

CHAPTER 9

RIGHT OF WAY MANAGEMENT ORDINANCE

Section 9.01	FINDINGS AND PURPOSE
Section 9.02	DEFINITIONS
Section 9.03	ADMINISTRATION
Section 9.04	EXCAVATION PERMIT
Section 9.05	EXCAVATION PERMIT FEE
Section 9.06	CONSTRUCTION DETAILS
Section 9.07	TESTING
Section 9.08	INSPECTION
Section 9.09	RIGHT-OF-WAY REPAIR
Section 9.10	RESTORATION SPECIFICATIONS-SODDING
Section 9.11	PROJECT COORDINATION
Section 9.12	OTHER OBLIGATIONS
Section 9.13	REVOCATIONS, SUSPENSIONS, REFUSALS TO ISSUE OR EXTEND PERMITS
Section 9.14	WORK DONE WITHOUT A PERMIT
Section 9.15	SUPPLEMENTARY NOTIFICATION
Section 9.16	RESERVATION OF REGULATORY AND POLICE POWERS
Section 9.17	PENALTY

CHAPTER 9

RIGHT OF WAY MANAGEMENT ORDINANCE

Section 9.01 FINDINGS AND PURPOSE. The Village finds that the passage of the Telecommunications Act of 1996 has resulted in increased use of the public rights-of-way and increased costs to the taxpayers of the Village and that these costs are likely to continue into the foreseeable future.

The Village finds that excavation and occupancy of the public rights-of-way causes direct and indirect costs to be borne by the Village and its taxpayers, including but not limited to:

1. Administrative costs associated with public right-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials.
2. Management costs associated with ongoing management activities necessitated by public right-of-way users.
3. Repair costs to the roadway associated with the actual excavation into the public right-of-way.
4. Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life, due to excavations into the public rights-of-way.

In response to the foregoing facts, the Village hereby enacts this ordinance relating to administration of and permits to excavate, obstruct and/or occupy the public rights-of-way. This ordinance imposes reasonable regulations on the 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 state and federal agencies.

The Village's authority to enact this ordinance is pursuant to, but not limited to, the following federal, state and local authority: 47 U.S.C.253(c); Sec. 61.34 Wis. Stats; Sec. 62.11(5) Wis. Stats; Sec. 66.0425 Wis. Stats; Sec. 66.0915 Wis. Stats; Sec. 86.16 Wis. Stats; Sec. 182.017 Wis. Stats; Sec. 196.58 (1) Wis. Stats; and Sec. 196.499(1) Wis. Stats.

The purpose of this ordinance is to provide the Village a legal framework within which to regulate and manage the public rights-of-way, and to provide for recovery of costs. This ordinance provides for the health, safety and welfare of the residents of the Village as they use the rights-of-way of the Village, as well as to ensure the structural integrity of the public rights-of-way. The Village desires to minimize and anticipate the number of excavations taking place thereon and to regulate the placement of facilities within the rights-of-way to ensure that they remain available for public services. The taxpayers of the Village bear the financial burden for the upkeep of the rights-of-way. A primary cause for the early and excessive deterioration of its rights-of-way is the frequent excavation by Persons who locate facilities therein.

Under this Chapter, all Persons who excavate, obstruct and/or occupy the public rights-of-way will reimburse the Village's administrative, ongoing management and degradation costs. Right-of-way users will bear a fair share of the financial responsibility for the integrity of the public rights-of-way.

Section 9.02 DEFINITIONS. The following definitions apply in this ordinance. References hereafter to "sections" are unless otherwise specified references to sections in this ordinance. Defined terms remain defined terms whether or not capitalized.

"Alternative Telecommunications Utility Other" has the meaning in Section 196.01 of the Wisconsin Statutes and means any of the following: (a) Cable television telecommunications service providers; (b) Pay telephone service providers; (c) Telecommunications resellers or resellers; (d) Any other telecommunications provider if the commission finds that the service offered by the telecommunications provider is available from other telecommunications providers within this state directly or indirectly to the public.

"Applicant" means any person requesting permission to excavate, obstruct and/or occupy a right-of-way.

"Village" means the Village of River Hills, Wisconsin, a Wisconsin municipal corporation.

"Degradation" means the accelerated depreciation of the right-of-way, caused by an excavation of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur,

"Department" means the Department of Public Works of the Village.

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

"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 or replacement in order to restore service to a customer.

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

"Facilities" means all equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include but is not limited to poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances.

"In", when used in conjunction with "right-of-way," means over, above, in, within, on or under a right-of-way.

"Local Representative" means a local person or persons, or designee of such person or persons, authorized by a Permittee to accept service and to make decision for that Permittee regarding all matters within the scope of this Chapter.

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

"Occupy" means to dwell or reside above, on, in, or below the boundaries of the public rights-of-way.

"Permittee" means any person to whom a permit to excavate or occupy a right-of-way has been granted by the Village including any person required by the regulations of this Chapter to obtain a permit from the Village to excavate or occupy a right-of-way.

"Person" means, municipality, corporation, company, association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.

"PSC" means the Public Service Commission of the State of Wisconsin.

"Public Utility" has the meaning provided in Wis. Stats. 196.01(5) and means, except as provided in par. (b) in this definition, every corporation, company, individual, association, their lessees, trustees or receivers appointed by any court, and every sanitary district, town, village or city that may own, operate, manage or control any toll bridge or all or any part of a plant or equipment, within the state, for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public.

(a) "Public utility" includes all of the following:

(1) Any person engaged in the transmission or delivery of natural gas for compensation within this state by means of pipes or mains and any person, except a governmental unit, who furnishes services by means of a sewerage system either directly or indirectly to or for the public;

(2) A telecommunications utility;

(3) Any company, as defined in s. 196.795 (1) (f), which owns, operates, manages or controls a telecommunications utility unless the company furnishes, directly to the public, telecommunications or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas;

(4) A commercial mobile radio service provider;

(5) A joint local water authority under s. 66.0823.

- (b) "Public utility" does not include any of the following:
- (i) A cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members only;
 - (ii) A holding company, as defined in s. 196.795 (1) (h), unless the holding company furnishes, directly to the public, telecommunications or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas.

