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ORDINANCE NO. _____

An ordinance relating to street rights-of-way; incorporating by reference a new, comprehensive revision of the Unified Government's Technical Specifications and Standards prepared and published by the Unified Government Department of Public Works, such incorporation being authorized by K.S.A. 12-3009 to and including 12-3012; and repealing original Sections 32-2, 32-3, 32-4, 32-5, 32-6, 32-7, 32-8, 32-9, 32-46, 32-47, 32-48, 32-49, 32-50, 32-51, 32-52, 32-66, 32-67, 32-68, 32-96, 32-97, 32-98, 32-99, 32-116, 32-117, 32-118, 32-119, 32-120, and 35-34 of the 1988 Code of Ordinances of the City of Kansas City, Kansas,.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS:

Section 1. General

- (a) No person shall excavate the right-of-way, construct in the right-of-way, use the facilities within the right-of-way, or disrupt or obstruct the right-of-way except as provided herein.
- (b) This ordinance shall apply to the right-of-way within the limits of the former City of Kansas City, Kansas, as it existed on September 30, 1997.

Section 2. Purpose

- (a) To recognize the Unified Government's role as primary steward of the right-of-way and its duty to its citizens to recover the costs of managing the right-of-way and incursions into it;
- (b) To clarify and regulate conditions of occupancy and construction for those ROW-users occupying space within the Unified Government's right-of-way given the anticipated increased use of the right-of-way by various ROW-users throughout the country;
- (c) To recognize the necessity for sound management practices in light of the increased use of the right-of-way and the fact that the right-of-way is a limited resource;
- (d) To treat each ROW-user equitably and in a competitively neutral manner with considerations that may be unique to the technologies and situation of each particular ROW-user;
- (e) To minimize disruption, visual impact or inconvenience to the public, and to preserve the public health, safety and welfare; and
- (f) To comply with state and federal legislation.

Section 3. Definitions

For purposes of this Ordinance, the following words and phrases shall have the meaning given herein:

- (a) “Abandoned Facilities”: those facilities owned by the ROW-user that are not in use and will not be utilized by the owner in the future.
- (b) “Administrative Fee”: the fee charged by the Unified Government to recover its cost incurred for right-of-way management; including, but not limited to, costs associated with registering applicants; 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 Unified Government may incur in managing the provisions of this Ordinance.
- (c) “Affiliate”: any person controlling, controlled by or under the common control of a “service provider.”
- (d) “Applicant”: any person requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.
- (e) “Area of Influence”: that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration.
- (f) “City”: that portion of the territory of Wyandotte County which constituted Kansas City, Kansas, on September 30, 1997.
- (g) “Construct”: to construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.
- (h) “Day”: calendar day unless otherwise specified.
- (i) “Degradation”: the accelerated depreciation of a street caused by excavation in or disturbance of the street, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.
- (j) “Disrupt”: to place an object, materials, or debris in the right-of-way or to interfere with the right-of-way so as to obstruct or hinder free and open passage over any part of the right-of-way, including landscape maintenance and excluding ordinary vehicular or pedestrian traffic.
- (k) “Emergency”: a condition that poses a clear and immediate danger to life or health, or of a significant loss of property.
- (l) “Excavate”: to cut, dig, excavate, tunnel, bore, grade or otherwise alter the surface or subsurface material or earth in the right-of- way.
- (m) “FCC”: Federal Communications Commission.

- (n) “Facility” or “Facilities”: lines, pipes, irrigation systems, wires, cables, conduit facilities, poles, towers, manholes, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, splice pits, wells, drains, sewer lines, appurtenances, or other equipment. pipes, drains, sewer lines, irrigation systems, or other structures.
- (o) “Facility based service provider”: a service provider owning or possessing facilities in the right-of-way, whether they provide service within the City or outside the City.
- (p) “Kansas One Call”: the statewide notification system established pursuant to the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*
- (q) “KCC”: the Kansas Corporation Commission.
- (r) “MUTCD”: the latest edition of the Federal Highway Administration’s Manual on Uniform Traffic Control Devices.
- (s) “Pavement”: the weatherproofing and load distributing surface coverings of the portions of the right-of-way intended for vehicular or pedestrian use, including Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces, any aggregate base material, and brick.
- (t) “Permittee”: any person to whom a right-of-way permit is issued to excavate, disrupt, obstruct, or otherwise work in the right-of-way.
- (u) “Person”: any natural or corporate person, business association or business entity including, but not limited to, a corporation, 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.
- (v) “Public improvement”: any project undertaken by the Unified Government for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, curbs and gutters, sewers, drainage facilities, traffic control devices, signs, street lights, parks, public facilities, public buildings or public lands.
- (w) “Public lands”: any real property of the Unified Government that is not right-of-way.
- (x) “Repair”: the construction work necessary to restore the right-of-way to its previous configuration and use.
- (y) “Reseller service provider”: a service provider providing service within the City limits that does not have its own facilities in the right-of-way, but instead uses the right-of-way by interconnecting with or using the network elements of another service provider utilizing the right-of-way, and/or by leasing excess capacity from a facility-based service provider.

- (z) “Restoration”: the process by which an excavated right-of-way and surrounding area, including pavement and sub-base, is returned to the same condition, or better, that existed before the commencement of the work.
- (aa) “Right-of-way”: the area on, below, or above the present and future streets, alleys, roads, highways, boulevards, bridges, bikeways, parkways, sidewalks, or other land dedicated as right-of-way.
- (bb) “Right-of-way Permit”: the authorization to excavate, disrupt, or obstruct for the construction, installation, repair or maintenance of any type of facility or for the performance of work within the right-of-way.
- (cc) “Routine Service Operation”: a work activity that makes no material change to the facilities and does not disrupt traffic.
- (dd) “ROW-user”: a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon, including, but not limited to, landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic, the Unified Government or a reseller service provider that does not own or control its own facilities in the right-of- way.
- (ee) “Service”: a commodity provided to a person by means of a distribution, transmission, or collection system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services, Open Video Systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sewer systems.
- (ff) “Service provider”: any person that is a provider of a service for or without a fee that has the requisite certifications and authorizations from applicable governmental entities, including the KCC and the FCC, to provide such service. Service provider includes both facility-based service providers and reseller service providers
- (gg) “Street”: the pavement and sub-grade of a residential, collector, arterial, or limited access roadway including curb and gutter.
- (hh) “Technical Provisions and Standard Drawings”: the latest technical standards adopted by the Unified Government Engineer and available from the Public Works Department.

