

## CITY OF LEE'S SUMMIT ENCROACHMENT POLICY

### BACKGROUND:

Encroachments on City of Lee's Summit ("City") right-of-way, or City easements are only allowed as established by this Encroachment Policy. Such encroachments may interfere with the City's ability to provide services or maintain infrastructure, and may present safety concerns or risk of damage to property.

### PURPOSE:

The purpose of this Encroachment Policy is to establish policies related to the protection of City right of way and City easements from unauthorized encroachment; to establish guidelines by which requests for encroachments may be considered; to establish the responsibilities of City departments concerning right of way or City easements from unauthorized encroachments, and to establish policies regarding the disposition of existing unauthorized encroachments.

### SUBJECT TO ORDINANCES AND LAWS:

This policy shall be subject to the provisions of the City Code of Ordinances and any applicable federal, state or other local laws and regulations.

### EXHIBIT A:

Exhibit A, attached hereto, is a summary of uses of City right of way, or City easements. Exhibit A is incorporated by reference into this policy as if fully set forth herein.

### EXHIBIT B

Exhibit B, attached hereto, is a Release and Waiver to be signed by Requesting Parties for Conditional Uses.

### DEFINITIONS:

*Allowed Use* – A use of City right of way or City easement, listed under Exhibit A, that does not require a Release and Waiver or License Agreement or is otherwise found by the City Engineer not to unreasonably interfere with the City's use and enjoyment of City right-of- way or easement or otherwise authorized by law.

*City Easement* – "City Easement" or "easement" shall refer to any easement where the City is named as the grantee, including but not limited to general utility easements, water line easements, sanitary sewer easements, drainage easements, inundation easements, sidewalk easements, avigation easements, or any other easement granting the City limited or exclusive

rights of access, maintenance, repair, or replacement of certain improvements or other rights as identified in the easement which are intended to protect human life and/or property.

*City Right of Way* - Land dedicated to the City of Lee's Summit or it's assigns through a plat, dedication, separate document, condemnation, or other means and reserved for use of the public for transportation, utilities, and all other rights defined under State Law.

*Conditional Use* – Uses within the City easement or right of way, as listed in Exhibit A, or otherwise determined by the City Engineer, where a “Release and Waiver” must be executed.

*Encroachment* - Development, construction on or use of City right of way, or City easements with the exception of uses defined in Exhibit A.

*Non-Allowed Use* –Encroachments within City easements or right of way, as listed in Exhibit A, or otherwise determined by the City Engineer, which are not allowed unless otherwise specified in this policy.

*Restoration of Allowed Use* - The minimum level of service which the City is obligated to perform to restore an Allowed Use on City right of way and City easements when repairing, replacing or maintaining improvements within these areas.

*Requesting Party* – A person or entity seeking encroachment authorization pursuant to this policy.

## I. GENERAL

A. Procedure for Encroachment Authorization. It is the City's policy that requests for authorization to encroach on City right-of-way or City easements shall be considered as follows:

1. General: The requesting party shall first examine Exhibit A to determine whether the proposed use of City right of way or City easements are a “Non-Allowed Use”, “Conditional Use”, or “Allowed Use”. Allowed Uses require no further action. Conditional Uses shall be executed by the Requesting Party in the form of a Release and Waiver (template as shown on Exhibit B). The Requesting Party should be aware of Section IV “Restoration of Allowed or Conditional Uses” of this Encroachment Policy which limits the City’s obligation to restore the use to its original condition.
2. Non Allowed Uses cannot be administratively approved by City staff, but shall require prior authorization and the execution of a license agreement approved by the City Council, and signed by the City Manager. Requests for Encroachment Authorization shall be forwarded to the Public Works Department. Public Works

staff shall review the proposed encroachment and forward the request for encroachment authorization to the director of the City department(s) that would be affected by the proposed encroachment. The director of the City Department(s) that would be affected by the proposed encroachment shall determine whether the requested action would violate any land use regulations; be detrimental to the City's property interests; preclude other appropriate use; and otherwise be prudent and reasonable. The proposed encroachment and proposed license agreement described in Section 1.B below shall be submitted to the Public Works Committee (PWC) for review with staff recommendation. Following PWC's recommendation for approval, the license agreement will be forwarded to the City Council for review.

