

**UTILITY EASEMENT UPON TAX FORFEITED LANDS**

ITASCA COUNTY LAND DEPARTMENT

Effective Date:

PURPOSE:

To update Itasca County's utility easement requirements and fees.

APPLICABLE STATUTE:

M.S. 282.04, Subdivision 4. Easements.

POLICY:

- A. An easement shall be required for all utility crossings on Itasca County tax-forfeited lands. Where the easement services County leased lands or County rental property, the easement shall extend to the customer's (lessee's) service point. (As used herein "service point" shall mean the point at which the customer (lessee) receives service from the utility.)
- B. The fee charged for easements shall consist of the total of an application fee, the current market value of the easement right and the current market value of the timber upon the easement. The application fee shall be as set forth on the fee schedule attached hereto as Exhibit "A".

In the event the parties cannot mutually agree upon the current market value of the easement right, each party shall retain a qualified appraiser at their own expense who shall appraise the property. The selected appraisers shall agree upon a third qualified appraiser who shall also appraise the property. The expense of the third appraiser shall be born equally between the County and the Applicant. The current market value of the easement right to be paid herein shall be the average of the current market values as determined by each of the appraisers.

The application fee shall be paid at the time of the initial application and is nonrefundable. The sum representing the current market value shall be paid at the time the easement is executed by the County. The sum representing the current market value of the timber upon the easement shall be paid within thirty (30) days of

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billing by the County.

- C. The terms of the utility easement shall be those stated in the UTILITY EASEMENT agreement attached as Exhibit "B". Easements will be granted, subject to termination under the conditions stated in M.S. 282.04, Subdivision 4.
- D. The easement location and survey requirements (as used herein the term "survey" does not require a certificate of survey by a registered land surveyor) of each type of easement shall be as follows:
  - 1. For all pipes and pipelines, any and all telephone lines (except service drops) and any and all electrical lines above or below ground in excess of four thousand (4,000) volts, together with any and all appurtenance thereto the Grantee shall coordinate the location of the easement with the County Department responsible for the management of the property to be crossed. The easement location will be approved on the preliminary location accepted by the managing County Department. Upon completion of the utility installation, the Grantee shall provide the necessary map and description for completion of the final easement document. The Grantee shall be responsible for the protection and preservation of property corners in accordance with Minnesota Statutes, Chapter 381.19 and Chapter 505.33.

The Grantee shall provide at the time of making application a written legal description of the easement and clearly specify which County administered lands the easement encumbers. The County administered lands shall be identified by Section, Township and Range, together with the appropriate fractional part or government lot of the section; or the lot and block in a recorded plat. The description shall be tied to the Public Land Survey System or properly recorded subdivision plat. The description shall contain adequate mathematical information for it to be located on the ground by appropriate land survey procedures if necessary.

The Grantee shall within 90 days after completion also provide a map showing the as-built location of the easement on County administered lands. Scale of the map shall not be smaller than 1:7200 (1 inch - 600 feet) and shall fit on a maximum sheet of 24 x 36 inches. At a

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minimum the map shall contain, but not be limited to, the following information:

- a) The date, as well as the name and title of the person who approved the map.
- b) Whether the installation is overhead or underground, the number and location of all lines within the easement and the type of utility by size and content.
- c) The plat monumentation or Public Land Survey System corner monuments the easement description is tied to. The Grantee shall describe the corner position to include the type of monument found marking the corner. If no corner monumentation is found, the Grantee shall explain fully, on the map or with supporting documentation, how the corner position that the description is tied to was determined.
- d) The linear dimensions between each angle point of the easement centerline or reference line. In addition, the linear dimension between each point where the easement centerline or reference line intersects a monumented property line of County administered land and the nearest angle point on the County administered land side of the property line.
- e) The method used to determine the linear dimensions. A steel tape or instrument similar or better accuracy must be used.
- f) The angle the easement centerline or reference line makes at each angle point, together with the angle the easement centerline or reference line makes at each monumented section line where the easement enters and exits a contiguous block of County administered land in a single section. The Grantee may utilize bearings instead of angle to show the directions of each segment of the easement centerline or reference line.
- g) The method used to determine the angles or, if bearings are utilized, the source of orientation, together with the declination, shall be clearly identified.

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- h) The width of the right-of-way on each side of the described centerline or reference line.
- i) For the purposes of this policy the addition of lines, pipes or pipelines within the easement description shall require the grantee to provide the grantor with updated facility locations.

If evidence of corner monumentation and survey information is not adequate to meet these requirements, variances may be granted by the County Board upon the recommendation of the County Surveyor and the Department responsible for administering the lands.

2. For electrical lines less than four thousand (4,000) volts and all telephone service drops the grantee shall provide easement location and survey requirements as follows:

- a) The legal description: Govt lot, fractional part of section or other subdivision, section, township, range, water name, and county.
- b) Indicate the length and width of right-of-way and if it is an under or over crossing as it pertains to, each crossing listed.
- c) Attach a separate plat or map on 8 1/2 by 11 size paper for each crossing showing the proposed location of the crossing. The plat should be drawn to a suitable scale to show necessary detail (see example attached hereto as Exhibit "C"); especially center line location.

