

AN ORDINANCE OF THE CITY OF WEST PLAINS, MISSOURI TO ENACT A NEW ARTICLE V OF CHAPTER THIRTY-EIGHT, OF THE CODE OF ORDINANCES OF THE CITY OF WEST PLAINS TITLED STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, RELATED TO RIGHTS-OF-WAY MANAGEMENT.

WHEREAS, the City is authorized to enact certain regulations to manage its rights-of-way and recover its management costs for the same; and

WHEREAS, the City has specifically been granted authority including Section 67.1830 RSMo. to establish permitting requirements for towers and other structures or equipment for wireless communication facilities in the rights-of-way and the City desires to reaffirm its intent to regulate and enforce permitting requirements for the wireless communication facilities in the rights-of-way;

WHEREAS, the City Council legislative findings include that: (a) the ROW is a unique and physically limited resource; (b) the ROW is critical to the travel and transportation of persons and property in the City; (c) the ROW intended for public uses and must be managed and controlled consistent with that intent; and can be partially occupied by Facilities or Utilities and public service entities to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; (d) to avoid disruption of the market and violation of Section 67.5094 RSMo. prohibition on having preferential treatment for wireless facilities based on ownership, wireless facilities in the ROW shall be subject to the same zoning and compensation requirements for all wireless facilities, regardless of location; and (e) such requires adoption of specific additional regulations to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of ROW Users in the public interest; and

WHEREAS, consistent with state and federal law and the City Council's legislative findings, the City Council desires to enact a new ROW Management Code.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST PLAINS, MISSOURI, AS FOLLOWS:

Section 1: That Chapter Thirty-Eight, Streets, Sidewalks and Other Public Places, of the Code is hereby amended by enacting a new Article V, Managing Use and Occupancy of Public Rights-Of-Way, attached hereto as Exhibit A and incorporated herein by reference. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of West Plains, Missouri, and the Sections of this Ordinance may be renumbered to accomplish such intention.

Section 2: The provisions of this Ordinance are severable and if any provision hereof is declared invalid, unconstitutional or unenforceable, such determination shall not affect the validity of the remainder of this Ordinance.

Section 3: This Ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED AND APPROVED THIS \_\_\_ DAY OF \_\_\_\_\_ 2017.

CITY OF WEST PLAINS, MISSOURI

By: \_\_\_\_\_  
MAYOR JACK PAHLMAN

ATTEST:

\_\_\_\_\_  
CITY CLERK MALLORY PREWETT

**EXHIBIT A**

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**ARTICLE V –  
MANAGING USE AND OCCUPANCY OF PUBLIC RIGHTS-OF-WAY**

**Sec. 38-200. – Applicability; Preemption.**

1. *Applicability.* Except as provided for herein and where limited by applicable law, this Article shall apply to all Excavations and use, construction, operation, and Maintenance of Facilities or structures, in the ROW of the City. No Person shall commence or continue with the operation of any Facilities or structures in the ROW except as provided and in compliance with this Article. Because numerous types of users and uses of the ROW may be subject to various or changing regulatory schemes under federal or state law, any such limitation or qualification that may be applicable less than all users and uses of the ROW are not duplicated herein, but are nevertheless incorporated herein, whenever application is so required by law, including but not limited to applicable provisions of Chapter 67 RSMo. and other applicable state and federal law.
  
2. *Preemption.* No provision of this Article shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and furthermore, if any section, subsection, sentence, clause, phrase, or portion of this Article is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

**Sec. 38-201. – Definitions.**

For purposes of this Article, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended.

“Abandoned” means any equipment materials, apparatuses, devices, or Facilities that are: 1) declared abandoned by the owner of such equipment or Facilities, 2) no longer in active use and the owner of such equipment or Facilities fails to respond within thirty (30) days to a written notice sent by the City, or 3) as otherwise may be defined by applicable law.

“Above-ground Facilities” means any Facilities located above the surface of the ground, including the underground supports and foundations for such Facilities.

“Antenna” means any device that transmits and/or receives electromagnetic wireless radio waves or signals for voice, data or video communications purposes including, but not limited to, television, text, AM/FM radio, microwave, cellular telephone, Communications Service or otherwise.

“Applicant” means any Person applying for a ROW Use Agreement, Franchise, License, or any permit or other authorization to install, maintain, repair or otherwise physically access Facilities in the ROW.

“City” means the City of West Plains, Missouri.

“Communications Service” means the transmission via Facilities, in whole or in part, of any writing, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any telecommunications service, enhanced service, information service, or internet service, as such terms are now, or may in the future, be defined under applicable law, and including all instrumentalities, Facilities, apparatus (Communications Facilities), and services (among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include “video services” as defined in § 67.2677 RSMo. The term “Communications Service” does not include the rental of conduit or physical Facilities, which if proposed must be expressly separately requested below.

“Director” means City Administrator.

“Excavation,” “Excavating,” or “Excavate” means any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced, by means of any tools, equipment or explosives, except as excluded by applicable law.

“Excavation Permit” means a permit authorizing Excavation for the construction or installation of Facilities in the City's Rights-of-Way.

“Excess Capacity” means the remaining volume or capacity in any existing or future duct, conduit, manhole, handhold or other Facility, including dark fiber, in the ROW that is used, or authorized by the ROW User to be used, by others.

“Facilities” or “Facility” means any equipment, installation, structure located in the Rights-of-Way, including without limitation, cables, wires, lines, poles, towers, Antenna, conduit facilities, vaults, pedestals, transmitters, meters, fiber, foundations, and any other equipment, infrastructure, structures or obstruction. Facilities shall include lawful vehicular parking or use or lawful minor incidental uses such as driveway aprons, private utility connections or other incidental Facilities which may be permitted by license issued by the Director as provided herein.

“Facilities Maintenance” or “Maintenance” means the construction, installation, repair, upgrade, or other physical access to the Facility in the ROW that does not involve Excavation.

“Facilities Maintenance Permit” means a permit issued by the City for the ROW User to provide Maintenance to its Facilities or otherwise perform work in the ROW that does not involve Excavation but requires physical access to the Facilities in the ROW.

“FCC” means the Federal Communications Commission.

“Franchise” means the rights and obligations extended by the City to certain ROW Users to

occupy the Rights-of-Way for the purpose of providing, transporting or distributing electricity, gas, water, steam, lighting, energy or sewer service to any Person or area within the City's limits and boundaries.

“Governing Body” means the City Council of the City.

“License” means the rights and obligations extended by the City to a Person to use and occupy the Rights-of-Way for the purpose of installing temporary Facilities in the Rights-of-Way or incidental uses such as ingress and egress facilities, lateral utility lines, mailboxes or driveway aprons.

“Person” means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

“Permit” means an Excavation Permit or a Facilities Maintenance Permit.

“Minor incidental uses” means driveway aprons, private utility connections or other incidental Facilities which may be permitted by license issued by the Director as provided herein.

“Reseller Service Provider” means a Person does not have its own Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another ROW User utilizing the Rights-of-Way, and/or by leasing Excess Capacity from an entity having Facilities in the Rights-of-Way.

“Rights-of-Way” or “ROW” means the area on, below, or above a public roadway, highway, street or alleyway in which the City has an ownership interest or right of management, and including such adjacent areas within such public ways within such City control, except as may be limited herein or by law.