3. City Right-of-Way: Chapter 26, Article III of the Code of Ordinances contains provisions and prohibitions related to obstructions in City right-of-way. Those encroachments not covered by Section 26-101, et seq., shall be governed by this Policy, including the procedure specified hereinabove.
4. When an encroachment is associated with a development project which requires Preliminary Development Plan approval through the City Council, and the encroachment is disclosed in the Preliminary Development Plan, the encroachment may be authorized through adoption of the ordinance approving the Preliminary Development Plan. The encroachment shall be subject to the rules and procedures as provided above based upon the type of encroachment.
5. If a requested use is not listed in Exhibit A, the City Engineer shall determine if the use is an "allowed use," "conditional use" or a "non-allowed use."
6. The document authorizing the Encroachment shall be recorded with the Jackson County Recorder of Deeds department by the Requesting Party. Recording shall in such a manner that the Release and Waiver or License Agreement can be associated with the appropriate parcel so that the documents are readily available to any future interests in the property initiating the encroachment.

B. License Agreement Requirement. If the use is a Non-Allowed Use as defined by Exhibit A, or otherwise determined by the City Engineer, it is the City's policy that encroachment authorization to encroach on City right-of- way or City easements only be granted by a written License Agreement (template as shown on Exhibit B) which shall be reviewed and approved by the City's Legal Department, approved by the City Council and executed by the City Manager on behalf of the City. The License Agreement shall contain such stipulations and conditions deemed appropriate by the City to protect its property and interests. Such stipulations shall include, but not be limited to, the following:

1. The encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the Requesting Party;
2. The Requesting Party shall agree to, at all times, indemnify and save the City free

and harmless from and pay in full any and all claims, demands, losses, damages or expenses that the City may sustain or incur in any manner resulting from the construction, maintenance, use, repair or presence of the encroaching structure, including any loss, damage or expense arising out of (a) loss of or damage to property, or (b) injury to or death of a person.

3. The Requesting Party must agree to remove the encroachment within thirty (30) days after notice by the City to do so;
4. The City shall have the authority to remove any encroachment or cause its removal if the Requesting Party does not comply with the thirty (30) day notice required by Section I.B.3., and all costs related to such action shall be chargeable to the Requesting Party;
5. The City shall have the authority to immediately remove any encroachment, or cause its removal, without notice to the Requesting Party, when the director of the Department affected by the encroachment, or his or her designee, determines that immediate access covered by the written authorization is needed because of an emergency situation. The Requesting Party shall be liable for the costs related to the removal of the encroachment.
6. The License Agreement shall address any insurance concerns as provided in Section V of this policy, - INSURANCE REQUIREMENTS FOR USES AUTHORIZED THROUGH LICENSE AGREEMENTS.

## II. EXISTING UNAUTHORIZED ENCROACHMENTS

Unless otherwise provided for in the City Code or other applicable law, upon discovery of an unauthorized encroachment, City staff shall provide the property owner with written notice of the presence of the unauthorized encroachment and of the need to seek approval of the City in the manner prescribed in this Policy within thirty (30) days. It is the City's policy to compel removal or other corrective action in the event of non-compliance by the property owner.

## III. EMERGENCY SITUATIONS

Nothing in this Policy shall be construed to prevent the City from pursuing immediate removal of an encroachment when such removal is needed because of an emergency situation, pursuant to the City Code of Ordinances.

## IV. RESTORATION OF ENCROACHMENTS

If repair, replacement, or maintenance of improvements within City right of way or City easements is performed by the City or its agents, which causes damage or destruction of any Allowed Use, Conditional Use, or Non-Allowed Use, the City is not obligated to perform any

restoration. The City is only obligated to restore the impacted area to the surface elevation that existed prior to the repair, replacement, or maintenance of improvements, and shall not be responsible for replacement of the Use. This policy includes, but is not limited to asphalt repair, concrete repair, parking lot repair, concrete patio repair, special plant or special grass replacement, tree replacement, or other items listed in Exhibit A.

The City will repair or replace the following if damage is caused to certain Allowed Uses by the City or its agents during construction activities:

1. Standard portland cement concrete or asphaltic concrete residential and commercial driveways which are within a City easement or right of way. Brick paver stone or decorative stamped concrete and other non-standard driveway materials will not be repaired or replaced. Parking lots and curb and gutter will not be repaired or replaced.
  2. Chain link, vinyl, or wooden fences, to the extent that they will only be replaced with the original existing fencing material.
  3. Residential and commercial building sewers and water supply lines to the extent that they are damaged during construction activities by the City or its agents.
  4. Residential and commercial utilities to the extent that they are damaged during construction activities by the City or its agents.
  5. Mailboxes to the extent that they are damaged or require re-location during construction activities by the City or its agents.
  6. Newspaper sales boxes.
- V. INSURANCE REQUIREMENTS FOR USES AUTHORIZED THROUGH LICENSE AGREEMENTS. As deemed necessary by the City, the Requesting Party shall be required to maintain and carry in force for the duration of any agreement authorized under this Policy. Insurance coverages, provisions and conditions shall meet the requirements of the City's Right of Way Ordinance: Chapter 26 Streets, Sidewalks and Other Public Places, Section 26-211. Proof of insurance shall be submitted to the City Engineer and the City Attorney in accordance with the License Agreement.



