

RESOLUTION NUMBER: 2022- 10

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF KIOWA COUNTY, KANSAS, ENACTING REGULATIONS FOR THE EXCATATION OF SECTION CORNER MONUMENTS WITHIN THE COUNTY'S RIGHT-OF-WAYS.

WHEREAS, the Board of County Commissioners desires to set forth a regulatory policy for the excavation of section corner monuments within the County's Right-of-Ways.

WHEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF KIOWA COUNTY, KANSAS:

SECTION 1: DEFINITIONS

- a. Public right-of-way means only the areas of real property in which Kiowa 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 easements obtained by utilities or private easements in platted subdivisions or tracts.
- b. Applicant means any person, firm corporation, or other entity desiring to excavate or have excavated the section corner monuments within the County's right-of-way for purpose of conducting a survey.

SECTION 2: AUTHORIZATION FROM COUNTY REQUIRED

- a. No person, firm, corporation, association, or other entity shall excavate within the County's right-of-way without the express written permission of the County.
- b. The County shall have the authority to prohibit excavation within the public right-of-way by an applicant due to a reasonable public interest necessitated by public health, safety and welfare so long as the authority exercised in a manner that is competitively neutral and nondiscriminatory. Reasonable public interests include, but are not limited to: (1) The prohibition is based on the recommendation of the County Road and Bridge Supervisor and is related to public health, safety and welfare and is nondiscriminatory among applicants; (2) The applicant has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the County for requiring an alternative method that will not result in unreasonable additional installation expense; (3) The County reasonably determines, after affording the applicant reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on competitively neutral and nondiscriminatory basis.
- c. The County shall process each valid and administratively complete application for excavation of corner section monuments within the public right-of-way within five (5) working days.
- d. The County authorizes the Road and Bridge Supervisor and, in the alternative, the Road and Bridge administrative staff, to execute the permits on behalf of the County.

SECTION 3: COMPLIANCE WITH MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES

Any occupant of the public right-of-way shall comply with the provisions of Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management of the most current version of the Manual of Uniform Traffic Control Devices (MUTCD) published by the U.S. Department of Transportation, Federal Highway Administration, which is incorporated herein by reference as if fully set forth herein.

SECTION 4: NOTIFICATION

All applicants shall be required to contact KS-ONE-CALL prior to beginning excavation and provide proof of such notification to the County. Additionally, all applicants shall contact and cooperate with all utility companies and other entities with lines within the County right-of-way to ensure that no damage is caused to any property of any occupant of the right-of-way. It shall be the responsibility of the applicant to determine the utilities and other entities affected and take such measures as shall be required to ensure that no damage is caused to any property. Each applicant must also notify the Kiowa County Road and Bridge Supervisor or his designee a minimum of five (5) working days prior to the initiation of any work or excavation within the County's right-of-way. Further each applicant shall notify the road and bridge supervisor within one (1) day after the work is completed.

SECTION 5: REPAIR

Any applicant is hereby required to repair all damage to a public right-of-way caused by the excavation of the corner section monuments and any other activities of that applicant, or of any agent, affiliate, employee, or subcontractor of that applicant, and to return the right-of-way to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the County. The applicant shall further be responsible for the costs of any materials required to return the excavation site to its condition prior to the excavation. If the applicant fails to make the repairs required by the County, the County may effect those repairs and the occupant shall be responsible for reimbursing the County for the cost of those repairs.

SECTION 6: FEES

Each Applicant shall pay a \$150 application fee; \$125 of said application fee shall be refunded to the applicant, less any costs for the County to repair or backfill the dig, after the applicant has provided corner certificates and digging reports to the Kiowa County Road and Bridge Supervisor. If the County is required to provide equipment and employees to properly backfill the dig, the cost to the applicant shall be \$80.00 per hour for the use of the county backhoe and county employee labor. This shall be charged in one (1) hour increments and hourly charges shall include time moving equipment to the excavation site, backfill, and return to county office.

SECTION 7: INSURANCE

All applicants shall provide a Certificate of Insurance for general liability insurance under a claims-made policy that has a minimum combined single limit of \$2,000,000 for personal injury

and property damage. Further each applicant shall provide a Certificate of Insurance for workers compensation and employer liability insurance that complies with Kansas State law. Additionally, each applicant shall provide a Certificate of Insurance for automobile liability insurance under a claims made policy that has a minimum combined single limit of \$1,000,000 for personal injury and property damage. All such Certificates of Insurance shall name Kiowa County as an additional insured and shall be furnished to the Kiowa County Road and Bridge Supervisor prior to approval of any application.

SECTION 8: CERTIFICATES AND REPORTS

Each applicant shall provide to the Kiowa County Road and Bridge Supervisor, within sixty (60) days, Corner Certificates and a digging report for all corners excavated. The Corner Certificates shall meet state standards and the digging report shall provide sufficient information to accurately locate the dig area.

SECTION 9: INDEMNIFICATION

- a. Applicant shall indemnify and hold Kiowa County and its officers, and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a Court of competent jurisdiction to be caused by the negligence of the applicant, any agent, officer, director, representative, employee, affiliate, or subcontractor of the provider, or their respective officers, agents, employees, directors, or representatives while excavating or engaging in other activities within the public right-of-way.
- b. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of Kiowa County, its officers, employees, contractors, or subcontractors. If an applicant and Kiowa County are found jointly liable by a Court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to Kiowa County under state law and without waiving any defense of the parties under state or federal law.
- c. This section is solely for the benefit of Kiowa County and applicant and does not create or grant any rights, contractual or otherwise, to any person or entity.

SECTION 10: PRIOR RESOLUTIONS

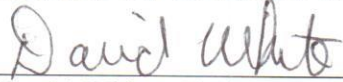
This Resolution repeals any and all prior resolutions or parts of resolutions in conflict with the terms hereof are hereby repealed.

SECTION 11: EFFECTIVE DATE

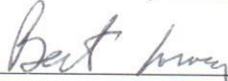
this Resolution shall be in full force and effect upon publication in the official county newspaper and until otherwise modified or repealed by the Board of County Commissioners of Kiowa County, Kansas.

Passed and adopted this 21 day of March, 2022

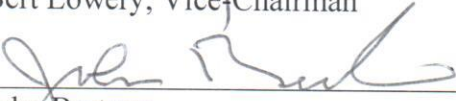
BOARD OF COUNTY COMMISSIONERS OF KIOWA COUNTY, KANSAS:



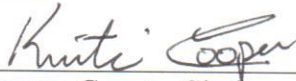
David White, Chairman



Bert Lowery, Vice-Chairman



John Bertram

Attest 

Kristi Cooper, County Clerk