Exhibit A

Article VI – Rights-of-Way Management Code

Section 106-140. – Applicability; Preemption.

1. *Applicability*. Except as provided for herein and where limited by applicable law, this Chapter 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 Chapter. 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 to 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. This Article shall supplement and establish additional requirements to the other provisions of this Chapter.

2. *Preemption.* No provision of this Chapter 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furthermore, if any Section, Subsection, sentence, clause, phrase, or portion of this Chapter is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and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.

Section 106-141. – Definitions.

For purposes of this Chapter, 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 Facilities" 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 for a period of six months or more, and the owner of such equipment or Facilities fails to respond within thirty (30) days to a written notice sent by the City, the owner allows a franchise, agreement or license to expire and fails to cure within thirty (30) days after notice, or 4) as otherwise may be defined by applicable law.

"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 who has applied for a ROW Use Agreement, Franchise, License, ROW Permit, or any permit or other authorization to install, maintain, repair or otherwise physically access Facilities in the ROW.

"City Facilities" means any Facilities located in the ROW and owned by the City.

"Communications Service" means the transmission via Facilities, in whole or in part, of any

writings, 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.

"Director" means the Director of Public Works or his/her designee.

"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.

"Facilities" or "Facility" means any equipment, installation, or 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 **not** include mailboxes, 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.

"Franchise" means a binding and accepted ordinance for 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 in the City's limits and boundaries.

"License" means the executed agreement between the City and a Person to use and occupy the Rights-of-Way for the purpose of installing incidental temporary Facilities within the Rights-of-Way or incidental uses such as ingress and egress Facilities, lateral utility lines, or driveway aprons.

"Linear Foot" means the length in feet of cable, wire, fiber, conduit or other linear Facilities. Facilities that are physically connected, wrapped or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single Facility for purposes of calculating each linear foot, provided that each conduit or bundle of conduit up to and including four (4) inches in exterior diameter shall constitute a separate facility for calculating linear feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate Facilities but shall be

considered part of the single "conduit" or bundle for purposes of calculating linear feet provided that such fiber optic or other cable or wire installed within a singular "conduit" can physically fit inside four (4) inches of exterior diameter. Each ROW User shall be subject to a separate Linear Foot charge for Facilities used by a ROW User and subject to this Code.

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

"Permit" means an Excavation Permit or a Facilities Maintenance Permit.

"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 by law.

"Rights-of-Way Use Agreement" or "ROW Use Agreement" means a document granting consent by the City to use the ROW for the purpose of providing Communications Service or for such other use for which a Franchise or License is not applicable and obtained as provided for 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. To the extent permitted by law, ROW User shall not include the City.

Section 106-142. – 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, use, or install Facilities or other structures in the Rights-of-Way without a Franchise, License, or ROW Use Agreement all subject to the requirements of this Chapter and issued by 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 in 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 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 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 Chapter or as otherwise established by law. The Applicant shall be required to pay an application fee and an inspection fee as established by the City. Any Person granted a License hereunder shall be subject to the applicable requirements of this Chapter. Unless otherwise stated in the License, a License shall be for an indefinite term and shall be revocable at any time on written notice in the public interest by the City.

d. *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.

e. *Temporary License or Construction Permits*. Any ROW-User that has a license or permit for construction of Facilities and is otherwise required to obtain a Franchise or ROW Agreement shall within 90 days of the date of the effective date of this Ordinance: (1) seek and obtain a fully executed franchise or ROW agreement with the City and fully comply with the terms of such franchise or agreement, this Code and other applicable law; or (2) provide written evidence documenting a legal right to operate without such Franchise or ROW Agreement ("Asserted Preemption") and fully comply with the requirements of this Chapter and other applicable law. Nothing in this Paragraph shall waive the City's right to challenge any Asserted Preemption nor shall such preemption be valid if not fully supported by applicable law.

