# BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

## MONDAY, DECEMBER 9, 2002

9:00 A.M.

-Convene

## CONSENT AGENDA

(1) (a) Consider approval of Commission Orders

(b) Consider approval of Sanitary Sewer Easement – South Lawrence Trafficway (Michael Kelly)

## REGULAR AGENDA

(2) Work session with Douglas County legislative delegation to discuss upcoming legislative session

(3) Consider approval of resolution authorizing Douglas County to be listed as a named party in legal action by the Kansas Association of Counties with respect to demand transfer payment reductions recently made by Governor Graves

(4) Discussion of parking issues around the courthouse

(5) Other Business

(a) Consider approval of Accounts Payable (if necessary)

(b) Appointments

(c) Miscellaneous

(d) Public Comment

(6) Adjourn

## WEDNESDAY, DECEMBER 11, 2002

6:35 P.M.

-Receive report and recommendations from ECO2 Study group

-Planning item: TA-05-02A-02: Text Amendment to Section 21-104(a) of the Joint City/County Subdivision Regulations to require subdivision plats within the City of Lawrence to include all contiguous land under the same ownership. (Bryan Dyer)

-Black Jack Battlefield Issues surrounding Nomination to the National Register (Dennis Enslinger)

-Discussion of fireworks regulations in unincorporated area of the county (Weinaug)

## MONDAY, DECEMBER 16, 2002

-Consider approval of resolutions approving cereal malt beverage licenses (Patty Jaimes)

## MONDAY, DECEMBER 23, 2002

## WEDNESDAY, JANUARY 15, 2003 (meeting cancelled)

(1)(6)

# Douglas County

## Department of Public Works

Keith A. Browning, P.E.
Director of Public Works/County Engineer

**MEMORANDUM**

TO : Douglas County Commission

FROM : Keith A. Browning, P.E., Director of Public Works/County Engineer
Michael D. Kelly, L.S., County Surveyor

DATE : November 22, 2002

RE : U.S. Army Corps of Engineers; Sanitary Sewer Easement; South Lawrence Trafficway; Consent Agenda

In 1990 the U.S. Army Corps of Engineers (USACE) granted to Douglas County a license to construct a sanitary sewer main across a portion of the Clinton Lake property in the vicinity of the Youth Sports Inc. (YSI) sports fields. The project was required to allow proper construction of the South Lawrence Trafficway.

Upon completion of construction the license was to have been converted to an easement based upon the as-built location of the sewer main. Apparently the process to convert the license to easement was never completed. To that end we have been contacted by the USACE in an effort to finish the process.

The attached documents were prepared by the USACE for the purpose of granting to Douglas County an easement for pipeline right-of-way for a portion of the Yankee Tank Trunk Sewer #3. We are required to remit $1,500 for Easement consideration and $1,250 for an administration fee making a total amount due of $2,750. We have determined funds for this expenditure are available in Fund #408 – South Lawrence Trafficway.

**ACTION REQUIRED:** Consent agenda approval for the Chairman of the Board to affix his signature to the documents.

1242 Massachusetts Street, Lawrence, Kansas 66044-3350 / Fax No. (785) 841-0943
Telephone No. (785) 832-5293 / E-Mail dgcopubw@douglas-county.com

# DEPARTMENT OF THE ARMY
# EASEMENT FOR PIPELINE RIGHT-OF-WAY
# LOCATED ON
# CLINTON LAKE
# DOUGLAS COUNTY, KANSAS

**THE SECRETARY OF THE ARMY**, under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 2669, having found that the granting of this easement will be in the public interest and will not substantially injure the interests of the United States, hereby grants to **Board of County Commissioners, acting for Douglas County, Kansas,** duly organized and existing under and by virtue of the laws of the State of **Kansas,** with its principal office at **1242 Massachusetts Street, Lawrence, Kansas 66044-3350,** hereinafter referred to as the grantee, an easement for the **operation and maintenance of underground sewer line** hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in red on EXHIBIT(S) **"A" and "B"**, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

**THIS EASEMENT** is granted subject to the following conditions.

## 1. TERM

This easement is hereby granted for a term of **Fifty (50)** years, beginning **August 1, 2002,** and ending **July 31, 2052.**

## 2. CONSIDERATION

**a.** The grantee shall pay in advance to the United States the amount of **ONE THOUSAND FIVE HUNDRED and NO/100 Dollars ($1,500.00)**, in full for the term hereof, payable to the order of the Finance and Accounting Officer, Kansas City District and delivered to the District Engineer, US Army Engineer District, Kansas City District, 601 East 12th Street, Kansas City, Missouri 64106-2896.

## 3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to the **Board of County Commissioners, Douglas County Kansas, 1242 Massachusetts Street, Lawrence, Kansas 66044-3350** and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, Kansas City District, 601 East 12th Street, Kansas City, Missouri 64106-2896, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

## 4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include assignees, transferees and their duly authorized representatives. Any references to "Operations Manager" shall be interpreted to be the Corps of Engineers Operations Manager, **Clinton Lake, Kansas** and include his/her duly authorized representatives.

## 5. SUPERVISION BY THE DISTRICT ENGINEER

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the District Engineer, Kansas City District, hereinafter referred to as said officer. Upon the completion of any of the above activities, the grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

## 6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

## 7. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

## 8. INSPECTION AND REPAIRS

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

## 9. PROTECTION OF GOVERNMENT PROPERTY

The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

## 10. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the grantee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

## 11. TRANSFERS AND ASSIGNMENTS

Without prior written approval by said District Engineer, the grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the grantee.

## 12. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

## 13. SUBJECT TO EASEMENTS

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

## 14. REQUIRED SERVICES

The grantee shall furnish through said facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the grantee for similar service.

## 15. RELOCATION OF FACILITIES

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at the sole expense of the grantee.

