

RESOLUTION NO. 139-2016

Date Adopted: *Sep. 28, 2016*

Date Published:

Date Effective: *Oct. 1, 2016*

**A RESOLUTION MODIFYING CHAPTER 22, ARTICLE II OF THE
SEDGWICK COUNTY CODE REGARDING UTILITY PERMITS.**

WHEREAS, Sedgwick County Resolution No. 2-1982 established certain requirements for the use and administration of highway permit agreements and utility permit agreements by contractors and public utilities that use and occupy public rights-of-way in the County's unincorporated areas, which are included within the *Sedgwick County Code* as Chapter 22, Article II; and

WHEREAS, Sedgwick County Resolution No. 150-1996 has been the sole amendment to Resolution No. 2-1982, which granted the County Engineer the authority to approve such highway and utility permit agreements; and

WHEREAS, the Kansas legislature, within the Senate Substitute for House Bill No. 2131, codified as K.S.A. 66-2019, enacted legislation that significantly modifies wireless telecommunications and allows wireless telecommunications facilities to be located within the public rights-of-ways of municipalities; and

WHEREAS, within K.S.A. 66-2019, the Kansas legislature states that the rights of wireless telecommunications providers to locate within the public rights-of-way "shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the authority"; and

WHEREAS, due consideration must also be given to K.S.A. 68-545 and K.S.A.68-115, which respectively act to generally prohibit obstructions in the public rights-of-way and authorize the County Engineer to remove or cause to be removed such obstructions; and

WHEREAS, the provisions of the Wichita-Sedgwick County Unified Zoning Code do not apply to property included within the public rights-of-way; and

WHEREAS, the Board of County Commissioners of Sedgwick County deems it appropriate to modify the *Sedgwick County Code* provisions governing utility permits.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, AMENDS THE *SEDGWICK COUNTY CODE* AS FOLLOWS:

SECTION 1. SEDGWICK COUNTY RESOLUTION NOS. 2-1982 AND 150-1996 REPEALED AND REPLACED IN THEIR ENTIRETY.

Sedgwick County Resolution Nos. 2-1982 and 150-1996, which include *Sedgwick County Code* Sections 22-21 through 22-26, are repealed and replaced in their entirety by the provisions included within Section 2 of this Resolution.

SECTION 2. NEW PROVISIONS FOR CHAPTER 22, ARTICLE II.

Sec. 22-21. – Title; purpose; jurisdiction; scope.

- (a) *Title.* The provisions of this Article shall be known as “Utility Permits Code,” and may be cited as such, and may also be referred to herein as “this Code” or “this Article”.
- (b) *Purpose.* This Code is intended to establish clear, safe, and appropriate guidelines for highway and utility permits that are granted by the County, such that citizens within the County may benefit from the services and access afforded by such highway and utility permits.
- (c) *Jurisdiction.* The provisions of this Code shall apply to the unincorporated area of Sedgwick County, Kansas.
- (d) *Limitation of Scope.* The scope of this Code does not include any permits or approvals that may be required within the Wichita-Sedgwick County Unified Building and Trade Code or within the Wichita-Sedgwick County Unified Zoning Code. Nothing in this Code shall be interpreted as expressly granting a public utility the authority to construct, maintain or operate any facility or related appurtenance on property owned by the County that might be outside of the public-right-of-way.

Sec. 22-22. – Definitions.

Above-ground Apparatus means any item associated with a public utility’s operations that is located above the existing ground level that is situated within the public right-of-way, with such term including but not limited to a pole, base station, tower, small-cell facility, transmission equipment, wireless facility, and wireless support structure.

Application means the utility permit agreement and any corresponding documentation submitted by public utilities for projects.

Base Station means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics. “Base

station” does not mean a tower or equipment associated with a tower and does not include any structure that, at the time the relevant application is filed with the County, does not support or house equipment described in this paragraph.

Collocation means the mounting or installation of wireless facilities on a building, structure, wireless support structure, tower, utility pole, base station or existing structure for the purposes of transmitting or receiving radio frequency signals for communication purposes.

Contractor means every person or entity who contracts with any owner or lessee of real estate for the construction, maintenance or repair of a driveway entrance, curb, culvert, or ditch or work or any work that is performed on a public utility project which necessitates the performance of labor in or the use or storage of materials upon any road or public right-of-way in the unincorporated areas of the County. The term “contractor” also includes any person or company that builds or installs public utilities projects in the public right-of-way.

Eligible Facilities Request means the mounting or installation of wireless facilities on a building, structure, wireless support structure, tower, utility pole, base station or existing structure for the purposes of transmitting or receiving radio frequency signals for communication purposes.

Existing Structure means a structure that exists at the time an application to collocate wireless facilities on a structure is filed with an authority. The term includes any structure that is currently supporting or designed to support the attachment of wireless facilities, including, but not limited to, towers, buildings and water towers.

Project means either the furnishing of materials or the performance of labor in or upon a public right-of-way in the unincorporated area of the County, which furnishing or performing:

- (1) Occurs within a contiguous area of not to exceed one (1) square mile (with the exception of small cell facilities that may have up to twenty-five (25) small cell facilities within the same permitted project);
- (2) Is prosecuted according to plans on file with the Sedgwick County Public Works Department; and
- (3) Is completed no later than one (1) year after approval by the County Engineer or his/her designee and said construction shall be diligently pursued to completion.

Public Right-of-Way means only the area of real property in which the County has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service easements obtained by utilities or private easements in platted subdivisions or tracts.

