

- 
- A. **CALL TO ORDER/ROLL CALL**  
\_\_Nisly \_\_Schmidt \_\_Weber \_\_Garretson \_\_Fairbanks \_\_Scofield
  
  - B. **PLEDGE OF ALLEGIANCE**
  - C. **APPROVAL OF AGENDA (ADDITIONS/DELETIONS)**
  - D. **CITIZEN COMMENTS**
  - E. **HEARINGS, PRESENTATIONS, PROCLAMATIONS & RECOGNITIONS**
  - F. **CONSENT AGENDA**
    - 1. Approval of Minutes – Regular Meeting, April 18, 2022
    - 2. Approval of InvoicesMotion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_
  
  - G. **ACTION ITEMS**
    - 1. Cell Tower Special Use Permit Application  
Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_
  
    - 2. Market South Hutch Appointment  
Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_
  
    - 3. GIS/Asset Management Software Vendor Agreement  
Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_
  
  - H. **DISCUSSION ITEMS**
    - 1. Independence Day Fireworks Show
    - 2. Land Development Code – Review & Update
    - 3. Miscellaneous Issues
  
  - I. **CITY ADMINISTRATOR’S REPORT**
  - J. **GOVERNING BODY COMMENTS**
  - K. **EXECUTIVE SESSION**
    - 1. Attorney-Client Privilege (5 minutes)
    - 2. Non-elected personnel (20 minutes)
  
  - L. **ADJOURNMENT**

**Meeting Date:** May 2, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** Consent Agenda

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**Background/Analysis** – Consent agendas are designed to take routine business items, non-controversial items, and other matters where a consensus has been reached and combine them into one single motion and vote. Items on the consent agenda should not be discussed or debated by the governing body. Any member of the governing body may elect to pull an item from the consent agenda for a separate vote.

Notable Items:

- Approval of Minutes from April 18, 2022 regular meeting
- Approval of Invoices

**Recommendation** – Motion to approve the consent agenda as presented.

**Exhibit A** – Minutes from April 18, 2022 Regular Meeting

**Exhibit B** – AP Invoices

**A. CALL TO ORDER/ROLL CALL**

X Nisly X Schmidt X Weber X Garretson X Fairbanks X Scofield

**B. PLEDGE OF ALLEGIANCE**

**C. APPROVAL OF AGENDA (ADDITIONS/DELETIONS)**

**D. CITIZEN COMMENTS**

**E. HEARINGS, PRESENTATIONS, PROCLAMATIONS & RECOGNITIONS**

**F. CONSENT AGENDA**

1. Approval of Minutes – Regular Meeting, April 4, 2022
2. Approval of Invoices  
Approval of Cereal Malt Beverage License (Stuckey’s Travel Center Hutchinson – 1515 South Main St.)

*Motion:* Schmidt

*Second:* Weber

*Vote:* 5-0

**G. ACTION ITEMS**

1. Perfection of Water Rights File No. 40536 (Well #3)

*ACTION:* Motion to authorize the Mayor to request a certificate of appropriation be issued early for Water Rights File No. 40536 from the Kansas Department of Agriculture.

*Motion:* Weber

*Second:* Schmidt

*Vote:* 5-0

2. Special Counsel Services Agreement with Attorney Austin K. Parker

*ACTION:* Motion to authorize the Mayor to enter into an agreement for special counsel services with attorney Austin K. Parker in an amount not to exceed \$10,000.

*Motion:* Garretson

*Second:* Fairbanks

*Vote:* 5-0

3. Special Events Permit for Fireworks Show at Our Lady of Guadalupe Festival

*ACTION:* Motion to approve the Special Events Permit for Fireworks Show at Our Lady of Guadalupe Festival.

*Motion:* Schmidt

*Second:* Weber

*Vote:* 5-0

**H. DISCUSSION ITEMS**

1. Development of Housing Presentation by Austin K. Parker
2. 2022 Q1 Budget Update

**I. CITY ADMINISTRATOR’S REPORT**

**J. GOVERNING BODY COMMENTS**

**K. EXECUTIVE SESSION**

1. Attorney-Client Privilege (to include Austin K. Parker)

Motion for an executive session pursuant to K.S.A. 75-4319 to discuss Attorney-Client privileges and include Austin K. Parker for 15 minutes.

***Motion:*** Scofiled                      ***Second:*** Weber                      ***Vote:*** 5-0

Motion was made to call the meeting back to order.

***Motion:*** Schmidt                      ***Second:*** Garretson                      ***Vote:*** 5-0

Motion for an executive session pursuant to K.S.A. 75-4319 to discuss acquisition of real property for 10 minutes.

***Motion:*** Schmidt                      ***Second:*** Weber                      ***Vote:*** 5-0

Motion was made to call the meeting back to order.

***Motion:*** Schmidt                      ***Second:*** Garretson                      ***Vote:*** 5-0

Motion for an executive session pursuant to K.S.A. 75-4319 to discuss employer-employee negotiations for 5 minutes.

***Motion:*** Schmidt                      ***Second:*** Weber                      ***Vote:*** 5-0

Motion was made to call the meeting back to order.

***Motion:*** Schmidt                      ***Second:*** Garretson                      ***Vote:*** 5-0

L.      **ADJOURNMENT**

***Motion:*** Schmidt                      ***Second:*** Garretson                      ***Vote:*** 5-0

**Invoice Approval List  
May 2, 2022**

<b>Gen Gov</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-101-6000	Phone System	Vaspian	\$118.50
101-101-6002	Attorney Service	Stan Juhnke	\$2,000.00
101-101-6002	Computer Support	Leading Edge Technology	\$111.00
101-101-6002	CMB fee to State	KS Dept of Revenue	\$25.00
101-101-6002	Public Hearing	GateHouse	\$56.48
101-101-6011	IIMC Membership	Int Institute of Municipal Clerk	\$175.00
101-101-7000	Cartridge	Better Image	\$51.95
101-101-7002	Flags	First Bank Card	\$121.28
101-101-7005	Reimbursement	Joseph Turner	\$350.00
			<b>\$3,009.21</b>
<b>Police</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-102-6000	Phone System	Vaspian	\$288.00
101-102-6002	Computer Support	Leading Edge Technology	\$872.51
101-102-6002	Amazon membership & KBI Lab	First Bank Card	\$31.69
101-102-6002	Radio repair	TBS	\$120.00
101-102-6004	Oil and filter change	Allen Samuels	\$157.05
101-102-6004	Evidence tags	First Bank Card	\$32.98
101-102-6011	KACP Membership	First Bank Card	\$100.00
101-102-6012	Video training	First Bank Card	\$395.00
101-102-7002	Flags	First Bank Card	\$121.27
101-102-7002	Vacuum, bags, cleaners	Janitorial Supply	\$793.08
101-102-7003	Fuel	Bridgman	\$414.37
101-102-7009	Tourniquet holder	First Bank Card	\$16.77
			<b>\$3,342.72</b>
<b>Street</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-103-6000	Phone System	Vaspian	\$85.00
101-103-6002	Computer Support	Leading Edge Technology	\$96.67
101-103-6003	Uniform cleaning	Unifirst	\$77.97
101-103-7002	Weed eater head	Fairview	\$105.00
101-103-7002	Flags	First Bank Card	\$121.28
101-103-7002	Squeegee, signs	Janitorial Supply	\$172.72
101-103-7002	Cold patch	Crafco	\$1,320.00
101-103-7002	Fyfanon Spray	Van Diest	\$1,470.00
101-103-7003	Fuel	Bridgman	\$65.28
			<b>\$3,513.92</b>
<b>Fire</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-104-6000	Phone System	Vaspian	\$67.50
101-104-6002	Computer support	Leading Edge Technology	\$106.23
101-104-6003	Sensor and yellow lens	First Bank Card	\$362.86
101-104-6004	Annual fee for Fire Suite	Emergency Networking	\$2,590.00
101-104-7000	Paper	First Bank Card	\$20.48
101-104-7001	Pizza	First Bank Card	\$35.00
101-104-7002	Batteries	First Bank Card	\$25.98
101-104-7002	Decals	Witmer	\$97.76
101-104-7003	Fuel	Bridgman	\$59.67
101-104-8000	Gas monitor	First Bank Card	\$224.66
			<b>\$3,590.14</b>

**Invoice Approval List  
May 2, 2022**

<b>Park</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-105-6001	Irrigation insurance	Chubb	\$4,081.00
101-105-7002	Pipe and valves	Westlake	\$40.97
			<b>\$4,121.97</b>
<b>Court</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
101-106-6004	Report for Court	Kansas State Treasurer	\$100.00
101-106-6004	Retrievals	Underground Vaults	\$19.00
101-106-6016	Judge Service	Larry Bolton	\$1,100.00
101-106-6016	Attorney service	Rick Roberts	\$1,100.00
101-106-6018	Court Apt Atty	Jennifer Lautz	\$150.00
101-106-6018	Court Apt Atty	Benjamin Fisher	\$75.00
			<b>\$2,544.00</b>
		<b>GENERAL TOTAL</b>	<b>\$20,121.96</b>
<b>Water</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
201-000-6002	Computer Support	Leading Edge Technology	\$151.45
201-000-6002	Bore at 45 Detroit	Appel Company	\$600.00
201-000-6003	Uniform cleaning	Unifirst	\$77.98
201-000-7001	KRWA Meals	First Bank Card	\$19.87
201-000-7001	KRWA Conference	Kansas Rural Water	\$452.50
201-000-7002	Tubing, meter, valves	Core & Main	\$2,555.31
201-000-7002	Shipping of water samples	First Bank Card	\$19.80
201-000-7002	Batteries	Dynamic Electronics	\$34.44
201-000-7002	Flags	USA Bluebook	\$41.96
201-000-7002	Connectors, clamps, pipe	Westlake	\$59.86
201-000-7003	Fuel	Bridgman	\$80.73
			<b>\$4,093.90</b>
<b>Sewer</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
301-000-6002	Computer Support	Leading Edge Technology	\$151.45
301-000-6002	Lab Analysis	SDK	\$598.00
301-000-6003	Uniform cleaning	Unifirst	\$77.97
301-000-6003	Grit removal	Reno County Solid Waste	\$41.00
301-000-7001	KRWA Meals	First Bank Card	\$19.87
301-000-7001	KRWA Conference	Kansas Rural Water	\$452.50
301-000-7002	Hydraulic hose	B&B Hydraulic	\$125.62
301-000-7002	Angle Iron	Dan Dee	\$42.50
301-000-7002	Chemicals and flags	USA Bluebook	\$94.36
301-000-7002	Valves and adapters	Westlake	\$31.77
301-000-7003	Fuel	Bridgman	\$155.66
			<b>\$1,790.70</b>
<b>Sales/Street</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
403-000-7013	Web Hosting	Immense Impact	\$1,196.50
			<b>\$1,196.50</b>

**Invoice Approval List  
May 2, 2022**

<b>Com Ctr</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
811-000-7002	Flags	First Bank Card	\$121.27
811-000-7002	Liners, tissue, towels	Janitorial Supply	\$161.12
			<b>\$282.39</b>
<b>Equip Res</b>	<b>Description</b>	<b>Vendor</b>	<b>Inv. Amt</b>
901-000-8023	Boot	Danko	\$405.00
			<b>\$405.00</b>
		<b>GRAND TOTAL</b>	<b>\$27,890.45</b>

**Meeting Date:** May 2, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** Cell Tower Special Use Permit Application

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**Background/Analysis** – The Council will be asked to approve a cell tower special use permit application submitted by Harmoni Towers (Harmoni). Harmoni seeks to build a cell tower near an existing cell tower owned by SBA Towers V, LLC (SBA) down by Crupper’s Corner. Harmoni is represented by attorney Glenda Cafer. SBA opposes the application and is represented by attorneys Patrick Edwards and Luke VanFleteren.

At the April 11 meeting the planning commission voted 5-1 to recommend the approval of the application. This followed an initial vote in opposition to that failed on a 2-4 vote.

### **Governing Body Options**

I want to set forth what I understand to be the options available to the governing body:

- Adopt the recommendation (simple majority)
- Override the planning commission’s recommendation (requires 2/3<sup>rd</sup> vote)
- Return the recommendation to the planning commission with a statement specifying the basis for the governing body’s failure to approve or disapprove
  - The planning commission may re-submit their recommendation to the council with their reasoning; or
  - Submit a new or amended recommendation
- Upon a re-submission by the planning commission, the governing body may revise, amend, or adopt the recommendation by a simple majority

### Protests & Appeals

Aggrieved parties, including property owners within the notification area, Harmoni, and SBA, must seek redress through district court during the 30-day period after the city council makes a final decision on the permit application

### **Harmoni’s Application Submission & 150-Day Requirement**

There has been some confusion regarding the actual date that Harmoni submitted their application. The date of the application is important because KSA 66-2019(h)(3) states that “an application shall be deemed approved if an authority fails to act on an application...within the 150-calendar day review period.”

A previous Harmoni employee named Cheryl Marlin began working with Code Enforcement Officer Matt Mock in October/November of 2021. Harmoni believes that Marlin applied around this time. In her letter dated March 8, 2021, Ms. Cafer argues on



behalf of the applicant that the 150-day clock began running on 11/22/2021 and expires on 4/21/2022.

This is based on miscommunication between Harmoni representative Mike Nuckols and Mock in February.

We have no record of receiving this application and it is important to note that Harmoni has never presented a copy of a filed application with a date-stamp, nor have they submitted a copy of an email with an attachment from Marlin to support this claim.

The actual application was submitted on March 17, 2022, and the 150-day clock began at that point. Unless Harmoni can present a copy of the application that was allegedly submitted in November, I reject the notion that the 150-day clock started then.

### **Summary of Arguments**

I will attempt to summarize the respective arguments and issues raised by Harmoni and SBA. These arguments were made at the January 11 and April 11 planning commission meetings, as well as written correspondence by attorneys for both parties.

#### SBA's Position

The initial thrust of SBA's arguments in opposition to the application were communicated in a February 10 letter to Mock by Edwards after the January 11 meeting. Their arguments centered on the following:

1. Harmoni had not submitted an application nor a statement on the proposed use as required by South Hutchinson Code 27-104(24) and 27-101; and
2. The proposed tower does not satisfy the setback requirements from Code 27-104(24)(A); and
3. That KSA 66-2019 only applies to cell towers located on public property

At the April 11 meeting, VanFleteren also introduced a letter from Susan Mulvaney, the SBA site marketing manager responsible for Kansas. The letter states that she is the primary point of contact for AT&T with respect to all leasing matters. Mulvaney maintains that AT&T has not contacted her to express any concerns or displeasure with their current lease agreement and that AT&T amended the lease agreement in 2019.

#### Harmoni's Position

Cafer penned a rebuttal to the Edwards' letter dated March 8, 2022. Cafer sets forth Harmoni's position as follows:

1. Federal law, and namely the Telecommunications Act of 1996, limits the authority of local governments to deny applications for the construction of wireless towers within their jurisdiction; and
2. KSA-66-2019 is applicable to the building of cell towers on private property.
3. Engineering standards would allow the tower to be constructed in such a manner so that the "fall zone" was confined within the parcel; and
4. The 150-day deadline clock began ticking in November of 2021.

At the April 11 meeting, Harmoni representatives argued that state and federal law is very broad and that there are few legitimate reasons for obstructing the building of cell towers. They maintain additional towers will increase competition and result in better service to customers.

They also argued that the existing cell tower at Crupper's Corner is in violation of the existing setback requirements and that opposing their application on these grounds would be a double standard.

### **Conclusion**

I have reviewed and studied the arguments presented by both parties. Our land development code plainly states that "the location of every tower must be such that it is at least an equal distance from all property lines as it is in height" (Code 27-104(24)(A)). Additionally, the code does not provide for any setback allowance or exceptions based on how a tower is engineered.

While I am sympathetic to arguments that the previous tower appears to have been built even though it violates the setback requirements, I am not sympathetic to the notion that once one exception, or even a mistake has been made, that the governing body is then perpetually obligated to repeat the same mistake(s).

Additionally, there are important distinctions between the existing and proposed towers:

1. The owner of the existing tower was not the original applicant and purchased the asset after its construction.
2. There is no record of any opposition to the application of the existing tower.
3. It is reasonable to presume that the original tower provided a much needed and valuable service to area residents and that the benefits of tower outweighed the setback requirement concerns. There is no evidence that the building of a second tower will enhance the existing service provided to our residents.

If members of the governing body would like the tower erected, then I believe the land development code should be amended.

**Financial Impact** – None.

**Recommendation** – Staff recommends the Council override the planning commission's recommendation or return the with a statement specifying the basis for the governing body's failure to approve.

**Exhibit C** – Harmoni Towers Special Use Permit Application Packet

**Exhibit D** – Harmoni Towers Supporting Documentation Packet

**Exhibit E** – SBA Towers Supporting Documentation Packet



March 17, 2022

Town of South Hutchinson, Kansas  
 Attn: Mr. Matt Mock  
 2 South Main  
 South Hutchinson, KS 67505

**RE: Proposed Telecommunications Facility – Harmoni Towers, LLC**  
**Site Name: Cruppers Corner**

Dear Mr. Mock,

On behalf of Harmoni Towers, LLC, a Delaware Limited Liability Co. and pursuant to the Land Use Regulations for S. Hutchinson, Kansas, enclosed is a Special Use Permit application package for a new 338' guy wire tower facility and associated equipment.

