

AN AGREEMENT BETWEEN
BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, KANSAS,
AS THE GOVERNING BODY OF THE UNIFIED WASTEWATER DISTRICT
AND
CITY OF OVERLAND PARK, KANSAS
FOR MANAGING THE USE AND OCCUPANCY OF PUBLIC RIGHT-OF-WAY

THIS AGREEMENT, made and entered into as of 4 day of February, 2002 by and between the **City of Overland Park, Kansas**, hereinafter termed the "**City**" and the **Board of County Commissioners of Johnson County, Kansas, as the Governing Board of the Unified Wastewater District**, hereinafter termed, "**County**".

1. General.


- 1.1. The general intent is for the County and the City to cooperate in the management of the facilities within the right-of-way of the City.
- 1.2. This Agreement is entered into pursuant to Kansas State Statute 12-2908.

2. Purpose.

- 2.1. To recognize the City's primary role as chief steward of the right-of-way and its duty to its citizens to recover the administrative costs of managing the right-of-way and incursions into it;
- 2.2. To clarify and manage conditions of occupancy and construction for the County occupying space within the City's right-of-way given the anticipated use of the right-of-way by the County;
- 2.3. To recognize the necessity for sound management practices in light of the use of the right-of-way and the fact that the right-of-way is a limited resource;
- 2.4. To minimize disruption, visual impact or inconvenience to the public, and to preserve the public health, safety and welfare; and
- 2.5. To comply with state and federal legislation.

3. Definitions.

- 3.1. For purposes of this Agreement, the following words and phrases shall have the meaning given herein:
 - 3.1.1. "**Abandoned Facilities**" means those facilities owned by the County that are not in use and will not be utilized by the County in the future.



3.1.2. **“City”** means the City of Overland Park, Kansas, a municipal corporation and any duly authorized representative.

3.1.3. **“City Engineer”** means the City Engineer, Overland Park, Kansas, or the authorized representative.

3.1.4. **“Construct”** means and includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.

3.1.5. **“Day”** means calendar day unless otherwise specified.

3.1.6. **“Emergency”** means a condition that (a) poses a clear and immediate danger to life or health, or of a significant loss of property; or (b) requires immediate repair or replacement in order to restore service to a user.

3.1.7. **“Excavate”** means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.

3.1.8. **“Facility”** means lines, pipes, irrigation systems, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennae, transmitters, gates, meters, appurtenances, or other equipment.

3.1.9. **“Governing body”** means the Mayor and the City Council of the City of Overland Park, Kansas.

3.1.10. **“Governmental entity”** means any county, township, city, town, village, school, library County, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States or of the United States.

3.1.11. **“Loss”** means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney’s fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with or claimed to arise out of or be connected with this Agreement, any permit issued under this Agreement, or any action

connected with the performance of the permitted work whether arising before or after the completion of the work.

3.1.12. **“Parkway”** means the area between a property line and the street curb, sometimes called boulevard, tree-shelf, or snow-shelf.

3.1.13. **“Pavement”** means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material.

3.1.14. **“Person”** means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

3.1.15. **“Public improvement”** means any project undertaken by the City for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands.

3.1.16. **“Public lands”** means any real property of the City that is not right-of-way.

3.1.17. **“Public Works Director”** means the Director of the Public Works Department of the City of Overland Park, Kansas, or the authorized representative.

3.1.18. **“Repair”** means the temporary construction work necessary to make the right-of-way useable.

3.1.19. **“Restoration”** means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, that existed before the commencement of the work.

3.1.20. **“Right-of-way”** means the area on, below or above the present and future City streets, alleys, bridges, bikeways, parkways and sidewalks.

3.1.21. **“Right-of-way Permit”** means the authorization to excavate for the construction, installation, repair or maintenance of any type of facility within the right-of-way.

3.1.22. **“Routine Service Operation”** means a work activity that makes no material change to the facilities and does not disrupt traffic.

3.1.23. **“Service”** means the removal and treatment of wastewater and sanitary waste for persons by the County in accordance with statute by means of facilities located in whole or in part in the right-of-way.