Public Utility means every person or entity, or their trustees, lessees, or receivers, that owns, controls, operates, or manages any poles, lines, anchors, conduit, pipe, transformers and any and all equipment or machinery incidental thereto for the transmission of telephone, telegraph, television, wireless data signal, or data messages or for the production, transmission or delivery or furnishing of heat, light, water or power within the public rights-of-way in the unincorporated areas of the County. The term applies to private utilities that are located within the public right-of-way. The term may also apply to any person or entity engaged in the business of providing wireless services or the wireless infrastructure required for wireless services, upon their submission of an application pertaining to a utility permit agreement.

Small Cell Facility means a wireless facility that meets both of the following qualifications: (A) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (B) primary equipment enclosures that are no larger than seventeen (17) cubic feet in volume, or facilities comprised of such higher limits as the federal communications commission has excluded from review pursuant to 54 U.S.C. § 306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

Small Cell Network means a collection of interrelated small cell facilities designed to deliver wireless service.

Substantial Modification means a proposed modification to an existing wireless support structure or base station that will substantially change the physical dimensions of the wireless support structure or base station under the objective standard for substantial change, established by the Federal Communications Commission pursuant to 47 C.F.R. 1.40001.

Transmission Equipment means equipment that facilitates transmission for a wireless service licensed or authorized by the Federal Communications Commission including, but not limited to, radio transceivers, antennas, coaxial or fiber optic cable and regular and backup power supply. "Transmission equipment" includes equipment associated with wireless services including, but not limited to, private, broadcast and public safety services such as wireless local area network services, and services utilizing a set of specifications developed by the institute of electrical and electronics engineers for interface between a wireless client and a base station or between two wireless clients, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.

Wireless Facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to: (A) Equipment associated with wireless services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave

backhaul; and (B) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration. “Wireless facility” does not mean any wired connections from a wireless support structure or base station to a hub or switching location.

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

Sec. 22-23. – Violations and penalty.

- (a) This Article is enforceable under Chapter 8 of the *Sedgwick County Code*. Except as otherwise stated, any violation of this Article shall be classified as a class H violation, as identified within Section 8-5.
- (b) Violations of this Article are punishable as provided in Section 1-8 of the *Sedgwick County Code*.

Sec. 22-24. – Utility permit agreement.

- (a) The public utility shall complete all requirements of the utility permit agreement, enclose any required plans and documents, and deliver an executed utility permit agreement to the Sedgwick County Public Works Department. The form for the utility permit agreement can be obtained from the Sedgwick County Public Works Department and shall be substantially in the same form as Exhibit A included within this Code (“Exhibit A”). Prior to initiating any project, the public utility must receive a counter-executed copy of said utility permit agreement. The terms and provisions of Exhibit A are incorporated into this Code by reference as if fully set forth herein and such terms and provisions constitute requirements and conditions for each project undertaken by a public utility.
- (b) The Sedgwick County Engineer and his/her designee are authorized to accept and approve all utility permit agreements on behalf of Sedgwick County, Kansas, so long as they are in substantially the same form as Exhibit A.
- (c) The Sedgwick County Public Works Department will address each utility permit agreement that a public utility has submitted as an application for a wireless telecommunications project that may fall within the purview of K.S.A. 66-2019 as indicated below:
 - (1) For a new wireless support structure, within one hundred fifty (150) calendar days of receiving an application for a new wireless support structure, the Sedgwick County Public Works Department shall make a final decision to approve or

disapprove the application and advise the public utility in writing of the final decision, including the reasons for such final decision.

- (2) For any substantial modification to an existing wireless support structure or base station, or any other application for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a), within ninety (90) calendar days of receiving an application, the Sedgwick County Public Works Department shall make a final decision to approve or disapprove the application and advise the public utility in writing of the final decision, including the reasons for such final decision.
- (3) For small cell facilities or a small cell network, within sixty (60) days of receiving an application, Sedgwick County Public Works Department shall make a final decision to approve or disapprove the application and advise the public utility in writing of the final decision, including the reasons for such final decision.
- (4) Sedgwick County Public Works Department shall review and issue any potential approvals of applications for eligible facilities requests, as defined by 47 U.S.C. § 1455(a) and this Code, within 60 days according to the procedures established by federal regulations within 47 C.F.R. 1.40001.
- (5) If, within the first thirty (30) days after the public utility has submitted its application, the Sedgwick County Public Works Department determines that the utility permit agreement or the required bond are incomplete, the aforementioned timeframe for approval may be tolled, provided that Sedgwick County Public Works Department notifies the public utility in writing that such utility permit agreement and/or bond is incomplete and includes, in writing, the reasons for that finding. The applicable timeframe within Section 22-24 (c) (1) – (4) shall recommence once the public utility resubmits its application. Alternatively, the applicable timeframe for approval of the utility permit agreement may be tolled by the express agreement in writing by both the Sedgwick County Public Works Department and the public utility.
- (6) If the Sedgwick County Public Works Department fails to act on the application within the applicable timeframe included within Section 22-24 (c) (1) through (4), the application will be deemed approved once the public utility has provided notice to the Sedgwick County Public Works Department that the applicable time period has lapsed.
- (7) Within 30 days after: (a) approval of a utility permit agreement; (b) the affirmative denial of an application by the Sedgwick County Public Works Department; or (c) by the inaction of the Sedgwick County Public Works Department resulting in an approval pursuant to Section 22-24 (c) (6), a party aggrieved by the final action of the Sedgwick County Public Works Department

within this Section 22-24 (c) may bring an action for review in any court of competent jurisdiction.

