

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, DECEMBER 5, 2018

4:00 p.m.

-Presentation to Lucas Neece

-Presentation from National Alliance for Mental Illness to recognize County Commission and County Administrator (Bill Wood)

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Consider approval of 2019 Grant Materials for the Natural & Cultural Grant Program (Jan Shupert-Arick);
- (c) Approval of the Memo to Use Unspent HCC Funds 2011-2014 for Douglas County Archaeological Study (Jan Shupert-Arick);
- (d) Consider approval of Cereal Malt Beverage License for Flamingo Enterprises/The Bird of Lawrence (Clerk's Office);
- (e) Consider approval of Cereal Malt Beverage license for Clinton Submarina (Clerk's Office);
- (f) Consider approval of Cereal Malt Beverage license for Clinton Marina (Clerk's Office); and
- (g) Consider approval of Class "B" Club License for Little Reno, Inc. DBA Paradise Saloon (Clerk's Office)

REGULAR AGENDA

- (2) Consider an agreement with Forensic Medical Holdings of Kansas, LLC for Coroner Services and Consider appointment Dr. Atlat Hossain M.D. as District Coroner for the Seventh Judicial District, Douglas County, Kansas and approve an agreement for services (Sarah Plinsky)
- (3) Approve Memorandum of Understanding and Business Associate Agreement with Lawrence Douglas County Fire and Medical, and Douglas County, Kansas for My Resource Connection (Jill Jolicoeur)
- (4) Consider approval of Westar Energy Direct Renewable Participation Service Agreement (Jasmin Moore);
- (5) Presentation on Kansas Leadership Center- Leadership Transformation Grant (Jasmin Moore) – No backup
- (6) Consider approval of 2019 Douglas County Legislative Platform (Weinaug);
- (7) Consider approval of a Temporary Business Permit for brush burning for RD Johnson/Hamm at 1600 N 1250 Road (Tonya Voigt);
- (8) **CUP-18-00432:** Consider a Conditional Use Permit for *Top Soil Removal* and *Landfill* (clean rubble) on approximately 44.88 acres located at the NE Corner of E 1600 Rd & N 1250 Rd. Submitted by RD Johnson Excavating Company LLC, property owner of record. Mary Miller is the Planner.
- (9) (a) Consider approval of Accounts Payable (if necessary)
- (b) Appointments
- (c) Board of Zoning Appeals (1) positions 10/17
- (d) Building Code of Appeals Board (2) positions 12/16
- (e) Community Corrections Advisory Board (1) position open (edu); (1) 08/31/18
- (f) Criminal Justice Coordinating Council (2) positions
- (g) Douglas County Emergency Management Board
- (h) Fire District No. 2 (2) positions
- (i) JAAA Advisory Council (2) position
- (j) JAAA Board of Directors (1) position
- (k) Joint Economic Development Council (2) positions

- Lawrence-Douglas County Advocacy Council on Aging (2) open positions
- MPO Bicycle Advisory Committee (1) position
- Mental Health Board (1) position 04/18
- Property Crimes Compensation Board (1) position
- Senior Resource Center (1) position 12/31/18
- (c) Public Comment
- (d) Miscellaneous

(10) Adjourn

WEDNESDAY, DECEMBER 12, 2018

WEDNESDAY, DECEMBER 19, 2018

Consent:

-4:00 p.m. - Petition to vacate utility easement for Kanwaka Township (Kevin Sontag)

WEDNESDAY, DECEMBER 26, 2018

Note: The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and/or 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.



DOUGLAS COUNTY COMMISSIONERS

1100 Massachusetts Street
Lawrence, KS 66044-3064
(785) 832-5268 Fax (785) 832-5148
www.douglas-county.com

MEMO TO: The Board of County Commissioners
Craig Weinaug, County Administrator

FROM: Jan Shupert-Arick, Program Coordinator, Heritage
Conservation Council

SUBJECT: **Approval of 2019 Heritage Conservation Council's Natural
& Cultural Heritage Grant Program Materials**

DATE: November 29, 2018

The 2019 Douglas County Natural & Cultural Heritage Grant Program materials are attached for your review. The materials are basically the same as the 2018 documents with the following exceptions:

- 1) The grant funding pool is reduced to \$135,000 due to the budget cuts to the Heritage Conservation Council.
- 2) Grant materials will be released the first week of January. Grant applications are due March 7, 2019.



Douglas County Natural & Cultural Heritage Grant Program

2019 Grant Application Guidelines

I. PROGRAM OVERVIEW

The Douglas County Commission has authorized grants funds of approximately **\$135,000** for the 2019 Douglas County budget to assist with the development and creation of natural and cultural heritage conservation projects. This is part of an ongoing effort to secure the benefits of our heritage for present and future generations.

In 2011, the Commission adopted the recommendations of the *Natural & Cultural Heritage Task Force Final Report* that a majority of grant amounts, funded by tax dollars should be used for one substantial project each year. These major projects over time would be a visible testament to the ongoing value of the County's significant conservation accomplishments. The remainder of the funds would be directed to target projects that meet smaller and equally important projects of local organizations and qualified individuals working to conserve our heritage.

Major Grants - \$40,000-\$74,000

A major grant project may receive up to 55% of the total allocated funds. A major grant proposal is defined as a proposal requesting at least \$40,000 and no more than \$74,000. Grant projects falling in this category should be large enough to have a major impact on the conservation of our natural and cultural resources. These grants are competitive and not every proposal will be funded.

Target Grants – Up to \$39,999

A series of target grant projects may receive up to 30% of allocated funds. Target grant proposals are equally important for conserving Douglas County's natural and cultural heritage and applicants may request at most \$39,999. These grants are competitive and not every proposal will be funded.

Grant Period

Fiscal Year 2019 grant project are expected to be completed within a 24-month time period from the project start date. The start date cannot begin until after the grant awards are announced.

Reimbursable Grant Program

Except for grants in the amount of \$5,000 or less, the Natural & Cultural Heritage Grant Program should be treated as a reimbursable grant. The grant recipient shall pay, in full, all the costs of the project as they become due and payable. Progress payments or monthly billings for a percentage of the completed project are not reimbursable under this program. This provision should be taken into consideration when calculating the cash flow for the project and itemizing the project budget. (All recipients receiving more than \$5,000 will receive a distribution of 30% of their grant award at the beginning of the project. Grant recipients under \$5,000 will receive the full amount of their award at the beginning of their projects.

For projects on properties or structures the applicant must hold title to the property or demonstrate full consent of the property owner.

Individuals or organizations with an open or completed Natural & Cultural Heritage Grant award from 2011-2018 may apply for 2019 grant funds.

Applicants may apply for multiple grants to fund separate projects.

GRANT APPLICATION SCHEDULE

January 4, 2019 Grant guidelines and application materials to be released.

Before February 26, 2019 Applicants are required to meet with the HCC Program Coordinator.

March 7, 2019 at 5 p.m. Application Deadline. (Delivered in person, by USPS, UPS, or other carrier.)

AFTER THE GRANT APPLICATION DEADLINE:

1. Grant applicants are asked to make presentations before the Heritage Conservation Council on one of the following dates:

Thursday, March 21, 2019 at 7 p.m. at Douglas County Courthouse in the Commission Meeting Room or on Thursday, March 28, 2019 at 7 p.m. at Douglas County Courthouse in the Commission Meeting Room.

2. The Douglas County Heritage Conservation Council will hold open sessions at the Douglas County Courthouse in the Commission Meeting Room to review grants at 7 p.m. on April 4, 2019 and April 11, 2019 (if needed).

3. The Heritage Conservation Council plans to send grant recommendations to the Douglas County Commission on May 15th at 4 p.m. (This date is subject to change.)

**OPTIONAL GRANT INFORMATION SESSIONS WILL BE HELD FOR POTENTIAL APPLICANTS
ON:**

**Friday, January 4, 2019 at 4:30 p.m. – Lawrence Public Library, Meeting Room “C”
lower level**

**Tuesday, January 22, 2019 at 10:30 a.m. – Lawrence Public Library, Meeting Room “B”
lower level**

NO RESERVATIONS REQUIRED. SEATING LIMITED TO 30 PERSONS.

II. ELIGIBILITY - Who May Apply?

Non-profit organizations, universities, K-12 schools, libraries, for profit businesses, or any unit of local government within Douglas County, Kansas.

Individuals, families, businesses, or out-of-county organizations, or units of government outside of Douglas County must have a Douglas county partner (as listed above) to apply.

Form 990: All 501(c)(3) non-profit applicants must be in current good standing with the IRS regarding their Form 990 filing requirements. A copy of the organization's most recent Form 990 must be submitted as part of the grant application.

For projects on properties or structures the applicant must hold title to the property or demonstrate full consent of the property owner.

Individuals or organizations with an open or completed Douglas County Natural and Cultural Heritage grant from 2011 through 2018 may apply for 2019 grant funds.

Applicants may apply for multiple grants to support multiple projects.

Project Geographic Location

All grant projects must occur in Douglas County, Kansas.

Project Categories

To be eligible for funding, projects must fall into at least one of the following categories:

1. Historic Structures
2. Prairie; woodlands, waterways; habitat restoration/preservation
3. Agriculture (working farms, heritage farms; high quality agricultural soils)
4. Freedom's Frontier National Heritage Area themes: Civil War & pre-Civil War heritage; Settlement stories; Enduring struggle for freedom
5. Pre-settlement history

III. APPLICATION PROCEDURE

Grant application forms are available at the Douglas County Heritage Office located on the third floor (loft area) of the Douglas County Courthouse, calling 785-330-2878 or send an email to Jan Shupert-Arick at jshupertarick@douglascountyks.org Grant materials will be posted on the Douglas County website by January 4, 2019.

Applicants must complete all questions contained in the grant application and submit **one original signed application and budget sheet, one set of original support materials (if applicable), seven additional copies of all materials, and one USB flash drive or CD containing the full application, budget and support materials** to:

Douglas County Heritage Conservation Council, Douglas County Courthouse, Administrative Services 3rd Floor Loft Area, 1100 Massachusetts Street, Lawrence, KS 66044. The Courthouse is open Monday-Friday (except for holidays) from 8 a.m. to 5 p.m.

Applicants are encouraged to submit thorough and concise grant applications with detailed budgets.

Grant applications are subject to the Kansas Open Records Act (KORA). Please see the Douglas County website for the KORA policy and procedures at: <http://douglascountyks.org>

IV. APPLICATION EVALUATION & SELECTION

Applications will be reviewed for completeness by the HCC Program Coordinator. After the application deadline, the Program Coordinator will distribute application materials to each of the HCC members for evaluation using the grant evaluation criteria (see below).

Grant applicants submitting a Major Grant application will be required to make a presentation regarding their proposal to the HCC. Applicants submitting a Target Grant application will also be given the opportunity to present their projects and answer questions.

The HCC will forward its grant award recommendations to the Board of County Commissioners. The Board of County Commissioners will make all final funding decisions.

Competitive Evaluation Criteria

The Natural & Cultural Heritage Task Force Final Report concluded that grant applications should be evaluated according to the impact the proposed project would have on conserving our county's heritage. Therefore, as outlined in the Task Force Final Report and modified by the Board of County Commissioners on October 15, 2014, grants are evaluated by the Heritage Conservation Council based on the following criteria:

Highest Criteria (more heavily weighted in evaluation)

1. **Conservation and Preservation of Natural and Cultural Resources:** The project provides substantial benefit to the conservation and preservation of natural and cultural resources.
2. **Matching Resources:** Refers to the presence and extent of additional resources dedicated to the project activities (i.e. in-kind contributions, additional grant funding, cash on hand, loans, project partnerships or volunteer labor).
3. **Sustainability:** Refers to the long-term maintenance of a project. (i.e. what steps will be taken in the future to ensure the preservation of the project?)

ii) Remaining Criteria (all of equal importance)

4. **Overall Quality of Application:** Takes into consideration the grant application's completeness, clarity, thoroughness as well as the overall thoughtfulness of the grant project (i.e. is the budget thorough and reflective of the project activities? Did the applicant fully answer each application question?)
5. **Urgency:** Refers to both the nature and extent of preservation threat.
6. **Community Impact:** Refers to how the project contributes to maintaining or enhancing Douglas County's heritage for public benefit. This may include public educational benefit and/or economic

impact, including an emphasis on proposed projects using Douglas County procured materials, supplies, and labor whenever feasible.

7. **Connectivity:** Refers to how strongly the project connects to physical sites and interpretive stories, as well as demonstrating a collaborative effort between agencies or organizations.
8. **Educational/Interpretative Value:** Refers to opportunities for the public to acquire educational benefit (i.e. is there evidence of educational programs, educational partnerships, exhibits and/or publications?).
9. **Public Access:** Refers to whether the project includes opportunity for the public to experience or have contact with the project, including direct physical (on-site) access or virtual access (films, books or digital media). If no public access will be allowed, what is the justification for this project?
10. **Budget:** Refers directly to how reasonable the costs associated with grant project activities outlined in the budget appear. (Do the cost estimates appear valid based on known costs? Are all project costs accounted for? Are bids included in the application?)
11. **Feasibility:** Refers to how realistic the proposed project is and the capacity of the applicant to finish the project. Considerations include the project description, timeframe, projected costs, and having the necessary regulatory approvals or those yet to be secured, such as zoning approvals and land use rights. Is there evidence that the individual or organization has the capacity to accomplish the project? If the project requires expertise the organization does not have, how will that expertise be supplemented?
12. **Designated Structures, Districts and Landscape:** Such listing and designations include National, State or Local Register of Historic Places for structures and districts; landscapes with national or state recognition and designated as conservation areas; wilderness areas; and historic or scenic trails.

V. TERMS AND CONDITIONS

Awarded grant applicants must sign a project agreement with Douglas County. It is recommended that all potential grant applicants read the project agreement prior to submitting a grant application available on the Douglas County website at: _____.

In some instances, conditions specific to the awarding of particular grant may be added to the project agreement.

Grants may be partially funded.

All awarded grant applicants shall submit a final report as outlined in the project agreement.

Awarded grants in the amount over \$5,000 will also submit an interim grant report.

Grant recipients of \$50,000 or more must submit quarterly progress reports (not tied to reimbursement) for projects with a duration period of more than six months.

These report documents are available on the Douglas County website at: _____.

An awarded Target Grant project less than or equal to \$5,000 will receive a check from Douglas County for the entire award amount upon full execution of the project agreement. Target Grant projects greater than \$5,000 and Major Grant projects will receive initial payment for 30% of the project work upon full execution of the performance agreement. Remaining grant funds will be distributed based upon receipt and approval by the Heritage Conservation Council of the interim and final reports (see project agreement

for details). **All grantees will be required to submit a final report. Failure to submit a report disqualifies grantee from applying for future grants until a final report is submitted.**

VI. PROFESSIONAL STANDARDS GUIDELINES FOR APPLICANTS

If the core of your grant project is historic preservation, the project must be carried out in compliance with the U.S. Secretary of the Interior Standards for such projects and other applicable codes and regulations at the federal, state and local levels. Please see link below.

Secretary of the Interior Standards for Rehabilitating, Restoring, and Reconstructing Historic Buildings:
http://www.nps.gov/history/local-law/arch_stnds_8_2.htm

Grant projects not focused on historic preservation should follow best practices relevant to the project's particular field. Examples of sources pertaining to best practice standards include:

Kansas State Historical Society information about the Register of Historic Kansas Places:

<http://www.kshs.org/p/national-and-state-registers/14635>

Kansas Historical Preservation Officer (SHPO) - Kansas Historical Society http://www.kshs.org/portal_shpo

National Resources Conservation Service Practice Standards:

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/alphabetical/ncps>

Kansas Farm Service Agency:

<http://www.fsa.usda.gov/FSA/stateoffapp?mystate=ks&area=home&subject=landing&topic=landing>

USDA Farm Service Agency Conservation Reserve Program Conservation Practices:

http://www.fsa.usda.gov/Internet/FSA_File/appendixb.pdf

Society for American Archaeology Law & Ethics

http://www.saa.org/publicftp/PUBLIC/resources/law_ethics.html

American Association of Museums Best Practices and Code of Ethics:

<http://www.aam-us.org/aboutmuseums/standards/stbp.cfm>

Oral History Standards: <http://www.oralhistory.org/?s=Standards>

VII. Grant Application Assistance/Grant Information Sessions

The following assistance is available to applicants:

Two optional grant information sessions will be held at the Lawrence Public Library on:

- 1) Friday, January 4, 2019 at 4:30 p.m. in Meeting Room "C" lower level
- 2) Tuesday, January 22, 2019 at 10:30 a.m. in Meeting Room "B" lower level

Required: All grant applicants must meet with the Heritage Conservation Council Program Coordinator before February 27, 2019. Contact the HCC Program Coordinator at jshupertarick@douglascountyks.org or 785-330-2878.



Douglas County Natural & Cultural Heritage Grant Program 2019 Grant Application

Application Deadline: Thursday, March 7, 2019

Applications must be hand-delivered or postmarked by Thursday, March 7, 2019 at 5 p.m.

Late applications will not be accepted. Grant awards will be announced in May.

- ☐ **Answer all questions. Do not use smaller than 11 point font.**
- ☐ Signature of the Authorized Official is required if an organization is submitting the grant application.
- ☐ **Submit 1 original signed application, 1 set of original support materials (if applicable) and 7 additional copies of all materials.** Staple or paperclip application materials. Do not include binders, folders and/or plastic sleeves. Submit one electronic copy of the application and support materials on a thumb drive (or CD).
- ☐ Please refer to grant guidelines for more information about completing this application and requirements for applicants.
- ☐ **Individual appointments must be held with HCC Program Coordinator on or before Tuesday, February 26, 2019.**
- ☐ Non-profit organizations must have proof of 990 and be in good standing with the IRS and related filings. (Submit 1 copy of the 990 with original application.)

1. Project Applicant (Provide 2 contacts for this application.)

Applicant Name (and all partners if applicable): _____

Authorized Official/s _____

Title _____

Project Director's Name _____ Title _____

Project Director's Email _____ Project Director's Phone _____

Official Grant Project Address _____

City _____ State _____ Zip _____

Secondary Contact's Name _____ Title _____

Secondary Contact's Email _____ Secondary Contact's Phone _____

Secondary's Address _____

City _____ State _____ Zip _____

2. Project Summary

a) Type of Grant (Check One)

☐ Major Grant ($\geq$ \$ 40, 000 and no more than \$74, 000)

☐ Target Grant ($\leq$ \$39,999)

\$ _____ Amount requested for this project

b) Project Title _____

c) Full Street Address of this project (please include Township name)

d) Name of individuals/organization that own the property

e) Contact information for those individuals: _____

f) For projects involving historic structures. If applicable, please check all that apply. The structure is:

_____ Listed on the National Register of Historic Places

_____ Listed on the Kansas Register of Historic Places

_____ Not listed but is eligible for listing

_____ Located in a Historic District

_____ Date of building construction (if known) _____

_____ Original architect(s) (if known)

Explain the historical/architectural significance of the building and attach any additional historical or architectural information to this application.

g) For organizations with board of directors or other oversight group, attach a complete list of members, including brief resumes, and contact information (email address, street address, phone number, term limits.)

Do you have directors' liability insurance? Yes No

Name of Insurer _____

h) Project Summary – describe the nature and scope of the proposed project (200 words maximum):

i) Total Project Budget \$ _____

j) Amount of Grant Funds Requested from Douglas County \$ _____

k) Scope of Project: (Please check all that apply)

☐ Historic structures

☐ Prairie, woodlands, waterways, habitat restoration/preservation

☐ Agriculture; working farms; heritage farms

☐ Freedom's Frontier themes (Civil War and pre-Civil War heritage; Settlement stories before and after Civil War; Enduring struggle for freedom)

☐ Pre-settlement history

3. Project Description

a) Specifically explain the proposed project, including any regulations, guidelines, or best practices that will be followed.

What do you plan to do? When? How?

Please include separately any supporting materials such as photos, plans, drawings, illustrations, building condition reports, building inspections, and copies of regulatory approvals, if applicable, that are related to the proposed project.

b) Describe the natural and cultural heritage significance of the project, structure, and or property.

c) Describe the urgency of the project.

d) If applicable, describe the condition of the property and include photos.

e) Provide an expected timeline for completion of this project.

f) How will the HCC Natural & Cultural grant funding be acknowledged in this project?

4. Community Impact

a) Describe how the project provides a substantial benefit to the conservation of Douglas County's natural and cultural resources.

b) How will this project connect the physical sites and interpretative stories of Douglas County?

c) Please describe the public benefit derived from this project.

d.) Will the project incorporate educational programs?

☐

Yes

☐

No

Please explain your response above.

e. Will you allow public access to the facility/property?

☐

Yes

☐

No

Please explain your response above.

5. Project Costs

a) Provide an estimated budget for this project using the budget template provided with this application. Include explanatory and clarifying information (a budget narrative) below the budget form in the space provided. For estimates over \$20,000, explain how cost estimates were determined.

b) How will the project be sustained once the project is completed? For instance, how will on-going maintenance costs be financed?

c) Explain if there are any other resources you intend to use in order to complete this project. This may include other sources of funding, loans, or in-kind contributions.

6. Signature(s)

1. Signature

Printed Name

Date

2. Signature (if necessary)

Printed Name

Date

3. Signature (if necessary)

Printed Name

Date

Mail or Deliver the Original Application Packet, 7 Copies, and an electronic version on a thumb drive (or CD) to:

Douglas County Heritage Conservation Council
Attention: Jan Shupert-Arick
Douglas County Courthouse, Administrative Services
1100 Massachusetts Street, Third Level Loft Area
Lawrence, KS 66044-3064

Staff Contact: For questions about the Natural & Cultural Heritage Grant Program, contact the HCC Program Coordinator, Jan Shupert-Arick at jshupertarick@douglascountyks.org or 785-330-2878.

Douglas County Heritage Conservation Council Website
http://www.douglas-county.com/depts/ad/hcc/ad_hcc.aspx Natural and Cultural

COMPLETE THE SEPARATE BUDGET FORM and then explain the entries in a brief narrative.

