

**VILLAGE OF GERMANTOWN
N112 W17001 MEQUON ROAD
GERMANTOWN, WI 53022**

MEETING: REGULAR MEETING OF THE VILLAGE BOARD

DATE AND TIME: MONDAY, May 2, 2016 7:00 p.m.

LOCATION: Germantown Village Hall Board Room

- I. **CALL TO ORDER:** *This meeting has been given public notice in accordance with Section 19.83 and 19.84, Wis. Stats, in such form that will apprise the general public and news media of subject matter that is intended for consideration and action.*
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **PRESIDENT'S REPORT**
- V. **APPOINTMENTS**
 - A. **Commissions/Boards/Committees**
 1. **Library Board**

Member	Darlene Vosen	07/01/2016 – 06/30/2019
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 2. **Plan Commission**

Member	Benjamin Goetter	05/01/2016 – 04/30/2019
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 3. **Police & Fire Commission**

Member	Larry Owen	05/02/2016 – 04/30/2019*
*(completing term of vacancy from 12-1-2015 resignation)		
 4. **Utility Advisory Committee**

Alternate Member	Julie Reichert	05/01/2016 – 04/30/2019
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- VI. **ANNOUNCEMENTS OF FORTHCOMING EVENTS OF PUBLIC INTEREST/COMMITTEE REPORTS:**

The following individuals will be given the opportunity to make announcements of future municipal activities: Village President, Village Board Members, Village Administrator, Village Attorney and Village Clerk.
- VII. **CITIZEN INPUT/PUBLIC APPEARANCE on items not subject to a public hearing:**

Please be advised per §19.84(2), information will be received from the public. It is the policy of this municipality that there be a three (3) minute time period, per person, with time extension per the Chief Presiding Officer's discretion; be further advised that there may be limited discussion on the information received, however, no action will be taken under public comments. (15 minutes)

VIII. CONSENT AGENDA:

- A. Approval of Village Board Minutes: March 7, March 21 and April 18, 2016
- B. Accounts payable/payroll
 - 1. April 19, 2016 Payroll (hourly) \$ 221,601.66
 - 2. April 25, 2015 Accounts Payable \$1,151,913.46
 - 3. April 29, 2016 Payroll (salary) \$ 78,424.86
- C. Operator Licenses: May 3, 2016 – June 30, 2016: [Recommended Approval]
Amin K. Al-Hassan, Sharna Y. Sinjakovic and Erik A. Lange

IX. UNFINISHED BUSINESS: None

X. PUBLIC HEARINGS – 7:00 P.M. OR LATER: *The purpose of said hearing(s) is to hear any and all parties, their attorneys or agents, for or against the application(s) filed by the petitioner(s).* None

XI. NEW BUSINESS:

- A. Request Approval of Change of Agent – PH Hospitality Group LLC, d/b/a Pizza Hut, N112W1588 Mequon Rd, Germantown, WI, Barbara Awve, N114W15846 Slyvan Cir #305 Germantown
- B. **Ordinance No. XX-2016** - An Ordinance to Create Section 8.065 of the Germantown Municipal Code Relating to the Regulation of Rights-of-Way.
- C. Appeal of The Board of Zoning Appeals Decision Re Saxony Village. The Village Board May Enter into Closed Session Per Wis. Stat. § 19.85(1)(G) For The Purpose of Conferring with The Village Attorney Who Is Rendering Oral or Written Advice Concerning Strategy to Be Adopted by The Body with Respect to Litigation in Which It Is or Is Likely to Become Involved, And Then May Re-Enter Open Session to Take Such Action as It Deems Appropriate

XII. ADJOURNMENT

The next Village Board meeting will be on May 16, 2016 at 7:00 p.m.

UPON REASONABLE NOTICE, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For Additional information or to request this service please contact the Village Clerk at (262)250-4740 at least 2 days prior to the meeting.

XI

MEMORANDUM

TO: Peter Hoell, Police Chief
FROM: Donna Hann, Deputy Clerk
DATE: April 29, 2016
SUBJECT: New Agent for Pizza Hut

Attached are the Auxiliary Questionnaire and Schedule for Successor of Agent Forms for Barbara Awve as a new liquor license agent for Pizza Hut, N112 W15800 Mequon Road, Germantown.