# LEE'S SUMMIT MISSOURI

## Release and Waiver

In consideration for the City of Lee's Summit's permission to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(attach drawing and extra sheets if necessary)

onto the City's \_\_\_\_\_ at (legal description of the easement, or right of way):

Lot No. \_\_\_\_\_ Plat Title \_\_\_\_\_ Address \_\_\_\_\_

County \_\_\_\_\_ State \_\_\_\_\_

I, \_\_\_\_\_, the undersigned, successors, and assigns do hereby release and forever discharge the City of Lee's Summit, its employees and/or agents from and against any and all liability, claims and demands for any use arising out of, relating to, or being in any way connected with work or service by the City, its employees or agents within the City's easement, or right of way as described above for any purpose whatsoever.

NOW THEREFORE, the Undersigned hereby declares that said property described above shall be held, sold and conveyed subject to the release herein and said release shall run with the real property and be binding on all parties having any part thereof, their heirs, successors and assigns.

IN WITNESS WHEREOF, this release has been read, signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_  
Printed or Typed Name

**INDIVIDUAL ACKNOWLEDGEMNT**

STATE OF MISSOURI  
COUNTY OF JACKSON

ON T his, T he \_\_\_\_ day o f \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public, personally appeared:  
\_\_\_\_\_, proved to me on the basis of satisfactory evidence to be  
the person(s) whose name(s) subscribed to the within instrument, and acknowledged that \_\_\_\_\_  
he/she/they executed the same for the purposes stated therein and no other.

WITNESS my hand and official seal in the County and State aforesaid, the day and year first above written.

/s/ \_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed or Typed Name

My Commission Expires:  
\_\_\_\_\_

(Seal)



**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 201\_, by and between the City of Lee’s Summit, Missouri, a Missouri constitutional charter city (hereinafter called “City”), and \_\_\_\_\_, a Missouri \_\_\_\_\_(hereinafter called “Licensee”).

WITNESSETH:

WHEREAS, City owns an Easement, described in paragraph 1 below, and the City desires to license to Licensee and the Licensee desires to license from the City a portion of the City’s \_\_\_\_\_ (“Licensed Premises”) for the construction and maintenance of \_\_\_\_\_ (“Improvements”).

NOW, THEREFORE, City, in consideration of the obligations hereby assumed by Licensee, hereby licenses and authorizes Licensee, its officers, members, contractors, agents, and guests, to enter and go upon the Licensed Premises, at all times during the continuance of this Agreement, and there to use and enjoy the Licensed Premises for the Improvements, subject to the following:

1. LICENSED PREMISES. The Licensed Premises referenced in this Agreement consists of [**describe the licensed premises, i.e. the area that the licensee will encroach upon**]. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. USE OF LICENSED PREMISES. Licensee, its officers, members, contractors, agents and guests shall have the right to use the Licensed Premises solely for the construction and maintenance of the Improvements. The Improvements shall consist of \_\_\_\_\_ The Improvements on the Licensed Premises shall comply with all ordinances of the City and are subject to approval of the City.

3. RESTRICTION ON MODIFICATIONS AND IMPROVEMENTS. Except as specifically allowed by paragraph 2, Licensee, its officers, members, contractors, agents, and guests are prohibited from making any addition, modification or improvement to any part of the Licensed Premises, and are prohibited from placing, affixing or constructing any structure, utility, signage or markings on the Licensed Premises.

4. MAINTENANCE. Licensee agrees to maintain, at its sole cost, the Improvements to the Licensed Premises and the Licensed Premises, at all times during the continuation of this Agreement.

5. RESTRICTION AS TO WASTE. Licensee shall not, except so far as may be reasonably necessary for the maintenance of the Improvements on the Licensed Premises and the Licensed Premises as aforesaid, commit or permit any waste thereon, and in particular Licensee shall not without the permission in writing of City cut down or destroy or injure any bushes or trees. Licensee shall be liable for any damage done to the Licensed Premises, except as is permitted by this Agreement, by any persons entering upon the Licensed Premises on behalf of Licensee pursuant to the terms of this Agreement.