## 16. TERMINATION

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

## 17. SOIL AND WATER CONSERVATION

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

## 18. ENVIRONMENTAL PROTECTION

**a.** Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. The grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

**b.** The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**c.** The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee's activities, the grantee shall be liable to restore the damaged resources.

## 19. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as EXHIBIT **"C"**. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION.**

## 20. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

## 21. NON-DISCRIMINATION

**a.** The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion.

**b.** The grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 195) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the grantee, its agents, successors, transferees, and assignees.

## 22. RESTORATION

On or before the expiration or termination of this easement, the grantee shall, without expense to the United States, and within such time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. In the event the grantee shall fail to remove said facilities and restore the premises, the United States shall have the option to take over said facilities without compensation, or to remove said facilities and perform the

restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

## 23. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. Section 403), Section 404 of the Clean Water Act (33 U.S.C. Section 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

## 24. SPECIAL CONDITIONS

**a.** This easement is granted for the exercise of water rights granted by the State of **Kansas** and does not create any right to use water from the **Clinton Lake** Project. Granting of this easement does not preclude the Secretary of the Army from requiring the grantee to enter into an appropriate water service contract in consideration of such irrigation benefits as may, in the opinion of the Secretary of the Army, be derived from the withdrawal of the irrigation water from the **Clinton Lake** Project.

**b.** All electrical equipment will be installed, operated and maintained in compliance with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located, including, but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB's).

**c.** Electrical service to submerged motors or those located above water shall be by means of a sealed, water-proof, multiple conductor cable with controls and switches located on the land. The location of such motors and the electrical feeders shall be clearly marked to be visible to boaters and swimmers. Additionally, signs warning "DANGER-HIGH VOLTAGE - Unauthorized Access Prohibited" shall be erected to be visible from the land and water approaches to the equipment.

**d.** In the event this easement is renewed by a similar instrument, then numbered Condition No. 22 hereof will not be applicable.

**THIS EASEMENT** is not subject to Title 10, United States Code, Section 2662, as amended.

**IN WITNESS WHEREOF,** I have hereunto set my hand by authority of the Secretary of the Army, this _____ day of _____, 2002.

_____
**GREG G. WILSON**
Chief, Real Estate Division

**THIS EASEMENT** is also executed by the grantee this _____ day of _____, 2002.

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

BY: _____

TITLE: _____

*NOTE: The grantee must furnish a Certificate of Authority, signed by the appropriate official, other than the person executing the outgrant, as follows:*

# CERTIFICATE OF AUTHORITY

I _____ (name) certify that I am the _____ (title) of **BOARD OF COUNTY COMMISSIONERS, DOUGLAS COUNTY, KANSAS**, that _____ (signator of outgrant) who signed the foregoing instrument on behalf of the grantee was then _____(title of signator of outgrant) **of BOARD OF COUNTY COMMISSIONERS, DOUGLAS COUNTY, KANSAS.** I further certify that the said officer was acting within the scope of powers delegated to this governing body of the grantee in executing said instrument.