Please run a background check with your recommendation and sign off on the enclosed form if everything checks out. It is going to the Village Board on Monday, May 2, 2016 for approval.

If you have any questions, please call me at 250-4740.

Thanks!

**SCHEDULE FOR APPOINTMENT OF AGENT BY CORPORATION/NONPROFIT
ORGANIZATION OR LIMITED LIABILITY COMPANY**

Submit to municipal clerk.

All corporations/organizations or limited liability companies applying for a license to sell fermented malt beverages and/or intoxicating liquor must appoint an agent. The following questions must be answered by the agent. The appointment must be signed by the officer(s) of the corporation/organization or members/managers of a limited liability company and the recommendation made by the proper local official.

☐ Town

To the governing body of: ☒ Village of Germantown

County of Washington

☐ City

The undersigned duly authorized officer(s)/members/managers of PH HOSPITALITY GROUP LLC
(registered name of corporation/organization or limited liability company)

a corporation/organization or limited liability company making application for an alcohol beverage license for a premises known as

PIZZA HUT

(trade name)

located at N112 W15800 MEQUON RD GERMANTOWN

appoints BARBARA AWE
(name of appointed agent)

N114 W15846 Sylvan Cir #305
(home address of appointed agent)

to act for the corporation/organization/limited liability company with full authority and control of the premises and of all business relative to alcohol beverages conducted therein. Is applicant agent presently acting in that capacity or requesting approval for any corporation/organization/limited liability company having or applying for a beer and/or liquor license for any other location in Wisconsin?

☐ Yes ☒ No If so, indicate the corporate name(s)/limited liability company(ies) and municipality(ies).

Is applicant agent subject to completion of the responsible beverage server training course? ☒ Yes ☐ No

How long immediately prior to making this application has the applicant agent resided continuously in Wisconsin? _____

Place of residence last year _____

For: PH HOSPITALITY GROUP LLC
(name of corporation/organization/limited liability company)

By: _____
(signature of Officer/Member/Manager)

And: MARK DILLON
(signature of Officer/Member/Manager)

ACCEPTANCE BY AGENT

I, Barbara L Awe, hereby accept this appointment as agent for the
(print/type agent's name)

corporation/organization/limited liability company and assume full responsibility for the conduct of all business relative to alcohol beverages conducted on the premises for the corporation/organization/limited liability company.

[Signature]
(signature of agent)

4-13-16
(date)

Agent's age _____

N114 W15846 Sylvan Cir #305
(home address of agent)

Date of birth _____

**APPROVAL OF AGENT BY MUNICIPAL AUTHORITY
(Clerk cannot sign on behalf of Municipal Official)**

I hereby certify that I have checked municipal and state criminal records. To the best of my knowledge, with the available information, the character, record and reputation are satisfactory and I have no objection to the agent appointed.

Approved on _____ by _____ Title _____
(date) (signature of proper local official) (town chair, village president, police chief)

AUXILIARY QUESTIONNAIRE ALCOHOL BEVERAGE LICENSE APPLICATION

Submit to municipal clerk.

Individual's Full Name (please print) (last name)		(first name)		(middle name)	
Barbara Awe		Lynn			
Home Address (street/route)		Post Office	City	State	Zip Code
N114W15846 Sylvan Cir			Germantown	WI	53022
Home Phone Number		Age	Date of Birth	Place of Birth	
				Wisconsin	

The above named individual provides the following information as a person who is (check one):

☐ Applying for an alcohol beverage license as an **individual**.

☐ A member of a **partnership** which is making application for an alcohol beverage license.

☒ **AGENT** of **PH HOSPITALITY GROUP LLC**
(Officer/Director/Member/Manager/Agent) (Name of Corporation, Limited Liability Company or Nonprofit Organization)

which is making application for an alcohol beverage license.