NOTE: If application includes more than one crossing, also provide a route map on 8 1/2 X 11 paper showing all crossings in relation to each other.

E. The easements granted hereunder shall not alter, limit, modify or restrict the authority of the County to sell or lease tax forfeited lands by law conferred. Any such sale or lease shall be subject to this easement and all rights granted by this easement shall be excepted from the conveyance or lease of the land and be reserved, and which

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may be canceled by the County Board in the same manner and for the same reasons as it could have been canceled before sale or lease and in that case the rights granted thereby shall vest in the State in trust as the land on which it was granted was held before sale or lease.

- F. The easements granted hereunder shall not be assignable except upon written consent of the grantor except that the execution and delivery by the grantee of a mortgage and deed of trust, with the indentures supplementary to the same, shall not be deemed to be an assignment of this easement or the interest granted hereunder in violations of the provisions of this paragraph. Subject thereto, this easement shall inure to the benefit of and be binding upon the successors, assigns and legal representatives of the parties hereto.

Approved by the County Board on April 27, 1993

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EXHIBIT "A"

The easement application fee shall be two hundred (\$200) per lineal mile of right of way on a pro rata basis. Provided, however, that the application fee for any easement which has a right of way of one quarter (1/4) lineal mile or less shall be fifty dollars (\$50.00).

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EXHIBIT B

ITASCA COUNTY UTILITY EASEMENT

This easement is granted this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, by the County of Itasca, State of Minnesota, hereinafter referred to as the Grantor, to \_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as the Grantee.

The address of the Grantee for purposes of any notification required herein shall be \_\_\_\_\_.

RECITALS

1. This easement is granted pursuant to the provisions of Minnesota Statutes Section 282.04, Subd. 4, which authorizes the County Auditor to grant easements upon unsold, tax-forfeited lands.
2. The Grantee desires to obtain an easement for \_\_\_\_\_ purposes and the Grantor desires to grant such an easement upon the property below described.
3. The Itasca County Board of Commissioners, by resolution dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, have prescribed the terms set forth below.

NOW, THEREFORE, in consideration of the premises and terms hereinafter set forth, the Grantor hereby grants unto the Grantee its heirs, successors and assigns, until terminated as hereinafter provided, full right and authority to enter at any time upon, across and under a strip of land \_\_\_\_\_ feet in width on the parcels hereinafter described, and from time to time to erect, maintain, repair, upgrade, rebuild, relocate, operate and patrol \_\_\_\_\_ (number) \_\_\_\_\_ (type) lines, including the right to erect poles and other \_\_\_\_\_ line structures, wires, cables, pipes and any necessary appurtenances, the right to clear said strip and keep it clear from brush, trees, buildings and fire hazards and the right to remove dangerous trees, if any, located beyond the limits of said strip.

TERMS

I.

Said easement is granted upon the following described parcels of unsold, tax-forfeited lands situated in Itasca County,

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Minnesota: (SEE ATTACHED EXHIBIT "A")

### II.

The Grantee shall comply with the Policy of Itasca County as the same is in effect as of the date of this easement and as hereinafter amended concerning the mapping and documentation of description of easements upon tax-forfeited lands and shall provide a written legal description and maps of the location of the "as built" easement centerline as set forth in the Policy.

### III.

The Grantee, before entering upon the premises for construction purposes, shall pay to the Grantor the sum equal to the current market value of the easement. This amount is consideration for the granting of this easement. This fee is to be determined in accordance with the policy that is established by the Itasca County Board of Commissioners.

The Grantee may clear and keep cleared said strip of trees and brush and as progress is made therein the Grantor shall be advised and shall cause the timber to be scaled and the Grantee shall pay the Grantor for such existing timber, and tree reproduction, a price to be determined by the Itasca County Land Commissioner. The Grantee shall also compensate the Grantor for the value of dangerous trees which may from time to time be removed beyond the limits of this easement.

### IV.

The Grantee shall comply with all laws, regulations and municipal ordinances affecting said lands. Grantee's activities upon said lands or the area in which they are situated. The Grantee shall keep said strip in a neat and orderly condition and shall remove all refuse and debris that may accumulate as a result of Grantee's or the Grantee's Contractor's use thereof. Nothing herein shall require the Grantee to remove refuse and debris unlawfully deposited by a third party. The Grantee shall take all reasonable precautions to prevent and suppress forest fires. The Grantee shall compensate the Grantor for any damages resulting from the improper use of said strip by the Grantee or damages to adjoining lands in gaining access thereto or egress therefrom.

### V.

The Grantee shall pay when due all taxes and assessments levied against the easement granted herein or the improvements thereon.

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### VI.

Nothing herein shall alter, limit, modify or restrict the authority of the County to sell or lease tax forfeited lands by law conferred. Any such sale or lease shall be subject to this easement and all rights granted by this easement shall be excepted from the conveyance or lease of the land and be reserved, and which may be canceled by the County Board in the same manner and for the same reason as it could have been canceled before sale or lease and in that case the rights granted thereby shall vest in the state in trust as the land on which it was granted was held before sale or lease.