Section 4. Policy

- (a) It is the policy of the Unified Government to authorize any ROW-user to use the right-of-way in a competitively neutral, non-discriminatory 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 by a ROW-user shall be subject to the terms and conditions of this ordinance in addition to other applicable federal, state, or local requirements.

- (b) The right granted to the ROW-user to use the right-of-way is limited to the use that the ROW-user has filed with the Unified Government in accordance with this ordinance. These rights are for the exclusive use of the ROW-user except where otherwise provided herein, or when authorized by the Unified Government.
- (c) This ordinance is designed to regulate occupancy, construction, excavations, and other disruptions in the right-of-way by providing, among other things, for the issuance of permits which grant the authority to utilize and occupy the right-of-way within the City.
- (d) All ROW-users shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the Unified Government in the reasonable exercise of its police power and are subject to all applicable laws, orders, rules, and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition the ROW-users shall be subject to the Technical Provisions and Standard Drawings and all technical specifications, design criteria, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the Unified Government in the reasonable exercise of its police powers relating to permits and fees, sidewalk and pavement cuts, driveway installation, utility location, construction coordination, surface restoration, and other requirements on the use of the right-of-way.

Section 5. Administration

- (a) The Unified Government Engineer is the principal Unified Government official for administration of this ordinance and its requirements. The Unified Government Engineer may delegate any or all of the duties under this ordinance.
- (b) The County Administrator is hereby authorized to promulgate regulations consistent with this ordinance as may be necessary or desirable to carry out the provisions of this ordinance.
- (c) The Unified Government Engineer is hereby authorized to adopt standards for work done in the right-of-way. Copies of any such standards shall be available in the office of the Unified Government Engineer.

Section 6. Right-of-Way Use Permit

- (a) ***Permit Requirement.***
 - (1) Except as otherwise provided, no ROW-user may excavate any right-of-way or conduct any construction, alteration, repair, reconstruction, or restoration of facilities located within the right-of-way or disrupt, obstruct, or otherwise work in the right-of-way without first having obtained the appropriate right-of-way permit.
 - (2) ROW-users performing routine service operations between 7:00 a.m. and 7:00 p.m. which do not disrupt traffic for more than four hours and do not involve excavation of the right-of-way are required to obtain an annual

right-of-way permit and otherwise must comply with this ordinance. No ROW-users other than those described in this subsection may obtain an annual permit.

- (3) ROW-users performing work in or disrupting the right-of-way due to an emergency must obtain a permit. If due to an emergency it is necessary for the ROW-user to perform work in the right-of-way immediately and it is impractical for the ROW-user to get the appropriate permit before doing the work, the work may be performed and the required permit shall be obtained as soon as possible during the next Unified Government working day.
- (4) A right-of-way permit shall be valid only for the dates and area of the right-of-way and work specified in the permit. No permittee may work in or disrupt the right-of-way outside the area specified in the permit or beyond the date or dates specified or do work not described in the right-of-way permit unless the permittee:
 - (A) Makes a supplementary application for another right-of-way permit before the expiration of the initial permit and
 - (B) A new right-of-way permit or permit extension is granted.
- (5) At all times permittees shall have their right-of way permits available at the work site for inspection by the Unified Government Engineer and other Unified Government employees.
- (6) Before receiving a right-of-way permit, the applicant must show proof of any necessary permit, license, certification, grant, registration, franchise agreement, or any other authorization required by any appropriate governmental entity, including but not limited to the Unified Government, the FCC, or the KCC.
- (7) Any ROW-user who is found to be working in or disrupting the right-of-way without a permit will be directed to stop work and shall stop work until a permit is acquired. The only exception allowed is for emergency repair work. The permit fee for a ROW-user who has been working in or disrupting the right-of-way without a permit in violation of this section shall be doubled. The enhanced fee is in addition to any fine which may be levied as a result of a conviction for violation in Municipal Court.

(b) ***Permit Applications.***

(1) ***Regular Applications***

- (A) Application for a right-of-way permit shall be submitted to the Unified Government Engineer either by the ROW-user or by the person who will do the work or excavation in or disruption of the right-of-way.

- (B) Right-of-way permit applications shall contain the following information:
- (i) Applicant's name and address and, if applicable, the ROW-user for whom the work is being done;
 - (ii) Identification of the location where the proposed project will be done;
 - (iii) A description of the proposed project;
 - (iv) A description of transmission medium and evidence that space is available if locating in or on existing facilities, if applicable;
 - (v) Identification of specific trees, structures, improvements, facilities proposed to be removed, relocated, adjusted, or otherwise affected by the proposed project; and
 - (vi) Any other information requested by the Unified Government.
- (C) Right-of-way permit applications shall be considered complete only upon:
- (i) Compliance with the registration requirements of this ordinance;
 - (ii) Submission of a completed permit application form, including all required attachments;
 - (iii) If applicant is not a service provider, submission of scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such location;
 - (iv) If applicant is a service provider, submission of drawings prepared by a Kansas licensed professional engineer;
 - (v) Submission of a traffic control plan;
 - (vi) If the applicant intends to excavate the right-of-way, presentation of evidence that the applicant has notified all service providers located in the right-of-way where the applicant intends to work of the applicant's proposed work and has given such other service providers an opportunity to review the applicant's plans.
 - (vii) Compliance with the insurance and bond requirements of this ordinance;

(viii) Payment of all money due to the Unified Government for permit fees and costs, for prior degradation or disruption costs, for any loss or damage or expense suffered by the Unified Government because of the applicant's prior excavations or disruptions of the right-of-way or for any emergency actions taken by the Unified Government, unless the payment of such money is in dispute and timely appealed as provided hereafter.

