

AN AGREEMENT BETWEEN
WATER DISTRICT NO. 1 OF JOHNSON COUNTY
AND
CITY OF OVERLAND PARK, KANSAS
FOR MANAGING THE USE AND OCCUPANCY
OF PUBLIC RIGHT-OF-WAY

THIS AGREEMENT, made and entered into this *20* day of *March*, 2000, by and between the City of Overland Park, Kansas, hereinafter termed the "City" and the Water District No.1 of Johnson County, hereinafter termed, the "District".

1. General.

1.1. The general intent is for the District and the City to cooperate in the use and management of the facilities within the right of way.

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 recognize the District's status under K.S.A.19-3501 et. seq. and its rights thereunder regarding the right-of-way.

2.3. To clarify and manage conditions of occupancy and construction for the District occupying space within the right-of-way given the anticipated use of the right-of-way by the District;

2.4. 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;

2.5. To minimize disruption, visual impact or inconvenience to the public, and to preserve the public health, safety and welfare; and

2.6. 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 District that are not in use and will not be utilized by the District in the future.

- 3.1.2. *“Administrative Fee”* means the fee charged by the City to recover its cost incurred for right-of-way management; including, but not limited to, costs associated with issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits, and other costs the City may incur in managing the provisions of this Agreement.
- 3.1.3. *“City”* means the City of Overland Park, Kansas, a municipal corporation and any duly authorized representative.
- 3.1.4. *“City Engineer”* means the City Engineer, Overland Park, Kansas, or the authorized representative.
- 3.1.5. *“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.
- 3.1.6. *“Day”* means calendar day unless otherwise specified.
- 3.1.7. *“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.
- 3.1.8. *“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.
- 3.1.9. *“Facility”* means lines, pipes, irrigation systems, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, appliances, antennae, transmitters, gates, meters, appurtenances, or other equipment.
- 3.1.10. *“Governing body”* means the Mayor and the City Council of the City of Overland Park, Kansas.
- 3.1.11. *“Governmental entity”* means any county, township, city, town, village, school district, library district, 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.
- 3.1.12. *“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 written authorization acquired prior to the District's excavation 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 provision of water to persons by the District in accordance with statute by means of a delivery system that is comprised 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. It is the policy of the District to 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.
- 4.2. Subject to the reservation of rights contained in Section 30.2 herein, the District shall use the right-of-way in accordance with this Agreement, and shall be limited to the use that the District has been granted by state statute. These rights are for the exclusive use of the District and its contractors.
- 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 District, 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 District.

- 6.1. The District shall designate a local person familiar with the facilities who will act as a local agent for the District and will be responsible for satisfying information requirements of this Agreement. The District 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 District 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 District shall cooperate with other users of the right-of-way and the City for the best, most efficient, and least obtrusive use of the right-of-way, consistent with safety, and to minimize visual impacts, traffic and other disruptions, including street cuts.

- 6.3. The mapping requirements of the District shall be:
 - 6.3.1. The District 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. Within ten (10) days of a request by the City, the District will provide to the City information concerning such facilities as may be reasonably requested.
 - 6.3.3. When available to the District, such information will be submitted electronically in an AutoCad® format to the extent compatible with the City's Geographical Information Systems (GIS) and Johnson County Automated Integrated Mapping Systems (AIMS) provided, however, that nothing herein shall be construed to require the District to acquire or modify any electronic mapping system.
- 6.4. Such mapping and identification shall be at the sole expense of the District.

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

- 7.1. The District shall not sell, transfer, lease, assign, sublet or dispose of its facilities, or any portion thereof, that is located in the 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. Subject to the reservation of rights contained in Section 30.2 herein, the District's use of the right-of-way is subject to the City's imposition of conditions upon the District'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 District shall coordinate the placement of future facilities in a manner that minimizes adverse impact on any public improvement. Where placement is not regulated, the facilities shall be placed with adequate clearance from such 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 District 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 facilities shall be located and laid 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 District shall, in doing work in connection with its facilities, 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 District shall be placed so that they do not unreasonably interfere with the use of right-of-way and public lands. The City, through its City Engineer, shall have the right to consult and review the location, design and nature of the facility prior to its being installed.
- 8.6. The District shall not interfere with the facilities of the others in the right-of-way without their permission.
- 8.7. 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 District's facilities. If mutually agreed upon by the City Engineer and the District, those District facilities currently in the right-of-way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its facilities are located, be moved to its assigned position within the right-of-way. Such decisions shall be based upon consideration of such factors as the remaining economic life of the facilities, public safety, user service needs and hardship to the District.
- 8.8. All earth, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the District shall be fully repaired or replaced promptly by the District 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 District 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 District to do any necessary additional work.
- 8.9. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the District'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 District. 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 District 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 requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the District without any expense to the City, its employees, agents, or authorized contractors.