“Rights-of-Way Use Agreement” or “ROW Use Agreement” means the rights and obligations extended by the City to a Person occupy the ROW for the purpose of providing any form of Communications Service to any Person or area within the City's limits and boundaries, or any other Person desiring to use the ROW for which a Franchise or License is not applicable, subject to the regulations and requirements herein.

“ROW User” – means all Persons and entities, whether a PSC registered utility or otherwise, owning, controlling, leasing, maintaining, using or installing Facilities in the Rights-of-Way of the City, not otherwise expressly exempted. A ROW User shall not include Reseller Service Provider.

“PSC” means the Missouri Public Service Commission.

“Underground Facilities” mean all Facilities located under the surface of the ground, excluding the underground foundations or supports for Above-ground Facilities.

**Sec. 38-202. – Rights-of-Way Use Agreement, License or Franchise Required; Requirements.**

1. *ROW Use Agreement, License, or Franchise Required.* Except where otherwise authorized or required by applicable law, no Person may own, control, lease, maintain, use, or install Facilities in the Rights-of-Way without a valid Franchise, License, or ROW Use Agreement with the City as provided herein and as follows:
  - A. *Franchise.* A Franchise shall be obtained in conformance with all applicable Franchise procedures for any ROW User seeking to use the Rights-of-Way for the purpose of providing, transporting or distributing electricity, gas, water, steam, lighting, energy, or sewer service to any Person or area within the City's limits and boundaries.
  - B. *ROW Use Agreement.* A ROW Use Agreement shall be required for all other ROW Users, except as provided herein or otherwise required by law. A ROW Use Agreement shall conform to all applicable laws and requirements, including as provided herein, but shall not be subject to procedures applicable only to Franchises.
  - C. *License for Incidental Uses.* Persons desiring to install an incidental use, which includes installation of temporary structures or minor incidental uses in the Rights-of-Way, such as mailboxes, driveway aprons, ingress or egress facilities, and similar incidental uses, that utilize a small area of the Rights-of-Way and serves the principal structure, may be permitted without a Franchise or Rights-of-Way Use Agreement pursuant to a License issued by the Director. The Director shall have discretion to establish such application, requirements, and conditions applicable to such uses consistent with the purposes of this Article or as otherwise established by law. Any Person granted a License hereunder shall be subject to the applicable requirements of this Article.
2. *Grant and Nature of Approval; terms and compensation.* The authority granted by the City in any ROW Use Agreement, License or Franchise shall be for non-exclusive use of the Rights-of-Way. Such grant does not in any way limit the continuing authority of the City through the proper exercise of its statutory powers to adopt and enforce ordinances necessary to provide for the health, safety, and welfare of the public. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other Person, including itself, as it deems appropriate, subject to all applicable laws. The granting of any ROW Use Agreement, License or Franchise shall not be deemed to create any property interest of any kind in favor of the ROW User nor shall it create any relationship of agency, partnership, joint venture, or employment between the parties. All Franchises and ROW Use Agreements shall be approved by ordinance or resolution of the Governing Body on a non-discriminatory basis provided that the Person is in compliance with all applicable requirements. Licenses may be approved by the Director on a non-discriminatory basis provided that the Person is in compliance with all applicable requirements. Each Franchise, License, and ROW Use Agreement shall include terms of use and be deemed to incorporate the terms of this Article and other applicable laws of the City, except as may be expressly stated in such Use Agreement, License or Franchise. The City may require compensation for use of the ROW

or other public property as may be reasonably required by the Governing Body, subject to applicable law.

3. *No Warranty.* The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of Rights-of-Way and shall not be liable for any damage therefrom. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the ROW User. The ROW User shall be solely liable for any damages to Facilities or other property due to Excavation, Facilities Maintenance, or other ROW work performed prior to obtaining the location of all Facilities that have been properly identified prior to such work. The ROW User shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed Facilities without the approval of the owner of the Facilities.
4. *Use of City or Third-Party Facilities.* No ROW Use Agreement, Franchise, or License shall grant the right to use Facilities owned or controlled by the City or a third party, and no such use shall occur, without the express written consent of such party (on file with the City and subject to other applicable requirements), nor shall any Franchise, ROW Agreement or License excuse such Person from first obtaining a pole attachment agreement or other express consent for such right or use before locating on the Facilities controlled or owned by the City or a third party.
5. *Lease Required for Public Lands.* Unless otherwise provided, use or installation of any Facilities in non-Rights-of-Way public property of the City shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the City with such reasonable terms as the City may require.
6. *Condition Precedent to Permit.* Unless otherwise required by applicable law, no Permit may be issued unless or until such Person has a valid Franchise, License or Rights-of-Way Use Agreement with the City.
7. *Transferability.* Except as provided in this Article or as otherwise required by law, no Franchise, ROW Use Agreement, or Permit may be transferred or assigned without the written application to and consent of the City based on the requirements and policies of this Article. The City shall not unreasonably withhold its consent as provided herein, but any costs incurred shall be paid by the ROW User to the extent allowed by law.
8. *Forfeiture of Agreement and Privilege.* In case of failure on the part of the ROW User, including its successors and assigns to comply with any of the provisions of this Article or a ROW Use Agreement, Franchise, License or other authorization, or if the ROW User, its successors and assigns should do or cause to be done any act or thing prohibited by or in violation of this Article or the terms of the authorization of such use, or otherwise loses authority to provide its service in the City, the ROW User, its successors and assigns shall forfeit all rights and privileges permitted by this Article and any ROW Use Agreement, Franchise, License or other authorization, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall



carry out the following proceedings: Before the City declares the forfeiture or revocation of a Rights-of-Way Use Agreement, Franchise, License or other authorization, it shall first serve a written notice upon the Person setting forth in detail the neglect or failure complained of, and the Person shall have thirty (30) days thereafter, or such other reasonable period established by the Governing Body, in which to cure the default by complying with the conditions of the ROW Use Agreement, Franchise, License or other authorization or requirement and fully remedying any default or violation. If at the end of such period the City determines that the conditions have not been complied with and that the Person did not reasonably and in the public interest require more than thirty (30) days to cure the default, the City shall take action by an affirmative vote of the Governing Body present at the meeting and voting to terminate the ROW Use Agreement, Franchise, License or other authorization, setting out the grounds upon which said agreement or other authorization is to be forfeited or revoked. Nothing herein shall prevent the City from invoking any other remedy or from declaring immediate forfeiture where the default is incapable of being cured by the ROW User, including where such defaults or violations have repeatedly occurred.