2. *Grant and Nature of Approval.* 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 by the City 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. 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 Chapter and other applicable laws of the City, except as may be expressly stated in such Use Agreement, License or Franchise.

3. *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 that authorizes that Person's use of the Rights-of-Way. Unless prohibited by applicable law, in addition to any other reason provided herein, the Director may deny a ROW Permit to any person that does not have a valid Franchise, ROW Use Agreement, or License with the City.

4. *Rights-of-Way User Fees*.

a. *User Fee*. Unless otherwise established by the City Council or applicable law, each Right-of-Way User shall pay to the City as compensation for the use of the public way a User Fee as

follows:

> Linear Foot Fee: one thousand dollars ($1,000.00)/month for the first (1st) mile of linear facilities, or part thereof, plus a monthly payment of $.16 per linear foot for each additional linear foot of Facilities located in the Right-of-Way, with the User Fee being capped at eight thousand dollars $8,000.00/month for each user; and

provided that all Right-of-Way Users shall be entitled to a credit against the User Fee due hereunder equal to the payment(s) from such Right-of-Way User in accordance with Section 67.1846 RSMo.; provided, however, such credit cannot exceed the amount due under this subsection and may not be carried forward or back to any other time period and a credit shall not apply to any taxes paid under protest or otherwise paid with qualification unless so required by law. User Fees and rates provided in this Chapter shall be in addition to any prior unpaid rate or obligation relating to such prior use, prior agreement or other obligation to the City, unless expressly released by written settlement with the City.

b. *Rates for Users without an Agreement.* Any Rights-of-User who fails to hold and maintain a current and valid agreement with the City to use the City's ROW or other public land or facilities has no right to holdover, unless otherwise provided by law, and shall be subject to the provisions and City remedies of this Chapter, in addition to all other remedies and penalties as may otherwise exist in applicable law. Because use of public property without an agreement imposes greater uncertainty, risk, and cost on the City and public, greater compensation for use without such agreement, even if occurring under a claim of a lawful exemption allowing such use, is a reasonable requirement to address such user status. Accordingly, where an agreement, lease, or other agreement for use of ROW or other public land or facilities expires and is not renewed or replaced, or a person is using such land or facilities thereon otherwise without a valid current agreement authorizing such use, in addition to other requirements, remedies, and penalties, if applicable, such person for any period without a valid current agreement shall: (1) indemnify the City from any liability arising from the use; (2) pay any damages and costs of the City from such use, including but not limited to attorneys' fees incurred in enforcing this ordinance; (3) otherwise fully comply with this Chapter and other applicable law; and (4) make payment of compensation for each linear foot in the amount established herein for operation without an agreement ("Non-Agreement Rate"). Unless otherwise established by the City Council, the Non-Agreement Rate for the User Fee shall be $0.32/foot per month for each Linear Foot of Facilities in the ROW or other public lands, with the User Fee being capped at sixteen thousand dollars $16,000.00/month for each user. Unless otherwise provided in an unexpired agreement, such person shall also be responsible for interest on all amounts owed and at a rate of one and one-half percent (1.5%) per month. Nothing in these provisions, remedies, or compensation requirements, or acceptance or enforcement thereof by the City, shall be deemed to accept or authorize any use of public property without a required agreement, or after the expiration of such agreement, or otherwise in violation of applicable requirements.

c. *Bundled Services*. The Right-of-Way User expressly acknowledges and agrees that to the extent it markets bundled services, including combination of goods or services, it will fairly reflect to the City an appropriate and reasonable division of services among the various services offered based on the actual value of each separate service. Whether or not the Right-of-Way User separates services on a subscriber's bill, it will provide to the City notice of any

such allocation sufficient for City verification. Should the Right-of-Way User engage in billing or payment practices that, in the reasonable determination of the City, do not fairly reflect a fair and appropriate allocation, the City may nullify such allocation and require payment applicable to the full receipts.