The above named individual provides the following information to the licensing authority:

- How long have you continuously resided in Wisconsin prior to this date? all my life
- Have you ever been convicted of any offenses (other than traffic unrelated to alcohol beverages) for violation of any federal laws, any Wisconsin laws, any laws of any other states or ordinances of any county or municipality? ☐ Yes ☒ No
If yes, give law or ordinance violated, trial court, trial date and penalty imposed, and/or date, description and status of charges pending. (If more room is needed, continue on reverse side of this form.)

- Are charges for any offenses presently pending against you (other than traffic unrelated to alcohol beverages) for violation of any federal laws, any Wisconsin laws, any laws of other states or ordinances of any county or municipality? ☐ Yes ☒ No
If yes, describe status of charges pending.

- Do you hold, are you making application for or are you an officer, director or agent of a corporation/nonprofit organization or member/manager/agent of a limited liability company holding or applying for any other alcohol beverage license or permit? ☐ Yes ☒ No
If yes, identify.

(Name, Location and Type of License/Permit)

- Do you hold and/or are you an officer, director, stockholder, agent or employee of any person or corporation or member/manager/agent of a limited liability company holding or applying for a wholesale beer permit, brewery/winery permit or wholesale liquor, manufacturer or rectifier permit in the State of Wisconsin? ☐ Yes ☒ No
If yes, identify.

(Name of Wholesale Licensee or Permittee)

(Address By City and County)

- Named individual must list in chronological order last two employers.

Employer's Name	Employer's Address	Employed From	To
George Webb	N112W15800 Mojum Rd	3-10	4-10
Employer's Name	Employer's Address	Employed From	To

The undersigned, being first duly sworn on oath, deposes and says that he/she is the person named in the foregoing application; that the applicant has read and made a complete answer to each question, and that the answers in each instance are true and correct. The undersigned further understands that any license issued contrary to Chapter 125 of the Wisconsin Statutes shall be void, and under penalty of state law, the applicant may be prosecuted for submitting false statements and affidavits in connection with this application.

Subscribed and sworn to before me

this 13 day of April, 20 16
[Signature]
(Clerk/Notary Public)

My commission expires 6-14-19

[Signature]
(Signature of Named Individual)



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Recycled Paper

XI B.

STATE OF WISCONSIN VILLAGE OF GERMANTOWN WASHINGTON COUNTY

ORDINANCE NO. ____-16

AN ORDINANCE CREATING SECTION 8.065 OF THE
GERMANTOWN MUNICIPAL CODE
RELATING TO THE REGULATION OF RIGHTS-OF-WAYS

WHEREAS, the passage of the Telecommunications Act of 1996 and advances in technology have 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; and

WHEREAS, the Village is granted the authority to regulate the rights-of-ways within its boundaries under 47 U.S.C. 253(c) and Wis. Stat. §§ 61.34(1), 66.0425, 66.0915, 86.16, 182.017, 196.58, 196.499(1); and

WHEREAS, the regulation of the rights-of-ways within the Village of Germantown is a matter in the interest of the public's health, safety and welfare;

NOW, THEREFORE, the Village Board of the Village of Germantown, Wisconsin, do ordain as follows:

SECTION I:

Section 8.065 of the Municipal Code of Germantown is hereby created to read in the form as attached hereto and incorporated herein by reference as Exhibit A.

SECTION II:

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION III:

All ordinances or parts of ordinances contravening the terms of this ordinance are hereby to that extent repealed.

SECTION IV:

This ordinance shall take effect and be in full force upon its passage and the day after publication.

ORDINANCE NO. ____-16

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Introduced by _____ on _____, 2016.

Adopted: _____, 2016 Vote: Ayes: Nays: Absent:

Dean M. Wolter, Village President

ATTEST:

Barbara K.D. Goeckner, Village Clerk

Approved as to form:

Brian C. Sajdak, Village Attorney

Published: _____

EXHIBIT A

8.065 REGULATION OF RIGHT-OF-WAYS

A. 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, together with an ordinance making necessary revisions to other Code provisions. 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, but not limited to, the following federal, state and local authority: 47 U.S.C. 253(c); Wis. Stat. § 61.34(1); Wis. Stat. § 66.0425; Wis. Stat. § 66.0915; Wis. Stat. § 86.16; Wis. Stat. § 182.017; Wis. Stat. § 196.58; and Wis. Stat. § 196.499(1).

