as defined in Section 403 of the City Code shall be restored to the standards established by the City Engineer. All restoration shall be inspected and accepted by the City Public Works Director before the Security is released. The Applicant

shall remove all dirt and debris from streets which results from Applicants construction activities at the Property. Prior to commencement of any construction work at the Property, Applicant shall identify in writing a responsible party and schedule for street cleaning and street sweeping. If at any time the City determines that Applicant is not complying with this requirement, the City may cause its agents to take appropriate clean up actions, at Applicant's expense.

**Ownership of Facilities.** Upon completion of the Facilities including landscaping and fence, that portion of the Facilities, except for gas lines, oil lines, electrical lines telephone lines or other communications lines and their accessories, if any, which lie within Public Grounds or the Street Right-of-Way shall become the City's property without further notice or action.

**Noise and Construction Hours.**

No delivery of material or equipment supporting construction activity shall be made before the hours of 7:30 A.M. or after 5:30 P.M. or on Saturday, Sunday or on a national holiday.

Except in an emergency where imminent damage to the building or an imminent hazard to persons is present, The Applicant and no person hired by the Applicant or hired by any other person shall engage in or permit construction activity except between the hours of 7:30 A.M. and 5:30 P.M. Monday through Saturday. No person hired by the Applicant of the dwelling or by any other person shall engage in any Construction Activity on a national holiday at any time.

Applicant shall not permit construction of the Facilities to cause or constitute a nuisance.

**Construction Access and Parking.** Access to and egress from the Property for construction vehicles shall be had solely via: \_\_\_\_\_. All construction vehicles, private vehicles and delivery vehicles shall be parked in a way to allow the passing of emergency vehicles, school buses and utility vehicles.

**Safety Plan.** Except for the case of landscaping or fences in the Street Right-of-Way, the Applicant shall submit a Safety Plan for the Public Works Director's review and approval. Such plan shall indicate how the public will be protected during construction and restoration including but not limited to: warning signs, trench covers and flashing safety lights.

**Security Required**

The Applicant shall post a Letter of Credit, Security and Performance Bond or other security in a form acceptable to the Public Works Director. Such security shall be not less than \$500 or equal to 125% of the estimated costs of the Facilities in the Public Ground or Street Right-of-Way for fences, landscaping, sanitary sewer, water, storm sewer or other facilities to be owned by the City and the estimated cost of restoration plus 25% for facilities owned and operated by a public utility company. Such Security shall be retained by the City until the Construction and Restoration is complete in accord with the Construction Requirements and approved by the Public Works director or Planning and Zoning administrator, if applicable, all City costs have been paid and the facilities, if applicable, have been accepted by the City Council.

**Restoration and Relocation.**

A. **Restoration.**

Upon completion of the work contemplated by this Permit, the Applicant shall restore the General area of the work. Upon completion of the work contemplated by this Permit, the Applicant shall restore the General area of the work, including the pavement and its foundations, to the same or better condition than existed prior commencement of the work necessitating a permit. The work shall be completed as promptly as weather permits. If the Applicant does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material and restore the Public Ground and Street right-of-Way to the same condition, the City may put it in the same condition at the expense of the Applicant. The Applicant shall, upon demand, pay to the City the direct and indirect cost of the work done for or performed by the City, including but not limited to the City's administrative costs and any attorney and consultant fees.

**B. Restoration; Cost Recovery.**

All areas in the Public Grounds and Street Right-of-Way as defined in Section 403 of the City Code shall be restored to the standards established by the City Engineer (Standards). All restoration shall be inspected and accepted by the City Public Works Director before the Security is released. Should the restoration not be completed to the standards, the City may recover its costs of restoration. To recover its costs, the City may will first draw on the security posted by the Applicant and then recover the balance of the costs incurred from the Applicant directly by written demand or Assessment of the Property of the Applicant. This remedy is in addition to any other remedies available to the City.

**C. Relocation Initiated By Applicant.**

In the case of a utility company, the Applicant shall give the City written notice before relocating its Facilities. An Applicant-initiated relocation shall be at the Applicant's expense and must be approved in advance by the City. Such approval shall not be unreasonably withheld.

**D. Relocation Required by City.**

In the case of facilities not owned by the City, the Applicant shall promptly, with due regard for seasonal working conditions, at the Applicant's expense, permanently relocate its Facilities the event that the City in writing requires such relocation.

Relocation Where Public Ground Vacated: The vacation of Public Ground does not deprive the Applicant of the right to operate and maintain its Facilities in the City. If the vacation proceedings are initiated by the City, or the Applicant, the Applicant shall pay the relocation costs.

**Applicant Default:**

**Notice:**

If the Applicant is in default in the performance of the work or occupancy authorized by the permit, including but not limited to restoration requirements or permanent occupancy fee payments for more than thirty (30) days after receiving written notice from the City of the default, the City may terminate the rights of the Applicant under the permit, subject to the City's absolute right to revoke at any time in the exercise of the City's police powers. The notice of default shall be in writing and specify the provisions of the permit and or this ordinance under which the default is claimed and state the grounds of the claim. The notice shall be served on the Applicant by personally delivering it to an officer thereof at its principal place of business in Minnesota or by certified mail to the Applicants address.