6. GENERAL INDEMNITY.

A. GENERAL. Licensee shall indemnify, release, defend, become responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, subject to the provisions set forth in the Missouri Sovereign Immunity Statute, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property to the extent arising out of or resulting from any act, error, omission, or intentional act of Licensee or its agents, employees, or subcontractors, arising out of or in any way connected with the operations expressly authorized herein; provided, however, that Licensee need not save harmless the City from claims, demands, losses and expenses to the extent arising out of the sole negligence or misconduct of the City, its employees, agents, or contractors.

B. NO LIMITATIONS OR WAIVER. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement, or by a limitation of the amount or type of damages or compensation payable by or for Licensee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by Licensee. The City does not, and shall not, waive any rights against Licensee which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by Licensee, of any of the insurance policies described in this Agreement. Except as provided in subpart A above, this indemnification by Licensee shall apply regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

C. NOTIFICATION OF CLAIMS. With respect to any claims which are subject to indemnity hereunder, Licensee shall immediately notify the City of any and all claims filed against Licensee or Licensee and the City jointly, and shall provide the City with a copy of the same.

D. CHALLENGES TO CONTRACT. Licensee shall indemnify, defend and hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, against any and all claims or challenges brought against the City with respect to the validity of the terms and conditions of this Agreement.

E. USE OF INDEPENDENT CONTRACTORS. The fact that Licensee carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, Licensee's duty of defense and indemnification under this section.

7. INSURANCE.

A. GENERAL PROVISIONS. Licensee shall file with the City evidence of liability insurance with an insurance company licensed to do business in Missouri. At all times while this Agreement remains in effect, and in recognition of the indemnification provisions set forth above, Licensee shall, at its own cost and expense, maintain a program of commercial general liability insurance and/or self-insurance in the amounts specified below to protect Licensee and the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from any liability for bodily injury, death and property damage occasioned by the activities of Licensee, or any person acting on their behalf, under this Agreement, including, but not limited to, Licensee's operations, products, services or use of automobiles or construction equipment. As proof of this compliance, Licensee shall, during the

term of this Agreement, keep on file with the Clerk of the City a certificate of insurance with an insurance company licensed to do business in the State of Missouri and/or affidavit of self-insurance which shall show the types and amounts of coverage. Any affidavit of self-insurance shall be signed by Licensee, or an employee or officer of Licensee who has knowledge of Licensee's self-insurance program and is authorized to make representations as to the scope of said program, and shall contain a statement making such representations.

B. Prior to any access in City-owned easements, the Easement User shall procure and maintain insurance against claims for: A) bodily injury, personal injury, sickness or disease, or death of any persons other than ROW user's employees; B) damages insured by usual personal and advertising injury liability coverage; C) damages because of injury to or destruction of tangible property, including loss of use resulting from; D) products/completed operations; and E) damages involving liability insurance applicable to Easements User's indemnity obligations under Division. Such insurance shall cover claims as may be occasioned by the operations, acts, errors, omissions, or negligence of Easement User or its officers, agents, representatives, employees, lessees, or contractors during all times that occupies the ROW. Insurance limits may be met by the combination of primary and umbrella or excess coverage.

The amount of insurance shall be in amounts sufficient to protect the City against all liabilities not protected by the State of Missouri's sovereign immunity statute and the City shall be named and endorsed as an additional insured and Easement-user shall provide an endorsed waiver of subrogation against the City for all such policies, unless prohibited by law. The City shall not have a deductible for its coverage, the intent being that the City shall not pay any amounts towards its defense or damages arising out the Easement-user's use of the City-owned easement and any condition the Easement-user creates or contributes to create on the Easement, ROW or on abutting property. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage arising out of or alleged to have arisen out of the negligent or willful acts or omissions of the Easement-user. The Easement-user agrees it does not have a cause of action or claim against the City for any action that such insurance would provide coverage for.

A copy of the liability insurance certificate and all required endorsements must be on file with the City Clerk.