AT&T currently leases space on the SBA Tower located approximately 0.3 miles SW from our proposed site. AT&T now desires to relocate its Wireless Facilities onto the Harmoni Tower as the SBA Tower has become a high-cost antenna site structure for AT&T.

The RF "search area" was reviewed for available structures and the existing tower was noted and reviewed. The other options do not meet our needs or objectives.

Since AT&T located on the SBA Tower, rent and escalators have become more competitive in the tower marketplace. New tower companies have entered the marketplace, which has also led to more competitive economic terms in tower lease agreements.

Considering these competitive economic terms from other tower companies, AT&T has requested tower rent reductions from SBA. Unlike other tower companies, SBA has resisted an economically sustainable cost structure with its existing AT&T co-location leases, such that many of these leases have become **economically burdensome** for AT&T.

AT&T will bear a significant capital cost in decommissioning its Wireless Facilities on the SBA Tower and relocating to the Harmoni Tower. Despite these relocation costs, the Harmoni Tower remains a better co-location option for AT&T.

If you have any questions, comments, or concerns, please let me know.

Kind Regards,

*Mike Nuckols*

**Mike Nuckols** - RE Project Mgr.  
 1044 Virginia Drive, Sarasota, FL 34234  
 (941) 328-2264 / [mike.nuckols@btgrp.com](mailto:mike.nuckols@btgrp.com)

Case Number: 2022-01  
Date Received: 3-17-22

APPLICATION FOR CITY OF SOUTH HUTCHINSON  
ZONING DISTRICT AMENDMENT & SPECIAL USE PERMIT

1. We, all the property owners, do hereby request:

Zoning District Amendment (\$100 application fee)  
We request that the zoning of the parcel described below  
be changed from \_\_\_\_\_ to \_\_\_\_\_.

Special Use Permit (\$100 application fee)

2. This request applies to property located at and described  
as follows:

Approximate address: 104 East Trail West Road, S. Hutchinson, Kansas 67501

Legal description: All that tract or parcel of land lying and being in the Northwest quarter of the Southwest quarter of Section 12, Township 24 South, Range 6 West of Reno County, Kansas and being a portion of the lands of Glenn R. Showalter and C. B. Showalter, as recorded in Deed Book 512, Page 449 and Deed Book 540, Page 276, Reno County records and being more particularly described on attached pages (Lease Parcel, Access/Utility/Guy Wire Easements, etc)

\*\*Harmoni Towers "Cruppers Corner" project;  
FA #15448494 / KSWIT2028 / KSAL06136 / Project Tracking #3210A0YAY6

Dimensions of parcel: Irregular Shape, approx: 1,075' x 1,163' x 765' x 1,120

3. The name (s), address (es), and phone number (s) of the  
property owners are as follows:

Name	Address	Phone
GLENN R & CB SHOWALTER	8803 E ARLINGTON RD., HAVEN, KS 67543	620-727-6642

4. We, the property owners, do hereby appoint the following  
person as our agent during consideration of our request.

Name	Address	Phone
Mike Nuckols (B+T Group for Harmoni Towers, LLC)	1044 Virginia Dr., Sarasota, FL 34234	#941-328-2264
Glenda Cafer - Morris, Laing, Evans Brock & Kennedy	800 SW Jackson, #1310, Topeka, KS 66612	#785-430-2003

5. Please submit a copy of a survey with an attached sketch plan, drawn to scale, showing location and exterior dimensions of the parcel boundaries, adjacent street and alley right-of ways, all existing and proposed structures, signs, yard improvements, landscaping, driveways off-street parking areas, off-street loading areas, pedestrian walks and areas storm water drainage facilities, exterior lighting fixtures, above ground utilities (such as electrical and phone lines), and below ground utilities (such as nature gas lines, water lines, pipelines, and sewers).

6. Please submit a certified copy by a registered abstractor, the names and legal addresses of all owners of any property located within 200 feet of the boundaries of the property to be affected by the proposed amendment.

7. Please submit a written and signed certification from the County Treasurer's office that all property taxes due for the parcel have been paid.

8. What is the property currently being used for (as)? \_\_\_\_\_

Agricultural

9. What will the property be used for if your application is approved? Specifically, list all uses relevant to this application.

Construct new 338' guy wire tower w/10' lightning rod; Standard Telecom Facility w/fenced compound; AG uses to continue

10. What is the number of existing and proposed off-street parking spaces that you plan to use or need for this application? Two (2).

How much area have you allocated for parking? 12' x 20' = 480 SF x 2 = 960 SF +/-.

11. What will the maximum height of any existing or proposed structure be? 338' guy wire tower w/10' lightning rod

12. When will construction begin if the application for the special use permit is approved and when will it be completed by ? \_\_\_\_\_

TBD, but ASAP

The following questions provide an opportunity to justify a change in zoning or approval of a special use permit. The information requested pertains to factors the Planning Board and City Council ordinarily considers in reaching a decision on an application.

**A. What is the character of the neighborhood?** This isn't a neighborhood, but an agricultural area. This area is comprised of AG uses parcels and road ROW: The nearest home is approx. 0.45 miles NW at 6305 South K-96 Hwy., Hutchinson, KS 67501. The nearest business is approx. 1,486' (Cruppers Corner Appliances).

**B. What are the zoning and uses on nearby parcels?** Agricultural / Agricultural  
North: 154 Agricultural acres owned by Hannah & Knut Korner; South: Approx. 42 acres of Trail West. Rd. & KS-96 ROW;  
East: 71 Ag acres owned by Leonard & Marilyn Yoder; West: 309 Ag acres owned by Harold Conrad of Joplin, Mo.

**C. Why is the parcel suitable for the proposed development?** \_\_\_\_\_  
1) Meets Radio-Frequency coverage needs; 2) Location not detrimental to community; 3) Ag parcels often used for Telecom sites;  
4) Best location we were able to lease; 5) Location promotes competition to lower costs to provide cell service.

**D. How will the proposed development affect nearby parcels?** N/A  
Safer tower location than existing tower which is approx. 632' from home at 7204 S. K-14 Hwy & approx 265' to Crupper's Corner Appliances

**E. Is the property currently vacant?** Yes If no, then what is located on the property and what is the history of the property?  
Nothing currently on property. Used for agricultural purposes.

**F. If the application is denied, the property owner(s) will face the following hardships:** \_\_\_\_\_  
Loss of income.

**G. The proposed development will be analyzed for its compliance to the South Hutchinson Land Development Ordinance. (no response necessary)**

**H. Public facilities and utilities are adequate to serve the proposed development as follows:** Power & Fiber

**I. What are the aspects of characteristics of the development that help to minimize the impact on the neighborhood, public health, safety and welfare; and public facilities and utilities:**  
The facility shall be routinely maintained to keep a high level of safety and security. Additionally, the facility shall operate under all applicable and permissible local codes, ordinances, and regulations, including but not limited to all City, County, State, and Federal Ordinances, rules and regulations. The construction of the proposed 338' guy wire Wireless Telecommunications Facility is legally permissible. The tower shall be approved and licensed by the FAA and FCC. AT&T is authorized and licensed to do business in the state of Kansas.

If the space provided is not sufficient, you may attach additional pages. The applicant may also submit any other pertinent information including photographs, drawings, maps, statistics, legal documents, and letters of support.

We, the undersigned do hereby authorize the submittal of this application and associated and do hereby certify that all the information contained therein is true and correct. (Signatures of property owners)

Name: Glen R. Showalter

Date: 3-15-2022

C.B. Showalter

3-16-2022

Glen R. Showalter & C.B. Showalter

=====  
Office Use Only  
=====

Case Number: 2022-01

Date Received: 3-17-22  
Present Zoning: Agricultural  
Protest Date: 4-11-22  
Final Action: \_\_\_\_\_

Fee Received: 3-17-22  
Notice Date: 3-18-22  
Hearing Date: 4-11-22

SOUTH HUTCHINSON PLANNING BOARD  
SOUTH HUTCHINSON, KANSAS

CITY COUNCIL  
SOUTH HUTCHINSON, KANSAS

Recommended Approval: 4-11-22  
Recommended Disapproval: \_\_\_\_\_

Approved: \_\_\_\_\_  
Disapproved: \_\_\_\_\_

Christophe D. P.      041122  
Chairman                      Date

\_\_\_\_\_  
Chairman                      Date

FA NUMBER: 15448494 / 12569589 SITE ID: KSWIT2028 / KSL06136

PAGE #: MRKSL046811

PROJECT TRACKING #: 3210A0YAY6

SITE NAME: CRUPPERS CORNER

LEGACY SITE NAME: CRUPPERS CORNER RS

PROPERTY ADDRESS: 911 ADDRESS:

SOUTH K96 HIGHWAY 104 E TRAIL WEST ROAD

HUTCHINSON, KS 67501 HUTCHINSON, KS 67501

RENO COUNTY RENO COUNTY

PROPOSED 340' GUYED TOWER




HARMONI TOWERS

HARMONI TOWERS  
 CRUPPERS CORNER /  
 CRUPPERS CORNER RS  
 FA# 15448494 / 12569589  
 SITE ID: KSWIT2028 / KSL06136  
 PACE# MRKSL046811  
 PROJ TRACKING # 3210A0YAY6  
 SOUTH K96 HIGHWAY  
 HUTCHINSON, KS 67501  
 RENO COUNTY  
 PROPOSED 340' GUYED TOWER

**A/E DOCUMENT REVIEW STATUS**

TITLE	SIGNATURE	DATE
HARMONI TOWERS PROP.		
HARMONI TOWERS CONST. MGR.		
INTERCONNECT:		
HARMONI TOWERS SITE DEV. MGR.:		
PROPERTY OWNER:		
STATUS CODE:		
1	ACCEPTED: WITH OR NO COMMENTS, CONSTRUCTION MAY PROCEED	
2	NOT ACCEPTED: RESOLVE COMMENTS AND RESUBMIT	

THE FOLLOWING PARTIES HEREBY APPROVE AND ACCEPT THESE DOCUMENTS AND AUTHORIZE THE CONTRACTOR TO PROCEED WITH THE CONSTRUCTION DESCRIBED HEREIN. ALL DOCUMENTS ARE SUBJECT TO REVIEW BY THE LOCAL BUILDING DEPARTMENT AND MAY IMPOSE CHANGES OR MODIFICATIONS.

**PROJECT SUMMARY**

SITE NAME: CRUPPERS CORNER  
 SITE NUMBER: KSWIT2028  
 TAX MAP PROPERTY ID: 1711200000004000  
 SITE ADDRESS: SOUTH K96 HIGHWAY, HUTCHINSON, KS 67501  
 104 E TRAIL WEST ROAD, HUTCHINSON, KS 67501  
 911 ADDRESS: RENO COUNTY  
 JURISDICTION: RENO COUNTY  
 TOWER OWNER: HARMONI TOWERS, 10802 EXECUTIVE CENTER DRIVE, LITTLE ROCK, AR 72211  
 AT&T PROJECT TEAM: 607 NORTH MILLER BLVD, OKLAHOMA CITY, OK 73107, CRAIG HALL, (405) 306-9487  
 NAD83  
 LATITUDE: 37.975236° N  
 LONGITUDE: -97.936956° W  
 APPLICANT: NEW CINGULAR WIRELESS, PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY  
 d/b/a AT&T MOBILITY  
 MENDINGER TOWER  
 462 S / 4th STREET, SUITE 2400  
 LOUISVILLE, KY 40202  
 CO-APPLICANT: N/A  
 OCCUPANCY TYPE: UNMANNED  
 FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION  
 A.D.A. COMPLIANCE:

**DESIGN INFORMATION**

A&E FIRM: B+T GROUP  
 1717 S. BOULDER,  
 SUITE 300  
 TULSA, OK 74119  
 MIKE A. SPEEDIE, PE  
 (918) 587-4630  
 SURVEYOR: POINT TO POINT  
 100 GOVERNORS TRACE, STE #103  
 PEACHTREE CITY, GA 30269  
 PH. (678) 565-4440  
 TELCO: AT&T  
 PROVIDER: XXX-XXX-XXXX

ELECTRIC: KANSAS CITY POWER & LIGHT COMPANY (KCP&L)  
 816-471-5275

**CODE COMPLIANCE**

ALL WORK SHALL BE PERFORMED AND MATERIALS INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES. NOTHING IN THESE PLANS IS TO BE CONSTRUED TO PERMIT WORK NOT CONFORMING TO THESE CODES:

CODE TYPE: CODE  
 BUILDING/DWELLING: IBC 2012  
 STRUCTURAL: IBC 2012  
 MECHANICAL: IMC 2012  
 ELECTRICAL: NEC 2011

**ZONING DRAWINGS**

**LOCATION MAP**



**DRIVING DIRECTIONS**

DEPART RENO COUNTY, 206 W 1ST AVE, HUTCHINSON, KS 67501 ON (N) ADAMS ST (SOUTH) 0.2 MI  
 KEEP RIGHT ONTO RAMP 0.3 MI WOODY SEAT FWY  
 KEEP STRAIGHT ONTO WOODIE SEAT FWY [WOODIE SEAT BLVD] 0.6 MI  
 ROAD NAME CHANGES TO (N) MAIN ST 2.0 MI  
 ROAD NAME CHANGES TO KS-96 [S MAIN ST] 2.8 MI  
 TURN LEFT (EAST) ONTO LOCAL ROAD(S) 65 YDS  
 ROAD NAME CHANGES TO E TRAIL WEST RD [TRAIL WEST RD] 131 YDS  
 TURN LEFT (NORTH) ONTO LOCAL ROAD(S) 109 YDS  
 ARRIVE 37.97524°N 97.936956°W

**PROJECT DESCRIPTION**

THE PROPOSED PROJECT INCLUDES:

- CONSTRUCT (1) NEW 340' GUYED TOWER
- CONSTRUCT FENCED GRAVEL UTILITY COMPOUND WITH LOCKING ACCESS GATE, 80' x 80' WITHIN 100' x 100' LEASE AREA.
- INSTALL (1) H-FRAME W/ UTILITY EQUIPMENT.
- INSTALL NEW POWER & TELCO UTILITY SERVICES.
- CONSTRUCT 12' WIDE GRAVEL ACCESS ROAD

**DO NOT SCALE DRAWINGS**

ALL DRAWINGS CONTAINED HEREIN ARE FORMATTED FOR 11X17. CONTRACTOR SHALL VERIFY ALL PLANS AND EXISTING DIMENSIONS AND CONDITIONS ON THE JOB SITE AND SHALL IMMEDIATELY NOTIFY THE ENGINEER IN WRITING OF ANY DISCREPANCIES BEFORE PROCEEDING WITH THE WORK OR BE RESPONSIBLE FOR SAME.

**DRAWING INDEX**

SHEET #	TITLE SHEET	SHEET DESCRIPTION
T-1	TITLE SHEET	TITLE SHEET
1-2	SURVEY	SURVEY
C-1	OVERALL AERIAL PLAN	OVERALL AERIAL PLAN
C-2	OVERALL SITE LAYOUT	OVERALL SITE LAYOUT
C-3	ENLARGED COMPOUND LAYOUT	ENLARGED COMPOUND LAYOUT
C-4	TOWER ELEVATION	TOWER ELEVATION

REV	DATE	DRN	DESCRIPTION
A	11/15/21	DLS	REVIEW
0	11/29/21	MAS	FINAL
1	12/20/21	MAS	FINAL

PROJECT NO: C0144749.016.01  
 CHECKED BY: DLS

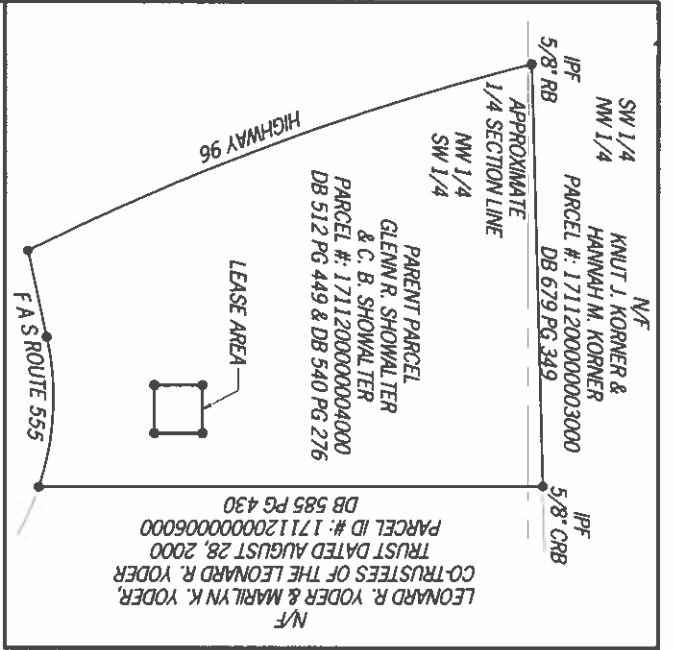
ISSUED FOR:  
 B&T ENGINEERING, INC.  
 4011  
 Expires 12/31/21

CALL KANSAS ONE CALL  
 (800) DIG-SAFE  
 CALL 3 WORKING DAYS BEFORE YOU DIG!