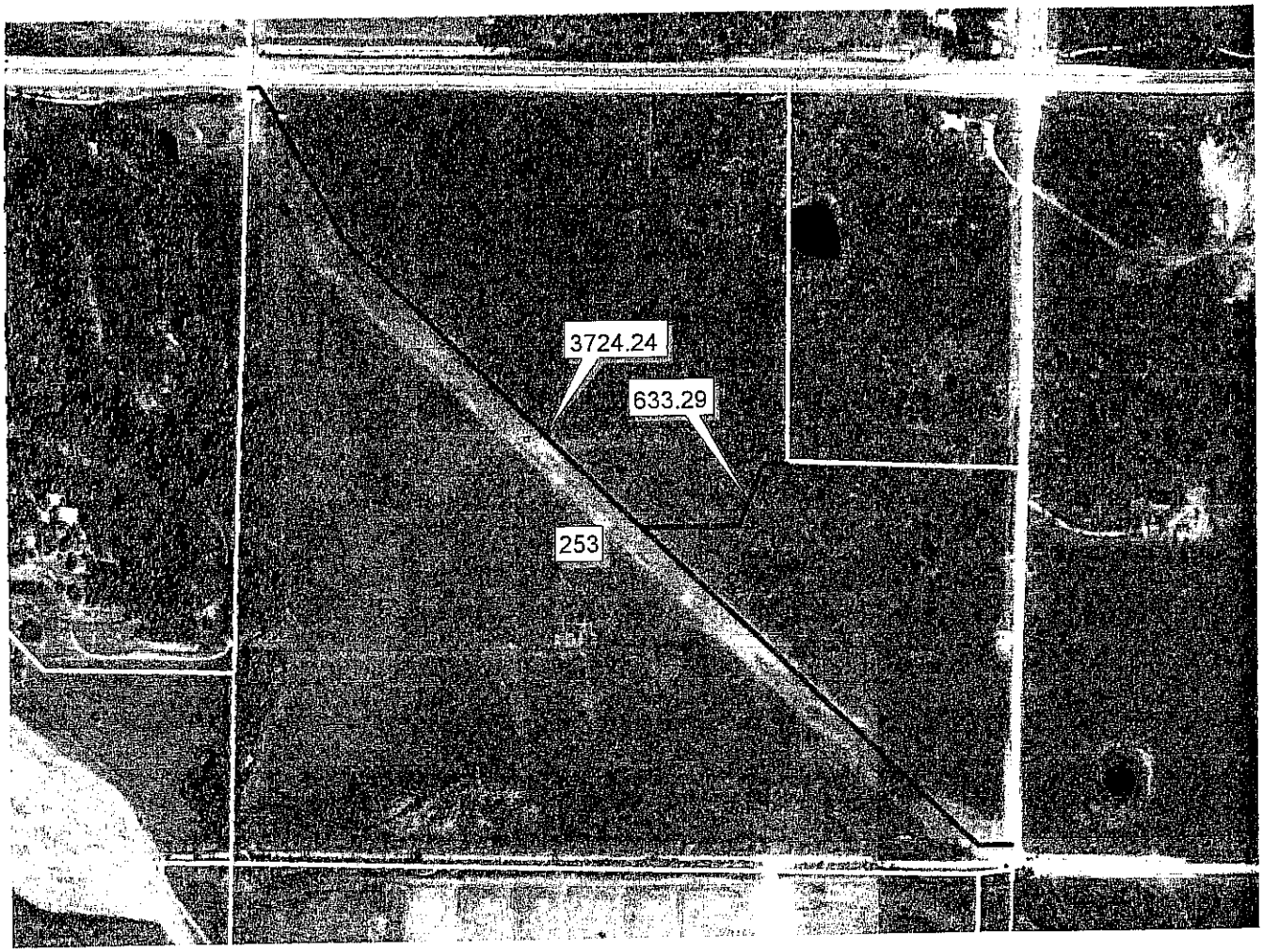
**BOARD OF COUNTY COMMISSIONERS**
**DOUGLAS COUNTY, KANSAS**

Date:_____

_____
Clerk or Appropriate Official

(AFFIX SEAL)

# CLINTON LAKE

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CLINTON LAKE, KANSAS
EASEMENT No. DACW41-2-02-0158
BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY
Operation and maintenance of an underground sewer line
TRACT No. 253
S9, T-13-S, R-19-E; 5.6 acres
Douglas County, Kansas

LEGEND

Easement
RealEstate Tracts
Townships & Sections

EXHIBIT "A"
Page 1 of 1

# Easement No. DACW41-2-02-0158
# Legal Description
# Tract No(s). 253

A strip of land fifty (50) feet in width, lying twenty five (25) feet on each side of a line located in the Northwest Quarter of Section 9, Township 13 South, Range 19 East of the Sixth Principal Meridian, County of Douglas, State of Kansas, more particularly described as follows:

Commencing at the Southeast corner of the Northwest Quarter of said Section 9; thence North along the East line of said Quarter 24.66 feet; thence on a deflection angle to the left of 89° 25' 34", 33 feet to the West Right-of-Way line of County Road 1050E said point being the true Point of Being; thence continuing on the same course, 62.11 feet; thence on a deflection angle to the right of 38° 36' 52", 600.00 feet; thence on a deflection angle to the right of 02° 01' 10", 2400 feet; thence on a deflection angle to the right of 21° 05' 14", 552.5 feet, more or less, to the South Right-of-Way line of Clinton Parkway, comprising approximately 4.15 acres, more or less.

EXHIBIT "B"

U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT
PRELIMINARY ASSESSMENT SCREENING (PAS)
CLINTON LAKE PROJECT

1. Real Property Transaction: Proposed grant of ( )lease, ( )license, ( X )easement ( ), permit( ), deed( ), or sale of building to Douglas County, Kansas - Department of Public Works for the purposes for a term of 50 years.

2. A description of the real property will be included in the outgrant.

3. CENWK-OF-CL Clinton Lake project records were searched on 05-April 2002 by David Rhoades for any history of hazardous substance activity on the site.

(X) The search did not reveal any evidence of hazardous substance release, storage, or disposal exceeding CERCLA* thresholds.
( ) The search or other reason prompted an on-site survey, attached.

Signed By: [signature]
Title: National Resource Mgmt Specialist Date: 4 April 2002

4. Operations Division records were searched on 4/24/02 by Michael Watkins for any history of hazardous substance activity on the site.
(X) The search did not reveal any evidence of hazardous substance release, storage, or disposal exceeding CERCLA thresholds.
( ) The search or other reason prompts an on-site survey, attached.

Signed By: [signature]
Title: Wildlife Biologist Date: 4/24/02

5. Records of Real Estate Division were searched on 7/25/02 by [print] Lora Vacca for any history of hazardous substance activity on the site.

(X) The search did not reveal any evidence of hazardous substance release, storage, or disposal exceeding CERCLA thresholds.
( ) The search or other reason prompts on-site survey, attached.

Signed By: Lora F. Vacca
Title: Realty Specialist Date: 7/25/02

6. Conclusion:

( ) PAS indicates no necessity to provide notice under CERCLA nor any environmental conditions to affect the proposed real property transaction.
( ) PAS indicates a positive finding which requires further investigation and reporting.

* Comprehensive Environmental Response, Compensation, and Liability Act

CLINTON LAKE, KANSAS;
EASEMENT NO. DACW41-2-02-0158
DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
Operation and maintenance of underground sewer line
TRACT NO. 253; S9, T-13-S; R-19-E, 5.6 acres
Douglas County, Kansas

January 23, 2002 Revision

(2)

# DRAFT
# 2003 Legislative Policy Statement
# Kansas Association of Counties

## Federal Legislative Priority:

*The Kansas Association of Counties supports federal legislation authorizing states to participate in an interstate sales tax compact and requiring remote sellers to collect existing state and local sales and use taxes.*

The Kansas Association of Counties believes that the taxation of sales should be equal whether a sale takes place over the counter, by telephone, mail order, or by the internet. States, counties and cities across America are losing $13 billion this year in annual sales tax revenues because remote sellers are not collecting sales and use taxes on internet and mail order sales. It is estimated that the amount of lost revenues will increase to $45 billion by 2005. The United States Supreme Court has ruled that congressional authorization is required before states can require remote sellers to collect sales and use taxes. The Internet Tax Freedom Act, passed by Congress in 1998, imposed a three-year moratorium on new internet access taxes. In 2001, Congress extended the moratorium for two more years (through December, 2003). The moratorium affects internet access taxes and any other taxes that discriminate against internet services, and therefore has no effect on the State of Kansas and its counties and cities. The moratorium does not affect remote sales conducted over the internet.

