

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, SEPTEMBER 21, 2016

4:00 p.m.

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders; and
(b) Review and Approve a contract between Douglas County and the Youth Advocate Program, Inc. (Pam Weigand).

REGULAR AGENDA

- (2) Consider approval of the 2016 Finance Policy (Sarah Plinsky)
- (3) Discuss Septage land application issues (Dan Partridge; Craig Weinaug)
- (4) Consider revisions to the County Code regulating construction within public rights-of-way (Keith Browning)
- (5) (a) Consider approval of Accounts Payable (if necessary)
(b) Appointments
-Board of Construction Codes Appeals (1) position 12/15
(c) Public Comment
(d) Miscellaneous
- (6) Adjourn

WEDNESDAY, SEPTEMBER 28, 2016

- Proclamation for National 4-H Week (Kaitlyn Peine)
- Energy Efficiency Report (Eileen Horn)

WEDNESDAY, OCTOBER 5, 2016

WEDNESDAY, OCTOBER 12, 2016

- NRA projects (826 Pennsylvania Street NRA and Vermont Place NRA)-Britt Crum-Cano

WEDNESDAY, OCTOBER 9, 2016

WEDNESDAY, OCTOBER 26, 2016 – light or cancelled

Note: The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:00 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.

MEMORANDUM

TO: Board of County Commissioners, Douglas County
Craig Weinaug, County Administrator

FROM: Pam Weigand, Youth Services Director

SUBJECT: Review and Approve contract between Douglas County and the Youth Advocate Program, Inc.

DATE: September 15, 2016

As you are aware Senate Bill 367, was passed by the 2016 Kansas Legislature. The bill provided for phased implementation of new approaches to meet the need of youthful offenders between the summer of 2016 and July of 2019. One of the new approaches spearheaded by Johnson County was the creation of an Eastern Region Youth Advocate Program. The Youth Advocate Program will serve as an alternative to out-of-home placement for moderate and high risk youthful offenders, and for re-entry of youthful offenders from state correctional facilities.

Participating in the eastern region Youth Advocate Program (YAP) program would be a beneficial addition to the continuum of services we offer at risk youth in Douglas County. YAP is an evidenced based program with very good outcomes. The goal in using YAP services is to reduce the use of out of home placements. With the passing of SB 367 the availability of out of home services will be significantly reduced. Douglas County currently has 5 youth in out of home placements and is currently serving several youth who are at risk of out of home placement. We believe we could serve youth more effectively in our community with YAP services, and reduce the number of youth in out of home placements with additional in home support services. (Additional information about the Youth Advocate Program is in your packet)

The cost of the Youth Advocate Program, Inc. services will be paid for with Kansas Department of Corrections – Juvenile Services (KDOC-JS) funds that are front loaded to Counties. Each quarter districts would send KDOC-JS receipts for YAP services purchased with the front loaded funds, and KDOC-JS would reload funds to cover what was spent. If YAP services aren't used during the quarter there would be no reloading of funds as no expenses were incurred. We have advised KDOC-JS that the 7th Judicial District would be interested in 2 of the 30 slots available in the region.

Each Board of County Commissioners who wishes to participate in the eastern region YAP program needs to enter into a contract for services with Youth Advocate Program, Inc. Once the contract is finalized it will be sent the KDOC-JS. The final step is for the BOCC is to enter into a Memorandum of Understanding with KDOC-JS with respect to payment for, and expectations for use of YAP services.

I will be available at the Commission meeting to answer questions. Thank you for your consideration.



Strengthening Communities One Biography at a Time

Youth Advocate Programs, Inc.
2007 North 3rd Street
Harrisburg, PA 17102
717.232.7580
www.yapinc.org



Youth Advocate Programs, Inc.

Community Alternatives to Placement (CAP)

Proposal To:

Johnson County Department of Corrections

May 15, 2016

YAP History

Youth Advocate Programs, Inc. (YAP) was founded to help communities safely care for high and complex need youth from within their homes and communities in two ways: by preventing youth from entering institutions, and by returning youth from institutions. Providing alternatives to institutional placement is not just one YAP program in an array of others; our mission is committed exclusively to the provision of safe and effective community-based care as alternatives to any type of institutional placement.

YAP's first program in 1975 helped return more than 100 young people from an adult prison in Camp Hill, PA to their families and communities. Today, YAP operates over 100 programs in 18 states, working annually with more than 13,000 youth and families in urban, rural, and suburban settings.

For the past 40 years, YAP has worked in partnership with state governments to provide community-based services as alternatives to placement, as well as with county governments to provide community-based alternatives to detention, incarceration, secure care, residential treatment and other out-of-home placements.

Our expertise is in authentic youth engagement with complex and high need youth, respectful partnerships with families, and helping governments to safely reduce youth detention, congregate care facilities, incarceration and violence. The focus of our intervention is both the youth and his family. In both preventive and aftercare programming, YAP core strategies build from the Positive Youth Justice framework to develop the young person and family's strengths/skills and positive community attachments as a means of reducing recidivism and promoting youth and family development and well-being.

YAP currently provides Community Alternatives to Placement (CAP) services through contractual relationships with a number of jurisdictions, including, communities throughout Pennsylvania, New York State, Florida, Ohio, Texas, Alabama and Nevada. YAP also operates a Pay for Success contract in Marion County (Indianapolis), Indiana.

CORE FEATURES OF YAP PROGRAMS

24/7 CRISIS SUPPORT

INTENSIVE CASE MANAGEMENT

RELATIONSHIPS WITH MULTI-SYSTEMS AND COMMUNITY ORGANIZATIONS

CULTURAL COMPETENCE

INDIVIDUALIZED SERVICE PLANS (ISP'S) FOR EACH YOUTH/FAMILY

SAFETY PLANNING

TRANSPORTATION

NO EJECT, NO REJECT POLICY

FAMILY ENGAGEMENT

MENTORING

ANCILLARY FUNDING

SUPPORTED WORK

PROJECT-BASED LEARNING

EVIDENCE-BASED INTERVENTIONS

Program Overview and Projected Outcomes

YAP proposes to partner with the Johnson County Department of Corrections and surrounding counties, (Marshall, Nemaha, Brown, Doniphan, Clay, Riley, Pottawatomie, Jackson, Atchison, Jefferson, Leavenworth, Wyandotte, Dickinson, Geary, Wabaunsee, Shawnee, Douglas, Morris, Marion, Chase, Lyon, Osage, Franklin, Miami, Coffey, Anderson, Linn, Woodson, Allen, Bourbon, Wilson, Neosho, Crawford, and Montgomery County) to develop alternatives to out-of-home placement and re-entry programming for youth returning from placement. YAP's wraparound/advocate model is designed to develop an Individualized Service Plan (ISP) that will help a young person to remain safely in the community without jeopardizing public safety. YAP will work with the Johnson County Department of Corrections to identify youth who have failed in traditional programs or placements and need additional supports to avert out-of-home placement. Youth will be deemed "moderate" to "high risk" and would otherwise be mandated to residential facilities or group homes in the absence of a suitable community alternative. YAP will provide intensive, flexible community-based services in youth homes, schools and communities for an average length of stay of 4 months. The length of stay will not exceed six (6) months.

Referrals to YAP are typically made by the Court, Probation or Parole. All referrals will be contacted via telephone within 24 hours and initial assessments will be completed within 48 hours of the original referral. YAP enforces a no reject, no eject policy; therefore, 100% of referrals will be accepted.

Each youth and family will undergo a comprehensive and holistic assessment process that results in an Individualized Service Plan (ISP) tailored to the youth and family's unique needs, strengths, and preferences. The plan will be developed in collaboration with the family, probation officer, YAP staff and other service professionals and/or natural supports that become part of the Family Team.

Youth will receive an average of 10-15 hours a week of face to face services within their home, school, and community at times most needed by the youth and family (such as evenings and weekends). Youth will also have access to YAP's Supported Work Program. This is an option for youth identified by the Johnson County Department of Corrections. YAP staff will be available 24/7.

PROGRAM GOALS:

- Reduce reliance on congregate care facilities
- Reduce new law violations
- Increase the successful completion of probation and court ordered conditions
- Increase employment opportunities for youth
- Increase the number of positive adult role models involved in the lives of youth
- Reduce recidivism rates

*successful discharge is defined as mutually agreed upon termination of services due to progress on the individualized service plan by YAP and probation/court

The YAP Model of Service

YAP is an experienced provider of community-based programming for high-risk youth and families with the most complex needs. YAP's service model is evidence-informed and is considered a "best" or "promising practice" by the Annie E. Casey Foundation and the National Council on Crime and Delinquency. Our model is also based on our four decades of successful practice that demonstrate that high and complex need youth can make remarkable strides when:

- 1) They are engaged in structured activities that reflect their needs, strengths and culture;
- 2) Their families are informed, empowered, and charged with the responsibility to provide support to their youth; and
- 3) Dependable adult role models and other community supports provide the youth with encouragement, limits and a means of accessing the positive community supports that will remain after YAP's services have ended.

YAP's model utilizes best practices found in the wraparound, mentoring, positive youth justice, restorative justice and positive youth development fields. These practices promote community safety, youth accountability, permanence and youth well-being. Our approach to working with youth and families is shaped by our core service delivery principles.

The YAP model is based on a three pronged approach that includes the wraparound planning process, relationship with a caring, trained adult and the development of meaningful community connections. Together, these services provide youth and families with individualized supports that build on their strengths and address their needs, including those needs that arise from trauma.

YAP services are flexible. Services are delivered at times most needed by the youth and family, and in locations most convenient for them or conducive to achieving the goals in their plan. It is this flexibility that ensures families receive the right service at the right time and at the right place.

Services are delivered by a Program Director and Advocates who work directly with youth and families. Using these methods and this staffing, YAP helps youth and families to achieve goals and connects youth to support systems in their local communities that remain in place after formal services end.

The Wraparound Planning Process: Referral and Assessment

The wraparound planning process is an intensive, individualized, holistic care planning and coordination approach to working with youth returning from out-of-home placement (or prevention of placement) and their families in the context of their homes and communities. Family "voice and choice," which means that the family's perspectives and preferences are an integral part of the process, drives services from start to end. From the moment we first meet a family through their completion of our programs, families are empowered as equal partners and interventions are tailored to their unique needs, strengths, interests and preferences.

Wraparound principles also emphasize the importance of unconditional care which enhances trust and participation. No youth or family referred to the program is refused services based on their histories or presenting issues, and services to young people or their families are never terminated due to case management difficulties. This "**no reject; no eject**" practice permeates our work. We inform families of this ethic and they witness it during difficult times. For example, when we ask to reconvene the family

team during periods of crisis or when plans go awry, families know that YAP will not abandon them. This consistency through tough times fosters a trusting relationship that enables us to work together to achieve the stated goals.

Once youth are referred to the program, YAP begins our assessment process within 48 hours. Completed by the Program Director or a designated YAP staff member, YAP meets with the young person, his/her family and other stakeholders using family-friendly assessment tools, available in English and Spanish, to gather critical information about strengths, needs, interests and family support.

YAPS ASSESSMENT TOOLS INCLUDE:

- YAP's ***Life Domain Tool*** is used to identify needs and strengths of the youth and family in core areas of family, education, social development, employment and training, finances, housing, legal, spirituality, recreation and culture, mental health, medical and safety.
- YAP's ***Strengths Inventory*** gathers information about strengths, talents, capabilities, assets and aspirations, with a special focus on employment and education.
- YAP's ***Interest Survey*** allows youth and families to identify activities of interest, including community organizations they may be involved with or are interested in becoming involved with as part of YAP services.
- ***SASSI (Substance Abuse Subtle Screening Inventory-Adolescent)*** is one of the most widely utilized validated screening tools to identify high or low probability of youth having a substance use issue and to determine the immediacy of the problem.
- ***SOCRATES (Stages of Change Readiness Treatment Eagerness Scale)*** is used with those youth identified as needing substance use intervention. This tool assesses youth's readiness to change drug using behavior, which allows for the selection of the most appropriate intervention strategy.
- YAP's ***Parent Survey*** is used with the parents/caregivers to gather information about the family's culture, traditions, hopes and vision for the future.

Throughout the assessment process, we are seeking to build a Family Team that values the input and contribution of each team member. The Family Team Members' thoughts on what is needed for the youth to return home safely, to prevent re-offending, and to achieve their goals during YAP involvement and thereafter are critical to the development of the Individualized Service Plan (ISP). This plan is created in partnership with the family during the Family Team meeting. The Family Team Meeting occurs while the youth is still in placement.

The ISP is a roadmap for service delivery and drives the work over the time the youth is in our program. Each ISP contains three to five service goals, strategies for reaching each goal; the roles and responsibilities of Family Team members; and establishes time frames for ongoing review. The strategies outlined in the ISP are flexible to allow for changing family circumstances and needs. In other words, if the first strategy does not work, YAP staff members are dedicated to working with families and other team members to determine what will.

The development of safety and crisis plans is one of the highest priority areas in the work of the Program Director. When families are engaged to predict what safety issues might arise, they can also develop plans to safely manage and prevent crises. Each youth has an individualized safety plan developed prior to his return to the community that addresses all risk related behaviors.

Research has demonstrated that the wraparound process can produce significantly better outcomes for young people and families with significant needs than traditional approaches, including: increased permanency and stability for young people; improved behavior and mental health symptoms; improved school outcomes; decreased family safety issues and risk factors; increased family protective factors; increased family engagement and satisfaction with services; and increased family resources to support their own children.

The Advocate: Leading the Delivery of Community-Based Services

Advocates are the key direct service workers charged with helping youth and families achieve the goals in their ISPs. When possible, Advocates meet youth while still in placement to develop rapport. Advocates guide the day-to-day implementation of the family's plan, working closely with the youth, family, and community supports. Advocates are available 24/7 in the event of a crisis or emergency.

Many youth in YAP programs have histories of non-compliance in other programs and are at the very least wary if not hostile about system involvement. Advocates are able to overcome these barriers and challenges: they meet youth where they are- both developmentally and physically, are available 24/7, never give up on them, believe in the family's ability to be successful, and do "whatever it takes" to help their youth and families. It is through this relationship that youth are best positioned to have their needs met, change negative behaviors and develop new skills and positive behaviors.

YAP employs a zip-code staff recruitment strategy in hiring Advocates: Every young person is matched with a trained Advocate from their neighborhood/community. Advocates work to develop productive relationships with youth and encourage local community members to do the same. This is possible because YAP staff members know the strengths and needs of the community and reflect the ethnic, racial and cultural diversity of their service area. Advocates are not therapists, and some may only have a high school degree. At the same time, Advocates establish open and trusting relationships with clients that enable and encourage youth to speak up, whether to the Advocate or to their parents or other caregivers. Advocates are, of course, trained to listen but it doesn't stop there. Advocates also speak with the authority and knowledge of coaches because many of them are retired "players" who survived the same life battles in which our clients are so seriously engaged.

In line with the principles of Positive Youth Justice, Advocates help develop a youth and family's resilience in a number of ways. Advocates are caring adults who hold high expectations of their youth and families. Advocates provide youth and families with opportunities to learn, grow and participate in meaningful ways within their community, such as through employment, connections to recreational activities, and opportunities to give back to their community. Advocates connect families with services and supports that help them meet their basic needs. And through each of these activities, Advocates are exposing youth and families to other positive people from within their community whose support will remain beyond YAP's involvement with them.

Advocates provide a variety of activities to implement each family's plan. All Advocate activities are planned and must relate to the service goals noted in the ISP. Prioritization of Advocate activities is discussed during the Family Team meetings. This allows Advocate activities to focus on specific areas of need related to issues putting youth at risk of being placed in a juvenile detention facility or jail. Similarly, certain non-negotiables identified by The Department of Youth Services and other stakeholders, also guide the ISP and the work of the Advocate. Everything Advocates do, whether it is

building youth and family skills or positive connections, prepares them for a purposeful transition from the YAP program.

Theories and research in positive youth development identify the importance of building protective factors and developmental assets across a number of environmental and social contexts. For this reason, the Advocate will work with their youth individually, in the context of their families, in small group setting and in their communities.

Individual, Family and Group Interventions

Individual Interventions

Advocates work with each youth and family to create a full schedule of structured activities. This schedule takes into account all hours in a day, when the youth is with the Advocate or without, to represent the full spectrum of activities that occupy his time. Oftentimes, we find that there is a lot of unstructured free time when youth first return to community. This unstructured free time can lead to youth engaging in risk behaviors. As a result, the Advocate identifies gaps in positive or structured activity to guide their work with youth.

An Advocate may include any number of activities with their youth based on the goals of their ISP, such as: meaningful educational/vocational activities; when appropriate, employment related activities; connecting youth to needed services; opportunities for youth to engage in positive community activities based on his own needs, strengths and interests, and; any mandates or requirements of the court or JPO. The Advocate might initially provide transportation to meetings, but over time, will help the youth and family identify and use other means of transportation to make appointments and meetings. This is an example of how Advocates prepare youth and families for purposeful transition, moving from “doing for” the family to “doing with” them and ultimately “cheering them on”.

Through these activities, Advocates help youth develop a number of developmental assets, including constructive use of time, positive identity, positive values, social competencies and empowerment, while also reducing risk of engagement in negative or antisocial behaviors.

Family Intervention: Engagement, Support and Responsibility

Engaging parents as partners and empowering them to take responsibility for their family supports the developmental assets of support, boundaries and expectations and constructive use of time. Advocates engage the youth’s parent(s) or caregivers as partners. Respectful partnership with families is one of YAP’s guiding principles, and creates an environment that fosters youth and family active participation and engagement in services. Strategies that foster engagement include an emphasis on building strengths and interests into service plans; ensuring that families have access, voice and ownership of their ISP’s, choice in determining family team members, input into weekly activity schedules for their youth, and support not only in meeting their needs of their child but also in meeting their own needs.

As a result, Advocates also focus time and attention on supporting parents/caregivers through activities that help meet concrete needs (such as transportation, housing, employment, etc.); parent education and support in setting limits, developing positive communication and family activities; household management skills, such as routines, budgeting, cooking, etc. and other needs as they arise.

Group Intervention: Pro-Social Relationships and Competency Development

An integral part of the YAP services model is working with youth in small peer groups. Whether informal or curriculum based, Advocates work to follow best practice youth development strategies in structuring interventions. Advocates lead informal small groups of youth in recreational activities, field trips, working on homework at libraries, visiting colleges and organizing youth to work on community service projects. Giving back and contributing to their community in a positive way is an important element of our work with youth. Projects are chosen by the youth and of interest to them. Adult support and supervision ensures that groups are safe places for youth to test their interests and build competencies. Ancillary funds may be used to incentivize youth participation in civic activities. Youth will also have the opportunity based on needs and interests to participate in a number of additional interventions identified below that build their skills:

Casey Life Skills

The evidence based Casey Life Skills curriculum is used with youth to assess their current strengths and areas of need so that Advocates can build planned education and activities in areas of development. The online assessment addresses the following life domain areas: Career Planning, Communication, Daily Living, Home Life, Housing & Money Management, Self-Care, Social Relationships, Work Life, Work & Study Skills. A wealth of resources and information as well as user-driven, computerized learning modules provide assessments with career and life success advice that is often readily available to the most well-connected individuals and families but often lacking in our most under-resourced communities and homes. The program provides training that is comprehensive as a stand-alone but also works well in a coordinated, holistic program such as this and is modifiable to diverse audiences. Advocates may do individual or group work with youth based on their pre-test to help develop life skills in these areas.

Supported Work

Supported work is a component of the YAP model that provides youth with opportunities to develop job skills and positive work habits through transitional job experience that may lead to long-term employment. Youth who participate in Supported Work are connected with employment in areas of their interest and receive wages subsidized by YAP. Along with job coaching and support from their Advocates, these subsidies encourage employers to offer apprentice-like positions to YAP clients who may otherwise face insurmountable obstacles to landing a job because of their background, life circumstances, or developmental challenges. Oftentimes, employers become mentors to youth and hire them as actual employers after the Supported Work component ends.

YAP and Substance Use

By exploring the reasons why young people use drugs and their stage of change, change (pre-contemplation, contemplation, determination/preparation, action, maintenance) the Advocate is trained to address the variety of the harms that can occur in a drug-using life, regardless of whether a person's use rises to the level of a disorder ("addiction") understanding that a relationship with drugs occurs on a continuum from no use to benign use to chaotic use, with many points in between. Recognizing the critical importance of addressing adolescent substance use in order for youth to be successful in reaching all their goals, the YAP Model promotes dialogue and addresses resistance to

change through evidence-based process that include education, motivational interviewing, positive pro-recovery relationships and referrals for counseling.

Research shows that retention rates and outcomes for substance use interventions are greatly improved by tolerating different rates of change and levels of motivation and matching strategies that respond to and are aligned with youth's goals. Consequently, these Evidence-Based Programs are used to address substance use as they are designed to reduce resistance in a respectful and clinically effective manner.

Brief Challenges™ is recognized by the National Registry of Evidence-based Program and Practices of the Substance Abuse and Mental Health Services Administration (SAMHSA) and is designed for youth who have a known or suspected drug problem. Through a four to five session guided interview, a specially trained staff assists the youth in exploring frequency and quantity of use, effect on functioning, motivation for use, level of problem, and self-awareness of reasons for use and harm from use. Brief Challenges is designed to: 1) determine drug and co-occurring problems and provide feedback to youth; 2) provide brief interventions for drug using behavior; 3) provide support in responding to external pressures for abstinence. The sessions may stand alone or are used to determine need for more services for youth who may want or need them.

After screening and assessment, those youth identified with chaotic substance use patterns that contribute to their lack of success in meeting their goals will receive the Brief Challenges intervention. Upon completion, recommendations for any needed next steps will be offered. Youth may be referred to community based treatment program when appropriate, or will be provided the evidence based program Adolescent Community Reinforcement Approach (ACRA) from the specially trained advocate.

Adolescent Community Reinforcement Approach (ACRA) is a substance abuse program designed for adolescents who are struggling with the consequences of drug and/or alcohol use. This evidence-based behavioral intervention aims to replace social and environmental structures supportive of drug and alcohol use with ones that promote a clean and healthy lifestyle. ACRA's strategies are designed to reduce substance use and dependence, increase social stability, improve physical and mental health, and improve life satisfaction.

ACRA includes individual sessions with adolescents, as well as sessions with parents/caregivers, and adolescents and parents/caregivers together during the course of the intervention. Research is clear that youth who have sufficient family support and effective structure have much greater success remaining drug free. Addressing dimensions of authority, roles, rules, boundaries, communication, and routines specific to parenting a youth addressing substance use are all important. In recognition of this, ACRA parent/caregiver sessions are designed to enhance parental motivation and increase knowledge of specific parenting skills for youth dealing with substance use issues, well as engage the family and youth in community support services.

Ancillary Fund

YAP also has a small *ancillary or flexible fund* to assist youth and their families with emergency items or provide an incentive or reward for positive behavior. Ancillary/flexible funds have been used to help families pay for items such as: a utility bill, provide transportation to a school meeting, or purchase a membership at a Boys and Girls Club.

Staffing Patterns and Training

The Johnson County Advocate Program (Community Alternatives to Placement) will be managed by a full time program director, administrative manager, program coordinator (if needed) and advocates. Advocates will carry a caseload of 2-4 youth and families. Each of these positions is hired locally.

Oversight of the program will be provided by a regional team including a regional Vice President and President.

All direct service staff must pass an extensive background check provided by YAP. Additionally, YAP will meet any county or state standards as it relates to background checks.

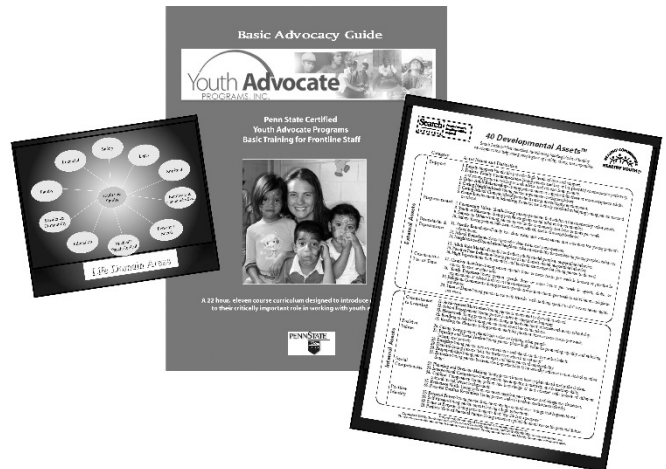
All field staff is required to receive at least 20 hours a year of annual training. During their first year of hire, staff complete the 9 course Basic Advocacy Training (BAT), a curriculum certified by Rutgers University that provides 18 professional CEUs. The training includes YAP's integrity compliance plan, which staff must receive re-certification in annually. In addition, specialized training is provided as need to help address specific needs of youth and families within programs, and other agencies may be invited to assist with training. In all elements of the staff development and training program, emphasis is placed on developing staff sensitivity and awareness of obstacles faced by youth and families and best practices in engaging youth and families and interventions. Training is designed to promote understanding and to teach non-punitive intervention strategies. Monthly training sessions are continually reinforced and enhanced by the Program Director's supervision of Advocates' involvement with youth and families.

Outcome Measurement

YAP began measuring entry and discharge outcomes in 2005 and expanded the process to include longitudinal outcomes at three, six and 12 months post discharge in 2010. In addition to collecting demographic information, changes in legal status, living situation, school attendance, employment status and substance abuse are aggregated and reported back to local program leadership quarterly. In addition, up to the minute outcomes are reported to agency leaders on a monthly dashboard that allows them to take action in situations where improvement is needed. Data collected and reported back on is reviewed and used to make adjustments to program management and service delivery. The purpose is to ensure that youth achieve positive outcomes.

Monitoring

Services are monitored by program staff and YAP's Support Center. The Program Director monitors client progress through weekly supervision, case reviews and by calling or visiting the family home. Each month, an independent telephone monitor calls each youth or parent from "The Support Center" to determine if the Advocate has visited the family or youth as reported on the weekly activity and progress report, and if the family is satisfied with the services provided. Letters and questionnaires are also sent to families of clients to confirm service hours and satisfaction with services provided. When service hours are not confirmed, the director is notified and completes an investigation within five



working days. In addition, all staff is certified in the agency's Integrity Compliance Plan to ensure a thorough understanding of their legal and ethical responsibilities

Outcomes, Recognition and Research: YAP's Evidence Base

Youth in YAP's juvenile justice program share many attributes with the youth targeted for this Community-based Alternatives to Placement Program. Between January 1, 2013 and October 27th, 2014, YAP served 5,833 youth involved in the juvenile justice system: eighty-eight percent (88%) were between 13-18 years old (46% were aged 16-18 alone); 81% were male; and 82.4% were youth of color. Upon completion of the YAP program, 90.5% lived in the community, and 84.7% were not arrested while enrolled in YAP. Further, 90.6% were not adjudicated of new felony or misdemeanor offenses while enrolled in YAP; and 84.8% had graduated or were attending school at discharge.

YAP has been implementing the Advocate model since its inception in 1975, adapting best practices into the model over time. Ten **(10) external studies have been conducted on the YAP model**. Of the 10 studies, three were studies conducted by the funding agency; three were University-based studies; three were studies commissioned by a public agency conducted by external evaluators and one was an external study commissioned by YAP. Six of the studies used pre-post test designs.ⁱ Four studies involved comparisons of YAP with similar community programs.ⁱⁱ The studies found YAP services to have higher program completion ratesⁱⁱⁱ; lower rates of placement into juvenile facilities or residential foster care^{iv}; lower re-arrest rates^v; lower numbers of youth who are AWOL^{vi} and greater residential stability while in the juvenile justice and child welfare systems^{vii} than comparison groups.

In addition, findings using other measures of success revealed that young people served in YAP programs achieved reductions in risks and needs^{viii}; improvements in quality of life^{ix}; positive results in education^x; enhanced links with community activities^{xi}; and improvements in social behavior^{xii}.

Findings from external research studies contributed to YAP receiving recognition from a number of well-established government organizations and private foundations:

- The Annie E. Casey Foundation has identified the YAP wraparound advocacy program model as a **"promising practice."**
- In a bulletin published by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), YAP's Tarrant County Advocate Program in Texas was recognized as a **Best Practice Model** for Alternatives to Secure Detention and Confinement of Juvenile Offenders.
- The US based National Council on Crime and Delinquency recognized YAP's Florida programs as an **"evaluated and promising program"**.
- The American Youth Policy Forum identified YAP as a **"promising program."**
- The National Gang Center has endorsed YAP's Tarrant County Advocate Program for having an **"effective program structure."**
- The Research & Evaluation Center and John Jay College of Criminal Justice in New York has recognized YAP as a **"Gold Medal Program"** that is informed by the science of adolescent development and built around the concepts of the Positive Youth Justice Model.
- Gladys Carrion, Esq., NYC Commissioner of the Administration for Children's Services and former state Commissioner of the New York State Office of Children & Family Services, has endorsed YAP as an **evidence-based program** that has saved OCFS as much as \$215 per day in some counties and has **"demonstrated that their program can help troubled youth be successful upon their return to the community."**

YAP has been accredited by the **Council on Accreditation (COA)** since 2009. The COA accreditation process involved a detailed review and analysis of our operations and service delivery practices. **YAP performance was “measured” against national standards of best practice.** These standards emphasize services that are accessible, appropriate, culturally responsive, evidence based, and outcomes-oriented. Achieving COA accreditation supports the premise that YAP services are provided by a skilled and supported workforce and that all individuals are treated with dignity and respect. Our accreditation was renewed in 2013 and we are recognized in the areas of Youth Development, Family Preservation, Outpatient Mental Health, Developmental Disabilities, and Workforce Development.