1. Personnel
2. Consultant/Professional Fees and Services
3. Materials/Supplies
4. Travel
5. Marketing
6. Printing Copying
7. Equipment
8. Other

2019 Douglas County Natural & Cultural Heritage Grant Program

Grant Budget Form

Project Information

Organization Name:	
Project Name:	
Date:	

Instructions

Please provide a budget that shows revenues (cash & in-kind support) and expenses for your entire project.

Revenues & Expenses

Please list all sources of funds for the project in the cash and in-kind columns and describe funds in your budget narrative.

Please list all expected expenses. Group expenses into categories and explain expenses in your budget narrative.

Project Budget	Total Project Amount	Grant Request	Cash	*In-Kind	Sub-Totals
Personnel Expense	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Consultants/Professional Fees	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Materials/Supplies	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Marketing	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Printing & Copying	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other (specify)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
% of Project		0%	0%	0%	0%
		Total Applicant Resources:			\$0.00

* Inkind = the value of non-cash contributions (goods & services) provided by the grant recipient or by third parties directly related to the grant activity.



MEMO

To: Douglas County Commission

Cc: Craig Weinaug/Sarah Plinsky

From: Jan Shupert-Arick, Douglas County Heritage Conservation Council Program Coordinator

Re: Unspent Funds 2011-2014

Date: November 19, 2018

With the assistance of Brooke Sauer, the Douglas County Heritage Conservation Council (HCC) has identified reserve funds for the years 2011-2014 that total \$37,975.84. The Heritage Conservation Council respectfully requests that these funds be approved to conduct an archaeological study in Douglas County. (The most recent study was completed in 1996 and is sorely out of date.) The HCC is seeking approval to solicit bids and spend the funds in the 2019 fiscal year.

As stated in *Horizon 2020 (Chapter 11, p 16)* this project is within the HCC's scope of work:

c. Develop an archaeological survey plan for the County that:

1. Includes an archaeological predictive model for Douglas County that identifies areas of high medium and low probability and

2. Prioritizes archaeological survey to focus on areas in which development is ongoing and in which resources would most likely be expected. The extent of potentially significant archaeological sites in Douglas County is not fully known. However, research and investigations indicate the potential for the presence of important sites throughout the county. In Douglas County, archaeological survey usually occurred only when triggered by federal law. As a result, little historical archaeological investigation has been conducted in the county.

In addition to the more obvious benefits of preserving information about past cultures, knowledge about the location of archaeological sites is crucial to facilitating both public and private development projects. Knowledge of the location or even the ability to predict the possible occurrence of archaeological sites provides developers and government agencies with the ability to investigate during project planning and avoid expensive last minute delays in project development. Section 106 of the National Historic Preservation Act requires any public or private entity utilizing federal funds, loans, or permits to identify, evaluate, and mitigate damage to archaeological resources affected by the project. This affects agencies such as the General Services Administration, the Army Corps of Engineers, the Kansas Highway and Transportation Department, and County programs receiving federal funding. One of the key issues to creating a successful archaeological survey plan for the County is working with rural property owners. Only by creating partnerships with existing land owners can sites be identified and evaluated. Successful examples such as the Blanton's Crossing project should be used as models. No survey or evaluation should take place on private property without the consent of the property owner.

RESOLUTION _____

WHEREAS, on the **5th of December, 2018** the same being a regular session of the Board of County Commissioners of the County of Douglas, the application of **Flamingo Enterprises/The Bird of Lawrence** for a cereal malt beverage license came up for consideration by the above board and

WHEREAS, the Board does find that said **Flamingo Enterprises/The Bird of Lawrence** is qualified under the law to sell cereal malt beverages for consumption on the premises located: **1626 E 1550 Rd, Lawrence, KS**

WHEREAS, the Board further finds that due and legal notice has been given the Grant Township Board and that ten days has expired from the giving of said notice and that no written objection has been filed by the Grant Township Board protesting the granting of a cereal malt beverage license.

NOW THEREFORE, BE IT RESOLVED that the applicant, **Flamingo Enterprises/The Bird of Lawrence** granted a license to sell cereal malt beverages for consumption on the premises located: **1626 E 1550 Rd, Lawrence, KS**

BE IT FURTHER RESOLVED, that Jameson Shew, County Clerk of Douglas County, Kansas be directed to issue said license.

Chairman

Member

Member

ATTEST:

Jameson Shew, Douglas County Clerk

KEEP THIS LICENSE POSTED CONSPICUOUSLY AT ALL TIME

RETAIL

Fee \$125.00

NO.

DEALER'S 2019 LICENSE

TO ALL WHOM IT MAY CONCERN:

License is hereby granted to: **FLAMINGO ENTERPRISES/THE BIRD OF LAWRENCE**

TO SELL CEREAL MALT BEVERAGES AT RETAIL FOR CONSUMPTION ON PREMISES

(State if for consumption on the premises or for sale in original and unopened containers and not for consumption on premises)

1626 E 1550 RD, LAWRENCE, KS Application therefore on file in the office of the County Clerk of Douglas County, having been approved by the governing body of said County, as provided by Laws of Kansas and the regulations of the board of County Commissioners.

This License will expire 12:00 midnight December 31, 2019 unless sooner revoked, is not transferable, nor will any refund be allowed thereon.

Done by the Board of County Commissioners of Douglas County, Kansas

This 5th Day of December 2018

Attest: _____
County Clerk

Chairman

RESOLUTION _____

WHEREAS, on the **5th day of December 2018**, the same being a regular session of the Board of County Commissioners of the County of Douglas, the application of **Clinton Submarina** for a cereal malt beverage license came up for considerations by the above board and

WHEREAS, the Board does find that said **Clinton Submarina** is qualified under the law to sell cereal malt beverages for consumption on the premises located **1329 E 800 Rd, Lawrence, Kansas**

WHEREAS, the Board further finds that due and legal notice has been given the Clinton Township Board and that ten days has expired from the giving of said notice and that no written objection has been filed by the Clinton Township Board protesting the granting of a cereal malt beverage license.

NOW THEREFORE, BE IT RESOLVED that the applicant, **Clinton Submarina** granted a license to sell cereal malt beverage for consumption on the premises located at **1329 E 800 Rd, Lawrence, Kansas**

BE IT FURTHER RESOLVED, that Jameson Shew, County Clerk of Douglas County, Kansas be directed to issue said license.

Chairman

Member

Member

ATTEST:

Jameson Shew, Douglas County Clerk

KEEP THIS LICENSE POSTED CONSPICUOUSLY AT ALL TIME

RETAIL

Fee \$125.00

NO.

DEALER'S 2019 LICENSE

TO ALL WHOM IT MAY CONCERN:

License is hereby granted to: **CLINTON SUBMARINA**

**TO SELL CEREAL MALT BEVERAGES AT RETAIL IN ORIGINAL AND UNOPENED
CONTAINERS AND FOR CONSUMPTION ON PREMISES**

(State if for consumption on the premises or for sale in original and unopened containers and not for consumption on premises)

**1329 E 800 Road, LAWRENCE, KS. Application therefore on file in the office of the County Clerk of Douglas County,
having been approved by the governing body of said County, as provided by Laws of Kansas and the regulations of the
board of County Commissioners.**

**This License will expire 12:00 midnight December 31, 2019 unless sooner revoked, is not transferable, nor will any
refund be allowed thereon.**

Done by the Board of County Commissioners of Douglas County, Kansas

This 5th Day of December, 2018

Attest: _____
County Clerk

Chairman

RESOLUTION _____

WHEREAS, on the 5th day of December, 2018, the same being a regular session of the Board of County Commissioners of the County of Douglas, the application of **Clinton Marina** for a cereal malt beverage license came up for considerations by the above board and

WHEREAS, the Board does find that said **Clinton Marina** is qualified under the law to sell cereal malt beverages not for consumption on the premises located **1329 E 800 Rd, Lawrence, Kansas**

WHEREAS, the Board further finds that due and legal notice has been given the Clinton Township Board and that ten days has expired from the giving of said notice and that no written objection has been filed by the Clinton Township Board protesting the granting of a cereal malt beverage license.

NOW THEREFORE, BE IT RESOLVED that the applicant, **Clinton Marina** granted a license to sell cereal malt beverage not for consumption on the premises located at **1329 E 800 Rd, Lawrence, Kansas**

BE IT FURTHER RESOLVED, that Jameson Shew, County Clerk of Douglas County, Kansas be directed to issue said license.

Chairman

Member

Member

ATTEST:

Jameson Shew, Douglas County Clerk

KEEP THIS LICENSE POSTED CONSPICUOUSLY AT ALL TIME

RETAIL

Fee \$75.00

NO.

DEALER'S 2019 LICENSE

TO ALL WHOM IT MAY CONCERN:

License is hereby granted to: **CLINTON MARINA**

**TO SELL CEREAL MALT BEVERAGES AT RETAIL IN ORIGINAL AND UNOPENED
CONTAINERS AND NOT FOR CONSUMPTION ON PREMISES**

(State if for consumption on the premises or for sale in original and unopened containers and not for consumption on premises)

**1329 E 800 Road, LAWRENCE, KS Application therefore on file in the office of the County Clerk of Douglas County,
having been approved by the governing body of said County, as provided by Laws of Kansas and the regulations of the
board of County Commissioners.**

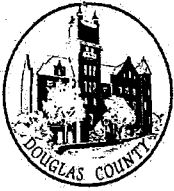
**This License will expire 12:00 midnight December 31, 2019 unless sooner revoked, is not transferable, nor will any
refund be allowed thereon.**

Done by the Board of County Commissioners of Douglas County, Kansas

This 5th Day of December, 2018

Attest: _____
County Clerk

Chairman



JAMIE SHEW
DOUGLAS COUNTY CLERK
1100 Massachusetts
Lawrence, KS 66044

Marni Penrod-Chief Deputy Clerk
Benjamin Lampe-Deputy Clerk Elections

2019

DOUGLAS COUNTY KANSAS OCCUPATIONAL LICENSE APPLICATION

DATE: 11-16-18

APPLICANT: Paradise Saloon

APPLICANT'S REPRESENTATIVE: Zachary Snyder

BUSINESS ADDRESS: 1697 Highway 40, Lawrence, KS 66044

STATE LIQUOR LICENSE NUMBER: 09-016-0134-00

BUSINESS PHONE: 785-843-9601

DOUGLAS COUNTY USE LOCATION: Same as above

Zachary Snyder

APPLICANT'S SIGNATURE

COUNTY FEE: \$150.00 COUNTY LICENSE NUMBER 1

DATE ISSUED _____

KEEP THIS LICENSE POSTED CONSPICUOUSLY AT ALL TIMES

Fee: \$ 150.00 (original)

LICENSE TAX NO. 1

2019

TO WHOM IT MAY CONCERN:

Occupational License is hereby granted to Little Reno, Inc DBA Paradise Saloon

of CLASS "B" CLUB LICENSE NO. 09-016-0134-00 for the year beginning **January 1, 2019**
at **1697 Highway 40, PO Box 442082, LAWRENCE, KS 66044** in the Township of **GRANT** in **DOUGLAS**
COUNTY, KANSAS

Same having been approved by the governing body of said County as provided by the Laws of Kansas, K.S.A.41-2622,
and the regulations of the Board of County Commissioners.

This License will expire **DECEMBER 31, 2019** unless sooner revoked, is not transferable, nor will
any refund of the fee be allowed thereon.

Done by the Board of County Commissioners of DOUGLAS County, Kansas

this **5th** day of **December 2018**.

Attest: _____
County Clerk

Chairman



DOUGLAS COUNTY ADMINISTRATIVE SERVICES

Douglas County Courthouse
1100 Massachusetts Street, Unit 204
Lawrence, KS 66044-3064
(785) 832-5329 Fax (785) 832-5320
www.douglas-county.com

Sarah Plinsky
Assistant County Administrator

MEMORANDUM

MEMO TO: Board of County Commissioners

FROM: Sarah Plinsky, Assistant County Administrator

SUBJECT: Coroner Appointment and Coroner Services

DATE: November 30, 2018

Dr. Erik Mitchell retired as the County Coroner earlier this year. Dr. Atlat Hossain, M.D. is currently Deputy Coroner for Douglas County and he has been providing services to Douglas County as lead Coroner since Dr. Mitchell's retirement. Both Dr. Mitchell and Dr. Hossain were affiliated with Forensic Medical Holdings of Kansas. Forensic Medical Holdings of Kansas provides the services associated with the Coroner, such as exams, autopsies, expert witness testimony, and laboratory services.

The County has been working with Forensic Medical Holdings of Kansas to develop and outline Coroner services and to appoint a Coroner and Deputy Coroner that meet the various needs of Douglas County. Staff has worked closely with the District Attorney's Office, the Sheriff's Office and Lawrence Douglas County Fire Medical to evaluate the services and staff. Douglas County staff has also evaluated the resumes of the appointments of Deputy Coroner.

The two attached agreements outline separately the responsibilities of the Coroner and the services to be provided under the Coroner by Forensic Medical Holdings of Kansas. Both agreements are an annual agreements through December 31, 2019. The District Attorney, staff and representatives from Forensic Medical Holdings of Kansas will be at the meeting to answer questions.

FORENSIC SERVICES CONTRACT

This contract is entered into on this _____ day of _____, 2018, by and between **DOUGLAS COUNTY, KANSAS (“COUNTY”)**, a county governmental entity of the State of Kansas, and **FORENSIC MEDICAL HOLDINGS OF KANSAS, LLC dba FRONTIER FORENSICS MIDWEST (“CONTRACTOR”)**.

For and in consideration of the mutual promises, covenants and agreements stated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Contractor agree as follows:

ARTICLE I. DEFINITIONS

- A. As used in this Agreement, the following terms have the specific meaning assigned them:
1. **“Agreement”** means the entire Agreement between the County and Contractor as contained herein;
 2. **“Contractor”** means Forensics Medical Holdings of Kansas, LLC dba Frontier Forensics Midwest;
 3. **“County”** means Douglas County, Kansas.

ARTICLE II. PURPOSE

Purpose. The purpose of this Agreement is for County to contract with Contractor to provide coroner and forensic medical services and the satisfactory completion of all related services.

ARTICLE III. DUTIES AND RESPONSIBILITIES

- A. **Licensing.** Contractor shall ensure that all forensic pathologists are forensic board certified or board eligible and maintain all certifications and licenses required by the State of Kansas and/or other governing authority required to offer the Services.
- B. **Duties.**
1. The Contractor shall provide all labor, equipment, and facilities required by the Contractor to perform all duties described in this Agreement including, but not limited to, duties imposed on a Contractor by statute or other legal authority, in addition to those duties. Contractor shall be available to perform these duties 24 hours a day, 365 days a year, as needed.
 2. **Coroner Appointment.** Contractor will allow County to appoint one of its forensic pathologists as District Coroner for the County and other forensics pathologists of the contractor as deputy coroners. Contractor will direct the person appointed as District Coroner to execute a separate agreement with County entitled Independent Contractor Agreement for Coroner Services. Execution of the Independent Contractor Agreement for Coroner Services by the District Coroner is an express and material condition of this Agreement.
 3. **Case Evaluation.** Contractor shall provide case evaluation services and shall be responsible for determining whether a specific case requires a coroner’s inquiry, and whether a specific

case requires evidence review, external examination, or autopsy prior to certification of the cause of death.

4. **Autopsy.** Contractor shall perform autopsies when determined necessary by the District Coroner or Deputy Coroner or the District Attorney.
5. **External Exam.** Contractor shall perform external examinations of decedents, when an autopsy examination is not necessary, to provide probable cause of death. External examination may include viewing the body, examining medical records, medical history, and similar information.
6. **Death Scene Examination.** Contractor shall view the bodies of decedents at the scene of death and/or perform other investigative services (such as interviewing/examining witnesses) during and after normal working business hours when requested by an authorized representative of the County such as law enforcement, Lawrence-Douglas County Fire Medical, District Attorney or other appropriate personnel.
7. **Expert Witness.** Contractor shall testify as an expert witness when subpoenaed to do so at any legal proceeding, including trials, preliminary hearings and depositions. Contractor will also participate in preliminary meetings with the district attorney and/or assistant district attorneys, as requested, and at other times arising in connection with cases in which Contractor has conducted an examination.
8. **Decedent Transportation Services.** Any fees related to decedent transportation are not the responsibility of the Contractor.
9. **Coroner and Administrative Services.** Contractor's administrative services under this Agreement include the following:
 - i. Responding promptly to inquiries from the public and local health officials and law enforcement;
 - ii. Preparing and submitting documentation for the Child Death Review Board;
 - iii. Reviewing requests for cremation permits and preparing permit requests submitted non-electronically; and
 - iv. Reviewing records and preparing death certificates for review and signature by the Coroner.
 - v. Attend review meetings with County monthly.
10. **Standards of Professional Services.** Contractor will provide and perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and, in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of the State of Kansas and all governmental agencies which regulate or have jurisdiction over the services to be provided and/or performed.

ARTICLE IV. COMPENSATION

A. Fee for Services.

1. County shall pay contractor the following fees for services:
 - a. Autopsy examination - \$1,650 per autopsy
 - b. External examination - \$200 per external examination
 - c. Lab fees – Toxicology fees or fees for forensic specialist (such as anthropologist, DNA testing, etc.) in excess of \$200 per case will be billed to the County. Additional fees, in the aggregate, over \$1,000 per case must be approved by County in advance.
 - d. Death Scene Investigations - \$300 per death scene investigation
 - e. Court and Deposition Testimony - \$250 per hour for a forensic pathologist time and \$75 per hour for any other personnel such as a forensic technician, investigator, etc., if subpoenaed or requested by County. This fee will not be paid for testimony preparation time or preliminary meetings. If Contractor is subpoenaed or requested to testify by other parties (e.g., by a defendant or in a civil case), County will not be responsible for this fee, but Contractor may arrange for or seek to collect testimony fees from the party requesting Contractor's testimony.
 - f. Storage only cases – \$200 per month – this fee is billed if decedent is stored 1 day or the whole month. \$50 per Kansas Child Death Review Case child death case defined as under age 18

B. Coroner and Administrative Fees.

1. The Contractor shall be paid \$400 per month to cover all coroner and administrative services above and beyond those listed in section IV.A., above.

C. Changes to Compensation. Should the parties agree to extend this Agreement, then the parties shall enter into good faith negotiations regarding whether to maintain or change the compensation rates at that time.

D. Other Fees. Any other fees for services rendered by Contractor that are not already provided for in this agreement shall be paid at such levels as mutually agreed upon in advance by Contractor and County.

E. Payment. Contractor shall submit to County, no later than the tenth (10th) day of each month, an invoice showing the fees and services performed by Contractor for or on behalf of the County for the prior month. Unless otherwise noted in this Agreement, payments shall be made within thirty (30) days following County's receipt of an invoice in a form approved by the County for services performed. Payments shall be due only upon the satisfactory completion of the services as determined by the County.

ARTICLE V. TERM AND TERMINATION

A. Initial Term. The initial term of this contract will begin on the date this Agreement has been properly executed by both parties and end on December 31, 2019 unless otherwise terminated as provided for in this contract.

- B. Termination of Agreement.** This Agreement may be terminated by either party at the end of the Initial Term or thereafter by giving the other party one hundred twenty (120) days written notice of the intent to terminate. The notice must specify a date upon which the termination will be effective, which date must be at least one hundred twenty (120) days from the date of mailing the notice. Notice shall be deemed received three (3) days after mailing in the United States mail, certified mail, return receipt requested. This Agreement may be terminated immediately for a material breach following written notice thereof and a sixty (60) calendar day right to cure. Contractor may not give notice to terminate until after it has completed one year of service hereunder.
- C. Renewal.** If the Notice provided for in Article V.B., above, is not properly and timely given, this Agreement shall automatically extend for successive one (1) year term(s) in accordance with all the terms and conditions hereof, including any mutually agreed adjustments to the amount of Compensation.

ARTICLE VI. INSURANCE

A. INSURANCE COVERAGE TO BE OBTAINED

1. Contractor shall obtain and maintain such insurance as will protect it from: (a) professional liability claims; (b) claims under Workers' Compensation laws; (c) claims for damages because of bodily injury, occupational sickness or disease or death of Contractor employees, including claims insured by usual personal injury liability coverage; (d) claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees, including claims insured by usual personal injury liability coverage; (e) from claims for injury to or destruction of tangible property including loss or loss of use resulting therefrom, any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations be by Contractor, its employees, or by any sub-consultant(s), subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable; and (f) employment practice liability claims. The fees for such insurance will be paid by Contractor.
2. The insurance protection set forth hereinabove shall be obtained for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.
3. Contractor shall obtain, have and maintain during the entire period of this Contract such insurance program as set forth and required herein.

B. CONTRACTOR REQUIRED TO FILE INSURANCE CERTIFICATE(S)

1. All such insurance certificates shall be in a form and underwritten by (an) insurance company(ies) acceptable to the County.
2. Each Certificate of Insurance shall include the following:
 - a. the name and type of policy and coverages provided;
 - b. the amount or limit applicable to each coverage provided;
 - c. the date of expiration of coverage;
 - d. the designation of Douglas County Board of County Commissioners as an additional insured. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and
 - e. cancellation – should any of the described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice

- to County.
3. If the initial or any subsequently issued Certificate of Insurance will expire prior to the completion of the work or termination of this Agreement, Contractor shall furnish to the County renewal or replacement Certificate(s) of Insurance not later than thirty (30) calendar days prior to the date of their expiration.

C. INSURANCE COVERAGES REQUIRED

Contractor shall obtain and maintain the following insurance coverages:

1. Worker's Compensation: Coverage to comply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. In addition, the policy shall include the following:
 - a. Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$100,000.00 for each accident, whichever limit is greater.
 - b. Notice of Cancellation and/or Restriction: The policy must be endorsed to provide the County with thirty (30) days prior written notice of cancellation and/or restriction.
2. Commercial General Liability: Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy filed by the Kansas Insurance Commission and shall include the following:
 - a. Minimum limits of \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate for Bodily Injury Liability and a minimum limit of \$100,000.00 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.00.
 - b. Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.
3. Business Automobile Liability: Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:
 - a. Minimum limits of \$500,000.00 per person and \$1,000,000.00 per accident for Bodily Injury Liability and a minimum limit of \$100,000.00 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.00.
 - b. Coverage shall include owned vehicles, leased vehicles, hired and non-owned leased vehicles, and employee non-ownership.
4. Professional Liability: Any forensic pathologist working for Contractor shall have professional liability insurance.
5. Employment Practices Liability: With limits not less than \$1,000,000.00; and a deductible of not more than \$25,000.00 per occurrence.

