

**Attachment A – Right-of-Way Use Agreement**  
**(Template Follows on next pages)**

\ \_\_\_\_\_ (Licensee)  
Joint Use of Highway Right of Way for \ \_\_\_\_\_  
\ \_\_\_\_\_ County, Kansas

### RIGHT-OF-WAY USE AGREEMENT

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is between the Secretary of Transportation of the State of Kansas (the “Secretary”) and \ \_\_\_\_\_ (“Licensee”), collectively referred to as the “Parties.”

#### RECITALS:

- A. The Secretary holds an interest in a tract of land that is part of the state highway system as further described in paragraph 1 below (the “Premises”), under the jurisdiction of the Kansas Department of Transportation (KDOT).
- B. Licensee desires to use the Premises for \ \_\_\_\_\_, as further described in paragraph 2 below (the “Stated Use”).
- C. The Secretary will permit Licensee to use the Premises for the Stated Use, provided such use does not impair the use and safety of the existing public roadway and provided that Licensee maintains the Premises for use as part of the state highway system.

**NOW, THEREFORE**, the Parties mutually agree as follows:

1. Granting of License; Premises. To the extent of its interest therein, the Secretary hereby grants and empowers to Licensee the right and privilege to use the Premises for the Stated Use (the “License”). The Premises are shown on the diagram in “Exhibit A,” which is attached and incorporated into this Agreement by this reference, and more specifically described as follows:

\ \_\_\_\_\_

2. Stated Use. The Stated Use of this License is limited to: \ \_\_\_\_\_. The Parties understand and agree that the Secretary shall have no duty or obligation whatsoever other than allowing the Licensee the right and privilege to use the Premises for the Stated Use.

3. Hunting Prohibition. Licensee acknowledges hunting is expressly prohibited on the Premises and agrees not to use or allow the Premises to be used for hunting purposes.

4. Plans and Specifications.

A. Licensee agrees to prepare, or have prepared, any necessary plans and specifications for the development of the Premises, which must include plans for eradication of improvements and/or restoration of the Premises to its original condition, as applicable. Upon approval by the Secretary or Secretary’s designee and if required under applicable Regulations, the Federal Highway Administration (“FHWA”), the plans by this reference will become a part of this Agreement.

B. Licensee agrees prior review and approval by the Secretary and if required under applicable Regulations, the FHWA, is needed for any revision in the design of the development, from that which was originally approved for construction, or any change in the Stated Use of the Premises. The Secretary’s and FHWA’s approval is for the Secretary’s and FHWA’s benefit only, and such approval is not intended nor



violation. If such violation(s) are not remedied and the Agreement is terminated, Licensee shall restore the Premises to its original condition prior to the effective termination date at no cost to the Secretary or the FHWA.

- C. Licensee may terminate this Agreement at any time by giving the Secretary a thirty (30) day written notice of such intent. Licensee shall restore the Premises to its original condition within \\_ (\\_) days prior to the effective termination date given by notice at no cost to the Secretary or the FHWA.
- D. In the event Licensee does not restore the Premises as required under A, B, or C above, the Secretary will arrange for its restoration and bill the Licensee for that expense. Licensee agrees to reimburse the Secretary for the cost of such restoration. Licensee shall remain obligated to the Secretary under this subparagraph (D), which hereby expressly survives the expiration or termination of this Agreement.

12. Hazardous Materials Prohibited. Licensee shall not use the Premises to store any hazardous material, to include without limitation any substance or material which has been determined by the U.S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated (49 C.F.R. 171.8). Further, Licensee agrees the Premises will not be used for any purposes that would constitute a potential fire hazard or any other hazard that would impair the use or safety of the Premises or the public roadway.

13. Safeguards; Maintenance and Repair. Licensee will provide the necessary safeguards to protect the public and the Premises, and to protect the safety and appearance of the highway facility. Licensee agrees to maintain the appearance of the Premises in accordance with all approved plans and specifications, or as otherwise required by the Secretary, and to repair any damages to the Premises caused by Licensee's use of the Premises. Licensee agrees any repair or maintenance required will be made within a reasonable time after written notice has been given to Licensee by the Secretary, or, at the election of Licensee, compensation may be paid to the Secretary for necessary expenses for repairs or maintenance.

14. Indemnification. Licensee expressly agrees and covenants it will defend, indemnify, hold harmless, and save the Secretary, FHWA, and the Secretary's and FHWA's authorized representatives, agents, assigns, and employees, from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by Licensee, Licensee's agents, employees, contractors, or subcontractors, or use or maintenance of the Premises by any person. Licensee shall not be required to defend, indemnify, hold harmless and save the Secretary for negligent acts or omissions of the Secretary or the Secretary's authorized representatives, agents, assigns, or employees.

[Alternative language if Licensee is a Governmental Entity]: To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claim Act as applicable, Licensee expressly agrees and covenants it will defend, indemnify, hold harmless, and save the Secretary, FHWA and the Secretary's and FHWA's authorized representatives, agents, assigns, and employees, from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by Licensee, Licensee's agents, employees, contractors, or subcontractors, or use or maintenance of the Premises by any person. Licensee shall not be required to defend, indemnify, hold harmless and save the Secretary for negligent acts or omissions of the Secretary or the Secretary's authorized representatives, agents, assigns, or employees.

15. Insurance. Licensee shall carry adequate general liability insurance to cover its obligations under this Agreement. Licensee shall provide the Secretary with a Certificate of Insurance prior to executing this Agreement and annually thereafter upon the Secretary's request.

