

CITY OF BALLWIN

14811 Manchester Road, Ballwin, MO 63011

Phone: (636) 227-2129

Fax: (636) 207-2360

**RIGHT-OF-WAY USER
PERMIT / APPLICATION**

PERMIT FEE: \$100.00

ALL INFORMATION PERTAINING TO THE WORK INVOLVED SHOULD BE INCLUDED ON AND/OR
ATTACHED TO THIS APPLICATION

APPLICATION DATE _____ JOB ADDRESS/LOCATION _____

Registered Service Provider Name	Phone #
Address	Email:

Contractor Name	Phone #
Address	Email:

SCOPE OF WORK

THIS PERMIT IS TO COVER THE FOLLOWING WORK:

- Type of installation _____ Project start date: _____
- Length of facility: _____ miles Project complete date: _____
- Number of poles/antenna: _____ Other: _____

Description and dimensions of work, proximity to other facilities, street crossings, cuts (attach drawings):

Applicant agrees all work is to be performed in accordance with Ballwin ordinances and the General Provisions and Conditions attached hereto, as well as the following conditions of approval and special provisions:

Applicant must advise City promptly of any material changes in the work.

CALL 24 HOURS PRIOR TO COMPLETION OF WORK FOR INSPECTIONS.**The owner or owner's contractor shall call 636-227-2129 a minimum of 24 hours prior to the completion of the work to allow the City to conduct the necessary inspections.*_____
Contractor_____
Service Provider Name_____
Contractor Signature_____
Service Provider Signature_____
Address_____
Address_____
City/State/Zip_____
City/State/Zip City/State/Zip_____
Phone_____
Phone_____
Email_____
Email

PERMIT #

DATE:

APPROVED BY:

DO NOT WRITE IN THIS SPACE - OFFICE USE ONLY

GENERAL PROVISIONS

(FOR REMOVAL OF STREET PAVEMENT OR SIDEWALK OR BORING)

1. STREET PAVEMENT/CURB & GUTTER CUTS

- a. The City reserves the right to prohibit open pavement cuts. In such cases boring or tunneling may be utilized.
- b. All pavement cuts shall be sawed – concrete or asphalt.
- c. Backfill – *Under roadway* - Granular material $\frac{3}{4}$ inch minus crush stone, full depth mechanically compacted in 6-inch layers. *In sodded areas* – Earth or other suitable material mechanically compacted in 6-inch layers.
- d. Provide steel cover plate if open street cut cannot be repaired the same day.
- e. Concrete – All concrete shall be 6-sack mix, 5% air entrained, low slump mix design with Meramec River gravel in lieu of crushed limestone. Provide acceptable curing method – broom finish- according to the latest ST. LOUIS COUNTY STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION. Provide adequate protection for 7 calendar days until concrete is cured.
- f. Asphalt – *Asphalt paving over concrete* – saw edges of existing asphalt surface square removing all jagged edges. Place 6-inch thick concrete base course – top elevation 2-inches below the existing asphalt surface course – broom finish – provide acceptable curing method – use cover plate until concrete has cured – apply asphaltic tack coat. Provide hot mix asphaltic concrete compacted with self-propelled roller. *Asphalt street repair* – Excavation within full depth asphalt streets will be repaired with 8-inches asphaltic concrete or matches existing asphalt whichever is greater.
- g. All concrete joints shall be filled or sealed with cold poured latex emulsion.
- h. Perimeter of all new asphalt shall be filled or sealed with cold poured latex emulsion.
- i. All work including forming and base to be inspected by the City Engineer.

2. DRIVEWAY REPLACEMENTS – The work shall not disturb the curb or street. The new driveway shall conform to the geometrics described in St. Louis County Department of Highway and Traffic's standard drawing number C608.00 (copy provided upon request). The concrete shall be 6 inches thick with Meramec River gravel used in lieu of crushed limestone. Asphalt shall be 3 inch thick Type "C" surface course on 6" Type 1 Aggregate Base Course meeting the latest ST. LOUIS COUNTY STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION.