ARTICLE VII. RECORDS

A. PUBLIC RECORDS

All records of the District Coroner are subject to the provisions of Kansas Statutes, except for private practice records, and any other applicable exemptions.

B. OWNERSHIP AND TRANSFER OF DOCUMENTS

1. Contractor hereby assigns to County all rights to all products, reports, documents, photographs, videos, data, and drawing produced by Contractor as a result of its services to County during the term of this Agreement.
2. Upon completion or termination of this Agreement, all of the above documents shall be delivered to the County or to any subsequent District Coroner within thirty (30) calendar days from either the expiration or termination of the Contract.
3. Contractor or the District Coroner, at its sole expense, may make and retain copies of all documents delivered to the County for reference and internal use.

C. MAINTENANCE OF RECORDS

Contractor will keep and maintain sufficient records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the District Coroner and Contractor for a minimum of five (5) years from the date of expiration or termination of this Agreement, or for such other period as required by law. Electronic copies shall be sufficient to meet the requirements of this section.

D. RECORDS RETENTION

The District Coroner and Contractor shall retain all records and supporting documents related to this Agreement in accordance with all applicable laws, administrative rules and regulations. Upon the expiration or termination of this Agreement, all such records and supporting documents will be conveyed to the successor District Coroner or the County, whichever is appropriate at the time.

**ARTICLE VII.
INDEPENDENT CONTRACTOR STATUS AND CERTIFICATION**

Contractor is an independent contractor, not a County employee. Contractor's employees or contract personnel are not County employees. Contractor and County agree to the following rights consistent with an independent contractor relationship:

- A. Contractor has the right to perform services for others during the term of this Agreement.
- B. Contractor shall perform the services required by this Agreement, and Contractor agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein.
- C. Contractor shall not receive any training from County in the skills necessary to perform the services required by this Agreement.
- D. The County does not require any one employee of Contractor to devote full time to performing the services required by this Agreement.
- E. Contractor hereby certifies that Contractor is not an employee of County and thereby Contractor waives any and all claims to benefits otherwise provided to employees of the County, including, but not limited to: medical, dental, or other personal insurance, retirement benefits, unemployment benefits, and liability or worker's compensation insurance.
- F. Contractor must provide its Federal Tax ID on Form W-9.

- F. Contractor understands and agrees that it is solely responsible for all taxes and social security payments applicable to money received for services herein provided.

**ARTICLE IX.
INDEMNIFICATION AND HOLD HARMLESS**

Contractor shall save, hold harmless, and indemnify County, its officers, agents and employees, from and against all claims, causes of action, liabilities, expenses and costs, including reasonable attorneys' fees, for injury of any person or damage to property arising out of, or connected with, work performed under this Agreement that is the result of any acts or omissions, whether negligent or otherwise, of Contractor, its officers, agents, subcontractors or employees.

**ARTICLE X.
TERMINATION DUE TO LACK OF FUNDING APPROPRIATION**

Douglas County is subject to the Kansas Cash Basis Law, K.S.A. 10-1101, et seq. If, in the judgment of County Administration or the Board of County Counselors, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or Contractor.

**ARTICLE XI.
ANTI-DISCRIMINATION CLAUSE**

Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, et seq.) and the Kansas Age Discrimination in Employment Act, (K.S.A. 44-1111, et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, et seq.) [ADA] and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission of access to or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out in K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or the EEOC, such violation shall constitute a breach of contract; (f) if the contracting agency determines that Contractor has violated applicable provisions of ADA, that violation shall constitute a breach of contract; (g) if (e) or (f) occurs, the contract may be cancelled, terminated or suspended in whole or in part by the County.

**ARTICLE XII.
ACCEPTANCE OF CONTRACT**

This contract shall not be considered accepted, approved or otherwise effective until the required approvals and certifications have been given and this is signed by the Board of County Commissioners of the County of Douglas, Kansas. The day that this contract is last executed by one of the parties shall be the Effective Date.

**ARTICLE XIII.
ARBITRATION, DAMAGES, WARRANTIES**

Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the County shall not agree to pay attorney fees and late payment charges; and no provisions will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

**ARTICLE XIV.
MISCELLANEOUS PROVISIONS**

A. This Agreement shall be entered into in Douglas County, Kansas and shall be construed and interpreted according to the law of the State of Kansas. The parties, and each of them, consent to personal jurisdiction and venue in Douglas County, Kansas, District Court.

B. Except as otherwise provided herein, all notices and other communications in connection with this Agreement shall be in writing and shall be considered given 3 days after mailing in the United States mail, using first class mail, postage prepaid, to the recipient's address as stated in this Agreement.

C. Contractor shall comply with all federal, state and local laws requiring business permits, certificates and licenses required to carry out the services to be performed under this Agreement.

D. Contractor may not assign any rights or obligations under this Agreement without County's prior written approval.

E. This Agreement constitutes the entire agreement between the parties and may only be modified or extended by a written amendment signed by the parties hereto. Neither party is relying upon any representation or promise except as expressly stated herein. This Agreement supersedes any prior discussions, negotiations, agreements, or understandings respecting the subject matter hereof.

F. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void.

G. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the County and Contractor.

H. Each party represents and warrants that the person signing on behalf of the party has authority to do so, and that all necessary approvals and authorizations to execute this Agreement on behalf of the party have been obtained.

IN WITNESS WHEREOF, the parties have duly executed this Agreement to be effective as of the Effective Date.

[Signatures on Following Page]

DOUGLAS COUNTY, KANSAS

Nancy Thellman, Chair

ATTEST:

Jamie Shew, County Clerk

Date: _____, **2018**

FORENSIC MEDICAL HOLDINGS OF KANSAS, LLC dba FRONTIER FORENSICS MIDWEST

By: Matt Martin, CFO
Nashville, TN 37216

Date: _____, **2018**

INDEPENDENT CONTRACTOR AGREEMENT FOR CORONER SERVICES

THIS AGREEMENT is between **THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, KANSAS** (“County”) and **ATLAF HOSSAIN, M.D.** (“Dr. Hossain”).

WHEREAS, the County wishes to secure and retain the services of Dr. Hossain to serve the citizens of Douglas County as the District Coroner for the Seventh Judicial District, Douglas County, Kansas;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. SERVICES TO BE PERFORMED BY THE PARTIES

a. Dr. Hossain agrees to perform the functions and duties of District Coroner as specified in the Kansas Statutes Annotated, and amendments thereto, for County. Dr. Hossain agrees to comply with the laws of the State of Kansas regarding the duties and requirements of District Coroner, and to render those services to County in accordance with such laws and requirements.

b. Dr. Hossain shall return all calls from public officials within twenty-four (24) hours or on the first business day thereafter.

c. Dr. Hossain may appoint Deputy District Coroners to provide coverage in Dr. Hossain’s absence. Dr. Hossain must notify County of his intent to appoint any particular person to the position of Deputy District Coroner not less than ten (10) days before making the appointment, additionally providing to County a copy of the person’s resume or CV. If County reasonably objects to the appointment of the individual as Deputy Coroner for County, and notifies Dr. Hossain of the same, Dr. Hossain will not appoint said person to serve as a Deputy Coroner for County. The parties acknowledge that Dr. Hossain’s anticipated absence will be approximately three (3) weeks per calendar year; however, as an independent contractor, he may be absent at his discretion for more or less than three (3) weeks per year as long as the obligations of the District Coroner are fulfilled.

2. CONSIDERATION

In consideration of the services to be performed by Dr. Hossain, County agrees to pay Dr. Hossain the sum One Dollar (\$1.00). Dr. Hossain hereby acknowledges the receipt and sufficiency of this consideration.

3. INDEPENDENT CONTRACTOR STATUS AND CERTIFICATION

Dr. Hossain is an independent Contractor, not a County employee. Dr. Hossain's employees or contract personnel are not County employees. Dr. Hossain and County agree to the following rights consistent with an independent Contractor relationship:

- a. Dr. Hossain has the right to perform services for others during the term of this Agreement.
- b. Dr. Hossain shall not be assigned an exclusive work location on County premises.
- c. Dr. Hossain shall perform the services required by this Agreement, and Dr. Hossain agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; however, Dr. Hossain shall have no scheduled hours for County.
- d. Dr. Hossain shall provide a mobile phone number that he can be reached by phone or text on a twenty-four (24) hour and seven (7) days per week basis, except during periods that he is not available but has made arrangements with a Deputy Coroner who has been assigned to assume his duties, and who shall be available in his stead.
- e. Dr. Hossain shall not receive any training from County in the skills necessary to perform the services required by this Agreement.
- f. The County shall not require Dr. Hossain to devote full time to performing the services required by this Agreement.

Further, Dr. Hossain hereby certifies:

- g. That Dr. Hossain is not an employee of County and thereby Dr. Hossain waives any and all claims to benefits otherwise provided to employees of the County, including, but not limited to: medical, dental, or other personal insurance, retirement benefits, unemployment benefits, and liability or worker's compensation insurance.
- h. Dr. Hossain must provide Federal Tax or Social Security Number on required Form W-9.
- i. That Dr. Hossain understands that he is solely responsible for all taxes and social security payments applicable to money received for services herein provided. Dr. Hossain understands that an IRS Form 1099 will be filed by the County for all payments made by County to Dr. Hossain.

4. INSURANCE

The County shall not be required to purchase any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to

the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), Dr. Hossain shall bear the risk of any loss or damage to any personal property to which Dr. Hossain holds title. Dr. Hossain will provide reasonable proof of insurance coverage for professional malpractice.

5. OWNERSHIP OF PRODUCTS/DOCUMENTS

Dr. Hossain hereby assigns to County all rights to all products, reports, documents, photographs, videos, data, and drawings produced by Dr. Hossain as a result of his services to County during the term of this Agreement. Provided, however, Dr. Hossain shall have full use and access to such product for any purpose, so long as he takes reasonable steps to protect the identity of all decedents that may be the subject of the same, unless the identity is otherwise public.

6. TERMINATION DUE TO LACK OF FUNDING APPROPRIATION

Douglas County is subject to the Kansas Cash Basis Law, K.S.A. 10-1101 et seq. If, in the judgment of County Administration or the Board of County Commissioners, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, County may terminate this agreement at the end of its current fiscal year. County agrees to give written notice of termination to Dr. Hossain at least thirty (30) days prior to the end of its current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the County or Dr. Hossain.

7. ANTI-DISCRIMINATION CLAUSE

Dr. Hossain agrees:

- (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act, (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) [ADA] and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission of access to or treatment or employment in, its programs or activities;
- (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer";
- (c) to comply with the reporting requirements set out in K.S.A. 44-1031 and K.S.A. 44-1116, if applicable to Dr. Hossain;
- (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor;

(e) that a failure to comply with the reporting requirements of (c) above or if Dr. Hossain is found guilty of any violation of such acts by the Kansas Human Rights Commission or EEOC, such violation shall constitute a breach of contract;

(f) if the contracting agency determines that Dr. Hossain has violated applicable state or federal employment discrimination laws, that violation shall constitute a breach of contract;

(g) if (e) or (f) occurs, the contract may be cancelled, terminated or suspended in whole or in part by the County.

8. ACCEPTANCE OF CONTRACT

This contract shall not be considered accepted, approved or otherwise effective until the required approvals and certifications have been given and this contract is signed by the Board of County Commissioners of the County of Douglas, Kansas.

9. ARBITRATION, DAMAGES, WARRANTIES

Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the County shall not agree to pay attorney fees and late payment charges; and no provisions will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

10. TERMINATION OF AGREEMENT

This Agreement may be terminated by either party by giving the other party one hundred twenty (120) days written notice of the intent to terminate. The notice must specify a date upon which the termination will be effective, which date may not be less than one hundred twenty (120) days from the date of mailing the notice. Notice shall be deemed received three (3) days after mailing in the United States mail, certified mail, return receipt requested. This Agreement may be terminated immediately for cause. This Agreement may be terminated immediately if the contract between County and Frontier Forensics Midwest Holdings of Kansas, LLC is terminated, for any reason, or for no reason. Upon any termination of this Agreement and/or the County's contract with Frontier Forensics Midwest Holdings of Kansas, LLC, Dr. Hossain will immediately tender to County his resignation from the District Coroner position and, if requested, will also secure and tender the resignation(s) of any and all Deputy Coroners.

11. CONTRACT TERM

This Agreement shall commence on the date signed and shall end on December 31, 2019, unless this Agreement is terminated sooner or extended in accordance with its terms.

12. MISCELLANEOUS PROVISIONS

a. This Agreement shall be entered into in Douglas County, Kansas and shall be construed and interpreted according to the law of the State of Kansas. The Parties consent to personal jurisdiction and venue in the Douglas County, Kansas District Courts.

b. Unless otherwise provided, all notices and other communications in connection with this Agreement shall be in writing and shall be considered given 3 days after mailing in the United States mail, using first class mail, postage prepaid, to the recipient's address as stated in this Agreement.

c. Dr. Hossain shall comply with all federal, state and local laws requiring business permits, certificates and licenses required to carry out the services to be performed under this Agreement.

d. Dr. Hossain may not assign any rights or obligations under this Agreement without County's prior written approval.

e. This Agreement constitutes the entire agreement between the parties and may only be modified or extended by a written amendment signed by the parties hereto. No party is relying on any promise or representation except as expressly stated herein. This agreement supersedes any and all prior discussions, negotiations, understandings or agreements with respect to the subject matter hereof.

f. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void.

g. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the County and Dr. Hossain.

IN WITNESS WHEREOF, the County and Dr. Hossain have executed this Agreement.

**BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, KANSAS**

Nancy Thellman, Chair

ATTEST:

Jamie Shew, Douglas County Clerk

Date: _____, 2018

Atlaf Hossain, M.D.

Date: _____



DOUGLAS COUNTY ADMINISTRATOR

1100 Massachusetts Street
Lawrence, KS 66044-3064
(785) 832-5328 Fax (785) 832-5148
cweinaug@douglaskountyks.org

G. Craig Weinaug
County Administrator

MEMO TO: Board of County Commissioners

FROM: Jill Jolicoeur, Assistant to the County Administrator

SUBJECT: Douglas County My Resource Connection

DATE: December 5, 2018

Douglas County is currently contracting with Johnson County, Kansas to implement My Resource Connection (MyRC), which is a web based application that was developed by Johnson County to facilitate the sharing of limited amounts of client information among participating county agencies and department accomplish the following:

- Promote the recognition and understanding of client needs;
- Improve the coordination of client services; and,
- More efficiently utilize community resources.

Among the Phase 1 implementation participating agencies is Lawrence Douglas County Fire and Medical (LDCFM), which will provide crucial information regarding calls for services, in the same manner that Johnson County Med-Act currently participates in MyRC in partnership with human service agencies in Johnson County. Attached for your review and approval is a Memorandum of Understanding (MOU) and Business Associate Agreement (BAA) between LDCFM and Douglas County. These agreements were developed with close consultation between the City of Lawrence Legal Department and Douglas County, and will formalize the legal use of LDCFM information in MyRC.

Legal review and approval has been provided by Brad Finkeldei from Stevens and Brand Law Firm. The City of Lawrence anticipates approval of these documents by the City Commission in the coming weeks.

The following motion is recommended to approve these items: ***“Approve Memorandum of Understanding and Business Associate Agreement with Lawrence Douglas County Fire and Medical, and Douglas County, Kansas.”***

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is between the City of Lawrence, Kansas, in behalf of its unincorporated entity, the Lawrence Douglas County Fire and Medical (hereinafter referred to as the “Covered Entity”) and the Board of County Commissioners of Douglas County, Kansas, a body politic (hereinafter referred to as the “Business Associate”).

WHEREAS, the City of Lawrence, Kansas, a municipal corporation, has a department, the Lawrence Douglas County Fire Medical Department, referred to herein as Covered Entity, that desires to use technology to improve the delivery of services to its clients to meet their needs more efficiently and economically;

WHEREAS, Business Associate has entered into a Memorandum of Understanding with Johnson County, Kansas, to use a web-based application called My Resources Connection (MyRC), developed by Johnson County to facilitate the sharing of limited amounts of client information among participating county agencies, departments and non-profit human service organizations to promote the recognition and understanding of client needs, improve the coordination of client services, and to more efficiently utilize community resources;

WHEREAS, Business Associate has engaged in an MOU with Johnson County to expand MyRC to Douglas County in order to facilitate the sharing of information, including health information, among caseworkers of different agencies, departments, non-profit human service organizations and other state or local governmental agencies serving Douglas County residents;

WHEREAS, the purpose of MyRC is to equip caseworkers and others with information that increases their understanding of clients and their needs and to foster collaboration between agencies/department that serve the same client or client family;

WHEREAS, the Business Associate has, is, and does perform various services for or in behalf of MyRC that may include the use of protected health information (hereafter “PHI”) as defined by 160.103 of the Standards for Privacy of Individually Identifiable Health Information 45 C.F.R. Parts 160 through 164, as modified by the Health Information Technology for Economic and Clinical Health Act, Public Law 11-005 (“HITECH”), and other applicable laws and regulations; and

WHEREAS, in addition to this MOU the parties have entered into a Business Associate Agreement (BA Agreement) to assist in compliance with Title II, Subtitle F, 261-264 of the Health Information Portability and Accountability Act of 1996 (“HIPAA”) and to establish the obligations of the Business Associate under HITECH, 45 C.F.R. Parts 160 through 164, Subpart C (the “Security Rule”), Subpart D (the “Data Breach Notification Rule”), Subpart E (the “Privacy Rule”) and the American Recovery and Reinvestment Act of 2009 (“ARRA”) collectively referred to as the “HIPAA Regulations.”

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. Business Associate Agreement. The BA Agreement entered into by the parties is attached hereto and is incorporated herein by reference as if set forth in full.

2. Obligations of Business Associate.

- a. In addition to the obligations set forth in the BA Agreement, Business Associate agrees to provide all software, or access to such software, and any other programs or equipment necessary to Covered Entity for Covered Entity's participation in MyRC. Business Associate also agrees to provide, or coordinate with a third party to provide, any training necessary for Covered Entity's appropriate understanding, use, and participation in MyRC.
- b. In addition, Business Associate agrees to provide the following data processing services to Covered Entity:
 - i. Business Associate shall have access to the PHI and related Covered Entity data listed on Appendix A this is attached to and incorporated herein to the extent necessary to carry out the purpose of MyRC and this Agreement. The Business Associate will conduct a risk analysis and implement reasonable and appropriate security measures for the data and provide adequate supervision and training to its workforce to ensure compliance with all relevant state and federal laws and regulations, ethical standards, and this Agreement.
 - ii. If and to the extent that and so long as required by the HIPAA Regulations that apply to Covered Entity, Business Associate does hereby assure Covered Entity that Business Associate will implement appropriate safeguards, including, but not limited to, the administrative, physical, and technical safeguards and documentation requirements of the Security Rule to protect the confidentiality, integrity, and availability of any electronic PHI that it may receive, maintain, or transmit on behalf of the Covered Entity and will appropriately safeguard all PHI regardless of form or format.
- c. Business Associate agrees to ensure that any subcontractors or agents to whom Business Associate provides PHI received from Covered Entity agree to the same restrictions and conditions that apply to Business Associate with respect to such information.
- d. Business Associate agrees that any "downstream" business associate contracts in place with subcontractors inform them that under the Omnibus Rule they qualify as business associates.
- e. Business Associate shall make available PHI in accordance with applicable law.

- f. Business Associate shall provide to individuals who are the subject of PHI received from Covered Entity their rights as made applicable to business associates of covered entities.
- 3. **Cost.** There shall be no cost to Covered Entity for its participation in the MyRC program or for any other related matter under the MOU and BA Agreement.
- 4. **Amendment.** Business Associate agrees that Covered Entity may amend the MOU or BA Agreement from time to time to the extent required by the provisions of 42 U.S.C. 1171 *et seq.*, HIPAA, the HITECH Act, and regulations promulgated thereunder to ensure that this MOU is consistent therewith, or for any other legal reason as determined by Covered Entity.
- 5. **Term**
 - a. The term of this MOU shall become effective as of the effective date set for the below.
 - b. Covered Entity may terminate this MOU immediately if Covered Entity determines that Business Associate has breached or violated any standard or requirement of HIPAA, the HIPAA regulations, or any other security or privacy laws.
 - c. Either party may terminate this MOU by providing at least sixty (60) days written notice to the other party.
 - d. Those provisions of this BA Agreement that by law, or by logic and their nature are intended to survive termination of the MOU shall so survive.

IT IS SO AGREED

This Memorandum of Understanding and the BA Agreement shall take effect upon execution by the duly authorized representatives of each of the parties hereto, and has been adopted by:

City of Lawrence, Kansas, in behalf of Lawrence Douglas
County Fire and Medical, by:

Interim Fire Chief

Date

Board of County Commissioners of Douglas County,
Kansas, by:

Chair, Board of County Commissioners

Date

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) BUSINESS ASSOCIATE AGREEMENT

THIS Business Associate Agreement (“BA Agreement”), effective as of _____, 2018 (“Effective Date”), is entered into between the Lawrence Douglas County Fire and Medical (hereafter referred to as the “Covered Entity”) and Douglas County, Kansas Government (hereafter referred to as the “Business Associate”). For purposes of this BA Agreement, “Business Associate” includes only those subsidiaries and affiliates of Douglas County, Kansas Government that create, receive, transmit or otherwise maintain Protected Health Information, as defined below, in connection with this Agreement.