3.1.24. **“Street”** means the pavement and sub-grade of a City residential, collector or arterial roadway.

4. Policy.

4.1. The County shall utilize the right-of-way in a manner that maximizes the efficient use of and conserves the right-of-way and minimizes the burden on the right-of-way, physically and aesthetically. Any use of the right-of-way within the City by the County shall be subject to the terms and conditions hereof, in addition to other applicable federal, state or local requirements.

4.2. The County shall use the right-of-way in accordance with this Agreement, and shall be limited to the use that the County has been granted by state statute. These rights are for the exclusive use of the County.

4.3. This Agreement also is designed to manage occupancy and regulate excavations in the right-of-way by providing, among other things, for the issuance of permits.

4.4. If any of the rules, regulations, policies, ordinances and other criteria described herein are subsequently adopted or amended by the City in manner that creates a conflict with any provision of this Agreement and said conflict adversely affects the operation of the County, then the parties to this Agreement shall make a good faith effort to renegotiate those provisions of this Agreement that directly relate to said conflict.

5. Administration.

5.1. The City Engineer is the principal city official for administration of right-of-way permits for work and excavations made in the right-of-way. The City Engineer may delegate any or all of the duties hereunder.

6. Requirements of County.

6.1. The County shall designate a local person familiar with the facilities who will act as a local agent for the County and will be responsible for satisfying information requirements of this Agreement. The County shall present to the City the agent’s name, address, telephone number, fax number and email address. The agent shall be the person to whom relocation notices and other such notices

shall be sent, and with whom rests the responsibility to facilitate all necessary communications.

6.2. The County shall participate in any joint planning, construction and advance notification of right-of-way work, including coordination and consolidation of street cut work. In addition, the County shall cooperate with other users of the right-of-way and the City for the best, most efficient, most aesthetic and least obtrusive use of the right-of-way, consistent with safety, and to minimize traffic and other disruptions, including street cuts.

6.3. The mapping requirements of the County shall be:

6.3.1. The County shall keep and maintain accurate records and as-built drawings depicting accurate location of all its facilities constructed, reconstructed, or relocated in the right-of-way after the effective date of this Agreement.

6.3.2 Such information shall be made available through the Johnson County Automated Integrated Mapping Systems (AIMS). Any reasonably necessary information not available through AIMS shall be timely provided upon request by the City in a format reasonably approved by the City.

6.3.3 Such mapping and identification shall be at the sole expense of the County.

7. County's Right to Sell, Transfer, Lease, Assign, Sublet or Dispose.

7.1. The County shall not sell, transfer, lease, assign, sublet or dispose of its facilities, or any portion thereof, that is located in public right-of-way, or any right, title or interest in the same, by ordinary sale, consolidation or otherwise, without notice to the City.

8. Use of the Right-of-Way.

8.1. The County's use of the right-of-way is subject to the City's imposition of conditions upon the County's use or occupation of the right-of-way within reasonable exercise of its police powers. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the City.

8.2. The County shall coordinate the placement of future facilities in a manner that minimizes the adverse impact on any public improvement. Where placement is not regulated, the facilities shall be placed with adequate clearance from public improvements so as not to impact or be impacted by such public improvement

as defined in the City's Manual of Infrastructure Standards available in the office of the City Engineer.

- 8.3. The County shall consider any request made by the City concerning placement of facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- 8.4. All County facilities shall be located so as not to permanently disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the County shall avoid, so far as may be practicable, disrupting or interfering with the lawful use of the streets, alleys, sidewalks or other public lands of the City.
- 8.5. All new facilities of the County shall be designed to minimize interference with the use of right-of-way and public lands. The City, through its City Engineer, shall have the right to review and comment upon the location, design and nature of the facility prior to its being installed.
- 8.6. The City Engineer may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is currently or, pursuant to current technology, the City Engineer expects will someday be located within the right-of-way. All right-of-way permits issued by City Engineer shall indicate the proper corridor for the County's new or relocated facilities. Those County facilities shall, no later than at the time of next reconstruction or excavation of the area where its facilities are located, move the facilities to its assigned position within the right-of-way, if mutually agreed upon by City Engineer and the County, upon consideration of such factors as the remaining economic life of the facilities, public safety, user service needs and hardship to the County.
- 8.7. All earth, materials, sidewalks, paving, crossings and other public improvements damaged or removed by the County shall be fully repaired or replaced promptly by the County at its sole expense and to the reasonable satisfaction of the City. Upon determination by the City Engineer that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within twenty-four (24) hours of notice from the City, or the City Engineer may direct the City to make such repair or replacement and bill the County for the City cost. The City Engineer has the authority to inspect the repair or replacement of the damage, and, if necessary, to require the County to do any necessary additional work.