GENERAL CONDITIONS

1. At all times while any work is under construction within the City of Ballwin's right-of-way, Applicant and Applicant's Contractor will display appropriate warning signs, barricades, lights and flares as described in the current MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, and will provide flagman satisfactory to the City Engineer.
2. All work will be performed expeditiously and in a workmanship like manner.
3. Applicant's Contractor shall request, a minimum of 2 working days in advance (excludes weekends and holidays) the City Engineer's inspection.
4. Applicant and Applicant's Contractor agree to perform all work in accordance with this permit and indemnify and hold harmless the City of Ballwin, its officers and employees from all liability, judgements, cost, expenses, suits, actions or claims growing out of damages, or alleged damages, of any nature to any person or property arising out of performance or non-performance of said work or the existence of facilities and/or appurtenances thereof.
5. Roadway, culverts, ditches, and other such devices used to carry surface runoff will be kept open, free, and clear at all times.
6. All voids resulting from boring or pushing casings to other facilities under roadways or approaches will be satisfactorily filled by the method and with materials approved by the City Engineer.
7. All pavements (asphaltic concrete or Portland cement concrete) will be repaired by full depth saw cutting in a straight line. For full depth asphalt streets a minimum of 12 inches on each side of the excavation. For concrete streets with or without asphalt surface, either one-half section or the entire section shall be replaced. The cut will extend to the nearest joint or dowel to the existing concrete to satisfaction of the City Engineer.
8. The Applicant and the Applicant's Contractor will protect roadway plant materials, including trees and shrubs. **SUCH MATERIALS AND GRASS AREAS THAT ARE DISTURBED WILL BE RESTORED AS DIRECTED BY THE CITY ENGINEER.** Trees and shrubs will not be cut, trimmed or moved without the specific permission from the City Engineer.
9. All sidewalks removed or damaged, as a result of the work herein will be replaced to the satisfaction of the City Engineer. The Applicant and the Applicant's Contractor will be responsible for such replacements for one year from the date the permit is released.
10. In case of damage to private property located next to the City of Ballwin's right-of-way, the Applicant and the Applicant's Contractor will repair or replace such property to the satisfaction of the property owner. In all cases, Applicant and the Applicant's Contractor will notify the property owner and City Engineer of such damage immediately.
11. Obtaining this permit does not relieve the Applicant or the Applicant's Contractor of the responsibility for obtaining other permits required by this or any other agency or jurisdiction. This permit does not give the Applicant or the Applicant's Contractor permission to enter private property without the property owner's permission.
12. The Applicant and the Applicant's Contractor will be held jointly responsible for all of the requirements of this permit until it is released by the City Engineer.
13. Storage of material(s) shall not interfere with the use of sidewalks, driveways, roadways, or drainage in any way. Any materials and equipment so stored will remain as near the right-of-way line as possible, properly barricaded, and for as short of time as possible. If the Applicant and the Applicant's Contractor is performing work on or has a right to the property adjacent to the City of Ballwin's right-of-way, all materials and equipment will be stored on that property.
14. The total cost of all construction, maintenance, cleaning of streets, sidewalks, and sewers, and removal of facilities and their appurtenances installed or placed under this permit shall be borne by the Applicant and the Applicant's Contractor, his successors, heirs, and assigns.
15. The Applicant and the Applicant's Contractor will be responsible to locate all underground utilities.

ADDITIONAL CONDITIONS

Excerpts from Ballwin ROW Usage Code, Sections 24-75 et seq

Note: these excerpts are provided as a convenient resource, but all applicable Code sections shall continue to apply.

24-75

A.1. Any person desiring to become a person having facilities within the ROW and any person having facilities within the ROW must register with the City.

C. Notice Of Change. Within thirty (30) days of any changes in the information set forth in or accompanying its registration letter, a registered person shall notify the City of any such change. Such notices shall be submitted and processed in the same manner as an initial registration, except the filing fee shall not be required.

24-78

A.1. Any person desiring to perform ROW work must first apply for and obtain a ROW permit, in addition to any other building permit, license, easement, franchise or authorization required by law. In the event of a need for emergency ROW work, the person conducting the work shall as soon as practicable notify the City of the location of the work and shall apply for the required ROW permit as soon as practicable following the commencement of the work, not to exceed the third (3rd) business day thereafter...

B.6. An applicant receiving a ROW permit shall promptly notify the Director of any material changes in the information submitted in the application...