- (d) Nothing in this Section shall prohibit a public utility whose application has been disapproved from resubmitting a modified version of its application.
- (e) Nothing contained within this Section shall prevent the ability for Sedgwick County Public Works to communicate with a public utility to make any suggestions or comments for possible modifications or adjustments of the public utility's application after the public utility has submitted its application.
- (f) Should a public utility modify or adjust its application, any timeframe specified within Section 22-24 (c) (1) – (3) shall begin anew upon the public utility's modification or adjustment of the application. Any modification or adjustment of an application shall not incur a new utility permit agreement fee. If an application for a wireless telecommunications project has been denied by the Sedgwick County Public Works Department, it cannot later be considered eligible for a modification or adjustment under this section, but would instead be considered as a new application. The option for modifying or adjusting an application is to be viewed as distinct from Section 22-24 (c) (5), which applies solely to incomplete applications.

Sec. 22-25. – Public health, safety and welfare considerations.

- (a) The right of public utilities to use and occupy the public right-of-way shall always be subordinate to the reasonable public health, safety and welfare requirements and regulations of Sedgwick County, as determined by the Sedgwick County Engineer or his/her designee. To the extent that any such public health, safety and welfare requirements and regulations may cause the disapproval of a utility permit agreement, such items shall be detailed in writing, as stated within Section 22-24 (c), and shall be exercised in a competitively neutral manner that is not unreasonable or discriminatory.
- (b) At a minimum, any public utility operating within the public right-of-way will comply with the following requirements such that these requirements are not meant to operate to the exclusion of other public health, safety, and welfare concerns that might be present:
 - (1) No part of any above-ground apparatus shall be located within fifteen (15) feet of the edge of the driving surface of any road, street, highway or other similar public thoroughfare. However, with approval of the County Engineer or his/her designee, a small cell facility may collocate with an existing above-ground apparatus that is already located within fifteen (15) feet of the edge of the driving surface of any road, street, highway or other public thoroughfare.
 - (2) No part of any above-ground apparatus, including improvements and grading, shall be located within the "clear zone", as identified within the most recent

version of the Roadside Design Guide, as published by the American Association of State Highway and Transportation Officials (AASHTO).

- (3) All public utilities shall comply with the provisions of the most recent version of the Manual Uniform Traffic Control Devices (MUTCD), published by the United States Department of Transportation, Federal Highway Administration, 2009 Edition, or any future equivalent portions of such publication.
 - (4) All public utilities shall comply with the most recent version of the Roadside Design Guide, as published by AASHTO.
 - (5) All public utilities shall comply with Sedgwick County's Utility Accommodation Policy, dated January 15, 1982, and any amendments or updates thereto.
 - (6) All public utilities shall comply with the Kansas Underground Utility Damage Prevention Act, as set forth in K.S.A. 66-1801 *et seq.*
- (c) The County Engineer and his/her designee may grant reasonable exceptions to the requirements included in subsection (b), so long as the work permitted through such exceptions continues to ensure public health, safety, and welfare.

Sec. 22-26. – Highway permit agreement.

- (a) Prior to initiating any project for construction work within the public right-of-way in the unincorporated area of Sedgwick County not completed by Sedgwick County Public Works, its agents, or covered under a separate agreement or permit, a contractor authorized to complete such work shall execute and deliver to the Sedgwick County Public Works Department a highway permit agreement, which shall be substantially in the same form as Exhibit B included within this Code ("Exhibit B"), and the contractor must receive a counter-executed copy of said highway permit agreement. The terms and provisions of Exhibit B are incorporated into this Code by reference as if fully set forth in this Article, and such terms and provisions constitute requirements and conditions for each project undertaken by a contractor.
- (b) The Sedgwick County Engineer and his/her designee are authorized to accept and approve all highway permit agreements on behalf of Sedgwick County, Kansas, so long as they are in substantially the same form as Exhibit B.

Sec. 22-27. – Fees.

- (a) The following fees and charges shall be paid by the public utility or contractor, as the case may be, for each project, and the fees shall accompany the respective permit agreement:

- (1) Utility permit agreement: One hundred fifty dollars (\$150.00)
- (2) Highway permit agreement: One hundred fifty dollars (\$150.00)

*For small cell networks involving no greater than twenty-five (25) individual small cell facilities of substantially similar design, upon request of the public utility, Sedgwick County Public Works Department shall allow the public utility to file a consolidated application for such small cell facilities.

- (b) Such fees shall be paid only once for each project to be initiated under any respective highway permit agreement or utility permit agreement. The fees and charges established by this Section are for regulatory purposes only.
- (c) All fees provided in this Section shall be payable to Sedgwick County, and upon receipt the fees shall be deposited and credited to the County general fund.

Sec. 22-28. – Bond.

In order to guarantee satisfactory installation of a utility permit agreement or a highway permit agreement, each public utility or contractor, as the case may be, shall execute and deliver to the Sedgwick County Public Works Department a bond, payable to Sedgwick County, with good and sufficient sureties as indicated within Exhibit C to this Code (“Exhibit C”). The amount of the bond shall be according to the schedule attached to this Code within Exhibit C. A public utility or contractor may file and maintain with the Sedgwick County Public Works Department a bond continuous in nature that is in an amount that equals or exceeds what is required within Exhibit C.

Sec. 22-29. – Repair.