Legislation was introduced in the House and Senate of the 107th Congress authorizing an interstate compact on sales and use taxes. If twenty or more states jointly simplify definitions and administration of their sales and use taxes, these states could join the interstate compact and require remote sellers to collect sales and use taxes. States should not be required to have a single state-wide sales/use tax rate.

## Federal Legislative Policy Statements:

### Fair Labor Standards Act (FLSA) Exemption for Public Emergency Medical Service Personnel

In 1985, the U.S. Supreme Court ruled in the Garcia case that state and local governments are subject to the FLSA. Public sector employers were allowed to establish a 28-day work period for police officers and firefighters and provide overtime compensation when the number of hours worked during a 28-day work period exceeds 171 hours for police and 212 hours for firefighters.

Emergency Medical Service (EMS) personnel not working for fire departments are not adequately addressed in current law. As numerous EMS personnel do not work for a fire department and instead work for a separate EMS agency, the partial exemption should be expanded to include EMS personnel. The Kansas Association of Counties supports legislation to extend the partial exemption from FLSA overtime requirements to EMS agencies.

**Partnership Between the National Weather Service and Local Public Safety Agencies**

The Kansas Association of Counties urges the Congress to protect the existing, critical relationships between local public safety agencies and the National Weather Service (NWS) by resisting any attempts to limit the free flow of NWS products and services to local government which are necessary to protect life and property.

**Standardized Outcomes Assessment Information Set (OASIS)**

The Kansas Association of Counties has long been on record as opposing unfunded mandates, both at the federal and state level. The federal Health Care Financing Administration (HCFA) requirement for an Outcomes-based Assessment Information Set (OASIS) for all patients in Medicare-certified home health agencies and health departments (whether or not care is paid for by Medicare) is an unfunded mandate which causes unnecessary expense and undue hardship on local health departments and, ultimately, many older Kansans. The end result of this mandate may be the cessation of services to older Kansans by local health departments. The Kansas Association of Counties supports repeal of this mandate, or additional federal funding to pay for the additional, mandated cost.

**Changes in Medicare for Ambulance Service Payments**

The federal government has paid for medically necessary ambulance services for Medicare patients based on costs as identified in various regions of the country and which evolved over time as increases were demonstrated to be warranted. The Balanced Budget Act of 1997 required that ambulance services be placed on a national fee schedule in order to hold down the cost for Medicare payments. The Kansas Association of Counties supports a general increase in Medicare funding in order to support the actual costs of ambulance service rather than shifting the costs for this vital health service to the local level.

## Juvenile Accountability Incentive Block Grant and Title II Funding

The Kansas Association of Counties strongly opposes the President's recommendation to decrease federal funding for the Juvenile Accountability Incentive Block Grant and Title II by $239.5 million. These funds totaled over $3.5 million for Kansas in FY 2002. The loss of this funding source means the elimination of numerous community programs and services for Kansas juveniles.

## State Legislative Priorities:

### Increased State Participation in Local/State Partnership for Safe and Healthy Communities

Healthy and safe communities are a priority of the Kansas Association of Counties and its 105 member counties. Increasingly, counties are asked by the state to assume responsibility for providing basic services necessary to ensuring the well being of citizens with lessened commitment by the state. There are several areas of particular concern to the KAC and counties.

First, there is a lack of state funding for incarcerated juveniles who are in state custody. The reimbursement rate paid by the state is less than the actual expenses incurred by the detention center. The Juvenile Detention Facility Fund (JDFF) established in part to provide grant funds to help juvenile detention centers with remodeling, construction and operating costs has instead been used by the state to pay for the per diem rate and to make bond payments for the construction of regional juvenile detention centers. Second, there is a lack of inflationary increases in state aid to community mental health centers, local health departments and developmental disability service providers. As the state has shifted responsibility and funding for mental health and public health to counties, inflationary costs of providing services to the most vulnerable populations have not been addressed by the Legislature. Third, additional sources of state financial support to counties are needed for the support of broader environmental health objectives focusing on reducing morbidity and mortality due to injuries and environmentally related diseases. Fourth, the Kansas Association of Counties supports continued funding of the Children's Initiatives Fund for the promotion of child development and prevention efforts. Fifth, the housing of state prisoners in county jails continues to escalate while not being matched by the reimbursement rate provided by the state. In addition, the reimbursement is often not made in a timely manner. This is another area of concern in which the legislature continues to shift the costs of housing state prisoners to the county.

The State of Kansas, as a partner with counties in creating and ensuring healthy and safe communities, should assume its share of the financial responsibility for our shared goal. With increased responsibility, counties should enjoy increased financial participation from the State.

**Kansas Open Records Act**

The Kansas Open Records Act was modified by the 2000 Kansas Legislature to require appointment of a Freedom of Information Officer in each public agency. In addition, language was added that sunsets all exemptions to the Kansas Open Records Act in 2005.

All 105 counties have designated Freedom of Information Officers. The KAC continues to educate county officials on issues surrounding effective compliance with both the letter and spirit of the Kansas Open Records Act. The Kansas Association of Counties believes that openness in county government is essential to building public confidence. However, the public interest is sometimes served by withholding information from public disclosure. As such, the Kansas Association of Counties supports the retention of the exemptions to the Kansas Open Records Act currently found in the law.

**State Legislative Policy Statements:**

***Governmental Organization***

**Home Rule.** The Kansas Association of Counties supports constitutional home rule for counties. Currently, counties are afforded home rule authority by statute. The KAC supports counties using their current home rule powers when applicable rather than seeking specific legislative remedies. The Kansas Association of Counties will seek introduction of legislation granting constitutional home rule when appropriate. The Kansas Association of Counties supports constitutional home rule for counties and opposes any erosion of existing home rule authority.

