

APPLICATION TO ENCROACH UPON DUNN TOWNSHIP  
PUBLIC ROAD RIGHT-OF-WAY  
**\$500.00 Application Fee**

Application Process is a minimum of 2 weeks from the date of a received and completed application

Applicant Name: \_\_\_\_\_ Date \_\_\_\_\_ 20\_\_\_\_

Applicant Address: \_\_\_\_\_ Phone \_\_\_\_\_

Cell Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Other Address: \_\_\_\_\_

Contractor Responsible for work: Name; \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone # \_\_\_\_\_ Cell Phone # \_\_\_\_\_ License # \_\_\_\_\_

Real Property Upon Which Encroachment is Proposed to be Located:

Address: \_\_\_\_\_

Legal Description of Applicant's  
Property \_\_\_\_\_

Legal Interest of Applicant in Applicant's Real Property  
\_\_\_\_\_

Initial Application Fee: \_\_\_\_\_ (to start the process)

**Note\* Total expenses incurred by Dunn Township for this encroachment will be the sole responsibility of the applicant(s).**

Other recorded owners of Property ( names and addresses )  
\_\_\_\_\_  
\_\_\_\_\_

Other parties listed having any interest in Applicant's Property and nature of such interest:  
\_\_\_\_\_

The size and character of the proposed encroachment:

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The facts which require consideration for encroachment: Be specific with all measurements and include a complete drawing on the back side of this form.

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Applicant hereby agrees to indemnify the Township of Dunn, Otter Tail County, Minnesota, from all claims and demands which may arise as a result of the installation, placement, building, erection, maintenance, occupation, or use of building, structure, or encroachment up to or into the right-of-way. Applicant understands and agrees that if the Township agrees that the Application be granted, the Lansowner9s) shall enter into an Encroachment Agreement with the Township, which shall be revocable at the discretion of the Township, and that the Applicant shall not acquire any vested rights thereunder.

\_\_\_\_\_ \_\_\_\_\_ 20 \_\_\_\_\_  
Applicant Signature Date

Town Clerk: \_\_\_\_\_

Supervisor: \_\_\_\_\_

Supervisor: \_\_\_\_\_

Enclosures: \_\_\_\_\_ Certificate of Insurance      Application Fee: \_\_\_\_\_

**ENCROACHMENT LICENSE AGREEMENT**

This Encroachment License Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between Dunn Township, Otter Tail County, Minnesota, a Minnesota public corporation (the “Town”), and \_\_\_\_\_, Trustee of the \_\_\_\_\_ Trust, (the “Owner”).

**RECITALS**

- A. Owner is the owner of parcels of property located at or near \_\_\_\_\_, Dunn Township, MN, legally described in the attached Exhibit A and depicted in the attached Exhibit B (the “Properties”).
- B. The Properties are located adjacent to, and on either side of, a public road right-of-way known as \_\_\_\_\_, which is a Town road and over which the Town Board is the road authority. That portion of said right-of-way located between the Properties, as depicted in the attached Exhibit B, is hereinafter referred to as the “ROW.”
- C. Owner proposes to install [DESCRIPTION OF THE IMPROVEMENT AND LOCATION] (the “Improvement”) that travels in the ROW from \_\_\_\_\_ to \_\_\_\_\_.
- D. Owner has requested permission from the Town to install, locate, operate, use, repair and maintain the Improvement within the ROW.
- E. The Town has agreed to allow the Improvement to remain in the ROW and to allow the location, operation, use, repair and maintenance of the Improvement within the ROW, subject to the terms set forth below, on the condition that the Owner execute this Agreement and comply with its terms and conditions.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged by the parties, and based on the premises and the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

