

Section 312.11. - Performance security.

A. Security bond shall be posted to secure completion of all construction or installation commenced, pursuant to a permit under this chapter, except for construction of driveways not requiring a roadway modification, for utility placement by utility companies having a valid franchise to operate in Indian River County, for drainage structures serving single family residences located in ditches parallel to the roadway, and pedestrian bikepath facilities. Security bond shall be posted in the amount of one hundred fifteen (115) percent of the estimated costs of the proposed improvements in the right-of-way. The estimate shall be prepared by an engineer registered in the State of Florida to practice professional engineering. Upon completion and approval by the public works director of all required improvements, ninety (90) percent of the posted security will be released by the public works director. A ten (10) percent warranty security will be held for an additional twelve (12) months, following which time, if all improvements are free of defects due to faulty field engineering, workmanship, or materials, this ten (10) percent security will be released by the public works director.

B. In lieu of the above security, the permittee may post in an escrow account one hundred fifteen (115) percent of the estimated cost of the improvements in the right-of-way. Partial release may be authorized (up to ninety (90) percent of the posted security) as work is approved. The remaining ten (10) percent will be held for an additional twelve (12) months, following such time, if all improvements are free of defects due to faulty field engineering, workmanship or materials, this ten (10) percent of the security will be released by the county public works director.

C. Any user placing or installing any structure or object on County utility poles or other equipment or structures within the right-of-way shall ensure that, at least thirty (30) days prior to the commencement of any work on County utility poles or equipment or structures, the user, provide the Public Works Director security, in the form of a letter of credit, in a form deemed legally sufficient by the County Attorney's Office, or cash, posted in the amount of one hundred fifteen (115) percent of the estimated costs of replacing the utility poles or equipment or structure. The estimate shall be prepared by an engineer registered in the State of Florida to practice professional engineering. Upon completion and approval by the public works director of all required improvements, ninety (90) percent of the posted security will be released by the public works director. Ten (10) percent security funds shall remain in place at all times the structure or object remains installed or placed on the County utility poles or other equipment or structures within the right of way. If at any time, the security funds are not in place, the structure or object shall be deemed abandoned and shall be subject to immediate removal per section 312.13.

Section 312.13. - Termination of use or removal of object.

Notwithstanding any section of this chapter to the contrary, the county may terminate any certain use allowable or under permit, or require the owner or permittee to remove any object allowable or under permit, if it is determined that it is in the public interest to have such use terminated or object removed. Such objects shall be removed as soon as practicable with a time limit to be established by the director of public works. Failure to comply will result in the permittee being subject to penalties as described in section 312.15. The County may immediately remove any stricture or object that is deemed abandoned per section 312.11 or 312.14 or for lack of payment of any annual fee adopted by the Board.

Section 312.14. - Public protection and liability.

1. Whenever any of the public rights-of-way are used under the terms of this chapter the person so using them shall take necessary precautions, including illumination, for protection of the public with particular emphasis on the period from sunset to sunrise. The persons so using the public rights-of-way as a condition of that use agree to hold and save the county harmless from any and all liability that may arise out of the use of any public rights-of-way as provided in this chapter or by permit.

2. The user agrees and is bound to hold Indian River County whole and harmless against any and all claims for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by the use, occupancy, and maintenance of the public right-of-way, or from any act or omission of any representative, agent, customer, and/or employee of the user. This user shall also be responsible for any claim for damage that any utility, whether publicly or privately owned, may sustain or receive by reason of user's use of the public right-of-way and improvements and equipment located thereon. User shall not make any claim of any kind or character whatsoever against Indian River County for damages that it may suffer by reason of installation, construction, reconstruction, operation, and/or maintenance of any public improvement, or utility, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water and/or sewer mains and/or storm sewer facilities fiber optic cables, and whether such damage is due to flooding, infiltration, natural causes, or from any other cause of whatsoever kind or nature. It is the intention of this section, and a condition of any permit, that it shall be full and total indemnity against any kind or character of claim whatsoever that may be asserted against Indian River County by reason of, or as a consequence of having granted permission to a user to use and/or maintain a public right-of-way. User is required to defend any and all suits, claims, or causes of action brought against Indian River County on behalf of the county and pay any judgment or judgments that may be rendered against county in connection therewith.

3. Any user placing or installing any structure or object on County utility poles or other equipment or structures within the right-of-way shall ensure that, at least thirty (30) days prior to the commencement of any work on County utility poles or equipment or structures, the user provides to the Indian River County Risk Management Division a certificate or certificates issued by an insurer or insurers authorized to conduct business in Florida that is rated not less than category A-: VII by A.M. Best, subject to approval by Indian River County's Risk Manager, of Commercial general liability insurance with a combined single limit of \$1,000,000.00 per occurrence. The County shall be named as an additional insured for each of these policies. The Indian River County Risk Management Division has the authority to require additional insurance based upon the structure or object to be installed or placed. If at any time, the insurance shall not be in place, the structure or object shall be deemed abandoned and shall be subject to immediate removal per section 312.13.