In conformity with the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, as amended, including, but not limited to, the requirements under the Health Information Technology for Economic and Clinical Health Act (“HITECH”), the implementing regulations at 45 CFR Parts 160-64 (the “Privacy and Security Rules”), and related public guidance issued by the Department of Health and Human Services (all of the foregoing, collectively, “HIPAA”), Business Associate will under the following terms and conditions have access to, maintain, transmit, create and/or receive certain Protected Health Information:

1. Definitions. Capitalized terms used and not otherwise defined in this BA Agreement shall have the meanings assigned to such terms by HIPAA.
 - (a) Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g), but shall be limited to persons who are participants enrolled in, are seeking to become enrolled in, or were previously enrolled in the plan administered under the Memorandum of Understanding.
 - (b) Protected Health Information. “Protected Health Information” shall have the same meaning as the term “Protected Health Information,” as defined by 45 CFR 160.103, limited to the information created, maintained, transmitted, or received by Business Associate from or on behalf of Covered Entity.
 - (c) Standard Transactions. “Standard Transactions” means the electronic health care transactions for which HIPAA standards have been established, as set forth in 45 CFR, Parts 160-162.
2. Obligations and Activities of Business Associate
 - (a) Business Associate agrees to not use or disclose Protected Health Information other than
 - (i) for purposes of performing its obligations under the Memorandum of Understanding,
 - (ii) as otherwise permitted or required by this BA Agreement, or
 - (iii) as required by law.
 - (b) Business Associate agrees to use appropriate administrative, technical and physical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BA Agreement.
 - (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BA Agreement and to take appropriate measures to prevent future breaches in the event of an unauthorized disclosure or security incident.

- (d) Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not provided for by this BA Agreement of which it becomes aware, including a Breach of Unsecured Protected Health Information or a Security Incident.
- (e) Business Associate agrees to report to Covered Entity any Security Incident without unreasonable delay, and in no event later than ten (10) calendar days, after becoming aware that such Security Incident affects Covered Entity's information, except that, for purposes of this Security Incident reporting requirement, the term "Security Incident" shall not include inconsequential incidents that occur on a daily basis, such as scans, "pings" or other unsuccessful attempts to penetrate computer networks or servers containing electronic PHI maintained by Business Associate.
- (f) Business Associate agrees to report to Covered Entity any Breach of Unsecured Protected Health Information without unreasonable delay and in no case later than thirty (30) calendar days after becoming aware that such Breach affects Covered Entity's Protected Health Information. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate, to have been, accessed, acquired, or disclosed in connection with such Breach. In addition, Business Associate shall provide any information reasonably requested by Covered Entity for purposes of making the notifications required by 45 CFR 164.404(c) as soon as such information is available to Business Associate. Business Associate's notification of a Breach under this section shall comply in all respects with each applicable provision of 45 CFR Part 164, Subpart D and related guidance issued by the Secretary from time to time.
- (g) Business Associate shall require any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate to agree in writing to restrictions and conditions that are no less protective than those that apply through this BA Agreement to Business Associate with respect to such information, in accordance with 45 CFR 164.502(e)(1) (ii) and 164.308(b)(2), if applicable.
- (h) Business Associate shall provide access directly to an Individual, at the request of Covered Entity or an Individual and in a prompt and reasonable manner, including in the electronic form or format requested by the Individual, to Protected Health Information in a Designated Record Set, subject to and consistent with the timing and other provisions of 45 CFR 164.524.
- (i) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set at the request of Covered Entity or an Individual, subject to and consistent with the timing and other provisions of 45 CFR 164.526.
- (j) Business Associate agrees to make (i) internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, and (ii) policies, procedures, and documentation relating to the safeguarding of Electronic Protected Health Information available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the Privacy and Security Rules.
- (k) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information, subject to and consistent with 45 CFR 164.528.

- (l) Business Associate agrees to provide to an Individual, at the request of Covered Entity or an Individual, an accounting of disclosures of Protected Health Information subject to and consistent with the timing and other provisions of 45 CFR 164.528.
- (m) With respect to Electronic Protected Health Information, Business Associate shall implement and comply with the administrative safeguards set forth at 45 CFR 164.308, the physical safeguards set forth at 45 CFR 164.310, the technical safeguards set forth at 45 CFR 164.312, and the policies and procedures set forth at 45 CFR 164.316 to reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate acknowledges that (i) the foregoing safeguards, policies and procedure requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (ii) Business Associate shall be subject to HIPAA enforcement provisions, as amended from time to time, for failure to comply with the Security Rule safeguards, policies and procedure requirements and any guidance issued by the Secretary from time to time with respect to such requirements.
- (n) If Business Associate conducts any Standard Transactions on behalf of Covered Entity, Business Associate shall comply with, and require any Subcontractor to comply with, the applicable requirements of 45 CFR Parts 160-162.
- (o) Business Associate acknowledges that it shall be subject to the HIPAA enforcement provisions, as amended from time to time, for (i) impermissible uses and disclosures, (ii) failure to provide breach notification to Covered Entity, (iii) failure to provide access to a copy of Electronic Protected Health Information to either Covered Entity or the Individual, or the Individual's designee, (iv) failure to disclose Protected Health Information where required by the Secretary to investigate or determine Covered Entity's compliance with HIPAA, and (v) failure to provide the accounting of disclosures required in this BA Agreement.
- (p) To the extent under the Memorandum of Understanding or this BA Agreement Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- (q) Business Associate will provide ongoing HIPAA training to its staff and certifies that Business Associate has a HIPAA Compliance Program in accordance with federal law.
- (r) At all times Business Associate will be an independent contractor of Covered Entity and shall comply with all applicable laws, rules and regulations applicable to Business Associates under HIPAA.
- (s) Business Associate agrees to indemnify and hold harmless Covered Entity from and against any and all loss, damage or liability associated with Business Associate's obligations hereunder including any and all legal fees incurred by Covered Entity to enforce the provisions of this BAA and/or to remediate any harm caused by Business Associate.
- (t) Business Associate agrees to implement all recommendations from the National Institute of Standards and Technology ("NIST"). (Note that the NIST guidelines are best practices and are not required in all situations.)

3. Permitted Uses and Disclosures by Business Associate

3.1 General Use and Disclosure

Except as otherwise provided in this BA Agreement, Business Associate may use or disclose Protected Health Information to perform its obligations under the Memorandum

of Understanding, provided that such use or disclosure would not violate the Privacy and Security Rules if done by Covered Entity.

3.2 Specific Use and Disclosure Provisions

- (a) Except as otherwise provided in this BA Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- (b) Except as otherwise provided in this BA Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached in accordance with the Breach and Security Incident notifications requirements of this BA Agreement.
- (c) Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual without Covered Entity's prior written approval and notice from Covered Entity that it has obtained from the Individual, in accordance with 45 CFR 164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by Business Associate.
- (d) Business Associate may use or disclose Protected Health Information to communicate about a product or service, provided that such communication is made in a manner that does not constitute marketing as defined in 45 CFR 164.501 or otherwise constitute a use or disclosure that Covered Entity is prohibited from performing itself.
- (e) Business Associate may use Protected Health Information to perform Data Aggregation services relating to the healthcare operations of the Covered Entity.
- (f) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j).
- (g) The provisions of this BA Agreement notwithstanding, Business Associate is permitted to identify Protected Health Information, provided that it does so in accordance with HIPAA de-identification rules. De-identified information does not constitute Protected Health Information, and may be used and disclosed by Business Associate for its own purposes, including, without limitation, for purposes of developing comparative databases, performing statistical analysis and research, and improving the quality of Business Associate's products and services.

4. Obligations of Covered Entity

4.1 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- (a) Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices agreed to in accordance with 45 CFR § 164.520(b)(2), to the extent that such limitation) may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent

that such changes affect Business Associate's uses or disclosures of Protected Health Information.

- (c) Covered Entity agrees that it will not impose special limits or restrictions on the uses and disclosures of its Protected Health Information that may impact in any manner the use and disclosure of Protected Health Information by Business Associate under the Memorandum of Understanding and this BA Agreement, including, but not limited to, restrictions on the use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. 164.522(a), unless such restrictions are required by 45 CFR 164.522(a). The foregoing notwithstanding, Business Associate agrees to accommodate reasonable requests for alternative means of communications pursuant to 45 C.F.R. 164.522(b).

4.2 Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rules if done by Covered Entity except that Business Associate may use Protected Health Information in its possession (i) for Business Associate's proper management and administrative services, or (ii) to provide Data Aggregation services to the Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).

5. Term and Termination

- (a) Term. The provisions of this BA Agreement shall take effect on the Effective Date, and shall terminate upon expiration or termination of the Memorandum of Understanding, except as otherwise provided herein.
- (b) Termination for Cause. Without limiting the termination rights of the parties pursuant to the Memorandum of Understanding and upon either party's knowledge of a material breach by the other party, the non-breaching party shall either:
 - i. Provide an opportunity for the breaching party to cure the breach or end the violation, or terminate the Memorandum of Understanding, if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party, or
 - ii. Immediately terminate the Memorandum of Understanding, if cure of such breach is not possible.
 - iii. This Business Associate Agreement may be terminated by the Covered Entity if the Covered Entity determines that the Business Associate has violated a material term of this Agreement.
- (c) Effect of Termination.

The parties mutually agree that it is essential for Protected Health Information to be maintained after the expiration of the Memorandum of Understanding for regulatory and other business reasons. Notwithstanding the expiration of the Memorandum of Understanding, Business Associate shall extend the protection of this BA Agreement to such Protected Health Information, and limit further use or disclosure of the Protected Health Information to those purposes that make the return or destruction of the Protected Health Information infeasible.
- (d) Return or Destroy.

At the termination of the Business Associate Agreement, if feasible, Business Associate will return or destroy all Protected Health Information received from, or created or received by the Business Associate on behalf of, the Covered Entity that the Business Associate still maintains in any form and will retain no copies of such information or, if such return or

destruction is not feasible, extend the protections of the Business Associate Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

6. Miscellaneous

- (a) Regulatory References. A reference in this BA Agreement to a section in the Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment. The Parties agree to take such action to amend this BA Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of HIPAA.
- (c) Survival. The respective rights and obligations of Business Associate under Section 5(c) of this BA Agreement shall survive the termination of this BA Agreement.
- (d) Interpretation. Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Rules. In the event of any inconsistency between this BA Agreement and the Memorandum of Understanding, including any other appendices, schedules, exhibits and attachments, the terms and conditions of this BA Agreement shall control.
- (e) No third party beneficiary. Nothing expressed or implied in this BA Agreement or in the Memorandum of Understanding is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- (f) Governing Law. This BA Agreement shall be governed by and construed in accordance with the laws of Kansas and consistent with the provisions of the Memorandum of Understanding, subject to applicable federal law.
- (g) Countersignature: This BA Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this BA Agreement may contain more than one counterpart of the signature page and this BA Agreement may be executed by the affixing of the signatures of Business Associate and Covered Entity on behalf of Covered Entity, to one of such counterpart signature pages. All of those counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

(h) Notices: Any notices or communications to be given under this Agreement shall be made to the address and/or fax numbers given below:

To Covered Entity:

To Business Associate:

Lawrence Douglas County Fire and
Medical

Douglas County, Kansas Government

Phone: _____

Phone: _____

Fax: _____

Fax: _____

E-mail: _____

Email:

[THE NEXT PAGE IS THE SIGNATURE PAGE]

[THIS IS THE SIGNATURE PAGE]

BUSINESS ASSOCIATE

COVERED ENTITY

Authorized Signature

Authorized Signature

Print Name

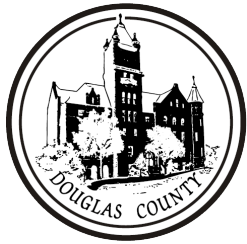
Print Name

Title

Title

Date

Date



DOUGLAS COUNTY ADMINISTRATION

1100 Massachusetts Street
Lawrence, KS 66044-3064
(785) 330-2873 Fax (785) 832-5148
jasminmoore@douglascountyks.org

Jasmin Moore
Sustainability Director

MEMORANDUM

TO: Board of County Commissioners

FROM: Jasmin Moore, Sustainability Director

DATE: November 28, 2018

SUBJECT: Direct Renewable Participation Service Agreement with Westar Energy

Westar Energy is currently offering large customers, like Douglas County, the opportunity to purchase wind power from a new wind farm, which will be fully operational by 2020. The county's participation in this service agreement to source 60% of its power from wind would save about \$12,500 annually and would also directly support the Douglas County Kansas Sustainability Plan, adopted in 2010, which includes a commitment to reduce emissions associated with energy use by 30 percent.

Financial Analysis

- There is no upfront cost to participate in the service agreement.
- The wind fuel charge goes into effect when the wind plant becomes operational in 2020.
- In the last five years, Douglas County spent an average of \$603,000 on electricity annually. Of that total, \$135,000 is attributed to fuel charges.
- The fuel charge rate for wind power is 15% less than the county is currently paying. The average fuel charge has been about 2.1 cents per kWh. The long term service agreement locks the wind fuel charge in at 1.8 cents per kWh for 20 years.
- Sourcing 60% of the county's energy from wind would result in an annual savings of about \$12,500.
- Transitioning to 60% wind power would diversify the county's energy portfolio and allow for further energy reductions without penalty.

The following motion is recommended to approve this item: ***“Approve the contract with Westar Energy for renewable energy to be purchased under the Direct Renewable Participation Service tariff.”***

Westar Energy, Inc.

Direct Renewable Participation Service Agreement

This Direct Renewable Participation Service Agreement (the "Agreement") is entered into on this _____ day of _____, 20____ between Westar Energy, Inc. (the "Company") and Douglas County Kansas ("Customer") for renewable energy to be purchased under the Company's Direct Renewable Participation Service tariff (the "DRPS Tariff").

Recitals

WHEREAS the Customer agrees to purchase the pro rata share of the renewable energy generated from __1000____ kilowatt (kW) of the Company's 300,000 kW Soldier Creek Wind Farm resource ("Resource"); and

WHEREAS the Customer agrees to purchase the renewable energy generated from Customer's pro rata share from the Resource for the lesser term of: (a) twenty (20) years, starting on the commercial operational date of the Resource, or (b) for the term that is equal to the Company's remaining term under its twenty (20) year purchase of renewable energy generated from the Resource, starting on the date of execution of this Agreement; and

WHEREAS the Customer has an average monthly peak demand of greater than 500 kW; and

WHEREAS the Customer recognizes that participation in this Agreement is voluntary and is governed by the DRPS Tariff as approved by the Kansas Corporation Commission ("KCC").

Agreement

The Customer and Company agree:

1. DRPS Subscription

- a. Subject to the terms and conditions set forth in this Agreement and the DRPS Tariff, the Company hereby grants the Customer a subscription to the electric energy output proportionate to the above kW share for the applicable term identified above.
- b. The Customer agrees to the following payment terms:
 - i. Substitution of the Retail Energy Cost Adjustment ("RECA") Surcharge with a fixed charge of \$0.018 per kWh generated by the Customer's pro rata share from the Resource and billed as the Renewable Participation Charge ("RPC").
 - ii. The amount of energy subscribed to above will be a pro rata share based upon a fixed kW amount in 500 kW increments up to 2,000 kW and with additional increments in 1,000 kW thereafter, which will be converted to a

pro rata share of the Resource. The Customer will receive no additional capacity credit for their subscription.

- iii. All charges, adjustments and surcharges, except the RECA, will be billed at the standard rates applicable to the customer's rate class.
- iv. Customers will receive a forecasted RPC credit, based on the Resource's generating forecast, of their pro rata share's expected annual production spread evenly across each month of the year. The Customer's usage and corresponding RPC substitution of the RECA will be trued-up at the end of the year with any additional RECA recovery billed to the customer. Any true-up will be applied to the first bill, occurring after January 15, of each calendar year. This bill may also reflect an RPC annual credit adjustment based on the Resource's year-prior actual generation.
- v. Excess energy generated by the Customer's pro rata share from the Resource and unused by the Customer in calendar year will be credited to the Customer's bill at 80% of the RPC.
 - 1. At the Company's discretion, and due to unforeseen Customer circumstances, such as a force majeure event, the Company may allow for RPC credits not utilized in a particular calendar year to be applied to the next calendar year.
- vi. Should the Customer choose to aggregate accounts, information pertaining to all accounts will be provided in Appendix A.
 - 1. The Company may elect to credit the accounts list in Appendix A starting with the account that has the highest energy usage and working through the smallest.
- vii. Customers with recurring excess generation from this Agreement will have their contracted amount reduced to better match their usage at the Company's discretion.
- c. The Company will not be held responsible for unforeseen or force majeure events that impact the Resource's energy generation.

2. Additional Terms and Conditions

- a. Service hereunder is subject to the Company's General Terms and Conditions as approved by the KCC and any modifications subsequently approved.
- b. All provisions of the DRPS Tariff in which this Agreement relies upon are subject to changes made by order of the regulatory authority having jurisdiction.
- c. The Customer being served or having been served under this Agreement waives all rights to any billing adjustments arising from a claim that the Customer's service would be or would have been at a lower cost had it not participated in the Agreement.

- d. The Customer may maintain participation in this program when relocating facilities or service within Company's service territory.
- e. At the Customer's request and cost, the Company will transfer the Renewable Energy Credits (RECs) associated with the Customer's subscription on an annual basis. Should the Customer not make a request for transfer, the Company will retire the associated RECs on the Customer's behalf annually to a nationally recognized renewable energy tracking system and provide a statement to Customer stating the volume of RECs retired on Customer's behalf, all at no additional cost to Customer.
- f. The RPC price outlined within this Agreement is fully fixed and will not rise or fall with changes to the RECA. The RPC price stated in this Agreement shall not be changed by Company during the term of this Agreement. Should the KCC or a party other than the Company increase the RPC fixed charge under this Agreement, Company shall provide ninety (90) days written notice to Customer, and Customer shall have the option of providing thirty (30) days notice to Company to cancel this Agreement without penalty or cost to Customer.
- g. If the Customer ceases all operations within Company's service territory during the term of this Agreement, this Agreement will terminate upon final billing. Any remaining excess energy generated by the Resource within the last billing period will be credited to the Customer's bill at 80% of the Renewable Participation Charge.
- h. The Provisions found in Douglas County Contractual Provisions Attachment (Revised April-2006), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

Customer: ____Douglas County Kansas_____

Representative/Title: Nancy Thellman, Chair of the Douglas County Board of County Commissioners

Signed: _____

Date: _____

Westar Energy, Inc.

Representative/Title: Jeff Martin, VP Customer and Community Operations

Signed: _____

Date: _____

DOUGLAS COUNTY

CONTRACTUAL PROVISIONS ATTACHMENT

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof:

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. As used herein, the term "Douglas County" shall refer to Douglas County and any of its agencies, offices, and departments entering into the contract.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the County Administrator, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, Douglas County may terminate this agreement at the end of its current fiscal year. Douglas County agrees to give written notice of termination to vendor/contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Vendor/contractor shall have the right, at the end of such fiscal year, to take possession of any unpaid equipment provided Douglas County under the contract. Douglas County will pay to the vendor/contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by Douglas County, title to any such unpaid equipment shall revert to vendor/contractor at the end of Douglas County's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to Douglas County or the vendor/contractor.
4. **Disclaimer Of Liability:** Douglas County shall not hold harmless or indemnify any vendor/contractor beyond that liability under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The vendor/contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the vendor/contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of

contract and the contract may be cancelled, terminated or suspended, in whole or in part, by Douglas County; (f) if it is determined that the vendor/contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by Douglas County.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a vendor/contractor who employs fewer than four employees during the term of such contract or whose contracts with Douglas County cumulatively total \$5,000 or less during the fiscal year of Douglas County.

6. **Arbitration, Payment Due, Interest, Warranties**: Notwithstanding any language to the contrary, no interpretation shall be allowed to find Douglas County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Payment from Douglas County to vendor/contractor shall not be due sooner than 30 days after the delivery of an invoice from vendor/contractor to Douglas County. Further, Douglas County does not agree to pay attorney fees or late payment charges beyond those available under K.S.A. 16-201, and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority To Contract**: By signing this contract, the representative of the vendor/contractor hereby represents that such person is duly authorized by the vendor/contractor to execute this contract on behalf of the vendor/contractor and that the vendor/contractor agrees to be bound by the provisions thereof.
8. **Responsibility For Taxes**: Douglas County shall not be responsible for, nor indemnify vendor/contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

Appendix A

[TO BE INSERTED BY WESTAR]



2019 Douglas County Legislative Statement

Introduction

The 2019 Legislature faces some very big challenges this year. While state finances are much improved over recent years, there are still significant challenges as the Legislature seeks to fund education as required by state law. At the same time, local governments are forced to make very difficult decisions as a result of the budget lid limitations imposed by the 2015 legislative session.

Actions taken by the state legislature in recent years, including 2014 legislation eliminating the Mortgage Fee Law of 1925 and implementing a budget lid law, hamstringing the ability of Douglas County government to deliver essential public health and safety services to our residents. Eventually, over a number of years, these budget constraints will cause local governments in Kansas to experience the same financial challenges that the state is facing. Essential public health and infrastructure maintenance services will deteriorate. Dedicated competent public employees will seek employment elsewhere as wages gradually become less and less competitive. Critical infrastructure will deteriorate as projects are deferred, and borrowing costs will increase as bond ratings deteriorate. We encourage you to repeal the budget lid law, or at least amend it to provide reasonable exceptions to avoid these unintended consequences.

The voters of Douglas County rejected our proposal to expand the jail on May 15, but the need for additional beds has grown more pressing. Our average daily population is now 235 and the Douglas County Jail has only 187 beds. To provide context, our average daily population is still one of the lowest in the state, according to stats from the Vera Institute. We have inmates that are in laundry rooms, classrooms, and farmed out to counties that are almost three hours away from Lawrence. On many days there are not enough beds in surrounding counties to accommodate our needs. Our nationally recognized jail transition programs are effectively on hold because most of our program spaces are now dedicated to bed space. The situation has become intolerable.

We are convinced that the key reason that the voters rejected our proposal was a firm belief and desire that the criminal justice system was in need of reform, and that we needed to find better ways to deal with our citizens who have committed felonies than to lock them up for periods of time that are dictated by law.

While the county officials share that aspiration, and we are strongly committed to continue the process of improving the criminal justice system to provide more alternatives to incarceration, we will always need some alternatives that involve incarceration, and our citizens need to understand that neither the courts nor county officials have the option to ignore the legal framework of the criminal justice system that is established by state law.

We therefore ask our legislative delegation to ask the legislature to engage in a comprehensive initiative to review all aspects of sentencing guidelines, and consider all possible criminal justice reforms that might produce lower incarceration rates, and greater possibilities of reducing recidivism for those who are jailed and imprisoned. We



2019 Douglas County Legislative Statement

are realistic enough to know that Douglas County will still need to expand our jail, and that there will always be a need for jails and prisons. But we also hope that our next proposal to expand our jail will be the last expansion needed.