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.

- B. 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 Wis. Stat. § 196.01.

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

"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 registrant to accept service and to make decisions for that registrant 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 under this Chapter.

"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.

"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, per 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, per 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 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. Stat. § 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 Wis. Stat. § 196.01.

“Telecommunications Provider” has the meaning in Wis. Stat. § 196.01.

"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, ATUs, and Carriers. For purposes of this Chapter, a cable television system defined and regulated under Wis. Stat. § 66.082(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 Wis. Stat. § 196.01.

"Unusable Facilities" means facilities in the right-of-way which have remained unused for one year and for which the registrant 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.

"Village" means the Village of Germantown, Wisconsin, a Wisconsin municipal corporation.

C. Administration. The Department of Public Works (“Department”) is responsible for the administration of the rights-of-way, and the permits and ordinances related thereto.

D. Registration for Right-of-Way Occupancy.

1. Registration. Each person who occupies, 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 register with the Department and pay the fee set forth in Section F. Registration will consist of providing application information and paying a registration fee. This section shall not apply to those persons exclusively utilizing facilities provided by another right-of-way user.

2. Registration Prior to Work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the Department.
3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a Village ordinance requiring persons to plant or maintain 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.

E. Registration Information.

1. Information Required. The information provided to the Department at the time of registration shall include, but not be limited to:
 - a. Each registrant's name, Diggers Hotline registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
 - b. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
 - c. All right-of-way users shall demonstrate to the satisfaction of the Village the financial capability to cover any liability which might arise out of their presence in the right-of-way.
 - d. If the person is a corporation, a LLC or LLP, a copy of any certificate required to be filed under Wisconsin statute as recorded and certified to by the Department of Financial Institutions.
 - e. A copy of the person'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.
 - f. Execution of an indemnification agreement in a form prescribed by the Department, which is consistent with, and shall not exceed the obligations provided in, Section 1.24 herein.
2. Notice of Changes. The registrant shall keep all of the information listed 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 registrant has knowledge of any change.

F. Registration Fee.

1. Registration Fee. The Department shall establish the Registration Fee in an amount sufficient to recover the costs incurred by the Village for processing registrants. This fee shall be computed as the average of labor costs, indirect costs, and other costs associated with registration.
2. Fee Computation. The Village may recalculate, and by resolution, establish the Registration Fee.

G. Excavation Permit Requirement.

1. Excavation 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 Department. 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, pursuant to Section N, and a new permit or permit extension is granted.
2. Permit Display. A copy of any permit issued under this Chapter shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the Department upon request.

H. 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. Registration with the Department if required by this Chapter;
2. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities;
3. Payment of all money due to the Village for:
 - a. applicable permit fees and costs as set forth below;
 - b. subject to section (e), unpaid fees or costs due for prior excavations; or
 - c. subject to section (e) 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. When an excavation permit is requested for purposes of installing additional facilities, and the posting of a restoration bond for the additional facilities is insufficient, the posting of an additional or larger restoration bond for the additional facilities may be required.
- e. The Department shall not deny a registrant an excavation permit because of a dispute between the Village and the registrant, related to sub. b and/or c if the dispute has been adjudicated in favor of the registrant or if the dispute is the subject of an appeal filed by the registrant and no decision in the matter has at yet been rendered.