d. *Timing of Payment of User Fees*. Unless otherwise agreed to in writing, all User Fees shall be due and payable every month of each calendar year within thirty (30) days after the end each such month. A credit of the applicable gross receipts tax for that same period may be taken against the Linear Foot payment for that month.

e. *Interest of Late Payments and Under Payments*. If any User Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest on the payment and interest on the unpaid balance shall accrue from the due date until received, at the rate of one and one-half percent (1.5%) per month, of the total amount past due, unless such other maximum rate is established by law, or at such other lower rate as may be required by applicable law.

f. *Fee Statement; Retroactive Adjustments*. Each User Fee payment shall be accompanied by a statement, certified as true, showing the manner in which the User Fee was calculated including the total number of feet of Right-of-Way occupied by the Right-of-Way User's Facilities, the per foot Linear Foot rate applied, any credit or adjustment taken (including setting forth the prior month's gross revenue and describing what revenues or receipts were included and excluded in the User Fee paid), and the payment of the User Fee made. If any fee statement is determined to understate the fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. No refund, credit or offset shall be granted for any claimed payment or overstatement of the amount due or certification of facilities reported, provided that a corrected payment or reported may be filed within the time for the original time for payment

g. *No Accord and Satisfaction*. No acceptance by the City of any User Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any User Fee payment be construed as a release of any claim of the City.

h. *Maintain Records*. Right-of-Way Users shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Right-of-Way User with respect to the Facilities in a manner that allows the City to determine whether the Right-of-Way User has properly calculated its User Fee in compliance with this Section. Should the City reasonably determine that the records are not being maintained in such manner, the Right-of-Way User shall correct the manner in which the books and/or records are maintained so that the Right-of-Way User comes into compliance with this Section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Missouri, and generally accepted accounting principles shall be deemed to be acceptable under this Section. Such books and records shall be maintained for a period of at least three (3) years.

i. *Right of Inspection*. The City or its designated representatives shall have the right to inspect, examine, or audit, during normal business hours and upon seven (7) calendar days' notice, all documents, records, or other information that pertains to the Facilities within the

Right-of-Way and/or Right-of-Way User's User Fee obligations. In addition to access to the records of Right-of-Way User for audits, upon request, Right-of-Way User shall provide reasonable access to records necessary to verify compliance with the terms of this Section.

j. *Fees and Compensation not a Tax.* The fees and costs provided for in this Section, and any compensation charged and paid for the use of the Right-of-Way as provided for in this Section, are separate from, and additional to, any and all federal, state, City or other local taxes as may be levied, imposed, or due.

5. *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 Chapter. 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 not prohibited by applicable law. In the case of the City granting consent to transfer, the transferee shall be subject to the terms and conditions of this Chapter.

6. *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 except to the extent permitted by applicable law, no such use shall occur, nor shall any Franchise, ROW Use 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.

7. *No Warranties.* 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 damages 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 work performed prior to obtaining the location of all Facilities that have been properly identified prior to such work or around. 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.

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 Chapter or a ROW Use Agreement, Franchise, or License, 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 Chapter 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 any ROW Use Agreement, Franchise, or License, 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, or License, 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 Director, in which to cure the default by complying with the conditions of such ROW Use Agreement, Franchise, or License 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 the establish time to cure the default, the City shall take action by an affirmative vote of the City Council present at the meeting and voting to terminate the ROW Use Agreement, Franchise, or License, setting out the grounds upon which said 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.

9. *No Waiver*. No action or omission of the City shall operate as a future waiver of any rights of the City under this Chapter. Except where rights are expressly granted or waived by a ROW Permit, ROW Use Agreement, Franchise, or License they are reserved, whether or not expressly enumerated.

10. *No Cause of Action Against the City*. As a condition for use of the Rights-of-Way, 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, Franchise, or License, 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.