(D) Permittees must report to the Unified Government Engineer any changes in the information submitted on or with their permit applications within 15 days of such change.

(2) ***Joint Applications.***

(A) Applicants may apply jointly for permits to excavate the right-of-way at the same time and place.

(B) Applicants who apply jointly for a right-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay.

(3) ***Supplementary Applications.***

Any permittee who wishes to excavate or disrupt an area greater than that which is specified in the permit or wishes to work in or disrupt the right-of-way for a longer time than that specified in the permit or wishes to do work not described in the permit must:

(A) make application for a permit extension and pay any additional fees required; and

(B) receive a new right-of-way permit or permit extension.

(c) ***Right-of-Way Permit Fees.***

(1) The amount of the right-of-way permit fees shall be set by the County Administrator.

(2) The right-of-way permit fee shall include but not be limited to:

(A) an amount for the Unified Government's costs of administration of this ordinance;

(B) an amount for the degradation costs associated with the decrease in the useful life of the pavement caused by an excavation, if applicable; and

- (C) an amount for the disruption costs associated with disruption of the right-of-way, if applicable.
- (2) No right-of-way permit shall be issued prior to the payment of the permit fee, unless other billing arrangements have been made with the office of the Unified Government Engineer.
 - (3) No right-of-way permit shall be issued if any previous right-of-way permits fees due under this ordinance remain unpaid by an applicant.
 - (4) Fees paid for a right-of-way permit which is subsequently revoked by the Unified Government Engineer are not refundable.
 - (5) A renewal or extension of a right-of-way permit shall require another fee in an amount to be set by the County Administrator.
 - (6) The permit fee for a ROW-user who has been working in or disrupting the right-of-way without a permit in violation of this ordinance shall be doubled.
 - (7) The Unified Government or the Board of Public Utilities of Kansas City, Kansas, (BPU), if their own employees are performing the work, are exempt from payment of fees under this ordinance, but contractors performing work in the right-of-way for the Unified Government or the BPU shall not be exempt from such fees.
- (d) ***Issuance of Permit.***
- (1) If the Unified Government Engineer determines that the applicant has satisfied the requirements of this ordinance, the Unified Government Engineer shall issue a right-of-way permit.
 - (2) The Unified Government Engineer may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the permittee 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.
 - (3) Issued permits are non-transferable.
- (e) ***Denial of Permit.*** The Unified Government 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 Unified Government Engineer, at his discretion, may consider one or more of the following factors in denial of a permit:
- (1) The extent to which the right-of-way space where the permit is sought is available;

- (2) The competing demands for the particular space in the right-of-way;
- (3) The availability of other locations in the right-of-way or in other right-of-way for the facilities of the applicant;
- (4) The applicability of any ordinance or other regulations that affect location of facilities in the right-of-way;
- (5) The degree of compliance of the applicant with the terms and conditions of its franchise, this ordinance, and other applicable ordinances and regulations;
- (6) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
- (7) The condition and age of the right-of-way which was constructed or reconstructed within the preceding five years;
- (8) 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;
- (9) Whether the applicant maintains a current registration with the Unified Government;
- (10) Whether the applicant has failed within the last three years to comply with, or is presently not in full compliance with, the requirements of this ordinance;
- (11) Whether the applicant has delinquent debt owed to the Unified Government;
- (12) Whether the issuance of a right-of-way permit for the particular dates and times requested would cause a conflict or interfere with an exhibition, celebration, festival, or other event, or with another ongoing or planned public improvement. In exercising this discretion, the Unified Government Engineer shall be guided by the safety and convenience of anticipated travel by the public over the right-of-way.

(f) ***Revocation of Permit.***

- (1) Permittees hold right-of-way permits issued pursuant to this ordinance as a privilege and not as a right. The Unified Government reserves its right, as provided herein, to revoke any right-of-way permit, without refund of the permit fee, in the event of a substantial breach of the terms and conditions of any law or the terms and conditions of the right-of-way permit. A substantial breach shall include but not be limited to the following:
 - (A) The violation of any material provision of the right-of-way permit;

- (B) 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 Unified Government or its citizens;
- (C) Any material misrepresentation of any fact in the permit application;
- (D) The failure to maintain the required bond or insurance;
- (E) The failure to complete the work in a timely manner;
- (F) The failure to correct a condition indicated on an order issued pursuant to this ordinance;
- (G) Repeated traffic control violations; or
- (H) Failure to repair facilities damaged in the right-of-way.

- (2) If the Unified Government Engineer determines that the permittee has committed a substantial breach of any law or condition placed on the right-of-way permit, the Unified Government Engineer shall make a written demand upon the permittee to remedy such violation. The demand shall state that the continued violation may be cause for revocation of the permit or legal action if applicable. Further, a substantial breach, as stated above, will allow the Unified Government 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 permittee. Within five calendar days of receiving notification of the breach, permittee shall contact the Unified Government Engineer with a plan, acceptable to the Unified Government Engineer, for correction of the breach. Permittee's failure to contact the Unified Government Engineer, permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the right-of-way permit. If a dangerous condition exists requiring immediate action, the Unified Government Engineer may order the permittee to stop work or to take measures to correct the dangerous condition immediately.
- (3) If a right-of-way permit is revoked, the permittee shall also reimburse the Unified Government for the Unified Government's reasonable costs, including administrative costs, restoration costs, and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(g) ***Appeals Process.***

- (1) Whenever a person shall deem themselves aggrieved by any decision or action taken by the Unified Government Engineer, the person may file an

appeal to the County Administrator within ten calendar days of the date of notice of such decision or action.