- 8.8. In connection with any public improvement undertaken by the City, the County shall pay for all manhole adjustment costs and shall provide the City with all appropriate riser rings.
- 8.9. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a County's facilities in the right-of-way shall be in accordance with applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the County. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Agreement may be in addition to or stricter than such minimum standards. The City Engineer may require that any drawings, plans and/or specifications submitted be certified by a Kansas registered professional engineer stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.
- 8.10. The County shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its facilities located within the right-of-way, when a potential conflict is identified between the County facilities and the public improvement. Such location and identification shall be at the sole expense of the County without any expense to the City, its employees, agents, or authorized contractors.

9. **Facility Relocation.**

- 9.1 The County shall promptly remove, relocate or adjust any facilities located in private easement or in right-of-way if facilities pre-dated the existence of the right-of-way, as directed by the City, for a public improvement, at City expense, by moving such facilities to areas within the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements. The County shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the City, in the future, elect to require the County to again relocate its facilities to other areas within the

expanded right-of-way, the cost of any such future relocation shall be borne by the City.

9.2 Unless the County facilities predate the existence of the right-of-way, the County shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement or when reasonably required by the City by reason of public safety. Such removal, relocation, or adjustment shall be performed by the County and the cost of the same shall be allocated as follows:

9.2.1 For any CARS funded project, the City and the County shall share 50-50% in the cost of relocation of County facilities, including the cost of design.

9.2.2 For any SMAC funded project, the City and the County shall share 25% (City) -75% (County) in the cost of relocation of County facilities.

9.2.3 When relocation is necessary for non-SMAC and non-CARS funded projects being constructed on property annexed by the City after 1995, as well as property annexed in the future, the City and the County will share the cost of the relocation of County facilities on a 50-50% basis.

9.2.4 For projects constructed on pre-1996 annexed property that does not utilize CARS and SMAC funding, the County will pay 100% of the cost of relocation of its facilities.

A flow chart graphically depicting the allocations set forth above, is attached hereto, as Exhibit A, and is incorporated herein by reference. Relocations shall be specifically subject to rules, regulations and schedules of the City. The County shall proceed with relocations with due diligence upon notice from the City.

9.3 The parties acknowledge that prior to entering into this Agreement, the City routinely included in the project the relocation of County facilities whenever undertaking a public improvement. In the past, the design, bid letting, and construction of the relocated County facilities was completed by the City. Notwithstanding anything to the contrary contained in this Agreement, the parties acknowledge and agree that the City shall, at the request of the County, continue to include the relocation of the County's facilities whenever a public improvement requires the relocation of County facilities. Upon receipt of a payment request from the City that documents actual relocation costs incurred, the County shall promptly reimburse the City for any and all relocation costs

attributable to the design, bid letting, and construction of the County's facilities according to the cost formulas set forth in Sections 9.1 and 9.2 above. For purposes of this Section 9.3, the City shall act on its own behalf and not as the County's agent in connection with contracting for relocations undertaken pursuant to this Section 9.3 and the County shall have no duty or obligation to indemnify the City or its agents or contractors for any Loss arising out of work associated with relocations undertaken pursuant to this Section 9.3. The City agrees that it shall not, in any document, represent that it is acting as the County's agent in connection with the relocation of the County's facilities.