In order for that hope to be a reality, the legislature, county commissions, the legal professionals on both sides of the courtroom and the courts must work together to improve the criminal justice system to assure that citizens are incarcerated only as a last resort when necessary to protect public safety, and the rule of law. The voters also need to recognize that with rare exceptions, each of the officials that are part of that criminal justice system are committed to due process and the public safety of our citizens, and that it is those very officials that are the key to making the system better, including our state legislators.

We appreciate your service to the residents of Douglas County and understand the difficult decisions with which you are faced. Our mutual responsibility to serve the residents of Douglas County is our shared highest priority and we look forward to working with you to meet their needs.

High Priority Issues

KanCare Expansion. We support expansion of the Kansas Medicaid program, KanCare, bringing more federal dollars to Kansas, and extending healthcare coverage to our lower income residents. The continued failure of the state to expand Medicaid places a greater fiscal burden, not only on our lower income residents, but also on the County's budget and the local property tax load.

New Transportation Program. We support transportation investment, which is proven to increase economic prosperity, safety of our citizenry, quality of life, and pride in our state. With the current T-Works program ending, and the 2018 Joint Legislative Transportation Task Force scheduled to make transportation program recommendations to the governor in early 2019, we urge the Douglas County legislators to support development of a new transportation program for the state.

Expansion of the West Leg-SLT to four lanes. With the opening of the four-lane East Leg of the SLT in 2016, traffic volumes on the two-lane West Leg-SLT has approximately doubled. This additional traffic, without supporting infrastructure, has significantly hampered the ability of Douglas County and other Kansas motorists to access jobs, homes, and recreation, and has seriously compromised the safety of the traveling public. We urge our legislators to include in the next transportation program a project to expand the West Leg-SLT to four lanes.

Interim West Leg-SLT improvements. While we support the ultimate project to expand the West Leg-SLT to four lanes, we believe some portions of the project could be advanced on an accelerated schedule. Construction of the planned interchange at



2019 Douglas County Legislative Statement

Wakarusa Drive would eliminate the serious safety concerns and capacity bottleneck at the existing at-grade intersection. Douglas County has already dedicated CIP funding for a project to connect to the planned interchange and extend Wakarusa Drive south across the Wakarusa River, completing an essential connection three miles west of US-59. While funding for the ultimate four-lane West Leg-SLT project should be a high priority, we encourage consideration of accelerated funding for initial phases to address the critical needs of the corridor as soon as possible.

Prison Sentencing Laws and related Mental Health Issues. The state must re-examine sentencing laws that contribute to increased incarceration rates in Kansas. The Douglas County incarceration rate, while lower than most counties in Kansas, has continued to increase over the last year. But our incarceration rate is not low when compared to incarceration rates in other states. This is partly because our district court judges are required to sentence convicted individuals according to Kansas state law that provides for mandatory sentencing with little flexibility, and it is partly because the state has chosen to understaff district courts in a way that increases the time that individuals stay in county jails awaiting their turn for trial. Neither of these causes can be fully addressed by the County. They must be addressed by the state legislature.

The incarceration rates in county jails are also higher as a result of the failure by the state to provide adequate short-term and long-term mental health treatment services. In particular, restored funding to serve our uninsured and underinsured populations is a critical need. In addition, funding to support housing services and resources that are available to individuals suffering from mental illness is also a critical need to ensure that the continuum of care is in place for these vulnerable citizens who are often challenged in maintaining consistent, stable housing.

Douglas County does not incarcerate individuals in the county jail because they are mentally ill, however; the failure to provide adequate mental health facilities often causes individuals in distress to take actions that lead to their arrest and incarceration. Today, when a law enforcement officer is called to a residence with a citizen experiencing a mental illness related crisis, more timely and appropriate crisis intervention therapeutic options are needed. Currently, those alternative options are limited.

The percentage of citizens in our county jail that have been diagnosed with serious mental illness is currently averaging about 18% which is consistent with national averages, and the county is currently working on an initiative to divert as many of these individuals as possible into proposed crisis intervention services, but it is beyond the capacity of the county to provide the long term services that the state no longer provides adequately. Our ability to prevent the escalation of behavioral health crisis and avoid unnecessary incarcerations and hospitalizations of individuals with mental illness and substance abuse disorders would be better served if behavioral health providers and facilities with the authority to keep individuals in crisis are able to do so for up to 72 hours of emergency operation and treatment, rather than the current 24-hour crisis observation period.



2019 Douglas County Legislative Statement

Spending and Taxing Lids. We continue to strenuously oppose any constitutional or statutory amendment to impose additional spending or taxing limitations on county government. Elected county commissioners should be responsible and accountable to make budget and spending decisions on behalf of constituents and local communities. Spending and taxing lids conflict with home rule powers and constitute an unnecessary infringement on local control.

This year, we would ask again that the legislature consider an additional exception to the budget lid law to cover operating costs related to providing community mental health services. The fact that the county has significantly increased budgetary commitments to the provision of mental health services at the local level, and is considering further increases, is a direct result of the state's decision to dramatically cut the level of mental health services and mental health beds over the last decade.

Other Issues

Public Health and Safety

Oversight of Privatized Health Care. As the State of Kansas remains committed to privatized health care to provide traditional government services, in spite of obvious problems, we ask that legislators work to provide an appropriate level of government oversight to ensure adequate service and fiscal responsibility.

Community Corrections. We support full funding for mandated community corrections programs and grants. Community correction services for adults reduce community risk and offender recidivism, which decreases taxpayer expense. In addition to serving non-violent, high-risk offenders, local community corrections also provide juvenile-offender supervision. The juvenile programs should include graduated sanctions, evidence-based practices, and prevention-funding to help reduce the number of juveniles from entering the correctional system. Additional funding produces a significant return on investment through reduced crime, incarceration, and recidivism.

Funding of Local Health Departments. We support increased state funding of local health departments. Local health departments have many mandated but unfunded functions that compete for limited resources. Health department costs rise every year with flat state funding, and thus put more pressure on property tax levies.

Governmental Organization

Home Rule. We support constitutional home rule for counties and oppose any additional erosion of existing statutory home rule authority. We support counties using their current home rule powers when applicable rather than seeking specific legislative remedies.

Open Meetings. We believe that openness in county government is essential to building public confidence. However, we believe there are times when privacy or other legitimate reasons require executive sessions.



2019 Douglas County Legislative Statement

Open Records. We support retention of current exemptions to the Kansas Open Records Act.

Revisions to Vehicle tag fund. Douglas County supports Kansas County Treasures Association's pursuit of additional funding of motor vehicle operations.

Environment, Energy, and Land Use

The nature of agriculture has changed dramatically since the first industry-protective Right to Farm Acts were passed, but the way we regulate its environmental consequences has not. The environmental and health impacts of what are often industrial-scale operations disproportionately affect the neighbors and communities where these operations are located, yet these very residents and communities have little say in how such facilities are regulated. The right to private property has never included the right to use property in a way that devalues the properties of one's neighbors or diminishes the overall quality of life in the community. All private property owners have a right to the peaceful enjoyment of their property and no one has a right to use their property in a way that deprives their neighbors of that right.

Priority Environmental Issues

Water Pollution. We oppose any and all measures that cause water pollution to surface water such as nearby streams and drainage ways and our valuable groundwater caused by excessive application or nutrient runoff of nitrogen and phosphorus. The capacity of land to absorb phosphorus is limited. We oppose any development that has a history of federal and state water pollution violations. We support buffer areas between land application fields and the control of land application rates.

Conservation Easements. We oppose any legislative initiative to repeal conservation easements. Conservation easements are an important legal instrument for both landowners and public entities to conserve prime farmland, forests, prairies, wetlands, historic areas, wildlife habitat, and scenic views for the benefit of future generations.

Natural resources. We support any legislative initiative to conserve prime farmland, forests, prairies, wetlands, historic areas, wildlife habitat, and scenic views for the benefit of future generations.

Injection Wells. We support a stronger open public process at the Kansas Corporation Commission that would hold industry accountable to landowners, neighbors, and the public at large. The current system is impossible for a citizen living close to a proposed injection well, or any other citizen, to access. There are no public hearings, and a person with reservations about the well is put in a position of hiring expensive subject matter experts and attorneys to even get through the door of the review process that is currently in place.

There are also documented instances where the Corporation Commission has ignored its own established procedures in approving injection wells that pose a risk to our state water resources and the water wells of individual citizens. The corporation commission is in



2019 Douglas County Legislative Statement

need of major reform, away from being a facilitator for the oil and gas industry and back to a government agency that protects the water resources upon which we all depend.

Priority Land Use Issues

Local Regulations. We support local authority to regulate large commercial feed operations to a more restrictive degree than current state law permits, allowing local authority to address any undue burden on the existing transportation and service facilities, compatibility to other land uses in surrounding areas of the county, allowing neighboring landowners to address concerns such as disturbing odors, sights, and traffic patterns, as well as addressing a cumulative result of nuisance complaints and decreased property values.

Priority Community Development and Labor Force Issues

Development. We support development that provides a relative gain to the public's health, safety and general welfare to our communities.

Housing. We support counties' home rule authority to address affordable housing needs, which are now at a crisis level, through all available methods, including inclusionary zoning. This includes a repeal of the prohibition in state law that removes this option for local governments.

Local Food System Support. We support the recommendations of the State's Local Food and Farm Task force to create a statewide Local Food and Farm Plan with policy and funding recommendations to increase production of locally-grown foods. Specifically, we support their recommendation to continue budget support for KSU Research and Extension positions to support specialty crop growers and local food system support.

Renewable Energy & Property Assessed Clean Energy (PACE) Legislation Support. We support public and private incentives to encourage investment in renewable energy sources. The County supports the goal of having a 20% renewable portfolio for regulated utilities by 2020. We encourage the State to work with communities to pursue manufacturing facilities for wind, biomass, solar and other energy related industries in Kansas. The County also supports legislation that would allow for the assessment of clean and energy efficient improvements to properties, to be assessed on a parcel's property taxes over a period of years. Twenty-four states have adopted such PACE legislation. The proposed bill would allow for the creation of local programs that would have no impact on the State budget while increasing energy efficiency.

Taxation and Finance

Alternative Taxing Authority. There is great stress on the property tax as a means of financing county services. There is also tremendous diversity among counties' economic bases, which makes a uniform approach to funding local services difficult. As such, we support legislation to provide a statutory menu of taxing and revenue options to finance county services which could be exercised by boards of county commissioners on a county



2019 Douglas County Legislative Statement

by county basis. This issue has become more pressing as the state moves toward elimination of the income tax, placing more mandates on counties.

Streamlined Sales Tax. We support federal legislation requiring retailers in other states to collect sales and use taxes on remote sales. We also oppose regulations that hinder implementation of the Streamlined Sales and Use Tax Agreement.

Assessed Valuation Limitation. We oppose any constitutional or statutory amendment limiting the change in assessed valuation for a parcel from one appraisal year to the next. This would create unnecessary inequities among parcels and would unnecessarily shift the property tax burden to older, mature properties.

Tax Base Exemptions. We oppose any further exemptions to the ad valorem property tax base or the state/local sales tax base. Exemptions only shift the burden of financing vital services to an increasingly narrow tax base.

Fee Sweeps. We oppose any legislation that sweeps fees intended for distribution to local government into the state general fund for use by the state.

KPERS and KPF. We oppose actions that would undermine the fiscal integrity of KPERS or KPF including privatization or transfer of pension funds to prop up the state general fund. Counties are now required in our audits to report our share of the unfunded portions of the growing liabilities, even though we are not permitted by state law to fund this liability. Deferring this cost to future generations is irresponsible and it desperately needs to be addressed by the legislature.

Fiscal Support of District Courts. We continue to urge the legislature to fully fund the state's district court obligations as set out by existing state law. Douglas County continues to pick up ever increasing portions of the district court budget as state funding has failed to keep pace with the fiscal needs of the court system.

Infrastructure and Public Works

Right of Way Management. We vigorously oppose restrictions to counties' ability to manage their rights of way or to recover public costs incurred when such property is necessarily used by regulated and non-regulated utilities or service providers. The management of public rights-of-way is a fiduciary responsibility of county government.

Transportation Network. The need for a functional, safe and well-maintained highway system is vital to the economic health of Douglas County and the State of Kansas, which requires a strong and appropriately funded Kansas Department of Transportation (KDOT). Restoration of funding that has been diverted to other state needs is strongly encouraged. Further, Douglas County favors legislation that produces safe and reliable infrastructure, and opposes legislation that speeds the decline of our roads and bridges, e.g. legislation increasing legal load limits for trucks.



2019 Douglas County Legislative Statement

The following transportation projects are strongly supported as well:

- **South Lawrence Trafficway.** With the opening of the east leg of the SLT (K-10), it is apparent (as expected) that the west leg of the SLT from I-70 to US-59 highway needs to be expanded to four lanes. All efforts should be made to move this project forward as swiftly as possible.
- **Route 438 Connection** – The County supports a connection to Douglas County Route 438 from the planned interchange at K-10 & I-70 (Kansas Turnpike).
- **Interchange at K-10 & Wakarusa Drive.** The County supports construction of an interchange as soon as possible near K-10 (SLT) & Wakarusa Drive. This could be constructed before expansion of the west leg of the SLT to four lanes. Douglas County stands ready to partner in a project to extend Wakarusa Drive from the new interchange to Route 458. Construction of this interchange would allow removal of two existing at-grade intersections on K-10, i.e. at Wakarusa Drive and at Kasold, thereby improving safety.



DOUGLAS COUNTY ZONING & CODES DEPARTMENT MEMORANDUM

TO: Board of County Commissioners

SUBJECT: ZTBU-2018-0002, Temporary Business Permit to burn brush on RD Johnson Excavating Company LLC property located at 1600 N 1250 Rd

DATE: December 5, 2018

FROM: Tonya Voigt, Planning & Zoning Coordinator

BACKGROUND:

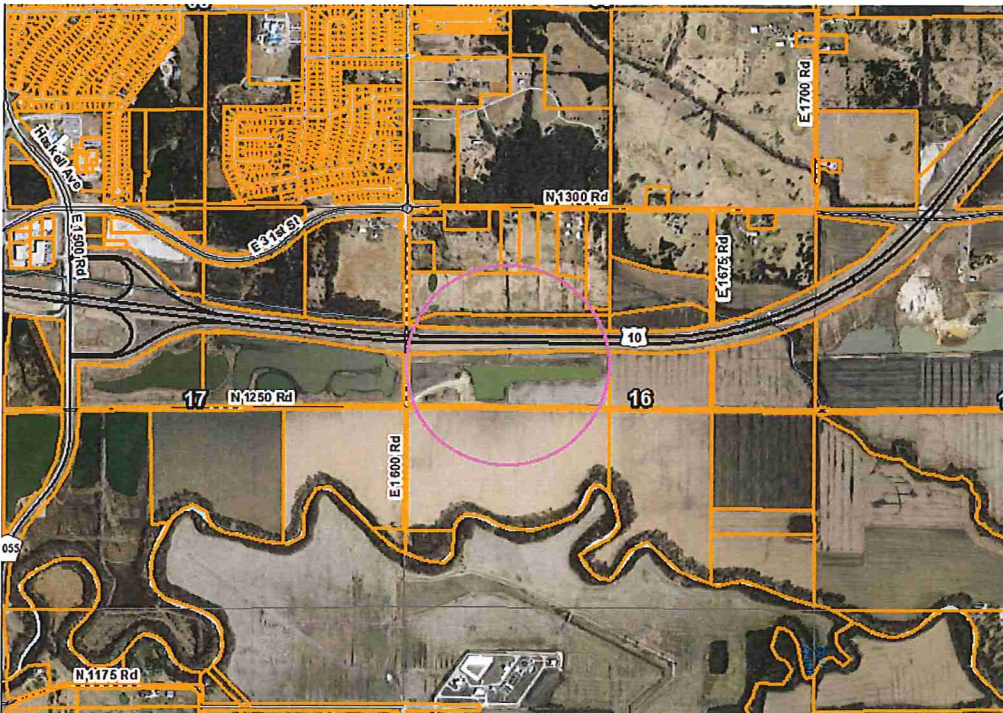
RD Johnson, LLC has submitted an application for a Temporary Business Use Permit for permission to burn brush brought from off-site to the above address. KDHE (Kansas Department of Health and Environment) has recently changed their policy to allow brush burning on commercial sites and has approved brush burning operations at 1600 N 1250 Rd. The approval is for the burning of trees and brush only. Because the brush is generated at other sites and is temporary, a TBU permit is also required from the County.

Land Use

Existing Use: Agricultural
Proposed Use: Agricultural with a pending CUP to remove topsoil/ clean rubble landfill
Surrounding Uses: City limits and Agricultural

Zoning

Existing Zoning: A (Agricultural) District
Proposed Zoning: No proposed change to existing district. A CUP is pending for a clean rubble landfill and topsoil removal.
Urban Growth Boundary: Property is located in the designated urban growth boundary just south of the East leg of K-10 and the city limits.



Site Characteristics and Adverse Impacts on Natural Environment

Environmental Factors: The property contains portions of Class 1 high quality agricultural soils.



Floodplain: Most of the property is encumbered by regulatory floodway.



Length Vacant as Zoned and History of Site

In 2013 a Temporary Business Use permit was approved by BOCC for a borrow pit along the SLT at this site. That permit expired in 2016. This property was farm ground prior to the SLT but has been in the process of filling the borrow pit for several years.

In July of 2018 we received a complaint and noted the property was accelerating removal of top soil from a new area. Activity had increased to an activities beyond the approved scope of the floodplain development permit. Since then, we've been working with the applicant to obtain a CUP permit for a clean rubble landfill and permission to remove topsoil.

Detrimental Effect on Nearby Properties

No comments have been received from neighbors within the notification area about burning.

Public Gain

None identified

Public Services Availability

No services are required for use. No utilities onsite.

Compatibility with Surrounding Uses

No impact on surrounding uses.

Adequacy of Continued Maintenance

Site will be reclaimed as the borrow pit is filled back to agricultural use.

Recommended Time Limit

Applicant is requesting approval for a one year period, from December 2018 to December 2019, with the possibility of a six month extension.

APPLICABLE REGULATIONS:

Temporary Business Uses may be permitted in any zoning district upon review and finding by the Board of County Commissioners that the proposed use is in the public interest [re: section 12-319-5]. In making this determination, the Board is required to consider four factors:

1. the intensity and duration of the use,
2. the traffic that can be expected to be generated by the use,
3. the applicant's plans for dealing with sanitation and other public health and safety issues, and
4. other factors which the Board, in its discretion, determines will affect the public's health, safety and welfare.

Temporary business uses shall include activities conducted only for a temporary specified duration. This includes any use of a temporary and specified duration generating no more traffic or other effects on neighboring property.

Typical application procedure requires an application be submitted a minimum of 28 days prior to the commencement date. A complete application was received on November 9, 2018.

The application is required to be accompanied by a plan showing the location of the temporary business use and to provide an explanation of the proposed activities.

A summary of the activities submitted with the application follows:

- Controlling traffic, parking and road conditions: The property will take access from an existing driveway on E 1600 Rd. Commercial traffic will not use township road, N 1250.
- Lighting: N/A This activity does not require any illumination.
- Security: N/A
- Township Fire Dept.: Wakarusa Fire Department, KDOT and Emergency Services were contacted to review this application.
- Liability Insurance: [General liability & property insurance for the office/job trailer site will need to be on file with the Douglas County Zoning & Codes Department before operation begins.]

Public notice of the temporary business use was mailed to property owners within 1000' on November 15, 2018. The Zoning & Codes Department has received no inquiries or calls in response to the notice sent.

A public hearing is required to be held by the Board of County Commissioners on the temporary business permit application in accordance with section 12-319-5.01.f. The Commission may approve or deny the permit. If the permit is approved, the action the Commission takes need to include the effective time period for the permit and all conditions under which the permit is granted.

A Temporary Business Permit is issued to the applicant making the request. It is not assignable to another part without the Commission's consent [re:-12-391-5.01.g]

COMMENTS RECEIVED:

Steve Baalman, Engineer with KDOT, District One, Area Four

"KDOT is concerned that the request by RDJ to burn brush at their waste fill site south of K10 could create safety issues for travelers on K-10 if/when the process generates heavy smoke and atmospheric conditions allow that smoke to reach K-10. Does RDJ have a plan that addresses the visibility safety issue that smoke could create on adjacent roadways? If the process is properly managed/monitored to prevent this from happening we don't have any objections. No representatives from KDOT will be able to attend the 12/5 hearing but if you could present these concerns to the county commission I would appreciate it."

Jullian Rodrigue, Douglas County Emergency Management

"We've reviewed the documentation and just want to ensure RD Johnson understands they must follow the provisions within the HOME RULE RESOLUTION 17-3-1, including only burning on allowed days. This may have already been discussed, but we didn't want to assume anything. Thank you for including us, and please let me know if you have any questions."