**Sec. 38-203. – Application for Franchise or ROW Use Agreement Required.**

1. *Application Required.* An application for a Franchise or ROW Use Agreement, on City forms, shall be presented to the Director in writing and shall include all such information as is required by this Section. The ROW User shall be responsible for accurately maintaining the information in the application during the term of any Franchise or ROW Use Agreement and shall be responsible for all costs incurred by the City due to the failure to provide or maintain as accurate any application information required herein.
2. *Application Deposit Fee.* An application deposit fee for review, documentation, and approval of such Use Agreement or Franchise shall be established by the City to recover any actual costs anticipated and incurred by the City in reviewing, documenting, or negotiating such ROW Use Agreement or Franchise, provided that no costs shall be included if such inclusion is prohibited by applicable law as to that Person. If the actual costs are thereafter determined to be less than the application deposit fee, such amount shall be returned to the Person, after written request therefrom; if the actual costs exceed the application deposit fee, such Person shall pay such additional amount prior to issuance of any final City approval after written notice from the City.
3. *Application Form.* An Applicant shall submit a completed application for a Franchise or Rights-of-Way Use Agreement on such form provided by the City, which shall include information necessary to determine compliance with this Article including, but not limited to:
  - A. Identity and legal status of the Applicant;
  - B. Name, address, telephone number, and email address of each officer, agent or employee responsible for the accuracy of the application. Each officer, agent or employee shall be familiar with the local Facilities of the Applicant, shall be the Person(s) to whom notices shall be sent and shall be responsible for facilitating all necessary communications including, but not limited to, certification to the City of any material changes to the

information provided in such completed application during the term of any Franchise or ROW Use Agreement;

- C. Name, address, telephone number, and email address of the local representative of the Applicant who shall be available at all times to act on behalf of the Applicant in the event of an emergency;
  - D. Proof of any necessary permit, license, certification, grant, registration, franchise, agreement or any other authorization required by any appropriate governmental entity including, but not limited to, the FCC or the PSC;
  - E. Description of the Applicant's intended use of the Rights-of-Way, including such information as to proposed services so as to determine the applicable, Federal, State and local regulatory provisions as may apply to such User;
  - F. A list of authorized agents, contractors and subcontractors eligible to obtain Permits on behalf of the Applicant. The list may be updated to add such Person at the time of Permit application if the updated information on the application is submitted by an authorized representative of the Applicant;
  - G. Information sufficient to determine the amount of net assets of the Applicant;
  - H. Information sufficient to determine whether the Applicant is subject under applicable law to franchising, service regulation, payment of compensation for the use of the Rights-of-Way, taxation or other requirements of the City;
  - I. Any request including one or more antennas shall also include all requirements for installation of antennas and wireless facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (§§ 67.5090 *et. seq.* RSMo.) or other applicable; and
  - J. Such other information as may be reasonably required by the Director to determine requirements and compliance with applicable regulation.
4. *Standard for Approval or Renewal of ROW Use Agreements.* In reviewing an application for a new or renewal ROW Use Agreement, the City may consider prior conduct of the Person in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. The City may deny or condition any ROW Use Agreement or Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. Applications for ROW Use Agreements or Franchises may be approved, denied, or approved with conditions consistent with requirements of applicable law or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Article.
5. *Approval Process.* After submission by the Applicant of a duly executed and completed

application and application fee and executed Franchise or Rights-of-Way Use Agreement as may be provided by the Director or as modified by the Director in review of the specific circumstances of the application, all in conformity with the requirements of this Article and all applicable laws, the Director shall submit such Agreement to the Governing Body for approval. Upon determining compliance with this Article, the Governing Body may authorize execution of the Franchise or ROW Use Agreement (or a modified Agreement otherwise acceptable to the City consistent with the purposes of this Article) and such executed Franchise or ROW Use Agreement shall constitute consent to use the Rights-of-Way; provided that nothing herein shall preclude the rejection or modification of any executed Franchise or ROW Use Agreement submitted to the City to the extent applicable law does not prohibit such rejection or modification, including where necessary to reasonably and in a uniform or non-discriminatory manner reflect the distinct engineering, construction, operation, maintenance, public work or safety requirements applicable to the Person.

**Sec. 38-204. – Use by Third-Parties and Reseller Service Provider Requirements.**

1. *ROW User Authority; Obligations.* A ROW User is authorized, subject to other applicable requirements, to sell or transfer use of Excess Capacity to Reseller Service Providers or other entities, provided that such entity either: (1) has no right to and does not physically access the Facilities while in the ROW, or (2) has a separate Franchise or ROW Use Agreement or other written agreement or consent authorizing the same with the City. In the event of such sale or transfer to a Reseller Service Provider, the ROW User shall notify the City of the same prior to such action so that the City can review compliance regarding doing business in the City. This notice shall not relieve the Reseller Service Provider from its own obligation to register, pay taxes, and obtain any necessary authorization from the City.
2. *Registration of Reseller Service Providers and Exempt Entities.*
  - A. *Reseller Service Provider Registration.* Prior to providing service (including sale or transfer of product or service) within the City or acquiring or using Excess Capacity through Facilities in the City, Reseller Service Providers shall register with the City the intent to do so and shall include: (1) identity of the Reseller Service Provider and certification of the applicable regulatory approval necessary to undertake such service, (2) the name of the provider(s) owning the Facilities within the City through which the service shall be transmitted; (3) name, address, telephone number, and email address of an officer, agent or employee responsible for the accuracy of the registration, and contact information for a person to speak on behalf of the Reseller Service Provider, if different; and (4) such other information as requested by the Director. It shall be unlawful for any Reseller Service Provider not having its own Rights-of-Way Use Agreement, License, or Franchise to have its own Facilities in the Rights-of-Way, have the right to physically access the Facilities in the Rights-of-Way, or to transmit service for commercial purposes through any Facility owned by a Person without a valid Rights-of-Way Use Agreement or other City authorization for such Facilities. It shall be the duty of a Reseller Service Provider to report any changes to its registration information within thirty (30) days of such change.

- B. *Exempt Entity Registration.* Prior to providing service within the City, transmitting communications through Facilities in the City, or constructing in the Rights-of-Way, entities not required to obtain a Franchise, License, or Rights-of-Way Use Agreement due to superseding federal or state law, shall nevertheless be required to register with the City by providing the City the information required by the Rights-of-Way application in Section 38.204. It shall be the duty of such exempt entity to report any changes to such registration information within thirty (30) days of such change.
3. *Reseller Service Provider Obligations.* Any Reseller Service Provider that buys or leases Excess Capacity or other services for resale from a ROW User, shall be subject to the terms and conditions of this Article, including the requirement to first register with the City and obtain any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, PSC or the FCC. If a Person through such lease or purchase owns Facilities in the Rights-of-Way or has the right to physically access or maintain any Facilities in the Rights-of-Way, then such Person no longer meets the definition of a Reseller Service Provider and is required to first obtain a Franchise, License, or Rights-of-Way Use Agreement as required herein.

**Sec. 38-205. – Permit Required; Requirements.**

1. *Excavation Permit Required.* Except as otherwise provided herein, no ROW User or other Person shall perform Excavation work in the ROW without an Excavation Permit. Any Person desiring to Excavate in the ROW shall first apply for an Excavation Permit, on an application form provided by the City, and submit the application fee and pay all applicable fees to obtain an Excavation Permit, in addition to any other building permit, license, easement, or other authorization required by law, unless such Excavation must be performed on an emergency basis as provided herein. The Director is authorized to draft an application form consistent with the requirements of this Article, including the information required for a Franchise or ROW Use Agreement in addition to: an engineering site plan may be required showing the proposed location of the Facilities work, the length, size, type, and proposed depth of any conduit or any other enclosures, the relationship of all Facilities to all existing streets, the number of road crossings, the number of entrance drive crossings, the locations of existing ROW Facilities, and the number and character of each proposed cut or Excavation. A property survey may be required at the Directors request. An Excavation Permit should be obtained for each project unless otherwise provided for in this Article. A separate special permit or lease shall be required for Excavation in or use of any real property interest of the City that is not ROW. All Excavation Permits shall expire after sixty (60) days from the date of issuance, unless otherwise specified in the Excavation Permit. An Applicant whose Excavation Permit application has been withdrawn, abandoned or denied for failure to comply with this Article shall not be refunded the application fee.
2. *Local Representative Designation.* Each ROW User shall designate a local person familiar with the Facilities that shall act as a local agent for the ROW User and shall be responsible for satisfying information requirements of this Article. The ROW User shall present to the City the agent's name, address, telephone number, and email address. The agent shall be the

person to whom relocation notices and other such notices shall be sent, and with whom rests the responsibility to facilitate all necessary communications. The ROW User shall be responsible for all costs incurred by the City due to the failure to provide such information to the City.