- 9.4 As soon as working drawings are available for public improvements that may require the County to relocate its facilities, the City shall provide the County with written notice of potential relocations and the anticipated bid letting date of said improvement. The County shall respond with any conflicts and a proposed construction schedule within thirty (30) days.
- 9.5 Following notice by the City in the form of the delivery of final design plans for such public improvements, the County shall remove, and relocate its facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the County. The County shall notify to the City, in writing, that its facilities have been relocated or adjusted in accordance with project plans provided by the City.
- 9.6 Any damages suffered by the City, to the extent caused by County's failure to timely relocate or adjust its facilities, or failure to properly relocate or adjust such facilities, shall be borne by the County.
- 9.7 It is the intent of this section for both the City and the County to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.

10. Protection of the Public.

- 10.1. It shall be the responsibility of the County to take adequate measures to protect its facilities in the right-of-way from damage.
- 10.2. The City shall not be liable for any damage to or loss of any of the County's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.

- 10.3. The County shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to delay damages, repair costs, construction delays, penalties or other expenses of any kind arising out of the failure of the County to perform any of its obligations under this Agreement to the extent caused by the acts or omissions of the County.
- 10.4. The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations.
- 10.5. If for any purpose, the County makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.
- 10.6. Whenever the County excavates the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.
- 10.7. Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered, if possible. The County assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.
- 10.8. The City Engineer, upon the review and approval of a plan and details for trimming trees in the right-of-way, may grant permission by permit to the County to trim trees upon and overhanging the right-of-way so as to prevent the branches of such trees from coming in contact with the work of the County.
- 10.9. The parties acknowledge that the City desires to preserve existing trees located within the right-of-way. If, in the opinion of the City Engineer, a contemplated installation or relocation of the County's facilities is detrimental to the health and safety of the mature trees along the proposed alignment of the County's facilities, the City and the County will discuss alternative alignments that would avoid damage to the trees. Any anticipated additional costs to be incurred by

the County, that are attributable to the agreed upon proposed alignment, will be allocated between the parties by agreement.

10.10. Upon the appropriate request of any person having satisfied City procedure and ordinances, the County shall remove, raise, or lower its above ground facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the County may require such payment in advance. The County must be given not less than fifteen (15) days written notice from the person detailing the time and location of the moving operations, and not less than 24-hours advance notice from the person advising of the actual operation.

10.11. Upon reasonable notification, the County will raise, lower, or otherwise adjust any facility in the City right-of-way due to City maintenance and repair operations. Unless the County facilities predate the existence of the right-of-way, there will be no cost to the City for this work.

11. Right-of-way Vacation.

11.1. If the City vacates a right-of-way which contains the facilities of the County, and if the vacation does not require the relocation of the County's facilities, the City shall reserve, to and for itself and the County, an easement for the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such vacated right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

11.2. If the vacation requires the relocation of facilities, and

11.2.1. If the vacation proceedings are initiated by the County, the County must pay the relocation costs.

11.2.2. If the vacation proceedings are initiated by the City, the County must pay the relocation costs unless otherwise agreed to by the City and the County.

11.2.3. If the vacation proceedings are initiated by a person other than the County or the City, such other person must pay the relocation costs in accordance with the City's Right-of-Way Management Ordinance.

12. Abandoned and Unusable Facilities.

12.1. The County must either:

12.1.1. Keep a record of its abandoned facilities located in the right-of-way, or

12.1.2. Remove its abandoned facilities located in the right-of-way, and replace or restore any damage or disturbance caused by the removal at its own expense.