- (2) The persons shall be afforded a hearing on the matter before the County Administrator or his or her designated representative within 30 days of filing the appeal.
- (3) In cases of applicability or interpretation of the rules, the County Administrator may revoke such decision or action taken by the Unified Government Engineer.
- (4) In cases where compliance with such decision or action taken by the Unified Government Engineer would cause undue hardship, the County Administrator may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of rules. The County Administrator shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.
- (5) Pending a decision of the County Administrator, the order of the Unified Government Engineer shall be stayed, unless the Unified Government Engineer determines that such actions will pose a threat to public safety or the integrity of the public infrastructure.
- (6) If a person still deems himself or herself aggrieved after the appeal to the County Administrator, such person shall have 30 days after the effective date of the County Administrator's final decision to institute an action in the District Court.

Section 7. Use of the Right-of-Way by All Right-of-Way Users

- (a) ***Subordination to UG Use.*** The ROW-user's use of the right-of-way shall in all matters be subordinate to the Unified Government's use or occupation of the right-of-way. Without limitation of its rights, the Unified Government expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the Unified Government.
- (b) ***Responsibilities of ROW-Users.***
 - (1) It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
 - (2) The Unified Government shall not be liable for any damage to or loss of any of the ROW-user'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 behalf of the Unified Government.

- (3) The ROW-user shall be responsible to the Unified Government 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 ROW-user to timely perform any of its obligations under this ordinance to the extent caused by the acts or omissions of the ROW-user.
 - (4) If another person, a subcontractor or otherwise, is doing work for the ROW-user, the person doing the work and the ROW-user shall both be liable and responsible for all damages, obligations, and warranties described in this ordinance.
- (c) ***Disruptions of Right-of-Way.***
- (1) ***In General.***
 - (A) Except when the Unified Government has issued a permit or except as otherwise provided by this ordinance, no person shall disrupt the right-of-way.
 - (B) If the ROW-user is responsible for creating a condition dangerous to the public health and safety, the Unified Government Engineer may order immediate cessation of activity or institution of measures to correct the dangerous condition.
 - (C) No person shall maintain any unsecured opening in the right-of-way which presents a hazard to the public.
 - (2) ***By Abutting Owner or Occupier.*** No person owning or occupying land abutting on the right-of-way shall construct, maintain, or permit in or on the right-of-way any fixed structure, material, or object which presents a hazard to the traveling public or which prevents the unobstructed flow of stormwater along the gutter of any street or which causes the adjacent pavement to deteriorate. If the Unified Government Engineer deems any structure, material, or object a hazard, he may require the property owner or occupier to remove it.
 - (3) ***Tree Trimming.*** A ROW-user engaging in tree trimming in the right-of-way shall obtain a permit and shall otherwise adhere to the provisions of this ordinance. Owners of property are not required to obtain a permit to trim trees in the right-of-way adjacent to their property.
- (d) ***Sidewalks, Curbs, Driveways, and Culverts.***
- (1) ***Subject to Ordinance.*** Construction, alteration, repair, reconstruction, or restoration of sidewalks, curbs, driveways, and culverts shall require a permit and shall otherwise be subject to this ordinance.

- (2) ***Culverts.*** Owners or occupiers of property abutting on uncurbed streets shall provide culverts to drain the surface water on such streets and adjoining property.

(e) ***Hauling.***

- (1) Hauling or moving any earth, excavated rock, rubbish, or used building and construction materials, regardless of where it originated, shall require a permit and shall otherwise be subject to this ordinance.
- (2) All vehicles used to move or transport such materials shall have proper tailgates and sideboards and covering as determined by the Unified Government Engineer.
- (3) If the earth, excavated rock, rubbish, or used building or construction materials are to be disposed of in the city, the disposal shall take place only between 7 a.m. and one-half hour prior to sunset, Monday through Saturday. No such disposal shall take place within the city on Sundays unless prior written permission is granted by the Unified Government Engineer.
- (4) Every hauling permit shall designate the route over which the material may be moved, and the material shall not be moved over any other street.

Section 8. Use of the Right-of-Way by Service Providers

(a) ***Registration of Service Providers.***

- (1) No service provider shall be authorized to use the right-of-way in any capacity or manner without registering and obtaining the necessary right-of-way permit from the Unified Government.
- (2) All existing service providers must register within 60 days of the effective date of this ordinance.
- (3) Any person who is not an existing service provider before the effective date of this ordinance and who wishes to become a service provider must first register with the Unified Government.
- (4) The service provider shall report any changes in its registration information within 30 days.
- (5) The information required for registration includes the following:
- (A) Identity and legal status of service provider, including related affiliates.
- (B) Name, address, telephone number, fax number, and email address of officer, agent, or employee responsible for the accuracy of the registration statement.

- (C) Name, address, telephone number, fax number, and email address of the local representative of the service provider who shall be available at all times to act on behalf of the service provider in the event of an emergency.
- (D) Proof of any necessary permit, license, certification, grant, registration, franchise agreement, or any other authorization required by any appropriate governmental entity, including but not limited to the Unified Government, the FCC, or the KCC.
- (E) Description of the service provider's use or intended use of the right-of-way.
- (F) Information sufficient to determine whether the service provider is subject to franchising by Kansas law.
- (G) Information sufficient to determine whether the service provider has applied for and received any certificate of authority required by the KCC.
- (H) Information sufficient to determine that the service provider has applied for and received any permit or other approvals required by the FCC.
- (I) Information which identifies reseller service providers as provided in this ordinance.
- (J) Such other information as may be reasonably required by the Unified Government to complete the registration statement.