YAP is also undergoing a number of current analyses and studies listed below:

YAP Partners with John Jay School of Criminal Justice

In mid-2011 YAP began collaborating with Jeffrey Butts, Ph.D., an expert in the integration of positive youth development interventions in juvenile justice settings and the Director of the Research and Evaluation Center at the John Jay College of Criminal Justice. Work with Dr. Butts and his staff have helped YAP to fine-tune its theory of change and logic model, and produce a series of “issue briefs” that address various aspects of YAP services and programs. Recently, Dr. Butts and John Jay have been awarded a grant from the Annie E. Casey Foundation that will enable them to study YAP programs in Baltimore MD and Orlando FL. These efforts are being undertaken to improve YAP’s current services and to prepare for a randomized control trial of its model in the near future.

YAP's Mentoring Model Studied by UTSA through OJJDP Grant

In late 2011 the University of Texas/San Antonio, in collaboration with YAP, received one of five “Best Practice in Mentoring” research grant awards from the federal Office of Juvenile Justice Delinquency Prevention (OJJDP). Data collection for the resulting study began in 2012 and is ongoing. When completed, this quasi-experimental research, which is being directed by UTSA’s Michael Karcher, Ph.D., will compare the impact of YAP services on YAP clients to other services received by otherwise comparable youth who are not referred to YAP.

YAP's Work with Advanced Metrics and the University of Maryland

YAP employs the CANS (Child and Adolescent Needs and Strengths) assessment tool in our juvenile justice, child welfare, and truancy programs in Maryland, Ohio and Pennsylvania. The CANS assessment tool evaluates how clients are progressing in a number of life domains, strengths, emotional needs and risk behaviors. YAP has engaged Steve Herr, Ph.D., to analyze our CANS data. Dr. Herr is affiliated with Applied Metrics and formerly with the University of Maryland. It is anticipated that the CANS data will allow Dr. Herr and University of Maryland to produce and hopefully publish the results of their research and thus provide further evidence of the effectiveness of the YAP wraparound advocacy model.

[Budget](#)

Please see the attached budget.

Endnotes

(1) William H. Barton and Jeffrey A Butts, (2008), *Building on Strength: Positive Youth Development in Juvenile Justice Programs*, Chapin Hall

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- ⁱ COA, 2006; Comisky, 2006; Jameson & Cleary, 2004; O'Brien, 2004; Travis, 2001, 2003
- ⁱⁱ Rea, Prior & Davis, 2003; Tarrant, 2002; THINK, 2003; Jones, Harris & Bachovchin, 1997
- ⁱⁱⁱ Rea, Prior & Davis, 2003; Tarrant, 2002
- ^{iv} Tarrant, 2002
- ^v Jones, Harris & Bachovchin 1997; Rea, Prior & Davis, 2003; Tarrant, 2002; THINK, 2003
- ^{vi} Jones, Harris & Bachovchin, 1997; Rea, Prior & Davis, 2003
- ^{vii} THINK, 2003
- ^{viii} Jones, Harris & Bachovchin, 1997; O'Brien, 2004
- ^{ix} COA, 2006
- ^x Jameson & Cleary, 2004; O'Brien, 2004; Rea, Prior & Davis, 2003; THINK, 2003
- ^{xi} Jameson & Cleary, 2004
- ^{xii} Jameson & Cleary, 2004; THINK, 2003



DOUGLAS COUNTY ADMINISTRATIVE SERVICES

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Sarah Plinsky
Assistant County Administrator

MEMO TO: Board of County Commissioners

FROM: Sarah Plinsky, Assistant County Administrator

SUBJECT: Financial Policies Update

DATE: September 16, 2016

Attached are updated Financial Policies for Douglas County. Previously, Douglas County had separate Purchasing Policies and a Fixed Asset Policy inside an Accounting Procedures manual that was never adopted by the Board of County Commissioners. This set of Policies combines those documents and updates both documents. Small updates and changes have been made throughout the document, but the following sections have had substantive changes:

- 3.4-3.6 PURCHASE OF COMMODITIES, SERVICES AND THE COMBINATION THERE OF.
 - Department Head Approval Levels When the purchase price of the commodity/ service or combination is less than or equal to \$20,000, the Department Head shall have the authority to make the acquisition without prior approval or the solicitation of quotes.
 - Administration Approval Levels: Approval for purchases of commodities may be made by the County Administrator or the Assistant County Administrator when the purchase price is between \$20,001 and \$50,000 with three informal bids or quotes.
- 3.7 PURCHASES NOT SUBJECT TO PURCHASING REQUIREMENTS
 - Staff added a section on expenditures that are not cannot be competitively bid, such as utilities and payroll related expenditures.
- 3.9 PURCHASES SUBJECT TO FEDERAL AWARD REQUIREMENTS
 - This section outlines that expenditures financed by Federal funds are subject to both federal award requirements and the financial policies.
- SECTION 6: DISPOSAL OF PROPERTY
 - This section has been updated substantial to give staff more flexibility to sell, recycle, and salvage outdated equipment and property. It also incorporates the IT Asset Disposal Policy
- SECTION 7: CAPITALIZED ASSETS
 - This section is the updated Capitalized (Fixed) Asset policy, as recommended by the External Auditors.

The policies have been reviewed by Department Heads and County Counsel. Staff will be at the County Commission meeting to answer questions.

DOUGLAS COUNTY



FINANCIAL POLICIES

2016

DOUGLAS COUNTY FINANCIAL POLICIES

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DOUGLAS COUNTY FINANCIAL POLICIES

SECTION 1 GENERAL PROVISIONS

1.1 PURPOSE

Financial policies serve as the guiding principles for the County's financial management and annual budgetary process. Generally, financial policies are desirable in order to maintain or improve an entity's financial position, financial management and credit rating(s). The County's financial policies will comply with applicable state statutes.

It is the policy of the Board of County Commissioners (BOCC) that all financial transactions conducted by or on behalf of Douglas County, its agencies, departments, officials and authorized agents shall be made in a manner and method that efficiently and effectively utilizes available financial resources and demonstrates good stewardship in the management of public funds and resources according to established financial management practices, accounting standards, and auditing requirements

Douglas County recognizes that the types of products and services the County purchases have inherent social, human health, environmental and economic impacts, and that the County should make procurement decisions that embody our commitment to sustainability whenever possible.

The purpose of this policy is to support the purchase of products and services that will minimize negative environmental, health, and social impacts of County operations and support markets for sustainably-produced products. The purchase of these products and services is preferred whenever they perform satisfactorily and are available at a reasonable cost. County department staff are encouraged to purchase sustainably-produced products within their existing budgets

1.2 APPLICATION AND WAIVERS

This policy shall apply to all expenditures using Douglas County funds, whether such funds are budgeted or not, and includes grant funds. The Board of County Commissioners, by majority vote, may waive the use of this policy when the Board deems it to be in the best interest of the County to do so, as long as the waiver does not contravene any Kansas statute.

1.3 RESPONSIBILITIES

It shall be the responsibility of the Assistant County Administrator to oversee the application of this policy, unless delegated specifically in policy or procedure.

1.4 PUBLIC RECORDS

Purchasing documents are public records to the extent provided in the Kansas Open Records Act, K.S.A. 45-215 et seq. and amendments thereto. Several exceptions to the Kansas Open Records Act, as listed in K.S.A. 45-221(a), are relevant to the purchasing process.

Fees for providing access to and copies of such documents shall be charged in accordance with the Open Records Fee policies established by the Board of County Commissioners.

SECTION 2 DEFINITIONS

The words defined in this Section shall have the meanings set forth below whenever they appear in this manual:

Bid: an offer, as a price, for payment or acceptance. A bid can either be an offer to the County by a vendor or a buyer.

Bid Security: a guarantee, in the form of a bond or deposit, that the bidder, if selected, will sign the contract as bid; otherwise the bidder (in the case of a deposit) or the bidder or their guarantor (in the case of a bond) will be liable for the amount of the bond or deposit.

Change Order: a written order signed by the Assistant County Administrator or designee, directing the contractor to make changes in the contract.

Commodity: a tangible good.

Cooperative or State Contract: a contract established through a bidding process that allows multiple governmental agencies to utilize the pricing.

Construction: the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.

Contract: an agreement between the County and one or more persons/businesses by which the other persons/businesses agree to provide, in exchange for consideration, any type of property, whether tangible or intangible, services or any other benefit to or for the County.

Contract Modification: any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the original contract.

Contractor: any person/business having a contract with the County.

Department: any office or department having a County budget and that utilizes any supplies, services or construction purchased under this policy.

Department Head: the manager, whether elected or appointment, in charge of a department.

Emergency Purchase: the purchase of supplies, services, and/or construction where the urgency of need does not permit the delay in utilizing formal competitive selection methods.

Employee: any individual receiving a County paycheck, such paycheck being a result of either appointment or election to a County position.

Extensions to Contracts: An addendum to a contract for an incidental service or commodity not anticipated or necessary to the original purchase.

May: denotes the permissive.

On-line Service: an internet service designed to provide notification to qualified vendors of appropriate formal bids/proposals requests.

Purchasing: buying, renting, leasing, or otherwise acquiring any supplies, services, and/or construction. It also includes all functions that pertain to the obtaining of any supply, service, and/or construction, including description of requirements, selection and solicitation of vendors, preparation and award of contract, and all phases of contract administration.

Purchase Description: the words used in a solicitation to describe the supplies, services, and/or construction to be purchased, and include specifications attached to, or made a part of, the solicitation.

Purchase Requisition: a notification to Administrative Services issued by a Department requesting that a contract be entered into for a specified need. Such notification may include, but is not limited to, the technical description of the requested time, delivery schedule, criteria for evaluation, suggested vendors, and information supplied for the making of any written determination required by this policy.

Purchasing Card: a method of payment with limits determined by the Assistant County Administrator and Department Head. Such payments must be compliant with the Douglas County Procurement Card Employee Manual.

Qualified Vendor: any vendor who has not been debarred or suspended from County consideration by the Board of County Commissioners within the past three (3) years.

Request for Information: a request (including general specifications) for pricing and for other related information that is provided to vendors holding cooperative contracts established by a competitive bidding process.

Request for Sealed Proposals: all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Informal Bids/Proposals: an informal offer or bid containing price and other terms made by a vendor in writing, telephone, or verbally.

Request for Qualifications: a documented process to narrow the selection of qualified vendors to respond to a solicitation of a bid/proposal, or to determine a list of qualified consultants that can be access as needed.

Request for Sealed Bids: all documents, whether attached or incorporated by reference, utilized for soliciting bids.

Responsible Bidder: a person/business who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

Responsive Bidder: a person/business who has submitted a bid which conforms in all material respects to the Request for Bids/Proposals.

Services: the furnishing of labor, time, and/or effort by a vendor.

Shall: denotes the imperative.

Sole Source of Supply: there is only one source for the required supply, service, or construction item due to uniqueness of the product, quality or performance of the item, or need to maintain uniformity with past purchases.

Specification: any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspection, testing, or preparing a supply, service, or construction item for delivery.

Supplies: all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Surplus: any supplies no longer having any use to the County. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

Sustainability: For Douglas County, sustainability means making decisions that balance the needs of the environment, economy, and society — for both present and future generations. We share our citizens' commitment to sustainability, and are working to foster a healthy environment that contributes to a growing economy and a livable community.

Vendor: a seller of commodities and/or services.

Vendor List: a list of qualified vendors established and maintained through on-line service for any party interested in doing business with the County.

SECTION 3 FINANCIAL PROCEDURES

3.1 PETTY CASH FUNDS

Petty cash funds of \$25.00 or less may be established by the Department Head for the purchase of miscellaneous small items. Petty cash funds greater than \$25.00 must be established by Resolution of the Board of County Commissioners. Receipts of expenditures must be submitted when requesting replenishment of petty cash funds.

3.2 CHANGE FUNDS

Departments may keep cash on hand for the sole purpose of making change for cash transactions. Such funds must be identified and kept separate from other cash, and may not be in an amount in excess of \$500.00, except for the Treasurer's Office, which may not be in an amount in excess of \$2,500.00.

3.3 PURCHASING CARDS (P-CARDS)

The use of P-Cards for purchases is encouraged wherever possible. Employees to whom P-Cards are assigned must sign the Purchasing Card Cardholder Agreement (see Attachment A). The Assistant County Administrator is responsible for the oversight of Purchasing Cards, including establishment of limits and types of purchases authorized.

3.4 PURCHASES OF COMMODITIES

A. Department Head Approval Levels: When the purchase price of the commodity acquisition is less than or equal to \$20,000, the Department Head shall have the authority to make the acquisition without prior approval or the solicitation of quotes.

B. Administration Approval Levels: Approval for purchases of commodities may be made by the County Administrator or the Assistant County Administrator at the following levels:

1. Cooperative or State Contracts: When the purchase price of the commodity acquisition is between \$20,001 and \$50,000, and the commodity may be purchased through a cooperative or state contract for which bids were originally issued.
2. Sole Source: When the purchase price of the commodity acquisition is between \$20,001 and \$50,000, and the commodity may only be purchased through one vendor due to uniqueness of the product, quality or performance of the item, or need to maintain uniformity with past purchases.
3. Informal Bids: When the purchase price of the commodity acquisition is between \$20,001 and \$50,000, and a cooperative or state contract is not available or is not being utilized, and informal bids/proposals have been solicited.

C. Board of County Commissioners Approval: Approval from the Board of County Commissioners is required when the purchase price of a commodity is greater than \$50,000.

Cooperative or State Contracts, Sole Source, or Formal Bids may be utilized for such purchase.

- D. Sustainability: When purchasing commodities, County staff are encouraged to purchase sustainably-produced products whenever they perform satisfactorily and are available at a reasonable cost.

3.5 PURCHASES OF SERVICES

A. Department Head Approval levels: When the purchase price of the service acquisition is less than or equal to \$20,000, the Department Head shall have the authority to make the acquisition without prior approval or the solicitation of quotes.

B. Administration Approval Levels: Approval for purchases of services may be made by the County Administrator or the Assistant County Administrator at the following levels:

1. Cooperative or State Contracts: When the purchase price of the service acquisition is between \$20,001 and \$50,000, and the service may be purchased through a cooperative or state contract for which bids/proposals were originally issued.
2. Sole Source: When the purchase price of the service acquisition is between \$20,001 and \$50,000, and the service may only be purchased through one vendor due to uniqueness of the service, quality or performance of the service, or need to maintain uniformity with past purchases.
3. Informal Bids/Proposals: When the purchase price of the service acquisition is between \$20,001 and \$50,000, and a cooperative or state contract is not available or is not being utilized, and informal bids/proposals have been solicited.

A. Board of County Commissioners Approval:

1. Approval from the Board of County Commissioners is required when the purchase price of a service is greater than \$50,000. Cooperative or State Contracts, Sole Source, or Formal Bids may be utilized for such purchase.
2. Engineering Services. For engineering services greater than \$50,000, but less than \$100,000, and are part of an approved CIP project, the department head may invite proposals from at least three firms. Pursuant to an interview of at least one firm, the department head shall request approval from the County Commissioners to negotiate a final contract and fee for the professional service; final approval of the contract must be requested from the Board of County Commissioners unless such approval authority has otherwise delegated by the Board. Engineering services greater than \$100,000 will be subject to Sections 3.11 and/or Section 3.8.

E. Sustainability: When purchasing services, County staff are encouraged to establish contracts with vendors that support the County's sustainability values in addition to the specific performance criteria required.

3.6 PURCHASES OF COMBINED COMMODITIES AND SERVICES

A. Department Head Approval levels: When the purchase price of the combined commodity/service acquisition is less than or equal to \$20,000, the Department Head shall have the authority to make the acquisition without prior approval or the solicitation of quotes.

B. Administration Approval Levels: Approval for purchases of combined commodity/services may be made by the County Administrator or the Assistant County Administrator at the following levels:

1. Cooperative or State Contracts: When the purchase price of the combined commodity/service acquisition is between \$20,001 and \$50,000, and the combined commodity/service may be purchased through a cooperative or state contract for which bids/proposals were originally issued.
2. Sole Source: When the purchase price of the commodity/service acquisition is between \$20,001 and \$50,000, and the commodity/service may only be purchased through one vendor due to uniqueness of the product, quality or performance of the item, or need to maintain uniformity with past purchases.
3. Informal Bids/Proposals: When the purchase price of the combined commodity/service acquisition is between \$20,000 and \$50,000, and a cooperative or state contract is not available or is not being utilized, and informal bids/proposals have been solicited.
4. Auctions: When an item with a value between \$20,001 and \$75,000 is available through an auction (with time constraints), the County Administrator or the Assistant County Administrator may authorize participation in the auction after analyzing the following requirements.
 - a. The item was a planned equipment purchase approved through the budgetary process.
 - b. Staff has observed the item and evaluated its condition.
 - c. Staff has established a value for the item being auctioned.
 - d. Staff has determined the price of an identical new piece of equipment (excluding trade-in).
 - e. Staff provides a value of existing equipment being replaced (if applicable, for disposable purposes).

If approval is provided for an amount less than \$20,000, the County Administrator/Assistant County Administrator will establish a maximum amount authorized for the purchase. If the amount of the purchase is expected to exceed \$50,000, the County Administrator/Assistant County Administrator will make every attempt to seek approval from the Board of County Commissioners within the time constraints; if that is not possible, the County Administrator/Assistant County Administrator will notify the Board of County Commissioners of the intent to participate in the auction, identifying the piece of equipment, the maximum amount authorized, and the deadline.

C. Board of County Commissioners Approval: Approval from the Board of County Commissioners is required when the purchase price of a combined commodity/service is greater than \$50,000. Cooperative or State Contracts, Sole Source, or Formal Bids may be utilized for such purchase.

- D. **Sustainability:** When purchasing combined services and commodities, County staff are encouraged to purchase sustainably-produced products and to work with sustainability-conscious vendors whenever they perform satisfactorily and are available at a reasonable cost.

3.7 PURCHASES NOT SUBJECT TO PURCHASING REQUIREMENTS

Some categories of expenditures cannot be competitively purchased and therefore, are exempt from the purchasing requirements, regardless of dollar threshold amount. These categories are outlined below;

- Utility payments
- Expenditures associated with payroll contributions and deductions i.e. Social Security, KPERS, KP&F, and employee voluntary deduction payments
- Expenses associated with Worker's Compensation and the provision of employee health insurance.
- Prisoner medical payments
- Out of county prisoner care, unless an inter-local agreement is entered into.
- Maintenance agreements, after the initial BOCC approval
- Contracts entered into by the City of Lawrence for shared services for example medical supply contracts for the Lawrence Douglas County Fire Medical
- Payments to Local Governments, Community Partners, and Townships for First Response services as outlined in the Annual Operating Budget
- DEU Buy Funds, Inmate and Forfeiture funds
- Any other category of expenditure as declared by the BOCC.

3.8 PURCHASES SUBJECT TO STATE STATUTORY PROCEDURES.

Except when other provisions of this Policy specifically require stricter or additional standards than required by applicable Kansas statutes, the applicable Kansas statutes shall control. As such, all Kansas statutes governing purchases, including the following, shall be followed (subject to exceptions enumerated by statute in the event of emergency, disaster, hardship, etc.):

A. Construction of County Buildings.

All contracts for the expenditure of County funds for the construction of any courthouse, jail or other County building in excess of \$10,000 shall be awarded in accordance with K.S.A. 19-214 et.seq, which requires a public letting and award to the lowest and best bid. Notice of the request for bids shall be published in a newspaper designated by the Board of County Commissioners.

The notice shall specify with reasonable minuteness the character of the improvement contemplated, the time and place at which the contract will be awarded, and invite sealed bids for the same. Plans and specifications of the proposed work shall be available for the inspection of bidders at a County office for at least 30 days prior to the time of awarding the contract. K.S.A. 19-216

DOUGAS COUNTY FINACIAL POLICIES

The contractor awarded the contract shall give the County a good and sufficient surety bond by a surety company authorized to do business in the State of Kansas, to be approved by the County Counselor, in the amount of the contract, and conditioned upon the faithful performance of the contract. K.S.A. 19-214

Pursuant to K.S.A. 19-214(b), this subsection shall not apply to the expenditure of County funds for professional service, for contracts subject to K.S.A. 68-521 (relating to construction of County roads), to the purchase of contracts of insurance, or to the repair of any courthouse, jail, or other county building or the repair or replacement of any such building's equipment when an emergency based upon public health or safety is declared by the Board of County Commissioners..

B. Construction of County Bridges and Culverts.

All contracts for the construction or repair of any County bridge or culvert shall be awarded in accordance with K.S.A. 68-1101 et seq., and any amendments thereto.

Among other things, the foregoing statutes provide for the following:

1. Possibility of protest petition by 5% of the legally qualified electors of the County if the expense to build or repair a bridge exceeds \$250,000 (K.S.A. 68-1106);
2. Award of contract to lowest responsible bidder after public bidding by sealed bid, however when bidding a lump sum on two or more bridges or culverts, also submit a separate proposal on each of the bridges or culverts; when bids are let for a consolidated project, the board shall accept the lowest lump sum bid for such consolidate project if such lump sum bid is less than the sum of the lowest bid for each separate bridge or culvert included in such consolidated project and may accept the lowest lump sum bid in any other case (K.S.A. 68-1113 and 68-1113a);
3. Bid security in the amount of not less than 5% of the bid proposal, (K.S.A. 68-1114);
4. The contract may not be awarded for more than 110% of the County Engineer's estimated cost or at a higher price than the lowest responsible bid received at the public letting (K.S.A. 68-115);
5. The bidder to whom the contract is awarded must provide a bond to Douglas County in a penal sum equal to the amount of the contract price, conditioned upon faithful performance of the contract in a form approved by the County Counselor (K.S.A. 68-117);
6. Retainage on contracts of no less than 5% (K.S.A. 68-1120); and
7. Determination of the County Counselor that the contract has been awarded in strict compliance with all statutory requirements (K.S.A. 68-118).

C. Construction of County Roads.

All contracts for construction, surfacing, repairing or maintaining of any County road when the County Engineer's estimated cost is in excess of \$20,000 shall be awarded in accordance with K.S.A. 68-521, which requires a public letting and award to the lowest responsible bidder. Notice of the request for bids shall, at a minimum, be published twenty (20) days

DOUGAS COUNTY FINANCIAL POLICIES

prior to such letting, at least twice in two consecutive weeks in the official County newspaper.

The published notice shall specify with reasonable minuteness the character of the improvement contemplated, where it is located, the kind of material to be used, the hour, date, and place at which the contract will be awarded, when the work is to be completed, and invite sealed proposals for the same. Plans and specifications of the proposed work which have been approved by the Board of County Commissioners shall be displayed for the inspection of bidders at a County office for at least twenty (20) days prior to the time of letting the contract. The notice should also provide proposal blanks on which all bids shall be made. Each bid shall be submitted with bid security in the amount of not less than 5% of the bid proposal. No contract shall be let for an amount exceeding the 110% of the County Engineer's estimated cost of the work.

The contractor awarded the contract shall give the County a good and sufficient performance bond by a surety company authorized to do business in the State of Kansas, to be approved by the County Counselor, in the amount of the contract and conditioned upon the faithful performance of the contract. The County Counselor shall approve the form of the bond.

The retainage on the contract of no less than 5%.

D. Construction of Roads in Benefit Districts.

All contracts for improvement of roads in benefit districts shall be awarded in accordance with K.S.A. 68-704, which requires a public letting and award to the lowest responsible bidder. Procedures to follow are similar as those set forth in above with respect to County roads generally, except there is no requirement that the contract price be less than the County Engineer's estimate.

3.9 PURCHASES SUBJECT TO FEDERAL AWARD REQUIREMENTS

All goods or services financed by Federal Grant Awards must be purchased in accordance with the requirements set forth in the Uniform Guidance for Federal Awards, as well as Douglas County Financial Policies.

3.10 REQUEST FOR QUALIFICATIONS.

A Request for Qualifications (RFQ) may be used to establish a list of qualified consultants or vendors that can be accessed as needed, rather than processing multiple requests for bids/proposals. The process is identical as that for Request for Proposals up to, but excluding, the award of a single contract. Additionally, when the purchase of a commodity and/or service warrants the formal bidding process, the Department Head may elect to issue a Request for Qualifications which will require vendors to be pre-qualified based on the criteria set forth in the RFQ. This process must be pre-approved by the Assistant County Administrator.

3.11 INFORMAL BIDS/PROPOSALS.

In situations where informal bids/proposals are required, at least two (2) bids/proposals must be solicited from qualified vendors. The bids/proposals must be written, but may be in the form of letter, fax, or e-mail. The bids/proposals must be submitted to the Department of Administrative Services along with a copy of the invoice and, if applicable, contract. Written justification, approved by the Assistant County Administrator, must be provided if the low bid is not accepted.

3.12 REQUEST FOR INFORMATION (RFI).

In situations where purchases in excess of \$50,000 will be made using cooperative contracts established by a competitive bidding process, a written request will be submitted to the Board of County Commissioners to issue an RFI for the purchase to those vendors awarded the contracts. The RFI will contain general specifications (which may be narrowed based upon available products and/or services offered in response to the RFI) and a specific deadline for response. An evaluation of responses to the RFI, along with a recommendation, will be presented to the commissioners for approval.

3.13 FORMAL BIDS/PROPOSALS.

- A. Notice to Commissioners.** Written notice of the intent to issue a formal request for bid or proposals must be provided to Commissioners. For purchases in which the bid is expected to exceed \$100,000, action is required as follows:
- For projects approved in the Capital Improvement Plan, written notification of the intention to solicit bids will be provided to the Board of County Commissioners prior to publication.
 - For purchases or projects NOT in the CIP, commission approval is required prior to publication for soliciting bids.
- B. Publication.** Except as provided in Sections 3.5 and 3.7, all requests for formal bids/proposals shall be published at least two (2) times in a two (2) week period in the newspaper designated by the Board of County Commissioners and shall be placed on the County web site during the period of solicitation. The publication shall include the specifications (or procedures for obtaining specifications), deadline for submission, the place and manner of submission, and the date, time and place of opening.
- C. Request for Bids/Proposals.** Except as provided in Sections 3.5 and 3.7, all requests for formal bids/proposals may be handled through an on-line service. Qualified vendors may be required to receive notification through such service. Notice shall include the specifications (or procedures for obtaining specifications), deadline for submission, the place and manner of submission, and the date, time and place of opening.
- D. Formal Bid/Proposal Submission.** Formal bids/proposals must be submitted in writing, signed by an authorized representative, and submitted prior to the bid deadline in a sealed envelope or package. Unless otherwise noted in the Request, faxed and email bids/proposals will not be accepted. Bids/proposals submitted after the deadline will not be accepted and will be returned unopened. The County Administrator and/or Assistant County Administrator

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shall have the authority to make exceptions when special circumstances exist; documentation of these circumstances shall be required.

E. Bid/Proposal Opening.

1. Bids. Bids/proposals shall be opened publicly in the presence of the County Clerk or the Clerk's designee (to be designated in writing if outside of the Clerk's Office) at the location and time stated in the Request. The amount of each bid and any other relevant information, together with the name of each bidder, shall be recorded. The record of bids/proposals shall be open to public inspection.
2. Proposals. Proposals shall not be opened publicly, but shall be recorded publicly in the presence of the County Clerk or the Clerk's designee (to be designated in writing if outside of the Clerk's Office) at the location and time stated in the Request. The name of the vendor shall be recorded. The proposal information shall not be made public until after the approval of the award.

F. Changes/Withdrawals to Bids/Proposals. Bids/proposals may be corrected or withdrawn prior to the stated deadline. Requests for all such transactions must be submitted to the County Clerk's Office prior to the deadline. Correction or withdrawal of inadvertently erroneous bids/proposals or proposals after the deadline but before the award, or cancellation of awards or contracts based upon such mistakes, shall be permitted only upon authorization by the County Administrator and/or Assistant County Administrator.

G. Awards. The purchase and/or contract shall be awarded or rejected with reasonable promptness. Written justification must be provided if the recommendation for award is not the lowest bid or proposal.

3.14 EMERGENCY PURCHASES

A. Emergency Repairs and/or Purchases. The County Administrator and/or Assistant County Administrator shall have the authority to authorize emergency repairs and/or purchases in an amount up to \$50,000 without the solicitation of bids/proposals. Prior to the authorization, approval must be received from the Chairman of the Board of County Commissioners; in the event of the absence of the Chair, the approval shall be received from the Vice Chair or the Member. The County Administrator shall also be responsible for notifying the Board of County Commissioners at the next regularly scheduled County Commission meeting that such an emergency purchase was made.

B. Declared Emergency Situations. The County Administrator or his/her designee may make or authorize others to make emergency purchases without monetary limit when there exists a threat to public health, welfare, or safety under declared emergency conditions. Prior to the authorization, approval must be received from the Chairman of the Board of County Commissioners; in the event of the absence of the Chair, the approval shall be received from the Vice Chair or the Member. Where possible, such competition as is practical under the circumstances shall be attempted.

3.15 CONTRACTS

A. Length. Contracts for commodities and/or services may be written in such a manner that they are renewable for up to five (5) years.

B. Repository. All contracts for commodities and services shall be maintained in the Administrative Services Department for a period of five (5) calendar years after expiration of the contract. Any formal bid documentation must be submitted with the contract.

C. Signatures. Signature authority shall be based upon approval authority as outlined in Section 3 or as designated by the Board of County Commissioners.

3.16 NON-MONETARY AGREEMENTS.

In situations where vendor agreements are necessary but involve no monetary expenditure by the County, the process for Informal Bids/Proposals shall be followed.

