

**City of Bonner Springs, KS**

**Right-of-Way Usage Code**

**2007 Edition**

**Adopted by Ordinance No. 2199**

**Chapter XIII Streets & Sidewalks**

**Article 3 Right-of-Way Usage Code**

The City of Bonner Springs, KS Right-of-Way Usage Code  
2007 Edition

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City of Bonner Springs, Kansas  
Right-of-Way Usage Code

Code of Ordinances, Chapter XIII; Article 3, Right-of-Way Usage Code.

**MANAGING THE USE AND OCCUPANCY OF PUBLIC RIGHT-OF-WAY FOR  
THE CITY OF BONNER SPRINGS, KANSAS**

**SECTION 1: General.**

No Person shall excavate the Right-of-Way, construct, use or maintain the Facilities within the Right-of-Way of the City except as provided herein.

**SECTION 2: Purpose.**

To recognize the City's primary role as chief 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; to clarify and regulate conditions of occupancy and construction for those ROW-users occupying space within the City's Right-of-Way given the anticipated increased use of the Right-of-Way by various ROW-users throughout the country; 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; to treat each ROW-user equitably and in a competitively neutral and nondiscriminatory manner with considerations that may be unique to the technologies and situation of each particular ROW-user; to minimize disruption, visual impact or inconvenience to the public, and to preserve the public health, safety and welfare; and to comply with state and federal legislation.

**SECTION 3: Definitions.**

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

"**Abandoned Facilities**" means those Facilities owned by the ROW-user that are not in use and will not be utilized by the owner in the future.

"**Affiliate**" means any Person controlling, controlled by or under the common control of a Service Provider.

"**Applicant**" means any Person requesting permission to occupy, lease or operate Facilities using the Right-of-Way, or to excavate the Right-of-Way.

"**Area of Influence**" means that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration.

"**City**" means the City of Bonner Springs, Kansas, a municipal corporation and any duly authorized representative.

"**City Engineer**" means the City Engineer, Bonner Springs, KS, or their authorized representative.

"**Code**" means the adopted Right-of-Way Usage Code and any additions or amendments therein.

"**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.

**"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.

**"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.

**"Excavation Fee"** means the fee charged by the City for each street or pavement cut which is intended to recover the costs associated with construction and repair activity of the ROW-user, its contractors and/or subcontractors.

**"FCC"** means Federal Communications Commission.

**"Facility"** means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, or other equipment. Facility shall also include driveways, sidewalks, fences, and other improvements located in the Right-of-Way.

**"Governing Body"** means the Mayor and the City Council of the City of Bonner Springs, Kansas.

**"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.

**"KCC"** means the Kansas Corporation Commission.

**"Maintain"** means any work that would excavate, damage, or alter the Right-of-Way.

**"Parkway"** means the area between a property line and the street curb; also referred to as a boulevard, tree shelf or snow shelf.

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

**"Permit and Inspection 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 registering applicants; issuing, processing, and verifying Right-of-Way permit applications; inspecting job sites and restoration of 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 Code.

**"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.

**"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.

**"Public Lands"** means any real property of the City that is not Right-of-Way.

**"Registration"** means the application process of a Service Provider, the approval of the application by the City, and the authorization of the Service Provider to use any portion

of the Right-of-Way within the City to provide service both within and beyond the City limits.

**"Repair"** means the temporary construction work necessary to make the Right-of-Way useable.

**"Repair and Restoration Costs"** means those costs associated with repairing and restoring the public Right-of-Way because of damage caused by the ROW-user, its contractors and/or subcontractors in the Right-of-Way.

**"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.

**"Right-of-Way (ROW)"** means the area on, below or above streets, alleys, bridges and parkways. Right-of-Way also includes any easements owned or controlled by the City. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service.

**"Right-of-Way Permit"** means the authorization to excavate for the construction, installation, repair or maintenance of any type of Facility within the Right-of-Way.

**"Routine Service Operation"** means a work activity that makes no material change to the Facilities and does not disrupt traffic.

**"ROW-user"** means a Person, its successors and assigns, and contractors and subcontractors, 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 or any Governmental Entity that has entered into an agreement pursuant to K.S.A. 12-2901 et seq. with the City regarding the use and occupancy of the City's Right-of-Way. A ROW-user shall not include any Person performing regular or routine maintenance or tree-trimming, as may be required under Chapter 8 Article 4 or Chapter 13 Article 6 of the Code of Ordinances, in any ROW or easement property which directly adjoins said Person's property.

**"Service"** means a commodity provided to a Person by means of a delivery 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 sanitary sewerage.

**"Service Provider"** means any Person owning, possessing or having an interest in Facilities in the Right-of-Way that are used for the provisions of a service for or without a fee; provided, that this definition shall also include Persons owning, possessing or having an interest in Facilities in the Right-of-Way that are used by, may be used by or are intended for use by another Person, in whole or in part, to provide a service for or without a fee, regardless of whether the actual Facility owner provides any service as defined herein.