"Registrant" means any person who has registered with the Village (1) to have its facilities located in any right-of-way, or (2) to use or seek to occupy or use the right-of-way or any facilities in the right-of-way.

"Repair" means to perform construction work necessary to make the right-of-way useable for travel, according to Department specifications, or to return facilities to an operable condition.

"Repair Bond" means a performance bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right-of-way excavation repair work is completed in both a timely and quality manner pursuant to Department specifications.

"Restore or Restoration" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is reconstructed according to Department specifications.

"Restoration Bond" means a performance bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that right-of-way excavation restoration work is completed in both a timely and quality manner pursuant to Department specifications.

"Right-of-Way" means the surface and space above and below a public roadway, highway, street, bicycle lane and public sidewalk in which the Village has an interest, including the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel and including other dedicated rights-of-way for travel purposes.

"Service" or "Utility Service" includes municipal sewer and water services and also includes, except as provided herein, but is not limited to

- (1) those services provided by a public utility as defined in Wis. Stats. 196.01(5);
- (2) telecommunications, pipeline, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services;
- (3) the services provided by a district heating or cooling system; and

(4) cable service as defined and regulated under 47 U.S.C. 521 through 573. Wireless telecommunications service and cellular mobile radio telecommunications (CMRS) services as defined by Section 332(d) of the Federal Communications Act of 1996 (47 U.S.C. 332 (d)(1)) are excluded, unless these services have a presence in the right-of-way.

"Supplementary Application" means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

"Telecommunications Carrier" has the meaning in Section 196.01 of the Wisconsin Statutes and means any person that owns, operates, manages or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public but does not provide basic local exchange service, except on a resale basis. "Telecommunications carrier" does not include an alternative telecommunications utility or a commercial mobile radio service provider.

"Telecommunications Provider" has the meaning in Section 196.01 of the Wisconsin Statutes and means any person who provides telecommunications services.

"Telecommunications Rights-of-Way User" means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information. This includes Telecommunications Providers, Utilities, Alternative Telecommunication Utilities, and Carriers. For purposes of this Chapter, a cable television system defined and regulated under Wis. Stats. 66.0419 (2)(d), and telecommunication activities related to providing natural gas or electric energy services, and which are not offered for resale as telecommunications services, are not telecommunications right-of-way users.

"Telecommunications Service" means the offering for sale or the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching and delivery incidental to such communication and including the regulated sale of customer premises equipment. Telecommunications Service does not include cable television service, wireless service or broadcast service.

"Telecommunications Utility" has the meaning in Section 196.01 of the Wisconsin Statutes and means any person, corporation, company, cooperative, partnership, association and lessees, trustees or receivers appointed by any court that owns, operates, manages or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public. "Telecommunications utility" does not include a telecommunications carrier.

"Unusable Facilities" means facilities in the right-of-way that have remained unused for one year and for which the Permittee is unable to provide proof that it has either a plan to begin using them within the next twenty-four (24) months or a potential purchaser or user of the facilities.

Section 9.03 ADMINISTRATION. The Department of Public Works ("Department") is responsible for the administration of the rights-of-way, and the permits and ordinances related thereto.

Section 9.04 EXCAVATION PERMIT.

A. Permit Required. Except as otherwise provided in this Chapter or other chapters of the Village Code, no person shall excavate any right-of-way or place facilities in a right-of-way without first having obtained an excavation permit from the Village. No person shall excavate the right-of-way or maintain an excavation in the right-of-way beyond the date or area specified in the permit unless such person makes a supplementary application for another excavation permit before the expiration of the initial permit and a new permit or permit extension is granted.

B. Exemption. Nothing in this Chapter shall be construed to repeal or amend the provisions of a Village ordinance requiring persons to plant or maintain the grounds sometimes referred to as the tree lawn in the area of the right-of-way between their property and the street curb, construct sidewalks, install street signs or perform other similar activities. Persons performing such activities shall not be required to obtain any permits under this chapter.

C. Excavation Permit Application. Application for a permit shall be made to the Department. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

1. Permittee Information. Each person who uses, or seeks to occupy or use, the right-of-way or any facilities in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, facilities located in any right-of-way shall provide the following information. This section shall not apply to those persons exclusively utilizing facilities provided by another right-of-way user and do not own, operate, maintain or control any facilities in the Village rights-of-way.

(a) Information Required of all Applicants. The information provided to the Department shall include, but not be limited to:

(1) Each applicant's name, Diggers Hotline registration certificate number, address, e-mail address (if applicable), telephone and fax numbers.

(2) The name, address and e-mail address (if applicable) and telephone and fax numbers of a local representative. The local representative (or designee) shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided.

(b) Information Required of Some Applicants. The following persons are exempt from the provisions of this part (b): (a) a municipality, or (b) all persons representing a public utility. The information provided to the Department shall include, but not be limited to:

(1) Demonstrated financial capability to cover any liability, which might arise out of their presence in the right-of-way to the satisfaction of the Village.

(2) If the applicant is a corporation, an LLC or LLP, a copy of any certificate required to be filed under Wis. Stats. as recorded and certified to by the Secretary of State.

(3) A copy of the applicant's certificate of authority from the Wisconsin Public Service Commission or other applicable State or Federal agency, where the person is lawfully required to have such certificate from said commission or other State or Federal Agency.

(c) Notice of Changes. The applicant shall keep the information above current at all times by providing to the Department information as to changes within fifteen (15) working days following the date on which the applicant has knowledge of any change.

2. Completed Application. Submission of completed permit application form, including all required attachments, and drawings adequate to show the facilities to be placed in the right-of-way, and showing the location and area of the proposed project and the location of all existing facilities in the project area. Proposed facilities of the applicant and of others that have been identified in accordance with Sec. 9.11, shall be shown. Dimensions to the facilities from either the right-of-way line or from the face of curb (or edge of pavement) shall be included.

3. Indemnification. Permittee expressly acknowledges and agrees, by acceptance of this permit, to indemnify, defend, and hold harmless the Village, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the Village or its agents or employees for damages because of bodily injury, including death at any time resulting therefrom sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, or in connection with, caused by or resulting from the Permittee's acts or omissions in the exercise of its rights under this permit, but excluding acts or omissions caused by or contributed to by the Village or its agents or employees.