**Electronic Governance and Service Delivery.** The Kansas Association of Counties recognizes that sweeping technological changes in society afford counties both new opportunities and challenges for governance and service delivery. The KAC supports a balanced perspective on the issues of privacy, cost recovery, as well as access to and release of electronic data compiled by counties given our concern that programs will be used by for-profit ventures without proper remuneration to counties.

**County Surveyors.** The Kansas Association of Counties supports the repeal of language in K.S.A. 58-2005 requiring additional certification by a county surveyor

of a plat of subdivision or survey before recording in the Register of Deeds Office. If the statute is repealed, counties desiring to continue this service can do so by home rule.

**Home Rule Regulation of the Liquor Industry.** Currently, regulation and enforcement of the liquor industry is afforded to local government. While the Kansas Association of Counties supports recodification of the liquor statutes. The KAC would oppose any attempt to erode the existing home rule authority of local government in this area.

**Consolidation.** The Kansas Association of Counties opposes mandatory consolidation of local government units and/or services. Counties presently share provision of numerous services with cities and other counties, but they should not be forced to do so. The KAC supports legislative changes that remove statutory limitations to consolidation of functions or services.

**Commissioner Districts.** The Kansas Association of Counties supports legislation that would provide that, following establishment of county commission districts by the Board of County Commissioners, no county election officer may alter precinct boundaries that would change commission districts unless there is unanimous approval of the Board of County Commissioners.

**Disposal of County Property.** The Kansas Association of Counties supports legislation which allows more flexibility in the disposal of county property.

**Fence Viewing Statutes.** The Kansas Association of Counties supports legislation providing counties the option of appointing other county officials(s) as fence viewers in lieu of the board of county commissioners.

**One Judge/One County.** The Kansas Association of Counties continues to support one judge per county.

**Open Meetings.** The Kansas Association of Counties believes that openness in county government is essential to building public confidence. Nevertheless, the KAC believes that there are times when privacy or other legitimate reasons require executive sessions. The KAC opposes legislation requiring executive sessions to be tape recorded because it would impose unreasonable demands on elected and appointed officials and raise questions as to the custody of tapes and their use in courts of law. The KAC supports broadening the Kansas Open Meetings Act to authorize executive sessions for governing bodies to discuss public safety issues after a state of local emergency has been declared.

**Records Storage.** The Kansas Association of Counties supports legislation to allow local governments the authority to determine the best method of record storage.

## *Public Health and Safety*

**Restoring Juvenile Local Purchase of Service Funds.** The Kansas Association of Counties supports restoring the funding to local communities for local purchase of service dollars that provide transportation and day reporting for youth in state custody and restoring funding of graduated sanction programs and services to appropriately assess, supervise and rehabilitate juvenile offenders.

To address this need, we recommend restoring $1million in aid to local communities for Juvenile Intake and Assessment intervention funds that were cut in SFY 2002 and restoring the $1.9 million local purchase of services funds reduced in SFY 2003.

**Community Corrections.** The Kansas Association of Counties urges full state funding to local communities for mandated Community Corrections Act programs. For state aid to be adequate and consistent to cover the actual costs for services, a formula is recommended which would multiply the projected average daily population by a unit cost that is adjusted annually for inflation. The amount needed to provide adequate supervision of offenders in the Intensive Supervision program in SFY 2004 is $13,293,840 (4200 x $3088= $12, 969,600 + 2.5% adjustment for inflation $324,240 = $13,293, 840.) The SFY 2003 allocation is $11,741,200. Local communities are threatened when offenders living in our communities cannot receive minimal services and supervision is inadequate to satisfy the public safety issues.

**Condition Violator Grant**: The Kansas Association of Counties recommends restoring the funding of the condition violator grant to local community corrections for condition violator programs. The condition violator grant was reduced from $750,000 in SFY 02 to $375,000 in SFY 03. These funds must be used to keep offenders from returning to prison, a much more costly option to the state.

**Residential Centers.** The Kansas Association of Counties urges the State of Kansas provide an annual cost of living adjustment to residential funding to keep pace with inflation, growth in salaries and the cost of doing business. Residential programs have provided cost-effective community punishments for increasing number of offenders with no funding increases for the last nine years.

**Consolidation of Field Services.** Consolidation activity involving court service officers and community corrections has been discussed for over a decade. In some instances, this consolidation has happened at the local level with no statewide mandate. The KAC supports allowing this decision to be made locally.

**Collection of Fees and Expenses by Garnishment.** Currently, state law allows the award of fees and expenses in child-in-need of care matters. However, the law does not allow the garnishment of wages and attachment, if necessary, to collect the fees and expenses. The Kansas Association of Counties supports

legislation which would allow garnishment of wages and attachment in these instances.

**Medicaid Reimbursement for Ambulance Services, Senior Care Facilities and other Services .** The Kansas Association of Counties encourages the state legislature to properly evaluate the costs associated with the provision of Medicaid reimbursible services in Kansas in order to assure that the state Medicaid program makes payments for these services that are more reflective of actual costs and that increases in the Medicaid rates occur on a regular basis to reflect the impact of inflation.

**State Government's Support of a National Homeland Security Program.** As the 105 Kansas counties have the responsibility for local emergency management and the charge of coordinating all local initiatives under a single homeland security/emergency management program, it is imperative to counties that the management of Homeland Security, anti-terrorism and emergency management at the state level be coordinated and adequately supported by the administration and the legislature.

The Kansas Association of Counties urge the Governor to designate the Kansas Commission of Emergency Planning and Response (CEPR) as the central coordinating entity for all homeland security/terrorism related planning requirements placed upon local entities by state entities.