9. Public Improvements.

- 9.1. The District 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 District at the District's sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The District shall proceed with relocations at due diligence upon notice by the City to begin relocation. The City shall provide the District with reasonable notice before preliminary design is begun to allow the District to comment upon the relocation of the District facilities. The District reserves the right to comment upon public improvements undertaken in whole or in part with private funds.
- 9.2. The District shall promptly remove, relocate or adjust any facilities located in private easement, as requested 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 District 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 District 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.

- 9.3. As soon as working drawings are available for public improvements that may require the District to relocate its facilities, the City shall provide the District with written notice of potential relocations and the anticipated bid letting date of said improvement. The District shall respond with any conflicts and a proposed construction schedule within thirty (30) days.
- 9.4. Following notice by the City in the form of the delivery of final design plans for such public improvements, the District shall remove and relocate its facilities, or construct new 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 District. The District shall notify to the City, in writing, that its facilities have been relocated or adjusted in accordance with project plans provided by the City.
- 9.5. In the event the District is required to move its facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.
- 9.6. It is the intent of this section for both the City and the District 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.
- 9.7. Any damage suffered by the City including but not limited to delay damages and attorney fees, to the extent caused by the District's failure to timely relocate or adjust its facilities, construct new facilities or properly located, relocate or adjust such facilities, shall be borne by the District.
- 9.8. In the event of a properly submitted claim by a Contractor, under a public contract for construction within right-of-way, for damages caused by the District's failure to timely relocate or adjust its facilities, construct new facilities or properly locate, relocate or adjust such facilities under this Section, the City shall timely notify the District of such claim, and, if it is determined by the City that damages are due to the Contractor, the District shall pay such damages directly to the Contractor; provided, however, such payment shall not create a third party beneficiary relationship between the District and the Contractor.

10. Protection of the Public.

- 10.1. It shall be the responsibility of the District to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
- 10.2. The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations.
- 10.3. If for any purpose, the District 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.
- 10.4. Whenever the District 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.
- 10.5. Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered, if possible. The District 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.
- 10.6. 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 District 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 District.
- 10.7. In the event the District severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the District will be required to remove and replace the tree at the District cost. Further, in review of the District's plan, City Engineer, in his discretion, may require the District to bore under any tree in the right-of-way.
- 10.8. Upon the appropriate request of any person having satisfied City procedure and ordinances, the District 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 District may require such payment in advance. The District 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.

10.9. Upon reasonable notification, the District will raise, lower, or otherwise adjust any facility in the City right-of-way due to City maintenance and repair operations. 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 District, and if the vacation does not require the relocation of the District's facilities, the City shall reserve, to and for itself and the District, 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 District, the District must pay the relocation costs.

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

11.2.3. If the vacation proceedings are initiated by a person other than the District 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 District 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 herein, the District 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 District to immediately perform work in the right-of-way, and it is impractical for the District 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 District will not excavate the right-of-way beyond the date or dates specified in the right-of-way permit unless the District:
 - 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 obtained.
- 13.5. Right-of-way permits issued shall be conspicuously displayed by the District 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 District 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 District shall have a metal marker inserted into the excavation of the restored pavement, which shall identify the District.
- 13.8. If the District is found to be working in the right-of-way without a permit, the District 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 District 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 District 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;
- 14.2.3. Payment of the Administrative Fee to the City for permit.

15. Liability Insurance.

- 15.1. The District shall require any contractor performing work on behalf of the District with in the right-of-way 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 District and its contractor.
- 15.2. If a contractor applies for a permit on behalf of the District, a copy of the Liability Insurance Certificate for the District's contractor must be on file with the City Clerk.
- 15.3. The District agrees to name the City as an additional insured under its commercial general liability (or equivalent) insurance policy with respect to liability arising out of the District's use and occupancy of the public right-of-way under this Agreement. The District will provide a certificate of insurance showing the City as additional insured on a form acceptable to the City.

16. Right-of-way Permit Fees.

- 16.1. The right-of-way permit fee shall be the Administrative Fee as approved by the Governing Body and listed in the Schedule of Fees maintained in the City Clerk's office.
- 16.2. Fees paid for a right-of-way permit, which is subsequently revoked by the City Engineer, are not refundable.

17. Issuance of Permit.

- 17.1. When the City Engineer determines that the District 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 District'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. If work is being done for the District by another person, a contractor or otherwise, the person doing the work and the District shall be liable and responsible for all damages, obligations, and warranties herein described.
- 17.5. The issuance of a permit by the City under this Agreement shall in no event be deemed an act of negligence on the part of the City.

18. Permitted Work.

- 18.1. The District shall not at any one time open or encumber more of the right-of-way than shall be reasonably necessary to enable the District to complete the project in the most expeditious manner.
- 18.2. The District 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.
- 18.3. The District shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.
- 18.4. The District 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 District, no such closure shall take place without notice and prior authorization from the City.
- 18.5. 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.
- 18.6. 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 District'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.