All public utilities that operate in the public right-of-way in the unincorporated area of Sedgwick County are required to repair all damage to a public right-of-way or any other property caused by the public utility, its agent, affiliate, employee or subcontractor while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the public right-of-way to its functional equivalence before the damage pursuant to the requirements and specifications of Sedgwick County Public Works. If the public utility fails to make the repairs required by Sedgwick County Public Works within sixty (60) days after Sedgwick County Public Works has provided written notice to the public utility, the County may make those repairs and charge the public utility the cost of those repairs. In this situation, the County would also be authorized to call and apply the bond provided by the public utility within Exhibit C.

Sec. 22-30. – Damaged, Abandoned, or Unused Above-ground Apparatus.

- (a) If an above-ground apparatus has sustained substantial structural damage such that said damage does not arise to the level of being an emergency as identified in Section 22-34, the public utility shall, upon discovery of such damage, promptly notify the Sedgwick County Public Works Department, commence any repairs to the above-ground apparatus within sixty (60) days of the notice provided to Sedgwick County Public Works, and diligently prosecute the repair of said above-ground apparatus. Upon receipt of such notice from the public utility, the Sedgwick County Public Works Department shall provide a written notice to inform the public utility of its duty to repair mentioned within this Subsection and the notice shall also mention the action that can be taken by the County pursuant to Section 22-30 (c) in the event of the public utility not completing the repairs within the indicated timeframe.
- (b) If an above-ground apparatus has sustained substantial structural damage such that said damage does not arise to the level of being an emergency as identified in Section 22-34 and the Sedgwick County Public Works Department becomes aware of such damage, the Sedgwick County Public Works Department shall provide a written notice to the public utility describing the above-ground apparatus by location and the damage that has been sustained.
- (c) If either the public utility or the Sedgwick County Public Works Department has notified the other party regarding substantial structural damage to an above-ground apparatus and sixty (60) days or more have passed and the public utility has failed to commence any repair or should otherwise fail to diligently prosecute such repair, the County may consider the above-ground apparatus to be an obstruction and take any action permitted by law to remove or modify the above-ground apparatus. Furthermore, if the County would be required to remove or modify the above-ground apparatus as noted in this subsection, the public utility would be required to reimburse the County for any costs incurred by the County.
- (d) If the Sedgwick County Public Works Department becomes aware that an above-ground apparatus appears to have been abandoned or unused for a period of six (6) months or longer, the Sedgwick County Public Works Department shall send a written notice to the public utility about the abandonment or non-use of the above-ground apparatus. The notice shall indicate the timeframe of such abandonment or non-use, the location of the above-ground apparatus, and any other details that the Sedgwick County Public Works Department may wish to provide. The notice shall indicate that if the public utility has not recommenced use of the above-ground apparatus, removed the above-ground apparatus, or taken other action to remedy the abandonment or non-use conditions within sixty (60) days after the date said notice is sent, the County may consider the above-ground apparatus to be an obstruction and take any action permitted by law to remove or modify the above-ground apparatus. Accordingly, should the abandonment or non-use conditions persist sixty (60) days or more after the notice has been sent, the County may consider the above-ground apparatus to be an obstruction and take any action permitted

by law to remove or modify the above-ground apparatus. Furthermore, if the County would be required to remove or modify the above-ground apparatus as noted in this subsection, the public utility would be required to reimburse the County for any costs incurred by the County.

Sec. 22-31. – Relocation.

Whenever requested by the County, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, a public utility shall promptly remove its facilities (with this term including any above-ground apparatus and any other public utility property located within the public right-of-way) from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the County. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the County for such relocation or adjustment. However, for wireless telecommunications projects that fit within the scope of K.S.A. 66-2019, and absent any circumstances beyond the County’s control that would require a shorter advance notice, the County would be required to provide the public utility written notice not less than one hundred eighty (180) days prior to any relocation. Any damages suffered by the County or its contractors as a result of the public utility’s failure to timely relocate or adjust its facilities shall be borne by the public utility.

Sec. 22-32. – Indemnification.

A public utility shall indemnify the County, and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage to the extent such loss and/or damage arises out of the public utility’s or its agent’s or employee’s negligence and/or willful, wanton or reckless conduct undertaken with regard to this Code. This indemnification shall not be affected by any other provisions in agreements pertaining to insurance requirements or bond requirements.

Sec. 22-33. – Claim Notification.

A public utility shall promptly advise the County in writing of any known claim or demand against the public utility or the County related to, or arising out of the public utility’s activities in a public right-of-way.

Sec. 22-34. – Emergencies.

If there is an emergency necessitating response work or repair, any public utility, its agent, affiliate, employee or subcontractor may begin that repair or emergency response work or take any action required under the circumstances, provided that the public utility, its agent, affiliate, employee or subcontractor notifies Sedgwick County Public Works promptly after beginning the

work and timely thereafter meets any requirements established by permit, agreement, or federal, state or county law.

Sec. 22-35. – Applicability of Other Laws.

This Code shall be subject to all other applicable federal and state laws, including but not limited to federal statutes and Federal Aviation Administration regulations that may pertain to heights of wireless telecommunications facilities near airports, local building and electrical code resolutions, and K.S.A. 66-2019.

SECTION 3. SEVERABILITY CLAUSE.

Should any section, clause or provision of this Resolution be declared by any court of competent jurisdiction to be invalid, the same shall not affect the validity of this Resolution as a whole, or any part thereof, other than the part so declared to be invalid.