13. Permit Requirement.

- 13.1. Except as otherwise provided, the County will not excavate any right-of-way or conduct any repair, construction, or reconstruction of facilities located within the right-of-way without first having obtained the appropriate right-of-way permit.
- 13.2. No permit shall be required to perform routine service operations which do not require excavation in the right-of-way and do not disrupt traffic for more than four (4) hours.
- 13.3. A right-of-way permit will be obtained for emergency situations. If due to an emergency it is necessary for the County to immediately perform work in the right-of-way, and it is impractical for the County to first get the appropriate permit, the work may be performed, and the required permit shall be obtained as soon as possible during the next City working day.
- 13.4. The County will not excavate the right-of-way beyond the date or dates specified in the right-of-way permit unless the County:
 - 13.4.1. Makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and,
 - 13.4.2. A new right-of-way permit or permit extension is granted.
- 13.5. Right-of-way permits issued shall be conspicuously displayed by the County at all times at the indicated work site and shall be available for inspection by the City Engineer, other City employees and the public.
- 13.6. Prior to the commencement of excavation, the County shall identify and locate any buried facilities to be spray painted according to the Uniform Color Code required by the Kansas One Call.
- 13.7. All excavations by the County shall have a metal marker inserted into the excavation of the restored pavement, which shall identify the County.
- 13.8. If the County is found to be working in the public right-of-way without a permit, the County will be directed to stop work until a permit is acquired and properly posted at the work site. The only exception allowed is for emergency repair work.
- 13.9. If the County is found to be working without providing for required safety and traffic control, it will be directed to stop work until the appropriate measures are

implemented in accordance with the current edition of the Manual on Uniform Traffic Control Devices.

14. Permit Applications.

14.1. Application for a right-of-way permit shall be submitted to the City Engineer either by the County or by the person who will do the work and/or excavation in the right-of-way.

14.2. Right-of-way applications shall contain and be considered complete only upon receipt of the following:

14.2.1. Submission of a completed permit application form, including all required attachments, sketches or scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such location;

14.2.2. A traffic control plan if necessary;

15. Liability Insurance, Performance and Maintenance Bond Requirement.

15.1. The County shall require any contractor performing work on behalf of the County to carry liability insurance with an insurance company licensed to do business in Kansas. The City shall be named as additional insured on said policies. The amount will be not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate. 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 to the extent caused or alleged to have been caused by the negligent acts or omissions of the County and its contractor.

15.2. A copy of the Liability Insurance Certificate for the District's sub-contractor must be on file with the City Clerk.

16. Fees.

16.1. The County will pay no right-of-way permit fee.

16.2. The City will pay no plan review fee for any City project.

17. Issuance of Permit.

17.1. When the City Engineer determines that the work has satisfied the requirements of this Agreement, the City Engineer shall issue a right-of-way permit.

17.2. The City Engineer may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the County's work in order to protect the public health, safety and welfare, to ensure the structural integrity of the

right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.

- 17.3. Issued permits are not transferable.
- 17.4. Except for a relocation of the County's facilities under Section 9.3 of this Agreement, if work is being done for the County by another person, a contractor or otherwise, the person doing the work and the County shall be liable and responsible for all damages, obligations, and warranties herein described.

18. Permitted Work.

- 18.1. The County shall not make any cut, excavation or grading of right-of-way other than excavations necessary for emergency repairs without first securing a right-of-way permit.
- 18.2. The County shall not at any one time open or encumber more of the right-of-way than shall be reasonably necessary to enable the County to complete the project in the most expeditious manner.
- 18.3. The County shall, in the performance of any work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavations to those excavations that are necessary for efficient operation.
- 18.4. The County shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.
- 18.5. The County shall notify the City no less than three (3) working days in advance of any construction, reconstruction, repair, location or relocation of facilities which would require any street closure or which reduces traffic flow to less than two (2) lanes of moving traffic for more than four (4) hours. Except in the event of an emergency as reasonably determined by the County, no such closure shall take place without notice and prior authorization from the City.
- 18.6. Non-emergency work on arterial and collector streets may not be accomplished during the hours of 7:00 AM to 8:30 AM and 4:00 PM to 6:00 PM, in order to minimize disruption of traffic flow.
- 18.7. All work performed in the right-of-way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the County's expense. Such signage shall be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices, unless otherwise agreed to by the City.