TITLE SHEET  
 SHEET NUMBER: T-1





**TITLE EXCEPTIONS**

THIS SURVEY WAS COMPLETED WITH THE AID OF TITLE WORK PREPARED BY REBELLY NATIONAL TITLE INSURANCE COMPANY, COMMITMENT DATE OF MAY 28, 2021, BEING COMMITMENT NO. 34732026, FOR THE PARENT PARCEL. TO DETERMINE THE IMPACTS OF EXISTING TITLE EXCEPTIONS:

- ACQUISITION OF PUBLIC ROAD RIGHT OF WAY IN FAVOR OF THE BOARD OF COUNTY COMMISSIONERS OF REBO COUNTY, KANSAS SET FORTH IN INSTRUMENT RECORDED ON NOVEMBER 12, 1957 IN DEED BOOK 100, PAGE 9. (THIS ITEM IS NOT APPLICABLE TO THE PARENT PARCEL.)
- GRANT OF RIGHT OF WAY IN FAVOR OF THE KANSAS POWER AND LIGHT COMPANY SET FORTH IN INSTRUMENT RECORDED ON FEBRUARY 4, 1959 IN DEED BOOK 100, PAGE 199, ASSIGNMENT TO MID CONTINENT MARKET CENTER, INC., A KANSAS CORPORATION, RECORDED ON AUGUST 11, 1995 IN DEED BOOK 292, PAGE 57; ASSIGNMENT TO ONEOK, INC., AN OKLAHOMA CORPORATION, RECORDED ON AUGUST 6, 2002 IN DEED BOOK 362, PAGE 176. (THIS ITEM IS APPLICABLE TO THE PARENT PARCEL AND IS BLANKET IN NATURE.)
- EASEMENT IN FAVOR OF STATE OF KANSAS SET FORTH IN INSTRUMENT RECORDED ON DECEMBER 2, 1966 IN DEED BOOK 375, PAGE 73. (THIS ITEM IS APPLICABLE TO THE PARENT PARCEL BUT DOES NOT AFFECT THE LEASE AREA AND ASSOCIATED EASEMENTS AS SHOWN HEREON.)
- GRANT OF PERMANENT EASEMENT IN FAVOR OF THE SECRETARY OF TRANSPORTATION OF THE STATE OF KANSAS SET FORTH IN INSTRUMENT RECORDED ON OCTOBER 13, 1997 IN DEED BOOK 312, PAGE 370. (THIS ITEM IS NOT APPLICABLE TO THE PARENT PARCEL.)
- UCC/FINANCING STATEMENT, FILED ON MARCH 1, 2001, IN THE OFFICIAL RECORDS AS INSTRUMENT NO. 196; UCC/FINANCING STATEMENT AMENDMENT, FILED ON FEBRUARY 28, 2002, IN THE OFFICIAL RECORDS AS INSTRUMENT NO. 984; UCC/FINANCING STATEMENT AMENDMENT, FILED ON MARCH 12, 2003, IN THE OFFICIAL RECORDS AS INSTRUMENT NO. 92003107; UCC/FINANCING STATEMENT AMENDMENT (CONTINUATION), FILED ON JANUARY 24, 2006, IN THE OFFICIAL RECORDS AS INSTRUMENT NO. 9200628; UCC/FINANCING STATEMENT AMENDMENT (CONTINUATION), FILED ON MARCH 1, 2011, IN THE OFFICIAL RECORDS AS INSTRUMENT NO. 9201161; UCC/FINANCING STATEMENT AMENDMENT, FILED ON APRIL 22, 2013, IN THE OFFICIAL RECORDS AS INSTRUMENT NO. 9201330; UCC/FINANCING STATEMENT AMENDMENT, FILED ON AUGUST 30, 2013, IN THE OFFICIAL RECORDS AS INSTRUMENT NO. 92013273; UCC/FINANCING STATEMENT AMENDMENT (CONTINUATION), FILED ON MARCH 1, 2016, IN THE OFFICIAL RECORDS AS INSTRUMENT NO. 9201667; UCC/FINANCING STATEMENT AMENDMENT (CONTINUATION), FILED ON JANUARY 8, 2021, IN THE OFFICIAL RECORDS AS DEED BOOK 2021, PAGE 1. (THESE ITEMS ARE NOT A SURVEY RELATED MATTER.)
- TERMS AND CONDITIONS OF OIL AND GAS LEASE DATED JULY 9, 2011 BY AND BETWEEN GLENN R. SHOWALTER AND ETHELYN M. SHOWALTER, AND J. FRED HAMBRIGHT, INC., RECORDED ON SEPTEMBER 7, 2011 IN DEED BOOK 465, PAGE 182. (THIS ITEM IS APPLICABLE TO THE PARENT PARCEL AND IS BLANKET IN NATURE.)
- TERMS AND CONDITIONS OF OIL AND GAS LEASE DATED AUGUST 4, 2011 BY AND BETWEEN GLENN R. SHOWALTER AND JOAN K. SHOWALTER, AND J. FRED HAMBRIGHT, INC., RECORDED ON SEPTEMBER 7, 2011 IN DEED BOOK 465, PAGE 183. (THIS ITEM IS APPLICABLE TO THE PARENT PARCEL AND IS BLANKET IN NATURE.)

**GPS NOTES**

THE FOLLOWING GPS STATISTICS UPON WHICH THIS SURVEY IS BASED HAVE BEEN PRODUCED AT THE 95% CONFIDENCE LEVEL:

POSITIONAL ACCURACY: 0.04 FEET (HORIZ), 0.19 FEET (VERT)  
 TYPE OF EQUIPMENT: GEOMAX ZENITH35 PRO BASE AND ROVER, DUAL FREQUENCY  
 TYPE OF FIELD PROCEDURE: ONLINE POSITION USER INTERFACE  
 DATES OF SURVEY: 06/30/2021  
 DATUM / EPOCH: NAD 83(2011) EPOCH: 2010.00000  
 PUBLISHED / FIELD CONTROL USE: N/A  
 GEOD MODEL: 18  
 COMBINED GRID FACTORS: 0.99986690 CENTERED ON THE GPS BASE POINT AS SHOWN HEREON.  
 CONVERSION ANGLE: 0.34629444  
 BENCHMARKS USED: DM6495, DM6487, D3428

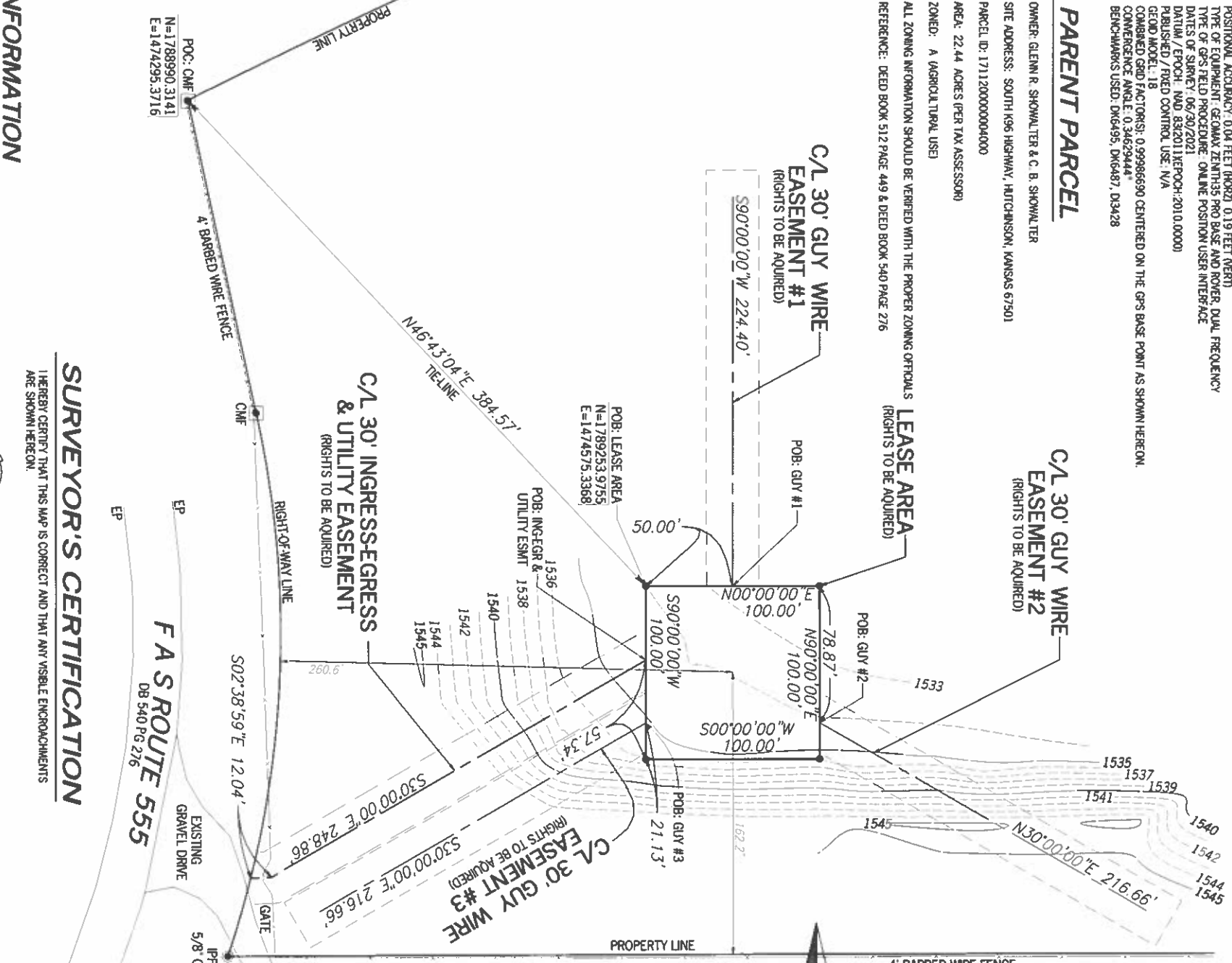
**PARENT PARCEL**

OWNER: GLENN R. SHOWALTER & C. B. SHOWALTER  
 SITE ADDRESS: SOUTH K96 HIGHWAY, HATCHINSON, KANSAS 67501  
 PARCEL ID: 1711200000004000  
 AREA: 22.44 ACRES (PER TAX ASSESSOR)  
 ZONED: A (AGRICULTURAL USE)

ALL ZONING INFORMATION SHOULD BE VERIFIED WITH THE PROPER ZONING OFFICIALS.  
 REFERENCE: DEED BOOK 512 PAGE 449 & DEED BOOK 540 PAGE 276

**SURVEYOR'S NOTE**

POTENTIAL PONDING OF WATER COULD OCCUR WITHIN THIS AREA DUE TO RAINFALL.



**GENERAL NOTES**

THIS SPECIFIC PURPOSE SURVEY IS FOR THE LEASED PREMISES AND EASEMENTS ONLY. THIS SPECIFIC PURPOSE SURVEY WAS PREPARED FOR THE EXCLUSIVE USE OF HARMONI TOWERS AND EXCLUSIVELY FOR THE TRANSFER OF THE LEASED PREMISES AND THE RIGHTS OF EASEMENT SHOWN HEREON AND SHALL NOT BE USED AS AN EXHIBIT OR EVIDENCE IN THE TITLE TRANSACTION OF THE PARENT PARCEL NOR ANY PORTION OR PORTIONS THEREOF. BOUNDARY INFORMATION SHOWN HEREON HAS BEEN COMPILLED FROM TAX MAPS AND DEED DESCRIPTIONS ONLY. NO BOUNDARY SURVEY OF THE PARENT PARCEL WAS PERFORMED.

THIS DRAWING DOES NOT REPRESENT A BOUNDARY SURVEY.

EQUIPMENT USED FOR ANGULAR & LINEAR MEASUREMENTS: LEICA TPS 1200 ROBOTIC & GEOMAX ZENITH 35. DATE OF LAST FIELD VISIT: 06/30/2021

THE 1' CONTOURS AND SPOT ELEVATIONS SHOWN ON THIS SPECIFIC PURPOSE SURVEY ARE ADJUSTED TO NAD 83 DATUM (COMPUTED USING GEOD18) AND HAVE A VERTICAL ACCURACY OF ± 0.5'. CONTOURS OUTSIDE THE IMMEDIATE SITE AREA ARE APPROXIMATE.

BEARINGS SHOWN ON THIS SPECIFIC PURPOSE SURVEY ARE BASED ON KANSAS GRID NORTH (NAD 83) SOUTH ZONE.

PER THE FEMA FLOODPLAIN MAPS, THE SITE IS LOCATED IN AN AREA DESIGNATED AS ZONE X (AREA OF MINIMAL FLOOD HAZARD). COMMUNITY PANEL NO.: 2015500456G DATED: 01/29/2021 AND COMMUNITY PANEL NO.: 2015500456F DATED: 01/06/2010 NO WETLAND AREAS HAVE BEEN INVESTIGATED BY THIS SPECIFIC PURPOSE SURVEY.

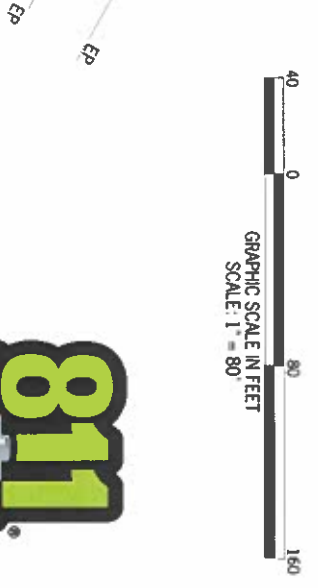
ALL ZONING INFORMATION SHOULD BE VERIFIED WITH THE PROPER ZONING OFFICIALS.

ANY UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM ABOVE GROUND FIELD SURVEY INFORMATION. THE SURVEYOR MAKES NO GUARANTEES THAT ANY UNDERGROUND UTILITIES SHOWN CORRESPOND TO ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT ANY UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED ANY UNDERGROUND UTILITIES.

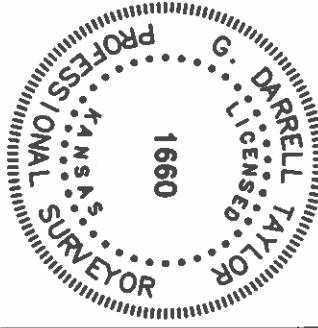
**SURVEYOR'S CERTIFICATION**

I HEREBY CERTIFY THAT THIS MAP IS CORRECT AND THAT ANY VISIBLE ENCROACHMENTS ARE SHOWN HEREON.

G. DARRELL TAYLOR  
 KANSAS PROFESSIONAL LAND SURVEYOR # 1660  
 07/09/2021



NO.	DATE	REVISION
1	7-20-21	TITLE REVIEW



**POINT TO POINT LAND SURVEYORS**  
 COA Number: LS-329  
 100 Governors Trace, Ste. 103  
 Peachtree City, GA 30269  
 (p) 678.565.4440 (f) 678.565.4497  
 (w) p2pls.com



SPECIFIC PURPOSE SURVEY PREPARED FOR:  
**HARMONI TOWERS**  
 10801 EXECUTIVE CENTER DRIVE  
 SHAWANO BLDG., STE 100  
 LITTLE ROCK, AR 72211

**CRUPPERS CORNER**

SITE NO. 15448494 KSWIT2028  
 SOUTHWEST 1/4, SECTION 12,  
 TOWNSHIP 24 SOUTH, RANGE 6 WEST,  
 REBO COUNTY, KANSAS

DRAWN BY: CCR  
 CHECKED BY: JML  
 APPROVED: D. MILLER  
 DATE: JULY 09, 2021  
 P2P JOB #: 21081115

**811**  
 Know what's below.  
 Call before you dig.

**LEGAL DESCRIPTION SHEET**

**LEASE AREA**

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 24 SOUTH, RANGE 6 WEST OF RENO COUNTY, KANSAS AND BEING A PORTION OF THE LANDS OF GLENN R. SHOWALTER AND C. B. SHOWALTER, AS RECORDED IN DEED BOOK 512, PAGE 449 AND DEED BOOK 540, PAGE 276, RENO COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE AT A CONCRETE MONUMENT FOUND ON THE SOUTHWEST CORNER OF THE LANDS OF GLENN R. SHOWALTER AND C. B. SHOWALTER, SAID CONCRETE MONUMENT HAVING A KANSAS GRID NORTH, NAD 83, SOUTH ZONE VALUE OF N: 1788990.3141 E: 1474295.3716; THENCE, RUNNING ALONG A TIE LINE, NORTH 46°43'04" EAST, 384.57 FEET TO A POINT; SAID POINT HAVING A KANSAS GRID NORTH, NAD 83, SOUTH ZONE VALUE OF N: 1789253.9755 E: 1474575.3368 AND THE TRUE POINT OF BEGINNING; THENCE, NORTH 00°00'00" EAST, 100.00 FEET TO A POINT; THENCE, NORTH 90°00'00" EAST, 100.00 FEET TO A POINT; THENCE, SOUTH 00°00'00" WEST, 100.00 FEET TO A POINT; THENCE, SOUTH 90°00'00" WEST, 100.00 FEET TO A POINT AND THE POINT OF BEGINNING.

BEARINGS BASED ON KANSAS GRID NORTH, NAD 83, SOUTH ZONE.

SAID TRACT CONTAINS 0.2296 ACRES (10,000 SQUARE FEET), MORE OR LESS.