4. Payment of Money Due. Payment of all money due to the Village for:

(a) applicable permit fees and costs as set forth below,

(b) unpaid fees or costs due for prior excavations,

(c) any loss, damage, or expense suffered by the Village because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the Village.

D. Supplementary Notification. If the excavation of the right-of-way begins later or ends sooner than the date given on the permit, Permittee shall notify the Department of the accurate information as soon as this information is known.

E. Work Done Without a Permit.

1. Emergency Work. Each permittee shall immediately notify the Department by verbal notice on an emergency phone number provided by the Village of any event regarding its facilities that it considers to be an emergency. Within five business days after the occurrence of the emergency the Permittee shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this Chapter. If the Department becomes aware of an emergency regarding a Permittee's facilities, the Department may attempt to contact the local representative of each Permittee affected, or potentially affected, by the emergency. The Village may take whatever reasonable action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the Permittee whose facilities occasioned the emergency.

2. Non-Emergency Work. Any person who, without first having obtained the necessary permit, performs non-emergency excavation on a right-of-way shall subsequently obtain a permit, and shall in addition to any penalties prescribed by Ordinance, pay double the normal fee for said permit, pay double all the other fees required by this Chapter or other Chapters of the Village Code, deposit with the Village the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Chapter.

F. Joint Applications.

1. Joint Application. Applicants may jointly apply for permits to excavate the right-of-way at the same place and time.

2. Joint with Village Projects. Applicants, who join in a scheduled excavation performed by the Village, whether or not it is a joint application by two or more applicants or a single applicant, are not required to pay the degradation portion of the excavation permit fee.

3. Shared Fees. Applicants who apply for permits for the same excavation, which the Village does not perform, may share in the payment of the excavation permit fee. Applicants shall agree among themselves as to the portion each will pay and indicate the same on their applications.

G. Supplementary Applications.

1. Limitations on Permit Area. An excavation permit is valid only for the area of the right-of-way specified in the permit. No Permittee may perform any work or excavate outside the area specified in the permit, except as provided in the following Subs. (a) – (c). Any Permittee, which determines that an area greater than that specified in the permit shall be excavated, shall, before working in that greater area,

(a) make application for a permit extension and pay any additional fees required thereby,

(b) post an additional or larger repair bond or restoration bond for the additional facilities (if a bond was required for the initial work), and

(c) be granted a new permit or permit extension.

2. Limitation on Permit Interval. An excavation permit is valid only for the dates specified in the permit. No Permittee may begin its work before the permit start date or, except as provided in this subsection, continue working after the end date. If a Permittee does not finish the work by the permit end date, it shall apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit.

3. Fees for Supplementary Applications. A Permittee shall pay administration costs for any additional permits. A Permittee is not required to pay an additional degradation fee for the same excavation, if one has already been paid on the original permit.

Section 9.05 EXCAVATION PERMIT FEE.

A. The Excavation Permit Fee has been determined by the Village to be an amount sufficient to recover the costs incurred by the Village. This fee shall recover administrative and inspection costs incurred by the Village. No repair shall be collected by the Village, however the Permittee shall be required to repair the public right-of-way to Village specifications, subject to inspection and acceptance by the Village, as per Sec 9.08, Inspection. The Village may require a repair or restoration bond in an amount based upon the Village's estimate of costs to repair and restore an excavation site. The Public Right-of-Way Excavation Permit Fee Schedule as set forth in the schedule of fees as adopted and subject to amendment from time to time by Resolution of the Village Board for Road and Terrace Work. The Resolution and the applicable schedule of fees shall be kept on file in the Office of the Village Clerk and will be posted on the village website. (Amd Ord # 537, 10/16/19)

B. Ongoing Management Fee. The Village may decide whether to implement this Subsection after a study of the applicable fee has been conducted.

1. Ongoing Maintenance Costs. Ongoing right-of-way management costs are exclusive of administrative costs. Ongoing management fees shall reflect the ongoing or

long term costs to the Village of managing access to the right-of-way. Ongoing management costs include, but are not limited to the identifiable incremental costs of:

- (a) maintenance of inventory of items and materials required by the Village solely due to the presence of facilities of right-of-way users in public rights-of-way,
- (b) tracking the existence of right-of-way user facilities in public rights-of-way (but excluding permitting or mapping costs),
- (c) mapping right-of-way user facilities to the minimum extent necessary to indicate the existence of such facilities (detailed map records are the responsibility of each right-of-way user),
- (d) tree trimming due to the existence of right-of-way users facilities in public rights-of-way,
- (e) grass mowing due to the existence of right-of-way users facilities in public rights-of-way,
- (f) other right-of-way maintenance due to the existence of right-of-way user facilities (i.e. incremental costs to plow near poles and cabinets) in public rights-of-way users, and
- (g) general inquiries to the Village related to public right-of-way users.

2. **Fee Basis.** The fee shall be based on the sum of the appropriate incremental costs identified above, divided by the total number of feet of right-of-way occupancy by all right-of-way users in the Village. The total fee for a permit shall be the present value of future costs per foot of occupancy, for 20 years (and an assumed annual interest rate of 3%) times the number of feet to be occupied by the Permittee as the result of this permit. The ongoing management fee shall be calculated as follows: (Annual management cost per foot of right-of-way occupancy) X 15.32 X (feet of occupancy under this permit) = the ongoing management fee.

3. **Fee Recalculation.** The ongoing management fees shall be initially set and may be annually re-computed to cover the costs incurred by the Village in ongoing management of the right-of-way.

C. **Payment of Permit Fees.** No excavation permit shall be issued without payment of applicable fees.

1. **Village Exemption.** The Village and its contractors are exempt from the fees.

2. Non Refundable. Permit fees are not refundable.

Section 9.06 CONSTRUCTION DETAILS.

A. General Conditions. The following general conditions apply to all work done within the public rights-of-way such as utility line installation or repairs performed by any Permittee, contractor, utility or municipality, public or private.

1. Protection of Existing Improvements

- a. The Permittee shall at all times take proper precautions and be responsible for the protection of existing street and alley surfaces, driveway culverts, street intersection culverts or aprons, irrigation systems, mail boxes, driveway approaches, curb, gutter, terraces, and sidewalks and all other identifiable installations that may be encountered during construction.