(b) ***Limitation on Entrants in the Right-of-Way.***

- (1) To the extent allowed by law, the Unified Government may limit the number of service providers in the right-of-way based upon but not necessarily limited to specific local considerations such as:
 - (A) The capacity of the right-of-way to accommodate service facilities;
 - (B) The impact on the community of the volume of facilities in the right-of-way;
 - (C) The disruption arising from numerous excavations of the right-of-way;
 - (D) The financial capabilities of the service provider and its guaranteed commitment to make necessary investments to erect, maintain, and operate the proposed facilities; or

- (E) Any other consideration based upon the interests of the public safety and welfare.
 - (2) The Unified Government shall not exercise its authority under this provision to deter competition or discriminate against any service provider.
- (c) ***Other Service Provider Requirements.***
- (1) ***Local Agent.*** Each service provider shall designate a local person familiar with the facilities who will act as a local agent for the service provider and will be responsible for satisfying information requirements of this ordinance. The service provider shall present to the Unified Government 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. The service provider shall be responsible for all costs incurred by the Unified Government due to the failure to provide such information to the Unified Government.
 - (2) ***Right-of-Way Permit.*** Before construction, reconstruction, repair, maintenance, or relocation of facilities owned by the service provider in the right-of-way, the service provider shall first obtain the necessary right-of-way permit as provided in this ordinance.
 - (3) ***Franchise.*** Before providing service to the Unified Government and its residents, the service provider shall first obtain the necessary franchise agreement, if any, from the Unified Government.
 - (4) ***Coordination.*** The service provider shall participate in any joint planning, construction, and advance notification of right-of-way work, including coordination and consolidation of excavations as directed by the Unified Government Engineer. In addition the service provider shall cooperate with other service providers and the Unified Government 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 excavations.
 - (5) ***Information Requested.*** Within ten days of a request by the Unified Government, the service provider will provide to the Unified Government information concerning its facilities as may be reasonably requested.
 - (6) ***Mapping.***
 - (A) Upon request by the Unified Government Engineer, a service provider shall furnish maps showing the alignment of its facilities within the City.
 - (B) The service provider shall keep and maintain accurate records and as-built drawings depicting accurate horizontal and vertical

alignment of all its facilities constructed, reconstructed, relocated, or abandoned in the right-of-way after the date of this ordinance.

- (C) When available to the service provider, maps will be submitted electronically in a format compatible with the Unified Government's Geographical Information System (GIS). Nothing in this section shall be construed to require the service provider to acquire or modify any electronic mapping system.
 - (D) Underground facilities shall be differentiated from overhead facilities.
 - (E) Such mapping and identification shall be at the sole expense of the service provider.
- (d) ***Service Provider's Right To Sell, Transfer, Lease, Assign, Sublet, or Dispose of Facilities.*** Except as provided in this section, the service provider shall not sell, transfer, lease, assign, sublet, or dispose of its facilities, or any portion thereof, that is located in City right-of-way, or any right, title, or interest in the same, or transfer any rights granted by the Unified Government to any person either by forced or involuntary sale, or by ordinary sale, consolidation, or otherwise, without notice to the Unified Government. This provision shall not apply to the sale of property or equipment other than the service provider's facilities or to the sale or lease of facilities to reseller service providers. No notice to the Unified Government shall be required for a transfer in trust, mortgage, or other similar instrument, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with the service provider.
- (e) ***Reseller Service Providers.*** A service provider may permit and has the authority to sell, lease, or sublease any use of excess capacity and to sell services for resale to any reseller service provider providing service within the City, including the service provider's subsidiary or affiliate. The reseller service provider shall first register and obtain any necessary permit, license, certification, grant, registration, franchise agreement, or any other authorization required by any appropriate governmental entity, including but not limited to the Unified Government, the FCC, or the KCC. A service provider selling, leasing, or subleasing excess capacity or services shall provide the Unified Government at least semi-annually, by January 1 and July 1, the identity of entities with which the service provider has entered into an interconnection and/or resale agreement within the State of Kansas. This notice will not relieve the reseller service provider from its own obligation to register and obtain any necessary franchise with the Unified Government. Nothing in this ordinance shall prevent a facility-based service provider from providing to any reseller service provider the use of the facility-based service provider's facilities in the right-of-way as authorized by federal or state law.

(f) ***Facility Location and Design.***

(1) ***Placement of Facilities.***

(A) ***Impact on Public Improvements.***

- (i) The service provider shall coordinate the placement of facilities in a manner which minimizes adverse impact on any public improvement, as reasonably determined by the Unified Government. 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.
- (ii) The service provider shall consider any request made by the Unified Government concerning placement of facilities in private easements in order to limit or eliminate future public improvement relocation expenses.

(B) ***Non-interference with Unified Government and Public Use.*** All facilities of the service provider shall be placed so that they do not interfere with the use of right-of-way and public lands. The Unified Government, through its Engineer, shall have the right to consult, review, and approve the location, design, and nature of the facility before it is installed. Service providers shall avoid so far as practicable disrupting or interfering with the public's use of the right-of-way.

(C) ***Non-interference with Other Right-of-Way Users.*** A service provider shall not interfere with the facilities of other ROW-users without their permission.

(D) ***Underground Facilities.***

- (i) Except when waived by the Unified Government Engineer, all facilities required to be underground by prior ordinances shall continue to be placed and maintained underground, including but not limited to all areas where plats were approved showing underground facilities and the following streets:
 - a. Minnesota Avenue between 2nd and 18th Streets;
 - b. Central Avenue between State Line and 18th Streets;
 - c. Kansas Avenue between 18th Street and the Kansas River;
 - d. James Street between the bridge over the Kansas River and State Line Avenue;
 - e. North 5th Street between Central and Haskell Avenues;

