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**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION PERMITTING  
USE OF COUNTY PUBLIC RIGHT-OF-WAY BY UTILITIES**

WHEREAS, the Board of County Commissioners of Bourbon County (“the Board”) has the power under Kansas Statutes Annotated 19-101a to regulate activities within the County Public right-of-way and to authorize and require permits and assess fees in connection with such regulation; and

WHEREAS, the Board has determined that it is necessary and desirable and in the best interests of the County to require a permitting process for the general health, welfare and safety of the public and to require fees for certain services when those services are provided by the Bourbon County Road and Bridge Department,

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Bourbon County, Kansas, that it makes the following resolution:

**Section 1. Definitions.**

(a) “Public right-of-way” means only the area of real property in which Bourbon County has a dedicated or acquired right-of-way interest in the real property. It shall include, but not be limited to the area on, below or above the present and future roads, highways, and / or public byways 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.

(b) “Occupant” means any person, firm, corporation, association, utility, or entity, which enters upon the County Public right-of-way of Bourbon County, or in any manner establishes a physical presence on, upon, in or over the Public right-of-way of Bourbon County, for the purpose of installing, constructing, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or temporary facilities.

(c) “County’s Representative” means any person, firm, corporation, association, or entity, which is appointed by the Bourbon County Board of Commissioners to represent Bourbon County.

**Section 2. Prohibited.**

(a) No person, firm, corporation, association, utility, or entity, shall enter upon the Public right-of-way of Bourbon County, or in any manner establish a physical presence on, upon, in or over the Public right-of-way of Bourbon County, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances, temporary, permanent, private or public thereto, without the express written permission of Bourbon County. The permission of Bourbon County may be granted thru the current version of the policies, permits, and agreements listed in Section 8 or by such other agreement as the governing body determines best protects the public interest in the County Public right-of-way.

**Section 3. Health, Safety, and Welfare Regulations.**

The authority of a provider to use and occupy the County Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the County, Federal and State.

**Section 4. Public Access and Right-of-Way.**

All activities associated with the County Public right-of-way shall be conducted in such a manner that emergency vehicles, school buses, commercial, agriculture and residential traffic shall have the right-of-way and will be able to operate with minimal interruption.

**Section 5. Specific Portions of Public Right-of-Way Restricted.**

(a) Bourbon County hereby prohibits the use or occupation of the following specific portions of Bourbon County Public right-of-way:\_\_\_\_\_.

[See K.S.A. 17-1902(e) for the standards which must be followed when prohibiting the use of a specific portion of the right-of-way. It reads as follows: The city shall have the authority to prohibit the use or

occupation of a specific portion of the County Public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following: (1) The prohibition is based upon a recommendation of the city engineer, is related to public health, safety and welfare and is nondiscriminatory among providers, including incumbent providers; (2) the provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the city for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality; (3) the city reasonably determines, after affording the provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or (4) the specific portion of the public right-of-way for which the provider seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state or federal law.] The County shall be considered equal to the City in the above Kansas Statute.

**Section 6. Denial.**

Bourbon County reserves the right to deny a request to use or occupy a specific portion of the County Public right-of-way, the applicant shall be served a notice of such denial by first class mail.

**Section 7. Unauthorized Work Performed by Occupant.** Bourbon County hereby prohibits unauthorized work to be performed within the Bourbon County Public right-of-way in accordance with Kansas Statute: [K.S.A. 68-545 Unlawful obstructions, excavations, removal of materials, dumping trash or other materials or plowing of roads; penalty; payment of cost to restore, states the following: It shall be unlawful for any person or persons to obstruct any portion of a public highway, including any portion of the entire right-of-way, in any manner with intent to prevent the free use thereof, or to make any holes therein, or to remove any earth, gravel or rock therefrom or any part thereof, or in any manner to obstruct any ditch on the side of any such highway and thereby damage the same, to dump trash, debris, sewage, or any other material, on any highway or any ditch on the side of any highway, or to plow any public highway for the purpose of scouring plows, or for any other purpose except for the improvement of such highway and as directed in writing by the county engineer and the township board of highway commissioners acting jointly. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction shall be fined for each and every offense under this act in the sum of not more than \$200, and shall pay costs of the action and the cost of cleaning the public highway and restoring it to its prior condition.]

**Section 8. Compliance with Bourbon County adopted Polices, Agreements and Permits.**

Any Occupant of the County Public right-of-way shall comply with the provision of the current Bourbon County policies, permits and agreements list below included but not limited to:

- (a) County Public Right-of-Way Use, Maintenance and Design Policy
- (b) Right-of-Way Use Permits
- (c) Construction Details
- (d) Right-of-Way Use, Repair and Maintenance Agreement for Transmission Pipeline Utility Installation
- (e) Bourbon County Resolution No. \_\_\_\_\_
- (f) County Public Right-of-Way Use for Utility Infrastructure Policy

**Section 9. Fees.**

See the Bourbon County Permit Fee Schedule and Culvert Fee Schedule for current application and permits fees.