SECTION 4. PUBLICATION AND EFFECTIVE DATE.

Upon the adoption of this Resolution, the Clerk of Sedgwick County shall publish this Resolution once in the official County newspaper. This Resolution shall take effect on the 1st day of October, 2016.

Commissioners present and voting were:

DAVID M. UNRUH
TIM R. NORTON
KARL PETERJOHN
RICHARD RANZAU
JAMES M. HOWELL

Age
Age
Age
Age
Age

Dated this 28th day of September, 2016.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

ATTEST:

for Karen S. Baird
KELLY B. ARNOLD, County Clerk



[Signature]
JAMES M. HOWELL, Chairman
Commissioner, Fifth District

[Signature]
RICHARD RANZAU, Chair Pro Tem
Commissioner, Fourth District

APPROVED AS TO FORM:

[Signature]
JUSTIN M. WAGGONER
Assistant County Counselor

[Signature]
DAVID M. UNRUH
Commissioner, First District

[Signature]
TIM R. NORTON
Commissioner, Second District

[Signature]
KARL PETERJOHN
Commissioner, Third District

EXHIBIT A

Permit No. _____

SEDGWICK COUNTY PUBLIC WORKS

Township _____

Road No. _____

**UTILITY PERMIT AGREEMENT
USE OF PUBLIC ROAD RIGHT-OF-WAY**

Com. District No. _____

THIS AGREEMENT, made and entered into this _____ day of _____, 20_____,
by and between the Board of County Commissioners of Sedgwick County, Kansas ("County") and
_____ ("Licensee")

Address _____
(street/city/zip)

State of organization or incorporation: _____, registered or authorized to do business in Kansas.

By (print) _____ Title _____

Signature _____ Date ____ / ____ / ____ Phone _____

Job Contractor _____ Contact Person _____

Job Contractor Phone _____

WHEREAS, the Licensee requests permission and authority from the County to perform certain work related to installation, operation, maintenance, or removal of the Licensee's public utility facilities, described as follows (the "Work"):

If the Work involves a wireless telecommunications facility, please also indicate which one (1) of the following categories the Work falls into pursuant to K.S.A. 66-2019:

- ___ New wireless support structure
- ___ Small cell facility or small cell network
- ___ Substantial modification to an existing wireless support structure or base station
- ___ Eligible facilities requests, as defined by 47 U.S.C. § 1455(a)
- ___ Any other application for placement, installation, or construction of transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a)

Work involving road right-of-way in, upon or along Road No. _____, Township _____, Range _____, Section _____,

of subdivision _____, Block _____, Lot(s) _____, in Sedgwick County, Kansas.

The estimated start date for the Work is ____ / ____ / ____ and the estimated completion date for the Work is ____ / ____ / ____.

(Refer to Section 8)

NOW, THEREFORE, in consideration of the parties' mutual promises and covenants, it is agreed as follows:

Section 1. LICENSE GRANTED. County hereby grants to Licensee a revocable (at the sole option of the County), non-exclusive license to occupy the above-described right-of-way for the purposes aforesaid, subject, however, to the covenants and conditions herein contained.

Section 2. PLANS. Licensee shall furnish to Sedgwick County Public Works one (1) set of comprehensive plans and/or sketches on 8½" x 11" or larger paper, of the proposed Work.

2.1 Plans for utility installations must include a description of the size, type and method of installation for the proposed Work to be located within road right-of-way, and adequate sketches to indicate the location of the proposed Work with respect to the traveled way of the road, the right-of-way lines and, where applicable, the control of access lines.

2.2 Plans for utility work (other than installation) shall include location and method of work, and location of other utility lines in the Work area.

Section 3. MATERIAL AND METHODS. All requests to perform Work in, upon and along road right-of-way must be approved by the County Engineer.

3.1 The Licensee shall furnish all material, perform all labor and pay all costs for the Work.

3.2 All utility installations shall comply with the conditions and requirements of the "Utility Accommodation Policy of Sedgwick County Public Works."

3.3 All Work materials and Work construction methods used within the right-of-way shall be equal to or better than that required by the Kansas Department of Transportation Standard Specifications for Road and Bridge Construction, current edition.

3.4 The Licensee's proposed agent or contractor for completing the Work cannot be a debarred vendor with Sedgwick County Purchasing.

Section 4. TRAFFIC OBSTRUCTIONS. Licensee agrees that highway traffic will be free of interference unless specifically provided for as a part of this Permit Agreement. Traffic protection shall be in accordance with the "Manual on Uniform Traffic Control Devices", current edition.

Section 5. RIGHT-OF-WAY. Licensee agrees to restore said right-of-way to the condition existing at the date hereof.

5.1 Any sod, shrubs or trees destroyed by the Work shall be replaced as directed by the County Engineer.

5.2 Any destroyed trees shall have the stump ground down to an elevation six inches (6"), at a minimum, below the existing grade.

5.3 The right-of-way shall be kept free from parking, advertising signs or any other commercial activity.

5.4 The Licensee shall restore the original configuration of all ditches, slopes, embankments and fills within the right-of-way.

Section 6. MAINTENANCE. All utility installations shall be properly maintained by the Licensee.

Section 7. BOND. (Check either 7.1 or 7.2)

7.1 _____ A check or other suitable bond, in the amount of \$ _____ made payable to Sedgwick County, shall be deposited with this Permit Agreement to guarantee satisfactory performance of the Work and of the conditions of this Permit Agreement.