- 18.8. The County shall obtain locates in conformance with the Kansas Underground Utility Damage Prevention Act “Kansas One Call” system, and notice shall be provided directly to Kansas City Power and Light (KCPL) or to the Traffic Operations section of the Public Works Department with respect to any municipal traffic signal and street light systems, as appropriate.
- 18.9. The County shall be liable for any damages to underground facilities due to excavation work prior to obtaining location of such facilities, or for any damage to underground facilities that have been properly identified prior to excavation. The County shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed underground facilities without the approval of the owner of the facilities.
- 18.10. Whenever there is an excavation by the County, the County shall be responsible for providing adequate traffic control to the surrounding area as determined by City Engineer of the City. The County shall perform work on the right-of-way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood.
- 18.11. All facilities and other appurtenances laid, constructed and maintained by the County shall be laid, constructed and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas, as well as the rules and regulations of any other local, state or federal agency having jurisdiction over the parties.
- 18.12. Following completion of permitted work for new construction, the County shall keep, maintain and provide to the City accurate records and as-built drawings, drawn to scale as accurately depicting the location of all utility facilities constructed pursuant to the permit. When available to the County, maps and drawings provided will be submitted in AUTOCAD.DXF or AUTOCAD.DWG automated formats if available, or in hard copy otherwise. The City Engineer may waive this requirement.
- 18.13. The City may use the as-built records of the County’s facilities in connection with public improvements.

19. Right-of-way Repair and Restoration.

- 19.1. The work to be done under the right-of-way permit and the repair and restoration of the right-of-way as required herein must be completed within the dates as specified in the permit. However, in the event of circumstances beyond

the control of the County or when work was prohibited by unseasonable or unreasonable conditions, the City Engineer may extend the date for completion of the project upon receipt of a supplementary application for a permit extension.

- 19.2. All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the County shall be fully repaired or replaced promptly by the County at its sole expense and the reasonable satisfaction of the City. The City Engineer has the authority to inspect the repair or replacement of the damage, and if necessary, to require the County to do the additional necessary work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the County and a reasonable time not to exceed fifteen days will be provided to allow for the deficiencies to be corrected, unless parties agree to an extension.
- 19.3. After any excavation, the County shall, at its expense, restore all portions of the right-of-way to the same condition or better condition than it was prior to the excavation thereof.
- 19.4. In addition to repairing its own street cuts, the County must restore any area within five (5) feet of the new street cut that has previously been excavated, including the paving and its aggregate foundations.
- 19.5. If the County fails to restore the right-of-way in the manner and to the condition required by the City Engineer, or fails to satisfactorily and timely complete all restoration the City may, at its option, serve written notice upon the County that, unless within five (5) days after serving of such notice, a satisfactory arrangement can be made for the proper restoration of the right-of-way, the City may take over the work and prosecute same to completion, by contract or otherwise at the expense of the County, and the County shall be liable to the City for any and all excess cost assumed by the City by reason of such prosecution and completion.
- 19.6. If during excavation, the County leaves any debris in the right-of-way, it shall be responsible for providing safety protection in accordance with the latest edition of the Manual of Uniform Traffic Control Devices and any applicable federal or state requirement.
- 19.7. If an excavation cannot be back-filled immediately and must be left unattended, the County shall securely and adequately cover the unfilled excavation. The County has sole responsibility for maintaining proper barricades, safety fencing

and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

- 19.8. In restoring the right-of-way, the County guarantees its work and shall maintain it for thirty-six (36) months following its completion. Any necessary restoration work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the Public Works (not including days during which work cannot be done because of circumstances constituting Force Majeure or days when work is prohibited as unseasonable or unreasonable).

20. Supplementary Applications.

- 20.1. A right-of-way permit shall be valid only for the area of the right-of-way specified within the permit. The County may not cause any work to be done outside the area specified in the permit, except as provided herein. If the County determines that an area greater than that which is specified in the permit must be excavated, the County will apply to amend the permit.
- 20.2. A right-of-way permit shall be valid only for the dates specified in the permit. The County may not commence work before the permit start date or, except as provided herein, continue working after the end date. If the County does not complete the work by the permit end date, the County must apply for and receive a new right-of-way permit or a permit extension for additional time.

21. Other Obligations.

- 21.1. The County shall perform all work in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas, or any other local, state or federal agency having jurisdiction over the parties. The County shall perform all work in conformance with all applicable codes and established rules and regulations and shall be responsible for all work done in the right-of-way pursuant to its permit, regardless by whom the work is done by.
- 21.2. Except in cases of an emergency and with approval of the City Engineer, no right-of-way work may be done when conditions are unreasonable for such work.
- 21.3. The County shall not disrupt a right-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with. Private vehicles may not be parked within or next to the permit area.