1. License Granted. The Town hereby grants to the Owner, its successors and assigns, (hereinafter, "Owner" includes its successors and assigns unless otherwise noted) subject to all of the terms and conditions of this Agreement, a non-exclusive license for the sole purpose of constructing, installing, locating, operating, using, repairing, maintaining and enjoying the benefits of the Improvement as said Improvement will be located within the ROW, as legally described in the attached Exhibit C (the "Encroachment Area"). The Encroachment Area is limited to that portion of the ROW needed to locate the Improvement and such additional area in the Encroachment Area as may reasonably be needed to keep the Improvement properly maintained.
2. Limitations and Requirements. This license is subject to the following understandings, limitations, requirements, and agreements:
  - (a) This license is limited exclusively to the Improvement as the same is constructed and located within the identified Encroachment Area and does not authorize any other improvements to be constructed or placed in or on the Encroachment Area or any other part of the ROW;
  - (b) The Owner shall be solely responsible for all work and costs to maintain, operate, locate, repair, and otherwise enjoy the Improvement, as may be needed, and all such work in or on the ROW shall be limited to the Encroachment Area;
  - (c) The Owner agrees not to disturb the surface of the road located in the ROW, to obstruct the flow of traffic therein, or to interfere with the public's use of the ROW in any way;
  - (d) If at any time in the construction, location, repair, or maintenance of the Improvement within the Encroachment Area the Owner or its agents cause any damage to the road or land within the ROW, the Owner agrees to repair and restore the road and land within the ROW to the condition it was in prior to said damage or better, at the Owner's sole expense. If the Owner fails, within 30 days after notice from the Town, to fully repair and restore the road and land in the event of damage thereto, the Town shall have the right to make all such repairs and restoration it deems necessary. If the Town determines the condition of the ROW is such that it cannot wait 30 days for the Owner to make the repairs, the Town may immediately take steps to cause the repairs to be made or to otherwise act to protect public safety. The Town shall bill the Owner for all associated costs it incurred related to the work, including the Town's administrative and legal costs. If the Owner or its successors or assigns fail to reimburse the Town for its costs and expenses within 30 days of receipt of an invoice for such costs, the Town shall have the right to recover its costs as provided in this Agreement;

- (e) The Owner agrees to keep the Improvement in good working order;
  - (f) The Owner agrees not to suffer or allow any liens, claims and processes to be placed against the Town's rights to or interest in the ROW as a result of its use of the Encroachment Area including, without limitation, any liens for labor or materials provided for the construction, repair, or maintenance of the Improvement within the Encroachment Area;
  - (g) The Town makes no representations or warranties as to the condition of the ROW or the Encroachment Area, or their suitability of use for the Improvement;
  - (h) The Owner agrees that the use of the ROW is with the Town's permission and is not open, continuous, notorious or in any other manner supportive of a claim of adverse possession, prescriptive easement, or other entitlement to the ROW. The parties acknowledge that this Agreement is a license to use the Encroachment Area for the purpose described herein, it is not a lease or easement and does not confer any estate or interest in real property to the Owner beyond what is specifically recited herein;
  - (i) The Owner assumes all risk with respect to their activities within, and use of, the Encroachment Area. The Town shall not be liable for, and shall not be required to repair, any damage that may occur to the Improvement occasioned by its maintenance or improvement activities within the ROW;
  - (j) The Owner hereby indemnifies and hold harmless the Town for any damage to the Improvement caused by public use of the ROW;
  - (k) Nothing herein shall be construed as limiting the Town's right to use, maintain, improve, reconstruct or relocate the ROW;
  - (l) This Agreement may be recorded in the office of the County Recorder and is intended to run with the land.
3. Town Costs. The Owner shall reimburse the Town for the professional costs it incurs to prepare and negotiate this Agreement.
4. Term and Revocation. This Agreement shall commence on the date first written above and shall continue until terminated by mutual agreement of the parties or until revoked by the Town. The Town may revoke this license and terminate this Agreement at any time, subject to the conditions below, upon providing the Owner at least 180 days' written notice of revocation. The Owner's obligation to remove the Improvement and to indemnify the Town shall survive the revocation or termination of this Agreement. The Town shall not revoke the license granted under this Agreement except upon the Town's determination that the Owner (including successors and assigns) have violated the terms of this Agreement or upon a determination that the ROW is needed for Town right-of-

way purposes inconsistent with the continued use of the Improvement in the Encroachment Area.