3. *Facilities Maintenance Permit; Exemptions.* No Person shall perform Facilities Maintenance in the Rights-of-Way without first obtaining a Facilities Maintenance Permit from the Director, except where such Facilities Maintenance is expressly authorized by an existing valid Excavation Permit for the applicable Maintenance location or is exempt herein. In addition to the conditions set forth below, conditions of a Facilities Maintenance Permit shall be as established in such Maintenance Permit and shall include requirements of notice to the City whenever traffic lanes are to be obstructed, manhole covers or safety barriers removed or altered, temporary or other barricades installed, and other events set forth in the Facilities Maintenance Permit. All Facilities Maintenance Permits shall expire after sixty (60) days from the date of issuance, unless otherwise specified in such Maintenance Permit. A Facilities Maintenance Permit shall not be required for:
  - A. ROW Users performing routine Maintenance which does not require Excavation, does not disrupt traffic or pedestrians, and requires no more than four (4) hours to complete, provided that at minimum two (2) hours' notice is provided to the City during normal business hours;
  - B. Emergency Situations as more fully described in Subsection 5 below; or
  - C. Contractors working on the construction or reconstruction of public improvements and which are operating pursuant to a contract with the City for such construction.
4. *Bulk or Individual Permits.* The Director may issue individual Permits for specific proposed Excavations or Facilities Maintenance or may issue bulk Permits covering multiple projects, types of actions, or locations during a period of up to one (1) year that may be thereafter performed during that Permit year. Where a bulk Permit is proposed, the ROW User shall provide sufficient information regarding the types of actions and locations to be approved so as to allow the Director to condition and ensure compliance with safety and other regulations herein.
5. *Emergencies.* In case of an emergency requiring immediate attention to remedy defects, and in order to prevent loss or damage to Persons or property, it shall be sufficient that the Person making such Excavation or performing such Facilities Maintenance obtain the necessary Permit as soon as possible and may proceed without a Permit when such Permit cannot reasonably be obtained before starting such emergency Excavation or Facilities Maintenance. Notice to the City of the emergency shall be provided at the earliest possible time and the appropriate Permit shall be obtained as soon as reasonably possible, and not later than five (5) business days, or as otherwise directed by the City. In the event the City becomes aware of an emergency requiring Facilities work, the City shall attempt to contact a representative of each ROW User affected, or potentially affected, by the emergency work. If no response is received by a particular ROW User to whom contact is attempted, the Director may take

whatever action he/she deems necessary to respond to the emergency, the cost of which shall be borne by the Person whose action or inaction occasioned the emergency or by the ROW User if the emergency was occasioned by an act of nature.

6. *Law Compliance Incorporation.* Every Permit issued hereunder shall incorporate the requirements and terms of this Article, and all applicable ordinances, to the extent permitted by law. The ROW User shall perform such work in accordance with the issued permit and applicable provisions of this Article and any subsequent ordinances or regulations that may be adopted by the City regarding Excavation or Maintenance work. In addition, all ROW Users shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to Permits and fees, sidewalk and pavement cuts, Facility location, construction coordination, surface Restoration, and other requirements on the use of the Rights-of-Way. A ROW User shall perform all Excavations or Facilities Maintenance in full compliance with all applicable engineering codes adopted or approved by the City, and in accordance with applicable statutes of the State of Missouri, and the rules and regulations of the PSC, FCC, and any other local, state or federal agency having jurisdiction over the parties. The Row User shall comply with the Excavation requirements of Missouri One Call established by §§ 319.010 *et. seq.* RSMo., as amended. A ROW User shall be responsible for all Excavations or Facilities Maintenance done in the Rights-of-Way on its behalf, regardless of by whom the Excavation or Facilities Maintenance is done.
7. *Stop Work Orders.* Any ROW User found to be working without a required Permit, failing to provide for required safety and traffic control measures, or otherwise violating any requirements herein, may be directed to stop work until the necessary Permit is obtained, the appropriate measures are implemented, or violations are discontinued or remedied in accordance with this Article. Except in cases of an Emergency or with approval of the Director, no Rights-of-Way Excavation or Work may be done in violation of a stop work order issued by the Director.
8. *Plans Required.* At least thirty (30) days before the beginning of any installation, removal, or relocation of its Facilities, the ROW User shall submit detailed plans of the proposed action to the Director. The Director shall, within thirty (30) days of receipt of such plans, either approve the plans or inform the ROW User of the reasons for disapproval.
9. *Subsurface Engineering Survey.* Unless determined by the Director as unnecessary, prior to the commencement of any construction or alteration of its Facilities located in the Rights-of-Way, the ROW User shall furnish to the Director a subsurface utility engineering study on the proposed route of construction, expansion, or alteration, which shall consist of the following tasks:
  - A. All available plans, plats, and other location data indicating the existence and approximate location of all Facilities along the proposed construction route;
  - B. Completion of a visual survey and written record of the location and dimensions of any Above-ground features of any Underground Facilities along the proposed construction

route including, but not limited to, manholes, pedestals, valve boxes, utility boxes, posts, and visible street cut repairs;

- C. Plot and incorporate the data obtained from completion of tasks (a) and (b) above onto the provider's proposed Facilities route maps, plan sheets, and GIS files; and
- D. Provide all such data collected into a GIS file (or other format as may be identified by the Director) compatible with that used by the Director and deliver a copy to the Director.

10. *Permit Specific Conditions.* The Director may also impose reasonable conditions upon the issuance of a Permit and the performance of Excavation and ROW work in order to protect the public health, safety, and welfare, to ensure the structural integrity of the Rights-of-Way, to protect the property and safety of other users of the Rights-of-Way, and to minimize the disruption and inconvenience to the traveling public. Such reasonable conditions may include, but are not limited to:

- A. The amount of Excavation or Facilities Maintenance which may occur at one (1) time and the amount of Rights-of-Way which may be obstructed during construction;
- B. The number or size of conduits or other Facilities that may be installed by each ROW User based on the reasonable needs to ensure that no one (1) ROW User may unreasonably consume a disproportionate amount of the available Rights-of-Way to deter competition or deprive the public or others of the reasonable use of the Rights-of-Way;
- C. Posting of an additional or larger performance and maintenance bond for additional Facilities, except as otherwise provided in Section 38.214 hereof, when the established amount is reasonably determined to be insufficient;
- D. The design, location, and nature of all Facilities, based on a nondiscriminatory basis in ensuring the safe, efficient, and appropriate use of the ROW consistent with this Article and applicable law; and
- E. Other reasonable conditions regarding the timing, safety precautions, space, or specific implementation of the specific work proposed.
- F. Traffic control plan may be required.

