

Exhibit C
Amendments to City Code Section 26-211 for Insurance

Section 26-211 of the City Code shall be amended as follows, with changes shown in the underline and ~~strikethrough~~ format:

Sec. 26-211. - Insurance.

- A. Unless a ROW-user has twenty-five million dollars (\$25,000,000.00) in net assets in the State of Missouri and does not have a history of noncompliance, or permitting noncompliance, within the City, then the ROW-user shall file with the City evidence of liability insurance with a reputable, qualified and financially sound insurance company licensed to do business in Missouri, and unless otherwise approved by the City in writing, with a current A.M. Best ROW User, Inc., rating of not less than A.
1. The ROW-user shall provide all information to the City necessary to determine the amount of net assets of the ROW-user.
 2. 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 ROW-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 ROW-user's use of the ROW and any condition the ROW-user creates or contributes to create on the 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 ROW-user. The ROW-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.
 3. If the ROW-user 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, but self-insurance shall only be permitted by consent of the City Council and the execution of an agreement separate from any agreement created under this article which shall be in full force and effect until such time as the ROW-user's facilities, structures and use are removed or cease from or on the ROW.
 4. A copy of the liability insurance certificate and all required endorsements must be on file with the City Clerk.
- B. No liability insurance will be required of any residential property owner excavating or working in the right-of-way adjacent to his/her residence who does not utilize a contractor to perform the excavation or work and who does not require a temporary traffic control permit. However, said residential property owner shall be required to demonstrate proof of a homeowner's policy with coverage and limits acceptable to the City Engineer.
- C. For purposes of this section, "history of noncompliance, or permitting noncompliance, within the City," shall mean the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public right-of-way to its previous condition under a previous right-of-way permit or temporary traffic control permit.
- D. ROW-users who are installing facilities that are not a part of a distribution system as outlined in Section 26-134.B. shall also comply with the security provisions in said section.
- E. In addition to the insurance provisions above, the following insurance provisions shall apply to ROW users who do not have a franchise or license agreement with the City that contains insurance provisions and who intend to have facilities in the ROW for more than sixty (60) days:
1. *Insurance required.* Prior to any access in the ROW, ROW 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

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involving liability insurance applicable to ROW user's indemnity obligations under Division. Such insurance shall cover claims as may be occasioned by the operations, acts, errors, omissions, or negligence of ROW 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.

2. Limits of insurance. The insurance to be provided by a ROW user shall be as set forth in the "Standard Insurance and Indemnification Requirements" as approved by the City Attorney, which may be updated and amended as needed from time to time.:
 - a. ~~Commercial general liability.~~ Carry and maintain commercial general liability insurance limit of one million dollars (\$1,000,000.00) per occurrence, five million dollars (\$5,000,000.00) Products and Completed Operations Annual Aggregate, and a five million dollar (\$5,000,000.00) general aggregate limit. The policy shall be primary, non-contributory and include coverage for bodily injury, property damage, personal injury, personal and advertising injury, products, completed operations, and blanket contractual liability, which coverage will be at least as broad as Insurance Services Office, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause, severability of interests and waiver of subrogation clauses. If any excess insurance is utilized to fulfill the requirements of this subsection, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
 - b. ~~Worker's compensation.~~ Carry and maintain worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of ROW user employees engaged in the performance of services; and employer's liability insurance of not less than one million dollars (\$1,000,000.00) for each accident, one million dollars (\$1,000,000.00) disease for each employee and one million dollars (\$1,000,000.00) disease policy limit.
 - c. ~~Automobile liability.~~ Carry and maintain commercial business automobile liability insurance with a combined single limit for bodily injury and property damages of one million dollars (\$1,000,000.00) each accident covering all owned, hired, and non-owned vehicles assigned to or used in performance of the ROW user's work. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. If any excess insurance is utilized to fulfill the requirements of this subsection, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
3. ~~Additional insured.~~ All insurance coverage and self-insured retention or deductible portions, except for workers compensation shall name and endorse the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the ROW user shall be primary insurance, and that any self-insured retention and/or insurance coverage carried by City or its employees shall not contribute to the coverages provided by ROW user. This provision and the naming of the City as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).
4. ~~Coverage term.~~ All insurance required herein shall be maintained in full force and effect while any license, franchise, agreement, permit, approval, or similar permission is in effect and until the ROW User has all removal and restoration obligations hereunder.
5. ~~Primary coverage.~~ ROW user's insurance shall be, or endorsed to be, primary, non-contributory insurance to the City, and any insurance or self-insurance maintained by the City shall not contribute to it. Such coverage shall be at least as broad as ISO CG 20 01 04 13.
6. ~~Claim reporting.~~ Any failure of the ROW user to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City. ROW user shall promptly furnish City's Risk Management Division with copies of any accident or incident report(s) sent to ROW user's insurance carriers covering accidents/incident occurring in connection with and/or as a result of use of the ROW.