The KAC urges the Governor and the Legislature to appropriate sufficient funds to implement the authorities/responsibilities granted to the Kansas Division of Emergency Management during the 2003 Legislature.

The KAC also urges all elements of state government to support efforts to complete a national emergency management assessment program.

## *Environment and Land Use*

**Clean Water Standards.** The KAC supports reasonable regulations that are scientifically based to protect the quality and quantity of water. Such regulations should take into account cost-benefit analyses and should not be unduly restrictive. In addition, the Kansas Association of Counties supports legislation and regulations to protect sensitive or important groundwater areas from possible contamination by human, animal or other sources. Further, the KAC supports further study by Kansas State University to examine the possible reduction of odor from confined animal production units.

**Local Environmental Protection Program (LEPP).** The KAC supports continued funding of the Local Environmental Protection Program from the Kansas Water Office in order to continue support established for public health and county water quality programs.

**County Code Court.** Currently, only counties with populations of 150,000 or more are authorized to establish county code enforcement courts to enforce zoning and nuisance regulations, building and sanitation codes, as well as other regulations and county resolutions. The Kansas Association of Counties supports the legislation giving flexibility to all counties to enforce county codes, regulations and resolutions through county code courts.

**Noxious Weed Law.** The Kansas Association of Counties believes that the eradication of noxious weeds is important to maintain the viability of Kansas' agricultural economy, protect property values, preserve our natural resources and protect the public health and safety. The Kansas Association of Counties supports locally-determined cost-share incentives and control practices (chemical, cultural and/or biological) and a state noxious weed list determined by legislative enactment. The KAC supports strengthened enforcement strategies and greater collaborative efforts involving counties, the State Department of Agriculture, KSU Research and Extension and others to find better control methods for the control with the purpose of eradication of noxious weeds. In addition, the KAC requests that the State of Kansas adhere to the state noxious weed law and adequately fund the control and eradication of noxious weeds on state properties controlled or leased by agencies of the state.

**Rails to Trails.** The Kansas Association of Counties supports legislation that gives specific remedies to counties if Rails to Trails groups fail to comply with the law. This legislation would include statutory language that specifically makes Rails to Trails land taxable; broadens the ability of the Attorney General to seek compliance on behalf of counties; and gives specific procedures for tax foreclosure upon failure to pay taxes.

**Burning of Clean Wood.** The Kansas Association of Counties supports changes in legislation or KDHE regulations that would allow counties to burn clean wood in city or county burn piles where trees, stumps and brush are burned.

**Waste Tire Program:** The Kansas Association of Counties supports the extension of the Waste Tire Fund and retaining responsibility for that program at the state level.

### *Taxation, Finance and Infrastructure*

**Funding State Mandates.** The Kansas Association of Counties opposes any new unfunded mandates by the state. In addition, unfunded mandates now in existence, should be funded by the state in recognition of the state/local partnership.

**Full Funding of State Revenue Sharing (Demand Transfer Programs).** The sharing of state sales and compensating use tax revenues through the Local Ad Valorem Tax Reduction Fund (LAVTRF) and City and County Revenue Sharing Fund (CCRS) and the full allocation of motor carrier property taxes to the Special City and County Highway Fund (SCCHF) all recognize an historic partnership in service provision between the State and counties. In the past several years, the State has either capped or actually reduced the amount of these demand transfers so that counties and other units of local government have not realized their proportionate share of revenues. The artificial "capping" and actual reductions in demand transfers have shifted a burden of financing county services to other sources, including local property taxes. The KAC strongly urges full statutory funding of all three demand transfer programs at the earliest possible time.

**Ad Valorem Property Tax.** The property tax is the single largest source of revenue financing county government services in Kansas. Although it is not the most popular tax, significant strides have been achieved to improve administration of the property tax in recent years. Counties pledge our commitment to continue improvement of the property tax system. The KAC is adamantly opposed to any additional statewide property tax levies. The State should not be competing with local governments for property tax revenues, nor should the state dictate local priorities by doing so.

**Assessed Valuation Limitation.** The Kansas Association of Counties opposes any legislative proposal calling for a constitutional amendment or statutory change to limit the change in assessed valuation for a parcel from one appraisal year to the next. Such proposal would create unnecessary inequities among parcels and would unnecessarily shift the property tax burden to older, mature properties. In the past decade, the state and counties have expended a tremendous amount of political and fiscal capital to make the property tax system more modern and reflective of economic realities. To impose an artificial cap on the valuation of any parcel would negate much of this progress.

**Publication of Delinquent Taxes.** The Kansas Association of Counties urges the Legislature to amend K.S.A. 79-2001 and 79-2303 to require publication of delinquent property taxes one time, rather than three times as currently required.

**Streamlining of Statutes Relating to Property Valuation and Budget Process.** The Kansas Association of Counties supports the repeal of archaic and obsolete statutes related to certain cyclical financial activities of counties, including the transmittal of valuation information and revenue estimates.

**Tax Base Exemptions.** The Kansas Association of Counties opposes any new exemptions to the ad valorem property tax base or the state/local sales tax base. The KAC opposes construction equipment used by construction businesses being tax emempt under the farm machinery exemption. New exemptions would only shift the burden of financing vital services to an increasingly narrow tax base.

**Tax Equity for Independent Elderly Housing.** The Kansas Association of Counties opposes the current statutory exemption from property taxation of independent, elderly housing units owned by non-profit retirement communities.