- b. The Permittee shall at all times take proper precautions for the protection of existing utilities, the presence of which are known or can be determined by field locations of the utility companies. The Permittee shall contact the Digger's Hotline (currently 1-800-242-8511) for utility locates a minimum of three (3) working days prior to the proposed start of work.

- c. Existing improvements to adjacent property such as landscaping, fencing, utility services, driveway surfaces, etc., that are not to be removed shall be protected from injury or damage resulting from the Permittee's operations.

- d. The Permittee shall at all times take proper precautions for the protection of property pins/corners and survey control monuments encountered during construction. Any damaged or disturbed survey markers shall be replaced by a registered land surveyor at the Permittee's expense, and the Permittee shall promptly notify the permit agency.

- e. The repair of any damaged improvements as described above shall be the responsibility of the permit holder.

- f. The Permittee shall make adequate provisions to assure that traffic and adjacent property owners experience a minimum of inconvenience.

2. Temporary Surfaces Required. When the final surface is not immediately installed, it shall be necessary to place a temporary asphalt surface on any street cut opening. The temporary surface installation and maintenance shall be the responsibility of the Permittee until the permanent surface is completed and accepted. It shall be either a hot mix or cold mix paving material. Temporary surfaces shall be compacted, rolled smooth and sealed to prevent degradation of the repair and existing structures during the temporary period. Permanent patching shall occur within three (3) weeks except as outlined by the Village in the Permit. All permanent street repairs delayed by winter weather shall be completed by May 15th of each year.

3. Pavement Patches. All permanent pavement patches and repairs shall be made with "in kind" materials. For example, concrete patches in concrete surfaces, full depth asphalt patches with full depth asphalt, concrete pavement with asphalt overlay patches will be expected in permanent "overlaid" concrete streets, etc. In no case is there to be an asphalt patch in concrete streets or concrete patch in asphalt streets. Any repair not meeting these requirements will be removed and replaced by the Permittee at his expense. Refer to Section 4 for details.

4. Work to be Done in Expedient Manner. All work shall be done in an expedient manner. Repairs shall be made as rapidly as is consistent with high quality workmanship and materials. Completion of the work including replacement of pavement and cleanup shall normally be accomplished within three (3) weeks after the repair work or activity involving the cut is done. Extension of time for completion shall be with the written approval of the permitting agency. If the repairs are not completed in the allotted time, the Village has the right to repair the street at the Permittee 's expense.

5. Removal and Replacement of Unsatisfactory Work. Removal and replacement of unsatisfactory work shall be completed within fifteen (15) days of written notification of the deficiency unless deemed an emergency requiring immediate action. In the event the replacement work has not been completed, the Village will take action upon the Permittee 's bond to cover all related costs.

B. Excavation

1. Excavation shall consist of removal of all material necessary for the construction of the roadway section to the subgrade elevation line and grade shown on the plans or as specified in the contract documents. Unacceptable material defined as any earthen material containing vegetable or organic silt, topsoil, frozen material, trees, stumps, certain man-made deposits, or industrial waste, sludge or landfill, or other undesirable materials will be categorized as "unclassified excavation" and removed from the site and disposed of in accordance with applicable Village, State and Federal requirements. All tree stumps and roots shall be removed to a minimum of two (2) feet below subgrade. Unclassified excavation includes any and all earthen materials encountered, including rocks and boulders measuring greater than 9” in diameter, during construction.

2. Any work on trees, including roots, must be reviewed by the Village.

3. Excavation shall be performed in a careful and orderly manner with due consideration given to protection of adjoining property, the public and workmen. Any damage to streets, parking lots, utilities, irrigation systems, plants, trees, building or structures or private property, or the bench marks and construction staking due to the negligence of the Permittee, shall be repaired and restored to its original conditions by the Permittee at his expense. Those areas that are to be saved will be clearly fenced off by the Permittee per the owner's instructions and it will be the Permittee 's responsibility to ensure that these areas are not damaged during the

construction process. Following completion of construction, should any of these trees, shrubs or irrigation facilities, etc. require replacement, it shall be done at the Permittee 's expense.

4. All materials determined acceptable by the permitting agency acquired from roadway excavations may be used for embankment fill and backfill as needed. The entire area in the vicinity of the construction where excavation and filling has been performed shall be raked clean of all trash, wood forms, and debris, after completion of the work with no additional cost to the Owner. Material removed in excavation and not acceptable or not required for embankment fill of backfill shall be disposed of by the Permittee. It shall not be wasted on private property without written permission of the property owner. Waste banks shall be left with reasonably smooth and regular surfaces.

5. The construction of any repair activity within the street or alley rights-of-way shall be accomplished by open cut, jacking, boring, tunneling or a combination of these methods as approved by the permit. The permitting agency shall approve any change from the approved permit.

6. Trenches shall be excavated along the lines and grades established and in no case shall be more than two hundred (200) feet in length, or be trenched or backfilled in non-continuous sections unless approved by the permitting agency. Failure by the Permittee to comply with these requirements may result in an order to stop the excavation in progress until compliance has been achieved.

7. All excavated material shall be stockpiled in a manner that does not endanger the work or workers and that does not obstruct sidewalks, streets and driveways. No stockpiled materials shall be allowed on the asphalt surface or adjacent walkways. The work shall be done in a manner that will minimize interference with traffic and/or drainage of the street. The Permittee at the end of each day shall barricade all excavations and ditch lines, remove excess material from travel ways, and thoroughly clean all streets, alleys and sidewalks affected by the excavation. If it becomes necessary to accomplish this, all streets, alleys (if asphalt or concrete) and sidewalks shall be swept or washed as required by the Village.

8. Materials encountered during excavation such as rubbish, organic, or frozen material, and any other material that is not satisfactory for use as backfill in the opinion of the permitting agency, shall be removed from the site and disposed of daily by the Permittee at his expense. Stones, concrete or asphalt chunks larger than six (6) inches or frozen material shall be considered unsatisfactory backfill and removed by the Permittee.

9. All excavation, shoring and trenching, and the like shall comply with OSHA's "Construction Industry Standards" as well as all applicable Federal and State regulations.

10. No tracked vehicles shall be allowed on asphalt or concrete unless approved by the permitting agency.

11. Crossings under sidewalks or curbs may be made by tunneling only when approved. If the Permittee elects to remove a portion of the sidewalk or curb, the applicable Village standards shall be followed.