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

#### **SECTION 4: Policy.**

A. It is the policy of the City to authorize any ROW-user to utilize 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 hereof, 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 City in accordance with this Code. These rights are for the exclusive use of the ROW-user except where otherwise provided herein, or when authorized by the City.

**C.** This Code is designed to regulate occupancy and excavations 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. All ROW-users shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City 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.

**D.** The ROW-users shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the Right-of-Way.

#### **SECTION 5: Administration.**

The City Manager is the principal City official for administration of Right-of-Way permits for work and excavations made in the Right-of-Way as well as the principal City official responsible for administration of the registering of a Service Provider. The City Manager may delegate any or all of the duties hereunder.

#### **SECTION 6: Requirements of Service Provider.**

**A.** Any existing Service Provider must register within ninety (90) days of the effective date of this Ordinance.

**B.** Any Person, who is not an existing Service Provider prior to the effective date of this Code and who wishes to become a Service Provider, must first register with the City.

**C.** The Service Provider shall report any changes in its registration information within thirty (30) days.

**D.** No Service Provider shall be authorized to utilize the Right-of-Way in any capacity or manner without registering and obtaining the necessary Right-of-Way permit from the City.

**E.** The information required for registration includes the following:

1. Identity and legal status of service provider, including related affiliates.
2. Name, address, telephone number, fax number and email address of officer, agent or employee responsible for the accuracy of the registration statement.
3. 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.

4. 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 City, the FCC or the KCC.
5. Description of the Service Provider's intended use of the Right-of-Way.
6. Information sufficient to determine whether the service provider is subject to franchising by Kansas law.
7. Information sufficient to determine whether the Service Provider has applied for and received any certificate of authority required by the Kansas Corporation Commission.
8. Information sufficient to determine that the Service Provider has applied for and received any permit or other approvals required by the Federal Communications Commission.
9. Such other information as may be reasonably required by the City to complete the registration statement.

**F.** 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 Code. The Service Provider 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. The Service Provider shall be responsible for all costs incurred by the City due to the failure to provide such information to the City.

**G.** Prior to 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 hereafter.

**H.** Prior to providing service to the City and its residents, the Service Provider shall first obtain the necessary franchise agreement, if any, from the City.

**I.** The Service Provider shall participate in any joint planning, construction and advance notification of Right-of-Way work, including coordination and consolidation of street cut work as directed by the City's Public Works Director, and/or by the Utility Director or their Designees. In addition, the Service Provider shall cooperate with other service providers and the City for the best, most efficient, most aesthetic and least obtrusive use of the Right-of-Way, consistent with safety, and to minimize traffic and other disruptions, including street cuts.

**J.** The Service Provider shall furnish maps showing the location of Facilities of the service provider within the City as provided hereafter.

**K.** The City shall not exercise its authority under this provision to in any way deter competition or discriminate against any service provider.

**L.** The Service Provider shall be responsible for any work performed by sub-contractors on its behalf. The City shall be notified of all sub-contractors working on behalf of a Service Provider prior to or concurrent with the sub-contractor's beginning performance. This notification shall include the sub-contractor's name, contact person, phone number, emergency phone number and verification of insurance coverage.

**SECTION 7: Mapping Requirement of Service Provider.**

- A. The Service Provider 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. These records shall also be provided to the City.
- B. Within ten (10) days of a request by the City, the Service Provider will provide to the City information concerning the location such Facilities as may be reasonably requested.
- C. Underground Facilities shall be differentiated from overhead Facilities.
- D. Such mapping and identification shall be at the sole expense of the service provider.

**SECTION 8: Service Provider's Right to Sell, Transfer, Lease, Assign, Sublet or Dispose.**

- A. Except as provided hereafter, 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 the transfer of any rights granted by the City to any Person either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, without notice to the City.
- B. This provision shall not apply to the sale of property or equipment in the normal course of business or to the sale or lease of Facilities to reseller Service Providers.
- C. No notice to the City 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.

**SECTION 9: Use of the Right-of-Way.**

- A. The ROW-user's use of the Right-of-Way shall in all matters be subordinate to the City's use or occupation of the Right-of-Way. The City may reserve sufficient space within the Right-of-Way for future public improvements. 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.
- B. The ROW-user shall coordinate the placement of Facilities in a manner which minimizes adverse impact on any public improvement, as reasonably determined by the Public Works Director and/or the Utility Director, or their Designees. 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 by the City.
- C. The ROW-user shall comply with any requirement made by the Public Works Director and/or the Utility Director, or their Designees concerning placement of Facilities in private easements in order to limit or eliminate future street improvement or other public improvements relocation expenses as long as the request is technically feasible.
- D. All Facilities shall be located and constructed so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the ROW-user shall, in doing work in connection with its Facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of Right-of-Way or other public lands of the City.

E. All Facilities of the ROW-user shall be placed so that they do not interfere with the use of Right-of-Way and public lands. The City shall have the right to consult and review the location, design and nature of the Facility prior to its being installed.