**30' GUY WIRE EASEMENT #1**

TOGETHER WITH A 30-FOOT WIDE GUY WIRE EASEMENT LYING 15 FEET EACH SIDE OF CENTERLINE AND EXTENDING 15 FEET BEYOND THE POINT OF TERMINATION LYING AND BEING IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 24 SOUTH, RANGE 6 WEST OF RENO COUNTY, KANSAS AND BEING A PORTION OF THE LANDS OF GLENN R. SHOWALTER AND C. B. SHOWALTER, AS RECORDED IN DEED BOOK 512, PAGE 449 AND DEED BOOK 540, PAGE 276, RENO COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING CENTERLINE DATA:

TO FIND THE POINT OF BEGINNING, COMMENCE AT A CONCRETE MONUMENT FOUND ON THE SOUTHWEST CORNER OF THE LANDS OF GLENN R. SHOWALTER AND C. B. SHOWALTER, SAID CONCRETE MONUMENT HAVING A KANSAS GRID NORTH, NAD 83, SOUTH ZONE VALUE OF N: 1788990.3141 E: 1474295.3716; THENCE, RUNNING ALONG A TIE LINE, NORTH 46°43'04" EAST, 384.57 FEET TO A POINT ON THE SOUTHWEST CORNER OF THE LEASE AREA, SAID POINT HAVING A KANSAS GRID NORTH, NAD 83, SOUTH ZONE VALUE OF N: 1789253.9755 E: 1474575.3368; THENCE, RUNNING ALONG SAID LEASE AREA, NORTH 00°00'00" EAST, 100.00 FEET TO A POINT; THENCE, SOUTH 90°00'00" WEST, 100.00 FEET TO A POINT; THENCE, SOUTH 30°00'00" EAST, 216.56 FEET TO THE ENDING AT A POINT.

BEARINGS BASED ON KANSAS GRID NORTH, NAD 83, SOUTH ZONE.

**30' GUY WIRE EASEMENT #2**

TOGETHER WITH A 30-FOOT WIDE GUY WIRE EASEMENT LYING 15 FEET EACH SIDE OF CENTERLINE AND EXTENDING 15 FEET BEYOND THE POINT OF TERMINATION LYING AND BEING IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 24 SOUTH, RANGE 6 WEST OF RENO COUNTY, KANSAS AND BEING A PORTION OF THE LANDS OF GLENN R. SHOWALTER AND C. B. SHOWALTER, AS RECORDED IN DEED BOOK 512, PAGE 449 AND DEED BOOK 540, PAGE 276, RENO COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING CENTERLINE DATA:

TO FIND THE POINT OF BEGINNING, COMMENCE AT A CONCRETE MONUMENT FOUND ON THE SOUTHWEST CORNER OF THE LANDS OF GLENN R. SHOWALTER AND C. B. SHOWALTER, SAID CONCRETE MONUMENT HAVING A KANSAS GRID NORTH, NAD 83, SOUTH ZONE VALUE OF N: 1788990.3141 E: 1474295.3716; THENCE, RUNNING ALONG A TIE LINE, NORTH 46°43'04" EAST, 384.57 FEET TO A POINT ON THE SOUTHWEST CORNER OF THE LEASE AREA, SAID POINT HAVING A KANSAS GRID NORTH, NAD 83, SOUTH ZONE VALUE OF N: 1789253.9755 E: 1474575.3368; THENCE, RUNNING ALONG SAID LEASE AREA, NORTH 90°00'00" EAST, 78.87 FEET TO A POINT AND THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID LEASE AREA AND RUNNING, NORTH 30°00'00" EAST, 216.66 FEET TO THE ENDING AT A POINT.

BEARINGS BASED ON KANSAS GRID NORTH, NAD 83, SOUTH ZONE.

**30' GUY WIRE EASEMENT #3**

TOGETHER WITH A 30-FOOT WIDE GUY WIRE EASEMENT LYING 15 FEET EACH SIDE OF CENTERLINE AND EXTENDING 15 FEET BEYOND THE POINT OF TERMINATION LYING AND BEING IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 24 SOUTH, RANGE 6 WEST OF RENO COUNTY, KANSAS AND BEING A PORTION OF THE LANDS OF GLENN R. SHOWALTER AND C. B. SHOWALTER, AS RECORDED IN DEED BOOK 512, PAGE 449 AND DEED BOOK 540, PAGE 276, RENO COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING CENTERLINE DATA:

TO FIND THE POINT OF BEGINNING, COMMENCE AT A CONCRETE MONUMENT FOUND ON THE SOUTHWEST CORNER OF THE LANDS OF GLENN R. SHOWALTER AND C. B. SHOWALTER, SAID CONCRETE MONUMENT HAVING A KANSAS GRID NORTH, NAD 83, SOUTH ZONE VALUE OF N: 1788990.3141 E: 1474295.3716; THENCE, RUNNING ALONG A TIE LINE, NORTH 46°43'04" EAST, 384.57 FEET TO A POINT ON THE SOUTHWEST CORNER OF THE LEASE AREA, SAID POINT HAVING A KANSAS GRID NORTH, NAD 83, SOUTH ZONE VALUE OF N: 1789253.9755 E: 1474575.3368; THENCE, RUNNING ALONG SAID LEASE AREA, NORTH 00°00'00" EAST, 100.00 FEET TO A POINT; THENCE, NORTH 90°00'00" EAST, 100.00 FEET TO A POINT; THENCE, SOUTH 00°00'00" WEST, 100.00 FEET TO A POINT; THENCE, SOUTH 90°00'00" WEST, 21.13 FEET TO A POINT AND THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID LEASE AREA AND RUNNING, SOUTH 30°00'00" EAST, 216.56 FEET TO THE ENDING AT A POINT.

BEARINGS BASED ON KANSAS GRID NORTH, NAD 83, SOUTH ZONE.

**30' INGRESS-EGRESS & UTILITY EASEMENT**

TOGETHER WITH A 30' WIDE INGRESS-EGRESS AND UTILITY EASEMENT LYING 15 FEET EACH SIDE OF CENTERLINE LYING AND BEING IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 24 SOUTH, RANGE 6 WEST OF RENO COUNTY, KANSAS AND BEING A PORTION OF THE LANDS OF GLENN R. SHOWALTER AND C. B. SHOWALTER, AS RECORDED IN DEED BOOK 512, PAGE 449 AND DEED BOOK 540, PAGE 276, RENO COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING CENTERLINE DATA:

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BEARINGS BASED ON KANSAS GRID NORTH, NAD 83, SOUTH ZONE.

**PARENT PARCEL**

PER FIDELITY NATIONAL TITLE INSURANCE COMMITMENT NO. 34732026

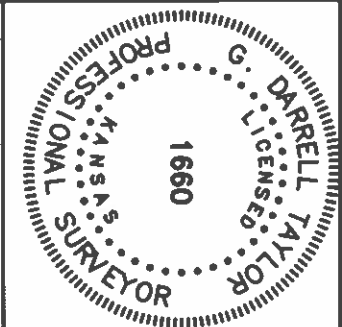
AN INTEREST IN LAND, SAID INTEREST BEING OVER A PORTION OF THE FOLLOWING DESCRIBED PARENT PARCEL, A TRACT OF LAND IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 24 SOUTH, RANGE 6 WEST OF THE 6TH PRINCIPAL MERIDIAN IN RENO COUNTY, KANSAS DESCRIBED AS FOLLOWS:

BEGINNING AT POINT ON THE NORTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 12 AND ON THE EASTERLY LINE OF KANSAS HIGHWAY NO. 96, SAID POINT BEING NORTH 88°26'52" EAST 247.40 FEET FROM THE NORTHWEST CORNER OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 12; THENCE NORTH 88°26'52" EAST, 579.00 FEET ALONG THE NORTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 12; THENCE SOUTH 01°33'08" EAST 1017.90 FEET TO THE NORTH LINE OF F A S ROUTE 555; THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 580.87 FEET AND AN ARC DISTANCE OF 34.45 FEET; CHORD OF SAID CURVE BEING SOUTH 79°17'34" WEST, 34.44 FEET ALONG THE NORTH LINE OF F A S ROUTE 555; THENCE SOUTH 77°37'22" WEST, 184.06 FEET ALONG THE NORTH LINE OF SAID F A S ROUTE 555 TO THE EASTERLY LINE OF SAID STATE HIGHWAY NO. 96; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 3241.48 FEET AND AN ARC DISTANCE OF 1119.72 FEET, CHORD OF SAID CURVE BEING NORTH 20°21'17" WEST 1117.59 FEET TO THE POINT OF BEGINNING.

AND BEING A PORTION OF THE SAME PROPERTY CONVEYED TO BOB BERGKAMP CONSTRUCTION, CO. INC. FROM GLENN R. SHOWALTER AND ETHELYN M. SHOWALTER AND C. B. SHOWALTER, ALSO KNOWN AS CRAIG BYRON SHOWALTER, AND JOANN K. SHOWALTER BY WARRANTY DEED DATED FEBRUARY 11, 1997 AND RECORDED MARCH 3, 1997 IN DEED BOOK 526, PAGE 434; AND FURTHER CONVEYED TO GLENN R. SHOWALTER AND C. B. SHOWALTER FROM BOB BERGKAMP CONSTRUCTION CO., INC. BY CORPORATION QUITCLAIM DEED DATED AUGUST 13, 1999 AND RECORDED OCTOBER 7, 1999 IN DEED BOOK 540, PAGE 276.

TAX PARCEL NO. 1711200000004000

NOTE: THE DESCRIPTION ABOVE ONLY DESCRIBES THE WESTERN PORTION OF THE PARENT PARCEL AND SHOULD INCLUDE THE DESCRIPTION FROM DEED BOOK 512, PAGE 449.



NO.	DATE	REVISION
1	7-20-21	TITLE REVIEW

SPECIFIC PURPOSE SURVEY PREPARED BY:  
**POINT TO POINT LAND SURVEYORS**  
 COA Number: LS-329  
 100 Governors Trace, Ste. 103  
 Peachtree City, GA 30269  
 (p) 678.565.4440 (f) 678.565.4497  
 (w) p2pls.com



**HARMONI TOWERS**  
 10801 EXECUTIVE CENTER DRIVE  
 SHANNON BLDG., STE 100  
 LITTLE ROCK, AR 72211

CRUDDERS CORNER

SITE NO.  
**15448494 KSWIT2028**

SOUTHWEST 1/4, SECTION 12,  
 TOWNSHIP 24 SOUTH, RANGE 6 WEST,  
 RENO COUNTY, KANSAS

DRAWN BY: CCR SHEET:

CHECKED BY: JML

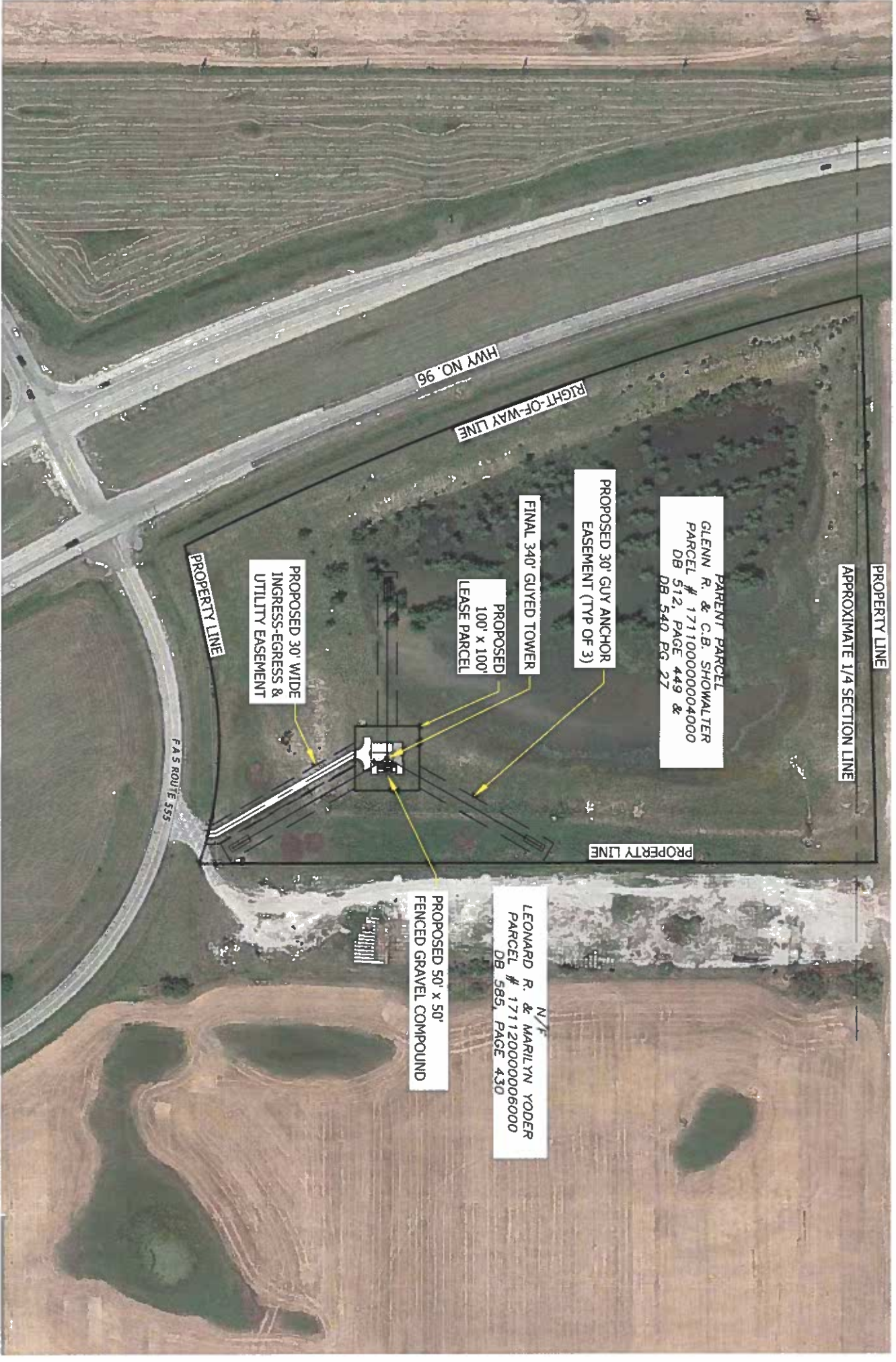
APPROVED: D. MILLER

DATE: JULY 09, 2021

P2P JOB #: 210811KS

**2**  
 OF 2

NOTE:  
 1. THIS MAP IS FOR GENERAL INFORMATION PURPOSES ONLY AND IS NOT A BOUNDARY SURVEY.  
 2. NOT FOR RECORDING OR PROPERTY TRANSFER.



N/F  
 KNUIT J. & HANNAH M. KORNER  
 PARCEL # 17112000003000  
 DB 679, PAGE 349

PARENT PARCEL  
 GLENN R. & C.B. SHOWALTER  
 PARCEL # 17110000004000  
 DB 512, PAGE 449 &  
 DB 540, PG. 27

N/F  
 LEONARD R. & MARILYN YODER  
 PARCEL # 17112000006000  
 DB 585, PAGE 430

1 OVERALL AERIAL PLAN  
 SCALE: 1" = 200'  
 0 100' 200' 300' 400'



CALL KANSAS ONE CALL  
 (800) DIG-SAFE  
 CALL 3 WORKING DAYS  
 BEFORE YOU DIG!