**Sec. 38-206. – Excavation Details; Manner of Work Generally.**

- 1. *Open Excavations; Street-Plate Bridging.* The ROW User shall not permit an Excavation to remain open or Facilities Maintenance actions to continue in the Rights-of-Way longer than is necessary to complete the repair, installation or action, and in no event may an Excavation or Facilities Maintenance remain open or continue beyond the expiration of the Excavation Permit or any approved extension. Unless otherwise approved by the Director in writing, all Excavations shall be filled in or covered at the end of each working day. Street plate bridging

(SPB) to cover open Excavations shall be authorized subject to requirements contained in the standard specifications.

2. *Interference Control.* The ROW User Excavating in the Rights-of-Way shall cause the Excavation to be done with the least possible injury to the pavement, sidewalk, curbing, parkway, or other surface and shall place the materials from the Excavation where they will cause the least possible inconvenience to the public and permit the uninterrupted passage of water along the gutters. The width of the Excavation shall be no greater than is necessary for doing the work.
3. *Erosion Control.* Before new Excavation or construction is commenced and until sodding, planting, concreting, paving, or other final surfacing is in place, which will avoid washing or spreading of dirt and mud onto other property, sidewalks, curbs, gutters, streets, and the Rights-of-Way, the ROW User shall erect and maintain approved temporary erosion control measures to prevent such washing or spreading of materials. At the end of each day and as required throughout the day during the course of Excavating or construction, dirt and mud on the sidewalks, curbs, gutters, streets, and the Rights-of-Way resulting from work must be removed.
4. *Cleaning up; Removing Mud from Vehicles.* The Person doing the Excavating or other ROW work under the requirements of this Article shall immediately, after the work is completed and the refill is made, clean up and haul away all surplus earth, rock, debris, or other rubbish. The ROW User shall remove dirt from the wheels of all vehicles leaving any site where mud has accumulated on the wheels before such vehicles enter any public street of the City. It shall be unlawful for any ROW User to permit any vehicles to leave such place with mud on the wheels which is liable to be dispersed over any public street of the City and it shall be unlawful for any driver of a vehicle to enter upon the public streets of the City without having removed or had mud removed from the wheels prior to such entry. Each occurrence shall be a separate offense. The ROW User shall be responsible for damages to the City, or its contractors, resulting from such failure and shall indemnify the City and its contractors as provided herein and pay the costs for remedying such failure.
5. *Spilling Materials onto Rights-of-Ways.* The ROW User shall load materials on any vehicle so no portion thereof shall be spilled or be liable to be spilled on the streets of the City. It shall be unlawful for any ROW User to permit any vehicle to enter upon the streets of the City loaded in violation of this provision and it shall be unlawful for any Person to operate a vehicle on the streets of the City which is loaded in such manner that it spills or is liable to spill mud, dirt, or other materials on the streets.
6. *Barricades and Safety Devices.* The ROW User assumes the sole responsibility for maintaining proper barricades, plates, safety fencing, and/or lights as required from the time of opening of the ROW until the Excavation is surfaced and opened for travel. All Excavations and Facilities Maintenance that disturb traffic or pedestrian travel shall be barricaded in such a manner as to protect both pedestrians and vehicular traffic. Such Excavations, Facilities Maintenance, and barricades shall be lighted at night with danger



signals in such a manner that all traffic may be warned of the existence and location of such Excavations, Facilities Maintenance, and barricades.

7. *Traffic Control.* Whenever there is an Excavation or Facilities Maintenance by the ROW User, the ROW User shall be responsible for providing adequate traffic control to the surrounding area as determined by the Director. All traffic control devices shall be in compliance with the current version of the standard specifications and the Manual of Traffic Control Devices (MUTCD), unless otherwise agreed to by the City. All surplus Excavation materials, tools, or supplies at the site of the Excavation or Facilities Maintenance shall be barricaded and lighted at night in the manner described in this Section. In the event the Excavation or Facilities Maintenance is not completed in a reasonable period of time, the ROW User may be liable for actual damages to the City for delay caused by the ROW User pursuant to this Article. The Director may require a traffic control plan.
8. *Hours of Activity.* Nonemergency Excavations or Facilities Maintenance effecting traffic on arterial and collector streets may not be performed during the hours of 7:00 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m., in order to minimize disruption of traffic flow. The ROW User shall perform Excavations or Facilities Maintenance on the Rights-of-Way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood, and shall not work between the hours of 11:00 p.m. and 6:00 a.m.
9. *Methods of Pavement Removal, Excavation, and Backfill.* The Person making an Excavation shall abide by the following conditions:
  - A. The initial cut in a street pavement shall be equal to the width of the trench with the option of being jack hammered or saw cut. The final cut in an asphaltic concrete street pavement shall be one (1) foot wider than the trench width and shall be made only by saw cutting of the pavement.
  - B. For cuts in concrete paved streets, concrete pavement replacement shall be full slab length (joint-to-joint) and full slab width (curb or gutter to street centerline) unless specifically authorized otherwise by the Director.
  - C. Refill Excavation with suitable unfrozen materials free from trash, rubbish, vegetative and deleterious material, and/or rocks over three (3) inches in maximum dimension, in layers not exceeding eight (8) inches in depth and each layer shall be compacted thoroughly.
  - D. Compaction shall meet or exceed the most current version of the standards and conditions of the City and the ASTM International (American Society for Testing and Materials). If inspections were not requested or a valid Excavation Permit obtained, the City may require compaction testing by a registered professional engineer licensed in the State of Missouri at the ROW User's expense.
10. *Repairs when Defective.* All violations of the standards and requirements herein shall be corrected within the time specified in the issuance of a written notice to correct. Action to

correct violations which require immediate action shall be taken upon notification to the Person by the City. Every Person failing to comply with the oral or written notice shall be deemed in violation of this Article. If the action is not taken within the time period specified by notice and in addition to any other remedy, the Director may have the violation, including but not limited to, the existence of mud or debris on the Rights-of-Way, immediately remedied and the City's costs shall be reimbursed by the ROW User through the surety or otherwise. Nothing in this Subsection shall prevent prosecution of violation of this Article in the absence or in addition to the issuance of notice of violation.

11. *Inspection and Acceptance of Excavations after Backfilling and Settlement.* When an Excavation has been made in the ROW, and after the same has been properly backfilled, the Person making the Excavation shall notify the Director that the same is ready for final repair. The Director or his duly authorized agent shall inspect the same. The judgment of the Director or his authorized agent as to when an Excavation has been properly backfilled to permit final repair shall be conclusive.
12. *Final Repair of Excavations; Specifications; City Restoration.* After inspection and acceptance of Excavation by the Director, the Person shall be responsible for Restoration of the affected Rights-of-Way, including pavement and its foundation, pursuant to and in accordance with the standard and conditions of the City, to be completed prior to expiration of the Excavation Permit. If the Excavation is not properly completed and Restored by the expiration of the Excavation Permit, the City may, in addition to all other remedies, perform the Restoration and completion and obtain reimbursement for such costs from the ROW User or surety, provided that if the City provides an invoice to the ROW User for such Restoration, such invoice shall be paid in not more than thirty (30) days of such invoice.
13. *Notice of Completion.* The ROW User shall notify the Director upon completion of the Excavation or Facilities Maintenance authorized by the Excavation Permit.
14. *Guarantee of Work.* Every Person to whom an Excavation Permit has been granted or otherwise performed Excavations, shall guarantee for a period of four (4) years the Restoration of the Rights-of-Way in the area where such Person conducted an Excavation and performed the Restoration. Such Person shall guarantee and pay for the Restoration of the Rights-of-Way against sagging, buckling, deterioration, and other premature failures of the Restoration. During said guarantee period, the ROW User shall, upon notification from the Director, correct all Restoration, Excavation, or Work to the extent necessary, using any method as required by the Director. Said Excavation or Work shall be completed within a reasonable time, not to exceed thirty (30) calendar days of the receipt of notice from the Director (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). In the event the ROW User is required to perform new Restoration pursuant to the foregoing guarantee, the Director shall have the authority to extend the guarantee period for such new Restoration for up to an additional forty-eight (48) months, or other greater period allowed by law, from the date of the new Restoration, if the Director determines there was action by the ROW User not to comply with the conditions of the