B.7. ROW permits inure to the benefit of the applicant and the rights granted there under may not be assigned or transferred to any other person without the written consent of the Director.

Sec. 24-79-Work in the Rights-of-Way

A. Jurisdiction, Inspection And Stop Work Orders.

1. All facilities and ROW work shall be subject to inspection by the City and the supervision of all Federal, State and local authorities having jurisdiction in such matters to ensure compliance with all applicable laws, ordinances, departmental rules and regulations.

2. The Director shall have full access to all portions of the ROW work and may issue stop work orders and corrective orders to prevent unauthorized work, including work not meeting the standards established in Subsection (F)...

B. Installation Of Facilities.

3. In the case of new construction or property development, the developer or property owner shall give to all persons registered hereunder reasonable written advance notice of the particular date on which open trenching will be available for installation of facilities. Costs of trenching and easements required to bring facilities within the development shall be borne by the developer or property owner; except that if the facilities are not installed within five (5) working days of the date the trenches are available as designated in the notice given by the developer or property owner, then once the trenches are thereafter closed, the cost of new trenching shall be borne by the person installing the facilities.

D. Property Repair And Alterations.

1. During any ROW work, the person doing the work shall protect from damage any and all existing structures and property belonging to the City and any other person. Any and all rights-of-way, public property or private property disturbed or damaged during the work shall be repaired or replaced by the person doing the work or the person on whose behalf the work is being done and such person shall immediately notify the owner of the fact of the damaged property. Such repair or replacement shall be completed within a reasonable time specified by the Director and to the Director's satisfaction.

2. Any alteration to the existing water mains, sewerage or drainage system or to any City, State or other public structures or facilities in the rights-of-way required on account of the construction, installation, repair or maintenance of facilities within the rights-of-way shall be made at the sole cost and expense of the owner of such facilities.

F. Standards For ROW Work.

1. Except for emergency ROW work as provided in Section 24-78, ROW work shall be performed only upon issuance and in accordance with the requirements of a ROW permit. At all times during the work, ROW permits shall be conspicuously displayed at the work site and shall be available for inspection by the Director.
2. If at any time it appears that the duration or scope of the ROW work shall differ from that allowed by the ROW permit, the ROW user shall inform the Director. The Director may issue a waiver, an extension or a revised ROW permit or require that the ROW user reapply for an ROW permit in accordance with all requirements of this code.
3. ROW users shall not open or encumber more of the rights-of-way than is reasonably necessary to complete the ROW work in the most expeditious manner or allow excavations to remain open longer than is necessary to complete the work.
4. All ROW work that affects vehicular or pedestrian traffic shall be properly signed, barricaded and otherwise protected at the ROW user's expense. The ROW user shall be responsible for providing adequate traffic control to the area surrounding the work as determined by the Director.
5. The ROW user shall perform the ROW work at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood as permitted by the Director. Unless otherwise provided by the Director in the permit, non-emergency ROW work on arterial and collector streets may not be accomplished 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.
6. The ROW user shall notify the City no less than three (3) working days in advance of any ROW work that would require any street closure or would reduce traffic flow to less than two (2) lanes of moving traffic for more than four (4) hours. Except in the event of emergency ROW work, no such closure shall take place without notice and prior authorization from the City.
7. All ROW work shall be in accordance with all applicable Sections of the Occupational Safety and Health Act of 1970, the National Electrical Safety Code and other Federal, State or local laws and regulations that may apply including, without limitation, local health, safety, construction and zoning codes and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as that code or standard, if followed, would result in facilities that could not meet requirements of Federal, State or local law).
8. All facilities shall be installed and located to cause minimum interference with the rights and convenience of property owners, other ROW users and the City. Facilities shall not be placed where they will disrupt or interfere with other facilities or public improvements or obstruct or hinder in any manner the various utilities serving the residents and businesses in the City or public improvements.
9. All facilities shall be of good and durable quality.
10. All ROW work shall be conducted in accordance with good engineering practices, performed by experienced and properly trained personnel so as not to endanger any person or property or to unreasonably interfere in any manner with the rights-of-ways or legal rights of any property owner, including the City, or unnecessarily hinder or obstruct pedestrian or vehicular traffic.
11. All safety practices required by law shall be used during ROW work, including commonly accepted methods and devices to prevent failures and accidents that are likely to cause damage, injury or nuisance to the public.
12. Any contractor or subcontractor of a ROW user must be properly licensed under laws of the State and all applicable local ordinances and each contractor or subcontractor shall have the same obligations with respect to its work as a ROW user would have pursuant to this code. A ROW user:
 - a. Must ensure that contractors, subcontractors and all employees performing ROW work are trained and experienced,
 - b. Shall be responsible for ensuring that all work is performed consistent with the ROW permit and applicable law,
 - c. Shall be fully responsible for all acts or omissions of contractors or subcontractors,
 - d. Shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and
 - e. Shall implement a quality control program to ensure that the work is properly performed.
13. It shall be the duty of any person making an excavation in the ROW to properly backfill such excavations and properly restore the surface to its proper condition. In the event the excavations are made in the improved portion of the ROW, twelve (12) inches of granular backfill will be placed over an exposed utility and controlled low strength material (CLSM) will fill the hole within eight (8) inches of the finished surface for concrete pavements. There will be a plastic membrane placed between the rock base and the CLSM to prevent the material from bleeding into the rock base. The