F. All newly constructed Facilities shall be located underground. The ROW-user shall comply with all requirements of the Public Works Director and/or the Utility Director, or their Designees relating to underground Facilities. This requirement may be waived by the City Manager or his Designee, at his discretion for safety concerns, or some other good cause under the condition that does not cause discrimination among ROW-users. If this requirement is waived, the Facilities shall be located as directed by the Public Works Director or the Utility Director, or their Designees including, but not limited to, requirements regarding location and height.

G. If above ground Facilities or appurtenances are required, then such Facilities shall be placed in the least obtrusive, most aesthetically pleasing location, as determined by the City Manager or his Designee. The preferred location for above ground Facilities shall be at the corner in back of the property or the side of the property.

H. The ROW-user shall not interfere with the Facilities of the other ROW-users without their permission. If and when the City 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 Code as outlined by the Appeals Process in Section 27 of this Code.

I. The City Manager, Public Works Director, and/or the Utility Director, or their Designees 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 expects will someday be located within the Right-of-Way. All Right-of-Way permits issued by the City shall indicate the proper corridor for the ROW-user's Facilities. Any ROW-user whose Facilities are currently in the Right-of-Way that are not within the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its Facilities are located, move the Facilities to its assigned position within the Right-of-Way, unless this requirement is waived for good cause shown, upon consideration of factors including, but not limited to, the remaining economic life of the Facilities, public safety, user service needs and hardship to the ROW-user.

J. If the Public Works Director and/or the Utility Director, or their Designees deem it appropriate for a conduit to be constructed along, across or under the Right-of-Way, the Public Works Director and/or the Utility Director, or their Designees shall notify all appropriate ROW-users. If a ROW-user desires to construct, maintain or operate Facilities along such Right-of-Way, the Public Works Director and/or the Utility Director or their Designee may require the ROW-user to use the conduit, and to contribute to the expense of such conduit, provided that the ROW-user's use of the conduit is reasonable and appropriate under the circumstances.

K. All earth, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City. The City Manager, Public Works Director, and/or the Utility Director, or their Designees can require that the City replace any sidewalk, paving,

crossings, utilities, or other public improvements that are damaged by the ROW-user and the ROW-user shall be billed for the City's cost. Upon determination by the City Manager, Public Works Director, and/or the Utility Director, or their Designee 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 Manager, Public Works Director, and/or the Utility Director, or their Designee may direct that the City shall make such repair or replacement and bill the ROW-user for the City cost. The City Manager, Public Works Director, and/or the Utility Director, or their Designees has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to do any necessary additional work.

L. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW-user's Facilities in the Right-of-Way shall be in accordance with then current applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Code may be in addition to or stricter than such minimum standards.

M. A ROW-user shall not construct or reconstruct any of its Facilities located upon, over, under or within the City Right-of-Way without first having submitted in writing a description of its planned improvement to the City and having received a permit for such improvement. The City 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.

N. The ROW-user 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, both underground and overhead, when requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the expense of the ROW-user without any expense to the City, its employees, agents, or authorized contractors.

O. The City shall have the authority to prohibit the use or occupancy of a specific portion of the Right-of-Way by a ROW-user due to public health, safety, welfare, or location of existing utilities considerations.

#### **SECTION 10: Facility Relocation.**

A. The ROW-user 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 health, safety and welfare. Such removal, relocation, or adjustment shall be performed by the ROW-user at the ROW-user'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 ROW-user shall proceed with relocations at due diligence upon notice by the City to begin relocation.

B. The ROW-user shall promptly remove, relocate or adjust any Facilities located in private easement, as directed by the City, for a public improvement, at the ROW-user's 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 ROW-user shall disclaim those parts of its easements which lie within the expanded Right-of-Way. Should the City, within five (5) years, elect to require the ROW-user to relocate it's the same Facilities to other areas within the expanded Right-of-Way on more than one occasion, the cost of any such future relocation shall be borne by the City.

C. As soon as working drawings are available for public improvements which will require the ROW-user to relocate its Facilities, the City shall provide the ROW-user with written notice of relocations and the anticipated bid letting date of said improvement. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days.

D. Following notice by the City in the form of the delivery of final design plans for such public improvements, the ROW-user shall remove, and relocate its Facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its Facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the City.

E. Any damages suffered by the City, its agents or its contractors to the extent caused by ROW-user's failure to timely relocate or adjust its Facilities, or failure to properly relocate or adjust such Facilities, shall be borne by the ROW-user.

F. In the event the ROW-user is required to move its Facilities in accordance with this section, any ordinary Right-of-Way permit fee shall be waived.

G. It is the intent of this section for both the City and the ROW-user 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.

#### **SECTION 11: Protection of the Public.**

A. 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.

B. The City 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 the behalf of the City, except to the extent caused by the grossly negligent, willful, intentional, or malicious acts or omissions of the City.

C. The ROW-user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to delay damages, repair costs, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW-user to timely perform any of its obligations under this Code to the extent caused by the acts or omissions of the ROW-user.