Excavation Permit and any Restoration requirements. The guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

**Sec. 38-207. – Permit Denial.**

1. The Director may deny an application for a Permit if:
  - A. To the extent permitted by law, the Person does not have a current registration Franchise, License, or Rights-of-Way Use Agreement, or other authorization with the City.
  - B. The ROW User, or any Persons acting on the behalf of the ROW User, fails to provide all the necessary information requested by the City for managing the Rights-of-Way.
  - C. The ROW User, or any Persons acting on the behalf of the ROW User, including contractors or subcontractors, has a history of noncompliance or permitting noncompliance within the City. For purposes of this Section, "history of noncompliance or permitting noncompliance within the City" shall include where the ROW User, or any Persons acting on the behalf of the ROW User, including contractors or subcontractors, has failed to return the Rights-of-Way to its previous condition under a previous Permit, or has violated terms, or is in violation of terms of the ROW Users' Franchise, Rights-of-Way Use Agreement, License, or other authorization with the City.
  - D. The City has provided the ROW User with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the Excavation or Facilities Maintenance identified in the Permit application, or a reasonable alternative route that will not result in additional installation expense of more than ten (10) percent to the ROW User or a declination of service quality.
  - E. Any other violations or noncompliance caused by or through the ROW User of any applicable City, state or federal law or regulation, except where such violation is prohibited by applicable law for being a basis for denial.
  - F. The City determines that the denial is necessary to protect the public health and safety, provided that the authority of the City does not extend to those items under the jurisdiction of the PSC, such denial shall not interfere with a ROW User's right of eminent domain of private property, and such denials shall only be imposed on a competitively neutral and nondiscriminatory basis. In determining whether denial of a Permit application is necessary to protect the public health and safety, the Director may consider one (1) or more of the following factors:
    - i. The extent to which the Rights-of-Way space where the Permit is sought is available, including the consideration of competing demands for the particular space in the Rights-of-Way, or other general conditions of the Rights-of-Way;
    - ii. The applicability of any ordinance, code provision, or other regulations that affects the location of Facilities in the Rights-of-Way;

- iii. The degree and nature of disruption to surrounding communities and businesses that will result from the use of that part of the Rights-of-Way, including whether the issuance of a Permit for the particular dates and/or times requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event;
- iv. The area is environmentally sensitive as defined by state statute or federal law or is a historic district designated by City ordinance; and
- v. The failure to comply with applicable City ordinances, or any other violation, unsafe conditions, or damage or threatened harm to the Rights-of-Way or public, except where such circumstance would otherwise not constitute a lawful basis for denial of a Permit.

**Sec. 38-208. – Permit Revocation.**

The Director may, after reasonable notice and an opportunity to cure, revoke a Permit without fee refund, but only in the event of a substantial breach of the terms and material conditions of the Permit. A substantial breach by a ROW User includes but is not limited to:

- 1. A material violation of a provision of the Permit;
- 2. An evasion or attempt to evade any material provision of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- 3. A material misrepresentation of fact in the Permit application;
- 4. A failure to complete work by the date specified in the Permit, unless a Permit extension is obtained, or unless the failure to complete the work is due to reasons beyond the ROW User's control;
- 5. A failure to correct, within the time specified by the City, work that does not conform to applicable national safety codes, industry construction standards, or local safety codes, upon inspection and notification by the City of the faulty condition; or
- 6. Such other lawful reasons.

**Sec. 38-209. – Location, Design, and Mapping of Facilities.**

- 1. *Exclusion of Certain Locations/Facilities.* Prior to its installation of any Facilities in the Rights-of-Way, and after Applicant provides the City with its proposed plans, the City may, in its discretion, designate certain locations or Facilities in the Rights-of-Way to be excluded from use by the ROW User, including but not limited to, ornamental or similar specially-designed street lights or other Facilities or locations which, in the reasonable judgment of the Director, do not have electrical service adequate or appropriate for the provider's Facilities, or cannot safely bear the weight or wind loading thereof, or any other Facility or location that

in the reasonable judgment of the Director is incompatible with the proposed Facilities, or would be rendered unsafe or unstable by the installation. The Director may further exclude certain other Facilities that have been designated or planned for other use or are not otherwise available for use by the ROW User due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with the reasonable requirements of the ROW User, the City will cooperate in good faith with the ROW User to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for the ROW User.

2. *Location, Type, and Design of Facilities Subject to Approval.*

- A. *Review Required.* The design, location, and nature of all Facilities shall be subject to the review and approval of the Director. Such review shall be on a non-discriminatory basis in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of this Article shall be placed underground, and in conduit, where capable. City height limitations, applicable zoning restrictions, and general City policies with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.
- B. *Underground Facility Location.* All underground mains and service lines with ancillary appurtenances thereto shall, wherever practicable, be placed between the curb or pavement edge and sidewalk line in the section of the street known as the parkway. Where the pavement and sidewalk occupy the entire street, the Underground Facilities shall be located under the sidewalk, unless otherwise directed by the City.
- C. *Above-ground Facilities.* All new Facilities may be located Above-ground only if approved by the Governing Body for good cause. Unless extraordinary circumstances exist, good cause shall not include authorization for Above-ground Facilities requiring new poles or major modification to existing Above-ground structures. Above-ground pedestals, vaults, cabinets, or other Facilities may be installed only if approved by the City where alternative Underground Facilities are not feasible or where underground requirements are otherwise waived pursuant to the provisions of this Subsection. Existing conduit shall be used where feasible and available. Where reasonable and appropriate and where adequate Rights-of-Way exists, the ROW User shall place Above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and economically feasible.
- D. *Use of Existing Facilities Required; Exceptions.* All new Facilities or structures shall collocate on existing poles or within existing conduit, trenches, or other Facilities to minimize unnecessary use of Rights-of-Way space, reduce potential existing or future interference and obstructions, and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and license appropriate private or public uses of the Rights-of-Way in the public interest (except where preempted by law or where good

cause is established as determined by the City applying these objectives). Where existing poles or Facilities are available, or exist at or near the proposed use, unless otherwise approved, the Applicant must either use such Facilities or file a written request verified by the Applicant for exception specifying the specific reasons why such Facilities are not available or feasible to be used and addressing the objectives hereof.