7.2 _____ A standing bond has been filed with Sedgwick County Public Works in the amount of \$ _____.

7.3 Licensee covenants and agrees that the foregoing bond will be conditioned on Licensee's proper performance of the Work and of the conditions of this Permit Agreement; and County covenants and agrees that said bond will be released upon such proper performance.

Section 8. INITIATION AND COMPLETION OF WORK. Licensee AGREES TO NOTIFY THE COUNTY ENGINEER AT LEAST 24 HOURS BEFORE THE WORK IS INITIATED AND AGAIN WITHIN FIVE (5) DAYS OF WHEN THE WORK IS COMPLETED. The Work hereunder shall be performed to the satisfaction of the County Engineer. Licensee will at all times comply with and abide by all rules, notices and regulations of the County Engineer.

8.1 The Work, including right-of-way restoration, shall be completed within one (1) year of County's approval date of this Permit Agreement and the Work shall be diligently pursued to completion. If the Work is not so timely completed this Permit Agreement shall be deemed revoked and the bond hereunder shall be forfeited.

8.2 An approved signed copy of this Permit Agreement shall be on the premises before and during the period any Work is performed.

Section 9. LIABILITY. The Licensee hereby assumes all risk for liability for damages that may occur to persons or property on account of the Work, whether completed by the Licensee or by the Licensee's agent or contractor completing, installing, or maintaining the Work on the Licensee's behalf; and the Licensee does hereby indemnify and hold the County harmless from any and all costs, liabilities, expenses, suits, judgments or damages to persons or property or claims of any nature whatsoever (including reasonable attorneys' fees) arising out of or in connection with the Work and with Licensee's occupation of the right-of-way hereunder.

9.1 The Licensee shall procure and maintain liability insurance to protect the public from injuries occurring as a result of the Work and to protect the County from all liability and damages on account of injuries to workers, as provided by law, and to protect the County from all liability and damages occasioned by the Work.

9.2 The Licensee agrees to file with the County Engineer, prior to the granting of this Permit Agreement, "Certificates of Insurance" or other satisfactory evidence to show that Licensee carries Worker's Compensation Insurance, Employer's Liability Insurance, Standard Form Comprehensive Public Liability and Property Damage Insurance, and Comprehensive Automobile Owned, Non-owned and Hired Insurance as recognized by the Commissioner of Insurance of the State of Kansas. All insurance coverages are to be a minimum of \$500,000.00.

9.3 All insurance coverages shall name the County as an additional insured and shall require the insurer to notify the County Clerk at least thirty (30) days in advance of any cancellation or change in insurance coverages.

9.4 Insurance as herein required shall be maintained in force until final release of the Licensee by the County Engineer from all obligations under the terms of the Permit Agreement. Said insurance contract shall cover claims for such length of time as said claims are permitted by law.

9.5 The Licensee also agrees to ensure that any agent or contractor completing, installing, or maintaining the Work on its behalf within the road right-of-way, shall have insurance in place to match those coverages required within Section 9 of this Permit Agreement.

Section 10. ROAD IMPROVEMENTS. Licensee recognizes that the County may from time to time deem it necessary or proper to make alterations or improvements in and upon the above-described road right-of-way and that the County has sole discretion to determine the nature and extent of such alterations or improvements. Licensee further recognizes that such County works may require the alteration or relocation of the Work hereunder. Licensee therefore covenants and agrees that, within a reasonable time after written notice from the County Engineer and without cost or expense to the County, Licensee will alter, reconstruct and relocate the Work as directed by the County Engineer. Licensee further covenants and agrees to indemnify and hold the County harmless from any and all liability and damages occasioned by said alteration, reconstruction and relocation.

10.1 Licensee covenants and agrees that the Work will be conducted in such a manner as not to interfere with County construction, improvement or maintenance in the said road right-of-way.

10.2 Licensee SHALL BE AND IS HEREBY RESPONSIBLE FOR LOCATING AND SAFEGUARDING ANY EXISTING UTILITY LINES WITHIN THE PROJECT AREA IN ACCORDANCE WITH K.S.A. 1993 Supp 66-1801, *et seq.*

Section 11. ABANDONED WORK. If the Licensee's Work becomes damaged, abandoned, or unused and County has complied with any requirements included within Section 22-30 of the Sedgwick County Code regarding notice and the damaged, abandoned, or unused condition persists, the County may remove or modify the Work and the Licensee would be required to reimburse the County for any costs incurred by the County during such removal or modification.

Section 12. CLAIM NOTIFICATION. The Licensee shall promptly notify the County in writing of any known claim or demand against the Licensee or the County related to or arising out of the Work.

Section 13. ASSIGNMENT. This Permit Agreement, and the rights, duties and liabilities incidental hereto, may not be assigned or otherwise transferred by the Licensee without the consent of the County.

Section 14. CHOICE OF LAW AND VENUE. This Permit Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Permit Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

APPROVED THIS _____ DAY OF _____, 20_____.

DAVID C. SPEARS, P.E.,
DIRECTOR OF PUBLIC WORKS/COUNTY ENGINEER

Only

EXHIBIT B

Permit No. _____

**SEDGWICK COUNTY PUBLIC WORKS
HIGHWAY PERMIT AGREEMENT
USE OF PUBLIC ROAD RIGHT-OF-WAY**

Township _____

Road No. _____

Com. District No. _____

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between Sedgwick County, Kansas (hereinafter referred to as the "County") and _____ ("Licensee")

Address (street/city/zip) _____

By (print) _____ Title _____

Signature _____ Date ____ / ____ / ____ Phone _____

Job Contractor _____ Contact Person _____

WHEREAS, the Licensee requests permission and authority from the County to perform certain work, related to installation, operation, maintenance, location or removal of the Licensee's facilities, described as follows (the "Work"):

____ Entrance culvert in open ditch

____ Curb cut for driveway

____ Other, describe as follows: _____

involving road right-of-way in, upon or along Road No. _____, Township _____, Range _____, Section _____, of subdivision _____, Block _____, Lot _____ in Sedgwick County, Kansas.