D. The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for Facility locations when constructing public improvements.

E. Any ROW-user who for any purpose 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.

F. Whenever a ROW-user shall excavate 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 by this Code, MUTCD marking requirements, and/or at the direction of the Public Works Director and/or the Utility Director or their Designee.

G. Any excavation left open overnight on any thoroughfare or collector-type street shall be securely covered. The ROW-user assumes the sole responsibility for maintaining legal and proper barricades, plates, safety fencing, lights, and/or any other MUTCD marking requirements as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.

H. The City, upon the review and approval of a plan and details for trimming trees in the Right-of-Way, may grant permission by permit to any ROW-user 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 Facilities of the ROW-user. The ROW-user must follow all applicable City ordinances and best practices when tree trimming.

I. In the event the ROW-user 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 ROW-user will be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, the Public Works Director and/or the Utility Director or their Designees, in his discretion, may require the ROW-user to directionally bore around any tree in the Right-of-Way.

J. Upon the appropriate request of any Person having satisfied City procedure and ordinances, the ROW-user 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 the same, and the ROW-user may require such payment in advance. The ROW-user 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.

#### **SECTION 12: Right-of-Way Vacation.**

A. If the City vacates a Right-of-Way which contains the Facilities of the service provider, and if the vacation does not require the relocation of the Service Provider's Facilities, the City 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 the same.

B. If the vacation requires the relocation of Facilities, and

1. If the vacation proceedings are initiated by the Service Provider, the Service Provider must pay the relocation costs.
2. If the vacation proceedings are initiated by the City, the Service Provider must pay the relocation costs unless otherwise agreed to by the City and the Service Provider.
3. If the vacation proceedings are initiated by a Person other than the Service Provider or the City, such other Person must pay the relocation costs.

**SECTION 13: Abandoned and Unusable Facilities.**

A. A ROW-user owning Abandoned Facilities in the Right-of-Way must either:

1. Remove its Facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The City may allow underground Facilities or portions thereof remain in place if the Public Works Director and/or the Utility Director or their Designees determines that it is in the best interest of public safety to do so. At such time, the City may, at its option, take ownership and responsibility of such vacated Facilities left in place, subject to the provisions of paragraph 3, below; or
2. Provide information satisfactory to the City that the ROW-user's obligations for its Facilities in the Right-of-Way have been lawfully assumed by another authorized ROW-user; or
3. Submit to the City a proposal and instruments for transferring ownership of its Facilities to the City. If the ROW-user proceeds under this section, the City may, at its option, require the ROW-user, at its own expense, to remove the facility, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the Facilities.

B. Facilities of a ROW-user who fails to comply with this section, and who's Facilities remain unused for two (2) years, shall be deemed to be abandoned thirty (30) days after the City has made a good faith effort to contact the ROW-user, unless the City receives confirmation within that time frame that the ROW-user intends to use or transfer the Facilities within sixty (60) days, and such use or transfer does in fact begin within said sixty (60) day period. Abandoned Facilities are deemed to be a nuisance. The City 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 and charging the costs of such action against the Service Provider or ROW-user; or
3. requiring the removal of the Facility by the ROW-user or Service Provider at its sole expense.

C. Any Service Provider who willfully abandons Facilities and does not remove them shall be barred from receiving any further Right-of-Way permits within the City limits of Bonner Springs for a period of five (5) years from the date the Facilities were deemed abandoned.

**SECTION 14: Permit Requirement.**

A. Except as otherwise provided, no ROW-user or their agents may excavate any Right-of-Way or conduct any repair, construction, movement or relocation, or reconstruction of

Facilities located within the Right-of-Way without first having obtained the appropriate Right-of-Way permit.

**B.** There are four exemptions to this provision:

1. Contractors working on the construction or reconstruction of public improvements at the direction of the City, State, or Federal government.
2. ROW-users performing routine service operations which do not require excavation in the Right-of-Way and do not disrupt traffic for more than four (4) hours.
3. Sub-contractors working under a Service Provider's permit and supervision.
4. Contractors working on new construction and have an approved development plan and a new construction permit.

**C.** No Person owning or occupying any land abutting on a public Right-of-Way shall construct, maintain, or permit in or on the portion of the public Right-of-Way to which such land is adjacent, any fixed structure, material or object without having obtained the appropriate Right-of-Way permit.

**D.** A Right-of-Way permit is required for emergency situations. If due to an emergency it is necessary for the ROW-user to immediately perform work in the Right-of-Way, and it is impractical for the ROW-user 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.

**E.** No ROW-user may excavate the Right-of-Way beyond the date or dates specified in the Right-of-Way permit unless the ROW-user:

1. Sends notification of a need for an extension to the City. All requests must include the new dates of construction and must be approved by the Public Works Director and/or the Utility Director or their Designees
2. A new Right-of-Way permit is granted.

**F.** Any Right-of-Way permit issued shall be conspicuously displayed by the ROW-user at all times at the indicated work site and shall be available for inspection by the City Engineer, other City employees and the public.

**G.** Prior to the commencement of excavation, the ROW-user shall identify and locate any buried Facilities to be spray painted and/or flagged according to the Uniform Color Code required by the Kansas One Call.