3.17 EXTENSIONS ON CONTRACTS

Extensions to contracts shall be considered separate purchases, and shall follow the guidelines set forth above. The extension must be an incidental service or commodity not anticipated or necessary to the original purchase.

3.18 LEASE AND LEASE/PURCHASE ARRANGEMENTS

Consistent with K.S.A. 10-1116b and 10-1116c, and any amendments thereto, relating to the Kansas Cash Basis Law, when it is in the best interests of the County to lease or lease/purchase goods rather than acquire them, the policies outlined herein shall be applied in the same manner as an acquisition.

SECTION 4 BONDS & CONTRACT CLAUSES

4.1 BID SECURITY

Bid security shall be required when the Board of County Commissioners, County Administrator, or Assistant County Administrator deems it appropriate or when required by law. As noted in Section 3.7, K.S.A. 68-521, K.S.A. 68-704, and 68-1114, and amendments thereto, any bidder for the construction of any road, bridge or culvert must provide bid security in an amount of not less than 5% of such bid proposal.

Bid security shall be a bond provided by a surety company authorized to do business in Kansas, or the equivalent in cash, certified check, cashier's check or otherwise provided in a form satisfactory to the Board of County Commissioners, all payable to the Douglas County Treasurer. When bid security is required, noncompliance shall result in rejection of the bid. If a bidder is permitted to withdraw its bid prior to an award (but after opening of bids/proposals), no action shall be held against the bidder or the bid security.

4.2 PERFORMANCE BONDS

A performance bond shall be required when the Board of County Commissioners, County Administrator, or Assistant County Administrator deem appropriate and when required by law.

Kansas law requires a performance bond for construction of any:

- Public building (K.S.A. 19-214)
- Bridge or culvert (K.S.A. 68-1117)
- Any County road (K.S.A. 68-521 and K.S.A. 68-704)

When a contract is awarded and a performance bond is required, a performance bond or security shall be delivered to the County on the County's designated bond form and shall become binding on the parties upon the execution of the contract. The performance bond shall be conditioned upon the faithful performance of the contract.

A performance bond satisfactory to the County, executed by a surety company authorized to do business in Kansas or otherwise secured in a manner satisfactory to the County, in an amount determined by the Board of County Commissioners or their designee, except as required by law, including but not limited to the following:

- A. Construction of any Public Building.** Pursuant to K.S.A. 19-214, and any amendments thereto, the bidder to whom any contract for the construction of any public building shall be awarded shall give a performance bond to the County in a sum equal to the contract price. The County shall not be bound until the County Counselor approves the form of the bond as legal and binding upon both parties by the County Counselor's signature endorsed thereon.
- B. Construction or Repair of any Bridge or Culvert.** Pursuant to K.S.A. 68-1117, and any amendments thereto, the bidder to whom any contract shall be awarded for the construction or repair of any bridge or culvert shall give a performance bond to the County in a sum equal to the amount of the contract price. The sufficiency of the bond shall be approved by the chairperson of the Board of County Commissioners, but the County shall not be bound until

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the County Counselor approves the form of the bond as legal and binding upon both parties by the County Counselor's signature endorsed thereon.

- C. Construction, Surfacing, Repairing or Maintaining of any County Road.** Pursuant to K.S.A. 68-521 and/or K.S.A. 68-704, any amendment thereto, the bidder to whom any contract shall be awarded for constructing, surfacing, repairing or maintaining any County road shall give a performance bond to the County in a sum equal to the amount of the contract price. The sufficiency of the bond shall be approved by the chairperson of the Board of County Commissioners, but the County shall not be bound until the County Counselor approves the form of the bond as legal and binding upon both parties by the County Counselor's signature endorsed thereon.

4.3 PAYMENT BONDS

A payment bond shall be required when the County enters into a contract in any sum exceeding \$50,000 with any bidder for the purpose of making any public improvements, or constructing any public building or making repairs on the same or in other instances that the Board of County Commissioners, County Administrator, or Assistant County Administrator deems appropriate and when required by law. The foregoing policy is stricter than required by Kansas statutes. Pursuant to K.S.A. 60-1111, a payment bond is required when the County enters into a contract in any sum exceeding \$100,000 with any bidder for the purpose of making any public improvements, or constructing any public building or making repairs on the same. No exception to or waiver of this policy shall be made in violation of the requirements of the foregoing statute, and amendments thereto.

A payment bond shall be a bond to the State of Kansas, provided by a surety company authorized to do business in Kansas or otherwise secured in a manner satisfactory to the County, conditioned that such contractor or the subcontractor of such contractor shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies, used or consumed in connection with the work provided for in the contract. The bond shall be in an amount determined by the Board of County Commissioners or their designee and shall be in the form designated by the County, but shall not be less than the contract price. The payment bond shall be filed with the Clerk of the District Court of Douglas County; and a copy of the filing receipt must be submitted to the County.

4.4 AUTHORITY OF THE BOARD OF COUNTY COMMISSIONERS

Nothing in this section shall be construed to limit the authority of the County to require other security in addition to the bonds described above. Unless the bond is required by the Kansas statutes, the Board of County Commissioners may withdraw the requirements for the bond at any time in the purchasing process.

4.5 CONTRACT CLAUSES

A. Mandatory Clauses

Pursuant to K.S.A. 44-1030, and any amendments thereto, unless (i) the bidder to whom any contract shall be awarded employees fewer than four employees or (ii) has contracts with the County that cumulatively total less than \$5,000 during the County's fiscal year, any contract for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or service shall contain provision by which the contractor agrees that:

1. The contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrases "equal opportunity employer," or a similar phrase to be approved by the commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the County; If the contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the County; and
4. The contractor shall include the provisions of subsection 1 through 3 in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

B. Discretionary Contract Clauses

The Board of County Commissioners may require the inclusion in County contracts of clauses providing for adjustment in prices, time of performance or other contract provisions, including but not limited to, the following subjects:

1. The unilateral right of the County to issue change orders in the work and changes in the time of performance of the contract.
2. Variations occurring between estimated quantities of work and actual quantities;
3. Suspension of work ordered by the County;
4. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses need not be included in negotiated contracts or when the contractor provides the site or design or when the parties have otherwise agreed with respect to the risk of differing site conditions;
5. Liquidated damages as appropriate;
6. Specified excuses for delay or nonperformance;
7. Termination of the contract for default; and,
8. Termination of the contract in whole or in part for the convenience of the County.

SECTION 5 PROTESTS, SUSPENSION, OR DISBARMENT

5.1 PROTESTS BY VENDORS. Vendors or potential vendors who do not agree with the conditions, specifications or scope of services or other requirements contained in any procurement, whether by bid or request for proposal, shall be afforded the opportunity to protest the solicitation. Bidders or respondents who do not agree with the County's recommendation for bid or RFP award shall be afforded the opportunity to protest the recommendation.

A. Submission of Protest.

1. Bid or RFP Solicitation. Protests of any bid or RFP solicitation must be submitted in writing to the Assistant County Administrator more than 3 business days prior to the closing date and time stated in the bid/RFP documents in order to be considered. No sealed bids shall be opened until protests made pursuant to this Section have been finally decided.
2. Recommendation for bid/RFP award. Bidders or respondents who do not agree with the County's recommendation for bid or RFP award may submit written protest to the Assistant County Administrator, who shall deliver it to the Chair of the Board of County Commissioners. Such protest shall be provided within 3 business days after the award decision by the Board of County Commissioners. Bids or proposals not meeting the minimum published requirements (including specifications and/or scope of service) are not subject to protest.

B. Effective Date of Contract. No contract subject to appeal or protest under Section 5.1.A.2 shall become effective or signed on behalf of the County until AFTER the 3 day protest period has expired. If a protest is made by a bidder submitting a bid and meeting the minimum published requirements (including specifications and/or scope of service), the effective date of the award of the contract shall be further delayed until the appeal is heard and finally decided.

C. Response to Protest of Bid or RFP Solicitation. The Assistant County Administrator shall consider and decide any protest of a vendor or potential vendor who does not agree with the conditions, specifications or scope of services or other requirements contained in any procurement, whether by bid or request for proposal. The written decision of the Assistant County Administrator shall be delivered to the protesting vendor. Decisions sent via electronic mail, facsimile, or other electronic communication shall be deemed delivered when sent to a representative of the vendor. Decisions sent by U.S. mail shall be deemed delivered two days after deposit in the U.S. Mail, postage prepaid. The vendor may appeal the decision of the Assistant County Administrator to the Board of County Commissioners by providing written appeal to the Assistant County Administrator, who shall deliver it to the Chair of the Board of County Commissioners. Such appeal must be received by the Assistant County Administrator within 3 business days of delivery of such decision.

D. Response to Protest of Contract or Appeal of Bid/RFP Solicitation. The Board of County Commissioners shall consider any protest or appeal in public session as the decision of the Board of County Commissioners shall be final.

5.2 SUSPENSION OR DEBARMENT OF VENDORS

Douglas County may suspend or debar a vendor or potential vendor from participation in County purchasing opportunities and practices upon a showing of just cause, and during the period of suspension or debarment, the County shall reject any bid, proposal or other offer by the vendor and shall return any submission to the suspended/debarred vendor. This section applies to both contractors and subcontractors.

A. Just Cause for Suspension. Just cause for suspension shall include any of the following:

1. Failure to comply. Failure to comply with the conditions, specifications or terms of a bid or proposal or contract with the County including a recent record of unsatisfactory performance in accordance with the terms of one or more contracts.
2. Misrepresentation. Commission of any misrepresentation in connection with a bid or proposal.
3. Criminal Offense. Charged by a court or competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract. If charges are dropped or the vendor found not guilty, the suspension shall be lifted automatically upon notification and proof of final court disposition provided to the County by the vendor.
4. Conviction.
 - a. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or honesty which currently, directly and seriously affects that vendor's responsibility as a County supplier. If charges are dismissed or the vendor found not guilty, the suspension shall be automatically lifted upon written notification and proof of final court disposition provided to the County by the vendor.
 - b. Conviction under state or federal antitrust statutes arriving out of the submission of bids or proposals.
5. Insolvency. Vendor becomes insolvent, has proceedings in bankruptcy instituted against it or consolidates its debts or assigns over its estate or affects for payment thereof or has a receiver appointed over its property.
6. Other. Any other cause the County Administrator or Assistant County Administrator determines to be so serious or compelling as to materially and adversely affect the responsibility of the business as a government contractor, including but not limited to suspension by another government entity for substantial cause.

A. Just Cause for Debarment. Just cause for disbarment shall include any of the following:

1. Failure to Comply. Failure to comply with conditions, specifications, drawings, schedules or terms of a bid, proposal or contract with the County.

2. Conviction.

- a. Conviction by or judgment obtained in a court of competent jurisdiction for commission of offenses in connection with the vendor's commercial enterprise. If the conviction is reversed through the appellate process, the debarment shall be immediately lifted upon written notification and proof of final court disposition to the County from the vendor.
 - b. Conviction for the commission of any fraud or act of collusion in connection with a bid, quotation, proposal or other act incident to doing business with the County.
3. Federal Debarment List. Inclusion on any Federal debarred vendor list.

B. Procedures.

1. Investigation. The Assistant County Administrator shall promptly investigate and prepare a written report concerning a proposed suspension or debarment. This report shall be forwarded to the County Administrator stating with specificity the facts supporting the request for suspension or debarment.
2. Decision. Within 5 work days of receipt of the report, the County Administrator may issue a notice of suspension or debarment. The vendor shall be immediately advised by certified mail with return receipt requested. The letter will contain the following specific information:
 - a. Statement that suspension or debarment has been imposed by the County effective upon receipt.
 - b. Detailed information as to the reason and causes for the suspension or debarment in terms sufficient that the vendor will understand the conduct or transactions upon which the action is based.
3. Appeal. The vendor may within 5 work days of receipt of notice, present a written request for reconsideration including additional information relating to the reason given for suspension or debarment. The Assistant County Administrator, in consultation with the County Counselor, shall consider such additional information in deciding whether the decision to suspend or debar should be delayed or revised. If the original decision to suspend or debar is determined to be proper and justified, the vendor shall be suspended or debarred as planned.

E. Duration of Suspension/Debarment.

1. Suspension. A vendor may be suspended for a maximum period of 6 months if it is believed to be involved in any of the activities listed in Section 5.2A.
2. Debarment. A vendor may be debarred for a period not to exceed 5 years if after investigation it is found to be engaged in any of the activities listed in Section 5.2B.

SECTION 6 DISPOSAL OF PROPERTY

Surplus, obsolete, and/or non-functional property may be transferred, sold, offered as a trade-in, abandoned or destroyed. Any property disposed of will be stripped of all identification as County property. This policy, adopted by resolution, pursuant to K.S.A. 19-211(b), as part of the Douglas County Purchasing Policy, is intended to replace the disposal provisions otherwise provided for in K.S.A. 19-211. Unless otherwise specified, the following policies apply to surplus or personal property. The sale or disposal of surplus obsolete information technology assets and resources (i.e. computers, printers, handheld devices, servers, hubs, switches, routers) shall be governed both by this policy and the IT Asset Disposal Policy, as approved by the County Administrator. In the event any provision of the IT Asset Disposal Policy conflicts with this policy, this policy shall govern the disposition of such assets.

6.1 PROPERTY WITH A VALUE EQUAL TO OR GREATER THAN \$50,000.

The Board of County Commissioners must vote unanimously to dispose of any County property with a value greater than \$50,000, regardless of the method of disposal. See Section 6.4 for Terms and Conditions of Sale.

6.2 PROPERTY WITH A VALUE LESS THAN \$50,000

The County Administrator, Assistant County Administrator, or their designee may authorize the disposition of County personal property having a value of less than or equal to \$50,000 according to the following guidelines and pursuant to additional procedures as may be established by the County Administrator; such additional procedures to include, at a minimum, notification to the public of the property to be sold; describing the property to be sold; and the method of sale, including but not limited to fixed price, negotiated bid, sealed bid, public auction or auction or any other method of sale which allows public participation. Additionally, the County Administrator may establish additional guidelines and procedures relating to the recording keeping requirements for all property disposed hereunder.

- A. Donation.** Such property may be donated to other governmental agencies, not-for-profit organizations or other entities if the County Administrator, the Assistant County Administrator, or their designee determine that such donation will reduce the donee's reliance on funding from governmental agencies or taxpayers of Douglas County or otherwise provide a benefit to residents of Douglas County See Section 6.4 for Public Notice Requirements
- C. Sale.** The County Administrator, the Assistant County Administrator, or their designee may approve the sale or trade-in of item(s) no longer required by the County. See Section 6.5 for Terms and Conditions of Sale. Proceeds resulting from the sale of surplus or obsolete property shall be deposited to the appropriate fund.
- D. Property having a value of less than \$1,000.** For any personal property having a value less than \$1,000, as determined by a Department Head with responsibility for the type of property involved, the County Administrator, the Assistant County Administrator, or their designee may dispose of or authorize the disposal of such property by donation, sale, or trade-in, using

the same criteria as otherwise provided in this Section 6.2. No notice or publication is required for disposal of property pursuant to this Section 6.2.C.

- E. Property with no value or salvage value only.** For any personal property having no value or salvage value only, as determined by a Department Head with responsibility for the type of property involved, the County Administrator, Assistant County Administrator or their designee may dispose, recycling of or authorize the disposal of the property in any manner that best promotes the public health, safety and welfare, including but not limited to donation, sale, trade-in, or destruction. No notice or publication is required for disposal of property pursuant to this Section 6.2.D.

6.3 REAL PROPERTY

The Board of County Commissioners must vote unanimously to dispose of any County real property of any value. See Section 6.4 for Public Notice Requirements and Section 6.5 for Terms and Conditions of Sale. The provisions of K.S.A. 19-211(a)(5) shall apply to vacation or abandonment of any right-of-way and the resolution vacating or abandoning any such right-of-way shall provide for a reservation to the County and the owner of any lesser property rights for public utilities, the rights-of-way and easements for public service facilities which are then in existence and in use across the property.

6.4 PUBLIC NOTICE REQUIREMENTS

Public notice of the sale of real and personal property shall be made in a manner reasonably calculated to reach those who may be interested in purchasing the real or personal property, and shall also be dependent upon the method of sale, including but not limited to, posting on the County's website, publication in the official newspaper of the County, or any other mechanism deemed appropriate to allow public participation or notification. Such notice shall include the method of sale, date, time, description of property, and any other terms and conditions relevant to the sale. Inclusion of items on the Board of County Commissioners' Agenda shall constitute public notification.

6.5 TERMS AND CONDITIONS OF SALE

- A.** Sales or trade-ins may be made through the most efficient and economical method to maximize returns, and may include, but not be limited to, on-line offerings, fixed price sales, negotiated bids, sealed bids, silent auctions, regular auctions, or any other method of sale allowing public participation. The method of sale of real estate of any value and personal property having a value in excess of \$50,000 shall be determined by the Board of County Commissioners. The method of sale of any personal property having a value of \$50,000 or less shall be determined by the County Administrator, Assistant County Administrator, or their designee.
- B.** County employees shall be permitted to participate as buyers in competitive sales as any other member of the public and on such other conditions as approved at the discretion of the County Administrator and/or Assistant County Administrator. Consistent with ethical conduct, County employees shall not take advantage to gain personal benefit from such transactions.
- C.** Prospective buyers will be allowed time prior to the sale to inspect items, including by digital image where appropriate.

- D.** No warranty or guarantee of any kind is given by the County. All items are offered for sale or gift “as is,” “where at,” and “without recourse.”
- E.** The successful bidder or purchaser shall be required at their own risk and expense to remove any items awarded within 5 days after notification of acceptance of bid or purchase offer by the County, but not before payment of the purchase price. Receipt of each unit must be signed by the purchaser or its duly authorized agent at the time the item is removed. Any item not called for or left behind for a period of more than 5 days after the date of bid acceptance shall be considered as abandoned and the County has the right to dispose of same in any manner whatsoever. Exceptions may be approved by the County Administrator and/or Assistant County Administrator.
- F.** In some instances, minimum prices will be established. In such cases, items may not be sold below that minimum price. Exceptions may be approved by the County Administrator and/or Assistant County Administrator.
- G.** The County reserves the right to accept or reject any or all bids/proposals.

6.6 EXCEPTIONS TO POLICY

The provisions of this Section 6 requiring public participation and public notice do not apply to the conveyance of property for the following purposes: (i) certain conveyances of real property to the State of Kansas, as set forth in K.S.A. 19-211(c), (ii) certain conveyances of real property to certain nonprofit corporations for development of industrial or business parks, as set forth in K.S.A. 19-211(d), (iii) certain conveyances of real property to a port authority for development of an industrial, commercial, or business park, as set forth in K.S.A. 19-211(e), or (iv) any other conveyance of property exempt from the provisions of K.S.A. 19-211 pursuant to this Section 6.6 shall be done according to such terms and conditions and in such manner as a majority vote of the Board of County Commissioners.

SECTION 7 CAPITALIZED ASSETS

Policy Background:

The term “Fixed assets” in this policy refers to items with useful life in excess of one year. Fixed assets, including property, equipment, software, and infrastructure (e.g., roads, bridges, and similar items) need to be reported to Administrative Services. This will include property and infrastructure assets with initial individual costs that exceed \$50,000. Equipment and software is considered an asset when the initial cost exceeds \$10,000.

Policy Objective:

The objective of this policy is to safeguard the investments of the County in fixed assets by identifying and establishing responsibility for the custody and use of County equipment.

Policy Statement:

The Department of Administrative Services shall maintain a fixed assets inventory for all items with a useful life in excess of one year. Property and infrastructures that exceed \$50,000 and equipment and software that exceed \$10,000 need to be reported.

Maintenance and repair costs may need to be capitalized to the asset. The following improvements will be considered maintenance and not capitalized: tuck pointing, roof repair or replacement (unless it extends the life of the building, such as going from a flat roof to a pitched roof), window replacement (unless replaced with energy efficient windows), repainting, epoxy repair, re-carpeting, etc. Administrative Services will establish procedures for the capitalization of maintenance and repair.

Individual departments or agencies shall maintain individual items in their inventory under the following guidelines:

- A. Items of personal property with a unit purchase price greater than \$1,000.00 and less than \$10,000.00, which are easily transportable and commonly used by the general populace, shall be maintained on the department’s fixed asset inventory for security control purposes.
- B. Assets with a value less than \$1,000 should be inventoried as needed for the prudent care of County funds and property.
- C. Items such as file cabinets, desks, chairs and monitors with purchase price less than \$10,000.00 or aggregate purchase price over \$105,000.00 **do not** have to be maintained on the department’s fixed asset inventory.

Department heads shall establish procedures to ensure that county property is not misused, borrowed, stolen or otherwise abused in any manner. Department heads are encouraged to maintain a departmental inventory at any level that the department head deems advisable for security purposes.

SECTION 8

STATE AND FEDERAL REQUIREMENTS

Where a purchase involves the expenditure of federal assistance or contract funds, the Board of County Commissioners or its designee shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this manual.

The provisions of this manual are subordinate to any State statutes governing County purchasing practices.

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SECTION 9

ETHICS IN COUNTY CONTRACTING

8.1 GENERAL STANDARDS OF ETHICAL CONDUCT

A. General Statement.

Any attempt to realize personal gain through County employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust. County employment includes any person who receives a County paycheck, such paycheck being a result of either appointment or election to a County position. In order to fulfill this generally prescribed standard, employees must also meet the specific standards set forth in this section.

B. Employee's Responsibilities.

It shall be the responsibility of County employees involved in any decision to purchase goods and/or services on behalf of the County to avoid the appearance of impropriety in such decision making.

8.2 EMPLOYEE CONFLICT OF INTEREST

A. Definitions.

1. Contract. The term "contract" as used herein shall mean any agreement between County and one or more other persons or businesses by which the other persons or businesses agree to provide, in exchange for consideration, any type of property, whether tangible or intangible, services, or any other benefit to or for County.
2. Employee. The term "employee" as used in this section shall apply to any person, whether appointed or elected, who receives a paycheck from the County.
3. Substantial Interest. The term "substantial interest" is defined at K.S.A. 75-4301a(a). A substantial interest includes any legal or equitable interest of an employee or employee's spouse in a business exceeding \$5,000 or 5% of any business of an employee or the employee's spouse.

B. Kansas Statutes

Pursuant to K.S.A. 75-4304, it shall be a breach of ethical standards for any County employee, in his/her capacity as such employee, to make or participate in the making of a contract with any person or business by which he/she (or his/her spouse) is employed or in whose business he/she has a substantial interest. If a County employee has ethical conflict prohibiting them from taking action on the contract, they shall not participate in the making of the contract as well.

C. Exceptions.

Section 8.2B does not apply when either of the following circumstances are in place:

1. Contracts let after competitive purchasing practices have been followed using the procedures outlined in previous sections of this policy.
2. Contracts for property or services for which the price or rate is fixed by law.

8.3 EMPLOYEE DISCLOSURE REQUIREMENTS

Except in cases of de minimus purchases, an employee who has, or obtains, any benefit from any County contract with a business or person in which the employee (or the employee's spouse) has a financial interest shall report such benefit to the Board of County Commissioners; provided, however, this Section shall not apply to a contract with a business where the employee's interest in the business has been placed in an independent trust. Any employee who knows or should have know of such benefit and fails to report such benefit to the Board of County Commissioners is in breach of ethical standards.

8.4 GRATUITIES, KICKBACKS, AND CONTINGENT FEES

A. Gratuities.

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase requisition; influencing the content of any specification or purchasing standard; or rendering of advice, investigation, auditing or in any other advisory capacity, in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter; pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor. Except as provided in below, gratuities shall not mean pens, calendars or other novelty items used for advertising purposes, meals or other meeting circumstances for the purpose of conducting or discussing official business.

B. Kickbacks.

It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract or order to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

C. Contingent Fees.

It shall be a breach of ethical standards for a person to be retained or to retain a person, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

8.5 RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES

Except as may be expressly permitted by the Board of County Commissioners or their designee, it shall be a breach of ethical standards for any County employee who is participating directly or indirectly in the purchasing process to become or be, while being a County employee, the employee of any person contracting with the County.

8.6 USE OF CONFIDENTIAL INFORMATION

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.

8.7 CIVIL AND ADMINISTRATIVE REMEDIES AGAINST EMPLOYEE AND NON-EMPLOYEES WHO BREACH ETHICAL STANDARDS

Civil and administrative remedies against employees and non-employees which are in existence on the effective date of this manual shall not be impaired. In addition to existing remedies for breach of ethical standards of this section, the Board of County Commissioners, in accordance with the Personnel Manual, may impose any one or more of the following on employees:

- Oral or written warnings or reprimands.
- Suspension with or without pay for specified periods of time; and
- Termination of employment.

In addition to existing remedies for breach of ethical standards of this section or regulations promulgated hereunder, the Board of County Commissioners may impose any one or more of the following on non-employees:

- Written warnings;
- Termination of transactions; and,
- Disbarment or suspension from being a contractor or subcontractor under County contracts.

The value of anything transferred or received in breach of the ethical standards of this section, or regulations promulgated hereunder, by an employee or a non-employee may be recovered from both the employee and non-employee.

All procedures under this Section shall be in accordance with due process requirements. To the extent that violations of the ethical standards of conduct set forth in this section constitute violations of federal or state law, they shall also be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this manual.

PROCEDURES

1. Financial Record Keeping Requirements

Unless this policy provides that records be maintained longer, all records related to purchasing shall be maintained consistent K.S.A. 45-401 et.seq, the Public Records Preservation Act, and amendments thereto, and any Records Retention and Disposition Schedules created by the State Records Board. For example:

- A. Documents related to request for proposals, bids, quotations, or estimates shall be retained for 5 fiscal years.
- B. Records related to construction projects, such as correspondence, bids, specifications, plans, drawings, reports, and notes shall be retained permanently.
- C. Contracts, including all associated documents, shall be retained until 5 calendar years after expiration of the contract.
- D. Copies of forms and supporting documents used to remove capital equipment from office inventory shall be retained for 3 fiscal years.
- E. Records concerning purchases from specific vendors, such as invoices, correspondence, and vouchers shall be retained for 5 fiscal years.

The Kansas Local Records Management Manual, which contains the current Local Records General Retention and Disposition Schedule, is currently located on the Kansas Historical Society web-site.

Department Heads (including Elected Officials) shall ensure that all acquisitions made by their staff conform to the guidelines established by this policy and State law. Staff shall provide assistance in the purchasing process where appropriate, including, but not limited to, specification development and negotiations. The department that bid and/or sought approval for the Contract is responsible for the recording keeping and any future re-awards. .

2. Fixed Assets Procedures:

The Douglas County Fixed Asset Inventory shall include at a minimum:

- A. A description of the fixed asset
- B. Serial number when available or VIN number
- C. Unit quantity
- D. Acquisition cost
- E. Date of acquisition
- F. Location where item is kept
- G. Invoice number
- H. Disposition date
- I. Sale price
- J. Method of disposition, i.e., traded, sold, transferred, scrapped, recycled (if transferred, department or agency transferred to)
- K. Purchasing fund

DOUGLAS COUNTY FINANCIAL POLICIES

The Department of Administrative Services shall be the central repository for the Douglas County Inventory of Fixed Assets of over \$10,000.00. Administrative Services shall provide forms to be filled out by all departments and divisions of Douglas County, District Attorney and the District Courts, and agencies whenever any fixed asset item as described above is acquired, sold, traded or otherwise disposed of.

Administrative Services shall transmit to each department or agency of the County, annually, a copy of that department's or agency's fixed assets inventory that is on file. It shall be the responsibility of each Department Head or Elected Official, or their designee to review the fixed asset inventory and ensure that the information therein is correct. Each department or agency shall return a copy of their inventory, corrected as necessary to the Administrative Services prior to the County's annual audit.

Capitalization of Maintenance and Repair:

The following table will determine if maintenance or repair should be capitalized or expensed. With respect to asset improvements, costs over \$10,000 (\$50,000 for buildings and infrastructure) should be capitalized if:

1. The estimated life of the asset is extended by more than 25%, or
2. The cost results in an increase in the capacity of the asset, or
3. The efficiency of the asset is increased by more than 10%, or
4. The improvement significantly changes the character of the asset, or
5. In the case of streets and roads – if the work done impacts the “base” structure.

Otherwise the cost should be expensed as repair and maintenance.

Maintenance costs allow an asset to continue to be used during its originally established useful life. Maintenance costs are expensed in the period incurred.

Preservation costs generally extend the useful life of an asset beyond its original estimated useful life, but do not increase the capacity or efficiency of the asset. Preservation costs are capitalized and depreciated if it extends the original estimated life by more than the assigned percent listed above.

A change in capacity increases the level of service provided by an asset. For example, additional lanes could be added to a road or the weight capacity could be increased. A change in efficiency maintains the same service level, but at a lower cost. For example, an electric generating plant could be reengineered so that it produces the same megawatts per day using less fuel.

Depreciation & Convention Methods Used to Calculate an Asset's Depreciation

The County will use the straight-line method, in which the basis of the asset is written off evenly over the useful life of the asset. The same amount of depreciation is taken each year. In general, the amount of annual depreciation is determined by dividing an asset's depreciable cost by its estimated life. The total amount depreciated can never exceed the asset's historic cost less salvage value. Below is a table to provide some guidance on useful life. However, if specific information is available on the asset, it should be used instead.