- f. North 6th Street between Central and Oakland Avenues;
 - g. North 10th Street between Central and Minnesota Avenues;
 - h. North 7th Street from Minnesota Avenue to Quindaro Boulevard.
- (ii) Except when waived by the Unified Government Engineer, all facilities constructed in new developments shall be located underground.
 - (iii) The service provider shall comply with all requirements of the Unified Government relating to underground facilities.
 - (iv) If and when the Unified Government requires or negotiates to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time, subject to the appeal process contained in this ordinance.
- (E) ***Right-of-Way Corridors.*** The Unified Government Engineer may assign specific corridors within the right-of-way for each type of facility. If the Unified Government Engineer has assigned corridors, the right-of-way permits shall indicate the proper corridor for the service provider's facilities. Any service provider whose facilities are 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, at its sole expense, move the facilities to its assigned position within the right-of-way, unless this requirement is waived by the Unified Government Engineer for good cause shown, upon consideration of such factors as the remaining life of the facilities, public safety, user service needs, and hardship to the service provider.
- (F) ***Conduits.*** If, in the preparation and planning of a right-of-way project, the Unified Government Engineer deems it appropriate for a conduit to be constructed along, across, or under the right-of-way, the Unified Government Engineer shall contact all appropriate service providers for their input on the planning and design of such conduit. If a service provider desires to construct, maintain, or operate facilities along such right-of-way, the Unified Government Engineer may require the service provider to use such conduit, and to contribute to the expense of such conduit, provided, however, the service provider use of the conduit is reasonable and appropriate under the circumstances.

(2) ***Technical Standards.***

- (A) All technical standards governing construction, reconstruction, installation, repair, operation, testing, use, maintenance, and dismantling of a service provider's facilities in the right-of-way shall be in accordance with applicable federal, state, and local law and regulations or in accordance with standards published by national trade associations commonly associated with the service provided. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this ordinance may be in addition to or stricter than such minimum standards.
- (B) Based on the size and complexity of the planned improvement, the Unified Government Engineer may require that any drawings, plans, and specifications submitted be certified by a Kansas registered professional engineer stating that such drawings, plans, and specifications comply with the Technical Provisions and Standard Drawings and 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.

- (3) ***Participation in Plan Review.*** The service provider shall participate in a review of its plans and shall cooperate promptly and fully with the Unified Government 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, both underground and overhead, when requested by the Unified Government. Such location and identification shall be at the expense of the service provider without any expense to the Unified Government.

(g) ***Facility Removal, Relocation, or Adjustment.***

- (1) The service provider shall promptly remove, relocate, adjust, or temporarily support any facilities located in the right-of-way as directed by the Unified Government for a public improvement or when reasonably required by the Unified Government by reason of public safety. Such removal, relocation, adjustment, or temporary support, including relocation, adjustment, or reconnection of service lines, shall be performed by the service provider at the service provider's sole expense without expense to the Unified Government, its employees, agents, or authorized contractors and shall be specifically subject to applicable rules, regulations, and schedules of the Unified Government. The service provider shall proceed with removals, relocations, adjustments, and supports with due diligence upon notice by the Unified Government.
- (2) If the Unified Government expands its right-of-way, the service provider shall promptly remove, relocate, or adjust any facilities located in private

easement, as directed by the Unified Government, for a public improvement, at Unified Government 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 Unified Government to avoid conflict with Unified Government construction and improvements. The service provider shall disclaim those parts of its easements which lie within the expanded right-of-way.

- (3) As soon as working drawings are available for public improvements which will require the service provider to remove, relocate, adjust, or temporarily support its facilities, the Unified Government shall provide the service provider with written notice and the anticipated bid letting date of the improvement. The service provider shall respond with any conflicts and a proposed construction schedule within 30 days.
- (4) Following notice by the Unified Government in the form of the delivery of final design plans for such public improvements, the service provider shall remove, relocate, adjust, or temporarily support its facilities in accordance with the mutually agreed upon schedule. The service provider shall certify to the Unified Government, in writing, that its facilities have been removed, relocated, adjusted, or supported to clear construction in accordance with project plans provided by the Unified Government.
- (5) Any damages suffered by the Unified Government, its agents, or its contractors to the extent caused by the service provider's failure to timely remove, relocate, adjust, or support its facilities, or failure to properly remove, relocate, adjust, or support such facilities, shall be borne by the service provider.
- (6) In the event the service provider is required to remove, relocate, or adjust its facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.
- (7) It is the intent of this section for both the Unified Government and the service provider to cooperate with one another so that the need for facility removal, relocation, or adjustment is minimized and, when required and feasible, removals, relocations, and adjustments may be completed before receipt of bids by the Unified Government for a public improvement.
- (8) Upon the appropriate request of any person having satisfied Unified Government procedure and ordinances, the service provider shall remove, raise, or lower its 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 it, and the service provider may require such payment in advance. The service provider must be given not less than five 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.

(h) ***Right-of-Way Vacation.***

- (1) If the Unified Government vacates a right-of-way which contains the facilities of a service provider, and if the vacation does not require the relocation of the service provider's facilities, the Unified Government shall reserve to and for itself and all service providers having facilities in the vacated right-of-way 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 such facilities.
- (2) If the vacation requires the relocation of facilities --
 - (A) If the vacation proceedings are initiated by the service provider or by the Unified Government, the service provider must pay the relocation costs unless otherwise agreed to by the Unified Government and the service provider.
 - (B) If the vacation proceedings are initiated by a person other than the service provider or the Unified Government, such other person must pay the relocation costs.
- (3) Petitions for vacation of any easement or right-of-way shall be filed with the Unified Government Clerk. A fee shall be charged for all such petitions in an amount to be set by the County Administrator.