**H.** The Applicant must show proof of all necessary permits, occupational licenses, professional licenses, certifications, grants, registrations, franchise agreements or any other authorizations required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC before issuance of a Right-of-Way Permit.

**I.** Any ROW-user who is found to be working in the public Right-of-Way without a permit will be directed to stop work until a permit is acquired and properly posted at the work site, subject to the penalties assessed in Section 17(C). The only exception allowed is for emergency repair work.

**J.** Any ROW-user found to be working without providing for required federal, state, and local safety and traffic control 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.

### **SECTION 15: Permit Applications.**

A. Application for a Right-of-Way permit shall be submitted to the City by either the ROW-user or by the Person who will do the work and/or excavation in the Right-of-Way.

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

1. Compliance with verification of registration;
2. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed Facilities at such location;
3. A traffic control plan;
4. Payment of all money due to the City for permit fees and costs, for prior excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations of the Right-of-Way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter.

### **SECTION 16: Liability Insurance, Performance and Maintenance Bond Requirement.**

A. The ROW-user shall file with the City evidence of commercial general and automobile liability insurance with an insurance company licensed to do business in Kansas. The general liability limit will be not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate. The automobile liability limit will not be less than one million dollars (\$1,000,000) combined single limit. 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 ROW-user. If the ROW-user is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

B. The ROW-user shall, at all times during the term of the construction permitted under this Code maintain a Performance Bond, in a form approved by the City Attorney. The amount of the bond required for a Right-of-Way permit will be \$2,000 or the value of the restoration as determined by the City, whichever is greater, for a term consistent with the term of the permit. The ROW-user may, with the approval of the City Attorney, obtain a Performance and Maintenance Bond as long as such instrument meets the requirements herein.

C. The ROW-user shall maintain a maintenance bond for two (2) years for any work performed in the ROW, in a form approved by the City Attorney. The amount of the bond required for a Right-of-Way permit will be \$2,000 or the value of the restoration as determined by the City, whichever is greater, for a term consistent with the term of the permit plus two additional years, conditioned on the ROW-user's faithful performance of the provisions, terms and conditions conferred by this Code. Alternatively, if the ROW-user anticipates requirements for multiple Right-of-Way permits, the ROW-user may choose to meet the bond requirements as follows:

1. 10 permits or less/year: \$15,000 annual bond
2. 25 permits or less/year: \$30,000 annual bond

3. Unlimited permits/year: \$50,000 annual bond

**D.** Current copies of any required Liability Insurance Certificate, Performance Bond and Maintenance Bond must be on file with the City Clerk.

**D.** All Performance Bonds and Maintenance Bonds must cover all contractors and sub-contractors. The Service Provider may, with approval of the City Attorney, provide a blanket bond to cover all work performed in conjunction with this Code.

**E.** No performance or maintenance bond will be required for permits issued for driveway replacement, landscaping work such as irrigation systems and tree planting or plumbing connections for new residential or commercial construction. No performance and maintenance bond or liability insurance will be required of any governmental entity, or of any residential property owner working in the Right-of-Way adjacent to his/her residence, who does not utilize a contractor to perform the excavation.

**SECTION 17: Right-of-Way Permit Fees and Costs.**

**A.** The Right-of-Way permit fee and any other applicable fees shall be recommended by the City Manager, approved by the Governing Body and listed in the Schedule of Fees maintained in the City Clerk's office.

**B.** Fees paid for a Right-of-Way Permit, which is subsequently revoked by the City, are not refundable.

**C.** Except as provided for in an emergency situation, a ROW-user who is found to have worked or is working in the Right-of-Way without having obtained a permit, the fee for the permit will be double the amount had the ROW-user obtained a permit prior to beginning work.

**D.** The City may also charge and collect any necessary repair and restoration costs.

**E.** The City Manager may waive the ROW permit fee. A waiver request form must be completed by the ROW-user.

**SECTION 18: Issuance of Permit.**

**A.** If the City determines that the Applicant has satisfied the requirements of this Code, the City shall issue a Right-of-Way permit.

**B.** The City may impose reasonable conditions upon the issuance of a Right-of-Way permit and the performance of the ROW-user 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.

**C.** When a Right-of-Way permit is requested for purposes of installing additional Facilities and the a performance and maintenance bond for additional Facilities is reasonably determined to be insufficient, the posting of an additional or larger performance and maintenance bond for the additional Facilities may be required.

**D.** Issued permits are personal to the Applicant and are not transferable.

**E.** If work is being done for the ROW-user by another Person, a subcontractor or otherwise, the Person doing the work and the ROW-user shall be jointly and severally liable and responsible for all damages, obligations, and warranties herein described.

**SECTION 19: Permitted Work.**

**A.** The ROW-user shall not make any cut, excavation or grading of Right-of-Way other than excavations necessary for emergency repairs without first securing a Right-of-Way permit.