12. Grading shall be done as necessary to prevent surface water from entering the excavation; any other water accumulation therein shall be promptly removed. Surface drainage, driveways, fire hydrants, manholes, water valves, etc. of adjoining areas shall be unobstructed.

13. When soft or unstable material or rock is encountered in the trench subgrade that will not uniformly support the pipe, such material shall be excavated to additional depths and backfilled with approved material.

C. **Blasting.** The Permittee's blasting procedures shall conform to Federal, State, and local ordinances. The Permittee shall acquire all required permits prior to the start of blasting. Blasting for excavation will be permitted only after securing the approval of the permitting agency. The agency will fix the hours of blasting. The Permittee shall use the utmost care to protect life and property. All explosives shall be safely and securely stored in compliance with local laws and ordinances, and all storage places shall be clearly marked "Dangerous Explosives". No explosives shall be left unprotected where they could endanger life or property. When blasting in trenches, the Permittee shall cover the area to be shot with earth backfill or approved blasting mats. Prior to blasting, the Permittee shall station flaggers and provide signals of danger in suitable places to warn people and stop vehicles. The Permittee shall be responsible for all damage to property and injury to persons resulting from blasting or accidental explosions that may occur in connection with the use of explosives.

D. **Equipment.** The use of trench digging equipment will be permitted in places where its operation will not cause damage to existing structures or features, in which case hand methods shall be employed.

1. No tracked vehicles shall be permitted on streets unless approved by the permitting agency. When tracked vehicles are allowed, existing facilities will be restored to original condition at the Permittee's expense.

2. Construction equipment and material delivery routing will be made a condition of the Permit.

E. **Dewatering.** Where ground water is encountered in the excavation, it shall be removed to avoid interfering with the work. It is the Permittee's responsibility to comply with any Federal, State and local permitting requirements prior to beginning any dewatering operations.

F. **Removals**

1. Streets, Paved. Bituminous pavement shall be saw cut to clean, straight lines and should be perpendicular or parallel to the flow of traffic. In existing pavement, all excavations within 36" of the edge of the asphalt shall require removal and replacement from the edge of asphalt to the excavation edge. Concrete pavement, cross pans, driveways, streets and alleys shall be removed to neatly sawed edges cut to full depth.

2. Streets, Gravel. When trenches are excavated in streets or alleys which have only a gravel surface, the Permittee shall replace such surfacing on a satisfactorily compacted backfill with gravel conforming to the aggregate base course standard adopted by the Wisconsin Department of Transportation. Gravel replacement shall be one (1) inch greater in depth than which originally existed, but not less than four (4) inches. The surface shall conform to the original street grade. Where the completed surface settles, additional gravel base shall be placed and compacted by the Permittee immediately after being notified by the Village, to restore the roadbed surface to finished grade. Some streets may have been treated with a special surface treatment to control dust and/or bind the aggregates together. In these cases the Permittee is responsible for installing the gravel surface in the same manner as what existed. Such surface treatments shall be of the same chemical composition as what existed prior to the excavation work. The permitting agency shall note on the permit the surface treatment that will be required.

3. Concrete Curb, Gutter and Sidewalk. Concrete shall be removed to neatly sawed edges to full depth for sidewalks and curb and gutter and shall be saw cut in straight lines either parallel to the curb or perpendicular to the alignment of the sidewalk or curb. Any removal shall be done to the nearest joint. Replaced sections may require doweling connections if required by the permitting agency.

G. Backfill.

1. Flowable-Fill (Aggregate slurry). Flowable-Fill will be required as utility trench backfill for all trenches unless otherwise approved. [There is no section 5 in this document] This requirement applies to all pavement and gravel locations and shall extend five (5) feet beyond paved area. Flowable-fill vibration may be required. The recommended mix for flowable-fill is shown below. Concrete backfill will not be allowed within the public right-of-way. Flash-fill may be used if approved. Refer to Section 6.43.8 or 6.43.9 of the Standard Specifications for Sewer and Water Construction in Wisconsin. Aggregate slurry or flash-fill shall be prohibited as a permanent street surface. Trenches shall initially be backfilled to the level of the original surface. After the flowable-fill has cured, the top surface of the flowable-fill shall be removed and the temporary or permanent surface shall be placed. Bridging and cutback requirements as described in these standards may still be required if the street failures indicate a clear need. Repair of failed trenches will be the responsibility of the Permittee.

2. Conventional Backfill (Other Than Flowable Fill). When "non flowable-fill" backfill material has been pre-approved by the permitting agency, backfill in existing or proposed streets, curbs, gutters, sidewalks and alleys shall comply with the standards contained within Chapter 6.43.0, Bedding, Cover, Foundation, and Backfill materials of Standard Specifications for Sewer and Water Construction in Wisconsin.

3. Compaction Testing Requirements. See Testing section.
4. Embankment and Slopes.
 - a. The permitting agency shall approve all fill material.
 - b. All cut slopes shall conform to OSHA standards.

H. Restoration

1. Bore Holes - Vertical and Horizontal

a. For openings less than or equal to 6" in diameter, bore holes shall be filled with patching material (cold mix is not acceptable) to prevent entry of moisture. Patching material used shall be in all cases compatible with the existing surface. Subgrade shall be replaced with flowable fill (aggregate slurry) to provide necessary support to the surface. The sealing of bore holes is the responsibility of the Permittee.

b. For openings greater than 6" in diameter, the limits of repair shall be identified in the permit.

c. The completed job shall be flush with the surrounding pavement and have no indentations, pockets, or recesses that may trap and hold water.

2. Subgrade. The subgrade for the pavement structure shall be graded to conform to the cross sections and profile required by the construction plans. Prior to the placement of aggregate base course or sub-course, the subgrade should be properly prepared. The subgrade should be scarified to a minimum depth of six (6) inches, moisture adjusted as necessary, and recompact to not less than the following:

a. For cohesive soils, 90% maximum Modified Proctor dry density at 2% of optimum moisture content, or 95% maximum Standard Proctor dry density at 2% of optimum moisture content.

b. For non-cohesive soils, 92% maximum Modified Proctor dry density at 2% of optimum moisture content, or 97% maximum Standard Proctor dry density at 2% of optimum moisture content.

c. For expansive soils, 88% maximum Modified Proctor dry density at 3% or greater above optimum moisture content, or 93% maximum Standard Proctor dry density at 1% or greater above optimum moisture content. For highly expansive soils (swell potential 2% under 200 psf surcharge pressure), paving will not be permitted without a subgrade treatment approved by the permitting agency.

d. Prior to approval to place the base or sub-base course, all utility main and service trenches shall be compacted to not less than the above referenced densities required for the given soil classification. This density requirement also applies to all utility trenches within the public rights-of-way from a point five (5) feet beyond the edge of asphalt and descending at 1:1 outward.