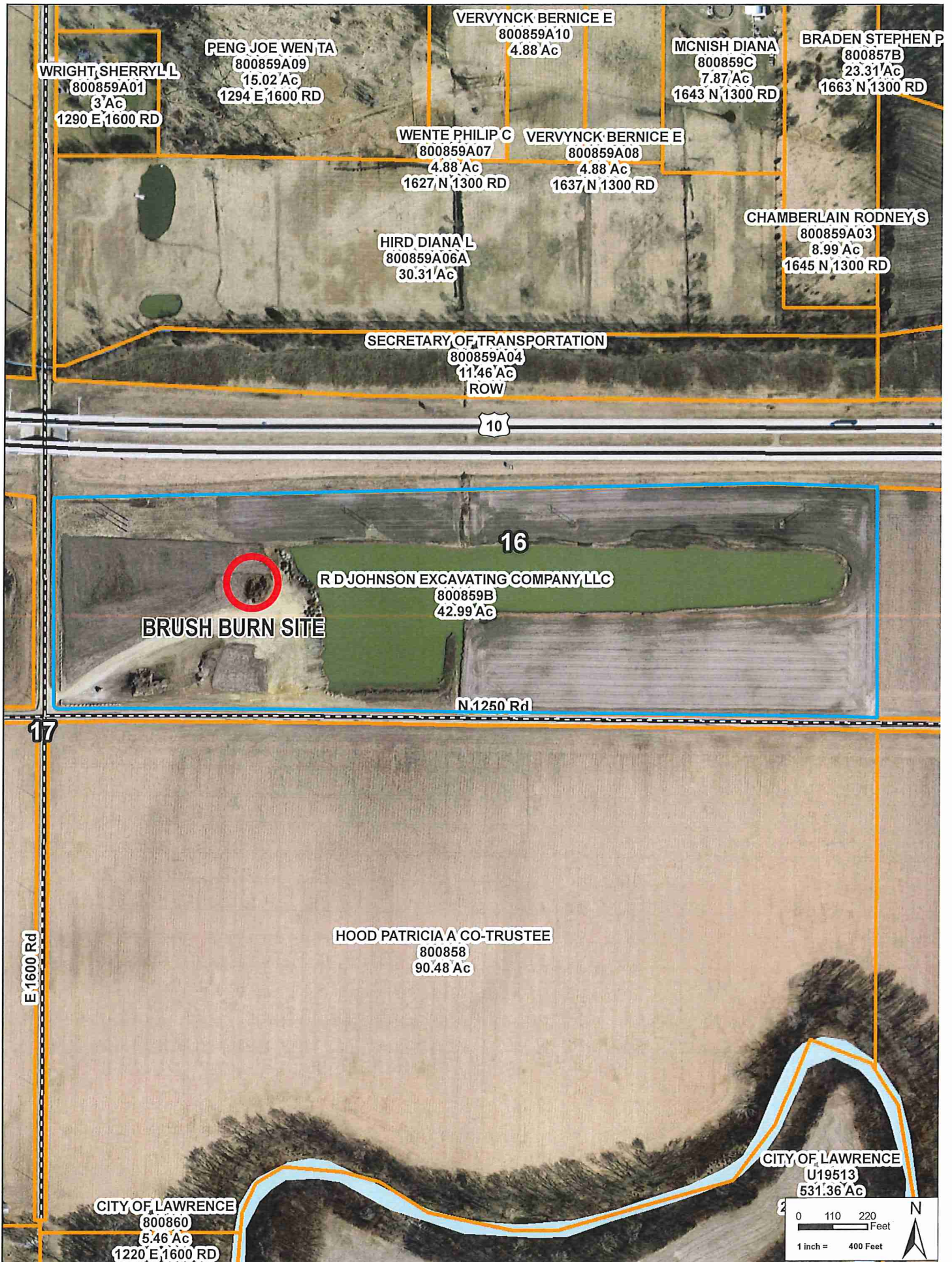
Chief Baxter, Fire Chief, Wakarusa Twp

"I have reviewed your application for open burning at the above address and have approved with the following conditions: 1. All open burning must be conducted in accordance with KAR 28-19-645, 28-19-645a, 28-19-646, 28-19-648 and Douglas County Home Rule Resolution No. HR 17-3-1. 2. Notification to Wakarusa Township Fire Dept. will be done prior to initiating a burn."

STAFF RECOMMENDATION:

Approval of the Temporary Business Permit for permission to burn off-site brush on property located at 1600 N 1250 Rd with the following conditions:

1. Approval is for the burning of trees and brush only.
2. All open burning must be conducted in accordance with KAR 28-19-647 and Douglas County Home Rule Resolution No. HR 17-3-1.
3. Notification to Wakarusa Township Fire Dept. will be done prior to initiating a burn.
4. Applicant is in compliance with the requirements of KDHE Permit No. 04-19-001 NEDO at all times.
5. The person conducting the burn shall insure that the burn is supervised until the fire is extinguished.
6. A person shall not conduct a burn that creates a traffic or other safety hazard.
7. Open burning is prohibited on those days when a local or state governmental entity has imposed a county wide or state wide burn ban.
8. Approval is requested for a one year period, from December 2018 to December 2019, with the possibility of a six month extension.





DOUGLAS COUNTY ZONING & CODES DEPARTMENT

3755 E 25th Street
Lawrence, Ks 66046
Phone: 785.331.1343

TEMPORARY BUSINESS USE PERMIT REQUEST NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN: Owners of property within 1000' of RD Johnson Excavating Company, LLC- Plate 800859B- 43 acres

SUBJECT: **ZTBU 2018-0002:** Temporary Business Permit to burn brush temporarily for one year from date of issuance located generally at 1600 N 1250 Rd, Lawrence, KS

DATE: December 5, 2018 @ 4 PM

RD Johnson Excavating has submitted an application for permission to burn brush brought from off-site on property located at approximately 1600 N 1250 Rd for a period 12 months. KDHE (Kansas Department of Health and Environment) recently changed their policy to allow brush burning on commercial sites. KDHE has approved brush burning operations at 1600 N 1250 Rd. The approval is for the burning of trees and brush only. Because this off-site burning is temporary in nature a TBU permit is also required from the County.

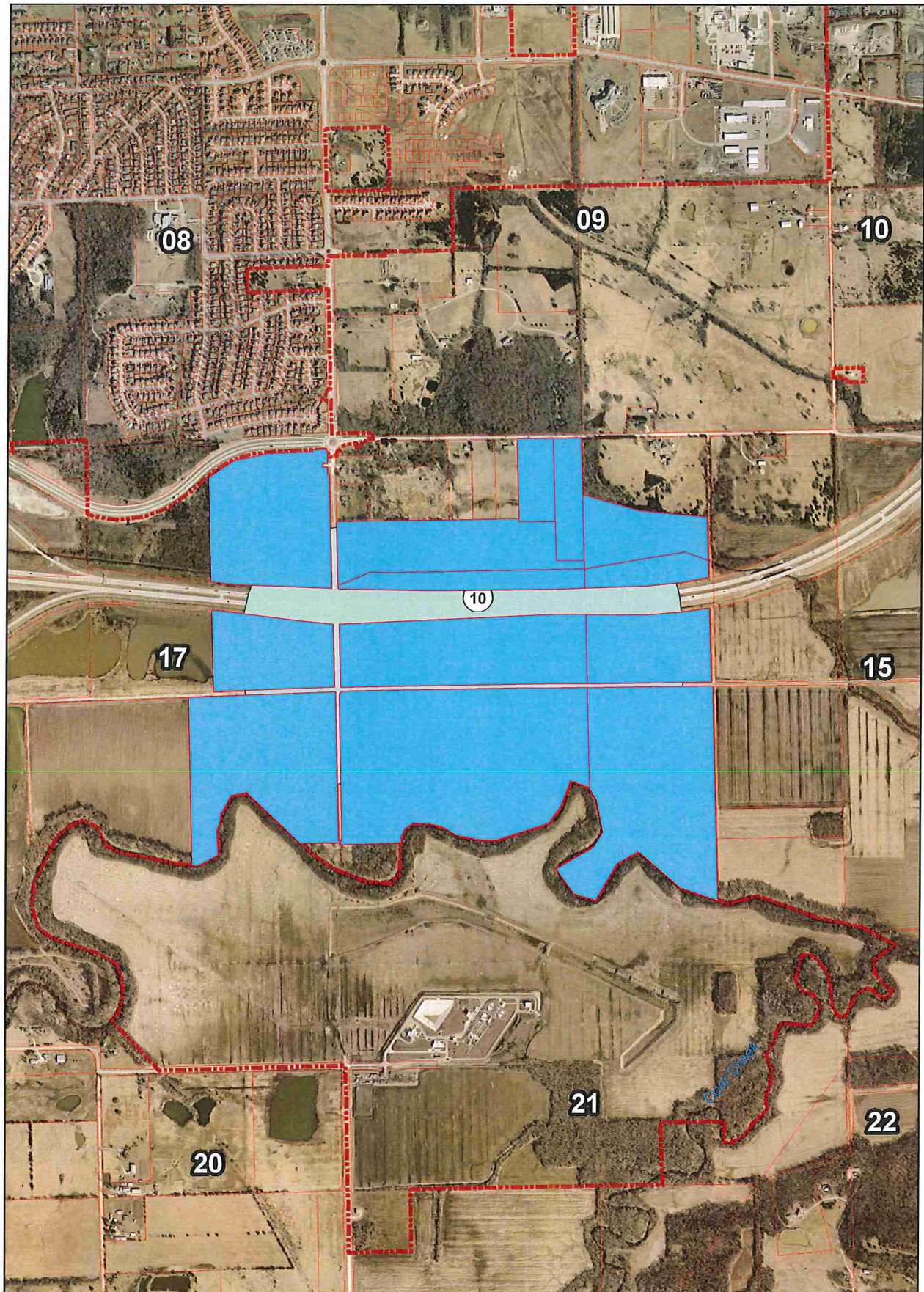
A Temporary Business Use Permit (TBU) requires a public hearing before the Board of County Commissioners, after which the County Commission can approve, approve with conditions, or deny the TBU permit.

The County Commission will hold a public hearing on this TBU at their regularly scheduled commission meeting on Wednesday, **December 5, 2018, at 4:00 pm.** The Douglas County Commission holds their meetings in the County Courthouse at 1100 Massachusetts Street, Lawrence, KS, in the Commission Room on the second floor of the Courthouse.

You are welcome to attend this meeting and share your comments or questions with the Commission regarding this application. If you'd like to ask questions before the meeting or submit comments in writing, you may contact the Zoning & Codes office at 785.331.1343 or by email to Tonya Voigt at tvoigt@douglascountyks.org.

bcc. Jason Dahl, Project Manager, RD Johnson Excavating Company
Ken McGovern, Douglas County Sheriff
Wakarusa Township Fire
Keith Browning, Douglas County Public Works Director

CERTIFIED POL WITHIN 1000 FT OF SELECTED TRACT (800859B)



STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF ENVIRONMENT
NORTHEAST DISTRICT OFFICE
800 WEST 24TH STREET
LAWRENCE, KS 66046-4417



PHONE: (785) 842-4600
FAX: (785) 842-3537
KDHE.NEDOADMIN@KS.GOV
WWW.KDHEKS.GOV

GOVERNOR JEFF COLYER, M.D.
JEFF ANDERSEN, SECRETARY

November 6, 2018

Jason Dahl, Director of Operations
R.D. Johnson Excavating
1705 N 1399 Road
Lawrence, Kansas 66046

Douglas County

RE: Tree and Brush Open Burning Operation Approval No. 04-19-001 NEDO

Dear Mr. Dahl:

The Kansas Department of Health and Environment hereby issues this approval to conduct a Tree and Brush Open Burning Operation, in accordance with K.A.R. 28-19-647(b). The site is located at 1600 N 1250 Road, Douglas County, Kansas. This exception is valid for an indefinite time period. However, the Department may revoke any approval upon thirty (30) days notice (K.A.R. 28-19-647(e)(9)).

The Operation is subject to the Open Burning Operation Conditions [K.A.R. 28-19-647(e)] which are attached. The approval is for the burning of trees and brush only. All burning shall be confined to the area designated on the Application and shall be initiated and conducted under the direct control of the Applicant. Representatives from the Department will make inspections of the site to determine compliance with the Open Burning Operation Conditions.

In granting this approval, the Department assumes no liability for personal injury or property damage resulting from such burning. If you have any questions concerning this matter, please contact the Northeast District Office at (785) 842-4600.

Sincerely,

A handwritten signature in cursive script that reads "Pat Simpson".

Pat Simpson
Air Program
Bureau of Environmental Field Services

C: Bureau of Air
NEDO File

OPEN BURNING OPERATION CONDITIONS

Each open burning operation for which the department issues approval shall be subject to the following conditions, except as provided [K.A.R. 28-19-647(e)]:

- (1) The person conducting the burning shall stockpile the material to be burned, dry it to the extent possible before it is burned, and assure that it is free of matter that will inhibit good combustion.
- (2) A person shall not burn heavy smoke-producing material including heavy oils, tires, and tarpaper.
- (3) A person shall not initiate burning during the nighttime, which for the purposes of this regulation is defined as the period from two hours before sunset until one hour after sunrise. A person shall not add material to a fire after two hours before sunset.
- (4) A person shall not burn during inclement or foggy conditions or on very cloudy days, which are defined as days with more than 0.7 cloud cover and with a ceiling of less than 2,000 feet.
- (5) A person shall not burn during periods when surface wind speed is less than 5 mph or more than 15 mph.
- (6) A person shall not burn within 1,000 feet of any occupied dwelling, unless the occupant of that dwelling has been notified before the burn.
- (7) A person shall not conduct a burn that creates a traffic or other safety hazard. If burning is to take place within 1,000 feet of a roadway, the person conducting the burn shall notify the highway patrol, sheriff's office, or other appropriate state or local traffic authority before the burning begins. If burning is to take place within one mile of an airport, the person conducting the burn shall notify the airport authority before the burning begins.
- (8) The person conducting the burn shall insure that the burning is supervised until the fire is extinguished.
- (9) The Department may revoke any approval upon 30 day notice.

PLANNING COMMISSION REPORT
Regular Agenda –Public Hearing Item

PC Staff Report
11/14/18

ITEM NO. 4 CONDITIONAL USE PERMIT FOR TOP SOIL REMOVAL & LANDFILL;
NORTHEAST CORNER OF E. 1600 RD & N. 1250 RD (MKM)

CUP-18-00432: Consider a Conditional Use Permit for *Top Soil Removal* and *Landfill* (clean rubble) on approximately 44.88 acres located at the northeast corner of E. 1600 Rd & N. 1250 Rd. Submitted by RD Johnson Excavating Company LLC, property owner of record.

STAFF RECOMMENDATION: Staff recommends approval of the Conditional Use Permit application referenced above subject to the following conditions:

1. The plan shall be revised with the following changes:
 - a. Deadlines for the reclamation phases listed: May 31, 2019 for the 1st phase and November 30, 2019 for the 2nd phase and the area in each phase noted.
 - b. Note regarding the burning of trees and brush and the area shown for this activity removed from the plan.
2. The following conditions apply to the use. Note these on the plan:
 - a. Only materials that are included in the KDHE definition of Clean Rubble may be disposed of in the landfill. These materials are: *"...the following types of construction and demolition waste: concrete and concrete products including reinforcing steel, asphalt pavement, brick, rock and uncontaminated soil as defined in rules and regulations adopted by the secretary."* Materials which do not meet this definition, including trees and brush, shall not be brought to the site.
 - b. The current drainage pattern with drainage flowing through a culvert under N. 1250 Road, northward across the subject property and under K-10 Highway, shall be maintained.
 - c. When filled, the borrow pit shall be graded to no more than 6 inches of the final elevation shown on the reclamation plan. When grading is complete, 6 inches of top soil shall be applied and the property shall be seeded. Reclamation is considered complete when vegetation has been established.
 - d. The Conditional Use Permit is subject to a 5 year administrative review and will expire 10 years after the date of the Commission's approval, unless an extension request, submitted before the deadline, is approved by the Board of County Commissioners.
3. A reclamation / closure plan shall be submitted to the Zoning and Codes Office by December 31st of each year, beginning in 2019. The plan shall show the following:
 - a. The portion that has been reclaimed (graded and final seeded and vegetation has been established) and reclamation has been approved by the Zoning and Codes Office; the portion that has been filled and graded (and seeded, if seeding has occurred but vegetation hasn't been established); the portion that is open and soil is being removed from, and the portion that has not yet been disturbed.
 - b. The area of each section shall be noted on the plan.
 - c. The plan shall note the estimated timeframe for the completion of reclamation of any phases where borrowing is complete.
 - d. As reclamation occurs, the plan shall include the surveyed elevation points of the areas that have been final graded and seeded to insure that the finished elevation is less than or equal to that which existing prior to borrowing, as shown on the approved CUP plan.

Reason for Request: *"R. D. Johnson would like to borrow dirt from the property for various projects around Lawrence. We will also use the area that is dug out for a waste area for approved materials and return it to original field."*

KEY POINTS

- The property was used as a borrow pit for the construction of the southern portion of K-10 Highway. To accommodate the Kansas Department of Transportation (KDOT) schedule for the construction of the highway, the Board of County Commissioner's adopted Home Rule Resolution No. HR-13-9-3 on September 25, 2013. This resolution approved temporary business permits for borrow pits necessary for the construction of the highway, rather than requiring each borrow pit to obtain a conditional use permit (CUP). A copy of this resolution is included with this report. The temporary business permits were valid from the date of publication of the resolution until October 31, 2016. As fill activity was occurring on the site beyond this date, the property owner was notified that the operation was in violation of the Zoning Regulations for the Unincorporated Territory of Douglas County. The property owner submitted this CUP application to bring the landfill into compliance with the Zoning Regulations and to allow additional removal of soil on the eastern portion of the site.
- The subject property contains approximately 44.88 acres. The reclamation/closure plan provided indicates that approximately 4 acres of the original borrow pit has been filled and will be reclaimed by spring of 2019. An additional 5 acres of the original borrow pit has not yet been filled, but they anticipate having this filled by fall of 2019.

OTHER ACTION REQUIRED

- Approval of the conditional use permit application and plan by the Board of County Commissioners.
- Applicant shall obtain a permit for the conditional use from the Zoning and Codes Office prior to commencing the use.

PUBLIC COMMENT

- A manager of the farm to the south contacted the Planning Office to express concern with the potential of the landfill to disrupt the drainage pattern from his farm. The stormwater flows north off the farm, through a culvert under N. 1250 Road, across the subject property and northward. A condition has been applied to insure this drainage pattern is maintained.

GENERAL INFORMATION

Current Zoning and Land Use: V-C (Valley Channel) District with F-W (Floodway) and F-F (Floodway Fringe) Overlay Districts; a pond resulting from a borrow pit associated with the construction of K-10 Highway

Surrounding Zoning and Land Use: To the north: V-C (Valley Channel) and A (Agricultural) Districts with F-F (Floodway Fringe) Overlay District; K-10 Highway and right-of-way adjacent to the property. North of the highway: *Agriculture, and Residential Detached Dwellings,*

To the west: V-C (Valley Channel) District with F-W (Floodway) Overlay District; Baker Wetlands, including ponds resulting from borrow pits which are part of the mitigation measures for the Baker Wetlands implemented with the highway construction

To the east: V-C (Valley Channel) District with F-W (Floodway) and F-F (Floodway Fringe) Overlay Districts; *Agriculture*. Another borrow pit/land fill associated with the KS Highway 10 construction, approved with CUP-16-00069, is located further to the east

To the south: V-C (Valley Channel) District and GPI (City-General Public and Institutional Uses) Districts with F-F (Floodway Fringe) and F-W (Floodway) Overlay Districts; *Agriculture*, Wakarusa River corridor, and the Wakarusa Wastewater Treatment Plant, a *Major Utility* (Figure 1)

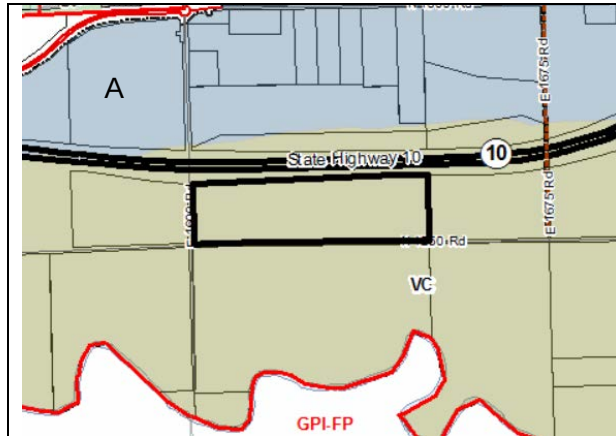


Figure 1a. Zoning in the Area. Subject property outlined.

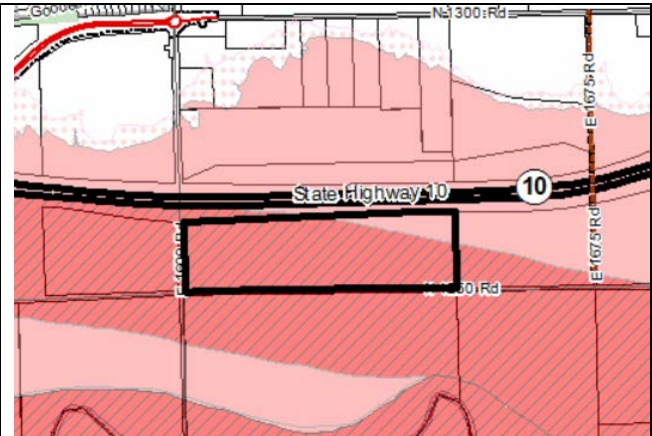


Figure 1b. Floodplain in the area. Red: Regulatory floodway; Pink: Regulatory floodway fringe.

Summary of Request

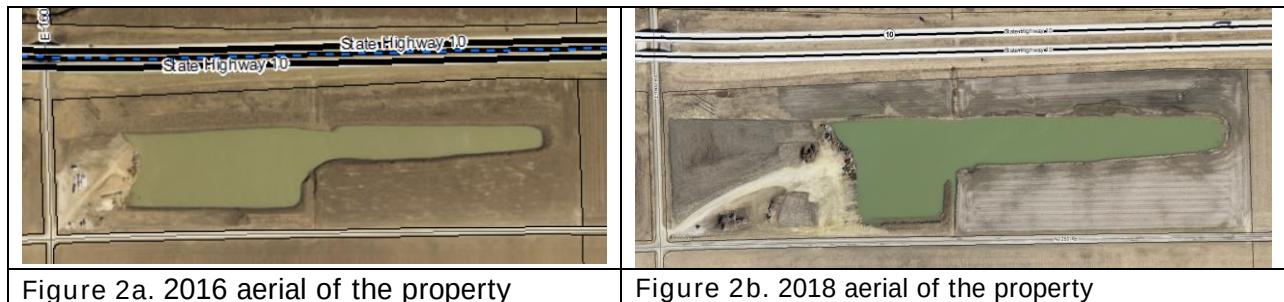
The subject property at 1600 N. 1250 Road, approximately 44.88 acres, contains a pond which was the result of a borrow pit which provided soil for the construction of K-10 Highway adjacent to the property on the north. In 2013, the Board of County Commissioners approved Home Rule Resolution No. HR-13-9-3, which allowed a group of borrow pits to be approved as temporary business uses, rather than requiring a conditional use permit for each one, to accommodate KDOTs construction schedule for the highway. Typically borrow pits require a conditional use permit for either excavation/mining or removal of top soil for sale—depending on the scale of the project.