**B.** The ROW-user shall not at any one time open or encumber more of the Right-of-Way than shall be reasonably necessary to enable the ROW-user to complete the project in the most expeditious manner.

**C.** The ROW-user 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.

**D.** The ROW-user shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.

**E.** The ROW-user shall notify the City no less than seventy-two (72) hours 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 ROW-user, no such closure shall take place without notice and prior authorization from the City.

**F.** 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.

**G.** 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 ROW-user'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. ROW-user must contact property owner(s) at least seventy-two (72) hours in advance of any work that would block entrance/exit to the property, unless such work constitutes an Emergency as outlined in this Code. This notification shall include the beginning and ending dates of construction.

**H.** The ROW-user shall identify and locate any underground Facilities in conformance with the Kansas Underground Utility Damage Prevention Act, Kansas One Call system, and notice shall be provided directly to the City's Utilities Department or to the Public Works Department with respect to any municipal traffic signal and street light systems, as appropriate.

**I.** The ROW-user shall be liable for any damages to underground Facilities due to excavation work prior to obtaining location of such Facilities, or for any damage to underground Facilities that have been properly identified prior to excavation. The ROW-user 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.

**J.** Whenever there is an excavation by the ROW-user, the ROW-user shall be responsible for providing adequate traffic control to the surrounding area as determined by the City. The ROW-user 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. In the event the excavation is not completed in a reasonable period of time, the ROW-user may be liable for actual damages to the City for delay caused by the ROW-user pursuant to this Code.

K. All Facilities and other appurtenances laid, constructed and maintained by the ROW-user 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 the Kansas Corporation Commission or any other local, state or federal agency having jurisdiction over the parties.

L. Following completion of permitted work for new construction, the ROW-user shall keep, maintain and provide to the City accurate records and as-built drawings, drawn to scale and certified to the City as accurately depicting the location of all utility Facilities constructed pursuant to the permit. The City Manager may waive this requirement. Such information shall be subject in all respects and shall have the benefit of protection as set forth in the section entitled Mapping Requirements of Service Provider contained herein.

M. The City may use the as-built records of the Service Provider's Facilities in connection with public improvements.

#### **SECTION 20: Right-of-Way Repair and Restoration.**

A. 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. In the event of circumstances beyond the control of the ROW-user or when work was prohibited by unseasonable or unreasonable conditions, the City Manager, Public Works Director, and/or the Utility Director, or their Designees may extend the date for completion of the project upon request.

B. All earth, materials, sidewalks, paving, crossing, public improvement or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and the reasonable satisfaction of the City. Any damaged water pipeline, sewer lines, sanitary/storm sewer, or other City utility shall be repaired or replaced by the City at the sole expense of the ROW-user. The City has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to do the additional necessary work. The Service Provider shall be responsible for any damage to private service connections and any necessary repairs to damaged private service connections. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the ROW-user and a reasonable time not to exceed fifteen days will be provided to allow for the deficiencies to be corrected.

C. After any excavation, the ROW-user 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.

D. All land areas which are to be unpaved or not covered by buildings shall be brought to finished grade and planted with turf or native grass or other appropriate ground cover. The City shall require additional landscaping or screening of any above ground facilities or appurtenances in order to maintain the aesthetic appeal or to mitigate the visual impact of the facilities at the sole expense of the ROW-user.

E. In addition to repairing any street cuts, the ROW-user must restore any area within five (5) feet of the new street cut, including the paving, curbing, and its aggregate foundations.

F. If the ROW-user fails to restore the Right-of-Way in the manner and to the condition required by this Code, the City Manager, Public Works Director, and/or the Utility Director, or their Designees, or fails to satisfactorily and timely complete all restoration the City may, at its option, serve written notice upon the ROW-user and its surety 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 shall immediately serve notice of failure to comply upon the surety and the ROW-user, and the surety shall have the right to take over and complete the work; provided, however, that if the surety does not commence performance thereof within ten (10) days from the date of notice, the City may take over the work and prosecute same to completion, by contract or otherwise, at the expense of the ROW-user, and the ROW-user and its surety shall be liable to the City for any and all excess cost assumed by the City by reason of such prosecution and completion.

G. The ROW-user responsible for the excavation that leaves debris in the Right-of-Way 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.

H. If an excavation cannot be back-filled immediately and left unattended, the ROW-user shall securely and adequately cover the unfilled excavation. The ROW-user 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.

I. The ROW-user shall be required to dispose of any debris within seventy-two (72) hours after the Permitted work is complete. If the ROW-user fails to remove the debris, the City shall remove the debris and charge the expense to the ROW-user.

J. In restoring the Right-of-Way, the ROW-user guarantees its work and shall maintain it for twenty-four (24) months following its completion. During the twenty-four (24) months the ROW-user shall, upon notification from the Public Works Director and/or the Utility Director or their Designees, correct all restoration work to the extent necessary, using any method as required by the Public Works Director and/or the Utility Director or their Designees. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the Public Works (not including days during which work cannot be done because of circumstances constituting force Majeure or days when work is prohibited as unseasonable or unreasonable). In the event the ROW-user is required to perform new restoration pursuant to the foregoing guarantee, the Public Works Director and/or the Utility Director or their Designees shall have the authority to extend the guarantee period for such new restoration for up to an additional twenty-four (24) months from the date of the new restoration, if the Public Works Director and/or the Utility Director or their Designees determines any overt action by the ROW-user not to comply with the conditions of the Right-of-Way permit and any restoration requirements.