remaining eight (8) inches will be restored by placing a twenty-eight (28) day minimum strength, four thousand five hundred (4,500) psi concrete mix.

In the event the excavations in the ROW are made in the improved portion of an asphalt or combination street, twelve (12) inches of granular backfill will be placed over an exposed utility and controlled low strength material (CLSM) will fill the hole within nine (9) inches of the finished surface. There will be a plastic membrane placed between the rock base and the CLSM to prevent the material from bleeding into the rock base. The remaining nine (9) inches will be restored by placing a six (6) inch thick, twenty-eight (28) day minimum strength, four thousand five hundred (4,500) psi concrete mix under a three (3) inch asphalt concrete lift of Type C mix to meet existing grades.

Construction of asphalt driveway entrances in residential ROW will be constructed of six (6) inches of compacted rock base and three (3) inches of Type C asphalt concrete mix. Construction of asphalt driveway entrances in commercial ROW will be constructed of four (4) inches of compacted rock base, seven and one-half (7.5) inches of Type X and three (3) inches of Type C asphalt concrete mix. Concrete driveway approaches will consist of a four (4) inch compacted rock base and be a minimum of six (6) inches thick in residential ROW and eight (8) inches thick in commercial ROW.

Street crossings will be bored at the direction of the Director.

G. Restoring And Maintaining The Rights-Of-Way.

1. To complete any ROW work the ROW user shall restore the ROW and surrounding areas, including, but not limited to, any pavement, foundation, concrete slabs or curbs, in accordance with the standards of Subsection (F) and the reasonable conditions of the Director. Restoration of the ROW shall be completed within the dates specified in the ROW permit unless the Director issues a waiver, extension or a new or revised ROW permit.

2. If an ROW user fails to restore the ROW within the date specified either by the ROW permit or any extension thereof as granted by the Director, the City may perform its own restoration. The City may also opt to perform its own restoration regardless of any failure by the ROW user, in which case the ROW permit or any amendment or revision thereto shall note such option. In either event, if the City performs the restoration, the ROW user shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty (30) days of invoice.

3. Every ROW user to whom a ROW permit has been granted shall guarantee for a period of four (4) years the restoration of the ROW in the area where the ROW user conducted excavation and performed the restoration. During this period the ROW user shall, upon notification from the Director, correct all restoration work to the extent necessary as required by the Director. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days from receipt of the Director's notice unless otherwise permitted by the Director. If a ROW user fails to restore the ROW within the time specified, the City may perform the work and the ROW user shall be responsible for reimbursing the City's reasonable actual restoration costs within thirty (30) days of invoice. The Director may extend the cure period on good cause shown.

4. A ROW user shall not be relieved of the obligation to complete the necessary right-of-way restoration and maintenance because of the existence of a performance bond pursuant to Subsection (I).

H. Mapping Requirements. After the completion of ROW work the ROW user shall provide to the City as-built drawings, maps or other comparable records as determined by the Director, drawn to scale and certified to the City as reasonably depicting the location of all facilities constructed pursuant to the ROW permit. Such records may be provided to the Director in the form maintained by the ROW user, but when available to the ROW user, shall be submitted in automated formats compatible with City systems, as determined by the Director, or in hard copy otherwise.