**Streamlined Sales Tax and Enactment of Local Use Tax.** The Kansas Association of Counties supports legislative efforts to modernize and streamline the sales tax system, in order that the State of Kansas can eventually qualify to join an interstate sales tax compact which would compel remote sellers to collect the State of Kansas' sales and use taxes. However, to protect the viability of countywide sales taxes from continued erosion and to ensure greater tax equity for Main Street merchants, the Kansas Association of Counties urges the Kansas Legislature to enact a local use tax, so that locally-enacted sales taxes (county and city sales taxes) do not continue to erode as internet and mail order commerce flourishes.

**Depository and Investment of Public Funds.** The Kansas Association of Counties supports legislation allowing counties to designate any federal or state chartered financial institution to be used as a depository for county funds.

**Mortgage Registration Tax.** The mortgage registration tax is a valuable and fair intangible tax and an important source of revenue to counties' general funds. The Kansas Association of Counties supports the continuation of this tax. Additionally, the KAC supports a statutory change requiring that fees be paid at the time all documents, including federal tax liens or releases, are presented for recording.

**Intangibles Tax.** The Kansas Association of Counties supports legislation providing for the electronic filing of intangibles tax forms with other income tax forms.

**Tax Equity for Financing of 9-1-1 Services.** As a matter of basic tax equity, the Kansas Association of Counties continues to strongly support as a priority the extension of taxes funding 9-1-1 emergency services to include mobile, cellular and wireless phone users. The KAC also supports local administration of 9-1-1 services, including the continued ability for local governments to make funding decisions for 9-1-1 services. The KAC adamantly opposes a centralized statewide 9-1-1 system including centralized administration. Public funds should not be used to subsidize private enterprise or investments, the costs of which can be directly recovered from customers. The Kansas Association of Counties also

supports the establishment of a statewide Public Safety Revolving Loan Fund to be used by local Public Safety Answering Points (PSAPs), based upon need, for building the infrastructure required to respond to the wireless E 9-1-1 system. This would be funded by a 25 cent surcharge placed on wireless phones. The fund would be administered by the KCC with the assistance of an appointed advisory board.

**Spending Lid.** Budget and spending decisions of county governments should be made by the elected board of county commissioners, which is directly accountable and accessible to constituents. Accordingly, the Kansas Association of Counties strenuously opposes any constitutional amendment or statutory change to impose spending limitations on county governments. Such limitations could directly conflict with counties' home rule powers and the rights of locally elected officials to determine their own destiny and would constitute an unnecessary infringement on local control.

**Local Government Outdoor Recreation Grant Program.** The Kansas Association of Counties supports the current outdoor recreation grant program and urges the Legislature to appropriate additional state funds for land acquisition and/or facility development.

**Continued Funding for the State 1999 Comprehensive Transportation Program (CTP).** The 1999 CTP was established on the basis of significant support from local governments across Kansas. The Kansas Association of Counties supports continued funding for the 1999 program. However, this support is conditional upon the additional transportation funding not coming at the expense of reductions or capping in state revenue sharing programs for governments.

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

**Contract for Road & Bridge Work.** The Kansas Association of Counties supports the existing statutes (K.S.A. 68-520, 68-1104, and 68-1116) as they apply to the board of county commissioners' authority in constructing, servicing, repairing or maintaining county roads.

**Threshold for Surety Bond Posting on County Construction Projects.** Current state law requires counties to award contracts in excess of $10,000 for the construction of county facilities through a public bidding process, and for the person or firm to whom the award is made to provide a surety bond in the amount of the contract. The surety bond requirement of the current law discourages small contractors from bidding on relatively small construction jobs

of counties. The Kansas Association of Counties supports a change in the minimum threshold for the posting of a surety bond for such projects from $10,000 to $40,000, with no change in the threshold requiring the actual bidding of such projects. Raising the threshold for the posting of a surety bond would stimulate greater competition among contractors and thereby save counties money.

**Threshold for Public Bidding of County Construction Projects**. Current state law requires counties to publicly bid projects in excess of $10,000 involving construction of any courthouse, jail or other county buildings. The Association supports an increase in the bidding threshold from $10,000 to $40,000.

**Contractor Retainage on County Road Projects**. The Kansas Association of Counties supports a statutory change which would repeal the fixed 10% retainage on county road projects in K.S.A. 68-521 and allow counties to determine the appropriate level of retainage.

**Township Road Traffic Control Signs**. The Kansas Association of Counties supports a change to K.S.A. 68-526 to authorize townships to install and maintain traffic control signs on township roads.

**Haul Roads**. The Kansas Association of Counties urges the Kansas Department of Transportation (KDOT) to expand agreements to include compensation to any county that sustains any road damage due to the operations of a road construction contractor under contract with KDOT.

**Recodification of Chapter 68 of Kansas Statute Annotated**. The Kansas Association of Counties supports the recodification of the road statutes in Chapter 68 of the Kansas statutes in order to remove archaic language and to streamline the statutes for modern usage.

**Moratorium on Rural Rail Abandonment.** Rural Kansas counties are adversely impacted when rail lines are abandoned, thereby forcing commodities and freight to be shipped by truck over county roads and bridges under-built for such heavy loads. For Kansas agriculture to remain competitive in the global marketplace, transportation of agricultural products from farm to market must be accomplished as efficiently as possible. The Kansas Association of Counties urges the federal Surface Transportation Board to declare a moratorium on all rural rail abandonment in Kansas until the State of Kansas and local communities have an opportunity to develop a rural transportation policy and determine the feasibility of finding a responsible party to purchase abandoned and existing rail operations.

**Repeal of KDOT Mandate Requiring Metric Units.** The KAC supports repeal of the KDOT policy requiring federal-aid road and bridge projects be surveyed, designed and constructed in metric units.

Revised Draft: 09/11/2002

**Kansas Association of Counties**
**6206 SW 9th Terrace**
**Topeka, Kansas 66615**

## URGENT RESPONSE NEEDED

As you are doubtlessly aware, last week the Governor cut $48 million dollars in demand transfer payments to cities and counties. This is money that would be transferred in December and again in the spring thus impacting both this year's budget and next.