	Estimated Useful Life
Buildings	40-50
Improvements	20-60
Streets and Infrastructure	15-20
Machinery and Equipment	5-20
Office Equipment	10
Vehicles	7-15

DOUGLAS COUNTY
PURCHASING CARD CARDHOLDER AGREEMENT

Name of Cardholder:

Department:

Card Number:

Cardholder agrees to accept responsibility for the protection and proper use of the Visa Purchasing Card in accordance with the terms and conditions below:

- Cardholder agrees to provide the supporting receipts from the vendor and/or a transaction as designated by the Department under the department policies and procedures. Failure to report or document any purchase may be deemed an improper use of the purchasing card.
2. If the card is lost or stolen, Cardholder will contact US Bank (800-344-5696) and the Assistant County Administrator (832-5329) immediately.
 3. Cardholder's department shall be responsible for all charges, including fees and interest, incurred from the proper use of the purchasing card.
 4. THE CARDHOLDER MAY NOT MAKE PERSONAL PURCHASES ON THE CARD. Cardholder understands that he/she shall be personally liable for any improper use of the purchasing card and agrees to pay to Douglas County for any such improper use. Purchases as the result of a lost or stolen card shall not be considered an improper use IF the cardholder reported the lost or stolen card immediately as described in paragraph 2. Cardholder understands that his/her improper use of the purchasing card may be cause for disciplinary action by the Department including termination and that improper use of the purchasing card may subject the Cardholder to criminal prosecution.
 5. Cardholder understands that should his/her employment with Douglas County be terminated for any reason, the purchasing card must be returned to the department head. Cardholder also understands that Douglas County may withdraw authorization to use the purchasing card and require the return of the purchasing card at any time for any reason.
 6. Cardholder understands that use of the purchasing card is for the purchasing of commodity and capital items subject to the individual card limitations stated below. All purchases must comply with County accounting and purchasing policies. Items on contracts may be acquired from the contract vendor with the purchasing card. The following items may not be purchased with the purchasing card; however, this list is not all inclusive:
 - a. Alcoholic beverages
 - b. Automotive repairs
 - c. Construction
 - d. Cash Advances
 - e. Gasoline Service (except out of town travel)
 - f. Hospitality or Entertainment

DOUGAS COUNTY FINACIAL POLICIES

- g. Hazardous Materials
- h. Personal items
- i. Weapons, ammunition

If in doubt that a purchase is authorized under this agreement through the use of the purchasing card, Cardholder understands that he/she should seek prior approval from the department head. Such approval presumes the proper use of the purchasing card.

7. Cardholder acknowledges by his/her signature to this agreement, that he/she has received training in the proper use of the purchasing card; has received, read and understands the County's purchasing card guideline manual; and has read and understands this agreement.

Cardholder Signature _____ Date _____

FOR DEPARTMENT USE ONLY		
Limit per Purchase	\$	
Monthly Limit	\$	
Travel?	Yes	
Dept. Head Approval:		Date:
Administration Approval:		Date:

Appendix B: Sustainable Purchasing Guide

Use of Social and Environmental Product or Service Labels to Determine Eligibility:

Douglas County employees are encouraged to use independent, third-party social and/or environmental (eco) product or service label standards when writing specifications for, or procuring materials, products, or services. These labels should be developed and awarded by an impartial third-party, developed in a public, transparent, and broad stakeholder process, and represent specific and meaningful leadership criteria for that product or service category.

For guidance on approved eco-labels for products, employees should reference the following charts that show typical categories that we purchase from (office supplies, electronics, construction, vehicles) and the accepted eco-labels to look for on these products.

For additional guidance and product categories, the federal government General Services Administration's Green Products Compilation (GPC). The GPC is a publicly available, web-based resource that allows users to identify applicable environmental programs, such as Energy Star and WaterSense, by product type and category. It serves as a centralized resource that supports compliance with sustainable purchasing policies.

<http://sftool.gov/greenprocurement>

To address concerns raised by the public regarding the practice of land application of septage, the Health Department offers the following options:

Option A - prohibiting land application

Pros

- + Septage is handled in a more controlled environment
- + Fewer complaints from the public

Cons

- Cost of dumping at a treatment facility estimated at \$150 will be passed on to rural property owners
- Cost of purchasing rural home increases by \$150 to \$200
- Some rural property owners may delay frequency of pumping septic tank
- Changing the Sanitary Code is a lengthy process

Option B - add explicit language to the Douglas County Sanitary Code describing a setback distance from residential structures

Pros

- + Land application is a safe method of septage disposal
- + Douglas County residents and septage haulers have more complete interpretation of EPA guidance for land application
- + Homeowners and licensed septage haulers have more disposal options, i.e. treatment plant and land application

Cons

- There is no setback distance that is acceptable to all residents
- Changing the Sanitary Code is a lengthy process

Option C – Health Department more fully utilizes EPA standards when administering land application provisions of the Sanitary Code

Pros

- + Can be implemented immediately

Cons

- The Sanitary Code would not be the single reference source for the public

Staff recommendation

Implement option C to establish clear guidance in Health Department protocols related to residential density by setting a standard of 400 - 500 feet while concurrently working to implement option B.



Lawrence-Douglas County
Health Department



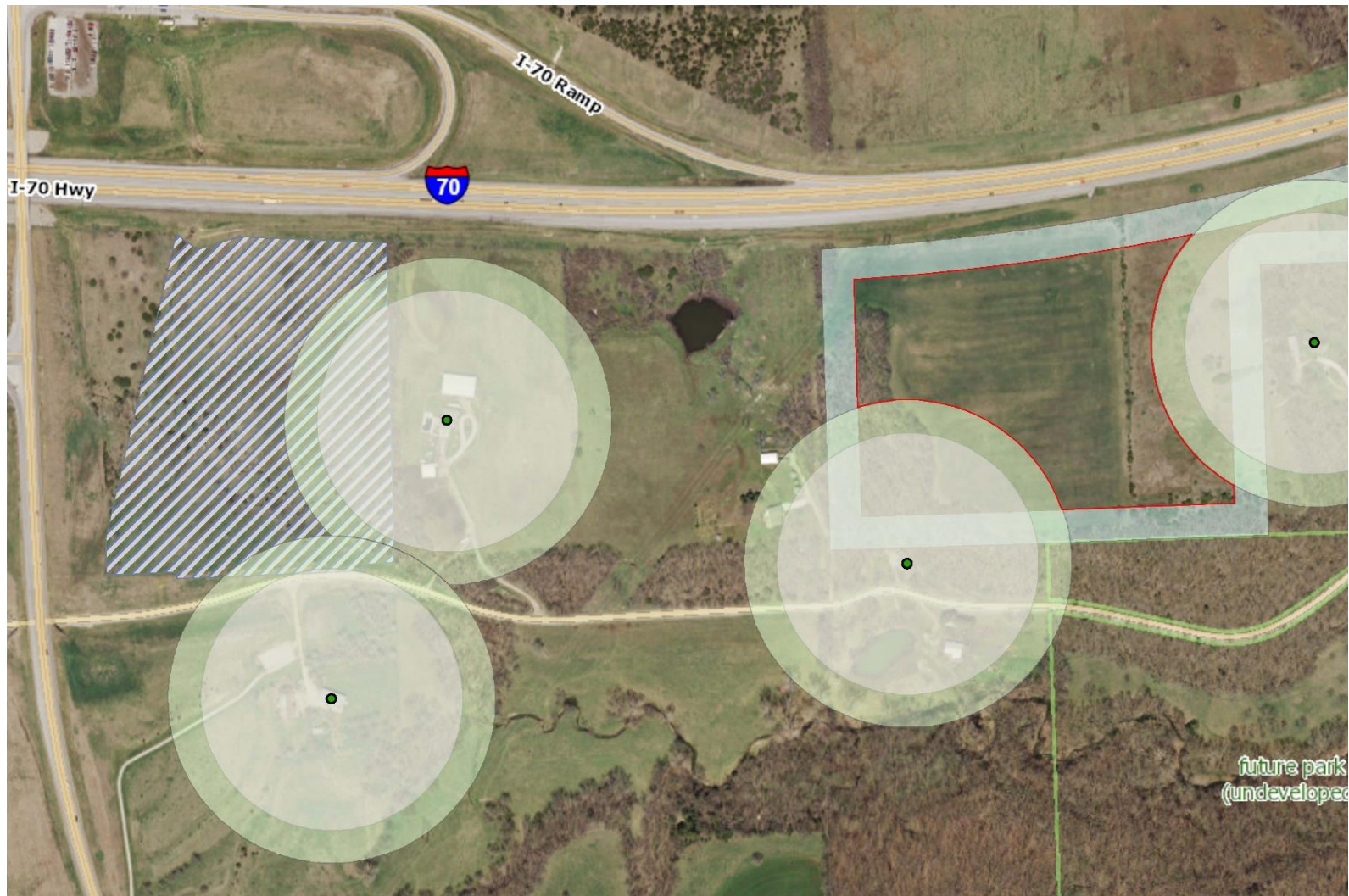
@ldchealth

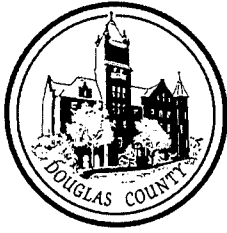


200 Maine, Suite B
Lawrence, KS 66044-1396
OFFICE: 785.843.3060
CLINIC: 785.843.0721
ldchealth.org

Aerial map of the three tracts identified in the application received on behalf of Greg Polk, owner of Honeybee. Using the following factors 1) slope, 2) 500 ft. setback from residential property and 3) soil type the 13 acre area within the red polygon has potential for approval for land application.

Before possible approval would be given the Health Department would work with the applicant to excavate multiple test pits to identify any depth to groundwater limitations. Assuming the full 13 acre site is approved 390,000 gallons (approx. 390 household septic tanks) of seepage could be applied at this site annually





DOUGLAS COUNTY PUBLIC WORKS

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(785) 832-5293 Fax (785) 842-1201
dgcopubw@douglascountyks.org
www.douglascountyks.org

Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer *KAB*

Date : September 14, 2016

Re : Consider changes to County Code concerning work in rights-of-way
Utility installation standards to accommodate wireless facilities

During the 2016 session, the Kansas legislature adopted Senate Substitute for House Bill No. 2131. Section 1 of the bill grants wireless providers the statutory right to use county public road rights-of-way to locate wireless structures and facilities, subject to "...reasonable public health, safety and welfare requirements and regulations..." which must be competitively neutral between wireless providers and traditional utilities. The bill takes effect October 1, 2016.

Attached are proposed revisions to the County Code. These revisions cover all construction work within public rights-of-way, and are intended to meet the neutrality requirements of H.B. No. 2131. They are also intended to provide reasonable public safety requirements for utility (and any other) installations in the right-of-way. The primary public safety concern is the existence of a rigid object in the road right-of-way. The proposed revisions prohibit or restrict above ground utility installations in the roadway "clear zone", i.e. an unobstructed, traversable roadside area intended to allow a driver of a vehicle that has left the roadway to stop safely or regain control of the vehicle.

Proposed utility installation standards are also attached, for your information. The proposed code revisions would authorize the Public Works Director to develop standards for construction in the right-of-way. Also attached for your information is a summary of H.B. No. 2131 prepared by an assistant Johnson County counselor.

We have worked with the county counselor in developing the proposed revisions to the County Code and the proposed utility installation standards. The county counselor feels the proposed code revisions and utility installation standards meet the requirements of H.B. No 2131. He is preparing a resolution for BOCC approval that would incorporate the proposed revisions into the County Code.

Action Required: Consider revisions to the County Code regulating construction within public rights-of-way.

REPLACE COUNTY CODE SECTIONS 9-107 THRU 9-112 WITH THESE SECTIONS:

9-107 CONSTRUCTION WORK WITHIN THE PUBLIC RIGHT-OF-WAY.

9-107-1 DEFINITIONS.

- a. "Construction work" as used in this article means any of the following activities:
 - (1) Excavation, fill, grading, paving or other modification of the ground surface;
 - (2) Construction of any post, pole, sign, wall, fence, gate, structure, enclosure or other fixed object;
 - (3) Construction of any footing, foundation, vault, manhole or other buried structure;
 - (4) Installation of any pipe, pipeline, conduit, cable, wire, antenna, equipment or related fixtures; or
 - (5) Planting of trees or other vegetation that would create a physical or visual barrier; or
 - (6) Removal of trees or tree limbs or other vegetation by physical or chemical means to accommodate public utilities.
- b. "Person" means any individual, association, firm, partnership, corporation, public utility or private entity.
- c. "Public right-of-way" means the area of real property in which the County has a dedicated or acquired right-of-way interest for the purpose of constructing and maintaining travel lanes, roadside ditches, culverts, bridges, signage and other features of a public road.
- d. "Public utility" means those utilities identified in K.S.A. 66-104, and amendments thereto.
- e. "Public utility facility" or "facility" means a pipe, pipeline, conduit, cable, wire, vault, manhole, enclosure, structure, post, pole, sign, marker, antenna, fixture, equipment or any other object installed and maintained by a public utility.

9-107-2 WRITTEN PERMISSION REQUIRED.

- a. It shall be unlawful for any person to do any construction work within, above or below the public right-of-way of a road or bridge maintained by the county, without first obtaining written permission from the director of public works.
- b. It shall be unlawful for any person to do any construction work within, above or below the public right-of-way of a road maintained by a township, without first obtaining written permission from the director of public works or township trustee.
- c. The owner of frontage along a public right-of-way may plant grass seed, mow, trim, and apply appropriate weed control practices as recommended by the Noxious Weed Director or Kansas Department of Agriculture within that public right-of-way without obtaining the written permission in (a) or (b).
- d. The owner of an existing public utility facility within the public right-of-way may perform maintenance work on that facility without obtaining the written permission in (a) or (b) provided that the maintenance work does not include construction work as defined in 9-107-1.
- e. The director of public works may develop minimum standards for allowable construction within the public right-of-way. The director of public works and the township trustees shall apply those minimum standards when reviewing work within the public right-of-way, to ensure the continued integrity and safety of roads, culverts and bridges within the county. The director of public works or township trustee may require more stringent standards when, in their opinion, such more stringent standards are necessary to ensure the continued integrity and safety of roads, culverts and bridges within the county.

9-107-3 ENTRANCE PERMITS. When a property owner proposes to construct or improve an entrance within or connecting to the public right-of-way, the approval required in 9-107-2 shall be in the form of an entrance permit. The director of public works shall develop standards and forms as necessary for the issuance of entrance permits. The applicant shall pay a \$75 permit application fee with each new application to construct or improve an entrance.

9-107-4 UTILITY PERMITS. When a public utility or its contractor proposes to construct, install, improve or modify facilities, or remove trees or limbs within, above or below the public right-of-way, the approval required in 9-107-2 shall be in the form of a utility permit. The director of public works shall develop standards and forms as necessary for the issuance of utility permits. A utility permit shall only be issued to a public utility if the applicant has the legal authority to occupy and use the public right-of-way for the purposes identified in the application for the permit. The public utility will reimburse Douglas County for fees for any consulting services needed in reviewing and approving the application or inspecting the installation, as determined necessary by the director of public works.

9-107-5 INSURANCE REQUIRED. Any person occupying the public right-of-way for the purpose of doing construction work or for the purpose of maintaining an existing public utility facility shall do so only after obtaining the following minimum insurance coverage to be in effect for the duration of the work:

- (1) Commercial general liability insurance for a combined single limit of a minimum amount of \$500,000 for bodily injury and property damage;
- (2) Automobile liability insurance for a combined single limit of a minimum amount of \$500,000 for bodily injury and property damage that covers owned, hired, and non-owned vehicles; and
- (3) Obtain insurance only from insurers authorized to transact insurance business in Kansas as an authorized insurer.
- (4) For utility attachments to bridges or other structures, the minimum insurance coverage shall equal the replacement value of the bridge or structure, as determined by the director of public works.

9-107-6 TRAFFIC CONTROL REQUIRED. Any person occupying the public right-of-way for the purpose of doing construction work or for the purpose of maintaining an existing public or private utility facility shall do so only after providing, erecting and maintaining all traffic control devices necessary to protect the public and workers. All traffic control devices must conform to the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) in terms of quality, quantity and placement. Construction work within the public right-of-way is prohibited unless and until the required traffic control is in place.

9-107-7 PERMIT REVOCATION. The director of public works or township trustee may revoke the permit and remove any work performed for failure to complete a project as described in the Permit or failure to comply with established policy. The Utility Company or right-of-way occupant shall reimburse the director of public works or township trustee, as appropriate, for any cost incurred by the county and/or township to restore the right-of-way. The director of public works or township trustee will not authorize any other permits for the Utility Company or right-of-way occupant until they have either reimbursed the county and/or township or restored the right-of-way.

9-107-8 PENALTY. Any person that is determined by the district court to have failed to comply with the provisions of this article shall be subject to the injunction provisions of K.S.A. 19-101d, and amendments thereto. Any person that is determined by the district court to have committed a second violation of this article within 12 months of a previous violation shall be subject to the maximum penalties prescribed for conviction of a Class C misdemeanor.

9-108 POLICY ON PLACEMENT OF PUBLIC UTILITIES WITHIN PUBLIC RIGHT-OF-WAY.

9-108-1 REMOVAL OR RELOCATION. Any utility permit issued pursuant to this article shall be conditioned upon the agreement of the applicant to move the permitted facility at no expense to Douglas County or any

township thereof in the event of a road improvement in the area within the right-of-way where the applicant's facility is located. Such agreement by the applicant shall be without reservation. The applicant shall agree to move the facility within 90 days after notification by the county or township, or four weeks prior to construction project bid letting, whichever is later.

9-108-2 NOTICE. The public utility or its subcontractor(s) shall notify the director of public works and/or township trustee when permitted work commences and when the work is completed.

9-108-2 LIABILITY.

- a. The public utility assumes all risk and liability for accidents and damages that may occur to persons or property from work performed under a utility permit.
- b. Douglas County shall not be liable for damage to any utility not installed in the location authorized by any permit or agreement issued pursuant to this policy.

9-108-3 UTILITY CORRIDOR. Public utility facilities paralleling the road shall be located as close to the right-of-way line as possible. Underground facilities should be located within ten feet of the right-of-way line. Overhead facilities should be located within three feet of the right-of-way line.

9-108-4 CLEAR ZONE LIMITATIONS. Above ground public utility facilities shall not be located on the ground within the roadside clear zone available for errant vehicles. The director of public works shall determine appropriate clear zone dimension standards.

9-108-5 VERTICAL CLEARANCE. The depth of cover over buried public utility facilities and the vertical clearance under overhead public utility facilities shall comply with standards determined by the director of public works.

9-108-6 MAXIMUM HEIGHT. The maximum height of any public utility facility shall be 65 feet.

9-108-7 MAXIMUM WIDTH.

- a. Measured perpendicular to the road, the combined width of all of the underground facilities owned by one public utility shall not exceed five feet, except where necessary to cross the road. Road crossings shall be aligned as close to perpendicular as possible.
- b. Measured parallel to the road and at the ground surface, the combined width of all of the above ground facilities owned by one public utility shall not exceed five feet within any 50 foot length of road.
- c. Measured perpendicular to the road and at the ground surface, the maximum width of any above ground facility shall not exceed three feet.

9-108-8 COMPLIANCE. Any utility permit issued pursuant to this article shall be conditioned upon the agreement of the applicant to remove or relocate the permitted facility at no expense to Douglas County or any township thereof in the event the facility does not comply with the size or location requirements of the approved permit.

DOUGLAS COUNTY, KANSAS

DEPARTMENT OF PUBLIC WORKS

UTILITY INSTALLATION STANDARDS

2016

www.douglascountyks.org

DOUGLAS COUNTY, KANSAS

DEPARTMENT OF PUBLIC WORKS

UTILITY INSTALLATION STANDARDS

2016

CERTIFICATION

Pursuant to the power and authority granted to the Douglas County, Kansas, Department of Public Works by Home Rule Resolution xx-xx, I, Keith A. Browning, P.E., Director of Public Works/County Engineer declare that the Douglas County, Kansas, Department of Public Works has officially adopted these Utility Installation Standards. Adherence to standards and the regulation of the use of road right-of-way on the Douglas County Highway System is to be authorized through the issuance of Utility Permits or Reimbursable Utility Agreements.

Dated this XX day of XXXX, 2016.

/S/ Keith A. Browning
Keith A. Browning, P.E.
Director of Public Works/County Engineer

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INTRODUCTION

DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS UTILITY INSTALLATION STANDARDS

INTRODUCTION

These standards are adopted by the Douglas County Department of Public Works acting pursuant to the authority granted by the Board of County Commissioners and the State of Kansas to establish and administer the Douglas County Highway System.

The power and authority of the Director of Public Works/County Engineer of Douglas County with respect to the accommodation of utilities are as set forth generally and principally in Kansas statutes and Douglas County Home Rule Resolution XX-XX. These sources of authority require compliance with state/local regulations and obtaining a permit for construction of public and private utilities (including pipelines) along, crossing over or under any county highway right-of-way. Utilities occupying public right-of-way involved in road construction projects are issued a use permit by the county. Any agreement for use of highway right-of-way is to include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

If applicable statute, rule or regulation sets forth more stringent requirement than these Utility Installation Standards, the statute, rule or regulation shall control.

These standards become effective upon the certification date and supersede all previously published Douglas County standards for accommodating utility facilities and appurtenances on highway right-of-way.

If application of these standards is not feasible, alternate proposals may be submitted by the Utility Company to the County Engineer for consideration.

The County Engineer reserves the right to waive the provisions of these Utility Installation Standards.

GLOSSARY OF TERMS / DEFINITIONS

BACKFILL: Replacement of soil around and over an underground Utility Company facility.

BORING: Piercing a hole under the surface of the ground without disturbing the earth surrounding the hole. Boring may be accomplished by any Douglas County approved manner. Water jetting or puddling is not permitted. Holes may be mechanically bored and cased using a cutting head and a continuous auger mounted inside of the casing. Small diameter holes may be augured and the casing or utility facility pushed in later.

BURY: Placement of the Utility Company facility below grade of roadway, ditch or natural ground to a specified depth.

CARRIER: Pipe directly enclosing a transmitted fluid (liquid or gas).

CASING: A larger pipe enclosing a carrier.

CLEAR ZONE: The total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, non-recoverable slope, and/or clear run-out area. The desired width is dependent upon the traffic volumes and speeds, and the roadside geometry.

COATING: Material applied to or wrapped around a pipe.

CONDUIT OR DUCT: An enclosed tubular runway for enclosing wires or cables.

DIRECT BURIAL: Installing an underground utility without encasement by plowing or trenching.

DITCH GRADE: Original plan grade, not silted in.

ENCASEMENT: Structural element surrounding a pipe or cable.

FLEXIBLE PIPE: A plastic, fiberglass, or metallic pipe having a large ratio of diameter to wall thickness which can be deformed without undue stress. Copper or aluminum pipe shall be considered as flexible pipe.

GROUNDING: Connected to earth or to some extended conducting body which serves instead of the earth whether the connection is intentional or accidental.

GROUT: A cement mortar or slurry of fine sand or clay.

HIGHWAY or ROAD: The entire area within the right-of-way dedicated as a public way for the purpose of vehicular travel.

JACKING: The installation of small pipes by the use of hydraulic jacks or rams to push the pipe under the traveled surface of the road.

KDOT STANDARD SPECIFICATIONS: Standard Specifications for State Road and Bridge

Construction. The specifications are located online at:
www.ksdot.org/burConsMain/specprov/specifications.asp

MANHOLE: An opening to an underground utility system which workers or others may enter.

NATURAL GAS PIPE LINES:

DISTRIBUTION SYSTEM: Pipeline other than a gathering or transmission line.

SERVICE LINE: Distribution line that transports gas from a common source of supply to a customer meter.

TRANSMISSION SYSTEM: Pipeline other than a gathering line that transports gas from a gathering line or storage facility to a distribution center or storage facility. Operates at a hoop stress of 20 per cent or more of the Specified Minimum Yield Strength (SMYS).
NORMAL: Crossing at a right angle.

PIPE: A tubular product made as a production item for sale. Cylinders formed from plate in the course of the fabrication of auxiliary equipment are not pipe.

PRESSURE: Relative internal pressure in PSIG (Pounds per Square Inch Gauge).

PRIVATE LINES: Privately owned facilities which convey or transmit commodities as defined in this section but devoted exclusively to private use.

PUBLIC LINES: Facilities which convey or transmit commodities as defined in this section and directly or indirectly serve the public or any part thereof.

REMEDICATION WELL: A well installed and used for remediation of environmental pollution.

RETAINING WALL SYSTEMS: Retaining wall systems shall include Mechanically Stabilized Earth (MSE) Walls, Modular Block Walls (MBW), Cast-in-Place Walls, Crib Walls, T-Walls and etc.

RIGHT-OF-WAY: Land, property or interest therein, usually in a strip, acquired for or devoted to highway transportation purposes.

ROAD or HIGHWAY: The entire area within the right-of-way dedicated as a public way for the purpose of vehicular travel.

ROADWAY: That portion of the highway extending from outside shoulder line to outside shoulder line or between curb lines.

SHOULDER: That portion of roadway contiguous with the traveled way for accommodation of stopped vehicles and emergency use.

TRAFFIC CONTROL PLAN: A signing plan for controlling traffic when work is being performed on the highway or within the "Clear Zone". The signing plan will be in accordance with the current edition of the Manual on Uniform Traffic Control Devices. The signing plan will also

address storage of materials and parking for work crew vehicles on the right-of-way when appropriate.

TRAVELED WAY: The portion of the roadway for the movement of vehicles, exclusive of shoulder and auxiliary lanes.

TRENCHED: Installed in a narrow excavation.

TUNNELING: Excavating the earth ahead of a large diameter pipe by one or more of the following processes:

- 1) The earth ahead of the pipe will be excavated by men using hand tools while the pipe is pushed through the holes by means of jacks, rams, or other mechanical devices.
- 2) The excavation is carried on simultaneously with the installation of tunnel liner plates.
- 3) The tunnel liner plates are installed immediately behind the excavation as it progresses and are assembled completely from the inside.

UTILITIES: All privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water, and other similar commodities, including fire and police signal systems and street lighting systems which directly or indirectly serve the public.

UTILITY COMPANY AND ROW OCCUPANT: Utility Company is a Company placing their utility on County's right-of-way. ROW occupant is anyone who is utilizing County's right-of-way for placement of utility or other approved item.

UTILITY PERMITS: Executed for all Utility Company facilities located on highway right-of-way.

REIMBURSABLE UTILITY AGREEMENTS: Executed when Utility Company facilities are located on private right-of-way and must be relocated for highway improvements.

WALL SYSTEM: refer to Retaining Wall Systems.

PART ONE

GENERAL REQUIREMENTS

**PART ONE
GENERAL REQUIREMENTS**

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PART ONE - GENERAL REQUIREMENTS

I. GENERAL PROVISIONS

A. GENERAL

1. A permit allowing a Utility Company the privilege of placing its facilities in or on the road right-of-way does not constitute any permanent right of use. Removal, remodeling, maintenance or relocation of the facilities will be promptly accomplished by the owner at no cost to Douglas County.
2. Private Utility Company lines shall not occupy the road right-of-way except where necessary to cross the highway.
3. Utility Companies who utilize subcontractors are responsible for subcontractor compliance with Douglas County specifications, regulations and permits issued pursuant to this Policy. Unsatisfactory work will be rejected and result in permit revocation and may result in denial of future Utility Permits.
4. Subcontractors must carry the required liability insurance unless the subcontractor is covered by the Utility Company insurance.
5. Utility Companies and subcontractors shall follow industry accepted construction and safety practices and follow applicable statutes and regulation(s).
6. The County Engineer or Township Trustee may waive requirements of these standards for road maintenance or safety concerns.
7. An approved and signed copy of the Utility Permit must be on the premises at the start and during the period any work is performed.
8. The Utility Company and its subcontractor(s) are responsible for contacting Dig Safe and for securing additional permits, (i.e. permits for crossing railroad right-of-way, dikes, levees and/or pipeline easement(s)).
9. The Utility Company or its subcontractor(s) must notify the County Engineer and/or Township Trustee when permitted work begins and when the work is completed.
10. The Utility Company will reimburse Douglas County for fees for any consulting services needed in reviewing and approving the application or inspecting the installation, as determined necessary by the County Engineer.

B. LIABILITY

1. Liability insurance shall be provided as more specifically outlined in the Section 9-107-5 of the County Code.
2. The Utility Company or ROW Occupant assumes all risk and liability for accidents and damages that may occur to persons or property from work performed under a Utility Permit or Reimbursable Utility Agreement. The Utility Company or ROW Occupant shall comply with the Underground Utility Damage Prevention Act (K.S.A. 66-1801 et seq.).
3. Douglas County shall not be liable for damage to any utility not installed in the location authorized by any permit or agreement issued pursuant to this UAP.

C. CHANGE IN OWNERSHIP

Douglas County shall be notified in writing of the names and addresses of the new owners within 30 days after a Utility Company changes ownership.

D. ABANDON OR RETIRE IN PLACE

The Utility Company shall notify Douglas County when the utility has been abandoned or retired in place and is responsible for all costs associated with removal (or making safe in place) abandoned or retired in place utility facilities. The Utility Company shall remove all above ground structures, pedestals, markers, manholes, and other structures or installations deemed necessary by the County Engineer or designee.

E. RELOCATION FOR ROAD CONSTRUCTION PROJECTS

Utilities must be relocated within 90 days after notification by Douglas County, or four weeks prior to construction project bid lettings, whichever is later. Utility Companies must contact the County Engineer or designee prior to starting relocation work. Relocation of utilities prior to construction project bid letting may require clearing and grubbing of trees and vegetation. Permission to leave debris for disposal may be granted by the County Engineer or designee. If not feasible as determined by the County Engineer or designee to have all utilities moved prior to a project bid letting, the Utility Company will coordinate with the contractor during the construction of the project. Relocation of utilities during project construction shall not slow progress of the construction. The Utility Company shall be responsible for all costs to Douglas County or a township due to construction project delays for relocation of utilities.