[Alternative language if Licensee is a Governmental Entity]: This provision is not applicable if the Licensee is a self-insuring Governmental Entity.

16. Purpose of Right of Way and Secretary's Right of Entry. Licensee agrees the primary purpose of the right of way is for construction and maintenance of the state highway system, and that the Secretary and the FHWA reserve the right to enter upon the Premises at any time to construct, inspect and maintain the Premises, or for any other highway purpose. The Secretary agrees to enter the Premises in a manner calculated so as not to unreasonably interfere with Licensee's use of the Premises. If the Secretary anticipates activities under this paragraph may require the disruption of operations of the Premises, the Secretary shall notify Licensee of the need for such activities and the expected period of disruption.

17. Structures. Licensee agrees no permanent structure will be built on the Premises, but the Secretary agrees Licensee may make such temporary improvements as are necessary in order for the Premises to be used for the Stated Use, so long as the temporary improvements are permitted by the designated KDOT Engineer, in writing. Licensee further agrees the Premises will be functional and orderly, in compliance with screening measures required pursuant to KDOT practices and procedures, and properly maintained.

18. Licensee Responsible for Repairs and Providing Alternative Accessible Routes. In the event \\_\_\_\_\_ is temporarily closed or removed for any reason, by Licensee or the Secretary, and for any length of time, it is the absolute obligation and duty of Licensee to provide an alternative accessible path and to comply with all laws and regulations relating to accessibility. Furthermore, in the event \\_\_\_\_\_ needs to be permanently removed for any reason by either Party, including termination of this Agreement, it is Licensee's duty and obligation to provide a permanent alternative accessible path, and to comply with all laws and regulations relating to accessibility.

[Note: If Licensee's improvements will include sidewalk/trail/pedestrian facilities, then keep this paragraph. If NO pedestrian facilities to be constructed, then the text of this paragraph will be deleted, but, KEEP paragraph numbering and the HEADER, and replace text with the words: "Intentionally deleted."]

19. Civil Rights Act.

A. *Non-Discrimination – Construction and Operations*. The Licensee for itself, its representatives, its successors in interest, and its assigns, as a part of the consideration for the License, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Premises described in this License for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Sub Title A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures, and as said Regulations may be amended.

(See “Special Attachment No. 1, Rev. 09.20.17” which is attached and incorporated into this Agreement by this reference).

- B. *Non-Discrimination – Use of Facilities.* The Licensee for itself, its representatives, its successors in interest, and its assigns, as a part of the consideration for the License, does hereby covenant and agree that (1) no person on the ground of race, color or national origin, sex, age, disability/handicap and low income status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin, sex, age, disability/handicap and low income status, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Licensee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Sub Title A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation – Effectuation or Title VI of the Civil Rights Act of 1964, Title 23 Code of Federal Regulations, part 200, Title VI Program and Related Statutes – Implementation and Review Procedures, and as said Regulations may be amended.
- C. *Effect of Breach.* In the event of breach of any of the above nondiscrimination covenants, the Secretary shall have the right to terminate the License and to reenter and repossess said land and the facilities thereon, and hold the same as if said License had never been made or issued.

20. Signage. Licensee agrees that no on-Premises signs shall be erected on the Premises without the express written consent of the Secretary.

21. No Property Rights. It is understood and agreed by the Parties that this Agreement only creates a license for the use of the Premises for the specific Stated Use and is subject to the terms of this Agreement. It is further understood and agreed by the Parties that this Agreement does not create, grant, convey, transfer, or vest, any property right or interest in the Premises to Licensee. Licensee understands and agrees that upon the expiration or termination of this Agreement, Licensee will not qualify for any relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the “Uniform Act”), 42 U.S.C. § 4601 et seq.

22. Authority to Execute. Each of the persons executing this Agreement on behalf of the respective Parties represents and warrants they have the authority to bind the party on behalf of whom they sign this Agreement for, and all acts requisite to the authorization to enter into this Agreement have been taken and completed.

23. Notices. Each party shall provide the other with written notice or any pertinent correspondence through the following addresses:

To Secretary:

Kansas Department of Transportation  
Bureau of Maintenance  
Attn: Chief of Maintenance  
700 SW Harrison Street  
Topeka, KS 66603

To Licensee:

24. Binding Agreement. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and Licensee and their successors and assigns.

25. No Third-Party Beneficiaries. No third-party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

**THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY;  
SIGNATURES APPEAR ON THE FOLLOWING PAGE.**

**IN WITNESS WHEREOF** the Parties have executed this Agreement by their proper officers on the day and year first above written.

NAME OF LOCAL ENTITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of \ \_\_\_\_\_

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, that the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, who is personally known to me to be the same person who executed the foregoing instrument of writing and such person acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

I, Burt Morey, P.E., Deputy Secretary and State Transportation Engineer, pursuant to the authority delegated to me by the Secretary of the Kansas Department of Transportation under K.S.A. 75-5005, hereby certify that I have authority to act on behalf of the Secretary of Transportation when the Secretary is absent or unavailable, and further certify I have signed the above foregoing document in accordance with that authority.

KANSAS DEPARTMENT OF TRANSPORTATION  
SECRETARY OF TRANSPORTATION

By: \_\_\_\_\_  
Burt Morey, P.E.  
Deputy Secretary and State Transportation Engineer

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF SHAWNEE    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, that the undersigned, a Notary Public in and for the County and State aforesaid, came Burt Morey, P.E., Deputy Secretary and State Transportation Engineer for the State of Kansas, who is personally known to me to be the same person who executed the foregoing instrument of writing and such person acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_