HARMONI TOWERS  
 CRUPPERS CORNER /  
 CRUPPERS CORNER RS  
 FA# 15448494 / 12569589  
 SITE ID: KSWIT2028 / KSL06136  
 PACE# MRKSL046811  
 PROJ TRACKING # 3210A0YAY6  
 SOUTH K96 HIGHWAY  
 HUTCHINSON, KS 67501  
 RENO COUNTY  
 PROPOSED 340' GUYED TOWER

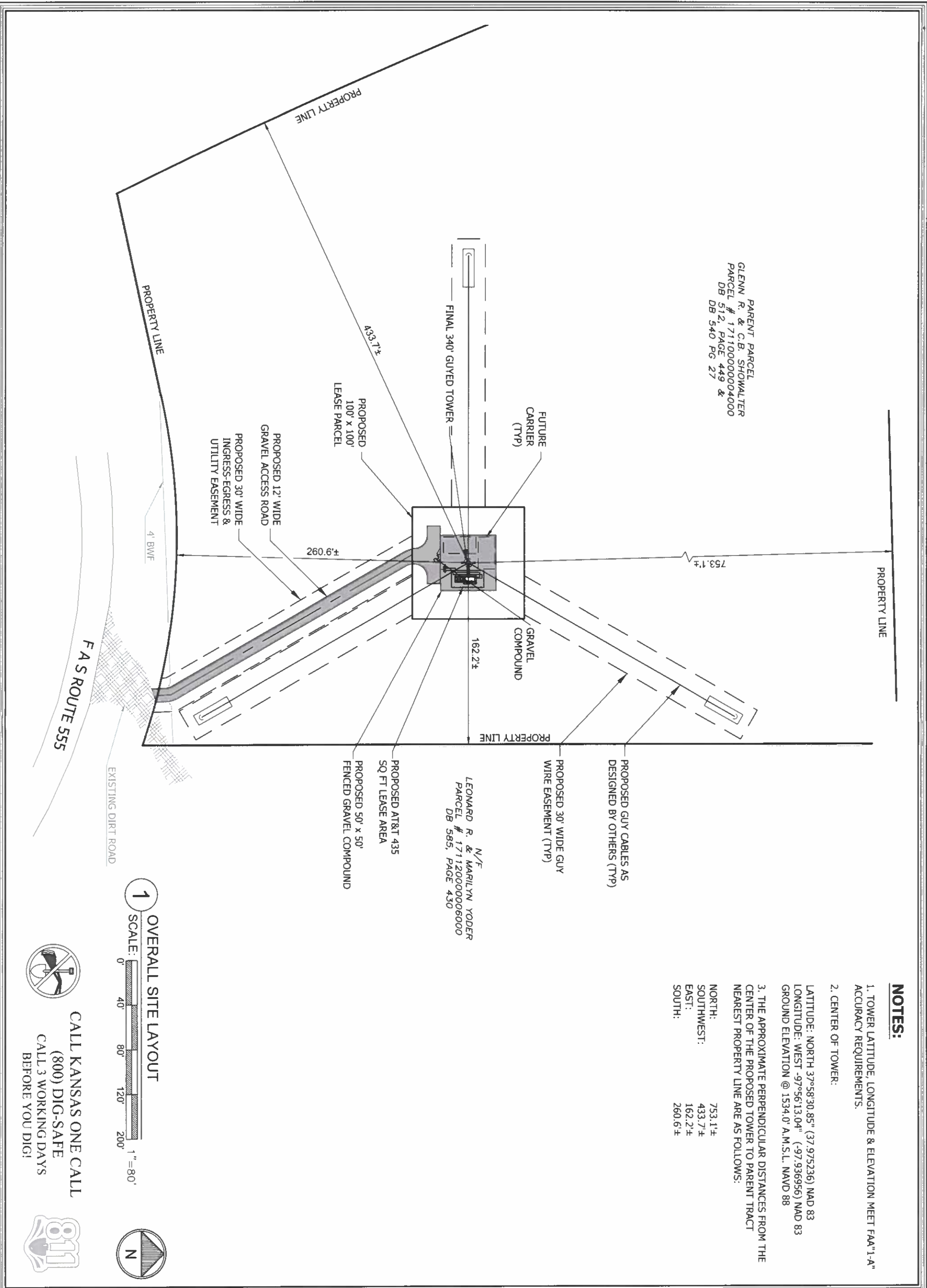
PROJECT NO: C0144749.016.01  
 CHECKED BY: DLS

ISSUED FOR:

REV	DATE	DRWN	DESCRIPTION
A	11/15/21	DLS	RENEW
0	11/29/21	MAS	FINAL
1	12/20/21	MAS	FINAL

B&T ENGINEERING, INC.  
 4011  
 Expires 12/31/21

OVERALL AERIAL  
 PLAN  
 SHEET NUMBER:  
**C-1**

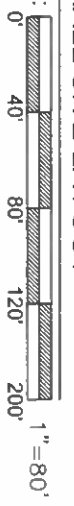


PARENT PARCEL  
 GLENN R. & C.B. SHOWALTER  
 PARCEL # 17110000004000  
 DB 512, PAGE 449 &  
 DB 540 PG 27

N/F  
 LEONARD R. & MARILYN YODER  
 PARCEL # 17112000006000  
 DB 585, PAGE 430

- NOTES:**
1. TOWER LATITUDE, LONGITUDE & ELEVATION MEET FAA "1-A" ACCURACY REQUIREMENTS.
  2. CENTER OF TOWER:  
 LATITUDE: NORTH 37°58'30.85" (37.975236) NAD 83  
 LONGITUDE: WEST -97°56'13.04" (-97.936956) NAD 83  
 GROUND ELEVATION @ 1534.0' A.M.S.L. NAVD 88
  3. THE APPROXIMATE PERPENDICULAR DISTANCES FROM THE CENTER OF THE PROPOSED TOWER TO PARENT TRACT NEAREST PROPERTY LINE ARE AS FOLLOWS:  
 NORTH: 753.1'±  
 SOUTHWEST: 433.7'±  
 EAST: 162.2'±  
 SOUTH: 260.6'±

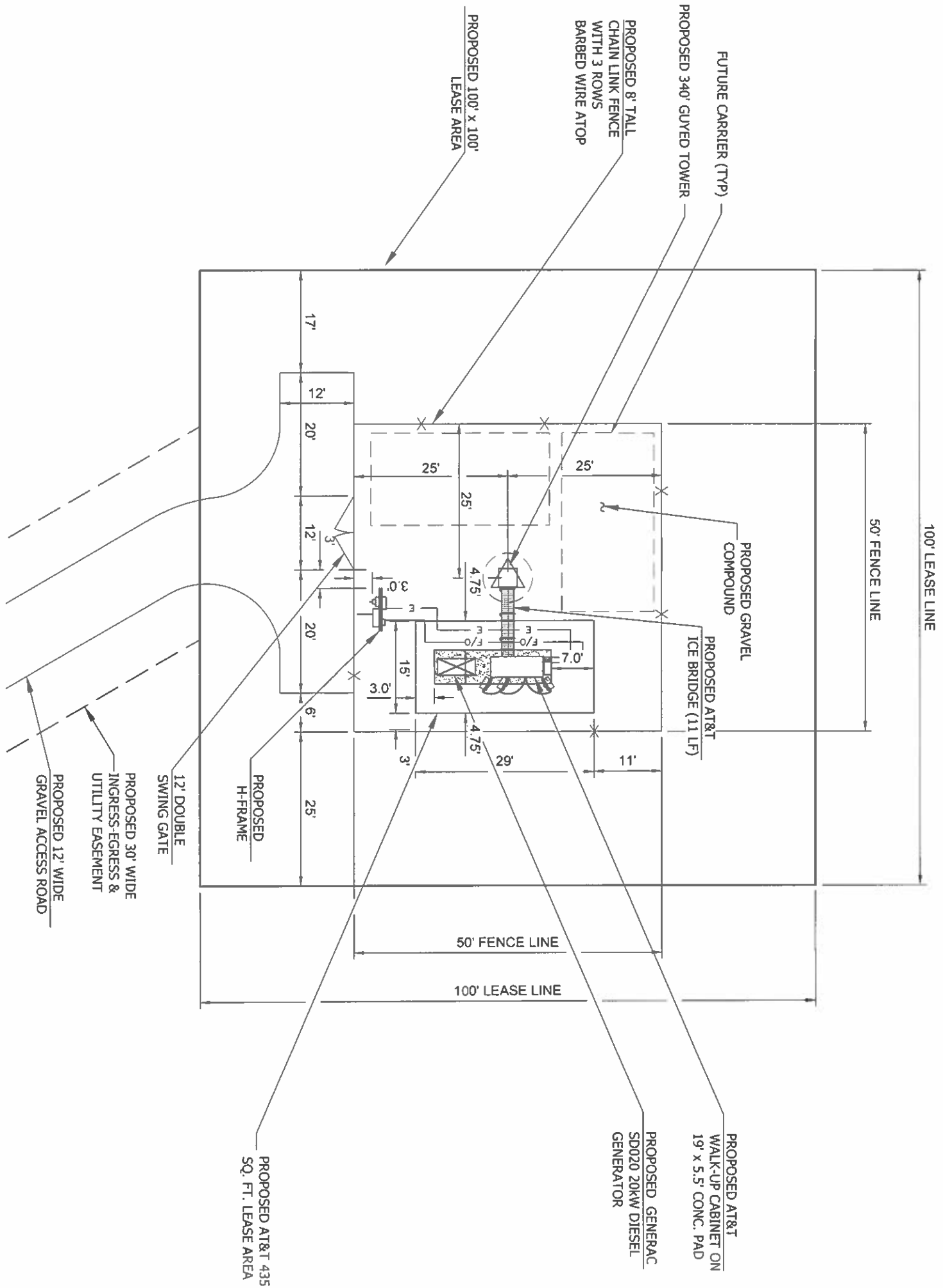
1 OVERALL SITE LAYOUT  
 SCALE: 1" = 80'



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			<p>HARMONI TOWERS                  CRUPPERS CORNER /                  CRUPPERS CORNER RS                  FA# 15448494 / 12569589                  SITE ID: KSWIT2028 / KSL06136                  PACE# MRKSL046811                  PROJ TRACKING # 3210A0YAY6                  SOUTH K96 HIGHWAY                  HUTCHINSON, KS 67501                  RENO COUNTY                  PROPOSED 340' GUYED TOWER</p>	<p>PROJECT NO: C01474901601                  CHECKED BY: DLS                  ISSUED FOR:</p> <table border="1"> <thead> <tr> <th>REV</th> <th>DATE</th> <th>DRWN</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>11/15/21</td> <td>DLS</td> <td>REVIEW</td> </tr> <tr> <td>0</td> <td>11/29/21</td> <td>MAS</td> <td>FINAL</td> </tr> <tr> <td>1</td> <td>12/20/21</td> <td>MAS</td> <td>FINAL</td> </tr> </tbody> </table>	REV	DATE	DRWN	DESCRIPTION	A	11/15/21	DLS	REVIEW	0	11/29/21	MAS	FINAL	1	12/20/21	MAS	FINAL	<p>B&amp;T ENGINEERING, INC.                  4011                  Expires 12/31/21</p>		<p>OVERALL SITE LAYOUT</p>	<p>SHEET NUMBER:                  C-2</p>
REV	DATE	DRWN	DESCRIPTION																					
A	11/15/21	DLS	REVIEW																					
0	11/29/21	MAS	FINAL																					
1	12/20/21	MAS	FINAL																					



**1** ENLARGED COMPOUND LAYOUT  
SCALE: 1" = 20'



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CALL 3 WORKING DAYS  
BEFORE YOU DIG!



HARMONI TOWERS  
CRUPPERS CORNER /  
CRUPPERS CORNER RS  
FA# 15448494 / 12569589  
SITE ID: KSWIT2028 / KSL06136  
PACE# MRKSL046811  
PROJ TRACKING # 3210A0YAY6  
SOUTH K96 HIGHWAY  
HUTCHINSON, KS 67501  
RENO COUNTY  
PROPOSED 340' GUYED TOWER



PROJECT NO: C0144749/016.01  
CHECKED BY: DLS

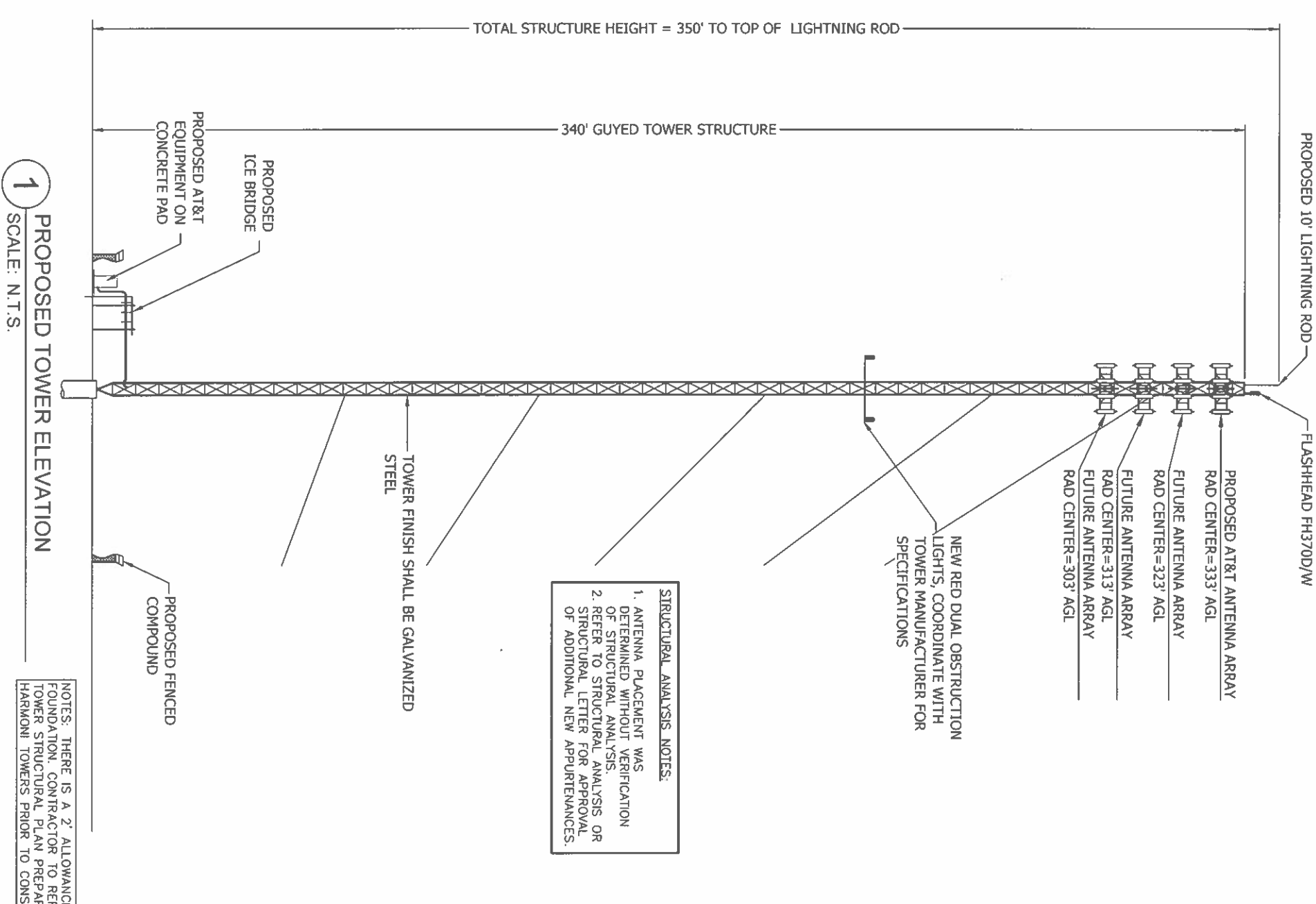
ISSUED FOR:

REV	DATE	DRWN	DESCRIPTION
A	11/15/21	DLS	REVIEW
0	11/29/21	MAS	FINAL
1	12/20/21	MAS	FINAL

B&T ENGINEERING, INC.  
4011  
Expires 12/31/21

BRAD ROBERT MILA  
KANSAS PROFESSIONAL ENGINEER  
12/20/21

ENLARGED COMPOUND LAYOUT  
SHEET NUMBER: C-3



**STRUCTURAL ANALYSIS NOTES:**  
 1. ANTENNA PLACEMENT WAS DETERMINED WITHOUT VERIFICATION OF STRUCTURAL ANALYSIS.  
 2. REFER TO STRUCTURAL ANALYSIS OR STRUCTURAL LETTER FOR APPROVAL OF ADDITIONAL NEW APPURTENANCES.

**1 PROPOSED TOWER ELEVATION**  
 SCALE: N.T.S.

NOTES: THERE IS A 2' ALLOWANCE FOR FOUNDATION. CONTRACTOR TO REFER TO THE TOWER STRUCTURAL PLAN PREPARED FOR HARMONI TOWERS PRIOR TO CONSTRUCTION.

			HARMONI TOWERS CRUPPERS CORNER / CRUPPERS CORNER RS FA# 15448494 / 12569589 SITE ID: KSWIT2028 / KSL06136 PACE# MRKSL046811 PROJ TRACKING # 3210A0YAY6 SOUTH K96 HIGHWAY HUTCHINSON, KS 67501 RENO COUNTY PROPOSED 340' GUYED TOWER
			PROJECT NO: C0144749/016.01 CHECKED BY: DLS ISSUED FOR:
REV. DATE DRWN DESCRIPTION A 11/15/21 DLS REVIEW 0 11/29/21 MAS FINAL 1 12/20/21 MAS FINAL	B&T ENGINEERING, INC. 4011 Expires 12/31/21		TOWER ELEVATION SHEET NUMBER: C-4

**Maps of Existing Tower (Green Circle) & Proposed Tower (Black X)**



**Distance Between Existing Tower & Proposed Tower: 1,711 feet or 0.32 miles**





**MAP 171**

DATE OF MAP 3/15/22

200 ft

**THIS PROPERTY OWNERSHIP MAP IS FOR TAX PURPOSES  
ONLY IT IS NOT INTENDED FOR CONVEYANCES, NOR IS  
IT A LEGAL SURVEY**

1 inch = 632 feet  
**RENO COUNTY KS**



sde.SDE.Cadastral\_Line ——— <all other values> ALPHATAG ——— Easement Line — - Lot Line ——— Parcel Line





Sender's email: [gcafer@morrislaing.com](mailto:gcafer@morrislaing.com)  
 Direct Phone: (785)430-2003  
 Direct Fax: (785)232-9983

Robert I. Guenther  
 A.J. Schwartz  
 Jeffery L. Carmichael  
 Robert W. Coykendall  
 Robert K. Anderson  
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Ryan M. Peck  
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 Sarah G. Briley  
 Grant A. Brazill  
 Alex P. Robinson  
 Ben K. Carmichael  
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 Jackson C. Ely  
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 H. Hurst Coffman  
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\*Resident & Licensed in FL  
 o Licensed only in IL & MI

March 8, 2022

Matt Mock  
 South Hutchinson Code Enforcement Officer  
 via email to: [Mock@southhutch.com](mailto:Mock@southhutch.com)

Re: Harmoni Towers Conditional Use Permit (CUP) in South Hutchinson, Kansas

Dear Mr. Mock:

My name is Glenda Cafer and I represent Harmoni Towers (Harmoni) on its request for a Conditional Use Permit (CUP) to build a cell tower in South Hutchinson. I attended the Planning Commission (Commission) meeting on January 11, 2022, at which Harmoni's application was initially considered.