22. Denial of Permit.

22.1. The City Engineer may deny a permit to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The City Engineer, at his discretion, may consider one or more of the following factors in denial of the permit.

22.1.1. The extent to which the right-of-way space where the permit is sought is available;

22.1.2. The competing demands for the particular space in the right-of-way;

22.1.3. The availability of other locations in the right-of-way or in other right-of-way for the facilities of the County;

22.1.4. The applicability of any ordinance or other regulations that affect location of facilities in the right-of-way;

22.1.5. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;

22.1.6. The condition and age of the pavement, which was constructed or reconstructed within the preceding five (5) years;

22.1.7. The balancing of costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the construction in the right-of-way;

22.1.8. Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interferes with an exhibition, celebration, festival, or any other event. In exercising this discretion, the City Engineer shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way.

22.2. Notwithstanding the above provisions, the City Engineer may in his discretion issue a right-of-way permit in any case where the permit is necessary to:

22.2.1. Prevent substantial economic hardship to a user of the County's service;

22.2.2. Allow such user to materially improve the service provided by the County.

23. Revocation/Breach of Permit.

23.1. If the City Engineer determines that the County has committed a substantial breach of any condition placed on the right-of-way permit, the City Engineer

shall make a written demand upon the County to remedy such breach. The demand shall state that the continued breach may be cause for revocation of the permit, or legal action if applicable. Further, a substantial breach, as stated above, will allow the City Engineer, at his discretion, to place additional or revised conditions on the right-of-way permit, specifically related to the manner in which the breach is cured by the County. Within five (5) calendar days of receiving notification of the breach, County shall contact the City Engineer with a plan, acceptable to the City Engineer, for correction of the breach. County's failure to contact the City Engineer, County's failure to submit an acceptable plan, or County's failure to reasonably implement the approved plan shall be cause for immediate revocation of the right-of-way permit.

- 23.2. The County holds right-of-way permits issued pursuant to this Agreement as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any right-of-way permits, without refund of the permit fee, in the event of a substantial breach of the terms and conditions of any law or the right-of-way permit. A substantial breach shall include, but not be limited to the following:
 - 23.2.1. The violation of any material provision of the right-of-way permit;
 - 23.2.2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 - 23.2.3. Any material misrepresentation of any fact in the permit application;
 - 23.2.4. The failure of the County's contractors to maintain the required insurance;
 - 23.2.5. The failure to complete the work in a timely manner;
 - 23.2.6. The failure to correct a condition indicated on an order issued pursuant to this Agreement;
 - 23.2.7. Repeated traffic control violations; or
 - 23.2.8. Failure to repair facilities damaged in the right-of-way.
- 23.3. If a right-of-way permit is revoked, the County shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

24. Work Requirements and Inspections.

- 24.1. Any excavation, back filling, repair and restoration, and all other work performed in the right-of-way shall be done in conformance with the City's Manual of Infrastructure Standards as promulgated by the City Engineer.
- 24.2. The County shall notify the office of the City Engineer upon completion of the authorized work permit.
- 24.3. The County will notify the City Engineer to schedule an inspection at the start of back filling. Upon completion of all right-of-way restoration activities, the County will schedule a closeout inspection.
- 24.4. When any corrective actions required have been completed and inspected to the City Engineer's satisfaction, the thirty-six (36) month maintenance period will begin.
- 24.5. In addition to the required scheduled inspections, the City Engineer may choose to inspect the ongoing permitted work in the right-of-way at any time to ensure that all requirements of the approved permit are being met by the County.
- 24.6. At the time of any inspection, the City Engineer may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well being of the public. The City Engineer may issue a citation to the County for any work which does not conform to the applicable standards, conditions, code or terms of the permit. The citation shall state that failure to correct the violation will be cause for revocation of the permit.