I. Performance And Maintenance Bonds.

1. Prior to any ROW work a ROW user shall establish in the City's favor a performance and maintenance bond in an amount to be determined by the Director to ensure the restoration of the rights-of-way. The bond shall continue in full force and effect for a period of twenty-four (24) months following completion of the work. The Director shall have the authority to extend the maintenance bond period for up to an additional twenty-four (24) months in the same manner as provided in Subsection (G)(2). The Director may waive this requirement when the work involves no disruption or damage or only minor disruption or damage to the rights-of-way. The Director shall waive this requirement when the ROW user has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of non-compliance with the ordinances of the City.

2. In the event a ROW user fails to complete the ROW work in a safe, timely and competent manner or if the completed restorative work fails within the time period for the bond (as determined by the Director), then after notice and a reasonable opportunity to cure there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the ROW user and the cost of completing work within or restoring the rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The City may

also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.

3. Upon completion of ROW work to the satisfaction of the Director and upon lapse of the bond period, including any extension by the Director, the City shall release the bond.

4. The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the City Attorney and shall contain the following endorsement:

"This bond may not be canceled or allowed to lapse until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

5. In lieu of the bond required herein, the ROW user may establish in the City's favor such other security as the Director may determine to be commensurate with the noted bonding requirements including, but not limited to, an annual bond to be maintained in the minimum amount of twenty-five thousand dollars (\$25,000.00).

J. Miscellaneous.

1. Upon failure of a ROW user to commence, pursue or complete any ROW work required by law or by the provisions of this code to be done in any street within the time prescribed and to the reasonable satisfaction of the City, the City may, at its option, after thirty (30) days' notice, cause such work to be done and the ROW user shall pay to the City the cost thereof in the itemized amounts reported by the City to the ROW user within thirty (30) days after receipt of such itemized report.

2. Upon ten (10) days' written notice and with the supervision of the City or as otherwise provided by law, a ROW user shall have the authority to trim trees that overhang rights-of-way of the City so as to prevent the branches of such trees from coming in contact with its facilities, at its own expense subject to the supervision and direction of the City. Nothing in this Subsection shall authorize the trimming of trees on private property without permission of the property owner. All cut materials shall be properly disposed.

3. During ROW work by a ROW user the City shall have the right to install and to thereafter maintain at its own cost in any excavation to or other applicable disturbance of the ROW any parallel facilities of its own that do not unreasonably interfere with the operations of other facilities.

4. Nothing in this code shall be in preference or hindrance to the right of the City and any board, authority, commission or public service corporation of the City to use or occupy the rights-of-way or to perform or carry on any public works or public improvements of any description.

24-81

B. Payment To City. Any person having facilities within the ROW shall pay to the City annual rent consisting of, depending on the facility, linear foot fees and antenna fees as set forth in Section 7.5-39 as amended from time to time for the use of the affected rights-of-way for the applicable facilities.

C. Not A Tax Or In Lieu Of Any Other Tax Or Fee — Credit For Business License Taxes Or Gross Receipts Taxes.

1. The rental fees are not a tax, license or fee subject to any requirement of voter approval, but rather constitute a charge for special and individualized use of public property.

2. Rental fees are in addition to all other fees and all taxes and payments that a person may be required to pay under any Federal, State or local law, including any applicable property and amusement taxes.

3. To promote economic development, any person obligated to pay rental fees shall be granted a credit for all sums paid to the City by such person for applicable business license fees or gross receipts taxes or franchise fees, up to the amount of the rental fees. In no event shall such a credit result in a refund from the City.

D. Payments.

1. The rental fees shall be paid quarterly to the City and shall commence as of the later of the effective date of this code or the first (1st) day on which a person having facilities within the ROW places facilities within the rights-of-way. The City shall be furnished at the time of each payment with a statement certified by the payer's chief financial officer or comparable officer or by an independent certified public accountant reflecting the calculation of the total amount of rental compensation for the payment period. Payments shall be made to the City no later than forty-five (45) days following the end of each calendar quarter.