- E. *Wireless Antennas and Facilities.* Pursuant to City authority, including by Section 67.1830 RSMo., and due to the limited space in the City's Rights-of-Way, and to minimize obstructions and interference with the use of the Rights-of-Way by the public, and to ensure traffic safety, preserve property values, and enforce the public policy to maintain neutrality as to ownership of wireless locations, wireless Facilities or structures and equipment shall not be permitted in the Rights-of-Way on new structures unless the Governing Body determines on a non-discriminatory basis such proposed application is in the public interest addressing all concerns stated herein and provided such use and location has received prior, separate zoning authorization to the extent permitted by law. In such circumstances where any new wireless application is permitted in the Rights-of-Way, such uses shall be subject to reasonable regulations, including any applicable specifications, compensation, and other terms established by the City in such approval or agreements. Wireless antennas and related Facilities on existing structures or underground may be permitted in the same manner as other uses in the ROW but subject to approval, denial or condition relating to location, design, height, appearance, safety, and such other zoning, building specification or other regulations, except as may be limited by law.
  
- F. *Limited Space.* The City shall have the power to prohibit or limit the placement of new or additional equipment in the Rights-of-Way if there is insufficient space to accommodate all of the requests of potential ROW Users. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Rights-of-Way, but shall be guided primarily by considerations of the public interest, public health and safety, the public's priority needs for the particular service, the condition of the Rights-of-Way, the time of year with respect to essential utilities, the protection of existing equipment in the Rights-of-Way, and future City plans for public improvements and development projects which are in the public interest.
  
- G. *Limit Number of ROW Users.* To the extent not prohibited by law, the City may limit the number of users in the Rights-of-Way in a competitively neutral manner, based upon, but not necessarily limited to, specific local considerations such as:
  - i. The capacity of the Rights-of-Way to accommodate current or future Facilities, public improvements, or public use;
  - ii. The impact on the community of the volume of Facilities in the Rights-of-Way;
  - iii. The disruption arising from the use of or numerous Excavations of the Rights-of-Way; or

- iv. Any other consideration based upon the interests of the public safety and welfare.
3. *Mapping of Facilities.* Upon completion of the ROW work involving installation of new Facilities, the ROW User shall supply the City copies of as-built and detailed maps showing the exact location of Facilities installed in the ROW.

**Sec. 38-210. – No Interference.**

1. *No Interference.* All ROW Users shall construct and maintain their Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided or as determined by the Director, the ROW User shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and Maintenance by the ROW User or its subcontractors shall be performed in accordance with industry standards. The ROW User shall, in the performance of any Excavation, Facilities Maintenance, Relocation and/or removal of any of its Facilities, limit such work to that necessary for efficient operation and so as not to interfere with other users of the Rights-of-Way. The ROW User shall not interfere with or alter the Facilities of the City or other ROW User without their consent and shall be solely responsible for such.
2. *Priority of Uses.* ROW User's use shall be in all situations subordinate and subject to public municipal use. In situations where multiple users are within the same location, first the municipal use shall have priority followed by Persons with a valid and current Rights-of-Way Use Agreement with the City, followed by all others.
3. *Site Triangle Maintained.* ROW Users shall comply with the requirements of site triangles and nothing shall be erected, placed, planted or allowed to grow in such a manner as to materially impede vision within the triangular area in Section 50-113 of this code.

**Sec. 38-211. – ROW User Responsibilities & Regulations.**

1. *Maintenance of Facilities.* Each Row User shall maintain its Facilities in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements.
2. *Advertising, Signs, or Extraneous Markings.* ROW Users shall not place or cause to be placed any sort of signs, advertisements, or other extraneous markings, whether relating to the ROW User or any other Person on the Rights-of-Way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the Facilities for service, repair, Maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.
3. *Tree and Landscape Protection.* Unless otherwise approved in writing by the City, a ROW User shall neither remove, cut nor damage any trees or other landscaping, or their roots, in and along the ROW and public places of the City. Tree trimming and landscape pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and

pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City. In the event the Person severely disturbs or damages any tree or other landscaping in the Rights-of-Way to the detriment of its health and safety, the Person shall be required to remove at the Person's cost. The location, size, and species of any replacement landscaping shall be as approved by the Director, unless the Director approves an equivalent monetary payment in lieu of replanting. In reviewing any Permit application, the City may require the Applicant to directionally bore around or otherwise avoid disturbance to any tree or landscaping, existing Facility, or other protected area in the Rights-of-Way.

4. *Responsible for Subcontractors.* If Excavation or Facilities Maintenance is being done for the ROW User by another Person, a subcontractor or otherwise, the ROW User shall be responsible for ensuring that the Excavation or Facilities Maintenance of said Person is performed consistent with its Permit and applicable law (including that the contractor shall be properly licensed under the State of Missouri and local ordinances) and shall be responsible for promptly correcting acts or omissions by said Person.
5. *Joint Permit Applications.* Applicants may apply jointly for Permits in the Rights-of-Way at the same time and place. All joint Applicants must jointly execute all required documents and shall be jointly and severally liable for all duties and obligations hereunder. Persons who apply jointly may share in the payment of the application deposit fee. Such Persons must agree among themselves as to the portion each shall pay.
6. *Notification, Joint Installation, and Collocation.* ROW Users shall, prior to any Excavation or installation in the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize Collocation of ROW Users, to minimize the disturbance to the Rights-of-Way, and maximize its useable capacity. ROW Users shall identify by mapping, as required by the Director, the location and specifications of all conduit available or dedicated for Collocation. Any Person unreasonably failing to respond to Collocation opportunities or otherwise comply with this provision or policies adopted hereunder shall, unless good cause is found by the City, be precluded from use of the Rights-of-Way for a period of thirty (30) months at such locations that would reasonably have been accommodated by the Collocation opportunity that was declined.

**Sec. 38-212. – Relocation of Facilities.**

1. *Required by City.* The ROW User shall promptly remove, relocate, or adjust any Facilities located in the Rights-of-Way as directed by the City when such is required by public necessity, or public convenience and security require it, or such other findings in the public interest that may require relocation, adjustment, or removal at the cost of the ROW User. Such removal, relocation, or adjustment shall be performed by the ROW User within the time frames established by the City and at the ROW User's sole expense without any expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations, and schedules of the City pertaining to such. The



ROW User shall proceed with relocations with due diligence upon notice by the City to begin relocation.

2. *Required by Third-Party.* The ROW User shall upon request of any other Person requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within a reasonable period of time and not less than forty-eight (48) hours prior to the date upon which said Person intends to exercise its rights under said permit, thereupon temporarily raise, lower or relocate its wires or other Facilities as may be required for the Person to exercise the rights under the permit, and the ROW User may require such Person to make payment in advance for any expenses incurred by said ROW User pursuant to said Person's request.
3. *ROW User Responsible for Damage.* Any damages suffered by the City, its agents or its contractors to the extent caused by the ROW User's failure to timely relocate, remove or adjust its Facilities, or failure to properly relocate, remove, or adjust such Facilities, shall be borne by the ROW User. Where the ROW User shall fail to relocate Facilities as required by the City, the City may, but shall not be required to, upon notice to ROW User remove the obstructing Facilities with or without further delay and ROW User shall bear all responsibility and liability for the consequences therefrom, and the City shall bear no responsibility to ROW User or others for damage resulting from such removal; provided that ROW User has failed to relocate the Facilities within the time frame required by the City.