**Section 10. Insurance.**

Any Occupant of the County Public right-of-way shall provide insurance according to the Bourbon County Right-of-Way Use, Maintenance and Design Policy and Right-of-Way Use Permits and shall furnish a certificate of insurance indicating but not limited to the following types:

- (a) Workman's Compensation: Is required to cover claims of the contractor and the contractor's employees.
- (b) Contractor's General Liability: Is required to cover completed operations and product liability coverage and eliminate the exclusion with respect to property under the care, custody, and control of the Contractor.
- (c) Automobile Liability: Is required to cover bodily injury and property damage for which the contractor is responsible per occurrence and accident basis.

- (d) Contractual Liability: Is required to cover bodily injury and property damage for which the contractor is responsible for per person and per occurrence basis.

**Section 11. Termination of Work.**

When Bourbon County or County's Representative has determined that an Occupant has violated any of the applicable policies or permits or that a project poses a hazardous situation or constitutes a public nuisance, public emergency, or other threat to the public health, safety, or welfare, or when the County or County's Representative determines that there is a paramount public purpose, the County or County's Representative is authorized to issue a stop work order, to impose new conditions upon a permit, or to suspend or revoke a permit by notifying the Occupant of such action in a written, electronic, or facsimile communication.

**Section 12. Initiation and Completion of Work.**

The Occupant shall notify Bourbon County or County's Representative according to applicable policies and permits before work is initiated and again when the work is completed. An approved signed copy of all applicable permits and agreements shall be on the premises before and during the period any work is performed. All work shall be completed with the designated construction time indicated on the agreements and permits.

**Section 13. Indemnity.**

(a) By accepting this permit and commencing the work, the Permittee agrees to indemnify and hold harmless Bourbon County from all claims, actions, lawsuits or damages of any kind and description which may accrue to or be suffered by any person, corporations, other entity, or real or personal property by reason of performance of the work, character of materials used or manner of installations or construction, or the maintenance or operation of the installations, or improper occupancy of the County Public right-of-way or public or private real or personal property, and in the case any such claim is made or an action or lawsuit is commenced against Bourbon County for damages arising out of any of the above causes, the Permittee shall, upon notice from the county of such claim or commencement of such action or lawsuit, defend the same at the Permittee's sole costs and expense shall fully satisfy any judgment after said lawsuit shall have been finally determined adversely to the county. This hold harmless and indemnification shall survive expiration of the permit. (b) Permittee assumes all liability for Permittee and any of its respective related entities' agents, employees, contractors, subcontractors, material suppliers, vendors, transport providers, designees and representatives.

**Section 14. Emergencies.**

If there is an emergency necessitating response work or repair, any person, firm, corporation, association, utility, or entity which has been granted permission hereunder to occupy the County Public right-of-way may begin that repair or emergency response work or take any action required under the circumstances, provided that the person, firm, corporation, association, utility, or entity notifies Bourbon County promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

**Section 15. Repair.**

Any Occupant of the County Public right-of-way is hereby required to repair all damage to the County Public right-of-way caused by the activities of that Occupant for which permission has been given hereunder, or of any agent affiliate, employee, or subcontractor of that occupant, while occupying, installing, repairing or maintaining facilities in the County Public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the applicable current policies, permits and agreements of Bourbon County. If the occupant fails to make the repairs required by Bourbon County, Bourbon County may affect those repairs and charge the Occupant the cost of those repairs.

**Section 16. Relocation.**

Whenever requested by Bourbon County, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, an Occupant promptly shall remove its facilities from the County Public right-of-way or shall relocate or adjust its facilities within the County Public right-of-way at no cost to the political subdivision. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by Bourbon County for such relocation or adjustment. Any damages suffered by Bourbon County or its contractors as a result of such occupant's failure to timely relocate or adjust its facilities shall be borne by such occupant.

**Section 17. Claim Notification.**

An Occupant shall promptly advise the other in writing within no more than thirty (30) days of any known claim or demand against the provider or Bourbon County related to or arising out of the Occupant's activities in the County Public right-of-way.

**Section 18. Penalty Provision.**

Any person, firm, corporation, association, utility, or entity, or agent, contractor or subcontractor thereof, violating any provision of this Resolution, shall be guilty of a Class C misdemeanor upon the first violation, and a Class B misdemeanor upon the second violation, and shall upon conviction be subject to a maximum fine of \$500.00. Each day of violation shall constitute a separate and distinct offense unless otherwise noted on the permits or agreements.

**Section 19. Further Provisions.**

The Board of County Commissioners of Bourbon County or the Bourbon County Road and Bridge Supervisor from time to time may make revisions to policies, permits and agreements to carry out the intent of this resolution.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Bourbon County Commissioner

\_\_\_\_\_  
Bourbon County Commissioner

\_\_\_\_\_  
Bourbon County Commissioner

ATTEST:

\_\_\_\_\_  
Bourbon County Clerk