3. Asphalt Surfacing. Any damage, even superficial, to the existing asphalt surface in the vicinity of the work shall be repaired at the expense of the Permittee, including but not limited to gouges, scrapes, outrigger marks, backhoe bucket marks, etc. A slurry seal type covering will be considered the minimum repair. Patching may be required, at the discretion of the Village.

a. The depth of asphalt patches in asphalt streets shall typically be the depth of the existing asphalt surface as specified by the permitting agency.

b. The asphalt patch area for street excavations that fall within the wheel path of the vehicular travel lane shall be increased in size to the center of the lane or adjacent lane. In no circumstance will the edge of a patch area be allowed to fall within the wheel path.

c. All street cuts shall be patched as per the guidelines of Section 4 below. In streets that are less than five (5) years old the Department reserves the right to deny any street excavation or require repairs that are over and above these specifications.

4. Concrete Surfacing and Patching. The concrete pavement shall be replaced with 4,000 psi concrete to match the finish and thickness of the existing pavement, but not less than eight (8) inches thick. All concrete construction shall be protected from vehicular traffic, including contractor vehicles, until the concrete has achieved eighty (80) percent of its ultimate strength. Concrete shall be coated and sealed with a uniform application of membrane curing compound applied in accordance with manufacturer's recommendations. The use of high early strength concrete (3000 psi strength within 48 hours) shall be used on all arterial and collector streets when repair areas are less than 500 square feet or when temperatures are below 40° F. Quick curing concrete repairs may be opened to traffic within two (2) days or when the concrete has achieved eighty (80) percent of its ultimate strength. Where existing cracks or damage are adjacent to the area being repaired the repair area shall include the cracked or damaged concrete. Pavement repairs shall include all areas of damage, including leak test holes, potholes, equipment and/or material scaring of the exiting surface. When repairing concrete, removal perimeter shall be sawcut and replacement concrete shall be doweled into the old concrete as directed by the permitting agency.

5. Joint Filling

a. Asphalt. Following placement of the asphalt surface, the joints where the new asphalt abuts the old shall be sealed with an approved elastic type joint filler (hot-pour) as more fully described in the next paragraph.

b. Concrete. Joints shall be thoroughly cleaned of all foreign material then filled with a hot-poured elastic type joint filler conforming to Wisconsin Standard Specifications for Road and Bridges Section 415.2.5 or silicone sealants or others as approved by the permitting agency. Joint material shall be filled to within 1/2 inch of the surface. Excess material shall be scraped off to provide a smooth riding surface.

Section 9.07 TESTING.

A. Description. The Village may require Permittee to provide material testing for each phase of the work and at no cost to the Village. The Independent Geotechnical Testing Firm chosen to perform this work for the Permittee must be qualified and acceptable to the Village.

B. Testing Frequencies

1. The number of density tests required may be increased if directed by the Village. The costs of any testing, as required, shall be borne by the Permittee. Proctors shall be determined prior to backfilling. Independent lab results shall be faxed to the Department as soon as possible.

2. All tests must be submitted to the Department on a daily basis as acquired and shall be hand delivered or faxed to the Village.

a. Native or imported backfill - If compaction is required, then one test for every nine (9) inch lift and every one hundred (100) feet horizontal.

b. Aggregate slurry - Testing may be required at the discretion of the Village.

c. Concrete pavement, curbs, gutters and sidewalks - Testing to be conducted for every 100 cubic yards or portion thereof, with a minimum of one. The types of testing required shall be as prescribed by the Village.

d. Asphalt Pavement

(1) Asphalt content - One test per 500 tons or fraction thereof of mix produced, minimum of one test per job.

(2) Gradation - Aggregate: one test per 500 tons or fraction thereof of mix produced, minimum of one test per job.

(3) In-place density - One test per 500 tons or fraction thereof of mix placed, minimum of one test per job.

e. Aggregate base course materials -One test per 400 lane feet.

Section 9.08 INSPECTION. All construction work within the public rights-of-way shall be subject to inspection by the Village and certain types of work may have continuous inspection. It shall be the responsibility of the Permittee or his/her designee to provide safe access for the inspector to perform the required inspections. It shall be the responsibility of the person performing the work authorized by the Permit to notify the Department that such work is ready for inspection. The Department requires that every request for inspection be received at least two (2) business days before such inspection is desired. Such requests may be in writing or by telephoning or faxing the permitting agency. The Village may make or require other inspections of any work as deemed necessary to ascertain compliance with the provisions of the Village's Right of Way Street Repair Policy, or this ordinance. Any work performed without the required inspections shall be subject to removal and replacement at the Permittee's expense, regardless of the quality of the work. Where large scale projects exceed the ability of the Village to provide inspection, the applicant will incur the cost of a private inspection firm. The inspection firm will be chosen by the Village prior to issuance of the Permit.

Section 9.09 RIGHT-OF-WAY REPAIR.

A. Timing. The work to be done under the excavation permit, and the repair of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the Permittee or when work was prohibited as unseasonable or unreasonable under Section 9.12.

B. Repair. In addition to repairing its own work, the Permittee must repair the general area of the work, and the surrounding areas, including the paving and its foundations, to the specifications of the Department. The Department shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the Department.

A Permittee may request to have the Village repair the right-of-way.

(1) Village Repair. If the Permittee requests to have the Village repair the right-of-way, the Village may accept or reject the request at its sole option. If the Village accepts, the Permittee shall be billed for the Village's costs, and shall pay the amount thereof within thirty (30) days of billing.