F. DISCHARGE OF WASTE MATERIAL

Applications for a Utility Permit or Reimbursable Utility Agreement for the installation of utility facilities which may discharge materials into the waters of the United States or waters of the State shall comply with all applicable requirements of the Corps of Engineers, Federal, State and local environmental protection agencies with jurisdiction. A copy of any necessary permit or authorization shall be provided to the County Engineer or designee.

G. NON-COMPLIANCE

Non-compliance with any these standards or any permit, license or agreement issued may be

considered as cause for shut down of operations until compliance is assured to the satisfaction of the County Engineer or designee or revocation of the permit at the discretion of the County Engineer or designee. The cost of any work required by Douglas County in the removal of non-complying construction will be assessed against the Utility Company or ROW Occupant.

II. PERMITS

A. GENERAL

1. Utility Permits are required when utility facilities are installed, relocated, removed or maintained along, crossing over or under all highway right-of-way. The Board of County Commissioners has delegated authority to the County Engineer or designee to approve and execute Utility Permits. All such permits are approved by the County Engineer or designee located at the Douglas County Department of Public Works – Engineering Division office.
 - a. A certificate of liability insurance shall be on file with Douglas County for each permit. Signing and all work shall be subject to the requirements of these standards and the Utility Permits.
 - b. Changes in the scope of work on a Utility Permit will require prior review and approval by the County Engineer or designee.
2. Reimbursable Utility Agreements are executed when Utility Company facilities are located on private right-of-way or private easements and must be relocated, adjusted or removed because of highway improvements. Costs for such utility changes are to be reimbursed by Douglas County. Such agreements are prepared and approved by the County Engineer.
 - a. A properly executed Reimbursable Utility Agreement will be considered to be a Utility Permit and all utility facilities relocated or adjusted on highway right-of-way will conform to these standards. Douglas County will prepare a "Utility Permit" for reimbursable utility relocations. These "Utility Permits" are for Douglas County's internal use and Utility Company endorsement is not required.
 - b. Utility relocations accomplished under a highway construction project, where costs are not reimbursable, will require a Utility Permit along with the required liability insurance.

B. APPLICATIONS

Application and plans shall be submitted for review and approval to the County Engineer. The application shall show the location of the utility by route or E911 Road I.D., section, township and range; and position of the utility within the right-of-way noting all construction details such as depths, type of materials, operating pressures, voltages, vertical and horizontal clearances, etc. Plans shall consist of two sets of 8-1/2" x 11" or 11" x 17" sheets; 24" x 36" sheets will only be accepted when smaller sheets would be illegible. Permit applications for pipelines carrying hazardous materials shall display the names of company officials who can be contacted on a 24-hour basis in case of any emergency. The Utility Company shall notify Douglas County of all changes in the calling list

within 7 days of such change.

C. Douglas County OFFICE

Applications for Utility Permits may be obtained at the Douglas County Department of Public Works – Engineering Division office or online.

All applications for utility installations on county or township roads shall be submitted to the Douglas County Department of Public Works – Engineering Division office.

Douglas County Public Works
3755 E. 25th Street
Lawrence, KS 66046

Douglas County internet address: www.douglascountyks.org

III. PROTECTION OF TRAVELING PUBLIC

A. TRAFFIC CONTROL

1. All utility work on the roadway, within the "Clear Zone", or involving equipment parked in the "Clear Zone" requires a Traffic Control Plan. The required Clear Zone for the particular location shall be determined by the County Engineer or designee. A guide to determining the Clear Zone is located in the Appendix.
2. Traffic Control is to be provided by the Utility Company or ROW Occupant for all Utility Permits whenever such Utility Company work interferes with the movement of traffic or where the work or equipment is located within the Clear Zone.
3. Personnel working on Douglas County right-of-way must wear ANSI Class II High Visibility Safety apparel compliant with 23 CFR Part 634, as set forth in 71 Federal Register 67792 to 67800 (Nov. 24, 2006). The purpose of the regulations is to decrease the likelihood of worker fatalities or injuries caused by motor vehicles and construction vehicles and equipment within the right-of-way.
4. The traveling public shall be warned of the activities of the contractor or individuals involved with utility construction and maintenance within the highway right-of-way by means of signs, flaggers, and traffic control devices as outlined in the latest edition of the "Manual of Uniform Traffic Control Devices" (MUTCD), U.S. Department of Transportation, FHWA.
5. Flaggers will be required according to the MUTCD when utility construction and maintenance work on the roadway (includes pavement) is in progress. Control by flaggers is for the safety of the workers and the traveling public. Flaggers must wear ANSI Class II safety vests at all times when flagging traffic.
6. Typical Signing Plans for traffic control on highways involving "Roadside Work" and "Lane Closure" are included in the Appendix. These are typical plans and should be supplemented if

necessary to conform to the MUTCD.

7. All Traffic Control Plans must be preapproved by the County Engineer or designee.

B. STORAGE AND PARKING

Storage of materials, parking of equipment and vehicles when not used in actual utility work within the highway right-of-way will not be permitted on the right-of-way unless no other alternative is available. If such storage or parking is permitted, then it must be located beyond the Clear Zone and as far to the edge of the right-of-way as possible.

IV. DESIGN CONSIDERATIONS

A. DESIGN

Each Utility Company is responsible for the design of their facilities to be installed within the highway right-of-way or attached to a highway structure.

B. MATERIALS

All Utility Company installations along, crossing over or under highway right-of-way and attachments to highway structures shall be of durable materials designed for long service life expectancy and free from routine servicing and maintenance. Materials shall conform to current applicable material specifications and codes.

C. FUTURE EXPANSION

1. On new installations or adjustments of existing Utility Company lines, provision should be made for known or planned expansion of the Utility Company facilities, particularly those located underground or attached to bridges and structures.
2. Plan future expansion to minimize hazards and interference with highway traffic when additional overhead or underground lines are installed.

V. MAINTENANCE AND SERVICING OF UTILITIES

A. UTILITY COMPANY'S RESPONSIBILITY

1. Maintenance of the utility is the responsibility of the Utility Company.
2. Maintenance must be performed to keep the utility in an as constructed condition and in compliance with the requirements of Federal, State and local statutes, regulations and utility codes.

3. Utility Companies shall replace and stabilize all earth cover and vegetation where the underground utility or its installation has caused erosion.
4. The Utility Company shall repair settlement of backfills, fills, and embankments placed by the Utility Company or its contractors or subcontractor at any tier which may occur within one year of the construction or installation. Any repairs shall be made by the Utility Company within thirty (30) days after receipt of notice from the County Engineer or designee.

B. EMERGENCY REPAIR

1. Emergency repair of utilities located on highway right-of-way is permissible without first obtaining a Utility Permit, if an emergency exists that interrupts critical services and is dangerous to the life, safety or welfare of the public and requires immediate repair. The Utility Company shall take all reasonable safety measures and temporary traffic control measures consistent with the MUTCD to protect the traveling public during repairs and cooperate fully with authorities.
2. The Utility Company will advise the County Engineer or designee of the location as soon as possible but no later than the next business day after discovering the emergency. The County Engineer may require a permit for any completed or ongoing work.

VI. PRESERVATION, RESTORATION, AND CLEANUP

A. DISTURBED AREAS

1. Areas of highway right-of-way disturbed by the installation, maintenance, removal and relocation of utilities shall be kept to a minimum with special care taken to avoid disturbing existing drainage facilities.
2. All excavations will be backfilled within twenty-four (24) hours after work is completed, or as directed by the County Engineer or designee, and all work shall comply with the current edition of the KDOT "Standard Specifications for State Road and Bridge Construction".
3. Disturbed areas shall be returned to normal grade and elevation with adequate compaction of backfill material and all excess or undesirable material removed by the Utility Company. All destroyed vegetation shall be replaced by the Utility Company by sodding or seeding, fertilizing and mulching with seed or sod types and application rates as required by the County Engineer or designee in conformity with methods and allowable seeding rates specified in the KDOT "Standard Specifications for State Road and Bridge Construction." Application rates for various seed types are included in the appendix.
4. Adequate protection against erosion shall be provided by the Utility Company in disturbed areas that are susceptible to erosion. Such protection may be in the form of temporary or permanent seeding, fertilizing, and mulching, rock rip-rap, wash checks, or other material that does not interfere with highway maintenance operations and is approved by the County Engineer or designee.
5. Disturbed or broken survey monuments shall be reestablished by a licensed Land Surveyor.

B. DRAINAGE FACILITIES

Utility Company shall not disturb existing drainage facilities.

C. CLEANUP

Prior to the final inspection for acceptance of work performed on highway right-of-way, the Utility Company shall restore all "Disturbed Areas" as required under Subsection A of this Section, remove all unused material or debris from the work area, and leave the right-of-way in a clean, acceptable condition.

VII. SPRAYING, CUTTING AND TRIMMING TREES

A. PERMIT REQUIRED

Trees, shrubs, bushes, vines or ground cover on the highway right-of-way shall not be sprayed, trimmed, cut down, rooted up, removed, or mutilated in any manner, unless a Utility Permit is granted.

B. PROTECTION OF VEGETATION

Consistent with the preservation of planted vegetation, consideration will be given to Utility Company for the necessary trimming, clearing or removal of vegetation to provide adequate clearance of overhead wires. Such work will be done in accordance with established practices and standards, such as those outlined in the KDOT "Highway Maintenance Manual". Approval shall not be granted for wasteful or wanton trimming or removal .

C. CHEMICAL BRUSH CONTROL

Spraying brush and seedling tree growth by Utility Companies or ROW Occupant is prohibited unless a permit is granted by the County Engineer or designee. Such activities shall be performed with extreme caution. The Utility Company or ROW Occupant shall be responsible for the performance of their employees, agents, contractors or subcontractors at any tier in the application of chemicals for brush control.

1. All spraying shall be done by a licensed herbicide applicator, licensed under Category Six of K.S.A. 2-2444a and approved by the Kansas Department of Agriculture.
2. Liability insurance, including coverage for chemical application damage, shall be provided in accordance with the County Code prior to issuing a Utility Permit for the use of chemicals.
3. Work involved on each permit application must be reviewed in detail and approved in writing by the County Engineer or designee prior to issuing the permit.
4. The name and type of chemical weed and brush killers that will be used on or near road right-of-

way shall be listed on the permit application.

5. Plants over five feet in height shall not be sprayed. Remove brush over five feet in height. Stumps shall be cut flush or below ground level and treated to prevent regrowth.
6. Shrubbery-type growth such as dogwood, sumac, redbud, plum, etc., shall not be sprayed unless prior approval is received in writing from the County Engineer or designee.
7. Steep slopes where brushy growth is a major factor in preventing erosion shall not be sprayed without prior written approval of the County Engineer or designee.
8. The spraying program shall be arranged, if possible, so that long stretches of right-of-way or both sides of the road are not treated at the same time.

D. TREE PRUNING

Tree pruning on highway right-of-way for utility lines will utilize best horticulture practices.

1. The pruning, trimming or removal of trees for utility line clearance or other purposes requires a Utility Permit from the County Engineer or designee or Township Trustee.
2. Any and all limbs trimmed shall be removed with a clean cut.
3. All cut branches, dead limbs, etc., shall be removed from Clear Zone while traffic control is in place and cleared from the highway right-of-way within forty-eight (48) hours or as directed by the County Engineer or designee. Such materials shall not be burned along the roadside unless such permission is granted on the permit and all required permits for open burning have been obtained by the Utility Company or ROW Occupant.
4. The Utility Company or ROW Occupant shall be held liable for any damage to grass, crops, native shrubs or trees arising from open burning of brush.
5. The Utility Company or ROW Occupant shall secure all required permits for open burning.

PART TWO

DRAFT

UTILITIES ON PERMITTED ROADS

**PART TWO
UTILITIES ON PERMITTED ROADS**

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PART TWO - UTILITIES ON PERMITTED ROADS

I. GENERAL PROVISIONS

This Part of the Policy applies to all public and private utilities, including electric power, telephone, telegraph, cable television, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigation, and similar lines that are to be located, adjusted, or relocated, within the right-of-way under the jurisdiction of the County Engineer. Such utilities may involve underground, surface, or aboveground facilities, either singly or in combination.

Part One -"General Requirements" and Part THREE -"Attachments to Bridges and Structures" contain general information and other requirements which pertain to Part Two and are to be referred to in application of these standards.

Utility Company lines constructed on public road right-of-way shall be in conformance with the current "National Electrical Safety Code", "American Waterworks Association Specifications", "Federal Pipeline Safety Regulations" and KDOT "Standard Specifications for State Road and Bridge Construction". Utilities must be located beyond the clear zone unless otherwise approved by the County Engineer or designee.

A. LOCATION

1. Utility Company installations shall be located to minimize need for later adjustment to accommodate future road improvements and to permit servicing such lines with minimum interference to road traffic and road maintenance operations.
2. All Utility Company installations, adjustments, and/or relocations, shall be located with consideration to road and Utility Company costs, impacts on road users, interference with road facilities and their operation, and impacts on road maintenance operations.
3. Parallel installations shall be located on uniform alignment within ten feet or less of the right-of-way line to reduce impacts on traffic operations and preserve space for future road improvements or other transportation purposes.
4. Utility Company line crossings of road right-of-way are to be installed perpendicular to the road alignment to the extent possible.
5. The horizontal and vertical location of Utility Company lines within the road right-of-way shall conform to the dimensions outlined in Sections II and III of this Part.
6. Attachments to bridges and structures must be in accordance with this Policy outlined in Part THREE -"Attachments to Bridges and Other Structures ".

B. TRENCHING AND BACKFILL

1. Where soil and depth conditions permit, trenches should be cut to have vertical faces with a

maximum width of outside diameter of pipe plus two feet. Trenches must be shored where necessary for safety and to protect the traveled way, shoulders and slopes.

- a. Bedding shall be provided to a depth of six inches or half of the diameter of the pipe, whichever is less. This requirement may be waived for lines with inside diameter of two inches or less, and installed in compliance with the American Waterworks Association (AWWA) standards, or other applicable Industry Standards.
 - b. Bedding material shall be free of lumps, clods, stones, and frozen material and shall be graded to a firm but yielding surface without abrupt changes in bearing value.
2. Backfilling of open trenches shall use only approved materials that will produce a dense, well-compacted backfill. Materials containing frozen soil, sod, debris, or organic material shall not be used.
 - a. The materials shall be placed in uniform layers not to exceed eight inches in depth and compacted by means of suitable equipment or by tamping with mechanical or hand tampers.
 - b. The moisture content of the soil used for backfilling shall be uniform and shall be such that required densities can be obtained.
3. A blasting plan shall be submitted to the County Engineer or designee before blasting a trench for utilities in rock on the right-of-way. A blasting plan will also be reviewed before blasting a trench for utilities in rock on the right-of-way within 100 feet (30.5 meters) of a bridge or road structure.

C. PIPELINE INSTALLATIONS

1. Utility Companies shall specify the type and class of material, test, design and maximum working pressures of their pipeline installations. Utility Companies operating pipelines that are not constructed, operated, and maintained under regulations established by the U.S. Department of Transportation shall upon revision in the class of material or an increase in the maximum operating pressure, notify the County Engineer in writing of such revisions.
2. Vents are appurtenances by which fluids between carrier and casing may be inspected, sampled, exhausted, or evacuated.
 - a. Vents shall be located at the high end of short casings and at both ends of casing longer than 150 feet (45 meters).
 - b. Vent standpipes shall be located and constructed so as not to interfere with maintenance of the road or be concealed by vegetation. Where possible, they shall be marked and located at the right-of-way line. The markers shall display the name and telephone number of company officials to contact in case of emergency.
3. Drains are appurtenances by which liquids or heavy gases may be evacuated or exhausted.

Roadside ditches or natural water courses shall not be used for purging the carrier unless

specifically authorized by the County Engineer and any state or federal agency with jurisdiction over said ditches or water courses.

4. The Utility Company shall place readily identifiable and suitable markers at the right-of-way where it crosses the road except in those cases where a vent serves as a marker.

II. ABOVEGROUND INSTALLATIONS

A. GENERAL

1. Aboveground Utility Company installations in rural areas should be located at the outer limits of the right-of-way, preferably within three feet or less of the right-of-way line. As right-of-way widths allow, when considering specific installations, facilities shall not be allowed closer to the traveled way than the Clear Zone, as determined by the County Engineer. A general guide to the Clear Zone distance is provided in the Appendix. This table is adopted from the AASHTO publication, "Roadside Design Guide" current addition.

Poles, guys, anchors, or other appurtenances shall not be located in the traveled way, shoulder slopes, ditches, at drainage structure openings, or on roadway shoulders. Exceptions may be permitted with the approval of the County Engineer or designee, but generally facilities should not be allowed closer to the traveled way than the Clear Zone. All poles, guys, anchors, or other appurtenances shall be located to minimize interference with maintenance operations of Douglas County.

2. Service lines (those that run from the primary lines on Douglas County right-of-way to a house or business) should utilize a "Slack" line configuration. The "Slack" line configuration will eliminate the need for additional guy anchors extending on to the right-of-way and congesting the utility corridor.
3. The minimum vertical clearance to overhead installations including guy wires and telephone poles should be that required by the National Electrical Safety Code, Institute of Electrical and Electronics Engineers, Inc. However, additional clearance may be required by Douglas County in certain instances.

General clearance guides are provided as follows:

<u>Vertical Clearance</u>	<u>Line Voltage</u>
18 feet	Any Communication Line
18 feet	0-750
20 feet	750-22,000
**	22,000-470,000
***	Over 50,000

** Increase general clearance 0.4 inch for each 1,000 volts of the excess over 22,000 volts.

*** All clearances for lines over 50,000 volts shall be based on maximum operating voltage. For voltages exceeding 50,000 volts, the additional clearance specified shall be increased 3% for each 1,000 feet in excess

of 3,300 feet above mean sea level.

4. The maximum height of any public utility facility shall be 65 feet.
5. Measured parallel to the road and at the ground surface, the combined width of all of the above ground facilities owned by one public utility shall not exceed five feet within any fifty foot length of road.
6. Measured perpendicular to the road and at the ground surface, the maximum width of any above ground facility shall not exceed three feet.
7. Installations should be limited to single pole type construction with vertical configuration of conductors and cables. Joint-use single pole construction is encouraged at locations where more than one utility or type of facility is involved.

III. UNDERGROUND INSTALLATIONS

A. GENERAL

1. Underground utility installations should be located within the ten feet utility corridor at the right-of-way line, unless otherwise approved by the County Engineer or Township Trustee. All installations and appurtenances shall be located to minimize interference with maintenance operations of Douglas County and other utilities in the corridor.
All Utility Company appurtenances above the ground surface shall be located outside the Clear Zone in the ten feet utility corridor at the right-of-way line.
2. Unless otherwise approved by the County Engineer or Township Trustee, utilities will not be permitted in the traveled way, median shoulder, shoulder slope, or ditch unless crossing perpendicular to the traveled way. Exception will be considered in extreme cases and require written approval by the County Engineer or designee.
3. Measured perpendicular to the road, the combined width of all of the underground facilities owned by one public utility shall not exceed five feet, except where necessary to cross the road.
4. Underground facilities shall be installed at a minimum depth of four feet below ditch or culvert flowline elevation and thirty inches below existing grade of ground surface outside of ditch back slopes. Such cable may require greater burial depth at certain locations including, but not limited to, crossings of streambeds, side roads, and major entrances. In no case shall the depth of cover for any underground facilities be less than that meeting applicable Industry Safety Guidelines.
 - a. If less than minimum depth is necessary because of existing utilities, water table, ordinance, or similar reasons the line shall be rerouted or protected with a casing, suitable bridging, concrete slab or other appropriate means.
 - b. Locations where it will be difficult to attain minimum depth due to wet or rocky terrain shall be avoided. Any plan location change must be approved by the

County Engineer or designee.

5. Manholes shall not be located in a bridge deck, traveled way, median, shoulder, shoulder slope, or ditch, and shall not protrude above the surrounding ground.
6. If directed by the County Engineer or designee, or the Township Trustee, any above ground structures (i.e. pedestal) shall be marked by a four foot tall post. All pedestal type structures shall be located at the outer limits of the right-of-way, preferably within two feet or less of the right-of-way line.
7. Buried electrical lines paralleling the right-of-way will only be allowed where Douglas County determines there is no reasonable alternative.
 - a. The electrical line shall be buried a minimum depth of 48 inches unless it is encased.
 - b. A tape shall be placed 12 inches below grade to mark the location of the cable.
 - c. Whenever the electrical line crosses a roadway, it shall be cased; this includes all side roads.
 - d. Electrical lines crossing county roads shall be marked with an aboveground marker on each side of the right-of-way.
 - e. The Utility Company shall mark buried cable with above ground markers a minimum of four times per mile. These markers may be placed directly above the buried cable, or offset at the right-of-way line at the discretion of the County Engineer or designee.
 - f. Douglas County may also require the encasement of the electrical line whenever it is in close proximity of a traffic control sign for the safety of Douglas County personnel when replacing downed signs.
8. Utility Company lines installed parallel to road right-of-way require casing at certain locations. Such locations include, but are not limited to, crossings of side roads and major entrances.
9. All buried plastic pipes shall be required to have a trace wire for ease of locating.
10. Private and public Utility Company lines shall not be permitted to be routed through drainage structures. Attachment to drainage structures may be permitted (see Part Three, Attachment to Bridges and Other Structures).
11. Fiber optic lines shall be buried at a depth of 42 inches and have a trace wire for ease of locating.
12. Buried vaults larger than a hand hole (3 foot x 4 foot) shall be located on private easement. Aboveground equipment cabinets other than splitter posts shall be located on private easement.

B. UNDERGROUND INSTALLATIONS CROSSING RIGHT-OF-WAY

1. All utilities crossing under ditches and roadways should have a minimum depth of cover of four feet below ditch grade (original plan grade elevation). In fill sections, the natural ground line at the toe of the slope will be considered as ditch grade. However, in no case shall the depth of cover be less than that meeting applicable Industry Safety Guidelines.
 - a. If the minimum depth is not possible because of existing utilities, water table, ordinances, or similar reasons, the line shall be rerouted or protected with a casing, suitable bridging, concrete slab or other appropriate means.
 - b. Locations that are considered unsuitable or undesirable shall be avoided. These include, but are not limited to, locations as in deep cuts, near bridge footings, and in wet or rocky terrain where it is difficult to obtain minimum depth. Plan location changes must be approved by the County Engineer or designee.
2. Underground installations may be made by open trenching from the right-of-way line to the toe of the fill slope in fill sections and to the toe of the shoulder slope in cut sections. No trenching or excavating shall be allowed in the fill or shoulder slope unless approved by the County Engineer or designee. The remainder will be tunneled, augured, or dry bored through the roadway and shall be cased, unless casing is waived by the County Engineer or designee.

IV. ENCASEMENT OF UTILITIES

A. GENERAL

1. Casings are oversized load bearing conduits or ducts through which a utility is inserted:
 - a. To protect the roadway from damages and to provide for repair, removal and replacement of the utility without interference to road traffic.
 - b. To protect the carrier pipe from external loads or shock, either during or after construction of the road.
 - c. To convey leaking fluids or gases away from the area directly beneath the traveled way to a point of venting at or near the right-of-way line.
2. The casing shall include necessary appurtenances, such as vents, drains, and markers. Casing pipe shall be sealed at both ends with a suitable material to prevent water or debris from entering the annular space between the casing and the carrier, in accordance with Pipeline Industry Standards.
3. Utility Company lines crossing road right-of-way shall be cased from top of ditch back slope to top of ditch back slope. The County Engineer or designee may allow minimum encasing from toe of back slope to toe of back slope in ditch sections and from toe of fill slope to toe of fill slope in fill sections.
4. Utility Company lines installed parallel to road right-of-way require casing at certain locations.

Locations included, but not limited to, are the crossings of side roads and major entrances.

B. CASING REQUIREMENTS FOR UTILITIES CROSSING THE RIGHT-OF-WAY

1. Underground electric service lines shall be placed in conduit or ducts from right-of-way line to right-of-way line and shall be clearly marked by the Utility Company at the outer limits of the right-of-way.
2. Underground fiber optic lines shall be placed in schedule 40 PVC, HDPE, or equivalent from right-of-way to right-of-way line, with a tracer wire and must be clearly marked by the Utility Company at the limits of the right-of-way.
3. Direct buried telephone and communications cable will not be required to be cased.
4. Lines carrying high-pressure natural gas, liquid petroleum products, ammonia, chlorine, or other hazardous or corrosive products need not be cased provided they are:
 - a. Welded steel pipelines;
 - b. Cathodically protected, if welded steel;
 - c. Coated in accordance with accepted Industry Standards, if welded steel;
 - d. Wall thickness is thick enough to meet requirements of the Federal Pipeline Safety Regulations -Code of Federal Regulations -Title 49 Code of Federal Regulations Parts 191 and 192 (Natural Gas) or Part 195 (Liquid Petroleum Gas) with respect to wall thickness;
 - e. Designed for operating stress levels in accordance with Federal Pipeline Safety Regulations;
 - f. Natural gas distribution and service lines with maximum pressure of sixty pounds per square inch (PSIG), are of copper, steel or plastic composition, and have an inside diameter of two inches (50 millimeters) or less.

When a waiver of casing is requested, the Utility Company shall provide, as a part of the Permit, a statement of certification that Utility Company pipeline will comply with the applicable conditions and provisions contained in items (a) through (f) above.

5. Gas pipelines not meeting applicable conditions and provisions (a) through (f) above shall be cased within the right-of-way limits and shall be vented and marked at the outer right-of-way limits. The markers shall give the name of the owner and phone number to contact in case of an emergency.
6. Sanitary sewer lines crossing the right-of-way must be encased from right-of-way line to right-of-way line. An exception shall be made for gravity flow lines placed prior to road construction, properly bedded, and constructed of heavy duty cast or ductile iron pipe with suitable

mechanical and/or restraint joints and seals. Suitability shall be determined by the County Engineer or designee in writing.

7. Water lines must be cased, from top to top of back slope in ditch sections or toe to toe of fill slope in fill sections. Venting and sealing of casement is not required. Casement is not required provided:
 - a. Water line is placed prior to road construction utilizing extra strength cast iron or ductile iron with mechanical and/or restraint joints and seals, and is properly bedded. The extra strength pipe is to be used from right-of-way line to right-of-way line.
 - b. Any copper, steel, or plastic waterline has an inside diameter of two inches or less.
8. All plastic pipe with inside diameter greater than two inches must be cased from top to top of ditch back slopes and meet minimum ASTM specifications and all applicable laws and codes. In certain instances as determined appropriate by Douglas County, minimum casing may be allowed requiring encasing from toe of back slope to toe of back slope in ditch sections and from toe of fill slope to toe of fill slope in fill sections.
9. Uncased Utility Company installations, which by reason of shallow depth or location make them vulnerable to damage from road construction or maintenance operations, shall be protected with suitable bridging, concrete slabs or other appropriate measures.
10. Underground utility installations not listed above may be installed without protective casing, where it is acceptable to both the Utility Company and Douglas County. Any such determination by Douglas County shall be in writing. Approval will be determined by the County Engineer or designee on an individual basis and limited to:
 - a. Open trenched construction;
 - b. Small bores;
 - c. Pipelines that are continuous (seamless) without joints;
 - d. Gas lines designed using the National Gas Institute Guidelines for Pipelines Crossing Railroads and Highway. Evidence must be submitted showing that the crossing is designed without encasement to meet stresses at the road crossing.

C. BORING

1. Underground utilities crossing hard surfaced roads must be bored or jacked. No open trenching across hard surfaced roads will be permitted.
2. Pits for boring, tunneling or jacking will not be permitted closer to the roadway than toe of fill in fill sections or toe of shoulder slope in ditch sections when allowed on the right-of-way.

3. Casing and pipeline installations shall be accomplished by dry boring, tunneling, jacking, trenching, or other approved methods.
 - a. The use of water under pressure (jetting) or puddling will not be permitted to facilitate boring, pushing, or jacking operations. Some boring may require water to lubricate cutter and pipe and under such conditions, may be considered dry boring, with prior approval from the County Engineer or designee.
 - b. Where unstable soil conditions exist, boring or tunneling operations shall be conducted in such a manner as not to be detrimental to the roadside being crossed.
 - c. If excessive voids or a too large bored hole is produced during casing or pipeline installations, or if it is necessary to abandon a bored or tunneled hole, prompt remedial action shall be taken by the Utility Company, subject to the written approval of the County Engineer or designee.
 - d. All voids or abandoned holes caused by boring or jacking are to be filled by pressure grouting when deemed necessary by the County Engineer or designee in writing. The grout material should be a sand cement slurry with a minimum of two sacks of cement per cubic yard and a minimum of water to assure satisfactory placement.
4. The hole diameter resulting from bored or tunneled installations shall not exceed the outside diameter of the utility pipe, cable or casing (including coating) by more than 1.5 inches on pipes with an inside diameter of 12 inches or less; or two inches on pipes with an inside diameter greater than 12 inches .

D. CASING MATERIAL

The following materials are acceptable for use in the casing of utility facilities when permitted by industry requirements and standards.