5. Removal of Improvements. The Owner shall be responsible, at its own cost, for removing the Improvement from the Encroachment Area upon receipt of a notice of revocation from the Town. The Owner shall, within a reasonable time, given the time of year, remove the Improvement and restore the ROW to a condition consistent with the rest of \_\_\_\_\_. If the Owner fails to timely remove the Improvement, the Town may do so and charge the Owner for its reasonable costs. If the Owner fails to pay the Town's costs within thirty (30) days of the Town having billed for the costs the Town may recover its costs as provided herein.
6. Indemnification. The Owner shall indemnify, hold harmless and defend the Town, its officials, employees, contractors and agents, from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs or expenses (including reasonable attorneys' fees), arising from or in connection with or caused by any act, omission or negligence of the Owner, its contractors, licensees, invitees, agents, servants or employees in connection with the Improvement, the construction, repair, or maintenance of the Improvement, and the Owner's use of the Encroachment Area. Nothing in this Agreement shall be construed as either party waiving any exception from, or limitation on, its liability provided in Minnesota Statutes, chapter 466 or in other law.
7. Cost Recovery. The parties agree that any amounts the Town is entitled to recover from the Owner, or its successors and assigns, under this Agreement may be collected by the Town in any of the following methods, none of which are exclusive, if they remain unpaid for 30 days after billing. The Town may include and recover its collection costs and related attorneys' fees in addition to the unpaid amounts collected hereunder.
  - (a) Service Charge. The parties agree that any unpaid amounts constitute a service charge the Town may collect together with property taxes levied against one or more of the Properties as provided in Minnesota Statutes, section 366.012.
  - (b) Special Assessment. The Town may assess the unpaid amounts on one or more of the Properties. The Owner expressly waives any right to notice of a hearing and waive the right to have the hearing required by Minnesota Statutes, section 429.031 on the special assessment to be levied on their property. The Owner also expressly waives any and all rights to appeal or otherwise contest or challenge the levying of the special assessment against the Properties including, but not limited to, the right to challenge whether the increase in fair market value resulting from the work done by the Town is at least equal to the amount that is being assessed against the Properties and that such increase in fair market value is a special benefit to the Properties. The Owner further agrees that any requirements of Minnesota Statutes, chapter 429 with respect to the adoption or levying of the special assessments are waived to the extent those requirements are not met.

- (c) Lien. The Town may place a lien on one or more of the Properties in accordance with Minnesota Statutes, section 514.67.
- (d) Other Authority. The Town may exercise any other authority available to it under law to collect any unpaid amounts from the Owner and its successors and assigns.
8. Governing Law and Amendments. This Agreement shall be governed by the laws of the State of Minnesota and may only be modified or amended with the written consent of both parties.
9. Binding Agreement. This Agreement constitutes the entire agreement between the parties regarding this matter and is binding on the parties until terminated by mutual agreement or revoked by the Town.
10. Not Construed Against Drafter. The language of this Agreement shall not be interpreted in favor of or against any Party as the drafter of this Agreement.
11. Incorporation. The recitals contained herein and the exhibits attached hereto are incorporated in and made part of this Agreement.
12. Counterparts. For the convenience of the parties, any number of counterparts hereof may be executed and each such executed counterpart shall be deemed an original, but all such counterparts together shall constitute one and the same Agreement.

[Remainder of page intentionally left blank.]

**OWNER**

\_\_\_\_\_ **TRUST**

By: \_\_\_\_\_

Its: Trustee

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF OTTER TAIL)

Acknowledged before me on \_\_\_\_\_, 2023, by \_\_\_\_\_,  
as Trustee for the \_\_\_\_\_ Trust dated \_\_\_\_\_, as owner.

(stamp)

\_\_\_\_\_  
Notary Public



**DUNN TOWNSHIP**

Approved this \_\_\_\_ day of \_\_\_\_\_, 2023.

**BY THE TOWN BOARD**

\_\_\_\_\_  
David L. Johnson, Chairperson

Attest: \_\_\_\_\_  
Sandra Tingelstad, Clerk

STATE OF MINNESOTA )  
  ) ss.  
COUNTY OF OTTER TAIL )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by David L. Johnson and Sandra Tingelstad, the Chairperson and Clerk, respectively, of Dunn Township, Otter Tail County, Minnesota, a public corporation, on behalf of the Town.

\_\_\_\_\_  
Notary Public

This document was drafted by:

Kennedy & Graven, Chartered (JMH)  
700 Fifth Street Towers  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402  
612-337-9300

Return to:  
  
Dunn Township  
47979 East Lake Lizzie Road  
Pelican Rapids, MN 56572

**EXHIBIT A**  
Legal Description of Properties

**EXHIBIT B**

Depiction of the Properties and the ROW

**EXHIBIT C**  
Legal Description of Encroachment Area