This letter is in response to the February 10, 2022, letter submitted by Mr. Patrick Edwards on behalf of SBA Towers V, LLC (SBA). I am also responding to your February 15<sup>th</sup> email to Mike Nuckols, Harmoni's land representative on this project, indicating that Harmoni's application was deleted from the City's computers when your predecessor left employment and that the best way for this to go forward is for Harmoni to start all over again with a new application.

### **I. Background Information**

In late October or early September of 2021, Harmoni's previous land representative, Cheryl Marlin, began working with the city on Harmoni's CUP application. A short summary of events is helpful to understand the status of this case and Harmoni's positions set out below:

09/07/21 Ms. Marlin sent an email to Joseph Turner (City Administrator) submitting Harmoni's survey in follow-up to their phone conversation on that day. She told

March 8, 2022

Page 2

Mr. Turner that Matt Mock had said the location for the Harmoni tower is already zoned for towers so the matter should be able to go straight to the Commission.

9/21/21 By email, Mr. Turner referred Ms. Marlin to Matt Mock and said Matt could provide her with the information she needs.

9/22/21 Ms. Marlin sent an email to Mr. Mock and Mr. Turner setting out certain CUP provisions in the Code and stating that Mr. Mock had advised her these items would be waived due to the SBA tower already being installed a half mile away. She asked Mr. Mock to confirm that this was accurate.

9/30/21 Mr. Mock emailed Ms. Marlin stating that her understanding is correct, and someone should get hold of him to get approval from the Commission and then the City Council (Council).

Ms. Marlin asked what Mr. Mock needed from her at this point, specifically mentioning a standard application or fees and whether there would be a public hearing.

Mr. Mock responded that “there’s no application or fee” and that he’d put the matter on the agenda and for her “just to have maybe a map of the area and some info on what the tower is going to be used for.”

11/15/22 Ms. Marlin’s replacement, Mike Nuckols, emailed Mr. Mock asking (1) if Ms. Marlin had emailed him the Zoning Drawings, to which Mr. Mock answered yes, (2) if the matter was coming before the Commission on December 13<sup>th</sup>, to which Mr. Mock responded it was, and (3) what else Harmoni might need to submit, to which Mr. Mock said, “I think we have everything”.

[The application was later postponed from the December to the January Commission meeting due to scheduling conflicts.]

01/11/22 Commission Meeting:

Harmoni’s representatives explained:

AT&T currently has facilities on existing SBA towers located on property near the site proposed for Harmoni’s Project, however, AT&T’s contract with SBA is expiring and negotiations between AT&T and SBA have failed to result in an acceptable renewal agreement. This is happening in a number of locations in Kansas and across the country as SBA has insisted upon extremely high rates that continue to escalate each year. This increases costs to customers for cell and broadband service and can threaten AT&T’s (and other carriers’) ability to provide efficient and reliable service to an area. As long as SBA is “the only game in town”, SBA has the ability to insist upon these excessively high charges.

March 8, 2022

Page 3

In response to this problem, AT&T has entered into an agreement with Harmoni to locate on Harmoni's towers throughout the state. It is Harmoni's obligation to site and obtain approval of the towers that will compete with the existing SBA towers, and that is what Harmoni is pursuing with this CUP.

Legal counsel for Harmoni, Glenda Cafer, explained how K.S.A. 66-2019 and federal law impose substantial limitations on the power of local zoning authorities in reviewing or denying cell tower CUPs.

Attorney for SBA, Luke VanFleteren, appeared in opposition to the application.

There was one written public comment received from Mike Smith in opposition. Two members of the public in attendance at the meeting said they weren't really sure of their position, but they felt allowing for the competition this tower would provide was important as it improves quality of service and price. Another member of the public at the meeting who is a retired air traffic controller asked about the impact of the tower on the flight paths in the area. Harmoni explained the tower had received FCC approval and a copy of that approval was provided to the Commission.

The Commission tabled the application until its February 14<sup>th</sup> meeting so that they could let the neighbors weigh in if they wanted. Ms. Cafer explained how K.S.A. 66-2019 provides that an application is deemed approved by operation of law if no action is taken on it within 150-day deadline. Although no one at the meeting knew the exact date the application was considered submitted, everyone believed postponing to February 14<sup>th</sup> wouldn't cause a problem with the 150-day deadline.

2/15/22 Mr. Mock sent an email to Mr. Nuckols explaining that the application materials had been deleted from his computer and advising that the best way for this to go forward is to start all over again with a new application.

## ***II. Response to SBA's Letter***

Federal and State laws have been adopted to promote the ability of companies such as Harmoni to build towers to ensure customers will have reliable cell and broadband service at reasonable rates. These laws are based on legislative determinations that such tower construction is in the public interest. The laws substantially restrict the power of the local zoning authority to deny applications or impose onerous or discriminatory conditions upon applicants.

Mr. Edwards' letter is consistent with his presentation at the January 11, 2022, Commission meeting. His arguments regarding the application and impact of K.S.A. 66-2019 are consistent with the arguments SBA has made in various local zoning jurisdictions through-out Kansas in opposition to the cell tower applications of Harmoni. His letter does not address any of the Federal

March 8, 2022

Page 4

laws applicable to cell tower construction, but I will provide some information about those in addition to addressing SBA's erroneous arguments on Kansas law.

### *Federal Law*

By way of background, federal law limits the authority of local governments to deny applications for the construction of wireless towers within their jurisdictions. The Telecommunications Act of 1996 (the "Federal Act") provides rights to wireless service providers and establishes limitations upon state and local zoning authorities with respect to wireless facility siting applications. Under the Federal Act, the county must take action on an application "within a reasonable period of time,"<sup>1</sup> and denial of an application must be "in writing and supported by substantial evidence contained in a written record."<sup>2</sup> Under the Federal Act, state and local governments may not unreasonably discriminate among providers of functionally equivalent services,<sup>3</sup> and state and local governments are prohibited from considering the effects of FCC-compliant radio-frequency emissions.<sup>4</sup>

The Federal Act also prohibits a local government from denying an application for a wireless telecommunications facility where doing so would "prohibit or have the effect of prohibiting" the carrier from providing wireless telecommunications services.<sup>5</sup> The Federal Communications Commission ("FCC") has confirmed that an "effective prohibition" occurs when the decision of a local government materially inhibits wireless services.<sup>6</sup> If a local government materially inhibits a wireless provider's service, local standards that would otherwise be sufficient to permit denial of the application are preempted and the municipality must approve the wireless facility.

### *State Law - K.S.A. 66-2019*

Declaring that deployment of wireless facilities is "critical to ensuring that all citizens of the state have true access to broadband and other advanced technology and information," the Kansas state legislature passed legislation, effective October 2016, that streamlines the permitting process for deployment of wireless networks and restricts a county's discretion to deny a wireless provider's application.<sup>7</sup> The Kansas legislature stated that "The permitting, construction, modification, maintenance and operation of wireless facilities are critical to ensuring that all citizens in the state have true access to broadband and other advanced technology and information,"<sup>8</sup> and to carry out that policy, the Kansas statute places a number of limitations on local zoning authorities, in addition to the restrictions imposed by Federal law, including barring such authorities from

---

<sup>1</sup> 47 U.S.C. § 332(c)(7)(B)(ii).

<sup>2</sup> 47 U.S.C. § 332(c)(7)(B)(iii).

<sup>3</sup> 47 U.S.C. § 332(c)(7)(B)(i)(I).

<sup>4</sup> 47 U.S.C. § 332(c)(7)(B)(iv); *see also* K.S.A. 66-2019(f)(14) (prohibiting an authority from rejecting an application "based on perceived or alleged environmental effects of radio frequency emissions or exposure").

<sup>5</sup> 47 U.S.C. § 332(c)(7)(B)(i)(II).

<sup>6</sup> *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) at ¶¶ 34-42 (FCC rejects the need for wireless providers to meet judicially-created coverage gap and least instructive means tests); *see also*, *In the Matter of California Payphone Association Petition for Preemption, Etc.*, Opinion and Order, FCC 97-251, 12 FCC Rcd 14191 (July 17, 1997).

<sup>7</sup> K.S.A. 66-2019.

<sup>8</sup> K.S.A. 66-2019(a).

March 8, 2022

Page 5

requiring an applicant to demonstrate a “need” for a wireless tower or from evaluating an application based on the availability of other potential locations for a tower.<sup>9</sup>

While the city can require Harmoni to state that it has conducted an analysis of available collocation opportunities on existing wireless structures, it can do so only for the purpose of confirming that Harmoni undertook the analysis. The county cannot require an applicant to further document its analysis or explain why existing towers are insufficient. It also cannot dictate what reasons are acceptable for rejecting collocation. This is exactly what SBA is asking you to do and it is contrary to the law of Kansas.

A. K.S.A. 66-2019 Applies to Towers Located on Private Property

SBA takes the position that K.S.A. 66-2019 is only applicable to towers on public property. This argument is contrary to a plain reading of the statute, is inconsistent with the legislative purpose behind adopting the statute and has already been rejected by other local zoning authorities.

SBA asserts that the heading for the statute proves it is intended to apply only to public property because it specifically states that it applies to public lands and public right-of-way. The heading of a statute is not considered part of the statute.<sup>10</sup> But even if it were, the heading of K.S.A. 66-2019 makes clear it applies to all cell tower applications. It reads as follows:

Siting of wireless infrastructure; public lands and public right-of-way; wireless providers and governing bodies, rights and requirements for application process.

There are four areas the heading informs us the statute addresses:

1. Siting of wireless infrastructure.
2. Public lands and public right-of-way.
3. Wireless providers and governing bodies.
4. Rights and requirements for application process.

The first, third and fourth areas addressed by the statute are not limited in scope by the second area. Each is listed individually as a topic addressed by the statute. The statute contains subsections (a) through (l), with only subsections (d) and (e) addressing the public right-of-way. The other ten subsections apply to all applications. The heading does not have to say “private property” in order for the statute to apply to private property, as SBA argues.

Applying the statute to private property as well as public right-of-way is consistent with the other subsections.<sup>11</sup> Sections (d) and (e) specifically address issues only relevant to public property and

---

<sup>9</sup> See K.S.A. 66-2019(f).

<sup>10</sup> See *Bonanza, Inc. v. Carlson*, 269 Kan. 705, 718 (2000), citing to *State v. Logan*, 198 Kan. 211, 217 (1967) - “The introductory heading is not dispositive because the title or caption prefacing the text of a statute is prepared by the Revisor of Statutes and forms no part of the statute itself.”

<sup>11</sup> Subsection (a) – the public policy purpose of the statute; subsection (b) – the definitions; subsection (c) – assessment of fees and costs for application processing; subsection (f) – restrictions on local zoning authorities imposed “to ensure uniformity across the state with respect to consideration of *every* application”; subsection (g) - consolidation of small network applications; subsection (h) - time deadlines for processing applications; subsection (i) - prohibiting

March 8, 2022

Page 6

public authorities. The fact that certain sections of the statute are specifically addressing cell tower applications on public property does not serve to limit the other ten subsections of the statute. SBA tries to read into the statute limiting language that does not exist.<sup>12</sup>

If the legislature intended to exempt cell tower applications on private property from the application of K.S.A. 66-2019, it would have said so in the statute. In fact, it did exactly that in subsection (k) for military installations, where it states, “Nothing in this section shall be construed to apply to military installations.” The legislature did not include such an exemption for privately owned property.

SBA asserts that the legislative history on K.S.A. 66-2019 indicates that the legislature didn’t intend for the statute to apply to private property. First, turning to legislative history is only appropriate if a plain reading of a statute yields an ambiguity or a lack of clarity, thus necessitating application of the rules of statutory construction to resolve the ambiguity. *Higgins v. Abilene Mach., Inc.*, 288 Kan. 359, 362 (2009). There is no such ambiguity here. K.S.A. 66-2019 is clear in its application to private property, as evidenced by the fragility of the assertions made by SBA in an attempt to argue otherwise. It is not necessary to fumble around in legislative history and speculate as SBA has done here.

That said, neither the Bill Summary prepared by the Legislative Research Department nor the testimony on the Bill supports SBA’s position. A Bill Summary gives the legislature a high-level overview of the legislation being proposed and, like the statute itself, does not need to specifically say it applies to private property. The Bill Summary says the purpose is “to ensure uniformity across the state with respect to consideration *of every application...*” It is very clear the intent is not to limit the statute’s application to only public right-of-way.

Further, the statement in the Bill Summary that says the statute “requires the authority to consider input from property owners adjoining the affected public right-of-way” doesn’t mean the law is only applicable to public right-of-way. It’s just saying that when the public authority owns the land for the tower, it still has to get public input.

Similarly, the Bill Summary’s explanation about the Bill giving the wireless provider the right to access the public right-of-way should not be interpreted to grant any right to construct, maintain, or operate wireless services on property owned by the authority outside the public right-of-way does not restrict the statute to only public right-of-way applications. This just gives the tower owner the right to construct on public right-of-way; it doesn’t *grant a right* to construct on private land (like it does on public right-of-way) because that’s a decision left to the private landowner. But if a landowner and tower company negotiate a contract for a cell tower, the law applies to the application for that tower.

---

authorities from instituting moratoriums on applications; subsection (j) - retention of other zoning authority not inconsistent with the limitations imposed by the statute; subsection (k) – excluding military installations from the provisions of the statute; and subsection (l) - setting the statute’s effective date.

<sup>12</sup> Appellate courts will not speculate about legislative intent or read a statute in a manner that adds something not readily contained within it.” *Redd v. Kan. Truck Ctr.*, 291 Kan. 176 (2010).

March 8, 2022

Page 7

The wireless carriers' testimony on the Bill also doesn't support SBA's position. The testimony is not inconsistent with the statute applying to applications on private property. Those testifying carriers did not claim the local authority retains all its zoning power; they correctly stated the local authority retains its power "consistent with state and federal law". That's exactly what the statute says. Furthermore, assuming the League of Municipalities would have commented in a particular way if the statute applied to private land or imputing to them an understanding of the Bill based on the assumption of how they would comment, is meaningless.

SBA also argues that applying the limiting provisions of subsection (f) of the statute to private property will cause it to conflict with subsection (j) which reserves to the local zoning authority the right to continue to exercise its zoning, land use, planning and permitting authority. But SBA ignores the qualifying words in the first part of subsection (j) which state, "*Subject to the provisions of this section and applicable federal law, ...*" K.S.A. 66-2019 substantially limits the authority of the local zoning authority, as does the federal law, but they do not take all such authority away. Subsection (j) makes clear that the local zoning authority retains some power in those remaining areas. SBA admits as much in its letter, where it states that applying subsection (f) to private property "would strip local zoning authorities of *nearly* all their power, and it "completely strips local governments of the *vast majority* of their authority". There is no conflict between subsections (f) and (j) if the statute is applied to private property.<sup>13</sup>

SBA is correct that K.S.A. 66-2019 has not yet been interpreted by the courts of Kansas. But the most fundamental rule of statutory construction is that "the legislature's intent governs if [it] can be ascertained." *Higgins* at 361. "The first step is to ascertain legislative intent through the language employed, giving ordinary words their ordinary meaning. *Higgins* at 361-62. "When a statute is plain and unambiguous, this court must give effect to the statute's express language, instead of determining what the law should or should not be. Appellate courts will not speculate about legislative intent or read a statute in a manner that adds something not readily contained within it." *Redd v. Kan. Truck Ctr.*, 291 Kan. 176 (2010).

The language of K.S.A. 66-2019 is not ambiguous. The language of the statute does not limit its application to only public property. The purpose of the statute is clearly stated; it is to "ensure uniformity across the state with respect to consideration of *every application, ...*" The language of the statute expresses the legislature's intent. Employing additional statutory construction to reach a different conclusion, as SBA has done, is inappropriate.

#### B. SBA's Arguments for Denial of the Application Violate the Law

SBA argues that Harmoni's application should be denied because it won't noticeably improve coverage in the area compared to what SBA is providing. This is an example of exactly what K.S.A. 66-2019(f) and federal law are seeking to prohibit – competitors like SBA obstructing cell

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<sup>13</sup> Furthermore, Courts must consider various provisions of an act *in pari materia* to reconcile and bring the provisions into workable harmony if possible. *State v. Breedlove*, 285 Kan. 1006, 1015 (2008). Although there is no conflict in K.S.A. 66-2019, when there is two potential interpretations of a statute, the court is required to adopt the interpretation that resolves the conflict, not the one that perpetuates it.

March 8, 2022

Page 8

tower applications to retain their business advantage to the detriment of expansion and improvement of the wireless network in Kansas.

Harmoni selected the proposed location in South Hutchinson as the best available and least intrusive means to provide the infrastructure needed in this case. K.S.A. 66-2019(f) restricts, among other things, the Commission from (1) requiring an applicant to submit information about its business decisions, (2) *evaluating a cell tower application based on the availability of other potential locations for placement*, or (3) requiring information be submitted concerning the need for the structure. SBA is arguing the city should perform this prohibited analysis and then deny the application based upon the availability of SBA's tower. This is a clear violation of K.S.A 66-2019.