The Board of the Kansas Association of Counties will be meeting, Thursday, December 12, 2002. As part of their regular meeting the Board will be considering whether to move forward with legal action to restore the 50% cut in demand transfers that he ordered last week.

In the event that the Board decides to go forward with this legal action, we would like as many counties as possible to be named as supporting this action. Several counties have already expressed such an interest. If you would like for your county to be named as a party to the suit, please notify the KAC office by noon at the latest....December 12, 2002. Your commission would need to pass a resolution in an open meeting in support of such legal action and send to the Kansas Association of Counties via fax or mail. Our address is 6206 SW 9th Terrace, Topeka 66615. Our fax is 785-272-3585. Again, the date that we must have your resolution is noon, December 12, 2002. In order to move forward we must adhere to this deadline. If we do not hear from you, your county's name will not be listed as supporting this action.

If you have questions, please contact Randy Allen or Judy Moler.

RESOLUTION NO. _____

*A resolution authorizing _____ County to be listed as a named party in legal action by the Kansas Association of Counties with respect to demand transfer payment reductions recently made by Governor Graves.*

**Whereas,** demand transfer payments from the State of Kansas to counties and cities are an important source of revenue for financing basic community services; and

**Whereas,** Governor Graves has reduced payments to local governments which affect both 2002 and 2003 resources to provide such basic services; and

**Whereas,** on December 12, 2002, the Kansas Association of Counties Governing Board will consider filing legal action on behalf of counties asking the court to set aside the Governor's action.

**Now, therefore, be it Resolved** by the Board of _____ County Commissioners that _____ County joins the Association in challenging the Governor's authority to cut demand transfers and agrees to have the name of _____ County specifically listed as part of the litigation.

**Adopted** this _____ day of December, 2002.

BOARD OF _____ COUNTY COMMISSIONERS

_____.

_____.

_____.

ATTEST:

_____.

, County Clerk

(4)

**WALKER**
PARKING CONSULTANTS

Walker Parking Consultants
5350 S. Roslyn Street, Suite 220
Greenwood Village, CO 80111

Voice: 303.694.6622
Fax: 303.694.6667
www.walkerparking.com

November 25, 2002

DEC 2002
Received
Douglas County
Commission

Mr. Charles Jones
Douglas County Commissioner
111 E. 11th. St.
Lawrence, Kansas 66044

Re: Proposal for Professional Services
Parking Study
Douglas County, Kansas

Dear Commissioner Jones:

Thank you for giving us the opportunity to submit this proposal to provide a supply/demand parking study and parking recommendations for Douglas County. The following sets forth our understanding of the project, our proposed scope of work and fee, our schedule, and conditions of agreement.

**BACKGROUND**

Douglas County has recently completed a $4 million expansion and renovation of the Judicial and Law Enforcement Center. At this time there appears to be a shortage of available parking for employees and visitors to the Center. As a result, a parking committee has been formed to address parking issues at that location.

The Center is located at the southern end of Downtown Lawrence. In 1997, Walker Parking Consultants conducted a downtown parking study for the City of Lawrence. The Center is located on a block included in that study. As a result we have some previous land use data for that area.

You indicated that you would like a proposal to address current parking resources. This will include a site-specific supply/demand study. We will then study allocation of the required parking and the alternates to develop the required parking supply. Finally we will make recommendations for equipment needed to control the parking supply and provide a cost estimate to implement our findings.

We propose the following Scope of Services to meet the above stated objectives.

## PROPOSED SCOPE OF SERVICES

1. Meet with Parking Committee to review committee's goals.

2. Determine employee-parking demand. Develop a survey form for a department-by-department inventory of employee parking demand based on hour of the day and day of the week. Ascertain seasonal variations in employee-parking demand. Determine specific needs for secure/segregated parking. These items will require significant input from all on-site County Department Managers.

3. Develop visitor-parking demand based on input from all on-site County Department Managers. Visitor-parking demand shall be reviewed for variations in time of day, day of the week, and seasonal adjustments.

4. Review existing parking supply. Determine feasibility of increasing existing parking supply through restriping or reconfigurations.

5. Develop alternatives for increasing parking supply to satisfy existing parking deficits.

6. Provide recommendations for allocation of parking for controlled and non-controlled parking areas.

7. Provide recommendations for equipment needed to manage parking areas.

8. Meet with Parking Committee to review findings and recommendations.

9. Provide letter report summarizing findings and recommendations.

## SCHEDULE

We are prepared to begin work on this study within two weeks of receiving written authorization to proceed; however, we recommend that, with the approaching holidays, the project be started after the start of next year, when more usual activity levels exist. We estimate that 3 weeks will be required to perform the supply/demand analysis and an additional 2 weeks to develop the alternatives and recommendations.

## PROFESSIONAL FEES

Walker will perform the services described above on a lump sum fee, including reimbursable expense, basis. The lump sum fee for these services shall be $5,000. This fee includes two trips to Lawrence. Any additional services, which you request and authorize in advance, will be performed at our standard hourly rates then in effect.

Invoices will be submitted on a monthly basis for services performed and expenses incurred the previous month, and will be due upon receipt.

All services will be performed in accordance with the terms and conditions of the attached Walker Document, "General Conditions of Agreement for Consulting Services".

We look forward to working with the Parking Commission and you to address your parking situation.

Sincerely,

WALKER PARKING CONSULTANTS

Thomas S. Romine, P.E.
Senior Project Manager

Attachment: General Conditions of Agreement for Consulting Services

ACCEPTANCE

Trusting that the foregoing meets with your approval, please sign and return one copy signifying your acceptance and authorizing us to proceed

ACCEPTED BY:

_____
Name

_____
Title

_____
Date