(i) ***Abandoned and Unusable Facilities.***

- (1) A ROW-user owning abandoned facilities in the right-of-way must:
 - (A) Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense, if required by the Unified Government Engineer; or
 - (B) Provide information satisfactory to the Unified Government that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or
 - (C) Submit to the Unified Government a proposal and instruments for transferring ownership of its facilities to the Unified Government. If the ROW-user proceeds under this section, the Unified Government, at its option, may purchase the equipment, require the ROW-user, at its own expense, to remove it or require the ROW-user to post a bond in an amount sufficient to reimburse the Unified Government for reasonable anticipated costs to be incurred to remove the facilities.
- (2) Facilities of a ROW-user who fails to comply with this section and whose facilities remain unused for two years shall be deemed to be abandoned, unless the Unified Government receives confirmation that the ROW-user

intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The Unified Government may exercise any remedies or rights it has at law or in equity, including but not limited to (1) abating the nuisance, (2) taking possession and ownership of the facility and restoring it to a useable function, or (3) requiring the removal of the facility by the ROW-user. The Unified Government may charge the ROW-user for any costs the Unified Government incurs in taking any of the actions described in this subsection.

Section 9. Work in the Right-of-Way

(a) *Conditions Governing Performance of Work in the Right-of-Way.*

- (1) Except in cases of an emergency or with approval of the Unified Government Engineer, no right-of-way work may be done when conditions are unreasonable for such work.
- (2) A permittee shall not at any one time open or encumber more of the right-of-way than shall be reasonably necessary to enable the permittee to complete the project in the safest and most expeditious manner.
- (3) A permittee shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.
- (4) The permittee 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. Except with the written approval of the Unified Government Engineer, non-emergency work shall be restricted as follows:
 - (A) on arterial and collector streets may not be performed during the hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.
 - (B) on any street may not be performed at night or on weekends.
- (5) ***Right-of-Way and Street Closure.***
 - (A) Whenever a ROW-user shall excavate or disrupt any part of the 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 backfilled as specified, unless the Unified Government Engineer has issued a street closure permit.
 - (B) Any ROW-user who for any excavates or disrupts the right-of-way and leaves any material, debris, or equipment in the right-of-way shall cause the site to be enclosed and properly secured with good substantial and sufficient barricades, drums, plates, warning lights, and orange safety fencing material as required by local, state, and federal laws or regulations or by the conditions contained in the right-of-way permit.

- (C) The Unified Government Engineer may close any street or any part of it when he deems it necessary to accommodate work in the right-of-way, for the protection of public health or safety, or because of other special condition.
 - (D) A permittee shall notify the Unified Government no less than three working days in advance of any excavation in or disruption of the right-of-way which requires street closure or which reduces traffic flow to less than two lanes of moving traffic.
 - (E) A permittee who requires a full street closure must obtain a street closure permit in addition to the right-of-way permit. An additional fee may be charged in an amount to be set by the County Administrator.
- (6) ***Traffic Control.***
- (A) When they are working in or disrupting the right-of-way, all ROW-users shall be responsible for traffic control in accordance with the MUTCD and any requirements contained in their right-of-way use permit.
 - (B) 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 permittee's expense. Such signage shall be in conformance with the MUTCD, unless otherwise agreed to by the Unified Government.
- (7) Any permittee found to be working without providing required safety and traffic control measures will be directed to stop work and shall stop work.
 - (8) Loading or unloading of vehicles adjacent to a work area is prohibited unless specifically authorized by permit.
 - (9) Any vehicle or mobile equipment used by a permittee in connection with excavation of, disruption of, or any work in the right-of-way shall be clearly identified with the name of the permittee or the person doing the work painted or otherwise durably marked on both sides of the vehicle or equipment, in plain letters not less than two inches high and with not less than one-fourth inch stroke.
 - (10) A permittee 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.
 - (11) In the event the ROW-user severely disturbs or damages any tree in the right-of-way, including its root structure, the ROW-user will be required to remove and replace the tree at the ROW-user's cost and to reimburse the owner of the tree for the difference in value between the tree removed

and the tree replaced. Valuation will be determined by a degreed forester or an arborist certified by the International Society of Arboriculture (ISA) using the ISA guidelines. Further, in review of the ROW-user's plan, the Unified Government Engineer, at his discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.

- (12) Prior to the commencement of any excavation, permittees shall identify and locate underground facilities according to the Kansas One Call system, shall notify affected utilities, and shall otherwise comply with the system's requirements. A permittee shall be liable for any damages to underground facilities due to excavation ~~work~~ performed prior to obtaining location of such facilities or for any damage to underground facilities that have been properly identified prior to excavation.
- (13) A permittee shall immediately notify the owner of any facilities damaged by the permittee's work. The permittee 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.
- (14) All work done by the permittee shall be done in accordance with the Technical Provisions and Standard Drawings and the technical standards required by this ordinance.
- (15) The Unified Government Engineer may inspect the permitted work at any time to ensure that all requirements of the permit are being met, and the permittee shall provide access to the Unified Government Engineer for such purpose.
- (16) The Unified Government 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, and the permittee shall comply with any such stop work order. The Unified Government Engineer or any Unified Government inspector may issue a citation to the permittee for any violation of this ordinance.
- (17) The permittee shall notify the Unified Government Engineer upon completion of its work.
- (18) The permittee shall remove all debris and otherwise leave the area in as clean a condition as it was before the work was begun.
- (19) Following completion of permitted work for construction after the date of this ordinance, the permittee shall maintain accurate records and as-built drawings, depicting the location of all facilities constructed pursuant to each permit and shall provide them to the Unified Government Engineer upon request. The Unified Government is entitled to rely on the as-built records of the service provider's facilities in connection with public improvements.