1. Welded steel pipe, smooth wall, in sound condition meeting the requirements of the current KDOT "Standard Specifications for State Road and Bridge Construction".
2. Corrugated metal pipe and coupling band meeting the requirements of the current KDOT "Standard Specifications for State Road and Bridge Construction".
3. Reinforced concrete pipe meeting the requirements of the current KDOT "Standard Specifications for State Road and Bridge Construction".
4. Vitrified clay pipe meeting the requirements of the current KDOT "Standard Specifications for State Road and Bridge Construction".
5. Cast iron pipe or ductile iron of the same class as used for carrier pipe, providing it meets the minimum ASTM Specifications. A statement certifying that such specifications are met will be submitted as a part of the permit.

6. Polyvinyl Chloride (PVC) meeting the requirements of the current KDOT "Standard Specifications for State Road and Bridge Construction."

High-Density Polyethylene (HDPE) providing it meets the minimum ASTM Specifications.

Chlorinated Polyvinyl Chloride (CPVC) providing it meets the minimum ASTM Specifications and all applicable laws and codes, in accordance with the listing below:

CPVC -WATER LINE PIPE
ASTM SPECIFICATION
F 441

<u>Casing Diameter</u>	<u>Min. Wall Thickness</u>	<u>Schedule</u>
4 inches (100 mm)	0.237 inches (6.02 mm)	40
6 inches (150 mm)	0.280 inches (7.11 mm)	40
8 inches (200 mm)	0.322 inches (8.18 mm)	40
10 inches (250 mm)	0.365 inches (9.27 mm)	40
12 inches (300 mm)	0.460 inches (10.31 mm)	40

The use of PVC pipe for casing is acceptable up to a maximum diameter of 12 inches (300 millimeters).

7. Electric conduits may be of non-metallic materials such as polyvinyl chloride, high-density polyethylene, or vitrified clay.

PART THREE

ATTACHMENTS TO BRIDGES AND OTHER STRUCTURES

**PART THREE
ATTACHMENTS TO BRIDGES
AND
OTHER STRUCTURES**

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PART THREE
ATTACHMENTS TO BRIDGES
AND
OTHER STRUCTURES

I. GENERAL PROVISIONS

A. UTILITY PERMIT

1. Applications for all Utility Company attachments to bridges and structures shall be authorized by a Utility Permit.
2. Structure insurance coverage, for damages that may occur by reason of pipeline attachments carrying PETROLEUM, HAZARDOUS, AND/OR CORROSIVE PRODUCTS, shall be provided by the Utility Company in an amount determined by the County Engineer or designee for each bridge, structure or retaining wall system. The amount of insurance shall at a minimum meet or exceed the replacement cost of the structure as determined by the County Engineer or designee. The amount of insurance may be reviewed annually and adjusted with the current cost of replacement of the structure.
3. A permit allowing a Utility Company the privilege of attaching its facilities to a bridge or road structure does not constitute any permanent right for such attachment or placement. Any removal, remodeling, maintenance, or relocation of the attachment or installation, will be promptly accomplished by the Utility Company at no cost to Douglas County.
4. Provisions for a Utility Company attachment may be included during the design of a structure. See Section II.A, 2 for more information.
5. Utilities, when permitted, are to be installed, serviced, or maintained without access from the bridge deck or without interfering with any retaining wall system backfill.
6. The County Engineer or designee shall review and approve the Utility Company's proposal, particularly the measures to be taken to preserve the structure, the road, and their safe operation, maintenance and appearance.

B. HAZARDOUS MATERIALS

Permit applications for pipelines carrying hazardous materials shall contain emergency contact phone numbers available on a twenty-four hour basis, in case of emergency. The Utility Company shall notify the County Engineer or designee in writing of any changes in the calling list within seven (7) days of any change.

II. PERMITTED ROADS

A. DESIGN

1. The Utility Company is responsible for the design of their facility's attachment to a bridge or road structure shall submit plans for review and approval. Attachment plans will include catalog cuts of attaching hardware and construction plans detailing the method of attaching the utility and position of the utility on any bridge or structure.
2. When a new structure is in the design stage, the Utility Company, through cooperation with the County Engineer or designee, may arrange for conduit and pipeline support systems to be included in the bridge construction plans. The additional cost of extra structural steel and fabrication needed to support the pipeline and/or conduit beyond what is needed for road purposes will be determined, and this cost will be invoiced to the Utility Company by the County Engineer at the time of design. This amount will be submitted along with the Utility Permit, which will include final design details outlining this attachment. The conduit itself for bridge attachment is to be supplied and installed later by the Utility Company. No Permit will be issued until all costs assessed to the Utility Company are paid in full.
3. Transition of alignment of utility from paralleling right-of-way to bridge or structure should be perpendicular to the roadway.
4. Satisfactory provisions for longitudinal conduit or pipeline movement due to temperature differentials or lineal expansion and contraction of the bridge shall be made in conduit or pipeline designs. Such provisions may be line bends, flexible couplings, or other methods acceptable under appropriate Industry Codes and Practices.
5. Utility Company lines will not be permitted through bridge abutments.
6. Manholes used to service the utility shall not be located in the bridge deck. Manholes shall be located beyond the edge of the wearing surface of the bridge or structure and outside of the roadway (pavement and shoulders).

B. LOCATION AND METHOD OF ATTACHMENT

1. The County Engineer or designee may be contacted for recommended locations and acceptable types of attachments for various bridges. Although road structure types and site conditions vary, some general standards have been adopted. The KDOT Utility Attachment Placement drawings are available in the Appendix as an aide in determining acceptable bridge attachments.
2. Whenever possible, attachments will be placed on the downstream side of bridges. Generally, Utility Company pipelines and conduits will be attached to diaphragms located between girders.
3. Prohibited:

- a. Anchors driven using the explosive type driving force method.
- b. All welding and drilling on steel members.
- c. All drilling in pre-stressed and reinforced concrete girders.
- d. Attachment of conduits to bridge handrail and/or guardrail components.
- e. Pipelines using bridge members to resist forces generated by fluids in motion.

C. EXCAVATIONS

Any open trench or excavation required in conjunction with bridge or structure attachments will be backfilled within twenty-four hours after work is completed, in accordance with KDOT "Standard Specifications for State Road and Bridge Construction", or as directed by the County Engineer or designee.

D. MATERIALS

- 1. All attachments to bridges and structures shall be of durable materials designed for long service life expectancy and free from routine servicing and maintenance. Conformance with current applicable materials specifications and codes is mandatory.
- 2. All steel materials used in attaching a utility to a structure must be stainless or galvanized.

E. MAINTENANCE

- 1. Maintenance of the Utility Company facility is the responsibility of the Utility Company.
- 2. The installations shall be maintained to the satisfaction of the County Engineer or designee.
- 3. Maintenance of the utility attachments to bridges will not be performed from the bridge deck.

F. PIPELINES

- 1. Pipelines carrying liquid petroleum, hazardous, or corrosive products will not be permitted to be attached to bridges or structures except in extreme cases where the Utility Company can document that any other location is extremely difficult and of unreasonable cost to the Utility Company and to the consumer and the County Engineer or designee approves the attachment or placement in writing.
- 2. Pipelines carrying natural gas, liquid petroleum products, or other volatile fluid or gas under pressure will require installation of emergency shut off valves. Valves shall be placed on each side of the bridge.
- 3. Pipelines shall be encased:

Attachment to Bridges: the length of the bridge with the casing carried beyond the back of the bridge abutments and opened or vented at each end to detect leakage, when the line carries fluids such as:

- i. petroleum, hazardous and/or corrosive products, sewage etc., or
- ii. waterlines carried over railroads, or other roads.

4. Carrier and casing pipe shall be suitably insulated from electric power line attachments.

G. COMMUNICATIONS AND ELECTRIC LINES

1. Attachment to Bridges

Communication and electric power line attachments shall be suitably insulated, grounded and carried in protective conduit or pipe from point of exit from the ground to re-entry.

APPENDIX

DRAFT

APPENDIX

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2. "A Guide for Accommodating Utilities within Highway Right-of-Way, October 2005", AASHTO, American Association of State Highway and Transportation Officials Publication
2. Program Guide Utility Relocation, Adjustments, and Accommodation on Federal-Aid Highway Projects Department of Transportation, Federal Highway Administration.
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4. Statutory Provisions, 23 U.S.C. 109 and 111.
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7. Pipeline Safety Regulations - Code of Federal Regulations, Title 49 - Transportation, Parts 191 and 192 - natural Gas; Part 195 - Liquid Petroleum Gas.
8. American Water Works Association Standards and Specifications, current issue. AWWA, 2 Park Avenue, N.Y., N.Y. 10016.
9. American Society for Testing and Materials (ASTM).
10. Manual on Uniform Traffic Control Devices, U.S. Department of Transportation, Federal Highway Administration.
11. "AASHTO Roadside Design Guide", Current Addition, American Association of State Highway and Transportation official publication.
12. Highway Maintenance Manual, Bureau of Construction and Maintenance, Kansas Department of Transportation.
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15. State of Kansas Traffic Control Handbook for Flaggers

CLEAR ZONE

Clear Zone Distances (In feet from the edge of the through traveled way)

[U.S. Customary Units]							
DESIGN SPEED	DESIGN ADT	FORESLOPES			BACKSLOPES		
		1V:6H or flatter	1V:5H TO 1V:4H	1V:3H	1V:3H	1V:5H TO 1V:4H	1V:6H or flatter
40 mph or less	UNDER 750	7 – 10	7 – 10	**	7 – 10	7 – 10	7 – 10
	750 – 1500	10 – 12	12 – 14	**	10 – 12	10 – 12	10 – 12
	1500 – 6000	12 – 14	14 – 16	**	12 – 14	12 – 14	12 – 14
	OVER 6000	14 – 16	16 – 18	**	14 – 16	14 – 16	14 – 16
45–50 mph	UNDER 750	10 – 12	12 – 14	**	8 – 10	8 – 10	10 – 12
	750 – 1500	14 – 16	16 – 20	**	10 – 12	12 – 14	14 – 16
	1500 – 6000	16 – 18	20 – 26	**	12 – 14	14 – 16	16 – 18
	OVER 6000	20 – 22	24 – 28	**	14 – 16	18 – 20	20 – 22
55 mph	UNDER 750	12 – 14	14 – 18	**	8 – 10	10 – 12	10 – 12
	750 – 1500	16 – 18	20 – 24	**	10 – 12	14 – 16	16 – 18
	1500 – 6000	20 – 22	24 – 30	**	14 – 16	16 – 18	20 – 22
	OVER 6000	22 – 24	26 – 32 *	**	16 – 18	20 – 22	22 – 24
60 mph	UNDER 750	16 – 18	20 – 24	**	10 – 12	12 – 14	14 – 16
	750 – 1500	20 – 24	26 – 32 *	**	12 – 14	16 – 18	20 – 22
	1500 – 6000	26 – 30	32 – 40 *	**	14 – 18	18 – 22	24 – 26
	OVER 6000	30 – 32 *	36 – 44 *	**	20 – 22	24 – 26	26 – 28
65–70 mph	UNDER 750	18 – 20	20 – 26	**	10 – 12	14 – 16	14 – 16
	750 – 1500	24 – 26	28 – 36 *	**	12 – 16	18 – 20	20 – 22
	1500 – 6000	28 – 32 *	34 – 42 *	**	16 – 20	22 – 24	26 – 28
	OVER 6000	30 – 34 *	38 – 46 *	**	22 – 24	26 – 30	28 – 30

* Where a site specific investigation indicates a high probability of continuing crashes, or such occurrences are indicated by crash history, the designer may provide clear-zone distances greater than the clear-zone shown in Table 3.1. Clear zones may be limited to 30 ft for practicality and to provide a consistent roadway template if previous experience with similar projects or designs indicates satisfactory performance.

** Since recovery is less likely on the unshielded, traversable 1V:3H slopes, fixed objects should not be present in the vicinity of the toe of these slopes. Recovery of high-speed vehicles that encroach beyond the edge of the shoulder may be expected to occur beyond the toe of slope. Determination of the width of the recovery area at the toe of slope should take into consideration right-of-way availability, environmental concerns, economic factors, safety needs, and crash histories. Also, the distance between the edge of the through traveled lane and the beginning of the 1V:3H slope should influence the recovery area provided at the toe of slope. While the application may be limited by several factors, the foreslope parameters which may enter into determining a maximum desirable recovery area are illustrated in Figure 3.2.

Source: Roadside Design Guide

**KANSAS UNDERGROUND UTILITY DAMAGE PREVENTION
ACT
K.S.A. 66-1801 (DIG SAFE)**

1-800-334-7233 (Dig Safe)

Color Coding for Locating Utility Company Lines

RED	Electric Power Lines, Cables, Conduit and Lighting Cables
YELLOW	Gas, Oil, Steam, Petroleum, or Gaseous Materials
ORANGE	Communication, Alarm or Signal Lines, Cables or Conduit including Cable TV
BLUE	Water, Irrigation and Slurry Lines
GREEN	Storm Drain Lines/Sewer
PINK	Survey Markings
WHITE	Proposed Excavation

Tolerance Zone: The area within 24 inches (600 millimeters) of the outside dimensions in all horizontal directions of an underground facility.

KANSAS DEPARTMENT OF TRANSPORTATION

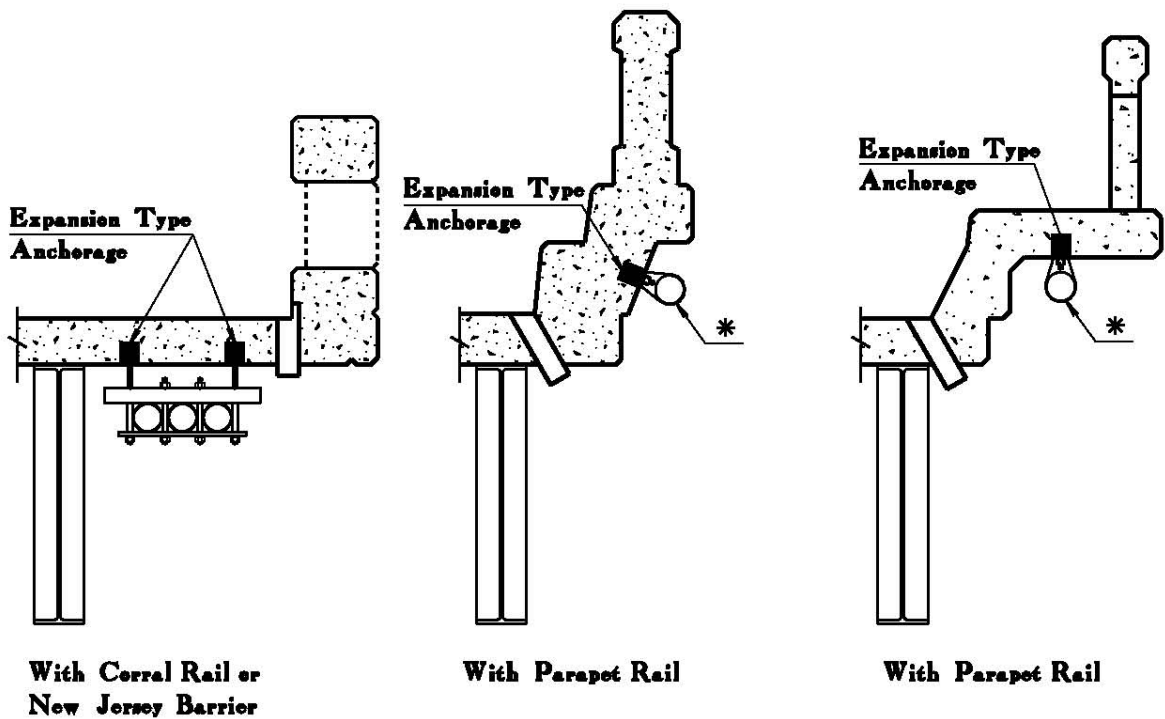
UTILITY ATTACHMENT PLACEMENT

For a Steel Superstructure Bridge with bent plate diaphragms

Support Spacing
_____ meters
(_____)feet

Diameter Conduit(s)
_____ mm
(_____)inches

Weight (Includes Conduit,
Support System and Cables)
_____ kg/ m
(_____)lbs/ ft.



SINGLE OR MULTIPLE CONDUITS - ALTERNATE LOCATIONS -

* Drilling, welding, or cutting of any structural steel is not allowed.
Use Conduit or Beam Clamps in place of drilling or cutting.

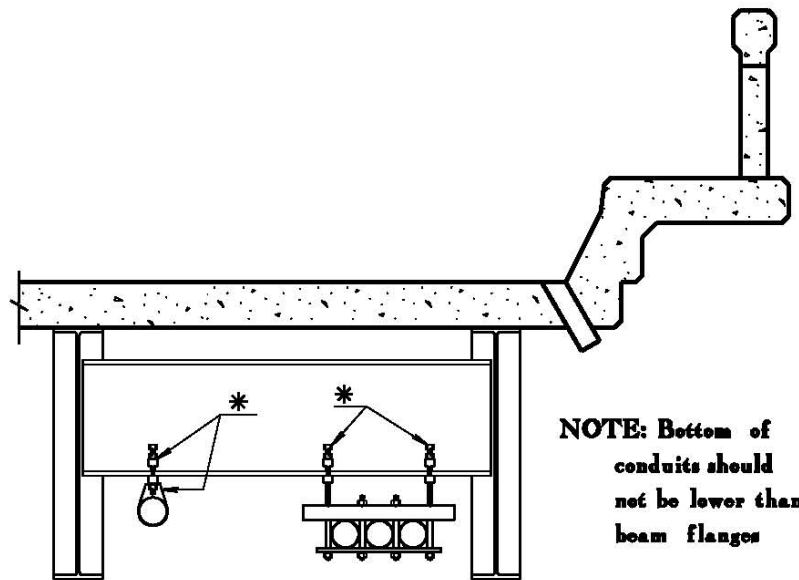
NOTE: All steel materials used in attaching a utility to a structure must be stainless or galvanized.

KANSAS DEPARTMENT OF TRANSPORTATION

UTILITY ATTACHMENT PLACEMENT

For a Steel Superstructure Bridge with bent plate diaphragms

Support Spacing	Diameter Conduit(s)	Weight (Includes Conduit, Support System and Cables)
_____ meters	_____ mm	
(_____)feet	(_____)inches	_____ kg / m
		(_____)lbs / ft.



NOTE: Bottom of conduits should not be lower than beam flanges

SINGLE OR MULTIPLE CONDUITS - PREFERRED LOCATION -

(See additional sheet for - ALTERNATE LOCATION -)

* Drilling, welding, or cutting of any structural steel is not allowed.
Use Conduit or Beam Clamps in place of drilling or cutting.

NOTE: All steel materials used in attaching a utility to a structure must be stainless or galvanized.

KANSAS DEPARTMENT OF TRANSPORTATION

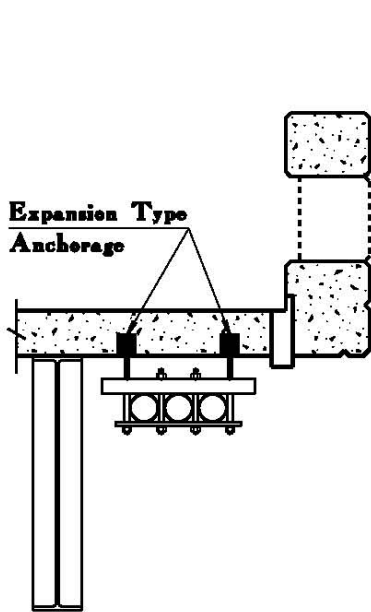
UTILITY ATTACHMENT PLACEMENT

For a Steel Superstructure Bridge with cross frame diaphragms

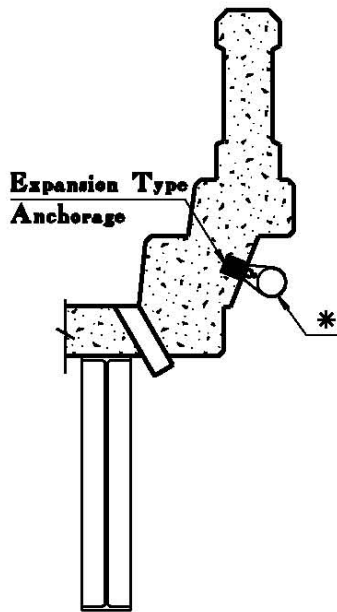
Support Spacing
_____ meters
(_____)feet

Diameter Conduit(s)
_____ mm
(_____)inches

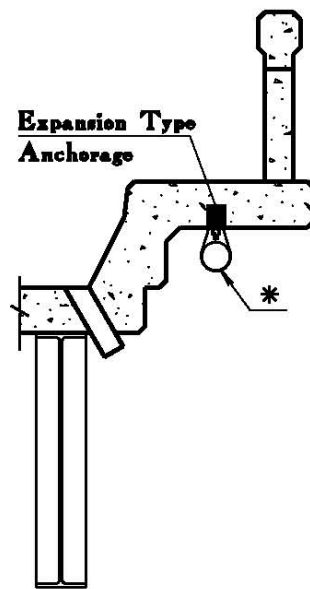
Weight (Includes Conduit,
Support System and Cables)
_____ kg/ m
(_____)lbs/ ft.



With Corral Rail or
New Jersey Barrier



With Parapet Rail



With Parapet Rail

SINGLE OR MULTIPLE CONDUITS - ALTERNATE LOCATIONS -

* Drilling, welding, or cutting of any structural steel is not allowed.
Use Conduit or Beam Clamps in place of drilling or cutting.

**NOTE: All steel materials used in attaching a utility
to a structure must be stainless or galvanized.**

KANSAS DEPARTMENT OF TRANSPORTATION

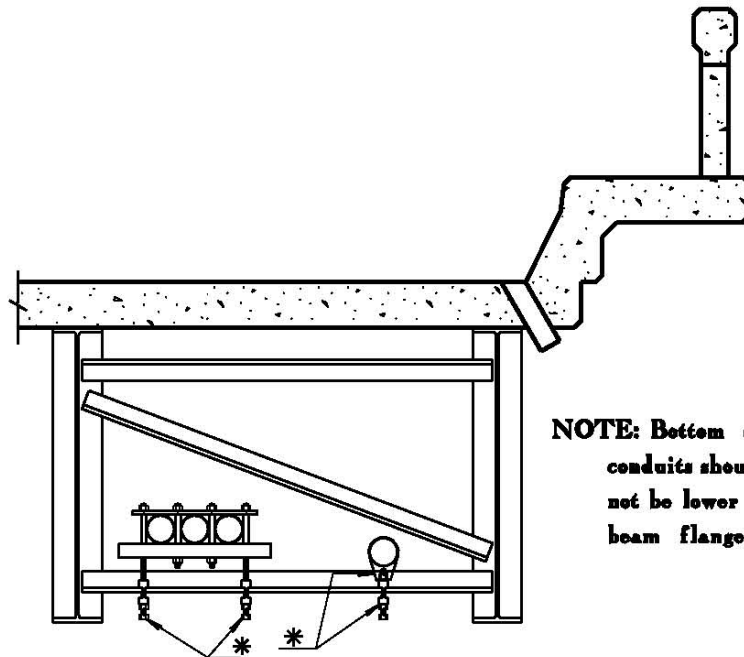
UTILITY ATTACHMENT PLACEMENT

For a Steel Superstructure Bridge with cross frame diaphragms

Support Spacing
_____ meters
(_____)feet

Diameter Conduit(s)
_____ mm
(_____)inches

Weight (Includes Conduit,
Support System and Cables)
_____ kg/ m
(_____)lbs/ ft.



NOTE: Bottom of
conduits should
not be lower than
beam flanges

**SINGLE OR MULTIPLE CONDUITS
- PREFERRED LOCATION -**
(See additional sheet for - ALTERNATE LOCATION -)

* Drilling, welding, or cutting of any structural steel is not allowed.
Use Conduit or Beam Clamps in place of drilling or cutting.

**NOTE: All steel materials used in attaching a utility
to a structure must be stainless or galvanized.**

KANSAS DEPARTMENT OF TRANSPORTATION

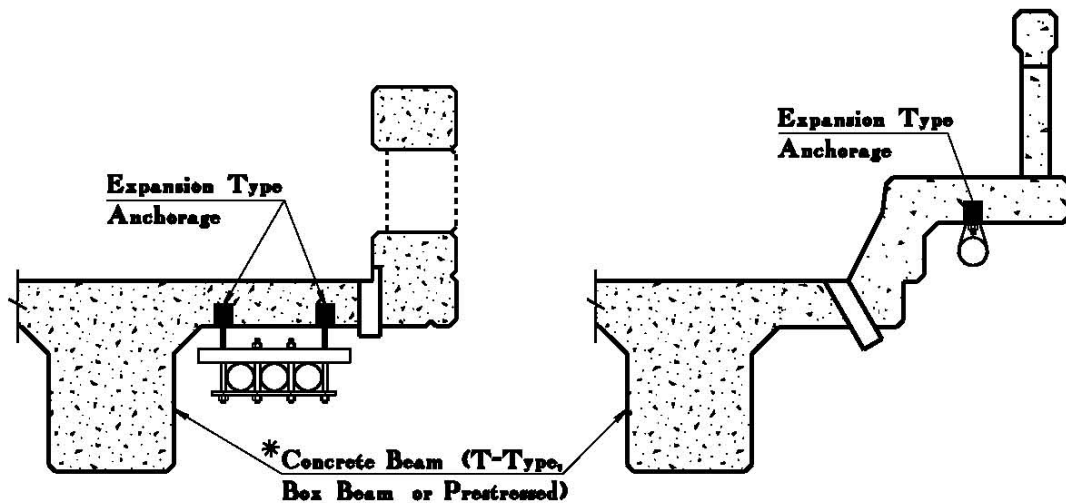
UTILITY ATTACHMENT PLACEMENT

For Concrete Beam Type Superstructures

Support Spacing
_____ meters
(_____)feet

Diameter Conduit(s)
_____ mm
(_____)inches

Weight (Includes Conduit,
Support System and Cables)
_____ kg/ m
(_____)lbs/ ft.



With Corral Rail or
New Jersey Barrier

With Parapet Rail

*** NOTE: ATTACHMENT ANYWHERE TO THE CONCRETE SUPERSTRUCTURE (BEAM) WILL NOT BE ALLOWED.**

**SINGLE OR MULTIPLE CONDUIT
- ATTACHMENT LOCATION ON CONCRETE BEAM BRIDGES -**

NOTE: All steel materials used in attaching a utility to a structure must be stainless or galvanized.

KANSAS DEPARTMENT OF TRANSPORTATION

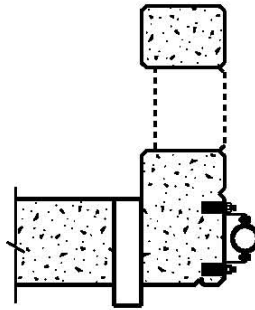
UTILITY ATTACHMENT PLACEMENT

For a Concrete Slab Type Superstructure

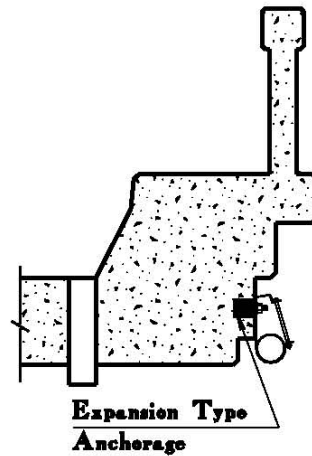
Support Spacing
_____ meters
(_____)feet

Diameter Conduit(s)
_____ mm
(_____)inches

Weight (Includes Conduit,
Support System and Cables)
_____ kg/ m
(_____)lbs/ ft.



With Corral Rail or
New Jersey Barrier



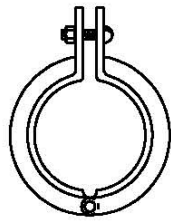
With Parapet Rail

SINGLE CONDUIT - LOCATIONS -

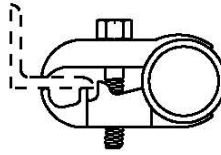
NOTE: All steel materials used in attaching a utility to a structure must be stainless or galvanized.