- 18.7. The District 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.
 - 18.8. Whenever an excavation is made by the District, the District shall be responsible for providing adequate traffic control to the surrounding area as determined by City Engineer of the City. The District 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
 - 18.9. All facilities and other appurtenances laid, constructed and maintained by the District 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.
 - 18.10. Following completion of permitted work for new construction, the District 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 District, 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. Such information shall be subject in all respects and shall have the benefit of protection which are set forth in the "Mapping Requirements of District" contained herein.
 - 18.11. The City may use the as-built records of the District'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 District 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 District shall be fully repaired or replaced promptly by the District 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 District to do the additional necessary work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the District and a reasonable time not to exceed fifteen (15) days will be provided to allow for the deficiencies to be corrected, unless parties agree to an extension.
- 19.3. After any excavation, the District 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 District 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 as reasonably determined by the City Engineer.
- 19.5. If the District fails to restore the right-of-way in the manner and to the condition in accordance with the Manual of Infrastructure Standards, or fails to satisfactorily and timely complete all restoration the City may, at its option, serve written notice upon the District 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 District, and the District 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 District 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 left unattended, the District shall securely and adequately cover the unfilled excavation. The District 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 District guarantees its work and shall maintain it for sixty (60) 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 City Engineer (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 only be valid for the area of the right-of-way specified within the permit. The District may not cause any work to be done outside the area specified in the permit, except as provided herein. If the District determines that an area greater than that which is specified in the permit must be excavated, the District 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 District may not commence work before the permit start date or, except as provided herein, may continue working after the end date. If the District does not complete the work by the permit end date, the District must apply for and receive a new right-of-way permit or a permit extension for additional time.

21. Other Obligations.

21.1. The District 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 District 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 unseasonable or unreasonable for such work.

21.3. The District 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. Conditions of Permit.

22.1. The City Engineer may consider one or more of the following factors in the issuance of right-of-way permits and imposing conditions on the same:

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 District;
 - 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 degree of disruption to the public and damage 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. 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-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 District's service;
 - 22.2.2. Allow such user to materially improve the service provided by the Districts.

23. Revocation/Breach of Permit.

- 23.1. If the City Engineer determines that the District has committed a substantial breach of any law or condition placed on the right-of-way permit, the City Engineer shall make a written demand upon the District 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 District. Within five (5) calendar days of receiving notification of the breach, the District shall contact the City Engineer with a plan, acceptable to the City Engineer, for correction of the breach. The District's failure to contact the City Engineer, the District's failure to submit

an acceptable plan, or the District's failure to reasonably implement the approved plan shall be cause for immediate revocation of the right-of-way permit.

- 23.2. A substantial breach of a condition of a permit 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 a subcontractor 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 is revoked, the District shall also reimburse the City for the City's reasonable costs, including administrative costs and restoration 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 District shall notify the office of the City Engineer upon completion of the authorized work permit.
- 24.3. The District 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 District will schedule a closeout inspection.
- 24.4. When any corrective actions required have been completed and inspected to the City Engineer's satisfaction, the sixty (60) 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 District.

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 District 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. Force Majeure.

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

26. Federal, State and City Jurisdiction.

26.1. 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 District'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 District shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction. The District'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 District shall comply with all applicable laws enacted pursuant to that power. Finally, failure of the District'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.

27. Severability.

27.1. 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.

28. Failure to Enforce.

28.1. The 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 either Parties rights nor a waiver of the obligation as herein provided.

29. Enforcement.

29.1. The Parties 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's or the District's attorney may institute injunction, mandamus or other appropriate action or proceeding to prevent breach of this agreement.

30. Reservation of Rights.

30.1. 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 District. 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.

30.2. Notwithstanding anything to the contrary set forth herein, the provisions of this Agreement shall not infringe upon the rights of the District pursuant to any applicable state or federal statutes, including, but not limited to the right to occupy the right-of-way. By entering into this Agreement, the District shall not be deemed to have waived or otherwise compromised any right that it may have to use and occupy the right-of-way.

31. Survival of Action.

31.1. All guarantees and rights of either party that accrue or arise 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.

32. Successors and Assigns.

32.1. The City and the District 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. Term.

33.1. This agreement shall be effective for a term of one (1) year from January 1, 2000. 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 have caused this Agreement to be executed in its behalf, thereunto duly authorized, and the District has executed four (4) counterparts of this agreement in the prescribed form and manner, the day and year first above written.

City of Overland Park, Kansas

Water District No.1 of Johnson County

By: _____

By: _____

Name: Ed Eilert

Name: Byron N. Johnson

Title: Mayor

Title: General Manager

Address: 8500 Santa Fe Drive
Overland Park, KS 66212

Address: 5930 Beverly
Mission, KS. 66202

Date of Execution: 3-20-2000

Date of Execution: 3/17/2000

Attest:

Attest:

Marian Cook, City Clerk

Jill C. Bell, Secretary to Board

Approved by:

Approved by:

Jane Neff-Brain, Senior Asst. City Attorney

Michael J. Thompson, General Counsel