The Federal Act also prohibits a local government from denying an application for a wireless telecommunications facility when doing so would prohibit or have the effect of prohibiting the carrier from providing wireless telecommunications services. Denial of Harmoni's application in this case would materially inhibit Harmoni and AT&T's ability to provide their wireless services. For AT&T, this includes providing FirstNet service in Kansas for emergency agencies.

Additionally, under the Federal Act and under K.S.A. 66-2019, the local zoning authority cannot unreasonably discriminate among providers of functionally equivalent services<sup>14</sup>, and granting SBA the right to locate its tower in the area while denying Harmoni the same ability constitutes unreasonable discrimination.

While federal and state law have imposed limitations on the authority of local zoning jurisdictions for cell tower applications, Harmoni recognizes that the city may continue to exercise zoning, land use, planning and permitting authority considering factors such as those set out in *Golden v. City of Overland Park*, 224 Kan. 591 (1978) **to the extent such factors are not inconsistent with restrictions imposed by the Federal Act and K.S.A. 66-2019**. The arguments made by SBA for denying Harmoni's application are inconsistent with the restrictions imposed by federal and state law.

### C. Harmoni Has Complied with the City's Rules

SBA asserts that, even if K.S.A. 66-2019 applies to private property, Harmoni's CUP cannot be approved because (1) Harmoni did not file an application in conformance with Section 27-104(24) of South Hutchinson's zoning code, and (2) Harmoni did not provide a statement on the proposed use as required by Section 27-101. Neither of these assertions is accurate.

The city is the authority that determines whether the information an applicant has provided is sufficient to meet its requirements and allow the processing of an application. Harmoni worked diligently with the city to provide detail about the project - including an explanation of its proposed use - sufficient to meet the city's standards under Section 27-101, *et. seq.* Harmoni's submittals addressed the information needed for an application and development plan under the code as applicable to a cell tower project like Harmoni's.

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<sup>14</sup> 47 U.S.C. §332(c)(7)(B)(i)(I).



March 8, 2022

Page 9

The correspondence between the city and Harmoni shows that the last item of information the city requested from Harmoni was submitted on November 12, 2021. Section 20-102 states that the development plan is to be submitted with the application and that “no application shall be deemed complete nor set for public hearing until said development plan is submitted”. The city set Harmoni’s application for hearing on December 13, 2021, sending out notices required by the Code prior to hearing, so the city clearly deemed the application to be complete at least as early as November 22, 2021 (20 days before the hearing). [Section 34-102.]

SBA also argues that the CUP cannot be approved because the setback for the proposed tower is not “equal distance from all property lines as it is in height” as provided for under Section 27-104(24)(A) of the code. This question came up during the Commission meeting. Harmoni explained that the lay out of the land would not allow for a bigger set back, but that engineering standards for the tower would allow it to withstand anything up to an actual tornado. The documentation on those standards has been provided by Harmoni to the Commission.

Denying a cell tower application for this reason appears to run afoul of the limitations imposed on the local zoning authority under state and federal law. Considering the engineering standards for the tower and its proposed location within the property lines, there is no reasonable basis to impose an equal distance set-back, especially where the location needed for the tower is physically unable to accommodate this parameter. Denying the application for this reason would unnecessarily prohibit or have the effect of prohibiting Harmoni and AT&T from providing services or would materially inhibit such services.

Also, Section 27-104(24) applies to structures 50 feet or more in height. There is a question as to whether the city has consistently imposed this requirement on other CUP applicants, including SBA. Under the Federal Act and the state statute, local zoning authorities may not unreasonably discriminate among providers of functionally equivalent services.<sup>15</sup>

#### D. The 150-Day Deadline was Triggered and is Running

In your February 15<sup>th</sup> email to Mike Nuckols, you stated that the information Harmoni submitted on its CUP request had been deleted from the city’s computers so the best way for this to go forward is for Harmoni to start all over again with a new application. Since a valid application was submitted by Harmoni and accepted by the city, Harmoni believes the 150-day timeline imposed under K.S.A. 66-2019 continues to run on the initial application. Using November 22, 2021, as the latest filing date possible, the 150 days would run on or about April 21, 2022. If the city’s governing body has not acted on the application by that date, Harmoni believes the application must be deemed approved pursuant to K.S.A. 66-2019(h)(3).

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<sup>15</sup> K.S.A. 66-2019(h)(1)(C) – “If an authority denies an application, there must be a reasonable basis for the denial. An authority may not deny an application if such denial discriminates against the applicant with respect to the placement of the facilities of other investor-owned utilities, wireless service providers, wireless infrastructure providers or wireless carriers.”

March 8, 2022  
Page 10

***III. Request for Action***

Harmoni respectfully requests that a copy of this letter be provided to the members of the South Hutchinson Planning Commission, and that the Commission move forward on Harmoni's CUP application at its next meeting on March 14, 2022.

Please let me know if you have any additional questions about the matter.

Very truly yours,

*Glenda Cafer*

Glenda Cafer  
Attorney for Harmoni Towers

cc: Stanley Juhnke  
South Hutchinson City Attorney  
via email to the city clerk: [denisem@southhutch.com](mailto:denisem@southhutch.com)

Joseph Turner  
City Administrator of South Hutchinson, KS  
via email: [josephturner@southhutch.com](mailto:josephturner@southhutch.com)



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 Roger N. Walter  
 S. Lucky DeFries  
 James D. Young  
 Kimberly K. Bonifas  
 Cameron V. Michaud

Ryan M. Peck  
 Shannon M. Braun  
 Will B. Wohlford  
 Danielle J. Carter<sup>◇</sup>  
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 ◇ Licensed only in IL & MI

April 25, 2022

Joseph Turner  
 City Administrator  
 City of South Hutchinson  
 2 Main St.  
 South Hutchinson, KS 67505  
 via email to: [joseph@southhutch.com](mailto:joseph@southhutch.com)

Re: Harmoni Towers Conditional Use Permit (CUP) No. 2022-01  
 South Hutchinson, Kansas

Dear Mr. Turner:

Thank you for giving me the opportunity to provide some additional information to the South Hutchinson City Council on the above referenced CUP application of my client, Harmoni Towers. I've previously submitted a letter to Matt Mock dated March 8, 2022. I understand that correspondence is in the official record so I will try to avoid repeating myself in this letter.

I attended the Planning Commission's meeting on April 11, 2022, at which a few questions arose that I want to provide some additional information on for the City Council's consideration at its meeting on May 2, 2022.

One question concerned the FAA's report and approval of the proposed tower obtained by Harmoni prior to filing the application. I provided the FAA report to you last week so will not include another copy with this letter. Please include the FAA letter in the record presented to the Council.

There was discussion at the meeting about the benefits to South Hutchinson of approving the Harmoni tower in light of the existence of the SBA tower. I must reiterate that the Kansas statute

April 26, 2022

Page 2

enacted in 2016<sup>1</sup> does not permit denial on the basis of the potential to locate on an existing structure. But in an attempt to assist the Council in its deliberations, and since the existing tower owner, SBA, has argued there is no such benefit, I'm providing the following list of benefits:

1. SBA's price-gouging affects the capital budgets of providers by diverting resources, which are reduced and can prevent equipment upgrades and Network expansion.
2. SBA wastes time and dollars due to amending the lease every time a provider wants to modify (ever changing) equipment.
3. Harmoni's tower is much further away from homes (0.45 mile vs. 620') & businesses (1,486' vs. 265') than the SBA tower.
4. Harmoni doesn't know the condition of the SBA tower (built by Horvath 14 years ago) but Harmoni's would be brand new with up-to-date construction and technology.
5. Right now, SBA is the only game in town for AT&T and other providers. The Harmoni tower injects competition into the market and market-based competition benefits consumers. The two community residents who attended the Board's meeting agreed that competition is a benefit. Time delays/fees inhibiting the provider's use of the SBA tower don't happen on the Harmoni Tower. As such, South Hutchinson can obtain upgraded wireless service *faster and more often*. This increases public safety as 85%+ of E-911 calls are from cell phones - FirstNet is the AT&T nationwide high-speed wireless broadband network dedicated to public safety. It allows first responders, emergency personnel and other essential workers to communicate during an emergency situation and it is designed to cut through the clutter of commercial traffic.
6. South Hutchinson may not be getting the *best and newest* equipment on the SBA tower. But the Harmoni tower gives AT&T "Superior Functionality" (aka *speed and flexibility to address coverage and capacity issues*).
7. Cost-effective operation of AT&T and other providers benefits everybody. Technology is ever-changing. Time is of the essence.
8. Other carriers like VZW, Sprint-T-Mobile, Dish, etc. that operate in this area, may want the same benefits of being on the Harmoni tower. This Harmoni tower may also improve other carrier's ability to upgrade/expand their networks in South Hutchinson.

Another question that arose at the meeting concerned the restrictions imposed by the Federal Telecommunications Act of 1996 ("FTA"). As I explained at the meeting, the FTA prohibits the City from denying Harmoni's application where doing so would "prohibit or have the effect of prohibiting the provision of personal wireless services."<sup>2</sup> The FCC has ruled that an effective prohibition in violation of the Act "includes materially inhibiting additional services or improving

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<sup>1</sup> K.S.A. 66-2019.

<sup>2</sup> 47 U.S.C. §332 (c)(7)(B)(i)(II).

April 26, 2022

Page 3

existing services.”<sup>3</sup> This analysis “focuses on the service the provider wishes to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality, all to offer a more robust and competitive wireless service for the benefit of the public.”<sup>4</sup>

Denying Harmoni’s application in this case would materially inhibit the provisioning of additional services and the improvement of existing services, losing the benefits to consumers as outlined above. In my opinion, denial of the CUP on the basis of something like aesthetics and/or setback rules is directly in conflict with the FTA. As Harmoni’s representative, Mr. Mike Nuckols, explained at the meeting, the tower is engineered so that it will withstand substantial wind conditions. In the unlikely event that the tower would fall, it is designed to collapse within its own area. Thus, the public safety concerns underlying the setback rules don’t exist.

In addition to restrictions on the City’s ability to materially inhibit the provisioning of wireless tower services, both the FTA and the state statute prohibit a local zoning authority from discriminating against a cell tower applicant in relation to how other similar applicants have been treated. My understanding is that South Hutchinson has waived the 1X Tower Height setback on many other applications, including but not limited to:

- SBA 340’ GWT (existing site; built ‘08) is 110’, 206’, 243’ and 333’ from property lines
- Alltel 115’ MP (1,000’ S. of City Hall; built ‘11) is 24’ and 43’ from property lines
- VB 300’ GWT (.46 mile SW of existing site; built ’18) is 204’ from a property line.

Thank you for providing this correspondence to the City Council for consideration at its May 2, 2022, meeting. Please let me know if you have any additional questions about the matter.

Very truly yours,

*Glenda Cafer*

Glenda Cafer

Attorney for Harmoni Towers

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<sup>3</sup> FCC Declaratory Ruling and Third Report and Order, Sept. 26, 2018, WT Dkt. No. 17-79, ¶37.

<sup>4</sup> *Id.* at ¶40 n.95.



Mail Processing Center  
 Federal Aviation Administration  
 Southwest Regional Office  
 Obstruction Evaluation Group  
 10101 Hillwood Parkway  
 Fort Worth, TX 76177

Aeronautical Study No. Exhibit D - 14  
 2021-ACE-8856-OE  
 Prior Study No.  
 2021-ACE-7891-OE

Issued Date: 10/31/2021

Andrew Smith  
 RESCOM Environmental Corp  
 PO Box 361  
 Petoskey, MI 49770

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Antenna Tower Cruppers Corner 1  
 Location: Hutchinson, KS  
 Latitude: 37-58-30.90N NAD 83  
 Longitude: 97-56-13.00W  
 Heights: 1534 feet site elevation (SE)  
 350 feet above ground level (AGL)  
 1884 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure is to be marked/lighted in accordance with FAA Advisory circular 70/7460-1 M, Obstruction Marking and Lighting, a med-dual system-Chapters 4,8(M-Dual),&15.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
- Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

This determination expires on 05/01/2023 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within

6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application. Exhibit D - 15

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (816) 329-2508, or [vee.stewart@faa.gov](mailto:vee.stewart@faa.gov). On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2021-ACE-8856-OE.

**Signature Control No: 495054586-499321483**

( DNE )