2. In the event any rental fee or other payment due hereunder is not made on or before the date specified herein, interest charges shall also be due, computed from such due date, at an annual rate equal to the commercial prime interest rate of the City's primary depository bank during the period such unpaid amount is owed plus a penalty of two percent (2%) of the amount.

E. No Accord Or Satisfaction. No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as rental fees under this code or for the performance of any other obligation.

F. Audit. The City shall have the right to inspect all reasonably necessary records and the right to audit and to recalculate any amounts determined to be payable under this code. Persons subject to rental fees hereunder shall be responsible for providing the records to the City at an office located within the metropolitan St. Louis area except as provided in Section 24-80(E). Such records shall be maintained for at least five (5) years. The City's audit expenses shall be borne by the person audited if the rental fees paid during the audit period are less than ninety-five percent (95%) of the amount owed according to the audit. Any additional amounts due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the person by the City of the underpayment, which notice shall include a copy of the audit report. If recalculation results in an additional amount to be paid to the City, such amount shall be subject to interest and penalties as specified in Subsection (D)(2) above.

Sec. 24-82-Insurance-Surety-Indemnification-Penalties.

A. Insurance Required. All ROW users shall maintain, for the duration of any ROW work and, when applicable, for as long as the ROW user has facilities within the rights-of-way, at least the following liability insurance coverage: Workers' Compensation and employer liability insurance to meet all requirements of Missouri law and commercial general liability insurance with respect to the construction, operation and maintenance of the facilities and the conduct of the ROW user's business in the City in the minimum amounts of:

1. Two million dollars (\$2,000,000.00) for property damage resulting from any one (1) accident;
2. Five million dollars (\$5,000,000.00) for personal bodily injury or death resulting from any one (1) accident; and
3. Two million dollars (\$2,000,000.00) for all other types of liability.

These insurance requirements shall not be construed to limit the liability of any person or to impose any liability on the City.

B. Qualifications Of Sureties. All insurance policies shall be with sureties qualified to do business in the State with an "A" or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition and in a form approved by the City.

C. Policies Available For Review. All insurance policies shall be available for review by the City and a ROW user having facilities within the rights-of-way shall keep on file with the City current certificates of insurance.

D. Additional Insureds — Prior Notice Of Policy Cancellation. All general liability insurance policies shall name the City, its officers, boards, board members, commissions, commissioners, agents and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City Clerk. A ROW user shall not cancel any required insurance policy without submission of proof that it has obtained alternative insurance that complies with this code.

E. Exemption From Insurance Requirements. The Director may exempt in writing from the requirements of Subsections (A) through (D) any self-insured ROW user, provided that the ROW user demonstrates to the Director's satisfaction that the ROW user's self-insurance plan is commensurate with said requirements and that the ROW user has sufficient resources to meet all potential risks, liabilities and obligations contemplated by the requirements of this code. The Director may require a security fund or letter of credit as a condition to a self-insured's exemption. The Director shall waive this requirement when the ROW user has twenty-five million dollars (\$25,000,000.00) in net assets and does not have a history of non-compliance with the ordinances of the City.

F. Indemnification.

1. Any ROW user granted a ROW permit and any person having facilities within the rights-of-way, as partial consideration for the privilege granted, shall, at its sole cost and expense, indemnify, hold harmless and defend the City, its officials, boards, board members, commissions, commissioners, agents and employees against any and all claims, suits, causes of action, proceedings and judgments for damages or equitable relief arising out of:
 - a. Any ROW work including, but not limited to, the construction, maintenance, repair or operation of facilities,
 - b. Failure to secure consents from landowners, or
 - c. Any actions taken or omissions made by the person pursuant to the authority of this code.
2. The foregoing indemnity provisions include, but are not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceeding prior to the person assuming such defense. The City shall notify a person of claims or suits within seven (7) business days of its actual knowledge of the existence of such claim,

suit or proceeding. Once a person assumes such defense, the City may at its option continue to participate in the defense at its own expense.

3. Notwithstanding anything to the contrary contained in this code, the City shall not be so indemnified or reimbursed in relation to any amounts:

- a. Attributable to the City's own negligence, willful misconduct, intentional or criminal acts, or
- b. Attributable to the City acting in a proprietary capacity to deliver service(s) within the City.