K. The twenty-four (24) month guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

L. Payment of an excavation fee shall not relieve the ROW-user of the obligation to complete the necessary Right-of-Way restoration.

M. The ROW-user shall be responsible for any damage and the cost of repairs to any private service connection.

N. The ROW-user shall complete all work in accordance with current APWA guidelines as adopted and amended by the City. The ROW-user shall also complete all work in accordance with City, State, and Federal regulations and guidelines. The ROW-user shall use best practices when performing any work within the Right-of-Way.

#### **SECTION 21: 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.

C. All Applicants who are granted a joint Right-of-Way permit shall be jointly and severally liable for the work that is completed and any necessary changes or repairs that may be required as outlined in this Code.

#### **SECTION 22: Supplementary Applications.**

A. A Right-of-Way Permit shall only be valid for the area of the Right-of-Way specified within the permit. No ROW-user may cause any work to be done outside the area specified in the permit, except as provided herein. Any ROW-user who determines that an area greater than that which is specified in the permit must be excavated must do the following prior to the commencement of work in that greater area: (a) make application for a permit extension and pay any additional fees required thereby; and (b) receive a new Right-of-Way permit or permit extension.

B. A Right-of-Way permit shall be valid only for the dates specified in the permit. No ROW-user may commence work before the permit start date or, except as provided herein, may continue working after the end date. If a ROW-user does not complete the work by the permit end date, the ROW-user must apply for and receive a new Right-of-Way permit or a permit extension for additional time. This supplementary application must be submitted to the City prior to the permit end date.

#### **SECTION 23: Other Obligations.**

A. Obtaining a Right-of-Way permit under this Code shall not relieve the ROW-user of its duty to 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 City, the FCC or the KCC, and to pay any fees required by any other City, County, State, or Federal rules, laws, or regulations. A ROW-user 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, and the rules and regulations of the KCC or any other local, state or federal agency having jurisdiction over the parties. A ROW-user 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.

B. Except in cases of an emergency or with approval of the City, no Right-of-Way work may be done when conditions are unreasonable for such work.

C. A ROW-user 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.

**SECTION 24: Denial of Permit.**

A. The City may deny a permit or prohibit the use or occupancy of a specific portion of the Right-of-Way to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way, or when necessary to protect the Right-of-Way and its users. The City Manager, Public Works Director, and/or the Utility Director or their Designees at his discretion, may consider all relevant factors including but not limited to:

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 Code, 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 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;
8. Whether the applicant maintains a current registration with the City;
9. 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 Manager, Public Works Director, and/or the Utility Director or their Designees shall be guided by the safety and convenience of anticipated travel of the public over the Right-of-Way.

B. Notwithstanding the above provisions, the City Manager may in his discretion issue a Right-of-Way permit in any case where the permit is necessary to:

1. Prevent substantial economic hardship to a user of the applicant's service;
2. Allow such user to materially improve the service provided by the applicant.

**SECTION 25: Revocation of Permit.**

A. ROW-users hold Right-of-Way permits issued pursuant to this Code as a privilege and not as a right. The City reserves its right, as provided herein, to suspend and/or 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 Right-of-Way permit. A substantial breach shall include, but not be limited to the following:

1. The violation of any material provision of the Right-of-Way permit;
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;

3. Any material misrepresentation of any fact in the permit application;
4. The failure to maintain the required bond or insurance;
5. The failure to complete the work in a timely manner;
6. The failure to correct a condition indicated on an order issued pursuant to this Code;
7. 2 or more traffic control violations; or
8. Failure to repair Facilities damaged in the Right-of-Way.

**B.** If the City Manager, Public Works Director, and/or the Utility Director or their Designees determine that the ROW-user has committed a substantial breach of any law or condition placed on the Right-of-Way permit, the City shall make a written demand upon the ROW-user to remedy such violation. The demand shall state that the continued violation may be cause for suspension or revocation of the permit, or legal action if applicable. Further, a substantial breach, as stated above, will allow the City Manager, Public Works Director, and/or the Utility Director or their Designees, at their 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 ROW-user. Within seventy-two (72) hours of receiving notification of the breach, ROW-user shall contact the City with a plan, acceptable to the City Manager, Public Works Director, and/or the Utility Director or their Designees for correction of the breach.

ROW-user's failure to contact the City, ROW-user's failure to submit an acceptable plan, or ROW-user's failure to reasonably implement the approved plan shall be cause for immediate revocation of the Right-of-Way permit.

**C.** If a Right-of-Way permit is revoked, the ROW-user shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

**D.** Any ROW-user that has a Right-of-Way permit suspended shall pay two (2) times the amount of the permit for any future Right-of-Way permits.