The estimated start date for the Work is ____ / ____ / ____ and the estimated completion date for the Work is ____ / ____ / ____.
(Refer to Section 8)

NOW, THEREFORE, in consideration of the parties' mutual promises and covenants, it is agreed as follows:

Section 1. LICENSE GRANTED. County hereby grants to Licensee a revocable, non-exclusive license to occupy the above-described right-of-way for the purposes aforesaid, subject, however, to the covenants and conditions herein contained.

Section 2. PLANS. Licensee shall furnish to Sedgwick County Public Works two (2) sets of comprehensive plans and/or sketches, 8 1/2" x 11" or larger, of the proposed Work.

2.1 Plans for installation of facilities must include a description of the size, type and method of installation for the proposed Work to be located within road right-of-way, and adequate sketches to indicate the location of the proposed Work with respect to the traveled way of the road, other right-of-way lines and, where applicable, the control of access lines.

2.2 Plans for entrances must include a plan layout sketch or drawing for the proposed installation, method of installation, location of utility lines (where applicable) and a description of the location of the installation in relation to entrance or drainage structures.

Section 3. MATERIAL AND METHODS. All requests to perform Work, in, upon and along road right-of-way must be approved by the County Engineer.

3.1 The Licensee shall furnish material as directed.

3.2 All entrance installations shall comply with the requirements of the County Engineer.

3.3 Drainage Structure requirements shall be determined by the County Engineer.

3.4 Commercial entrances shall be surfaced with material of the same general type and thickness as the adjacent public roadway surfacing or as directed by the County Engineer.

3.5 All materials and construction methods used on Work within the limits of the right-of-way shall be equal to or better than that required by the "Kansas Department of Transportation Standard Specifications for Road and Bridge Construction", current edition.

Section 4. TRAFFIC OBSTRUCTIONS. Licensee agrees that highway traffic will be free of interference unless specifically provided for as part of this Permit. Traffic protection shall be in accordance with the "Manual on Uniform Traffic Control Devices", current edition.

Section 5. RIGHT-OF-WAY. Licensee agrees to restore said right-of-way to the condition existing at the date hereof.

5.1 Any sod, shrubs or trees destroyed by the Work shall be replaced as directed by the County Engineer.

5.2 The right-of-way shall be kept free from parking, advertising signs or other commercial activity.

5.3 The Licensee shall restore to the original configuration all ditches, slopes, embankments and fills within the right-of-way.

Section 6. MAINTENANCE. The Licensee is responsible for maintenance of the Work for one full year from completion date. At the end of such year the Licensee shall notify the County Engineer in writing, and the County Engineer will thereafter inspect the Work.

Section 7. BOND. (Check either 7.1 or 7.2)

7.1 _____ A check or other suitable bond, in the amount of \$ _____ made payable to Sedgwick County, shall be deposited with this Permit to guarantee satisfactory performance of the Work and of the conditions of this Permit.

7.2 _____ A standing bond has been filed with Sedgwick County Public Works and approved by the County Counselor in the amount of \$ _____.

7.3 Licensee covenants and agrees that the foregoing bond will be conditioned on Licensee's proper performance of the Work and of the conditions of this Permit; and County covenants and agrees that said bond will be released upon such proper performance.

Section 8. INITIATION AND COMPLETION OF WORK. Licensee AGREES TO NOTIFY THE COUNTY ENGINEER AT LEAST 24 HOURS BEFORE THE WORK IS INITIATED AND AGAIN WITHIN FIVE (5) DAYS OF WHEN THE WORK IS COMPLETED. The Work hereunder shall be performed to the satisfaction of the County Engineer. Licensee will at all times comply with and abide by all rules, notices and regulations of the County Engineer.

8.1 An approved signed copy of this Permit shall be on the premises before and during the period any Work is performed.

8.2 The Work, including right-of-way restoration, shall be completed within sixty (60) calendar days of County's approval date of this Permit; and if the Work is not so timely completed, this Permit shall be deemed revoked and the bond hereunder shall be forfeited.

8.3 If the Work involves an entrance culvert, the County will size the culvert, determine the proper type, and note such information in Section 11 hereof. The Licensee will purchase proper culvert, have it delivered to the Work location and forthwith notify the County Engineer of its delivery.

Section 9. LIABILITY. The Licensee hereby assumes all risk for liability and damages that may occur to persons or property on account of the Work, whether completed by the Licensee or by the Licensee's agent or contractor completing, installing, or maintaining the Work on the Licensee's behalf; and Licensee does hereby indemnify and hold the County harmless from any and all costs, liabilities, expenses, suits, judgments or damages to persons or property or claims of any nature whatsoever (including reasonable attorneys' fees) arising out of or in connection with the Work and with Licensee's occupation of the right-of-way hereunder.

9.1 The Licensee shall procure and maintain liability insurance to protect the public from injuries occurring as a result of the Work and to protect the County from all liability and damages on account of injuries to workers, as provided by law, and to protect the County from all liability and damages occasioned by the Work.