11. *Enforcement; Attorneys' Fees*. The City shall be entitled to enforce any provision of this Code through all remedies lawfully available, and any person determined to have violated the terms of this Code shall further be liable to pay the City's costs and attorneys' fees in enforcing such Code provisions. Additionally, any user of City services, Rights-of-Way, or other City facilities or property, shall, as a condition of such use or continued use, to the full extent permissible by law, be liable to pay the City's costs and attorneys' fees incurred in enforcing any lawful requirement applicable to such use, whether arising in contract, statute, this or other ordinance, or other enforceable duty as to such use.

Section 106-143. – Application for Franchise or ROW Use Agreement Required.

1. *Application Form*. An application for a Franchise or ROW Use Agreement shall be provided to the City on City forms and shall include all such information as is required by this Chapter and as determined necessary by the Director. 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 of $500.00, or such other amount determined to be required by the Director, shall be submitted with the application, which shall be utilized to at least partly offset the City's costs in reviewing and issuing an agreement, and not to exceed an amount permitted by applicable law provided that no costs shall be included if such inclusion is prohibited by applicable law as to that Person; any amount not used by the City for its actual lawfully reimbursable costs will be refunded upon request after execution of a ROW Use Agreement or Franchise. If applicable, the applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review, negotiation, and adoption of an appropriate ROW

Use Agreement or Franchise that may exceed the application deposit.

3. *Standard for Approval or Renewal.* In reviewing an application for a new or renewal ROW Use Agreement or Franchise, 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 to fulfill the requirements and objectives of this Chapter or as otherwise provided by law. All ROW Use Agreements or Franchises by ordinance or resolution of the City Council and applications shall be decided on a non-discriminatory basis and shall be approved, conditioned or denied based on compliance with all applicable requirements herein, and conformance with applicable law and the public interest.

4. *Approval Process*. After submission by the Applicant of a duly executed and completed application, deposit 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 Chapter and all applicable laws, the Director shall submit such Agreement to the City Council for approval. Upon determining compliance with this Chapter, the City Council 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 Chapter) 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 or use.

Section 106-144. – 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 cost of said Permit shall be set out by the Director. The Director is authorized to draft an application form consistent with the requirements of this Chapter. An Excavation Permit should be obtained for each project unless otherwise provided for in this Chapter. 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. It shall be unlawful for any Person to perform Excavation work within the City at any time other than from 6:00 A.M. to 9:00 P.M., Monday through Friday without prior approval from the City, except in the case of an emergency. No work shall be performed during City holidays, except in the case of an emergency. 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 Chapter shall not be refunded the application fee.

2. *Facilities Maintenance Permit; Exemptions.* No Person shall perform Facilities Maintenance at a specified location 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 Facilities Maintenance location or is exempt herein. In addition to the applicable conditions and obligations set forth in this Chapter, conditions of a Facilities Maintenance Permit shall be as established in such Permit and shall include requirements of notice to and approval by 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 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 4 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; or

d. Routine maintenance on previously approved Small Wireless Facilities, replacement of Small Wireless Facilities that are the same or smaller in size, weight, and height, or installation placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between Utility Poles in compliance with applicable safety and building codes, when such work will not involve Excavation, affect traffic patterns, obstruct traffic in the ROW, or materially impede the use of a sidewalk, and provided the ROW User submits as-builts of the new Small Wireless Facilities or Micro Wireless Facilities so the City may maintain an accurate inventory of Facilities installed in the ROW.

3. *Bulk Permits.* The Director shall have the authority to establish procedures for bulk processing of applications and periodic payment of fees.

4. *Emergencies*. In the event of an emergency requiring immediate attention to remedy defects, and in order to avoid loss of damage to Person or property, it shall be sufficient that 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, 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.

5. *ROW Permit Specific Conditions*. The Director may also impose reasonable conditions upon

the issuance of a Permit and the performance of 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.