(b) ***Liability Insurance, Performance and Maintenance Bond Requirement.***

- (1) The permittee shall file with the Unified Government evidence of liability insurance with an insurance company admitted to do business in Kansas. The amount will be not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. The insurance will protect the permittee and the Unified Government 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 permittee, its employees, agents, or subcontractors.
- (2) The permittee shall at all times during the term of the permit and for two years thereafter maintain a performance and maintenance bond in a form approved by the Chief Counsel. The amount of the bond will be \$5,000 or the value of the restoration, whichever is greater, for a term consistent with the term of the permit plus two additional years, conditioned upon the permittee's faithful performance of the provisions, terms, and conditions contained in this ordinance. An annual bond in an amount of \$250,000 automatically renewed yearly during this period shall satisfy the requirement of this section. In the event the Unified Government shall exercise its right to revoke the permit as granted herein, then the Unified Government shall be entitled to recover under the terms of the bond the full amount of any loss occasioned.
- (3) When a right-of-way permit is requested for purposes of installing additional facilities and any bond on file is reasonably determined to be insufficient, the posting of an additional or larger bond for the additional facilities may be required.
- (4) No performance and maintenance bond or liability insurance will be required of the Unified Government or the Board of Public Utilities of Kansas City, Kansas, (BPU) if their own employees are performing the work, or of any residential property owner who is working in the right-of-way adjacent to his or her residence. If a contractor is performing the work for the Unified Government or the BPU or such property owner, such contractor must comply with the bond and insurance requirements set out in this ordinance.

(c) ***Right-of-Way Restoration and Guarantee.***

- (1) All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the permittee shall be fully repaired or replaced promptly by the permittee at its sole expense and to the reasonable satisfaction of the Unified Government. After any excavation, construction, or disruption, at its own expense, permittee shall restore all portions of the right-of-way to the standards published in the Technical Provisions and Standard Drawings. If no standards are published for the restoration, permittee shall restore the right-of-way to the same condition or better condition than it was prior to

the excavation. The Unified Government Engineer has the authority to inspect the repair, replacement, or restoration of the of the right-of-way, and, if necessary, to require the permittee to do additional repair, replacement, or restoration. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the permittee and a reasonable time not to exceed 15 days will be allowed for the permittee to correct the deficiencies.

- (2) In addition to repairing its own street cuts, the permittee must restore any area within five feet of the new street cut including the pavement and its sub-base, unless the Unified Government Engineer has waived such requirement in writing.
- (3) If, in the judgment of the Unified Government Engineer, the permittee fails in a timely manner to restore the right-of-way, the Unified Government may serve written notice upon the permittee and its surety that, unless within five days a satisfactory arrangement can be made for the proper restoration of the right-of-way, the surety shall have the right to take over and complete the restoration. If the surety does not commence performance within ten days from the date of notice, the Unified Government may complete the restoration by contract or otherwise. The permittee and its surety shall be liable to the Unified Government for all cost incurred by the Unified Government in completing the restoration.
- (4) The permittee warrants and guarantees for a period of 24 months that the excavation and restoration is free from all defects due to faulty materials or workmanship, and the permittee shall promptly make corrections as may be necessary by reason of such defects and shall promptly make repairs of any damage to other improvements, including damage to adjacent existing improvements, utilities, and pavement, resulting from such defects. The Unified Government will give written notice to the permittee of observed defects with reasonable promptness. If for any reason the permittee shall fail to make repairs within 20 days after the date such notice is served upon the permittee, the Unified Government shall have the right and authority to correct or cause the correction of the defects, including that which may be necessary by said defects, and may charge the permittee for all costs thereby incurred. The maintenance bond shall remain in full force and effect through the guarantee period.
- (5) Payment of a degradation fee shall not relieve the permittee of the obligation to complete the necessary right-of-way restoration.

Section 10. Indemnification.

A ROW-user operating under the provisions of this ordinance shall fully indemnify, release, defend, and hold harmless the Unified Government and agents of the Unified Government when acting in their capacity as municipal officials, employees and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability, and judgment by other persons for damages, losses, costs, and expenses, including attorneys' fees, to the extent caused by negligent acts or omissions of the ROW-user in the performance of the permitted

work. The Unified Government agrees to timely notify ROW-user of such claim, demand, suit, proceeding, or action by providing written notice to ROW-user and the registered agent of the ROW-user. Nothing herein shall be deemed to prevent the Unified Government or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the ROW-user from its duty to defend against liability or its duty to pay any judgment entered against the Unified Government or its agents.

Section 11. Federal, State, and Unified Government Jurisdiction.

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

Section 12. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance 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.

Section 13. Unified Government's Failure to Enforce.

The Unified Government's failure to enforce or remedy any noncompliance of the terms and conditions of this ordinance or of any permit granted under this ordinance shall not constitute a waiver of the Unified Government's rights nor a waiver of any person's obligation as provided in this ordinance.

Section 14. Reservation of Rights.

In addition to any rights specifically reserved to the Unified Government by this ordinance, the Unified Government reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, permit, or other authorization granted under this ordinance. The Unified Government shall have the right to waive any provision of this ordinance or any registration, permit, or other authorization granted thereunder, except those required by federal or state law, if the Unified Government determines that: (1) it is in the public interest to do so, and (2) the enforcement of such provision will impose an undue hardship on the person. To be effective, such waiver shall be evidence by a statement in writing signed by a duly authorized representative of the Unified Government.

Section 15. Penalties.

- (a) The violation of any provisions of this ordinance is hereby declared to be a public offense. Any person convicted of such a violation shall be punished by a fine of not less than \$250 and not more than \$1,000. Each day a violation occurs shall constitute a separate offense.
- (b) The violation of any provision of this ordinance is hereby deemed to be grounds for revocation of a right-of-way permit and registration to operate within the City.

Section 16. That said original Sections 32-2, 32-3, 32-4, 32-5, 32-6, 32-7, 32-8, 32-9, 32-46, 32-47, 32-48, 32-49, 32-50, 32-51, 32-52, 32-66, 32-67, 32-68, 32-96, 32-97, 32-98, 32-99, 32-116, 32-117, 32-118, 32-119, 32-120, and 35-34 of the 1988 Code of Ordinances, City of Kansas City, Kansas, be and the same are hereby repealed.

Section 17. This ordinance shall take effect and be in full force effective January 1, 2001, after its passage, approval, and publication in the Kansas City, *Kansan*.

PASSED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS,

THIS _____ DAY OF _____, 2000.

Carol Marinovich, Mayor/CEO

Attest:

Unified Government Clerk

Approved As To Form:

Assistant Counsel