9.2 The Licensee agrees, to file with the County Engineer, prior to the granting of this Permit, "Certificates of Insurance" or other satisfactory evidence to show that Licensee carries Worker's Compensation Insurance, Employer's Liability Insurance, Standard Form Comprehensive Public Liability and Property Damage Insurance, and Comprehensive Automobile Owned, Non-owned and Hired Insurance as recognized by the Commissioner of Insurance of the State of Kansas. All insurance coverages are to be \$500,000.00.

9.3 All insurance coverages shall name the County as an additional insured and shall require the insurer to notify the County Clerk at least thirty (30) days in advance of any cancellation or change in insurance coverages.

9.4 Insurance as herein required shall be maintained in force until final release of the Licensee by the County Engineer from all obligations under the terms of the Permit. Said insurance contract shall cover claims for such length of time as said claims are permitted by law.

Section 10. ROAD IMPROVEMENTS. Licensee recognizes that the County may from time to time deem it necessary or proper to make alterations or improvements in and upon the above-described road right-of-way and that the County has sole discretion to determine the nature and extent of such alterations or improvements. Licensee further recognizes that such County works may require the alteration or relocation of the Work hereunder. Licensee therefore covenants and agrees that, within a reasonable time after written notice from the County Engineer and without cost or expense to the County, Licensee will alter, reconstruct and relocate the Work as directed by the County Engineer. Licensee further covenants and agrees to indemnify and hold the County harmless from any and all liability and damages occasioned by said alteration, reconstruction and relocation.

10.1 Licensee covenants and agrees that the Work will be conducted in such a manner as not to interfere with County construction, improvement or maintenance in the road right-of-way.

10.2 Licensee SHALL BE AND IS HEREBY RESPONSIBLE FOR LOCATING AND SAFEGUARDING ANY EXISTING UTILITY LINES WITHIN THE PROJECT AREA IN ACCORDANCE WITH K.S.A. 1993 Supp. 66-1801, *et seq.*

Section 11. FIELD DATA FOR CULVERTS.

ENGINEER'S RECOMMENDATION:

SIZE _____ LENGTH _____ TYPE: CMP, RCP, CMAC, OTHER _____

CHECKED BY _____ DATE _____

FIELD CHECKED BY _____ DATE _____

APPLICANT CALLED BY _____ DATE _____

Section 12. ASSIGNMENT. This Permit, and the rights, duties and liabilities incidental hereto, may not be assigned or otherwise transferred by the Licensee without the consent of the County.

Section 13. CHOICE OF LAW AND VENUE. This Permit Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Permit Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

APPROVED THIS _____ DAY OF _____, 20_____.

DAVID C. SPEARS, P.E.
DIRECTOR OF PUBLIC WORKS/COUNTY ENGINEER

Example Only

EXHIBIT C

SCHEDULE OF MINIMUM BOND DEPOSITS

<u>Type of Work</u>	<u>Rate</u>	<u>Minimum Bond</u>
<u>Excavation</u>		
Open Trenching within Right-of-Way	\$10,000 per mile	\$5,000
Open Trenching through Pavement	\$2,500 each	\$5,000
Boring or Tunneling (Bore Pits off Right-of-Way)	\$1,000 each	\$5,000
Boring or Tunneling (Bore Pits on Right-of-Way)	\$2,500 each	\$5,000
Direct Burial (Plowing or Trenching)	\$5,000 per mile	\$5,000
Overhead Utility – New Poles	\$100 per pole	\$5,000
Overhead Utility - Attach to Existing Poles	\$50 per pole	\$5,000
Overhead Utility – New Pole with Cast in Place Concrete Base	\$500 per pole	\$5,000
<u>Entrances and Concrete Flatwork</u>		
Commercial Entrance - Permanent	\$2,500 each	\$2,500
Utility or Construction Entrance - Temporary	\$2,500 each	\$5,000
Curb and Gutter	\$10 per foot	\$2,500
Sidewalk	\$10 per foot	\$2,500
Flumes or Ditch Liner	\$10 per foot	\$2,500
<u>Bridge or Culvert Attachment</u>		
Cable or Pipe up to 2 Inches in Diameter	\$10 per foot	\$5,000
Cable or Pipe Larger than 2 Inches, smaller than 6 Inches	\$15 per foot	\$5,000
Cable or Pipe 6 inches or Larger	\$20 per foot	\$5,000
<u>Vegetation Management</u>		
Tree Trimming	\$50 per 100 feet	\$2,500
Tree Removal	\$500 each	\$2,500
Landscaping - Grading, Planting Turf, Irrigation	\$100 per 100 feet	\$2,500
Landscaping - Plant Trees	\$50 each	\$2,500
<u>Other Work Types</u>		
Any Work Type Not Defined Above	\$5,000 each	\$5,000

Calculation of Bond Covering Multiple Types of Work in a Single Permit

Where multiple work types are covered by a single permit, the total bond required is the sum of the bonds required for the various types of work. The minimum bond shall be set at the minimum for the type of work included in the project with the highest minimum.

Option for Standing Bond to Cover Multiple Permits and Types of Work

Applicants have the option to provide a standing bond to be held by Sedgwick County to meet the permit requirements for multiple open permits with multiple types of work. A standing bond shall be in the amount of \$10,000. A standing bond shall not be released by Sedgwick County until all work for which the bond was used to obtain permits has been completed and approved by Sedgwick County Public Works.