25. Indemnification.

- 25.1. The County shall indemnify, defend and hold harmless the City, its council members, officers, employees, agents, contractors, or suppliers from and against all loss, as defined by this Agreement, where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the County, its employees, agents, contractors or suppliers in the execution of work under this Agreement or any permit issued to the County hereunder. This indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature. Nothing contained herein shall be deemed to impose any obligation to

indemnify the City for relocation of County facilities undertaken by the City pursuant Section 9.3 of this Agreement.

- 25.2. The parties agree to timely notify one another of any such claim, demand, suit, proceeding, and/or action by providing written notice via certified mail. Nothing herein shall be deemed to prevent the City from participating in the defense of any litigation by its own counsel at its own expense.
- 25.3. Nothing in this section shall be deemed to impose liability on the County to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss.
- 25.4. The issuance of a permit by the City shall in no event be deemed an act of negligence on the part of the City.

26. Force Majeure.

- 26.1. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other circumstances beyond the County's or the City's control.

27. Federal, State and City Jurisdiction.

- 27.1. This Agreement shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this Agreement to the contrary, the construction, operation and maintenance of the County's facilities shall be in accordance with all laws and regulations of the United States, the state and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, the County shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction. The County's rights are subject to the police powers of the City to adopt and enforce this Agreement necessary to the health, safety, and welfare of the public. The County shall comply with all applicable laws enacted pursuant to that power. Finally, failure of the County's to comply with any applicable law or regulation may result in a forfeiture of any permit or authorization granted in accordance with this Agreement.

28. Severability.

- 28.1. If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate,

distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

29. City's Failure to Enforce.

29.1. The City's failure to enforce or remedy any noncompliance of the terms and conditions of this Agreement or of any permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of the County's obligation as herein provided.

30. Enforcement.

30.1. The breach of any provision of this Agreement is hereby deemed to be grounds for revocation of the permit to operate within the City.

30.2. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Agreement. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate action or proceeding to correct a breach of this agreement.

31. Reservation of Rights.

31.1. In addition to any rights specifically reserved to the City by this Agreement, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance, permit or other authorization granted under this Agreement. The City shall have the right to waive any provision of this Agreement, or any permit granted, except those required by federal or state law, if the City determines as follows: (a) that it is in the public interest to do so; and (b) that the enforcement of such provision will impose an undue hardship on the County. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

31.2. Notwithstanding anything to the contrary set forth herein, the provisions of this Agreement shall not infringe upon the rights of the County pursuant to any applicable state or federal statutes, including, but not limited to the right to occupy the right-of-way.

32. Successors and Assigns.

32.1. The City and the County bind themselves, their successors, assigns, and legal representatives to the other party hereto and to successors, assigns, and legal

representatives of such party in respect to covenants, agreements, and obligations contained in this agreement.

33. Survival of Action.

33.1. All guarantees, indemnifications and rights of either party that accrues or arises out of this Agreement or any permit issued hereunder shall survive the termination date of this Agreement and expiration of any permit issued to the District.

34. Term.

34.1. This agreement shall be effective for a term of one (1) year from January 1, 2002. This agreement shall renew annually unless either party gives notice of their intent to terminate the agreement ninety (90) days prior to the end of the then current term.

IN WITNESS WHEREOF, the City and the County have caused this Agreement to be executed on the date hereinabove written.

City of Overland Park, Kansas

Board of County Commissioners of Johnson County, Kansas, as the Governing Body of the Unified Wastewater District

Ed Eilert, Mayor

Douglas E. Wood, Chairperson

Attest:

Attest:

Marian Cook, City Clerk

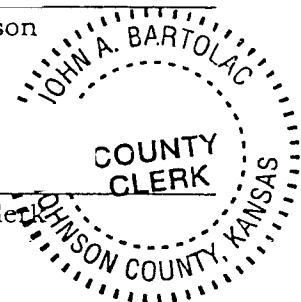
John A. Bartolac, County Clerk

Approved as to form:

Approved as to form:

Jane Neff-Baird
Senior Assistant City Attorney

Robert A. Ford
Assistant County Counselor



SEWER LINE RELOCATIONS