I. Excavation Permit Fee.

- 1. Fee Calculation. The Excavation Permit Fee shall be established by the Department in an amount sufficient to recover the costs incurred by the Village. This fee shall recover costs incurred by the Village for each of the following categories as provided herein:
 - a. Administrative: The general formula for computing the administrative fee shall be the average per-permit costs for labor plus indirect and other costs.
 - b. Repair: No repair fee shall be collected by the Village, however the Permittee shall be required to repair the public right-of-way to Department specifications, subject to inspection and acceptance by the Department, as per Section J, and to pay a degradation fee.
 - c. Degradation: The general formula for computing the degradation fee shall be the cost per square yard for street, overlay and seal coat multiplied by the appropriate depreciation rate for that street multiplied by the area of the patch. The area of the patch shall be calculated by adding two feet to each side of the actual street cut. Depreciation schedules shall be provided by type of street.
 - d. The total excavation permit fee shall be calculated as follows:
 Total Excavation Permit Fee = Administrative Cost + Degradation Fee (if applicable).
- 2. Village Exemption. Notwithstanding Subd. 1(c), the Village and its contractors shall not pay degradation fees.
- 3. Payment of Permit Fees. No excavation permit shall be issued without payment of applicable fees.
- 4. Non refundable. Permit fees paid for a permit that the Department has revoked for a breach as stated in Section Q are not refundable.

J. Right-of-Way Repair.

1. 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 P.
2. 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.
 - a. 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.
 - b. 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.
3. Standards. The Permittee shall perform repairs according to the specifications of the Department and/or in the conditions specified in the permit. The Department shall have the authority to prescribe the manner and extent of the repair, and may do so in written procedures of general application or on a case-by-case basis.
4. 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 P.
5. 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.

K. Restoration in Lieu of Repair and Degradation. The Permittee may elect to restore the excavation and surrounding pavement in lieu of repair and a degradation fee. If restoration is elected, the Department shall specify the area to be restored, and the methods and materials to be used for the restoration. The Permittee shall then also comply with the preceding Sec. J, as applied to restoration instead of repair.

L. Inspection.

1. Notice of Completion. When the work under any permit hereunder is completed, the Permittee shall notify the Department.
2. Site Inspection. Permittee shall make the work site available to the Department and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
3. Authority of Department. At the time of inspection, the Village may order the immediate cessation of any work which poses a threat to the life, health, safety or well being of the public. The Village may issue an order to the registrant for any work that does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant shall present proof to the Department that the violation has been corrected. If such proof has not been presented within the required time, the Department may revoke the permit pursuant to Sec. Q.

M. Ongoing Management Fees.

1. Fee Basis. Fees shall reflect the ongoing or long-term costs to the Village of managing access to the right-of-way. These costs are exclusive of Administrative costs collected under Excavation Permit Fees. Fees shall be initially set, and may be annually re-computed, to recover the costs incurred by the Village in ongoing management of the right-of-way. Ongoing management costs include, but are not limited to, inventory maintenance, facility tracking, GIS, tree trimming, grass mowing, right of way maintenance, location marking and general inquiries related to public right-of-way users. The fee shall be based on the number of feet of right-of-way occupancy by a Telecommunications Right-of-Way User. The per foot management fee shall be calculated as follows: Annual management fee per foot = Total annual management cost / Total ROW occupancy feet.
2. Payment of Fees. Ongoing management fees shall be subject to adjustment and correction at the conclusion of the calendar year. Such fees shall be paid for all and any part of a calendar year, prorated on a daily basis, during any time period

in which the said Person uses or occupies the right-of-way to furnish Telecommunications Service, or places, maintains or uses the Person's wires, mains, pipes, or any other facilities in the right- of-way.

N. Joint Applications.

1. Joint Application. Registrants may jointly apply for permits to excavate the right-of-way at the same place and time.
2. With Village Projects. Registrants who join in a scheduled excavation performed by the Village, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the degradation portion of the excavation permit fee.
3. Shared Fees. Registrants who apply for permits for the same excavation, which the Department does not perform, may share in the payment of the excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

O. Supplementary Applications.

1. Limitations on 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 herein. Any Permittee which determines that an area greater than that specified in the permit must be excavated must, before working in that greater area (1) make application for a permit extension and pay any additional fees required thereby, and (2) be granted a new permit or permit extension.
2. Limitation on Dates. 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 herein, continue working after the end date. If a Permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit.
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.

P. Other Obligations.

1. 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.

2. 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.