**City Action on Default:**

If the Applicant is in default in the performance of the work or occupancy authorized by the permit, the City may, after notice to the Applicant as specified in Section 403 (5) or the Agreement attached to this permit (A) and failure of the Applicant to cure the default, take such action as may be reasonably necessary to abate the condition caused by the default. The Applicant shall reimburse the City for the City's reasonable costs, including costs of collection and attorney fees incurred as a result of the Applicant default. The security posted under Section 403 (3) (I), will be applied by the City first toward payment for such reimbursement.

**Indemnification.**

**A. Scope.**

The Applicant shall indemnify, keep and hold the City, its elected officials, officers, employees, Consultants and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, installation, maintenance, repair, removal, relocation or operation of the Facilities affecting Public Ground, unless such injury or damage is the result of the gross negligence of the City, its elected officials, employees, officers or agents. The City will notify the Applicant of claims or actions and provide a reasonable opportunity for the Applicant to accept and undertake the defense.

## **B. Claim Defense.**

If a claim or action is brought against the City under circumstances where indemnification applies, the Applicant, at its sole expense, shall defend the City if written notice of the claim or action is given to the Applicant within a period wherein the Applicant is not prejudiced in the defense of such claim or action by lack of such notice. The Applicant shall have complete control of such claim or action, but it may not settle without the consent of the City, which shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. In defending any action on behalf of the City, the Applicant is entitled to assert every defense or immunity that the City could assert in its own behalf.

## **Insurance.**

The Applicant shall provide liability and indemnity insurance listing the City as co-insured in reasonable amounts as may be required by the City.

## **Other Conditions of Use.**

### **A. Use of Public Ground Street Right-of-Way**

Facilities including landscaping and fence shall be located, constructed, installed, maintained or relocated so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel and other use of Public Ground. The Facilities are subject to additional conditions of the permit including but not limited to (a) the right of inspection by the City at reasonable times and places; (b) the obligation to relocate the Facilities pursuant to Section 403 (4); and (c) compliance with all applicable regulations imposed by the Minnesota Public Utilities Commission and all other applicable laws and regulations.

### **B. Location**

The Facilities including landscaping and fences shall be placed in a location and in such manner as is designated in a permit and the Plan approved by the City's Public Works Director and Planning and Zoning Administrator or other person designated by the City Council. The City may designate whether Facilities shall be placed above ground or in subsurface conduits, all new utilities that are not a replacement of existing overhead lines shall be placed below ground.

### **C. Street Facilities, Paving or Resurfacing**

Upon request, the City will give the Applicant notice of plans for street Facilities where permanent paving or resurfacing is involved. The notice will contain (a) the nature and character of the Facilities; (b) the streets upon which the Facilities are to be made; (c) the extent of the Facilities, the approximate time when the City will start work; and (d) if more than one street is involved, the sequence in which the work is to proceed.

### **Applicant Protection of Facilities**

The Applicant shall take all reasonable measures to prevent its Facilities from causing damage to persons or property and to protect its Facilities from damage that could be inflicted on the Facilities by persons, property or the elements. The Applicant shall take all reasonable protective measures when the City performs work near the Facilities.

### **Guarding of Obstructions or Dangers**

If the Applicant obstructs any Public Ground or Street Right-of Way, the Applicant shall keep such obstruction properly guarded at all times. From sunset to sunrise, all obstructions shall be guarded by a sufficient number of warning lights placed in such manner that they will give proper warning of such obstruction. The City may require any other restrictions or safety precautions as may be in the public interest.

### **Prior Service Connections**

In cases where streets are at final width and grade and the City has installed underground sewer and water mains or other utilities and service connections to the property line abutting the streets prior to a permanent paving or resurfacing of the streets, and the Facilities are located

under such street, a Applicant may be required to install service connections prior to the paving or resurfacing, if it is apparent that service will be required during the five year period following the paving or resurfacing.

**Existing Facilities**

This ordinance applies Facilities including those already existing on, over, in, under, across or along any Public Ground or Street Right-of-Way in the City as of the effective date of this ordinance except those that are otherwise governed by State law granting exclusive jurisdiction to the State. Resolution Number 2008-40 applies to all existing landscaping and fences.

**Miscellaneous**

- A. Third-parties shall have no recourse against City under this Permit.
- B. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Permit is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Permit.
- C. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Permit. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council duly passed. The City's failure to promptly take legal action to enforce this Permit shall not be a waiver or release.
- D. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter available to the City, at law or in equity, or under any other Permit, and each and every right, power and remedy herein set forth or so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.
- E. Applicant may not assign this Permit without the advance written consent of the City. Applicant's obligation hereunder shall continue in full force and effect even if Applicant sells the Property or any part of it.
- F. If the Applicant be more than one person, each person shall be jointly and severally liable for the obligations herein.

Signed by \_\_\_\_\_ Print Name \_\_\_\_\_ Date \_\_\_\_\_

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**AUTHORIZATION OF PERMIT**

It is understood that this permit is conditioned upon replacement or restoration of the road surface to the condition prior to excavation in accordance with the appropriate rules and regulations.

Approved by \_\_\_\_\_ Date \_\_\_\_\_

*Public Works Director*

Approved, if required, by \_\_\_\_\_ Date \_\_\_\_\_

*Planning & Zoning Administrator*

**INSPECTION OF RESTORATION**

Restoration Approval \_\_\_\_\_ Date \_\_\_\_\_

*Public Works Director*