The Grantor shall consult with the Grantee herein prior to the granting of any easements or permits over the property which is the subject of this easement if such easement or permit would substantially conflict with the rights of the Grantee herein.

### VII.

Pursuant to Minnesota Statute Section 282.04, Subd. 4, this easement may be canceled for any substantial breach of the terms hereof or if at any time the Itasca County Board of Commissioners determines the continuance of this easement conflicts with the public use of these lands or any part thereof by resolution of said Board after ninety (90) days written notice of its intent to terminate this easement, addressed to Grantee at its address as set forth herein or as subsequently modified by written notice from the Grantee to the Grantor.

### VIII.

Grantee may, subject to such other provisions as herein contained, at its own option and at its own peril, allow to remain upon the premises, subsequent to the Grantee's discontinuation of the use of its improvements upon the easement, any below ground equipment, structures, pipes, wires, cables and below ground appurtenances provided that said equipment, structures, pipes, wires, cables and appurtenances are in conformance with all federal, state or other governmental codes, if any, or if no such codes exist are at least \_\_\_\_\_ feet below ground. Upon discontinuation of the use of this easement by the Grantee and removal of above ground equipment, structures, poles, wires, pipes and other appurtenances erected above ground, the Grantor shall be entitled to the full use and enjoyment of the surface rights of said easement and the Grantor shall waive any future fees for the granting of this easement.

### IX.

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Upon termination of this easement, the Grantee shall remove all its equipment, structures, poles, wires, pipes and other appurtenances located upon or above the lands described herein within one (1) year or as otherwise extended by the Itasca County Board of Commissioners; if such property is not removed within the aforesaid period of time, time being of the essence, title to all personal property remaining upon the premises shall vest in the Grantor, the Grantor, at its sole option may remove such property, restore the right of way to an environmentally sound condition and charge the Grantee for all expenses incurred.

Grantee shall, upon the removal of its property, restore the right-of-way to an environmentally sound condition. This may include, but is not limited to, eliminating any erosion problems and reestablishing stable vegetative cover as acceptable to the Land Commissioner.

### X.

No delay by the Grantor in enforcing any of the conditions of this easement shall operate as a waiver of any of its rights.

### XI.

That as additional consideration for the grant of this easement, the Grantee agrees to indemnify, save and hold harmless the Grantor from any loss, liability, damage or cost the Grantor may incur due to any causes of action, claims for damage or damages sustained by the Grantee or the person or property of any third party as a result of the presence of the Grantee, it's use, activities including ingress and egress or placement of improvements and equipment upon the above described premises or lands adjacent thereto, including but not limited to the reasonable value of attorney's fees in the defense of any claims.

That the Grantee shall keep in full force and effect during the term of this easement a policy of insurance providing general liability coverage for its use and activities pursuant to this easement in the minimum amount of \$200,000.00 per person and \$600,000.00 per occurrence or confirmation of self-insurance satisfactory to the grantor. The county of Itasca shall be named as additional insured on said policies and shall from time to time be provided with proof of the continued existence of said insurances in the form of a certificate of insurance or other documentation acceptable to the County. The provisions of this section shall survive the termination of this easement in

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the event the Grantee has not removed all of the personal property the Grantee had placed upon or under the surface of the premises and the Grantor has not exercised its right to remove the property.

### XII.

This easement shall not be assignable except upon written consent of the Grantor except that the execution and delivery by the Grantee of a mortgage and deed of trust, with the indentures supplementary to the same, shall not be deemed to be an assignment of this easement or the interest granted hereunder in violation of the provisions of this paragraph. Subject thereto, this easement shall enure to the benefit of and shall be binding upon the successors, assigns, heirs and legal representatives of the parties hereto.

### XIII.

Additional construction and maintenance specifications:

- A. Right-of-way construction, maintenance and associated activities must be confined to the stated right-of-way. Grantor agrees to grant temporary easements as are reasonably necessary for the purposes of construction and maintenance. No damage or improvements to access roads and other areas may be done outside of the right-of-way without permission from the Land Commissioner. The Land Commissioner must be notified before motor vehicles are used off traveled roadways or on vehicle restricted County trails, or before heavy equipment is moved across this easement or County lands not described herein. Prior approval and notification is not required during emergencies. However, the Land Commissioner must be notified within five (5) days of such use, damage or improvement to permit timely assessment of the extent of damage, if any, and to ensure proper reparations and repairs.
- B. All timber, slash, rocks and similar debris left on County land must be disposed of in a manner acceptable to the Land Commissioner.
- C. Organic soil material and mineral soil must be left in place on the right-of-way unless approved by the Land Commissioner.
- D. On utilities whose presence is not readily visible on the ground surface, such as on underground service lines with narrow, unmaintained right-of-ways, the utility line location must be signed at all angle points and at other locations as needed so that the distance between signs does



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Example of Plat to accompany Application

EXHIBIT C

SEC. \_\_\_\_\_ TWP. \_\_\_\_\_ RGE. \_\_\_\_\_ COUNTY  
\_\_\_\_\_

[Insertion of an Example of Plat to Accompany Application]