C. LIMITS AND COVERAGE.

- (1) Commercial General Liability: Minimum \$1,000,000 each occurrence limit for bodily injury and property damage; \$5,000,000 policy aggregate; \$5,000,000 products and completed operations aggregate.
- (2) Automobile Liability: Minimum \$1,000,000 combined single limit for bodily injury and property damage; applicable to owned, non-owned and hired automobiles.
- (3) Workers' Compensation: As required by state statute; if exempt, must submit letter stating the exemption; employer's liability \$1,000,000 each occurrence.
- (4) Umbrella/Excess Liability: An umbrella or excess liability policy in the minimum amount of \$2,000,000 each occurrence and aggregate; at least as broad as the underlying general liability, automobile liability and

employer's liability.

The following endorsements shall attach to the Commercial General Liability policy:

- (1) The policy shall cover personal injury as well as bodily injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad form property damage liability shall be afforded.
- (4) The City shall be listed as an additional insured.
- (5) Standard form of cross-liability shall be afforded.
- (6) 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 City.
- (7) The City shall be provided a valid Certificate of Insurance evidencing the coverage referenced herein upon request.

D. USE OF CONTRACTORS AND SUBCONTRACTORS. Licensee shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this paragraph. Said insurance shall be maintained in full force and effect until the completion of the work performed, and approval thereof by the City.

E. WORKERS' COMPENSATION. Licensee shall ensure that all contractors or subcontractors performing work for Licensee obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, Licensee shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with State laws, and to fully protect the City from any and all claims of such employees arising out of occurrences during work performed hereunder. Licensee hereby indemnifies the City for any damage resulting to it from failure of either Licensee or any contractor or subcontractor to obtain and maintain such insurance. Licensee further waives its rights to subrogation with respect to any claim against the City for injury arising out of performance under this Agreement. Licensee shall provide the City with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the Improvements.

## 8. REVOCATION.

Notwithstanding any provision of this Agreement to the contrary, City may terminate this Agreement and revoke the license hereby granted as to all or any part of the Licensed Premises at any time upon sixty (60) days advance notice in writing, provided, however, no advance notice is required if Licensee shall break any of the conditions or obligations herein contained. Licensee may terminate this Agreement at any time upon sixty (60) days advance notice in writing. No such termination by Licensee shall negate any rights or obligations of the parties accrued through the date of such termination. In the event of the termination of this Agreement, the Licensee shall remove, at its sole expense, the Improvements from the Licensed Premises.

## 9. CONSTRUCTION OF AGREEMENT.

A. SIMPLE LICENSE. The license created by this Agreement shall be construed as a simple license (sometimes referred to as a "bare," "mere" or "naked" license)

revocable at the will of the City, subject only to any advance written notice of revocation required by paragraph 8.

B. HEADINGS. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

C. NON-WAIVER. No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

D. JOINTLY DRAFTED. This Agreement shall be deemed to have been jointly drafted by the parties and shall not be construed more strongly against any party hereto.

E. APPLICABLE LAW. This instrument shall be construed in accordance with the laws of the State of Missouri.

10. UNASSIGNABLE.

The license created by this Agreement is solely for Licensee, its officers, members, servants, agents and guests and no others. Neither the license nor this Agreement, in whole or part, is assignable, except that at the request of Licensee, the City will consider assigning this Agreement to a homes association.

11. NON-SEVERABLE.

If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be deemed invalid and unenforceable, provided, however, that the terms and provisions of paragraphs 6 and 8 shall not be affected thereby and each term and provision of said paragraphs 6 and 8 shall be valid and enforced to the fullest extent permitted by law.

12. NOTICE.

Whenever any notice is required by this Agreement to be made, given or transmitted to the City, it shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, first class, addressed to:

City Manager  
City of Lee's Summit  
220 S.E. Green  
Lee's Summit, Missouri 64063

and notices to Licensee shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such place as either party shall designate by written notice to the other. Said notices may also be personally hand delivered by each party to the other, at the respective addresses listed above. If hand delivered, the date of actual completion of delivery shall be considered the date of receipt. If mailed, the item shall be considered received the third day after the date of mailing.

13. ENTIRE AGREEMENT.

This Agreement constitutes the entire Agreement between the parties hereunder and all other representations of statements heretofore made, verbal or written, are merged herein and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above mentioned at Lee's Summit, Missouri.

**CITY OF LEE'S SUMMIT, MISSOURI**

\_\_\_\_\_  
Mayor William A. Baird

ATTEST:

\_\_\_\_\_  
City Clerk Trisha Fowler-Arcuri

APPROVED AS TO FORM:

\_\_\_\_\_  
Nancy K. Yendes,  
Chief Counsel of Infrastructure and Planning

**[Licensee]**

\_\_\_\_\_  
\_\_\_\_\_