6. *Codes Incorporated.* Every Permit issued hereunder shall incorporate the requirements and terms of this Chapter, agreements, 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 Chapter and any subsequent ordinances or regulations that may be adopted by the City regarding Excavation or Facilities 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 Public Service Commission, Federal Communications Commission, 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. *Tree and Landscape Protection*. Upon ten (10) days' written notice and with the supervision of the City or as otherwise provided by law or agreement, the City may permit a ROW User 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 Facilities in the ROW, at its own expense, subject to the supervision and direction of the City. Nothing in this paragraph shall authorize the trimming of trees on private property without permission of the property owner. All cut materials shall be properly disposed. Unless otherwise approved in writing by the City, a ROW User shall not remove, cut or damage any trees or their roots in the Rights-of-Way. 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.

8. *Permit Displayed.* At all times during the work, Permits shall be conspicuously displayed at the work site and shall be available for inspection by the Director.

9. *Modification Requiring New Permit*. If at any time it appears that the duration or scope of the work is or will become materially different from that allowed by the Permit, the ROW User shall inform the Director. The Director may issue a waiver, an extension or revised Permit, or require that the ROW User reapply for a Permit in accordance with all requirements of this Chapter.

Section 106-145. – 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 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.

Section 106-146. – 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.

Section 106-147. – Relocation of Facilities.

1. *City Required Relocation.* 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.

2. *Emergency Exception.* In the event of an emergency or where construction equipment or Facilities create or are contributing to an imminent danger to health, safety, or property, the City may, to the extent allowed by law, remove, re-lay, or relocate such construction equipment or the pertinent parts of such Facilities without charge to the City for such action or for restoration or repair. The City shall attempt to notify the Person having Facilities in the Rights-of-Way prior to taking such action, but the inability to do so shall not prevent same. Thereafter, the City shall notify the Person having Facilities in the Rights-of-Way as soon as practicable.

3. *Third-Party Relocation.* A Person having Facilities in the Rights-of-Way shall, on the reasonable request of any Person, other than the City, holding a validly issued Permit, after reasonable advance written notice, protect, support, or temporarily disconnect or relocate Facilities to accommodate such Person and the actual cost, reasonably incurred, of such actions shall be paid by the Person requesting such action. The Person having Facilities in the Rights-of-Way taking such action may require such payment in advance.

4. *Abandonment Exception.* Rather than relocate Facilities as requested or directed, a ROW User may abandon the Facilities if approved by the City as provided in Subsection 7 of this Section.

5. *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 the ROW User remove the obstructing Facilities with or without further delay and the ROW User shall bear all responsibility and liability for the consequences therefrom, and the City shall bear no responsibility to the ROW User or others for damage resulting from such removal.

6. *No Vested Rights.* No action hereunder shall be deemed a taking of property and no Person shall be entitled to any compensation therefor. No location of any Facilities in the Rights-of-Way shall be a vested interest or property right.

7. *Abandoned Facilities; Removal.* A Person owning Abandoned Facilities in the Rights-of-Way must not later than thirty (30) days of notice or of abandonment remove its Facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Director may upon written application and written approval allow underground Facilities or portions thereof to remain in place if the Director determines that it is in the best interest of public health, safety, and

general welfare to do so. The City shall be entitled to all costs of removal and enforcement for any violation of this provision.

8. *Nuisance.* Facilities Abandoned or otherwise left unused in violation of this Chapter 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.

Section 106-148. – ROW User Responsibilities and Requirements.

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. *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 currently in effect or as may be amended. 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 District 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. and compliance with this Chapter.

3. *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.

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. *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 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, along with copies of the policy and other documentation, shall be provided. 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. The City's additional insured coverage shall have no deductible. 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 or the City determines such exemption has not been adequately shown. Additionally, in accordance with § 67.5121(3), a self-insured ROW User shall not be required to obtain insurance naming the City as an additional insured solely to the extent such ROW User is utilizing "Small Wireless Facilities" as defined in the Uniform Small Wireless Facility Deployment Act within the ROW. This exception to the City's insurance requirements shall only apply as related to "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide appropriate insurance to the City for any other activities or operations. The City may waive any and all requirements under this Subsection when deemed to be lawful and in the public interest.