KANSAS DEPARTMENT OF TRANSPORTATION

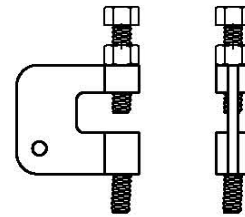
SOME ACCEPTABLE HANGER & CLAMP TYPES



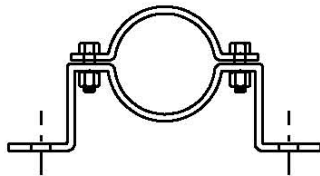
**SPLIT RING
HANGER**



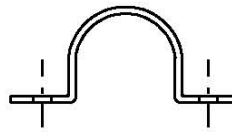
**PARALLEL PIPE AND
CONDUIT CLAMP**



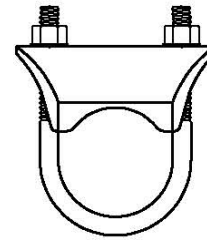
**"C" CLAMP
WITH LOCKNUT**



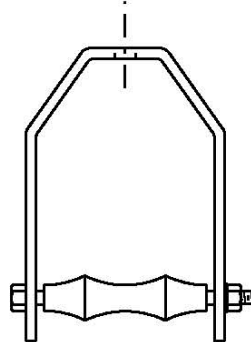
**OFFSET
PIPE CLAMP**



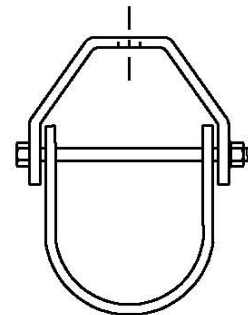
**HOLD DOWN
PIPE CLAMP**



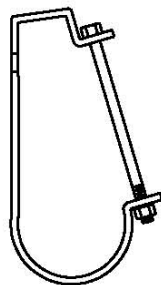
**RIGHT ANGLE
PIPE CLAMP**



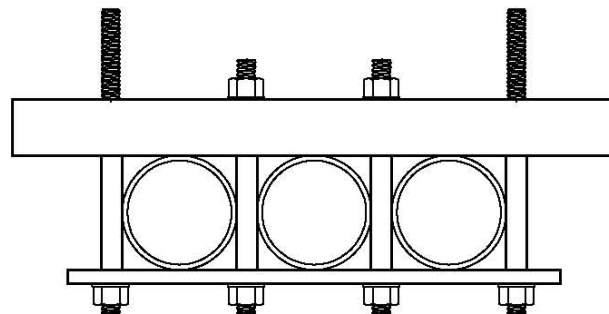
PIPE ROLLER HANGER



CLEVIS HANGER



T-SLOT HANGER



DUCT SUPPORT SYSTEM

5-22

Plot Date : 5/9/2007

View= Plot+4

Plotted By : roneels

Plot File : W:\Bridge Inspection\B-School\Bridge Insp Manuals\Utility Attachments\ultraman.dgn

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The Kansas New Wireless Deployment Act

Senate Substitute for House Bill No. 2131

2016 Kan. Sess. Laws, Ch. 40

presented by

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Introduction

During the 2016 session of the Kansas legislature, Senate Substitute for House Bill No. 2131 was adopted. Section 1 of the bill has been unofficially dubbed the Kansas New Wireless Deployment Act. That section was adopted, among other reasons, to promote the deployment of wireless infrastructure in the state; to ensure that all citizens in Kansas have access to broadband and other advanced technology and information; to ensure uniformity across the state with respect to consideration of every submitted application for the construction, maintenance and operation of wireless facilities; and to reduce perceived delays associated with the siting and construction of wireless facilities and structures. The bill, which takes effect October 1, 2016, will significantly affect counties in this state, so it is imperative that county officials become familiar with its provisions and requirements, and determine whether action is deemed necessary or advisable to adopt or amend any needed rules, requirements or regulations prior to the effective date.

In summary, Section 1 of the bill grants wireless providers, subject to certain local regulatory control mechanisms, the statutory right to use county public right-of-way to locate wireless structures and facilities. Counties will now also be directed, by state mandate, concerning various aspects of the wireless facility application process and procedure, including but not limited to, allowable application fees and charges; right-of-way user fees; the relocation of wireless facilities in the right-of-way; the leasing of county lands, buildings and facilities for the location of wireless facilities; limitations on the type of information counties may request, and conditions they can impose, during the application process; and time limitations on the review of applications.

Section 1 of the bill also sets forth a process and procedure concerning the following 5 different types of applications, along with designated time limitations for the processing of each application:

1. New wireless support structures, which include but are not limited to monopoles and guyed or self-supporting towers (150 day time limit);
2. A substantial modification to an existing wireless support structure or base station (90 day time limit);
3. Any other application for placement, installation or construction of transmission equipment that does not constitute and eligible facilities request as defined by 47 U.S.C. §1455(a) (90 day time limit);
4. A small cell network of 25 or less individual small cell facilities of substantially similar design (60 day time limit); and
5. An application for an eligible facilities request as defined by 47 U.S.C. §1455(a), which pertains to requests to modify an existing wireless tower or base station by the collocation of new transmission equipment, or the removal or replacement of transmission equipment (60 day time limit).

The good news for counties is that the bill expressly states that counties retain the ability to regulate wireless structures and facilities subject to reasonable public health, safety and welfare requirements; home rule authority; laws governing the use of right-of-way; and zoning regulatory control. The bad news is that the bill contains several internal conflicts and inconsistencies, either real or apparent, and lacks clarity, guidance and direction in certain areas, which will pose a challenge to those attempting to interpret and implement its provisions. Hopefully this paper will be of some help to county officials who have to become familiar with

the new law, however, this paper is intended for discussion purposes only, and is not intended as, nor should it be used for, the provision of legal advice on this subject matter. County officials are therefore encouraged to consult with their attorney about the legal effects and requirements of this new law. Furthermore, this paper contains the author's commentary, which may not necessarily reflect the views and opinions of the Board of County Commissioners of Johnson County, Kansas.

Lastly, at the time of this writing (August 31, 2016), the bill was codified at 2016 Kan. Sess. Laws, Ch. 40. The following section and subsection citations therefore correspond to those set forth in either the bill or the session law, as the formatting of both appear to be identical.

Section 1

Matters of Statewide Concern

Subsections 1(a)(1-4): The Kansas legislature finds and declares, among other things, that wireless facilities are critical for Kansas citizens to have access to broadband and other advanced technology; that they provide a significant economic benefit; and are therefore deemed to be matters of statewide concern and interest.

Commentary: Although this subject matter is deemed to be one of statewide concern, that by itself does not equate to state preemption of this particular field. State law preemption must be expressed by a clear statement in the law, Zimmerman v. Board of Wabaunsee County Comm'rs, 289 Kan. 926, 973 (2009); and the legislative intent to reserve to the state exclusive jurisdiction to regulate in the field must be clearly manifested by the statute. Id. at 973, citing City of Junction City v. Lee, 216 Kan. 495, Syl.No. 9 (1975). See also, for example, K.S.A. 79-4702 (the power to regulate hereby vested exclusively in the state).

Definitions

Subsections 1(b)(1-24): House Bill (H.B.) 2131 contains 24 defined words and terms. The following are several that deserve close attention:

“Authority” means any governing body, board, agency, office or commission of a city, county, or state that is authorized by law to make legislative, quasi-judicial or administrative decisions concerning an application. “Authority” shall not include any school district as defined in K.S.A. 72-8301, and amendments thereto, or any court having jurisdiction over land use, planning, zoning or other decisions made by an authority.

“Application” means a request submitted by an applicant to an authority for:

- (a) The construction of a new wireless support structure or new wireless facility;
- (b) The substantial modification of a wireless support structure or wireless facility; or
- (c) Collocation of a wireless facility or replacement of a wireless facility.

“Wireless support structure” means a freestanding structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities. “Wireless support structure” does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

“Wireless facility” means equipment at a fixed location that enables wireless communication between user equipment and a communications network, including, but not limited to:

(a) Equipment associated with wireless services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and

(b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

“Wireless facility” does not mean any wired connections from a wireless support structure or base station to a hub or switching location.

“Utility pole” means a structure owned or operated by a public utility defined in K.S.A. 66-104, and amendments thereto, a municipality as defined in K.S.A. 75-6102, and amendments thereto, or an electric cooperative as defined in K.S.A. 2015 Supp. 17-4652, and any amendments thereto, that is designed specifically for and used to carry lines, cables, or wires for telecommunications, cable, electricity or to provide lighting.

“Small cell facility” means a wireless facility that meets both of the following qualifications:

(a) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna’s exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and

(b) Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the federal communications commission has excluded from review pursuant to 54 U.S.C. § 306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included

in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

Commentary: (a). Applicants may argue the volume limits of an enclosure are to be measured internally rather than externally, however, a requirement that volume is a measurement of external displacement will avoid an unreasonable interpretation that a 10 cubic foot enclosure (measured externally) may house an internal compartment with 6 cubic feet of volume.

(b). The terms “primary equipment” and “primary equipment enclosures” are not defined by H.B. 2131. The enclosures, however, are typically the metal boxes that are located on the ground or attached to poles.

(c). 54 U.S.C. § 306108 requires federal agencies to take into account the effects of certain of their undertakings on historic properties included in or eligible for inclusion in the National Register of Historic Places, and to afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment with regard to such undertakings. Under the authority granted by Congress in the Communications Act of 1934, as amended (47 U.S.C. § 151 et seq.), the Federal Communications Commission (FCC) establishes rules and procedures for the licensing of certain antenna structures in the United States. Furthermore, pursuant to 54 U.S.C. § 304108, the Council may promulgate regulations as it considers necessary to govern the implementation of 54 U.S.C. § 306108. Therefore, if the FCC, in conjunction with the Council, allow higher volume limits on a particular historic structure, then the higher limits should be allowed.

“Public right-of-way” means only the area of real property in which the authority has a dedicated or acquired right-of-way interest in real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. “Public right-of-way” does not include any state, federal or interstate highway right-of-way, which generally includes the area that runs contiguous to, parallel with, and is generally equidistant from the center of that portion of the highway improved, designed or ordinarily used for public travel.

Application Fees and Other Processing Charges

Subsections 1(c)(1-4): The authority shall not charge an application fee for processing the application that is not similarly required of other wireless infrastructure or wireline providers. Fees or charges shall only be assessed for the actual cost directly incurred by the authority for processing the application; shall not be market-based or value-based; must be assessed reasonably contemporaneous to when the costs were incurred; and total charges and fees shall not exceed:

- (a) \$500 for a collocation application, that is not a substantial modification, small cell facility application or distributed antenna system application; or
- (b) \$2,000 for an application for a new wireless support structure or for a collocation application that is a substantial modification of a wireless support structure.

Furthermore, an authority or third-party consultant shall not include any travel expenses incurred in review of an application, except for one trip per application to the authority’s jurisdiction, which must be reasonable and directly related to the application. Additionally, an applicant shall

not be required to pay or reimburse the authority for consultant fees based on a contingency or results-based arrangement.

Commentary: H.B. 2131 allows an authority to seek reimbursement for the travel expenses of a third-party consultant, but the charges are limited to only one trip to the authority's jurisdiction, which would appear to preclude costs incurred to send the consultant to an alternative location (outside the authority's jurisdiction) for any purpose, such as to view a similar structure or facility as the one proposed by the applicant.

Public Right-of-Way User Fees

Subsection 1(d)(1): An authority may not charge a wireless provider a fee to locate a wireless facility or support structure in the authority's public right-of-way (Row), if the authority doesn't also charge other telecommunication providers, among others, for use of the Row. If a fee is charged, including one to attach to authority owned facilities in the Row, the fee must be competitively neutral with other users, and may not be unreasonable or discriminatory, or violate applicable state or federal laws, rules or regulations.

Commentary: Fees charged to use the public right-of-way (Row), would appear to be separate from, and therefore not bound by nor limited to, the cap limits set forth in Subsections 1(c)(4)(A) and (B), which pertain to application and other processing fees, but not Row use fees.

Use of Public Right-of-Way

Subsections (1)(d)(2)(A-B): Subject to the provisions of Subsection 1(d)(2), and an application, wireless service or infrastructure providers shall have the right to construct, maintain and operate wireless support structures, utility poles, small cell wireless facilities or distributed antenna

systems along, across, upon, under, or above the public right-of-way (Row). Such providers do not have the right to do same on property owned by the authority outside of the Row.

Commentary: H.B. 2131 grants wireless providers, subject to the provisions of Subsection 1(d)(2), and an application, the statutory right and privilege to use the authority's Row. This right extends to the location of wireless support structures, which are defined to include freestanding structures such as a monopole, guyed or self-supporting tower or other suitable existing or alternate structure designed to support or capable of supporting wireless facilities. Fortunately, the use of the Row is subject to certain local regulatory control mechanisms, including but not limited to, those that protect the public health, safety and welfare.

Regulating the Use of Right-of-Way

Subsections 1(d)(2)(C-E): The right of a wireless provider to use and occupy the public right-of-way (Row), remains subject to (i) the authority's reasonable public health, safety and welfare (HS&W) requirements and regulations; (ii) home rule authority, which must be exercised in a competitively neutral manner, and not be unreasonable or discriminatory; and (iii) all laws, rules and regulations governing the use of Row, which includes the authority's power to prohibit the use or occupation of the Row, at a specific location, if the authority deems it necessary to protect the public HS&W, if also done in a competitively neutral manner, is reasonable, and not discriminatory.

Commentary: A municipality should consult with its attorney regarding the necessity and/or advisability of having all necessary requirements, rules or regulations codified prior to October 1, 2016, as opposed to relying upon its legal-authority under statutory or common law.

Subsection 1(d)(2)(F): Wireless providers are responsible for the repair of damage to a public right-of-way (Row), caused by an applicant or their agent, while occupying, installing, repairing or maintaining facilities in the Row, and must return the Row to its condition prior to the damage. If the provider fails to do so, the authority may make the repairs and charge the provider the reasonable cost. If the authority incurs damages as a result of the provider's violation of this paragraph, the authority may seek the recovery of its damages, including reasonable attorney fees, in a court of competent jurisdiction.

Commentary: This subsection of H.B. 2131 is silent regarding any requirement of the authority to give the wireless provider a specific type of notice or time frame in which to complete repairs. The House Bill also seemingly prevents the authority from utilizing a self-help remedy, with reimbursement, unless and until the provider first fails to make the repair. Because repair of the Row in a prompt manner may be necessary to protect the public HS&W, time may be of the essence. Therefore, a municipality may want to consider implementing application approval requirements which place the burden upon the wireless provider to notify a designated authority official immediately after the damage is done, so that an acceptable repair completion deadline can be established and documented.

Subsection (1)(d)(2)(G): An authority may request that a wireless provider relocate or adjust its facilities within the Row, at no cost to the authority, if necessary to accomplish activities directly related to improvements for the public HS&W, if such request similarly binds all Row users. The request shall be completed as soon as reasonably possible, within the time frame of the written request, however, the authority must provide a minimum of 180 days advance written notice, unless circumstances beyond the authority's control, require a shorter period of advance notice.

If the request is for a private benefit, the provider is not responsible for the cost to the extent of the private benefit, and the relocation or adjustment requested need not be commenced until receipt of funds for same. The authority has no obligation to collect such funds.

Commentary: This section of H.B. 2131 appears to contemplate two separate written documents. The first, 6 months advance written notice of the need for the wireless provider to relocate their facility in the Row. Thereafter, a second document in the form of a written request which sets forth the time frame in which to complete the relocation request. The conservative approach would utilize 2 letters, however, it is doubtful the providers would not be afforded adequate due process if the advance notice and request were comingled into one written document, that includes both notice and a request.

Indemnification

Subsections 1(d)(2)(H-I): Wireless providers are required to indemnify and hold harmless an authority against all claims, losses and expenses, including reasonable attorney fees, caused by the negligence of the wireless provider or their agent while installing, repairing or maintaining facilities in the public right-of-way (Row). However, the provider is not required to indemnify the authority for the authority's own negligent acts. If both the provider and authority are found jointly negligent, liability shall be apportioned comparatively, without waiving any governmental immunity otherwise available to the authority. The provider and authority must advise the other in writing of any known claim arising out of the provider's activities in the public Row.

Limited Applicability

Subsections 1(d)(3) and (4): This subsection does not affect an authority's jurisdiction over activities of wireless providers in public easements, private easements, or privately owned property, nor prevent wireless structures and facilities being located on state, federal or interstate highway right-of-way pursuant to reasonable adopted policies and procedures.

Commentary: The use of the term “public easements”, which is undefined, is unclear as to its exact meaning, which is unfortunate and may cause confusion. The reason is that the term has a common meaning with that of public right-of-way. For instance, *Ballantine's Law Dictionary*, 3rd Edition, page 1021, defines the term public easement to mean “A public right of way”. Likewise, *Black's Law Dictionary*, 5th Edition, page 456, defines a public easement as “[O]ne the right to enjoyment of which is vested in the public generally... such as an easement of passage on the public streets and highways”. Obviously, that meaning would be in conflict with other provisions of H.B. 2131. Further confusion may also arise from the term “Public right-of-way”, which is defined by the bill to mean “[S]treets... dedicated or acquired as right-of-way...” That definition seems to acknowledge that right-of-way may be obtained by an authority in the form of “an easement”, in addition to that of fee simple absolute, further confusing the issue. In order to be consistent, the legislature therefore most likely intended the term “public easement” to mean an easement owned by the public, but used for purposes other than right-of-way.

Leasing of Public Lands, Buildings and Facilities

Subsections 1(e)(1-4): An authority may, but is not required, to enter into leases with an applicant for the applicant's use of public land, buildings and facilities. Leases for use of

publically owned lands must be at least 10 years in duration, unless otherwise agreed by both parties. The authority need not charge a fee for the placement of wireless facilities on public lands, but if they do, it must be at market rates, competitively neutral with regard to other users of publically owned lands and facilities, and not unreasonable or discriminatory.

If the market rate cannot be agreed upon, nor a process to determine same, then the market rate shall be determined by a panel of three appraisers, one appointed by each party, and a third selected by the two appointed appraisers. The market rate shall be set at the mean between the highest and lowest appraisals, unless the mean between high and low is greater or less than 10% of the appraisal of the third appraiser, in which case the third appraiser will determine the market rate. The appraisal process must conclude within 150 calendar days from the date the applicant first proposes a lease rate to the authority. Each party bears its own costs and shares the cost of the third appraiser.

Nothing in this subsection prevents a wireless provider from locating on real property or facilities owned by the secretary of transportation. Furthermore, the provisions and procedures of subsection 1(e) are not applicable to public rights-of-way governed by subsection 1(d).

Commentary: It is interesting to note the choice of wording utilized in this subsection. For example, Subsection 1(e)(1) states that an authority may lease to an applicant “public lands, buildings and facilities”. However, when it comes to entering into a lease of “publically owned lands”, the duration of the lease must be for 10 years. As such, did the legislature intend for this requirement to be limited to only publically owned lands, or does it also apply to buildings and facilities, although they are not mentioned? In another example, if an authority charges a fee for leasing “publically owned lands and facilities” the fee must be competitively neutral with that of those users. Does this requirement apply to “buildings” since that word was specifically omitted?

Rules of statutory construction will therefore need to be reviewed and applied in order to properly advise the client.

Uniform Prohibitions

Subsections 1(f)(1-18): To ensure uniformity across the state with respect to consideration of every application, an authority shall not:

1. require information about or evaluate an applicant's business decisions, with respect to the designed service, demand for service or quality of service. And while an authority may ask if a collocation analysis was conducted, the request is solely to confirm whether an analysis occurred.
2. require information concerning the specific need for the wireless support structure, including whether the structure adds additional coverage or capacity. Nor may an authority require propagation maps or telecommunication traffic studies.
3. evaluate an application based on the availability of other potential locations (collocation), rather than building a new structure or modifying an existing structure.
4. dictate the type of transmission equipment or technology to be used, such as requiring a DAS or small cell facility rather than a new wireless support structure.
5. require the removal of existing wireless structures as a condition of application approval, however, this does not preclude an authority from adopting rules requiring removal of abandoned wireless structures.
6. impose restrictions at or near civilian airports concerning height limitations in navigable airspace, proximity to airports, or marking and lighting on wireless support structures or base stations, that are greater or in conflict with restrictions imposed by the FAA, however, this

prohibition shall not impact any existing height restrictions of the authority for such structures at airports in effect October 1, 2016.

7. establish or enforce regulations or procedures for radio frequency signal strength or adequacy of service quality.

8. impose surety requirements to remove abandoned or unused facilities, unless the authority imposes similar requirements on other permits for other types of commercial development or land uses. The surety amount may not exceed the estimate of the direct cost of removal, must be competitively neutral, non-discriminatory, reasonable in amount and commensurate with the historical record for local abandoned structures.

Commentary: Although Subsection 1(f)(5) above refers to “abandoned” structures, Subsection 1(f)(8) seems to expand upon that by referring to “abandoned or unused” structures. In some situations, such as abandonment of a nonconforming use, there must be shown an intent to abandon. Union Quarries, Inc. v. Board of County Commissioners, 206 Kan. 268, Syl. No. 3 (1970). It is doubtful, however, that the criteria of failure to use a structure would also require proof of intent.

9. discriminate or create a preference on the basis of ownership when adopting rules for siting wireless facilities or for evaluating applications, or require the placement of wireless structures or facilities on authority owned or leased property. An authority may encourage location on authority property, such as by implementing an expedited approval process. Nothing in this subsection is to be construed to hinder or restrict the siting of public safety communication towers.

Commentary: Although an authority may not discriminate or create a preference, on the basis of ownership, for the siting of wireless facilities, it may nonetheless “encourage” providers

to locate their facilities on authority property, and may further adopt an expedited approval process for location on authority property, which while seemingly deferential in treatment, is not apparently considered to be either discriminatory or preferential.

10. impose any unreasonable requirements or obligations regarding the presentation, appearance or function of the wireless facility including, but not limited to, screening or landscaping of the facility. In developing such a requirement for facilities in the public right-of-way (Row), the authority shall consider input from property owners adjoining the affected public Row.

Commentary: An authority is not precluded from imposing requirements on the appearance of a wireless facility, however, the requirement must be reasonable. Under Kansas zoning law, courts have held that “aesthetics alone was a reasonable basis for the city’s action”. Zimmerman v. Board of Wabaunsee County Comm’rs, 289 Kan. 926, 952 (2009), citing Gump Rev. Trust v. City of Wichita, 35 Kan. App. 2d 501, 515-516 (2006) (city denial of communication tower 135 ft. in height held reasonable).

Subsection 1(f)(10) further provides that “In developing such a requirement... the authority shall consider input from property owners adjoining the affected public right-of-way”. If “developing such a requirement” means the adoption of legislative amendments to the authority’s zoning regulations, then public input can only be obtained from the general public during the hearing process prior to adoption of the zoning regulation amendments. If, however, it means the placement of conditions on the approval of an application for a specific location, in the form of either a quasi-judicial or administrative action, then public input can be obtained from the specific property owners near the proposed wireless facility. Although the legislature most likely had the latter in mind, it must be remembered that Kansas courts have previously

stated that although the concerns of the public should be considered by the authority, “Zoning is not to be based upon a plebiscite of the neighbors, and although their wishes are to be considered, the final ruling is to be governed by consideration of the benefit or harm involved to the community at large”. Taco Bell v. City of Mission, 234 Kan. 879, 891-892 (1984), citing Waterstradt v. Board of Commissioners, 203 Kan. 317, Syl. No. 3 (1969). “Thus, while residents neighboring the proposed ... site have protested its development, the benefit to the community as a whole must be considered”. Taco Bell, 234 Kan. at 892.

11. impose any requirements, among other things, that an applicant use facilities owned, provided or operated by an authority, in whole or in part, or by any entity which the authority has an economic or other interest.

12. impose environmental testing, sampling or monitoring requirements that exceed federal law.

13. impose any compliance measures for radio frequency emissions, or exposure from wireless facilities, that exceed the requirements of the FCC rules for radio frequency.

14. in conformance with 47 U.S.C. § 332(c)(7)(B)(iv), reject an application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions or exposure.

Commentary: 47 U.S.C. § 332(c)(7)(B)(iv) states that:

No State or local government or instrumentally thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions. (emphasis added).

The above underlined provision is consistent with Subsection 1(f)(13) supra, and would appear to support a decision of local government to deny an application if the wireless facility does not comply with FCC regulations concerning radio frequency emissions.

15. prohibit the use of emergency power systems that comply with federal and state environmental requirements, and do not violate local health and safety requirements, and local noise control ordinances, but no local regulations shall prevent the provision of emergency power during an actual emergency.

Commentary: Absent an “actual emergency”, which term is undefined, local health and safety requirements and local noise control requirements may regulate emergency power systems.

16. condition application approval upon a requirement that the applicant agree to allow any wireless facility provided or operated by an authority or any other entity, to be collocated with the applicant’s wireless facility.

Commentary: When this subsection is read in conjunction with Subsection 1(f)(1), local government may not require the applicant to collocate on the facility of another entity, nor can it require the applicant to agree to allow others to collocate on the applicant’s facility as a condition of application approval.

17. impose a greater setback or fall-zone requirement for a wireless support structure than for other types of commercial structure of a similar size.

Commentary: The above subsection would not appear to prohibit a requirement that a wireless support structure be breakaway (monopoles) or designed to collapse in sections (towers), however, the applicant may complain if other structures of a similar size, such as power poles, are likewise not required to also be of breakaway design.

18. approve an application for less than 10 years. Any renewals shall be negotiated in good faith. Construction of an approved structure or facility shall commence within one year of final approval, and be diligently pursued to completion.

Commentary: Although this subsection contains a completion deadline and diligence requirement, it does not expressly state that failure to comply with this provision will be deemed automatic termination and/or revocation of the application. An authority, therefore, should consider making this condition a stipulation to application approval, and including a similar requirement in its zoning or other applicable regulations.

Small Cell Network Consolidated Applications

Subsection 1(g): An applicant for a small cell network, of no greater than 25 individual small cell facilities of substantially similar design, within the jurisdiction of a single authority, shall be permitted upon applicant's request, to file a consolidated application and receive a single permit, instead of having to file separate applications for each facility. Separate applications may be required for facilities not of a substantially similar design. The authority shall render a decision no later than 60 days after submission of an application that satisfies the authority's requirements in a single administrative proceeding.

Commentary: Unfortunately, this subsection lacks the clarity, guidance and direction desired to implement its provisions. Therefore, one must analyze its provisions with those of other sections of the bill to see if the intent of the legislature can be discerned.

The bill states that the authority shall render its decision in a "single administrative proceeding". At first glance, this would appear to mean that the process for reviewing the application would be administrative, rather than quasi-judicial such as through a

zoning proceeding. See, Golden v. City of Overland Park, 224 Kan. 591, Syl. No. 2 (1978) (zoning is quasi-judicial in nature). But cf., Zimmerman v. Board of Wabaunsee County Commr's, 289 Kan. 926, 949 (2009) (zoning in Kansas cannot truly be labeled as purely quasi-judicial). See also, Id. at 947 (conditional use permit proceedings are also quasi-judicial in nature), citing McPherson Landfill, Inc. v. Shawnee County Commr's, 274 Kan. 303, 317 (2002). Processing the application administratively would seem to make sense, as it would eliminate the difficulty associated with fully processing a zoning application pursuant to the statutory requirements such as published and individual written notice to landowners within a designated distance of the subject property, and the requisite public meetings of the planning commission and governing body, all within a 60 day period of time. Furthermore, because the applicant can request that 25 or less facilities be processed in a single application, it avoids the myriad of unanswered questions that will arise of how to handle and process the submittal of protest petitions that are sure to be filed, such as whether each facility must be protested in order to change the votes needed to approve, or since all 25 facilities comprise one application, is only one protest petition necessary?

If chosen, the administrative process could be conducted in several different ways, such as entirely by county staff, or with a staff recommendation forwarded to the governing body for final determination. However, regardless of which administrative process is utilized, each authority will have to consider their comfort level of whether or not to provide notice and a hearing to potentially affected landowners, who pursuant to Subsection 1(f)(10), must be allowed input in developing requirements concerning the presentation, appearance or function of wireless facilities and equipment.

To further complicate this matter, Subsection 1(j) states that an authority may continue to exercise zoning, land use, planning and permitting authority with regard to, among other things, small cell facilities, except for small cell facilities located in an interior structure or upon the site of any campus, stadium or athletic facility. So despite the apparent “coded language” utilized in Subsection 1(g) that seems to infer that the proceedings are to be administrative in nature, rather than quasi-judicial, Subsection 1(j) of the statute nevertheless expressly provides that small cell facilities remain subject to the authority’s zoning regulatory control. A possible bridge to reconcile this apparent conflict, would be that the zoning regulations of an authority may provide that small cell facilities of 25 or less will be processed administratively, rather than under the normal zoning process.

Some jurisdictions may decide to process the small cell applications through their zoning procedure. With this approach, consideration should be given to requiring, as a condition of submitting a full and complete application, that certain requirements such as a list of all landowners to be given notice, are provided contemporaneously with the submittal of the application, to lessen the burden of the 60 day time limitation. Other requirements deemed necessary can also be made a condition contemporaneous with filing, so they are not submitted long after the application is filed. In addition, if the 25 or less facilities are comingled into one application, consideration should be given to the position that the denial of one facility constitutes a denial of the entire application, unless the applicant wants to omit that particular facility from the application prior to a final decision.

It also bears mention that this subsection omits, and does not address, many of procedural guidelines set forth in the following Subsection 1(h). For example, the present subsection does not expressly require the decision to be in writing, supported by substantial evidence contained

in a written record, and issued contemporaneously. Despite the omission, an authority should nonetheless give consideration as to whether following that same protocol is advisable and/or necessary. This subsection also does not provide for a tolling of the 60 day time period if the submitted application is incomplete (although the submitted application must satisfy the authority's requirements, which could mean requirements to be considered a full and complete application), nor does it state that the parties may agree to toll the deadline, although common sense would seem to allow the parties to agree. Furthermore, although this section does not expressly provide that a small cell application will be deemed approved upon the failure of an authority to approve an application within 60 days of submittal, an authority should nevertheless endeavor to make its final decision within the 60 day period to avoid the issue.

The Shot Clock

New Structures, Substantial Modifications and Certain Other Applications

Subsections 1(h)(1)(A-C): Within 150 calendar days of receiving an application for a new wireless support structure, and within 90 calendar days of receiving application for substantial modification to an existing structure or base station or any other application for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a), an authority shall:

- a. review the application for conformity with applicable local zoning regulations;
- b. make a final decision to either approve or deny the application; and
- c. advise the applicant, in writing, of the decision which must be supported by substantial evidence contained in a written record, and issued contemporaneously.

Denials must be supported by a rational basis, and be nondiscriminatory with respect to placement of facilities by other users.

Commentary: This subsection makes it clear that at least 3 types of applications are subject to review under an authority's zoning regulations. The 3 types are new wireless support structures, which include but are not limited to, monopoles and guyed or self-supporting towers; substantial modifications to an existing wireless support structure or base station; and any other application for transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a).

Fortunately, the terms wireless support structure, substantial modifications, base station and transmission equipment, are all defined in the definitions section of H.B. 2131, Furthermore, 47 U.S.C. § 1455(a) defines an eligible facilities request as follows:

For purposes of this subsection, the term "eligible facilities request", means any request for modification of an existing wireless tower or base station that involves:

- (a) collocation of new transmission equipment;
- (b) removal of transmission equipment; or
- (c) replacement of transmission equipment.