(2) Permittee Repair. If the Permittee chooses to repair the right-of-way, it shall at the time of application for an excavation permit post a repair bond in an amount determined by the Department to be sufficient to cover the cost of repairing the right-of-way to Department specifications. If, thirty-six (36) months after completion of the repair of the right-of-way, the Department determines that the right-of-way has been properly repaired, the surety on the repair bond shall be released.

C. Guarantees. The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion, except for organic material which shall be maintained for

twelve (12) months. During this period it shall, upon notification from the Department, correct all repair work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 9.12.

D. Failure to Repair. If the Permittee fails to repair the right-of-way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all repair required by the Department, the Department at its option may do such work. In that event the Permittee shall pay to the Village, within thirty (30) days of billing, the cost of repairing the right-of-way. If Permittee fails to pay as required, the Village may exercise its rights under the repair bond.

Section 9.10 RESTORATION SPECIFICATIONS-SODDING.

A. Description. This shall consist of preparing sod beds, furnishing and laying of live sod on the shoulders, slopes, ditches, or other locations as designated by the Engineer, the construction of sod ditch checks or similar appurtenances, furnishing and applying the required fertilizer, all in accordance with these specifications.

B. Materials.

1. Sod. The sod shall consist of a dense, well-rooted growth of permanent and desirable grasses, indigenous to the general locality where it is to be used, and shall be practically free from weeds or undesirable grasses. At the time the sod is cut, the grass on the sod shall have a length of approximately two (2) inches (if longer, the grass shall be cut to approximately this length) and the sod shall have been raked free from debris. The sod shall be cut in uniform strips approximately 18" x 72", but no longer than what can be easily handled. The sod strips shall be uniform in thickness; shall have no holes in them; shall be free of weeds, insects, and diseases; shall be uniformly green and not discolored due to drying or heating; and shall be moist. The thickness of the sod shall be uniform, approximately 3/4 inch or more, depending on the nature of the sod, so that practically all of the dense root system of the grasses will be retained, but exposed, in the sod strip and so that the sod can be handled without undue tearing or breaking up. In the event the sod which is to be cut is in a dry condition as to cause crumbling or breaking during cutting operations, at least twelve (12) hours before cutting the sod, the Permittee, at no additional cost to the Village, shall apply water to the sod in sufficient quantities to provide a well moistened condition of the sod to the depth to which it is to be cut.

2. Fertilizer. Fertilizer shall conform to the requirements set forth in Section C (4).

C. Construction Methods.

1. Preparation of the earth bed. The area to be sodded shall have been previously constructed to the required cross section and contour, and the tops and bottoms of the slopes shall be rounded to a minimum four (4) foot radius curve. The areas to be sodded shall be free from stones, roots, or other undesirable foreign material. The soil on the area to be sodded shall be loosened and brought to a reasonably fine granular texture, to a depth of two (2) to three (3) inches, by means of equipment or hand methods adapted to the purpose.

2. Fertilizing. When the fertilizing of areas to be sodded is required, the fertilizer shall be spread uniformly over the areas to be sodded at the rate of 17 pounds per 1,000 square feet of area unless otherwise specified in the Contract. The fertilizer shall be pulverized and free from lumps when applied. The fertilizer shall be incorporated into the areas to be sodded by light discing or harrowing.

3. Placing the sod. The earth bed upon which the sod is to be placed shall be moistened to the loosened depth, if not naturally sufficiently moist, and the sod shall be placed thereon within approximately twenty-four (24) hours after the same has been cut. Sod shall be laid so that the joints caused by abutting ends of sod strips are not continuous. Each sod strip shall be so laid as to abut snugly against the strip previously laid. As the sod is being laid it shall be rolled or firmly but lightly tamped with suitable wooden or metal tampers, sufficiently only to “set” or press the sod into the underlying soil. At points where water will flow over a sodded area, the upper edges of the sod strips shall be turned into the soil below the adjacent area and a layer of earth placed over this juncture, which earth shall be thoroughly compacted to conduct the surface water over the upper edge of the sod. At the limits of sodded areas, wherever practical or feasible, at the end strips shall be placed to effect a broken line, and ends of the strips shall be turned. Frozen sod shall not be placed, nor shall any sod be placed upon frozen soil.

4. Staking. On all slopes steeper than one (1) foot vertical to four (4) feet horizontal the sod shall be staked or pegged with pieces of plasterers’ lath or stakes equivalent thereto, twelve (12) inches in length, spaced as required by the nature of the soil and steepness of slope, from 18 inches to 36 inches apart along the longitudinal axis of the sod strip. Stakes shall preferably be placed near the top edges of the sod strip and shall be driven approximately plumb through the sod to be almost flush with the sod. All sod placed in ditches, flumes, or other appurtenances, where a concentrated flow of water may be expected, shall be staked regardless of the slope. After the staking has been completed the surface shall be cleared of loose sod, excess soil, or other foreign material, and the areas shall then be thoroughly moistened by sprinkling with water.

5. Watering. All sodded areas shall be kept thoroughly moist by watering or sprinkling, when rainfall is deficient, for a minimum period of ten (10) days, or until proper growth is established, whichever is longer. In the event the sodded areas are subject to weed infestation, the Permittee shall remove the weeds by appropriate methods to ensure grass growth. Notwithstanding the above, the Permittee shall be required to provide and maintain a guaranteed growth for one (1) year after project completion.

Section 9.11 PROJECT COORDINATION.

A. Coordination of Projects. It is in the best interests of all persons to attempt to coordinate projects whenever it is reasonably possible. Therefore, periodic reporting by Permittees of known construction project plans will be useful to achieve this objective.

1. Project Plans. At the time of application the applicant shall file a construction and major maintenance project plan with the Village. The plan shall include, but shall not be limited to, the following information:

a. The locations and the estimated beginning and ending dates of all Projects to be commenced during the next calendar year.

B. Location of Facilities.

1. Undergrounding. This section applies to any facilities not governed by Section 12.015 of the Village ordinances. The Village desires that all new facilities and all replacements of above ground facility lines be placed underground (or within buildings or other structures). Unless existing above ground facilities are used; the installation of new lines shall be underground. Where lines are added to existing above ground facilities, they shall not increase the expected life of the above ground facility. In recognition that in developed areas, undergrounding of existing lines may be significantly more expensive than replacement above ground lines, replacements of existing above ground lines with lines to increase capacity or if a majority of the poles in a line segment are to be replaced, the lines shall be placed underground except where undergrounding is unreasonably expensive, interferes with a roadway structure, or is physically impractical. All new and replacement above ground lines require the approval of the Village based on the above criteria. Such approval shall not be unreasonably withheld.