**E.** Any ROW-user that has a Right-of-Way permit revoked shall be ineligible to receive another Right-of-Way permit for a period of five years (5) from the date the prior permit was revoked.

#### **SECTION 26: Work Requirements and Inspections.**

**A.** Any excavation, back filling, repair and restoration, and all other work performed in the Right-of-Way shall be done in conformance with APWA Standards as adopted and amended by the City, and to any additional standards as determined by the Public Works Director and/or the Utility Director or their Designee.

**B.** The ROW-user shall utilize flowable fill in the restoration of any street cuts.

**C.** The ROW-user shall notify the City upon completion of the authorized work.

**D.** The ROW-user shall notify the appropriate City Department to schedule an inspection prior to the start of back filling. Upon completion of all Right-of-Way restoration activities, the ROW-user will schedule a closeout inspection with the Public Works Director or his Designee.

**E.** When any corrective actions required have been completed and inspected to the City's satisfaction, the two (2) year maintenance period will begin.

**F.** In addition to the required scheduled inspections, the City Manager, Public Works Director, and/or the Utility Director or their Designees 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 ROW-user.

G. At the time of any inspection, the City Manager, Public Works Director, and/or the Utility Director or their Designees 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 Manager, Public Works Director, and/or the Utility Director or their Designees may issue a citation to the ROW-user 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.

H. All Service Providers must use tracer wire/tape above all buried lines.

#### **SECTION 27: Appeals Process.**

A. Whenever a Person shall deem themselves aggrieved by any decision or action taken by the City Manager or his Designee, the Person may file an appeal to the Governing Body within ten (10) calendar days of the date of notice of such decision or action.

B. The Person(s) shall be afforded a hearing on the matter before the Governing Body within thirty (30) days of filing the appeal.

C. In cases of applicability or interpretation of the rules, the Governing Body may revoke such decision or action taken by the City Manager or his Designee.

D. In cases where compliance with such decision or action taken by the City Manager or his Designee would cause undue hardship, the Governing Body 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 Governing Body 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.

E. Pending a decision of the Governing Body, the order of the City Manager or his Designee shall be stayed, unless the City Manager determines that such actions will pose a threat to public safety or the integrity of the public infrastructure. If a Person still deems themselves aggrieved after the appeal to the Governing Body, such Person shall have thirty (30) days after the effective date of the Governing Body's final decision to institute an action in the appropriate court jurisdiction.

#### **SECTION 28: Indemnification.**

A. ROW-user shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions demands, causes of action, liability and suits of any kind and nature, including personal bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the ROW-user, any agent, officer, director, or their respective officers, agents, employees, directors or representatives, while installing repairing or maintaining Facilities in a public Right-of-Way.

B. Nothing herein shall be deemed to prevent the City 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 and judgment entered against the City, or its agents.

C. If a ROW-user and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state or federal law. This section is solely for the benefit of the City and ROW-user and does not create or grant any rights, contractual or otherwise, to any other Person.

**SECTION 29: Force Majeure.**

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

**SECTION 30: Federal, State and City Jurisdiction.**

A. This Code shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this Code 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 and any political subdivision thereof, or any administrative agency thereof, having jurisdiction.

B. The ROW-user shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction.

C. The ROW-user's rights are subject to the police powers of the City 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.

D. Failure of the ROW-user to comply with any applicable law or regulation may result in a forfeiture of any permit, registration or authorization granted in accordance with this Code.

**SECTION 31: Severability.**

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

**SECTION 32: City's Failure to Enforce.**

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

**SECTION 33: Penalties.**

A. Any Person or entity violating any provision of this Code is guilty of a public offense, and upon conviction thereof shall be fined in a sum of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00). Every day that this Code is violated shall constitute a separate offense.

B. The violation of any provision of this Code is hereby deemed to be grounds for revocation of the permit and registration to operate with the City.

C. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Code. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate action or proceeding to prevent violation of this Code.

**SECTION 34: Reservation of Rights.**

A. In addition to any rights specifically reserved to the City by this Code, the City 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 Code. The City shall have the right to waive any provision of this Code or any registration, permit or other authorization granted there under, except those required by federal or state law, if the City determines as follows:

1. that it is in the public interest to do so; and
2. that the enforcement of such provision will impose an undue hardship on the Person.

B. To be effective, such waiver shall be evidenced by a statement in writing signed by the City Manager or his Designee. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

C. Notwithstanding anything to the contrary set forth herein, the provisions of this Code shall not infringe upon the rights of any Person pursuant to any applicable state or federal statutes, including, but not limited to the right to occupy the Right-of-Way.

**SECTION 35: Waivers or Exemptions from this Code.**

The City Manager can, at any time, issue a waiver or provide an exemption of any section of this Code or part there of, to a ROW-user.

**SECTION 36: Fees.**

A. The permit fees for working within the Right-of-Way shall be as follows:

ROW Permit: \$65.00

After Hours Inspection Fee: \$100.00