### **Sec. 38-213. – Liability Insurance, Performance, and Maintenance Bond Requirement.**

1. *Insurance; Exceptions.* Except as provided in this Section, each ROW User shall provide, at its sole expense, and maintain during the term of any ROW Use Agreement or Franchise or anytime the ROW User has Facilities in the ROW, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A", that shall protect the ROW User, the City, and the City's officials, officers, and employees from claims which may arise from such use of the ROW, whether such operations are by the ROW User, its officers, directors, employees and agents, or any contractors or subcontractors of the ROW User. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all ROW User operations, products, services or use of automobiles, or construction equipment. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall be in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo. for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City as an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the Director. If the Person is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of

its ability to provide coverage in the above amounts. Any self-insurance or deductible above fifty thousand dollars (\$50,000.00) must be declared to and pre-approved by the City. The insurance requirements in this Section or otherwise shall not apply to a ROW User to the extent and for such period as the ROW User is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that ROW User has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise therefore so exempted unless otherwise provided by a ROW Use Agreement or Franchise. The City reserves the right to waive any and all requirements under this Section when deemed to be in the public interest.

2. *Performance Bond; Exceptions.* Except as otherwise may be required by law for ROW Users who have on file with the City Clerk an affidavit certifying that the ROW User has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise therefore so exempted, the Person shall at all times during the term of the Excavation Permit, and for four (4) years thereafter, maintain a performance and maintenance bond in a form approved by the City Attorney. The amount of the bond shall be five thousand dollars (\$5,000.00) or the value of the Restoration as determined by the Director, whichever is greater, conditioned upon the Person's faithful performance of the provisions, terms, and conditions conferred by this Article. Unless otherwise established in the Excavation Permit, an annual bond in an amount of one hundred thousand dollars (\$100,000.00) automatically renewed yearly during this period shall satisfy the requirement of this Section. The City shall be entitled to recover under the terms of such bond the full amount of any loss and damage occasioned from violation of the Excavation Permit or provisions of this Article.
3. *Copy Required.* A copy of the insurance policy(ies), endorsement, and documentation demonstrating compliance with the insurance requirements herein and the performance and maintenance bond requirements herein must be on file with the City Clerk.

### **Sec. 38-214. – City Police Power; Miscellaneous.**

1. *Compliance with Laws.* Each ROW User shall comply with all applicable federal and state laws and regulations and rules as well as all City ordinances, resolutions, rules, and regulations heretofore and hereafter adopted or established.
2. *ROW Users Subject to Other Laws, Police Power.*
  - A. *Zoning, Safety, and Building Code Compliance.* ROW Users shall at all times be subject to the lawful exercise of the police powers of the City, including but not limited to all police powers regarding zoning, supervision of the Restoration of the Rights-of-Way, building and safety regulations, and control of the Rights-of-Way. Installation of all Facilities in the Rights-of-Way are subject to and must be in compliance with all zoning and safety and building code requirements. For applications for installation of any Facility in the Rights-of-Way, (1) the most restrictive adjacent underlying zoning district classification shall apply unless otherwise specifically zoned and designated on the official zoning map, and (2) no application shall be submitted for approval without attaching the City's consent to use the Rights-of-Way for the specific construction

application in accordance with Chapter 67 RSMo.

- B. *No Waiver.* No action or omission of the City shall operate as a future waiver of any rights of the City under this Article. Except where rights are expressly granted or waived by a Permit, they are reserved, whether or not expressly enumerated.
3. *No Cause of Action Against the City.* A ROW User shall have no damages remedy or monetary recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of any ROW Use Agreement or Franchise, or because of the enforcement thereof by said City, or from the use of the Rights-of-Way. Nothing herein shall preclude the ROW User from seeking injunctive or declaratory judgment relief against the City where such relief is otherwise available and the requirements therefor are otherwise satisfied.
4. *Indemnification.* Every ROW User, as a condition of use of the Rights-of-Way, shall at its sole cost and expense fully indemnify, protect, defend (with counsel for the City acceptable to the City) and hold harmless the City, its municipal officials, officers, employees and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other Persons for damages, losses, costs, and expenses, including attorney fees, arising, directly or indirectly, in whole or in part, from the action or inaction of the ROW User, its agents, representatives, employees, contractors, subcontractors or any other Person for whose acts the ROW User may be liable, in constructing, operating, maintaining, repairing, Restoring or removing Facilities, or use of the Rights-of-Way or the activities performed, or failed to be performed, by the ROW User under this Article or applicable law, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not, under any circumstances, relieve the Person from the duty to defend against liability or its duty to pay any judgment entered against the City or its agents. This indemnification shall survive the expiration or termination of any ROW Use Agreement, Franchise, License, Permit, or other authorization for a period of five (5) years after the effective date of expiration or termination.
5. *ROW User Responsible for Costs.* The ROW User shall be responsible for all reasonable costs borne by the City that are directly associated with ROW User's installation, Maintenance, repair, operation, use, and replacement of its Facilities in the Rights-of-Way that are not otherwise accounted for as part of the Permit fee established pursuant to this Article, to the extent permitted by law. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request of the ROW User.
6. *Abandonment and Unusable Facilities.*
- A. *Abandoned Facility Requirements.* ROW Users owning Facilities in the Rights-of-Way shall not Abandon or otherwise cease to use of the Facilities for longer than one year unless, prior to doing so, the ROW Users satisfies one of the following:

- i. Provides written notice of such intention, and removes its Facilities in compliance with all requirements and replaces or restores any damage or disturbance caused by the removal at its own expense; or
  - ii. Provide information satisfactory to the City that the ROW User's obligations for its Facilities in the Rights-of-Way will be lawfully assumed by another authorized ROW User, including proof of a Franchise, ROW Use Agreement or License; or
  - iii. Submit to the City a proposal and instruments for transferring ownership of its Facilities to the City. If the ROW User proceeds under this Subsection, the City may, at its option, (1) purchase the equipment, (2) require the ROW User, at its own expense, to remove it, or (3) require the ROW User to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the Facilities, except as otherwise provided herein.
- B. *Nuisance.* Facilities Abandoned or otherwise left unused in violation of this Article are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (a) abating the nuisance, (b) taking possession and ownership of the Facility and restoring it to a useable function, or (c) requiring the removal of the Facility by the ROW User.

**Sec. 38-215. – Appeals; Penalties.**

- 1. *Appeals.* Unless otherwise required by law, the review procedures set forth in Article VIII of Chapter 2 shall govern appeals by an aggrieved Person of a final action of the Director or any other City official, officer, Council, Board, or commission that are claimed by an aggrieved Person to be unlawful or an unconstitutional taking or property without compensation. To the fullest extent permitted by law, the review procedures of Article VIII shall be exhausted before any action may be filed in any court against the City or its Council, officers, employees, boards, officials or commissions.
- 2. *Violations; Penalties.* In addition to any other penalties and remedies for violations that may exist in law or equity, any Person that violates any provision of this Article shall be subject to such penalties as set forth in Section 1-10 of the City Code per day for each and every day the violation exists or continues.

**Sec. 38-216. – Reservation of Rights.**

In addition to any rights specifically reserved to the City by this Article, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, Permit, or other authorization granted under this Article, and as may be authorized by Chapter 67 RSMo. and other authority applicable to regulation of the use of the Rights-of-Way. Notwithstanding anything to the contrary set forth herein, the provisions of this Article shall not infringe upon the rights of any Person pursuant to any applicable state or federal statutes, including, but not limited to any right that may exist to occupy the Rights-of-Way.