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- ~~7.—*Waiver.* To the fullest extent permitted by law, all policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of ROW user's acts, mistakes, omissions, work or services. ROW user shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.~~
- ~~8.—*Certificates of insurance.* Prior to the commencement of any work in the ROW, ROW user shall furnish to the City certificates of insurance, and additional insured and waiver of subrogation endorsements as required by this section, issued by ROW user's insurer(s) as evidence that policies providing the required coverages, conditions, and limits required by this section are in full force and effect and obtain approval of such certificates from the City's Risk Manager, which reasonable approval may not be withheld. The City may reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this section. Notwithstanding the foregoing, ROW user may not perform any work until an approved certificate of insurance is provided to the City. Such certificates shall identify the name of the license, franchise, agreement, permit, approval, or similar document authorizing ROW user to remain the ROW and will include the required endorsement(s). If a policy expires during the term of ROW user's occupation of the ROW, a renewal certificate(s) must be sent directly to the City's Risk Management prior to the expiration date.~~
- ~~a.— Such certificates and all subsequent renewals that are required shall name the City of Lee's Summit as the certificate holder and be sent directly to:~~

	With a copy to:
City of Lee's Summit	City of Lee's Summit
City Attorney's Office	City Engineer
220 SE Green St.	220 SE Green St.
Lee's Summit, MO 64063	Lee's Summit, MO 64063

- ~~9.—*Copies of policies.* The City shall not be obligated, however, to review same or to advise ROW user of any deficiencies in such policies and endorsements, and such receipt shall not relieve ROW user from, or be deemed a waiver of, the City's right to insist on strict fulfillment of ROW user's obligations under this section.~~
- ~~10.—*Policy limit escalation.* By written notice to ROW user, City may elect to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the reasonable amount of insurance to be provided, but in no instance less than the individual and combined sovereign immunity limits established by RSMo 537.610.~~
- ~~11.—*Policy deductibles and/or self-insured retentions.* The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. ROW user shall be solely responsible for any such deductible or self-insured retention amount.~~

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- ~~12. *Indemnification and sovereign immunity unaffected.* Nothing contained in this section shall be construed as limiting the extent of ROW user's obligation to indemnify, defend, and hold harmless the City as set forth in the indemnification requirements these Standard Ts and Cs. Nothing containing in these insurance requirements is to be construed to waive the City's sovereign or any other immunity or defense available to the City, its officers, employees, agents, or elected officials.~~
- ~~13. *Notice of claim; change in coverage.* ROW User shall upon receipt of notice of any claim in connection with this agreement promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. All policies shall contain an endorsement providing that the coverage afforded under such policies shall provide thirty (30) days' prior written notice of cancellation, except for non-payment of premium, will be given to City. ROW user shall be responsible for ensuring that the City is notified within thirty (30) days of the occurrence of any reduction in the insurance coverage amounts, cancellation, or expiration of any of the policies as required by this Standard Ts and Cs that are not replaced.~~
- ~~14. *Contractor insurance.* ROW user will require any of its contractors to obtain and maintain substantially the same coverage with substantially the same limits as required of ROW user, including the City being an additional insured.~~