Figure 1c. Land use/development in the area.

The temporary business permit allowed the borrow pits to move forward and accommodated the highway construction schedule but did not include provisions for the reclamation of the borrow pits. The temporary business permits expired on October 31, 2016. In 2018, Zoning and Codes staff noticed that a portion of the borrow pit was being filled and notified the property owner that the landfill activity wasn't permitted in the A District without approval of a conditional use permit. The property owner submitted this conditional use permit application to allow the borrow pit to be used as a clean rubble landfill and to allow additional borrowing to occur on the eastern portion of the site. These activities, the use of the property as a landfill to reclaim the borrow pit and the excavation and reclamation of a new borrow pit, require approval of a conditional use permit.

Figure 2 show the property in 2016, which was the year the temporary business use permit expired, and in 2018. The landfill activity has been placed on hold pending the outcome of this application. The proposed conditional use permit would allow additional removal of top soil in the southeast corner of the site and the reclamation of the entire site as a clean rubble landfill.



Other ponds in the area were borrow pits for the highway construction, Figure 3. These would also require approval of a conditional use permit for a *Landfill* if they are to be reclaimed through the addition of fill. The borrow pits to the west of the subject property, outlined, are owned by the Kansas Department of Transportation or are within KDOT right-of-way. These are included in the Baker Haskell wetlands as part of the wetland mitigation program for the impacts associated with the highway. A conditional use permit, CUP-16-00069, was approved in March of 2017 for the borrow pit to the east, marked with a star, for a clean rubble landfill and additional borrowing on a remaining portion of the property; similar to this application.



Figure 3. Other borrow pits/ponds in the area. Subject property outlined. Borrow pit/landfill approved with CUP-16-00069 marked with a star.

CONDITIONAL USES:

The following proposed uses are permitted in the A District when approved with a Conditional Use Permit, as noted below:

12-319-4.12 Landfill

12-319-4.14 Stripping of Top Soil For Sale

The proposed conditional use has been reviewed with the following criteria provided in Section 12-319-1.02 of the Zoning Regulations:

I. ZONING AND USES OF PROPERTY NEARBY

The subject property and nearby properties are zoned V-C (Valley Channel) with the F-W (Floodway) and F-F (Floodway Fringe) Overlay Districts. Other properties to the east and west, adjacent to K-10 Highway have also been developed with ponds as a result of removal of fill dirt for the construction of the K-10 Highway. These were processed with temporary business permits to accommodate KDOTs construction schedule. Ponds to the west were included as part of the mitigation measures for the highway's impact on the Baker Wetland. *Agriculture* is the principal land use on the nearby properties, with mitigated wetland to the west.

The Zoning Regulations provide the following information for development in the V-C District, which was developed to protect flood-prone areas prior to the establishment of the Regulatory Floodplain:

Premises in the Valley Channel District shall not be filled with any material nor shall any structure be built that will cause an obstruction to the conveyance of a flow of 220,000 cubic feet per second in the Kansas River, measured at Lecompton, Kansas; and to the conveyance of a flow of 36,000 cubic feet per second in the Wakarusa River measured at U.S. Highway 59, that are necessary to insure said flows in the respective rivers, and such areas shall be designed as lying within encroachment zones, and only those uses specified in Section 12-314-3 shall be permitted. (Section 12-314-2)

The County Engineer and the County Floodplain Manager indicated that fill would be acceptable provided the final elevation was no higher than that which occurred prior to excavation. The conditional use permit plans show the original elevation and the reclamation plans will require final elevation points to be surveyed to ensure compliance with this requirement.

Staff Finding – The area is zoned V-C (Valley Channel) and surrounding land uses are agricultural in nature. Open space is available in the area in the form of the Baker Wetlands. The proposed conditional use, as conditioned, should be compatible with the zoning and uses in the area as the final elevation will be no higher than that of the site prior to excavation and fill.

II. CHARACTER OF THE AREA

The area is bounded by K-10 Highway on the north, the Wakarusa River on the south by, E. 1500 Road/County Route 1055 on the west, and E. 1750 Road to the east. (Figure 4) The area is heavily encumbered with floodplain associated with the Wakarusa River. Open space, the Baker Wetlands, is located in the western portion of the area (Figure 5). Agriculture is the principal land use outside the wetlands. A large portion of the area lies within the regulatory floodway, the remainder is within the regulatory floodway fringe with the exception of a parcel in the southwest corner of the intersection of K-10 Highway and E. 1750 Road. This property was also used for a borrow pit, with a temporary business permit, with the construction of K-10 Highway and has an approved conditional use permit for an additional borrow pit and a landfill.

Staff Finding – The Baker Wetlands extend into the western portion of this area. Most of the area is encumbered with regulatory floodplain. Property outside the Baker Wetlands is primarily used for agriculture. The proposed use should be compatible with the character of the area provided conditions are applied as necessary, due to the location of the property within the floodplain.

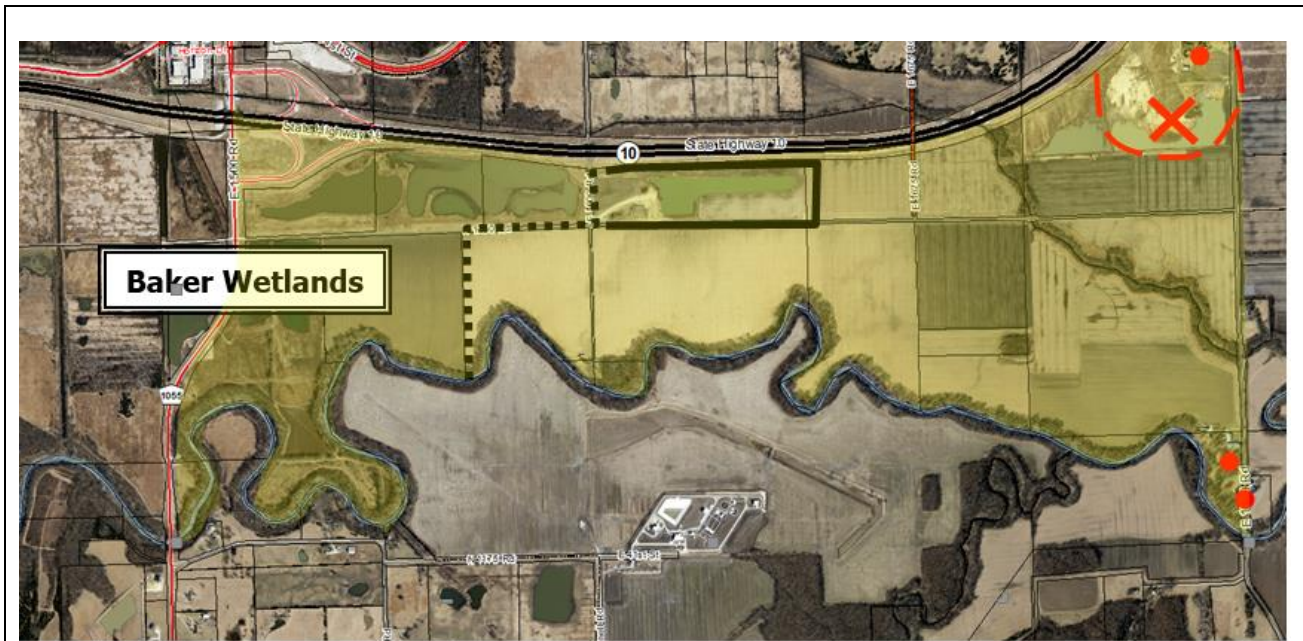


Figure 4. The area within the boundaries noted in this section is highlighted in yellow. Red dots mark the residences in the area. The red X marks the other excavation/landfill CUP use in the area. The portion of the area outside the floodplain is outlined in red dashed lines (generally). The eastern boundary of the Baker Wetlands is marked with dashed line. (Subject property outlined.)

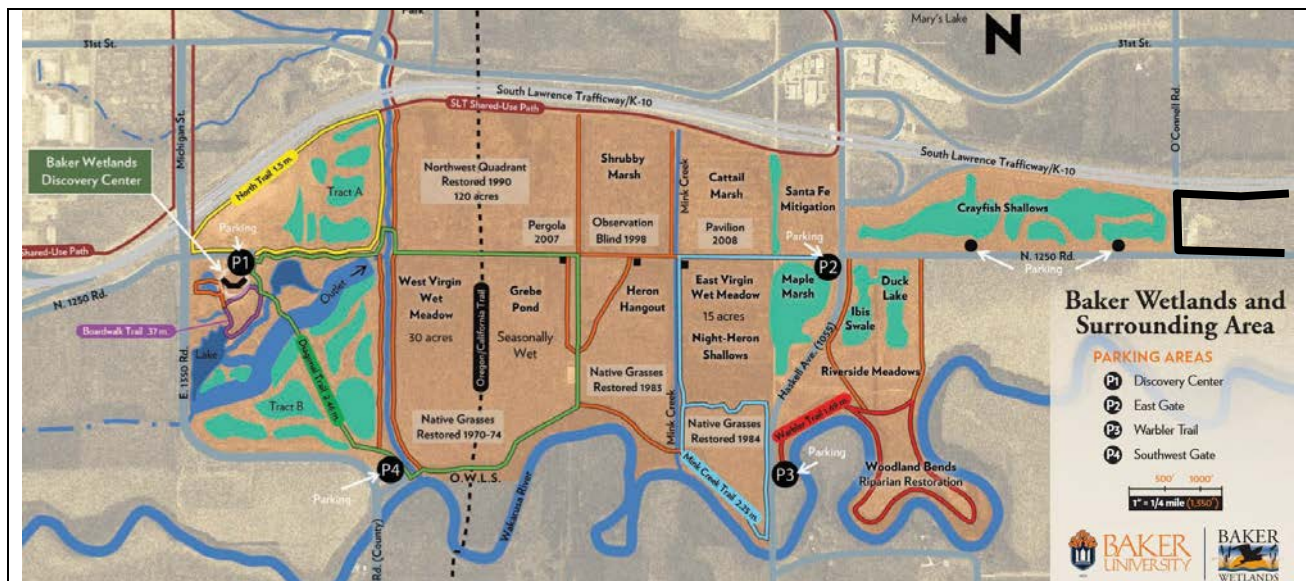


Figure 5. Baker Wetland boundaries. Subject property outlined.

III. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

Applicant's Response:

"It is farm ground and we intend on returning it to farm ground."

The subject property is zoned V-C (Valley Channel). As noted earlier, this district was established prior to the adoption of the FEMA floodplain maps. The district was intended to provide protection to flood-prone areas and uses permitted within the district are limited.

Permitted uses in the V-C District include agriculture, hunting, fishing, recreation facilities, and preserves. The subject property is well suited to the uses that are permitted in the V-C District. However, given the existence of an unfilled borrow pit, it is also suited to the proposed use of *Top Soil Removal for Sale* and a *Landfill* to reclaim the area.

Staff Finding – The property is well suited for the uses to which it is restricted with the V-C district due to the large amount of floodway and floodway fringe on the property. The property is also well suited to the proposed use, as it would be a continuation of the previously approved borrow pit and the landfill will result in the reclamation of the borrow pit.

IV. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Staff Finding – The property has been in agricultural use since the adoption of the Zoning Regulations in 1966. The ponds were installed in 2013 to 2016 as part of the K-10 Highway construction.

V. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

Applicant's Response:

"There should be no impact to nearby properties."

Section 12-319-1.01 of the County Zoning Regulations recognize that *"certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district...when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited."*

The proposed conditional use permit would allow excavation of the southeastern portion of the site to remove soil for construction projects in the area. This area and the former borrow pit will be filled as a clean rubble landfill as part of the reclamation. There will be no blasting involved in the excavation. As shown in Figure 4, there are no residences nearby. The only impact anticipated to the nearby properties would be the impact on the road network by vehicles delivering and removing materials. Wakarusa Township expressed concern with the use of E. 1750 or N. 1250 Roads for truck traffic. The truck route for this facility would be to use only E. 1600 Road, which is noted on the plan.

The application notes that this will be a clean rubble fill. KDHE provides the following definition: *"Clean rubble means the following types of construction and demolition waste: concrete and concrete products including reinforcing steel, asphalt pavement, brick, rock and uncontaminated soil as defined in rules and regulations adopted by the secretary."* The conditions will limit the fill to 'clean rubble'. The applicant had been interested in bringing trees and brush to the site to burn and dispose of within the landfill. Trees and brush are permitted items in a 'construction and demolition waste' landfill but are not considered 'clean rubble'. The Zoning Regulations prohibit landfills in the regulatory floodplain, with the exception of clean rubble landfills. The burning and disposal of trees and brush are not permitted activities with this clean rubble landfill.

The activity associated with the filling of the borrow pit would be trucks accessing the site to dump the clean rubble and heavy equipment moving the fill into place and grading the site. The noise associated with this heavy equipment should not impact nearby properties as they are in agricultural use, with the exception of K-10 Highway to the north and the mitigated wetlands for Baker Wetland to the west. No exterior lighting is being proposed. The plan notes that if any exterior lighting is proposed, a lighting plan shall be provided to the Planning Office for

consideration/approval prior to installation. Impacts to the wetland west of the subject property would need to be considered with any lighting plan review.

The Planning Office received a public comment regarding the potential of the landfill to disrupt the drainage pattern in the area. The County Engineer noted that state statutes prohibit blocking the natural drainage pattern. He noted that by restoring the property to the previous elevations, the drainage pattern should be maintained. To insure this, a condition requiring that the existing drainage pattern be maintained would be applied to the conditional use permit. (Figure 6)

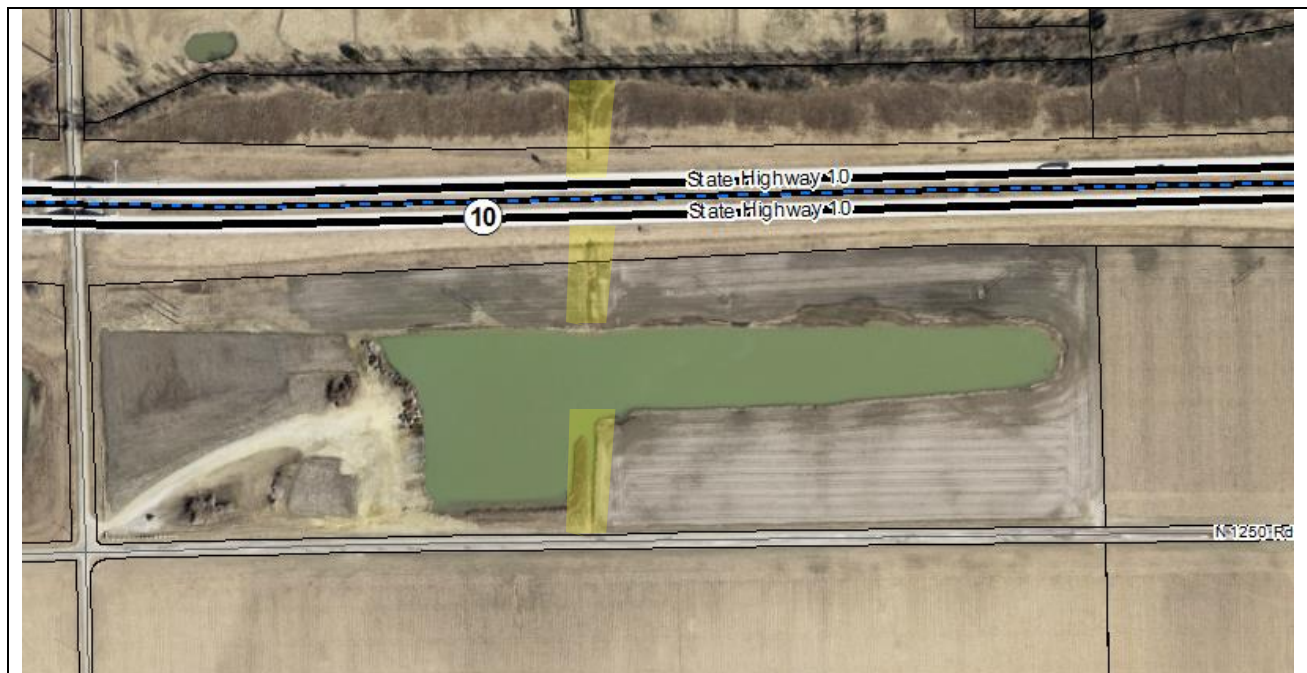


Figure 6. Aerial of subject property with drainage pattern marked.

Conditional use permits are typically required to be administratively reviewed by the Zoning and Codes Office every 5 years to insure compliance with the restrictions of use and conditions. Expiration dates are often applied to conditional use permits so they may be re-evaluated to determine if they remain compatible with the development in the area. As this is expected to be a short-term use, a 5 year administrative review is recommended along with a 10 year expiration date, from the date of the County Commission's approval. If the activity hasn't been completed within that time frame, an extension can be requested from the Board of County Commissioners. The extension request would need to be provided in writing to the Planning Office prior to the expiration date.

Staff Finding – Activities associated with a landfill and borrow pit could have negative impacts on nearby properties. The heavy equipment and earthwork required for the landfill are not expected to have negative impacts due to the limited hours of operation and lack of residential uses in the area. The truck traffic to and from the site is limited to E. 1600 Road to prevent an impact to the nearby township roads. The borrow pit/landfill is expected to be temporary and a 10 year expiration date is recommended, with the possibility of an extension by the Board of County Commissioners. These conditions should mitigate the impacts of the proposed use on nearby properties.

VI. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE
DESTRUCTION OF THE VALUE OF THE PETITIONER'S PROPERTY AS COMPARED
TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS

Applicant's Response:

"The dirt that will be borrowed from the property will be delivered to various projects throughout the county."

Approval of this conditional use permit would allow the borrow pit to be filled to the former elevation and reclaimed for agricultural use. It would also allow additional excavation and removal of soil which would be used in local construction projects. This would result in the loss of high quality Class 1 and 2 soils. (Figure 7) High quality soils are not identified for protection in the zoning regulations and are not considered one of the environmentally sensitive lands that requires protection when land divisions occur.



Figure 7. High quality Class 1 Soils shown in green on subject property, outlined.

Denial of the landfill conditional use permit request would not allow the pit to be reclaimed and would remove that area from agricultural production. Denial of the excavation request would not allow additional removal of soil for construction activities, but would retain the high quality, Class 1 and 2 soils identified on the site. The property is within the City of Lawrence's Urban Growth Area and is planned to be annexed into the city and developed with urban land uses at some point.

As negative impacts should be mitigated with conditions on the conditional use permit, the only benefit to be gained from denial of the borrow pit would be the retention of Class 1 and 2 soils.

Staff Finding – In staff's opinion, the gain to the public health, safety, and welfare by the denial of the request for the conditional use permit for the removal of top soil on the east side of the parcel would be the retention of high quality soils. As these are not listed in the Zoning Regulations or other portion of the County Code as resources that should be protected staff has no basis to recommend denial based on this factor. The hardship to the applicant would be the need to search for a new source of dirt for construction projects within the area.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response:

"The property is located in the Urban Growth Area which promotes development."

An evaluation of the conformance of a conditional use permit request with the comprehensive plan is based on the strategies, goals, policies, and recommendations contained within *Horizon 2020*. The comprehensive plan does not directly address conditional use permits; however, it does contain recommendations for properties within the Urban Growth Area in Chapter 4, Growth Management. The plan recommends that the Urban Growth Area not be developed to urban densities until infrastructure is in place and recommends that developing properties be annexed.

The comprehensive plan does contains recommendations regarding high quality agricultural land. Chapter Seven of *Horizon 2020*, the Industrial & Employment Chapter, provides the following recommendation on high quality agricultural land:

"The preservation of high-quality agricultural land, which has been recognized as a finite resource that is important to the regional economy, is of important value to the community. High-quality agricultural land is generally defined as available land that has good soil quality and produces high yields of crops. Within Douglas County these are capability class (non-irrigated) I and II, as identified by the National Resources Conservation Service."

"Future Industrial and Employment land use sites not included on Map 7-2, Potential Locations for Future Industrial and Employment Related Development, should balance the agricultural significance on the site against the need for industrial and employment related development." (Page 7-8, *Horizon 2020*)

Chapter Sixteen, the Environment Chapter, encourages the *"responsible use of marketable natural resources within Douglas County through proper extraction and reclamation methods. They are essential to sustainable development activity, primarily in the form of low cost raw materials, such as sand, gravel, oil gas, and stone, etc."*

The comprehensive plan recommends the protection of high quality soils and encourages the responsible use of marketable natural resources. This conditional use application proposes the expansion of a borrow pit that was approved in 2013, but will utilize additional high quality agricultural soils. The application is in conformance with Chapter 16 of the comprehensive plan, but compliance with Chapter 7 requires the balancing of the agricultural significance of the site against the need for industrial and employment related development. Factors to consider in this balancing include:

- 1) The high quality soils are located on the fringe of a large area of high quality soils.
- 2) A portion of the high quality soils were included in the previously approved borrow pit on this site.
- 3) The property will be reclaimed for agricultural use, following the soil removal and landfill activity.

The previously approved temporary business use permit can be seen as setting the precedent for this property when evaluating the agricultural significance of the site against the need for the development. At that time, the need for construction materials was seen as more significant than the preservation of the high quality soils.

Until regulations are developed in the Zoning Regulations pertaining to high quality soils, the determination of compliance must be made on a case-by-case basis.

Staff Finding –The proposed conditional use permit is in compliance with recommendations in the comprehensive plan in that the need for soil with the highway construction project was seen as more significant than the preservation of the high quality soils. The development of each parcel with high quality soils must be made on a case-by-case basis using the balancing criteria in Chapter 7 of the comprehensive plan until regulations or standards have been developed and included in the Zoning Regulations.

CUP PLAN REVIEW

No new buildings are being proposed and there is no parking required for the use. The plan notes that only equipment being used to fill and grade the property will be stored on site. Employees will park their cars on site, and no parking is permitted on the roadway. No utilities are required for the proposed conditional use.

Screening the use is not necessary as the property is bounded on the west by the Baker Wetland, on the north by K-10 Highway and on the east and south by agricultural land.