Q. Revocations, Suspensions, Refusals to Issue or Extend Permits.

1. 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:
 - a. The applicant or Permittee is required by Sec. D to be registered and has not done so;
 - b. The applicant or Permittee is seeking to perform work not included in its construction and major maintenance plan required under Section G; which work was reasonably foreseeable by the applicant or Permittee at the time said plan was filed;
 - c. Issuance of a permit for the requested date would or interfere with an exhibition, celebration, festival, or other event;
 - d. Misrepresentation of any fact by the applicant or Permittee;
 - e. Failure of the applicant or Permittee to maintain required bonds and/or insurance;
 - f. Failure of the applicant or Permittee to complete work in a timely manner;
 - g. The proposed activity is contrary to the public health, safety or welfare, including factors related to clear zones, fall zones and other similar concerns;
 - h. The extent to which right-of-way space where the permit is sought is available;
 - i. The competing demands for the particular space in the right-of-way;
 - j. The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the permit applicant;
 - k. The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;

- l. The condition and age of the right-of-way, and whether and when its is scheduled for total or partial reconstruction; or
 - m. The applicant or Permittee is otherwise not in full compliance with the requirements of this Chapter or other local, state or federal law.
2. Discretionary Issuance. Notwithstanding Subd. 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.
 3. 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 Public Works and Highways Committee. A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the Public Works and Highways Committee may affirm, reverse or modify the decision of the Department.

R. Work done Without a Permit.

1. Emergency Situations. Each registrant shall immediately notify the Village 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. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this Chapter. If the Village becomes aware of an emergency regarding a registrant's facilities, the Department may attempt to contact the local representative of each registrant 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 registrant whose facilities occasioned the emergency.
2. 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 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 Department the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Chapter.

S. 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.

T. Location of Facilities.

1. Undergrounding. Under conformity with local, state and federal law, unless existing aboveground facilities is used, the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes except where otherwise authorized by the Department.
2. Corridors. The Department may assign specific corridors within the right-of-way, consistent with Wisconsin Public Service Commission standards. All excavation or other permits issued by the Department involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue consistent with the Wisconsin Public Service Commission's corridor selection standards.
3. Limitation of Space. The Department may prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of Persons to occupy and use the right-of-way. In making such decisions, the Department 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.

U. Relocation of Facilities. Except as prohibited by State or Federal law, a Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the Department 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 Department may make such request to prevent interference by the Company's facilities with (i) a present or future Village use of the right- of-way, (ii) a public improvement undertaken by the Village, (iii) an economic development project in which the Village has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

V. Interference with Other Facilities during Municipal Construction. When the Village performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a registrant's facilities , the Village shall notify the local representative. The

registrant shall meet with the Village's representative within 24-hours and coordinate the protection, maintenance, supporting, and/or shoring of the registrant's facilities. The registrant shall accomplish the needed work within 72-hours, unless the Village agrees to a longer period. In the event that the registrant does not proceed to maintain, support, shore, or move its facilities, the Village may arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days.

W. Indemnification. Permittee expressly acknowledges and agrees, by acceptance of the 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, in connection with, caused by or resulting from the permittee's acts or omissions in the exercise of its rights under this permit, whether caused by or contributed to by the Village or its agents or employees.

X. Abandoned Facilities.

1. Discontinued Operations. A registrant who has determined to discontinue its operations in the Village must either:
 - a. Provide information satisfactory to the Department that the registrant's obligations for its facilities under this Chapter have been lawfully assumed by another registrant; or
 - b. Submit to the Department a proposal and instruments for dedication of its facilities to the Village. If a registrant proceeds under this clause, the Village may, at its option:
 - i. accept the dedication for all or a portion of the facilities; or
 - ii. require the registrant, at its own expense, to remove the facilities in the right-of-way at ground or above ground level; or
 - iii. require the registrant to post a bond or provide payment sufficient to reimburse the Village for reasonably anticipated costs to be incurred in removing the facilities.

However, any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way within two years, unless the Department waives this requirement.

2. Abandoned Facilities. Facilities of a registrant who fails to comply with subd. 1 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 (i) abate the

nuisance, (ii) take possession of the facilities, or (iii) require removal of the facilities by the registrant, or the registrant's successor in interest.

3. Public Utilities. This section shall not apply to a public utility as defined by Wis. Stat. § 196.01(5).

- Y. 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 maybe 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.
- Z. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Chapter 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.