6. *Performance and Maintenance Bonds*.

a. *Bond Required.* Prior to any 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 guarantee the restoration of the Rights-of-Way. The bond shall continue in full force and effect for a period of forty-eight (48) months following completion of the work. The Director may waive this requirement when the work involves, as determined in the sole discretion of the Director, no or only minor disruption or damage to the Rights-of-Way. The bond 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 or the City determines such exemption has not been adequately shown. The City may waive any and all requirements under this subsection for good cause when deemed to be lawful and in the public interest.

b. *Failure to Satisfactorily Complete Restoration.* If a ROW User fails to complete the work in

a safe, timely, and competent manner or if the completed restorative work fails without remediation 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 in or restoring the Rights-of-Way, 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.

c. *Bond Terms.* 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's Attorney and shall contain the following endorsement: "This bond may not be cancelled 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."

d. *Exception.* 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). Additionally, in accordance with § 67.5121(4), the bonds required for “Small Wireless Facilities” as defined in the Uniform Small Wireless Facility Deployment Act shall not exceed one thousand five hundred dollars ($1,500.00) per “Small Wireless Facility” or more seventy-five thousand dollars ($75,000.00) for all “Small Wireless Facilities” within the ROW of a ROW User. This exception to the City’s bonding requirements shall only apply as related to such “Small Wireless Facilities” and shall not otherwise alter the obligations of a ROW User to provide appropriate bonds to the City for any other activities or operations.

7. *Indemnification.* Any Person performing Excavation or a 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 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 Person performing Excavation or ROW User, its agents, representatives, employees, contractors, subcontractors, or any other Person for whose acts the Person performing Excavation or ROW User may be liable, in constructing, operating, maintaining, repairing, restoring, or removing Facilities or other structures, or use of the Rights-or-Way or the activities performed, or failed to be performed, by the Person performing Excavation or ROW User under this Chapter 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, License, or Permit. Provided however, that in accordance with § 67.5121(2), a ROW User solely to

the extent a ROW User is operating "Small Wireless Facility" as defined in the Uniform Small Wireless Facility Deployment Act within the ROW shall only indemnify and hold the City, its officers and employees, harmless against any damage or personal injury caused by the negligence of the ROW User, its employees, agents, or contractors. This exception shall only apply to the ROW User's "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide indemnification to the City for any other activities or operations.

8. *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 Chapter, 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.

Section 106-149. – Jurisdiction, Inspection, Stop Work Orders, Appeals, and Penalties.

1. *Inspections.* All work and Facilities 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, and the Permit.

2. *Stop Work Orders.* The Director shall have full access to all portions of the work and may issue stop work orders and corrective orders to prevent unauthorized work or substandard work as established herein. Except in cases of an emergency or with approval of the Director, no work may be done in violation of a stop work order issued by the Director.

3. *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 Chapter. 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 Chapter in the absence or in addition to the issuance of notice of violation.

4. *Appeals.* Unless otherwise provided herein or by any other governing ordinance or law, any person aggrieved by a decision, fee or requirement established or made pursuant to this Chapter shall, prior to seeking any judicial or statutory relief, if any, file a written appeal of any such decision, fee, or requirement with the City Council within fifteen (15) days of such decision or imposition of such fee or requirement specifying this provision and including specific details of the alleged claim or grievance, and an evidentiary hearing shall be held on such appeal by the City Council or its designee to render a final decision. Nothing herein shall deny or preclude any additional applicable appeal remedy that may be granted and required by federal or state law after such decision.

5. *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 Chapter shall be subject to such penalties as

set forth in 1-5 of the City Code per day for each and every day the violation exists or continues.

Section 106-150. – Reservation of Rights.

In addition to any rights specifically reserved to the City by this Chapter, 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 Chapter, 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 Chapter 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.