A time-frame for the completion of reclamation should be noted on the reclamation/closure plan. This should all be completed within the 10 year life span of the conditional use permit.

A principal factor with any extraction land use is the reclamation. A reclamation/closure plan was provided with the application. This should be updated yearly and provided to the Zoning and Codes office at the end of each calendar year.

Conclusion

The conditional use proposed complies with the County Zoning Regulations and the land use recommendation of *Horizon 2020*. The use, as conditioned, should be compatible with the surrounding land uses provided a road maintenance agreement is executed with the township to insure the damage done by the heavy trucks is repaired at the applicant's cost.

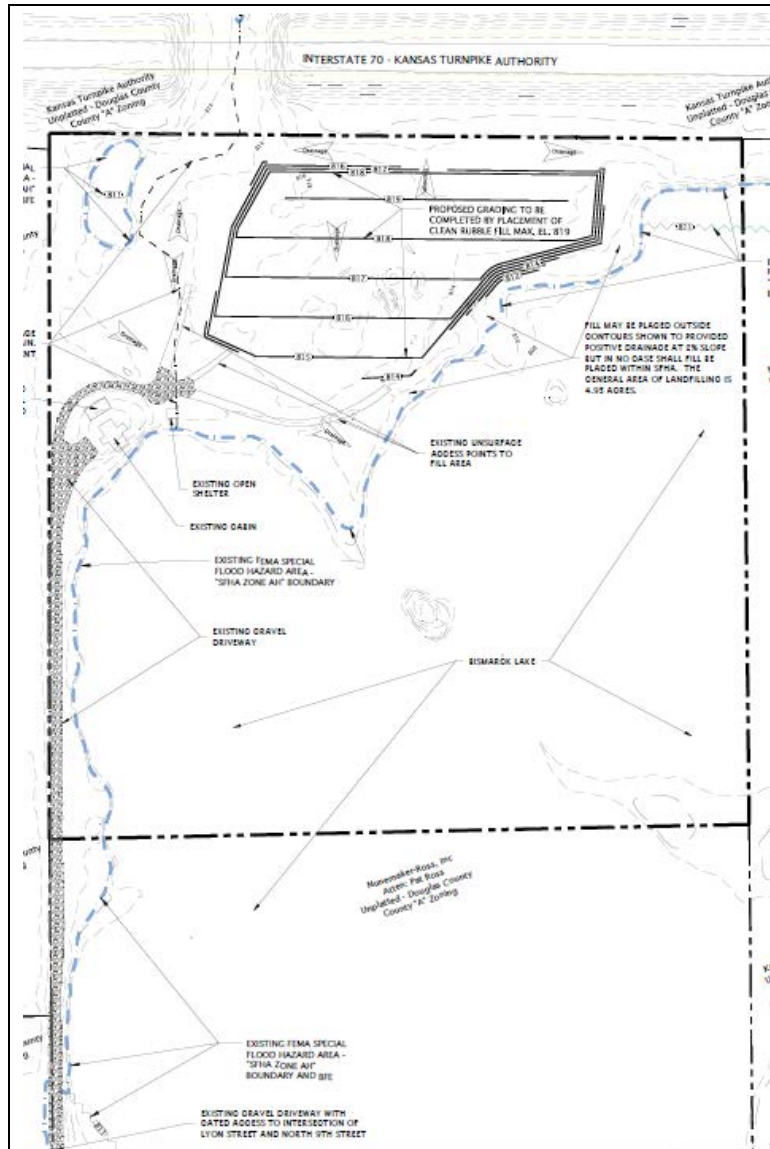


Figure 8. CUP/Site Plan showing approximate area for placement of fill.



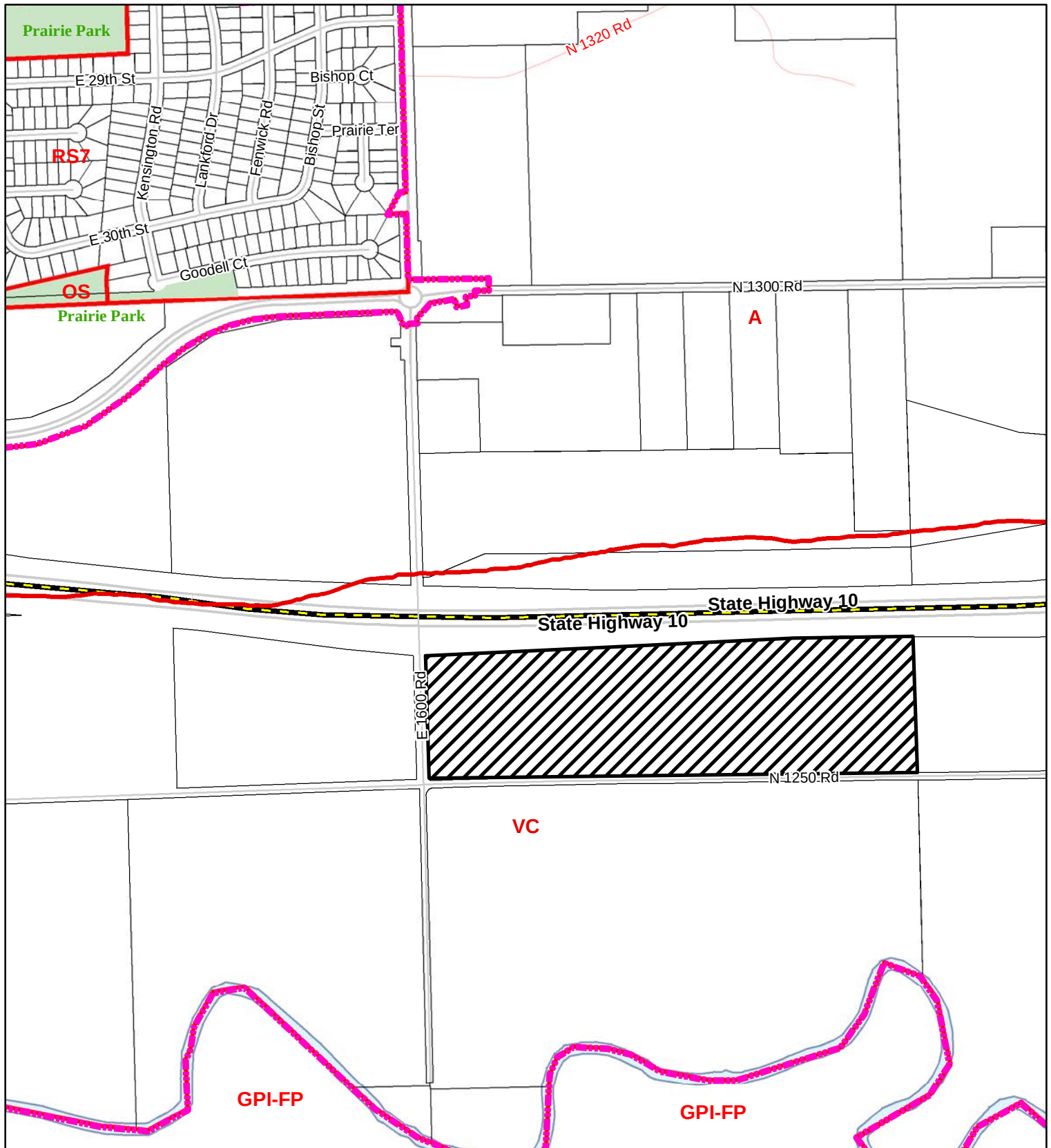
Figure 9. Current sections:

Red section, approximately 4 acres, reclamation to be completed by May 30, 2019

Green section, approximately 5 acres, reclamation to be completed by November 30, 2019

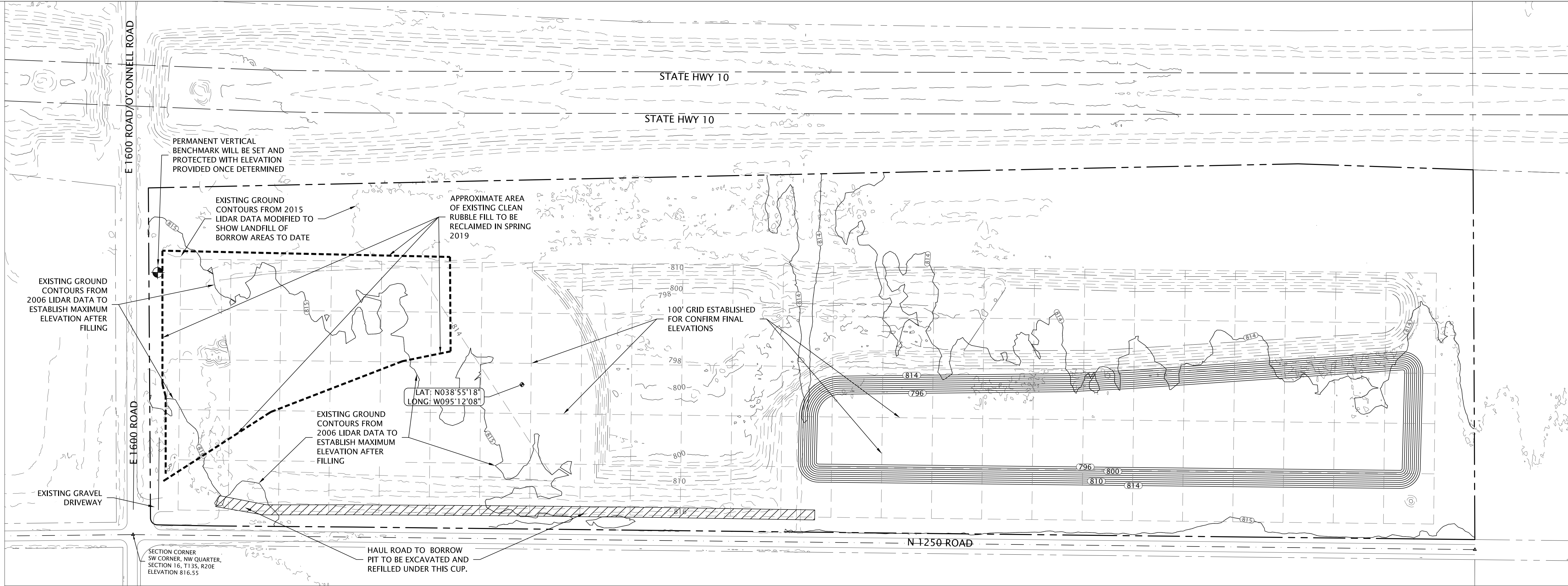
Purple section, approximately 9.5 acres, reclamation to occur throughout the life of the CUP.

Yellow section, approximately 7 acres, borrowing and reclamation to occur throughout the life of the CUP.



CUP-18-00432: Consider a Conditional Use Permit
for Top Soil Removal and Landfill use (clean rubble) on
approximately 44.88 acres located at the NE corner of
E. 1600 Rd. & N. 1250 Rd.





CLOSURE NOTES

- 1. This Conditional Use Permit (CUP) Site Plan was developed to allow soil borrowing and clean rubble landfilling activities as outlined in the Kansas Department of Health and Environment, Bureau of Waste Management Construction and Demolition Wastes and Clean Rubble, Technical Guidance Document SW-1994-G2. Clean rubble landfilling activities are to refill existing borrow areas excavated as part of the Kansas State Highway 10 construction project as well as refilling borrow areas excavated as part of the CUP. Landfilling will NOT include construction and demolition (C&D) wastes as outline in the above referenced document. Unlike a C&D landfill, state statues do not require a solid waste permit for operation of a site that only accepts clean rubble. Reclamation shall include 4 to 6" of topsoil. The clay and rubble fill shall be held to an elevation 4"-6" below final grades to allow for topsoil placement.
- 2. Landfilling shall be limited to an elevation equal too or less than elevations shown to exist prior to soil borrowing activities. Elevation contours are shown on this CUP.
- 3. The property/landfill area will have controlled access. Access to/from this property will be via an existing driveway(s) on E 1600 Road..
- 4. The entire property is located within the Special Flood Hazard Area (SFHA) Zone AE per FEMA Map # 20045C0187D Effective Date: August 5, 2010 with a Base Flood Elevation of 816.00±. The SFHA is delineated on this Conditional Use Permit - Site Plan. No portion of the activities associated with this CUP include filling above the elevations determined by the 2006 LIDAR topography created by Douglas County within the regulated SFHA illustrated on this Conditional Use Permit - Site Plan. As part of site reclamation, final fill elevations shall be surveyed by a licensed land surveyor to illustrate that grades do not exceed the existing ground contours from 2006 LIDAR data.
- 5. Drainage arrows and proposed contours are shown on the plan to indicate general drainage patterns.
- 6. National Geodetic Survey vertical benchmark is a disk marked "F 276 Reset 2004" set in top of concrete at the intersection of 31st Street and Haskell Avenue. The disk is 81.0 feet east of the center line of the Haskell Avenue, 2.33 feet south of 3rd Powerline Pole south of intersection, Elevation = 815.5 ft.
- 7. All fill areas will be restored with 4" - 6" topsoil and all disturbed areas shall be tillable for crop farming or reseeded with fescue or brome type grasses and otherwise restored to their original condition.
- 8. A symetrical grid has been established for locations of topographic elevations for conformation that final grades after reclamation.
- 9. This plan shall be updated yearly to illustrate areas of full reclamation.

PC Minutes 11/14/18

ITEM NO. 4 CONDITIONAL USE PERMIT FOR TOP SOIL REMOVAL & LANDFILL; NE CORNER
OF E 1600 RD & N 1250 RD (MKM)

CUP-18-00432: Consider a Conditional Use Permit for *Top Soil Removal* and *Landfill* (clean rubble) on approximately 44.88 acres located at the NE Corner of E 1600 Rd & N 1250 Rd. Submitted by RD Johnson Excavating Company LLC, property owner of record.

STAFF PRESENTATION

Mary Miller presented the item.

APPLICANT PRESENTATION

Jason Dahl, RD Johnson, said the Conditional Use Permit was important to continue their business.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

Commissioner Paden said the staff report included the statement "High quality soils are not identified for protection in the zoning regulations and are not considered one of the environmentally sensitive lands that requires protection when land divisions occur.....The property is within the City of Lawrence's Urban Growth Area and is planned to be annexed into the city and developed with urban land uses at some point." She inquired about floodplain regulations.

Miller said the county had floodplain regulations. She said the county allowed minimal adverse. She said the Zoning Regulations were being revised so there were no current plans to change the floodplain. She said the floodplain manager for the county would evaluate it. She said the county floodplain manager felt that keeping the elevation the same would not impact the floodplain.

McCullough said the city of Lawrence exceeds state and national model ordinances. He said they participate in the community rating system, which through different program elements, helps to get reduced insurance rates for those that need it in the city.

Commissioner Willey inquired about protections for prime agricultural soils, class one and two.

Miller said Horizon 2020 was adopted after the Zoning Regulations and that part was included in the industrial chapter after 2006. She said the Zoning Regulations had not been updated to reflect that. She said environmentally sensitive land protections were created but that high quality agricultural soils were not added at that time. She said they would probably be added with the revised regulations. She said there were no current protection standards or requirements for high quality soils.

McCullough said with the development of the Northeast Sector Plan discussions evolved into where class I and II soil type amounts were significant and contiguous in their value to the agricultural industry. He said the Northeast Sector Plan is the one sector plan that doesn't call for urban density. He said the other areas of significance were along the Wakarusa River area where it's not likely to urbanize because of the floodplain and floodway. He said periodically there are parcels with small amounts of class I and II soils that staff review for its merit but don't necessarily hold it to the same level as the Northeast Area Plan, for example.

Complete audio & video from this meeting can be found online:

<https://lawrenceks.org/boards/lawrence-douglas-county-metropolitan-planning-commission/>

Commissioner Willey said the Wakarusa Floodplain was another area of contiguous high value agriculturally significant class I and II soils. She said there was not equal value in the land before and after for agriculture from mining a high quality soil and replacing it with rubble.

Commissioner Carpenter asked how deep the top soil was.

Miller said staff uses the term top soil but that she doubted everything being removed would be top soil. She said it was the term used for a borrow pit in removing soil.

Carpenter said there was a big difference between soil and dirt. He inquired about possible future development.

Miller said development would be limited due to the floodway and floodplain.

McCullough said they wouldn't necessarily be having this discussion if it weren't for the need for the borrow pit with the highway project.

Commissioner Sinclair asked what could be done with agricultural land that had been reclaimed.

Willey said it could be used for grazing land. She wondered how deep the extraction was.

Dahl said the topsoil was about 8 inches to 1 foot. He said they can save the top soil or use good sources of top soil to replace it. He said after the topsoil is gone they dig down about 12 feet. He said fescue or rye could be planted, or any other kind of agricultural vegetables. He said part of the property was being used to grow beans.

Dean Grob, Grob Engineering Services, said RD Johnson was responsible for the reclamation of the Ames construction site on 59 Highway. He said the Soil Conservation Service came up with maps when the city and county looked at class I and II soils. He said there was no delineated line for where crops grew better than others.

Commissioner Willey agreed there was no hard and fast line between soil types. She said there were 8 classifications for soil suitability types and class I and II were limited. She said it was the only protection there was for agricultural land and soils.

Commissioner Kelly asked the applicant what he saw for the space going forward if the Conditional Use Permit was not approved.

Dahl said a pond, which is what was there now. He said the material was used to build K-10.

Commissioner Carttar said the application was for two uses; to fill with clean rubble and continue to excavate. He wondered about the economic feasibility of half of the application, to fill, without the continued excavation.

Dahl said he needs the area to be able to get rid of clean rubble. He said the borrow source of material was good and he wants to be able to utilize the site. He said it would be detrimental if he was not able to open up the rest of the property.

Commissioner Sinclair said they were talking about 7 acres that were bounded.

Commissioner Butler asked how much area had been used and what was left.

Complete audio & video from this meeting can be found online:

<https://lawrenceks.org/boards/lawrence-douglas-county-metropolitan-planning-commission/>

Dahl said the area total was 44 acres.

Grob said there were areas not part of this site. He said there were about 35 acres in the Conditional Use Permit. He said the pond was probably 22-25 acres and 10 acres to borrow.

Commissioner Willey said the fill has been ongoing but wondered if the borrowing was current as well.

Grob said there was borrowing from the existing pond and some borrowing in the south area.

Commissioner Sands inquired about the estimated end date.

Grob said it was a 10 year Conditional Use Permit with 5 year renewal. He said it would depend on construction so it was hard to predict.

Commissioner Willey asked if RD Johnson owned any other active borrow pits at this time.

Dahl said no.

Commissioner Kelly inquired about the permit issued originally for the borrow pit.

Miller said there was no limit to the amount they could borrow.

Commissioner Sands said he was generally comfortable with this.

ACTION TAKEN

Motioned by Commissioner Sands, seconded by Commissioner Struckhoff, to approve the Conditional Use Permit, CUP-18-00432, subject to the following conditions:

1. The plan shall be revised with the following changes:
 - a. Deadlines for the reclamation phases listed: May 31, 2019 for the 1st phase and November 30, 2019 for the 2nd phase and the area in each phase noted.
 - b. Note regarding the burning of trees and brush and the area shown for this activity removed from the plan.
2. The following conditions apply to the use. Note these on the plan:
 - a. Only materials that are included in the KDHE definition of Clean Rubble may be disposed of in the landfill. These materials are: *"....the following types of construction and demolition waste: concrete and concrete products including reinforcing steel, asphalt pavement, brick, rock and uncontaminated soil as defined in rules and regulations adopted by the secretary."* Materials which do not meet this definition, including trees and brush, shall not be brought to the site.
 - b. The current drainage pattern with drainage flowing through a culvert under N. 1250 Road, northward across the subject property and under K-10 Highway, shall be maintained.
 - c. When filled, the borrow pit shall be graded to no more than 6 inches of the final elevation shown on the reclamation plan. When grading is complete, 6 inches of top soil shall be applied and the property shall be seeded. Reclamation is considered complete when vegetation has been established.
 - d. The Conditional Use Permit is subject to a 5 year administrative review and will expire 10 years after the date of the Commission's approval, unless an extension request, submitted before the deadline, is approved by the Board of County Commissioners.

Complete audio & video from this meeting can be found online:

<https://lawrenceks.org/boards/lawrence-douglas-county-metropolitan-planning-commission/>

3. A reclamation / closure plan shall be submitted to the Zoning and Codes Office by December 31st of each year, beginning in 2019. The plan shall show the following:
 - a. The portion that has been reclaimed (graded and final seeded and vegetation has been established) and reclamation has been approved by the Zoning and Codes Office; the portion that has been filled and graded (and seeded, if seeding has occurred but vegetation hasn't been established); the portion that is open and soil is being removed from, and the portion that has not yet been disturbed.
 - b. The area of each section shall be noted on the plan.
 - c. The plan shall note the estimated timeframe for the completion of reclamation of any phases where borrowing is complete.
 - d. As reclamation occurs, the plan shall include the surveyed elevation points of the areas that have been final graded and seeded to insure that the finished elevation is less than or equal to that which existing prior to borrowing, as shown on the approved CUP plan.

Commissioner Sinclair said he doesn't love the idea of borrowing the soil but it was just 7 acres left to borrow from and Planning Commission was left to balance the value of the soils with the need for development. He said it did not feel good to let class I and II soils go but that it was a good balance.

Commissioner Carttar said he agreed with Commissioner Sinclair. He said the applicant mentioned provisions could be made to save the topsoil. He asked the applicant to explain how that would work.

Dahl said the topsoil would be stripped and an area would be created to stage that material. He said there was a current pile of topsoil saved. He said the topsoil could be saved and replaced after filling. He said it was standard procedure to use the topsoil to backfill.

Commissioner Willey said they were balancing the need for resource for building development and agricultural soils. She said she would vote against the motion because she wanted the Board of County Commission to have the benefit of the Planning Commission discussion. She said soil is an active ecosystem and when it is scrapped up and put it in a pile it is no longer the same thing.

Commissioner Kelly said reclamation would happen on the borrow pit and there was value in it not being continued as a barren borrow pit.

Motion carried 7-3, with Commissioners Carpenter, Paden, and Willey voting in opposition. Commissioners Butler, Carttar, Kelly, Sands, Sinclair, Struckhoff, and Weaver voted in favor of the motion.