2. Limitation of Space. Where there is insufficient space in a right-of-way to accommodate all of the requests of Persons to occupy and use the right-of-way, the Village shall request a meeting of representatives of all persons involved to resolve the issue. Where no agreement can be reached to make space available, the Village may prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the Village shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but may prohibit or limit the placement of new or additional facilities when required to protect the public health, safety or welfare.

C. Relocation of Facilities.

1. Relocation Coordination. Existing facilities may interfere with proposed or modified Village use of the right-of-way, or with public improvements undertaken by the Village.

2. Relocation Required. Except as prohibited by State or Federal law, a Permittee shall promptly and at its own expense, with due regard for seasonal working

conditions, permanently remove or relocate its facilities in the right-of-way whenever the Village requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The Village may make such request to prevent interference of facilities with:

- a. a present or future Village use of the right-of-way,
- b. a public improvement undertaken by the Village,
- c. when the public health, safety and welfare require it, or
- d. when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

D. Abandoned Facilities.

1. Discontinued Operations. A Permittee who has determined to discontinue its operations in the Village shall either:

a. Provide information satisfactory to the Village that the Permittee's obligations for its facilities under this Chapter have been lawfully assumed by another Permittee; or

b. Submit to the Village a proposal and instruments for dedication of its facilities to the Village. If a Permittee proceeds under this clause, the Village may, at its option:

- (1) accept the dedication for all or a portion of the facilities; or
- (2) require the Permittee, at its own expense, to remove the facilities in the right-of-way at ground or above ground level; or
- (3) require the Permittee to post a bond or provide payment sufficient to reimburse the Village for reasonably anticipated costs to be incurred in removing the facilities.

2. Abandoned Facilities. Facilities of a Permittee who fails to comply with Subsection. 1 above, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the Village may, at its option:

- a. abate the nuisance,
- b. take possession of the facilities, or

c. require removal of the facilities by the Permittee, or the Permittee's successor in interest.

3. Exemption. Subsections. 1 and 2 above of this Section shall not apply to:

- a. a municipality, or
- b. a public utility.

4. Records of Discontinued Operations or Abandoned Facilities. The person that owns discontinued operations or abandoned facilities in the public rights-of-way shall retain records of those facilities and shall make those records available whenever any designer or excavator requests information regarding the locations of existing facilities in public rights-of-way.

Section 9.12 OTHER OBLIGATIONS.

A. Compliance with Other Laws. Obtaining a permit to excavate and/or occupy the right-of-way does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other Village, County, State, or Federal rules, laws or regulations. A Permittee shall comply with all requirements of local, state and federal laws. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

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

Section 9.13 REVOCATIONS, SUSPENSIONS, REFUSALS TO ISSUE OR EXTEND PERMITS.

A. Grounds. The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

- (1) The applicant or Permittee is not in full compliance with the requirements of this chapter or state or federal law;
- (2) The applicant or Permittee is seeking to perform work not included in its construction and major maintenance plan required under Section 9.12; which work was reasonably foreseeable by the applicant or Permittee at the time said plan was filed;
- (3) Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival, or other event;

- (4) Misrepresentation of any fact by the applicant or Permittee;
- (5) Failure of the applicant or Permittee to maintain required bonds and/or insurance;
- (6) Failure of the applicant or Permittee to complete work in a timely manner;
- (7) The proposed activity is contrary to the public health, safety or welfare;
- (8) The extent to which right-of-way space where the permit is sought is available;
- (9) The competing demands for the particular space in the right-of-way;
- (10) The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the permit applicant;
- (11) The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
- (12) The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction.

B. Discretionary Issuance. Notwithstanding Subsection 1(b), the Department may issue a permit where issuance is necessary (a) to prevent substantial economic hardship to a customer of the Permittee or applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow the Permittee or applicant to comply with state or federal law or Village ordinance or an order of a court or administrative agency.

C. Appeals. Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review with the Board of Appeals of the Village. A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the Board of Appeals may affirm, reverse or modify the decision of the Department.

Section 9.14 WORK DONE WITHOUT A PERMIT.

A. Emergency Situations. Each Permittee shall immediately notify the Department by verbal notice on an emergency phone number provided by the Department of any event regarding its facilities that it considers to be an emergency. The Permittee may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the Permittee shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this Chapter.

If the Village becomes aware of an emergency regarding a Permittee's facilities, the Department may attempt to contact the local representative of each Permittee affected, or potentially affected, by the emergency. The Village may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the Permittee whose facilities occasioned the emergency.

B. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, excavates a right-of-way must subsequently obtain a permit, and shall in addition to any penalties prescribed by this Chapter or other Chapters of the Village Code, pay double the normal fee for said permit, pay double all the other fees required by this Chapter or other Chapters of the Village Code, deposit with the Department the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Chapter.

Section 9.15 SUPPLEMENTARY NOTIFICATION. If the excavation of the right-of-way begins later or ends sooner than the date given on the permit, Permittee shall notify the Department of the accurate information as soon as this information is known.

Section 9.16 RESERVATION OF REGULATORY AND POLICE POWERS. The Village, by the granting of a permit to excavate, obstruct and/or occupy the right-of-way, or by registering a person under this Chapter does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter granted to the Village under the Constitution and statutes of the State of Wisconsin to regulate the use of the right-of-way by the Permittee; and the Permittee by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way or of registration under this Chapter agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the Village, shall be in full force and effect and subject to the exercise thereof by the Village at any time. A Permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the Village to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the Village pursuant to such powers.

Section 9.17 PENALTY. Any person found guilty of violating any of the provisions of this Chapter shall be subject to a forfeiture of not less than Ten (\$10.00) Dollars nor more than Two Thousand (\$2,000.00) Dollars together with the costs of the action, and in default of payment thereof shall be subject to imprisonment in the County Jail or House of Correction of Milwaukee County until said forfeiture and costs together with any subsequent costs, are paid, but in any event not to exceed ninety (90) days. Each day that the violation is permitted or continues to exist shall constitute a separate offense.