Therefore, the third type of application that is subject to an authority's zoning control pertains to those applications concerning the placement, installation or construction of transmission equipment other than the collocation of new transmission equipment, or the removal or replacement of transmission equipment on an existing wireless tower or base station.

Finally, the authority's decision must be in writing, supported by substantial evidence contained in a written record, and issued contemporaneously. These requirements may have intentionally or unintentionally altered established zoning law in Kansas. Previously, Kansas courts have suggested, but not required, that a zoning decision of an authority be in writing, summarizing the evidence before it and stating the factors which it considered in arriving at its determination. Golden v. City of Overland Park, 224 Kan. 591, 597 (1978). However, written orders from zoning bodies were not considered mandatory as long as the record was adequate for

a determination of reasonableness. Board of Johnson County Commr's v. City of Olathe, 263 Kan. 667, 677-678 (1998). Furthermore, Kansas courts previously upheld the ability of local government to tentatively approve or deny a zoning application subject to the submission, at a later date, of findings of facts and conclusions of law to support the decision. K-S Center Co. v. City of Kansas City, 238 Kan. 482, 495-496 (1986) (resolution adopting findings and conclusions made 6 weeks after preliminary approval of permit). The legislature may have abrogated these common law principles.

Tolling the Clock

Subsections (1)(h)(2)(A-B): For the 3 types of applications immediately discussed above, the time period for approval of the applications shall begin when the application is submitted, and may be tolled within the first 30 days after submission if the authority notifies the applicant the application is incomplete, identifies all missing information, and specifies the code provision, etc., that require the information to be submitted. The time period shall start again when the applicant provides the necessary supplemental information. Additionally, the time period may be tolled by the express agreement, in writing, of both the applicant and the authority.

Deemed Approved

Subsections 1(h)(3)(A-B): The 3 types of applications shall be deemed approved if an authority fails to act on an application for (i) a new wireless support structure within 150 calendar days, (ii) a substantial modification to an existing wireless support structure within 90 calendar days, or (iii) other applications for transmission equipment not constituting an eligible facilities request under 47 U.S.C. § 1455(a), within 90 calendar days.

Commentary: The process and procedure set forth in Subsections 1(h)(1)(2) and (3) appears to only pertain to the 3 types of applications discussed in those subsections. They do not appear to pertain to small cell networks of 25 or less small cell facilities, nor to applications for eligible facilities requests as defined by 47 U.S.C. §1455(a), which has its own review process and procedure set forth in 47 C.F.R. 1.40001 which must be adhered to.

To avoid a missed deadline, some commentators on the subject recommend that the application form require the applicant to declare which application they believe they are applying for. This will avoid surprises when the applicant notifies the authority that the 60 day period has expired, when the authority believed it had 150 days to act. For a good article pertaining to an act adopted in California which is different than but in many ways similar to the Kansas act, see May, Robert M. and Masry, Omar, *A Brave New World for Cell Antennas in California*, Medium, January 25, 2016; <https://medium.com/@omarmasry/a-brave-new-world-for-cell-antennas-in-california-39d864a876d4>; accessed August 15, 2016. The article contains numerous helpful suggestions on how to implement these type of laws and avoid problems. For instance, the article suggests that the authority adopt a blanket set of requirements and/or conditions that shall be held to apply to the application in the event the authority fails to act within the required time frame.

60 Day Time Period For Eligible Facilities Requests

Subsection 1(h)(4): An authority shall approve applications for eligible facilities requests, as defined by 47 U.S.C. § 1455(a), within 60 days according to the procedures established by federal law under 47 C.F.R.1.40001.

Commentary: This subsection incorporates by reference the 60 day review procedure set forth in 47 C.F.R.1.40001. A copy of that federal regulation is attached hereto as “Attachment 1”. In summary, that procedure provides that:

1. Upon application, an authority may require the applicant to provide documentation to the extent reasonably related to determine whether the applicant meets the eligibility requirements of this regulation.
2. An authority must approve the application within 60 days of submittal unless it is determined that the application is not covered by this regulation.
3. The 60 day period begins to run when the application is filed, and may be tolled by mutual agreement or if authority determines the application is incomplete. The time frame cannot be tolled by a moratorium on the review of applications.
4. To toll the time frame for incompleteness, the authority must provide written notice within 30 days of receipt of the application, and specify all missing documents or information.
5. The time frame begins again when the applicant makes a supplemental submission in response to the authority’s notice of incompleteness.
6. Following a supplemental submission, the authority will have 10 days to notify the applicant the supplemental submission did not provide information identified in the original notice. The time frame is tolled for second or subsequent notices of incompleteness. Second or subsequent notices may not specify missing documents or information not designated in the original notice.
7. If the authority fails to act within the time frame for review (plus additional time due to tolling), the request shall be deemed approved. The approval shall become effective when

the applicant notifies the authority, in writing, after expiration of the time frame has expired (plus tolling), that the application has been deemed granted.

Notice to Authority

Subsection 1(h)(5): An application shall be deemed approved once an applicant has provided to the authority that the applicable time periods in this section have lapsed.

Commentary: This seemingly innocuous provision does raise questions. For instance, because it refers to “time periods in this section”, which would be Section 1, was the intent to include the 60 day time period for small cell networks of 25 or less facilities? If so, it is odd that the subsection pertaining to small cell networks (Subsection 1(g)) is silent on the topic, while the subsection pertaining to 3 specific types of applications (Subsection 1(h)(3)) expressly addresses the matter, as does 47 C.F.R. 1.40001, for eligible facilities requests. Therefore, an authority should endeavor to make a decision regarding small cell networks of 25 or less facilities within the 60 day time period to avoid issues of whether or not the failure to do so results in automatic approval.

Judicial Review

Subsection 1(h)(6): Within 30 days of notice provided pursuant to subsection 1(h)(5), a party aggrieved by the final action of the authority, either by denial or inaction, may bring an action in court.

Commentary: Once again, a provision that should be subject to easy interpretation has instead been made difficult simply by the choice of formatting utilized. This provision appears in Subsection 1(h)(6), rather than as its own independent subsection, which causes unnecessary

confusion. Was the intent that the provision apply only to the 4 types of applications mentioned in Subsection 1(h) (although eligible facilities requests referred to in Subsection 1(h)(4) contains its own appeal procedure to a court for competent jurisdiction under 47 C.F.R. 1.40001), or does it also include small cell networks referred to in Subsection 1(g)? If you prefer the former, then no appeal procedure exists for denial of small cell networks. If you prefer the latter, then Subsection 1(h)(6) would be interpreted to also apply to small cell networks.

Moratorium

Subsection 1(i): An authority may not institute a moratorium on the filing, consideration or approval of applications, permitting or the construction of new wireless support structures, substantial modifications of wireless support structures or collocations.

Zoning Authority

Subsection 1(j): Subject to the provisions of this section and applicable federal law, an authority may continue to exercise zoning, land use, planning and permitting authority within the authority's territorial boundaries with regard to the siting of new or modified wireless support structures, wireless facilities, small cell facilities or utility poles, except that no authority shall have or exercise any zoning or siting jurisdiction, authority or control over the construction, installation or operation of any small cell facility or distributed antennae system located in an interior structure or upon the site of any campus, stadium or athletic facility.

Military

Subsection 1(k): Nothing in this section shall be construed to apply to military installations.

Effective Date

Subsection 1(l): The provisions of this section shall take effect on October 1, 2016.

Section 2

Commentary: H.B. 2131 also amended K.S.A. 17-1902. That statute is applicable only to cities in this state and not counties. Furthermore, the new definition of the term “Provider” makes it clear that the term does not include an “applicant” as that term is defined in Section 1 of the bill.

Sections 3-7

Commentary: H.B. 2131 also amended K.S.A. 66-2004; K.S.A. 2015 Supp. 66-2005; K.S.A. 2015 Supp. 66-2007; K.S.A. 2015 Supp. 66-2008; and K.S.A. 2015 Supp. 66-2017. Those amendments change, among other things, how a rural telephone company changes its local service rates; how the Kansas Unified Service Fund support for rate of return carriers is determined; and the regulation of rural telephone companies that use Voice over Internet Protocol (VoIP) or Internet Protocol enabled service (IP-enabled service). That topic is beyond the scope of this paper, however, for a more detailed discussion see the legislative summary of H.B. 2131 attached hereto as “Attachment 2”.

ATTACHMENT 1

Code of Federal Regulations Title 47. Telecommunication Chapter I. Federal Communications Commission (Refs & Annos) Subchapter A. General Part 1. Practice and Procedure (Refs & Annos) Subpart CC. State and Local Review of Applications for Wireless Service Facility Modification (Refs & Annos)

47 C.F.R. § 1.40001

§ 1.40001 Wireless Facility Modifications.

Effective: May 18, 2015
Currentness

(a) Purpose. These rules implement section 6409 of the Spectrum Act (codified at 47 U.S.C. 1455), which requires a State or local government to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station.

(b) Definitions. Terms used in this section have the following meanings.

(1) Base station. A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

(2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(3) Eligible facilities request. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

(4) Eligible support structure. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

(5) Existing. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

(6) Site. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

(7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves

adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

(8) Transmission equipment. Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(9) Tower. Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(c) Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3) Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

(iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(5) Remedies. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.

Credits

[80 FR 28203, May 18, 2015]

SOURCE: 56 FR 57598, Nov. 13, 1991; 57 FR 187, Jan. 3, 1992; 58 FR 27473, May 10, 1993; 59 FR 22985, May 4, 1994; 61 FR 45618, Aug. 29, 1996; 61 FR 46561, Sept. 4, 1996; 61 FR 52899, Oct. 9, 1996; 62 FR 37422, July 11, 1997; 63 FR 67429, Dec. 7, 1998; 63 FR 71036, Dec. 23, 1998; 64 FR 63251, Nov. 19, 1999; 65 FR 10720, Feb. 29, 2000; 65 FR 19684, April 12, 2000; 65 FR 31281, May 17, 2000; 69 FR 77938, Dec. 29, 2004; 71 FR 26251, May 4, 2006; 74 FR 39227, Aug. 6, 2009; 75 FR 9797, March 4, 2010; 76 FR 43203, July 20, 2011; 77 FR 71137, Nov. 29, 2012; 78 FR 10100, Feb. 13, 2013; 78 FR 15622, March 12, 2013; 78 FR 41321, July 10, 2013; 78 FR 50254, Aug. 16, 2013; 79 FR 48528, Aug. 15, 2014; 80 FR 1268, Jan. 8, 2015; 80 FR 1269, Jan. 8, 2015; 81 FR 40821, June 23, 2016, unless otherwise noted.

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

Notes of Decisions (1)

Current through July 21, 2016; 81 FR 47312.

End of Document

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ATTACHMENT 2

Siting of Wireless Telecommunications Infrastructure; Permit Application Process Between Wireless Service Providers and Municipalities; Kansas Universal Service Fund; Senate Sub. for HB 2131

Senate Sub. for HB 2131 creates law concerning the siting of wireless telecommunications infrastructure and the permit application process between wireless service providers and municipalities. In addition, the bill amends law regarding rural telephone companies and the Kansas Universal Service Fund (KUSF). The bill makes several changes to how a rural telephone company changes its local service rates, how KUSF support for rate of return carriers is determined, and the regulation of rural telephone companies that use VoIP or IP-enabled services.

Siting of Wireless Telecommunications Infrastructure

The bill establishes the Kansas Legislature finds and declares that wireless facilities are critical for Kansas citizens to have access to broadband and other advanced technology and information, along with the facilities being critical for the state's economy, and that the facilities are matters of statewide concern and interest.

Definitions

The following terms are among the 24 terms defined in the bill.

"Authority" means any governing body, board, agency, office, or commission of a city, county, or the State that is authorized by law to make legislative, quasi-judicial, or administrative decisions concerning an application. "Authority" does not include any school district, as defined in law, or any court having jurisdiction over land use, planning, zoning, or other decisions made by an authority.

"Public right-of-way" means only the area of real property in which the authority has a dedicated or acquired right-of-way interest in the real property. It includes the area on, below, or above present and future streets, alleys, avenues, roads, highways, parkways, or boulevards dedicated or acquired as right-of-way. "Public right-of-way" does not include any state, federal, or interstate highway right-of-way, which generally includes the area that runs contiguous to, parallel with, and is generally equidistant from the center of that portion of the highway improved, designed, or ordinarily used for public travel.

"Small cell facility" means a wireless facility that meets both of the following qualifications:

- Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements can fit within an imaginary enclosure of no more than six cubic feet; and
- Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the Federal Communications

Commission (FCC) has excluded from review pursuant to federal law. Associated equipment can be located outside the primary equipment and, if so located, is not to be included in the calculation of equipment volume. (Under the bill, associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.)

“Small cell network” means a collection of interrelated small cell facilities designed to deliver wireless service.

“Wireless facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to:

- Equipment associated with wireless services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and
- Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

Fees

The bill establishes the application process for the siting of a wireless facility, including:

- The types of fees that an authority can or cannot charge or assess;
- The expenses that an authority can incur during an application review; and
- The cap on total charges and fees that can be assessed by the authority.

In addition, the authority will not be allowed to charge a fee to locate a wireless facility or support structure on any public right-of-way controlled by the authority, if the authority does not charge other providers for the same use. If the authority does charge other providers, then the fee charged to locate a wireless facility will be required to be competitively neutral and not unreasonable or discriminatory.

Construction, Maintenance, and Operation of Wireless Services within the Public Right-of-way

The wireless service provider will have the right to construct, maintain, and operate wireless services along, across, upon, under, or above the public right-of-way. The bill further specifies this provision should not be interpreted to grant any right to construct, maintain, or operate wireless services on property owned by the authority outside the public right-of-way.

The right to construct, maintain, and operate wireless services within the public right-of-way will always be subject and subordinate to the reasonable public health, safety, and welfare requirements and regulations of the authority, about which the authority may exercise its Home Rule powers, so long as doing so is competitively neutral and not unreasonable. Additionally, the authority may prohibit use or occupation of a part of the public right-of-way due to a reasonable public interest, so long as the reason is competitively neutral and not unreasonable or discriminatory.

The authority will be permitted to require a wireless services provider to repair damage to a public right-of-way that is caused by the activities of that provider or provider's agent while occupying, installing, repairing, or maintaining facilities in the public right-of-way. The authority also will have the ability to request a wireless services provider to relocate or adjust its facilities within the public right-of-way at no cost to the authority, as long as the request similarly binds all users of the right-of-way. The bill will require the authority to provide advance notice and for the relocation be directly related to public health, safety, or welfare.

The authority will have a cause of action against a provider for violation of this law that causes damages and can recover damages, including reasonable attorney fees, if the provider is found liable by a court of competent jurisdiction.

Wireless services and infrastructure providers will be required to indemnify and hold the authority harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, and fees to the extent it is found by a court of competent jurisdiction to be caused by the negligence of the wireless services or infrastructure provider.

An authority will have the ability to enter into a lease with an applicant for the use of public lands, buildings, and facilities, with the offered leases being at least ten years in duration, unless otherwise agreed to by both the applicant and the authority, and at market rates. Charges for placement of wireless facilities on public lands, if the authority chooses to charge, are required to be competitively neutral and not unreasonable, discriminatory, or in violation of existing federal or state law.

Limits on the Authority

To ensure uniformity across the state with respect to consideration of every application, the bill establishes 18 restrictions on the authority regarding what information can or cannot be required during the application process. The bill specifies the new law does not apply to military installations and would clarify the authority cannot impose restrictions at or near civilian airports. The bill also requires the authority to consider input from property owners adjoining the affected public right-of-way.

Small Cell Networks

Applicants for small cell networks involving no more than 25 individual small cell facilities of substantially similar design will be permitted to file a consolidated application and receive a single permit for the installation, construction, maintenance, and repair of a small cell network, instead of filing separate applications for each individual facility. The authority will be required to

render a decision no later than 60 days after the submission of an application regarding small cell facilities.

Timing for Review

The authority will be required to review an application, make a final decision, and advise the applicant of the decision in writing within 150 calendar days of receiving an application for a new wireless support structure or within 90 calendar days of receiving an application for a substantial modification to an existing wireless support structure, or any other application that will not constitute an eligible facilities request as defined in federal law.

The bill also provides for a time period when applications are found to be incomplete and will require approval of an application if the authority fails to act on an application within the required time frame. The authority cannot institute any moratorium on applications.

Interior Structures

The bill allows the authority to continue to exercise zoning, land use, planning, and permitting authority within the authority's territorial boundaries, with regard to the siting of new or the modification of existing wireless structures. The bill restricts the authority's ability to exercise any zoning or siting jurisdiction, authority, and control over the construction, installation, or operation of any small cell facility or distributed antennae system located in an interior structure or upon the site of any campus, stadium, or athletic facility.

Definition of "Provider" Clarified

The bill specifies the definition of "provider" in a continuing statute does not include an applicant as defined above.

Effective Date

The provisions regarding siting of wireless telecommunications infrastructure will take effect on and after October 1, 2016, and upon publication in the statute book.

Kansas Universal Service Fund

Limitation on Use of KUSF

The bill restricts a local exchange carrier (LEC) electing to operate under traditional rate of return regulation, or an entity in which a carrier directly or indirectly owns an equity interest of 10.0 percent or more, from using KUSF funding. An exception exists for Kansas Lifeline Service Program purposes, providing telecommunication services in an area outside the carrier's authorized service area.

Price Regulation of Telecommunications Services

Rates for the initial residential local exchange access line and up to four business local exchange access lines at one location will remain subject to price cap regulation and all other rates, except rates for switched-access services, will be deemed price-deregulated.

In addition, the LEC will be authorized to adjust rates, without the Kansas Corporation Commission's (KCC) approval, by not more than the greater of the percentage increase in the consumer price index for all urban consumers or the amount necessary to maintain the local rate floor as determined by the FCC in any one-year period, and the rates cannot be adjusted below the price floor established in continuing law.

Reporting Requirements

The bill removes the requirement for the KCC to determine the weighted, statewide average rate of non-wireless basic local telecommunications service and telecommunications services in exchanges that have been price-deregulated and report that information annually to the Governor, the Legislature, and each member of the standing committees of the House and Senate that are assigned telecommunications issues. The bill also eliminates the KCC's annual reporting requirement on the current rates for services provided by all telecommunications carriers, services in price-deregulated exchanges, service offerings, and number of competitors in price-deregulated exchanges.

Individual Customer Pricing

The bill allows a LEC to offer individual customer pricing without prior approval by the KCC. In response to a complaint filed with the KCC that an individual customer pricing agreement is priced below the price floor set forth in continuing law, the KCC will be required to issue an order within 60 days after the filing, unless the complainant agrees to an extension.

Application by Rural Telephone Companies; FUSF Support

The KCC will be required to approve an application within 45 days by a rural telephone company to increase the company's local service rates in a necessary amount for the company to maintain eligibility for full Federal Universal Service Fund (FUSF) support. If the KCC does not approve the application within 45 days, the application will be deemed approved.

KUSF Contributions and Support; Regulation

The bill changes the required contributions to the KUSF to be based upon the provider's intrastate telecommunications services net retail revenues on an equitable and non-discriminatory basis. (Prior law required KUSF contributions to be on an equitable and non-discriminatory basis.) In addition, the KCC will be restricted from requiring any provider to contribute to the KUSF under a different contribution methodology than the provider uses for purposes of the FUSF, including for bundled offerings.

Additionally, for each LEC electing to operate under traditional rate of return regulation, all KUSF support will ensure the reasonable opportunity for recovery of the carrier's intrastate embedded costs, revenue requirements, investments, and expenses, subject to the annual cap of \$30.0 million.

No KUSF support received by a LEC electing to operate under traditional rate of return regulation will be allowed to be used to offset any reduction of FUSF support for recovery of the carrier's interstate costs and investments.

In any year the total KUSF support for carriers may exceed the annual cap of \$30.0 million, each carrier's KUSF support will be proportionately based on the amount of support each carrier would have received, absent the cap.

The bill also specifies that law regarding regulation of VoIP services, IP-enabled services, or any combination thereof cannot be construed to modify the regulation of any rural telephone company.

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS AMENDING DOUGLAS COUNTY CODE
SECTIONS 9-107 THRU 9-112

WHEREAS, Chapter 9 of the Douglas County Code deals with Public Works; and

WHEREAS, Sections 9-107 thru 9-112 of Chapter 9 of the Douglas County Code deal with the placement of public utilities in the right-of-way; and

WHEREAS, it has been determined by the Board that there is a need to amend Sections 9-107 thru 9-112 of the Douglas County Code;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS AS FOLLOWS:

SECTION 1. Adoption of Regulations on Construction Work in the Right-of-Way. The following is adopted as part of Chapter 9 (Public Works), Article 1 (General Provisions) of the Douglas County Code:

CHAPTER 9. PUBLIC WORKS
ARTICLE 1. GENERAL PROVISIONS

9-107 CONSTRUCTION WORK WITHIN THE PUBLIC RIGHT-OF-WAY.

9-107-1 DEFINITIONS.

- a. “Construction work” as used in this article means any of the following activities:
 - (1) Excavation, fill, grading, paving or other modification of the ground surface;
 - (2) Construction of any post, pole, sign, wall, fence, gate, structure, enclosure or other fixed object;
 - (3) Construction of any footing, foundation, vault, manhole or other buried structure;
 - (4) Installation of any pipe, pipeline, conduit, cable, wire, antenna, equipment or related fixtures; or
 - (5) Planting of trees or other vegetation that would create a physical or visual barrier; or
 - (6) Removal of trees or tree limbs or other vegetation by physical or chemical means to accommodate public utilities.

- b. “Person” means any individual, association, firm, partnership, corporation, public utility or private entity.
- c. “Public right-of-way” means the area of real property in which the County has a dedicated or acquired right-of-way interest for the purpose of constructing and maintaining travel lanes, roadside ditches, culverts, bridges, signage and other features of a public road.
- d. “Public utility” means those utilities identified in K.S.A. 66-104, and amendments thereto.
- e. “Public utility facility” or “facility” means a pipe, pipeline, conduit, cable, wire, vault, manhole, enclosure, structure, post, pole, sign, marker, antenna, fixture, equipment or any other object installed and maintained by a public utility.

9-107-2 WRITTEN PERMISSION REQUIRED.

- a. It shall be unlawful for any person to do any construction work within, above or below the public right-of-way of a road or bridge maintained by the county, without first obtaining written permission from the director of public works.
- b. It shall be unlawful for any person to do any construction work within, above or below the public right-of-way of a road maintained by a township, without first obtaining written permission from the director of public works or township trustee.
- c. The owner of frontage along a public right-of-way may plant grass seed, mow, trim, and apply appropriate weed control practices as recommended by the Noxious Weed Director or Kansas Department of Agriculture within that public right-of-way without obtaining the written permission in (a) or (b).
- d. The owner of an existing public utility facility within the public right-of-way may perform maintenance work on that facility without obtaining the written permission in (a) or (b) provided that the maintenance work does not include construction work as defined in 9-107-1.
- e. The director of public works may develop minimum standards for allowable construction within the public right-of-way. The director of public works and the township trustees shall apply those minimum standards when reviewing work within the public right-of-way, to ensure the continued integrity and safety of roads, culverts and bridges within the county. The director of public works or township trustee may require

more stringent standards when, in their opinion, such more stringent standards are necessary to ensure the continued integrity and safety of roads, culverts and bridges within the county.

9-107-3 ENTRANCE PERMITS. When a property owner proposes to construct or improve an entrance within or connecting to the public right-of-way, the approval required in 9-107-2 shall be in the form of an entrance permit. The director of public works shall develop standards and forms as necessary for the issuance of entrance permits. The applicant shall pay a \$75 permit application fee with each new application to construct or improve an entrance.

9-107-4 UTILITY PERMITS. When a public utility or its contractor proposes to construct, install, improve or modify facilities, or remove trees or limbs within, above or below the public right-of-way, the approval required in 9-107-2 shall be in the form of a utility permit. The director of public works shall develop standards and forms as necessary for the issuance of utility permits. A utility permit shall only be issued to a public utility if the applicant has the legal authority to occupy and use the public right-of-way for the purposes identified in the application for the permit. The public utility will reimburse Douglas County for fees for any consulting services needed in reviewing and approving the application or inspecting the installation, as determined necessary by the director of public works.

9-107-5 INSURANCE REQUIRED. Any person occupying the public right-of-way for the purpose of doing construction work or for the purpose of maintaining an existing public utility facility shall do so only after obtaining the following minimum insurance coverage to be in effect for the duration of the work:

- a. Commercial general liability insurance for a combined single limit of a minimum amount of \$500,000 for bodily injury and property damage;
- b. Automobile liability insurance for a combined single limit of a minimum amount of \$500,000 for bodily injury and property damage that covers owned, hired, and non-owned vehicles; and
- c. Obtain insurance only from insurers authorized to transact insurance business in Kansas as an authorized insurer.
- d. For utility attachments to bridges or other structures, the minimum insurance coverage shall equal the replacement value of the bridge or structure, as determined by the director of public works.

9-107-6 TRAFFIC CONTROL REQUIRED. Any person occupying the public right-of-way for the purpose of doing construction work or for the purpose of maintaining an existing public or private utility facility shall do so only after providing, erecting and maintaining all traffic control devices necessary to protect the public and workers. All traffic control devices must conform to the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) in terms of quality,

quantity and placement. Construction work within the public right-of-way is prohibited unless and until the required traffic control is in place.

9-107-7 PERMIT REVOCATION. The director of public works or township trustee may revoke the permit and remove any work performed for failure to complete a project as described in the Permit or failure to comply with established policy. The Utility Company or right-of-way occupant shall reimburse the director of public works or township trustee, as appropriate, for any cost incurred by the county and/or township to restore the right-of-way. The director of public works or township trustee will not authorize any other permits for the Utility Company or right-of-way occupant until they have either reimbursed the county and/or township or restored the right-of-way.

9-107-8 PENALTY. Any person that is determined by the district court to have failed to comply with the provisions of this article shall be subject to the injunction provisions of K.S.A. 19-101d, and amendments thereto. Any person that is determined by the district court to have committed a second violation of this article within 12 months of a previous violation shall be subject to the maximum penalties prescribed for conviction of a Class C misdemeanor.

9-108 POLICY ON PLACEMENT OF PUBLIC UTILITIES WITHIN PUBLIC RIGHT-OF-WAY.

9-108-1 REMOVAL OR RELOCATION. Any utility permit issued pursuant to this article shall be conditioned upon the agreement of the applicant to move the permitted facility at no expense to Douglas County or any township thereof in the event of a road improvement in the area within the right-of-way where the applicant's facility is located. Such agreement by the applicant shall be without reservation. The applicant shall agree to move the facility within 90 days after notification by the county or township, or four weeks prior to construction project bid letting, whichever is later.

9-108-2 NOTICE. The public utility or its subcontractor(s) shall notify the director of public works and/or township trustee when permitted work commences and when the work is completed.

9-108-2 LIABILITY.

- a. The public utility assumes all risk and liability for accidents and damages that may occur to persons or property from work performed under a utility permit.
- b. Douglas County shall not be liable for damage to any utility not installed in the location authorized by any permit or agreement issued pursuant to this policy.

- 9-108-3 UTILITY CORRIDOR.** Public utility facilities paralleling the road shall be located as close to the right-of-way line as possible. Underground facilities should be located within ten feet of the right-of-way line. Overhead facilities should be located within three feet of the right-of-way line.
- 9-108-4 CLEAR ZONE LIMITATIONS.** Above ground public utility facilities shall not be located on the ground within the roadside clear zone available for errant vehicles, unless otherwise approved by the director of public works. The appropriate clear zone is site specific based on speed, traffic count, and cross section at the location. The director of public works shall determine appropriate clear zone dimension standards and/or appropriate clear zone dimensions at a particular location.
- 9-108-5 VERTICAL CLEARANCE.** The depth of cover over buried public utility facilities and the vertical clearance under overhead public utility facilities shall comply with standards determined by the director of public works.
- 9-108-6 MAXIMUM HEIGHT.** The maximum height of any public utility facility shall be 65 feet.
- 9-108-7 MAXIMUM WIDTH.**
- a. Measured perpendicular to the road, the combined width of all of the underground facilities owned by one public utility shall not exceed five feet, except where necessary to cross the road. Road crossings shall be aligned as close to perpendicular as possible.
 - b. Measured parallel to the road and at the ground surface, the combined width of all of the above ground facilities owned by one public utility shall not exceed five feet within any 50 foot length of road.
 - c. Measured perpendicular to the road and at the ground surface, the maximum width of any above ground facility shall not exceed three feet.
- 9-108-8 COMPLIANCE.** Any utility permit issued pursuant to this article shall be conditioned upon the agreement of the applicant to remove or relocate the permitted facility at no expense to Douglas County or any township thereof in the event the facility does not comply with the size or location requirements of the approved permit.
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9-112 LEFT INTENTIONALLY BLANK

SECTION 2. Repeal of Prior Provisions. CHAPTER 9, ARTICLE 1. GENERAL PROVISIONS, Sections 9-107 thru 9-112, as existing in the County Code before adoption of this Resolution, are hereby repealed. These sections are renumbered and amended as set forth above.

SECTION 3. Effective Date. This is a Resolution and shall take effect and be in force from and after its publication once in the official county newspaper.

ADOPTED this _____ day of _____, 2016.

BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS

James E. Flory, Chair

ATTEST:

Mike Gaughan , Vice-Chair

Jameson D. Shew, County Clerk

Nancy Thellman , Member