G. Relation To Insurance And Indemnity Requirements. Recovery by the City of any amounts under insurance, a performance bond or otherwise does not limit a person's duty to indemnify the City in any way; nor shall such recovery relieve a person of amounts owed to the City or in any respect prevent the City from exercising any other right or remedy it may have.

H. Penalties. Any person violating any provision of this code shall, upon conviction by the City's Municipal Court, be punished by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. Each day the violation continues may be charged as a separate offense. In addition, where any excavation for which a ROW permit is required by this Chapter is started prior to obtaining said permit, the total permit fee shall be doubled by the Director. Payment of the doubled fee shall not relieve any persons from fully complying with the requirements of this Chapter, nor from the penalties prescribed herein.

Sec. 24-84-Miscellaneous Provisions.

A. Captions. Captions throughout this code are intended solely to facilitate reading and reference to the Sections and provisions. Such captions shall not affect the meaning or interpretation of this code.

B. Interpretation Of Code. The provisions of this code shall be liberally construed to promote the public interest. This Article shall be interpreted in accordance with Sections 67.1830, RSMo., et seq., and 47 U.S.C. Section 332.

C. Expense. Any act that a person is required to perform by this code or other law shall be done at the person's expense, without City reimbursement, unless expressly provided to the contrary by law.

D. Eminent Domain. Nothing herein shall be deemed or construed to impair or affect in any way or to any extent the power of eminent domain held by the City or any other person.

E. Exclusive Contracts And Anticompetitive Acts Prohibited.

1. Unless otherwise allowed by law, no person shall enter into or enforce an exclusive contract for the provision of services with any other person or demand the exclusive right to serve another person or location as a condition of extending service to that person or location or any other person or location.

2. No person shall engage in acts that have the purpose or effect of limiting competition for the provision of services in the City, except for such actions as are expressly authorized by law.

F. No Recourse Against The City. Without limiting such immunities as the City or other persons may have under applicable law, no person shall have any recourse whatsoever against the City or its officials, members, boards, commissions, agents or employees for any loss, costs, expense, liability or damage arising out of any action undertaken or not undertaken pursuant to any provision or requirement of this code or because of the enforcement of this code or the City's exercise of its authority pursuant to this code or other applicable law, unless such recourse is expressly authorized by law.

G. Rights And Remedies.

1. The rights and remedies reserved to the City by this code are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the City may have with respect to the subject matter of this code.

2. The City hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this code.

3. Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

4. No course of dealing between any person and the City or any delay on the part of the City in exercising any rights hereunder shall operate as a waiver of any such rights of the City or acquiescence in the actions of such person in contravention of such rights except to the extent expressly waived in writing. No person shall be relieved of its obligation to comply with any of the provisions of this code by reason of any failure of the City to enforce prompt compliance nor shall any inaction by the City be deemed to waive a provision or render void any provision of this code.

H. Force Majeure. A person shall not be deemed in violation of this code where performance was hindered by war or riots, civil disturbances, floods or other natural catastrophes beyond the person's control and a registration shall not be terminated or a person penalized for such non-compliance, provided that the person takes prompt and diligent steps to bring itself back into compliance and to comply as soon as reasonably possible under the circumstances without unduly en-

dangering the health, safety and integrity of employees or property or the health, safety and integrity of the public, rights-of-way, public property or private property.

I. Public Emergency. In the event of a public emergency or disaster as determined by the City, a ROW user immediately shall make facilities, employees and property, as may be reasonably necessary, available for use by the City or other civil defense or governmental agency designated by the City for the term of such emergency or disaster for emergency purposes. In the event of such use, the ROW user shall waive any claim that such use by the City constitutes a use of eminent domain, provided that the City shall return use of the facilities, employees and property to the ROW user promptly after the emergency or disaster has ended.

Sec. 7.5-39. - Use fees.

Licensee shall pay to the city as monthly compensation for the use of the rights-of-way pursuant to an executed agreement a use fee equal to five percent of monthly gross receipts, but in no event shall the monthly use fee be less than the sum of:

\$5,000.00 for the first mile of linear facilities, or part thereof, plus \$1.90 per linear foot thereafter up to a monthly charge under this subsection of \$30,000.00, and

\$65.00 for each antenna in the rights-of-way, but not less than \$1,000.00.