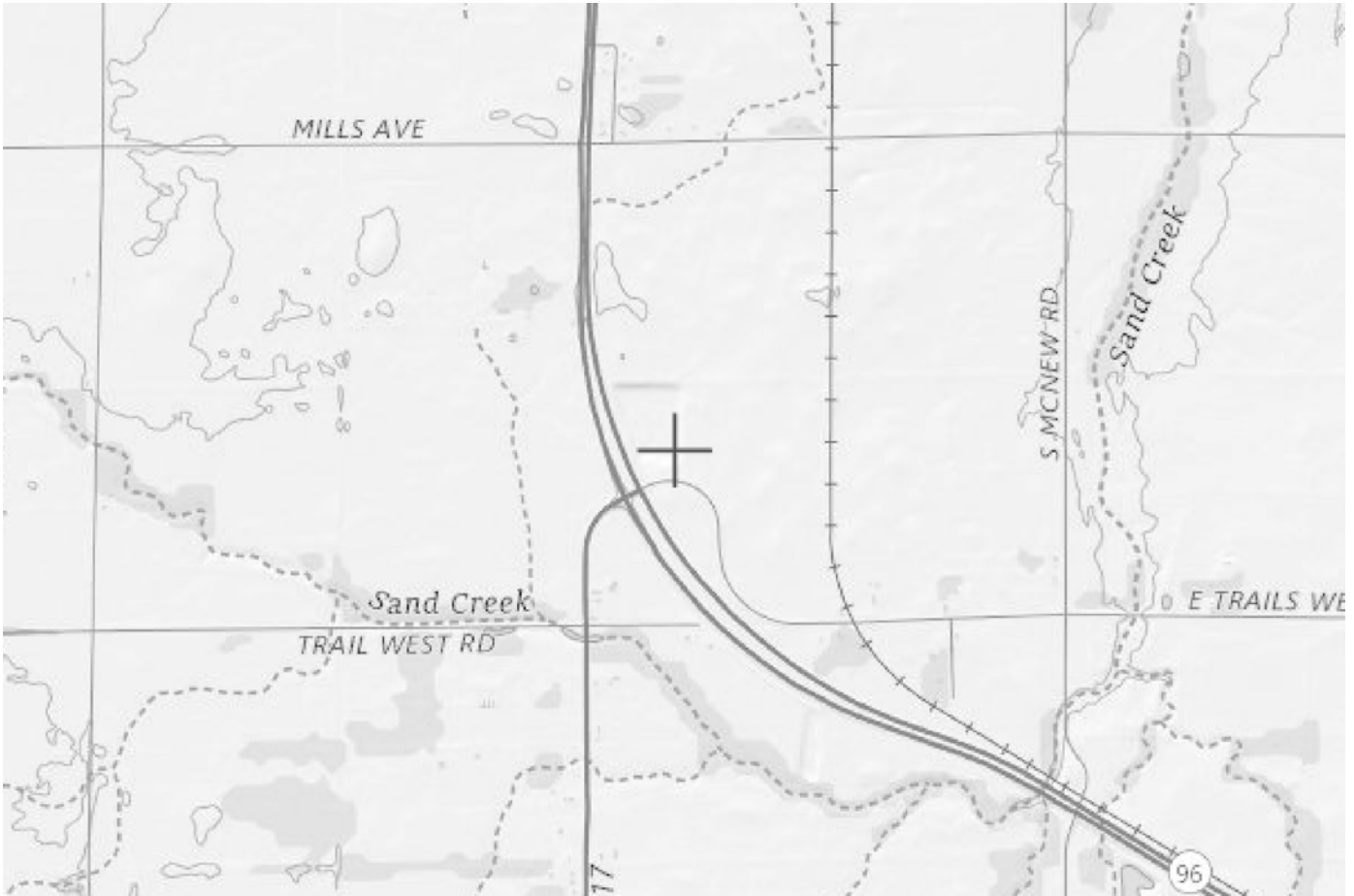
Vee Stewart  
Specialist

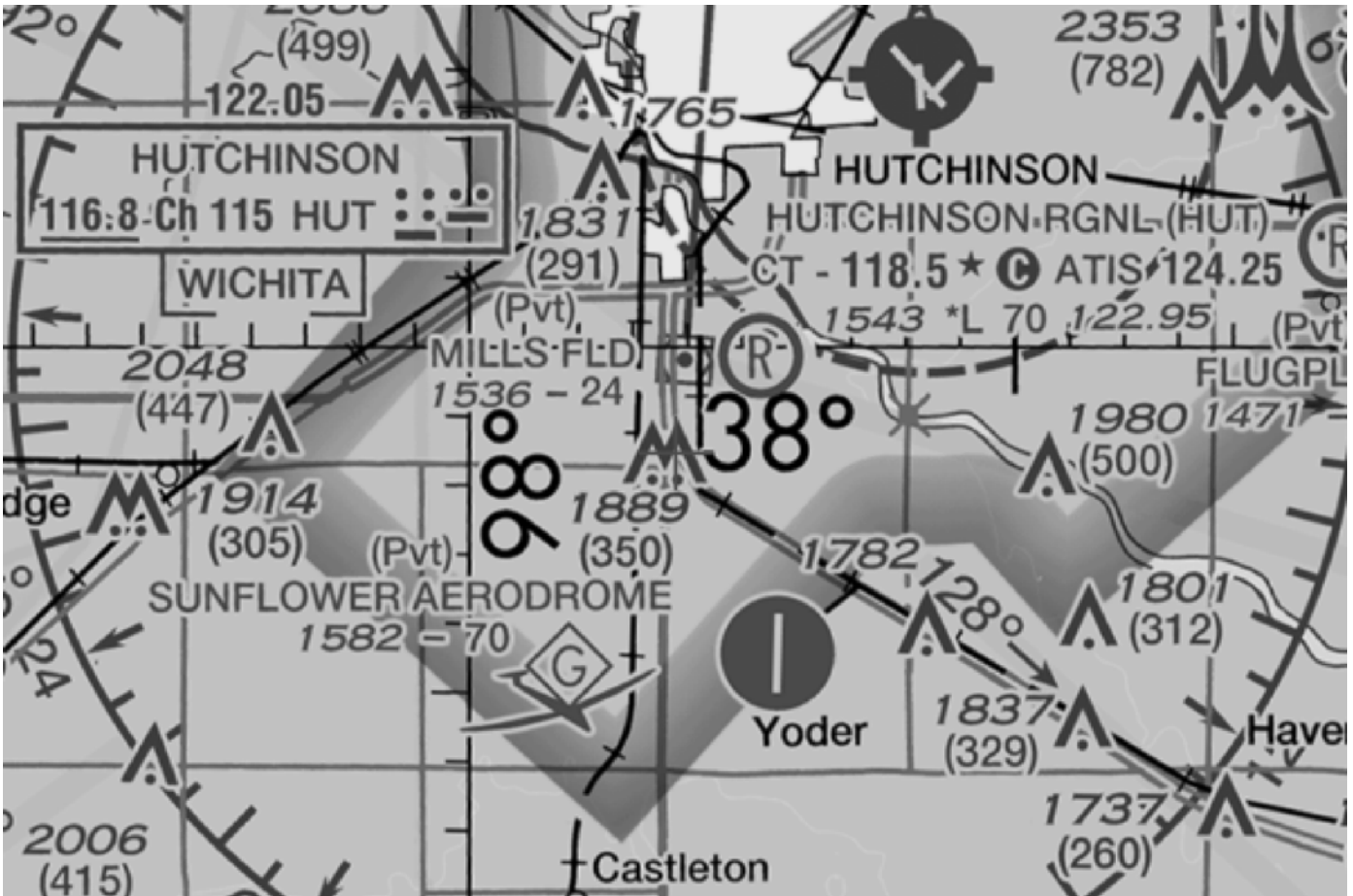
Attachment(s)  
Frequency Data  
Map(s)

cc: FCC

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
6	7	GHz	55	dBW
6	7	GHz	42	dBW
10	11.7	GHz	55	dBW
10	11.7	GHz	42	dBW
17.7	19.7	GHz	55	dBW
17.7	19.7	GHz	42	dBW
21.2	23.6	GHz	55	dBW
21.2	23.6	GHz	42	dBW
614	698	MHz	1000	W
614	698	MHz	2000	W
698	806	MHz	1000	W
806	901	MHz	500	W
806	824	MHz	500	W
824	849	MHz	500	W
851	866	MHz	500	W
869	894	MHz	500	W
896	901	MHz	500	W
901	902	MHz	7	W
929	932	MHz	3500	W
930	931	MHz	3500	W
931	932	MHz	3500	W
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1670	1675	MHz	500	W
1710	1755	MHz	500	W
1850	1910	MHz	1640	W
1850	1990	MHz	1640	W
1930	1990	MHz	1640	W
1990	2025	MHz	500	W
2110	2200	MHz	500	W
2305	2360	MHz	2000	W
2305	2310	MHz	2000	W
2345	2360	MHz	2000	W
2496	2690	MHz	500	W







# STINSON

Patrick A. Edwards  
 DIRECT 316.268.7938  
 patrick.edwards@stinson.com

February 10, 2022

Matt Mock  
 Code Enforcement Officer for City of South Hutchinson  
[Mock@southhutch.com](mailto:Mock@southhutch.com) (sent via email)

Re: Opposition to Harmoni's Request for New Cell Tower

Dear South Hutchinson Planning Commission members:

My name is Patrick Edwards and I am an attorney at Stinson LLP in Wichita. My colleague, Luke VanFleteren, attended your most recent meeting on January 11, 2022 and assisted with drafting this letter. My firm represents SBA Towers V, LLC ("SBA"), which owns and operates a 340-foot-tall cell phone tower located just southwest of 96 Highway and north of West Trail West Road near Crupper's Corner Appliance Store, approximately 3 miles south of South Hutchinson. SBA's tower was built in 2008, but it is technologically up-to-date. SBA's tower currently serves wireless carrier AT&T at 337 feet and has space available to add additional wireless carriers and equipment.

Luke VanFleteren appeared on behalf of SBA at the South Hutchinson Planning Commission meeting on January 11, 2022 to oppose the request to construct a new cell phone tower that was made by Harmoni Towers ("Harmoni") and B+T Group. The zoning drawings proposed a new 338-foot-tall cell tower to be built just 1/3 of a mile to the northeast of SBA's existing tower. At this meeting, Luke VanFleteren handed out an aerial map showing the location of SBA's existing tower and the proposed tower, as well as propagation maps that compared cell coverage on SBA's existing tower with likely cell coverage on the proposed tower, which demonstrate that the proposed tower would not noticeably improve cell coverage in the area. There were three residents who appeared at the meeting and shared their thoughts and questions as well, and you indicated that one resident had contacted you via email to note opposition to the proposed tower.

I write to provide responses and analysis of several issues that were raised at the Planning Commission meeting. There was discussion regarding K.S.A. § 66-2019 – the Kansas law regarding siting of wireless infrastructure – and whether it applies to Harmoni's permit request or precludes certain considerations. I will address those issues in this letter. However, whether or not that law applies to Harmoni's permit request, the Planning Commission cannot approve the request as presented because it fails to comply with Kansas law and the City of South Hutchinson Land Development Code for the following reasons:

1. Harmoni has not submitted a written application for a conditional use permit or a statement of the proposed use, as required by Code § 27-104(24) and 27-101; and
2. What limited documents Harmoni has provided shows its proposed tower comes nowhere close to satisfying the setback requirements from Code § 27-104(24)(A).

As a note, we made open records requests for all communications between and documents

1625 N. Waterfront Parkway, Suite 300, Wichita, KS 67206

STINSON LLP \ STINSON.COM

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South Hutchinson Planning Commission  
February 10, 2022

provided to or from Harmoni and the City related to Harmoni's request/application. From follow-up communications, it is our understanding that any email or other written communication with Harmoni has been lost, and there has been no written application filed in connection with Harmoni's request.

### **I. Kansas and South Hutchinson Rules Apply to Consideration of Harmoni's Request**

Based on information provided at the Planning Commission meeting, it is our understanding that Harmoni may have first approached South Hutchinson about siting a cell tower in October 2021, and since that time, the South Hutchinson Planning Commission has had some turnover and was not able to conduct certain meetings during the holiday season, which led to the request being heard in January 2022. While Harmoni has provided seven pages of design drawings for the proposed tower, no written application or other materials have been submitted to South Hutchinson for review.

Harmoni's requested tower is located south of the South Hutchinson city limits, and from conversations with Reno County and Matt Mock, it is our understanding that both the County and South Hutchinson understand the proposed tower location to be within the zoning jurisdiction of South Hutchinson. There is a Kansas statute, K.S.A. § 12-715b, that governs zoning of land outside city limits, such as the area at issue here. This statute allows cities to "adopt zoning regulations affecting all or any designated portion of land located outside the city but within three miles thereof."

This means that at least some zoning regulation must apply to Harmoni's request for a proposed cell tower. Because Section 1-103 of the South Hutchinson Land Development Code provides that the Code shall apply to land in the extraterritorial jurisdiction of the City, which should include the location of the proposed cell tower, the rules and the requirements of that Code must be applied when assessing whether Harmoni's request is proper. *See* Code § 1-103.

### **II. The South Hutchinson Land Development Code Places Requirements for Conditional Use Permits which have not been met**

The South Hutchinson Land Development Code provides for "conditional uses" and notes that radio and television broadcasting towers and/or stations as well as any tower or other similar structure 50 feet or more in height are considered "conditional uses" which may be approved by the governing body. *See* Code § 27-104(24).

Under the Land Development Code, before a conditional use permit can be granted, the applicant must present "a development plan in sufficient detail and a statement as to the proposed use of the buildings, structures, and premises." *See* Code § 27-101. While Harmoni has presented seven pages of design drawings of its proposed tower, it has not provided any statement as to the proposed tower or any written application for the Planning Commission to review. This written statement is required by the Code, because it gives the Planning Commission opportunities to review the development plan and statement and study the effect that the building, structure, or use will have on the surrounding property prior to submitting a recommendation to the governing body.

1625 N. Waterfront Parkway, Suite 300, Wichita, KS 67206

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CORE/3521750.0006/172128412.3

South Hutchinson Planning Commission  
February 10, 2022

*See* Code § 27-101. Because Harmoni has not submitted a written statement or other application, its request cannot be granted at this time.

The South Hutchinson Land Development Code further provides specific requirements for towers that are not met, and cannot be met, by Harmoni even with the limited design drawings provided so far. The Land Development Code requires that "[t]he location of every tower must be such that it is at least an equal distance from all property lines as it is in height." *See* Code § 27-104(24)(A).<sup>1</sup> This setback requirement is not optional, and Harmoni's design drawings make clear that the setback requirement has not been met with its proposed tower. Although the proposed tower is 338 feet tall, Harmoni proposes to build the tower at a location that is only 260.6 feet from the south property line and 162.2 feet from the east property line. During the January 11, 2022 Planning Commission meeting, Harmoni's representative admitted that proposed tower was not set back 338 feet from the property lines and stated the setback requirement was a difficulty given the size and shape of the property Harmoni is requesting to site the tower at. Absent a showing by Harmoni that the tower can be located at least 338 feet from all property lines, its request for a conditional use permit cannot be granted. While Harmoni's representative suggested the tower could be engineered to decrease the fall zone, this has no bearing on the Planning Commission's recommendation, as the Land Development Code is clear that the tower must be set back at least 338 feet from the property line regardless of how it is constructed.

Below, I will address the Kansas statute that was discussed at the Planning Commission meeting and its rules whether it permits the Planning Commission to consider evidence such as the propagation maps we previously provided. However, it is important to note that, whatever you decide regarding the applicability of the Kansas statute, the fact that (1) Harmoni did not submit any written statement or application and (2) Harmoni cannot satisfy the required setback on this property, require that its current request to build the new cell tower be denied. Kansas law permits the Planning Commission to enforce these requirements, regardless of the statute's applicability. This means that, without even considering the presence of nearby towers and the coverage already provided, Harmoni's request must be denied at this time.

**III. K.S.A. § 66-2019 only applies to and governs proposed facilities located on public property, so the statute has no bearing on Harmoni's application for a cell tower to be located on private property.**

K.S.A. § 66-2019 was passed into law by the Kansas Legislature in 2016 and has never been cited, much less interpreted or analyzed, by any court, state or federal. A copy of the statute can be

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<sup>1</sup> As addressed in this letter, K.S.A. § 66-2019 does not apply to Harmoni's request, as Harmoni seeks to site a new tower on private property. However, even if the requirements of K.S.A. § 66-2019(f) did apply, the City's setback requirement still must be enforced. The South Hutchinson Code imposes its setback requirement on "any tower *or other similar structure 50 feet or more in height*," (*see* Code § 27-104(24) [*emphasis added*]) meaning the requirement applies to similarly sized commercial structures, not just wireless support structures. As such, even if K.S.A. § 66-2019(f)(17) applies (which we contend it does not), the City's setback requirement is still valid and enforceable, as it complies with the statute.

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3

South Hutchinson Planning Commission  
February 10, 2022

found at [https://www.ksrevisor.org/statutes/chapters/ch66/066\\_020\\_0019.html](https://www.ksrevisor.org/statutes/chapters/ch66/066_020_0019.html). There are multiple justifications for why the restrictions in K.S.A. § 66-2019(f) must be interpreted and applied solely to proposed telecommunications facilities to be built on public property and public rights-of-way (but not on private property), several of which are set out below.

First, the heading of K.S.A. § 66-2019 specifically states that it applies to "public lands and public right-of-way." The exact heading for the statute is "Siting of wireless infrastructure; **public lands and public right-of-way**; wireless providers and governing bodies, rights and requirements for application process." (**emphasis added**). All statutes in Kansas have a heading (also referred to as a caption) "showing their scope." K.S.A. 77-133(b). "Though the heading or title given an act of the legislature forms no part of the statute itself . . . the language of the title cannot be ignored as an aid in determining legislative intent." *Arredondo v. Duckwall Stores, Inc.*, 227 Kan. 842, 846, 610 P.2d 1107, 1111 (1980). If K.S.A. § 66-2019 was intended to apply to private property, the heading either would mention private property or would omit the bold and underlined language above to show that it applies to all property. By including the specific reference to "public lands and public right-of-way" in the statute heading, it is clear that the scope of the statute reaches only public property, not private property.

Second, nowhere in K.S.A. § 66-2019 does it state that the statute applies to private property. In fact, the word "private" is used only six times in the statute (while the word "public" appears forty-two times), four times of which relate to the type of services provided by the wireless equipment and the type of benefit provided by relocating equipment, which is irrelevant to the current analysis. The only time the word "private" is used related to private property is in K.S.A. § 66-2019(d)(3), which states: "The provisions of this subsection shall not apply to or affect any authority's jurisdiction over the activities of wireless services providers or wireless infrastructure providers in public utility easements, private easements or on privately owned property." However, this statement certainly does not mean that the rest of the statute (*i.e.*, other than subsection (d)) applies to private property, especially in light of the statute heading discussed above.

Third, an interpretation or application of the statute to apply to all property (both public and privately owned) directly contradicts other provisions in the statute. Specifically, K.S.A. § 66-2019(j) states:

Subject to the provisions of this section and applicable federal law, an authority may continue to exercise zoning, land use, planning and permitting authority within the authority's territorial boundaries with regard to the siting of new or the modification of wireless support structures, wireless facilities, small cell facilities or utility poles, except that no authority shall have or exercise any zoning or siting jurisdiction, authority or control over the construction, installation or operation of any small cell facility or distributed antennae system located in an interior structure or upon the site of any campus, stadium or athletic facility.

If the statute is applied to private property, then subsection (f) of the statute would strip local zoning authorities of nearly all of their power, meaning that those authorities could not "continue to

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4

CORE/3521750 0006/172128412.3

South Hutchinson Planning Commission  
February 10, 2022

exercise zoning, land use, planning and permitting authority within the authority's territorial boundaries with regard to the siting of new" facilities as stated in this subsection.

Fourth, no one, including the Kansas Legislature and both proponents and opponents of the House Bill 2131 (the bill that was enacted to become K.S.A. § 66-2019), appears to have interpreted the statute as covering proposed telecommunications facilities on private property. For example, the Kansas Legislative Research Department issued a Summary of Legislation (*see* [http://www.kslegislature.org/li/2016/b2015\\_16/measures/documents/summary\\_hb\\_2131\\_2016.pdf](http://www.kslegislature.org/li/2016/b2015_16/measures/documents/summary_hb_2131_2016.pdf)) that explained House Bill 2131. This summary includes the following excerpts on page 3:

"To ensure uniformity across the state with respect to consideration of every application, the bill establishes 18 restrictions on the authority regarding what information can or cannot be required during the application process. The bill specifies the new law does not apply to military installations and would clarify the authority cannot impose restrictions at or near civilian airports. *The bill also requires the authority to consider input from property owners adjoining the affected public right-of-way.*"

*(emphasis added)*. The last sentence in the paragraph above indicates that all of the eighteen restrictions on authority (what eventually became K.S.A. § 66-2019(f)) only apply to telecommunications facilities proposed to be constructed on a "public right-of-way." Moreover, the Summary of Legislation provides that wireless service providers shall have the right to access the public right-of-way; however, page 2 of the Summary provides that "[t]he bill further specifies this provision should not be interpreted to grant any right to construct, maintain, or operate wireless services on property owned by the authority outside the public right-of-way." Again, this sentence demonstrates that K.S.A. § 66-2019(f) applies to telecommunications facilities proposed to be constructed on a "public right-of-way" as opposed to private property.

Additionally, several wireless carriers (including AT&T) submitted a joint letter in support of House Bill 2131 which includes statements that conflict with any argument that K.S.A. § 66-2019 applies to proposed facilities on private property. This letter (*see* <https://api.ctia.org/docs/default-source/legislative-activity/industry-letter-in-support-of-kansas-hb-2131---tower-siting.pdf>) describes House Bill 2131 as a "simple, straightforward solution" where "(l)ocal governments keep their power to exercise zoning and land use authority, and to approve or deny permit applications, consistent with state and federal law." It goes on to state that the bill "maintains a healthy balance of local control with the needs of uniformity and efficiency." If House Bill 2131 was meant to apply to private property, then it completely strips local governments of the vast majority of their authority to evaluate permit applications on the merits. As such, this letter from wireless carriers strongly suggests that even they did not believe that the bill applied to private property.<sup>2</sup>

<sup>2</sup> Page 4 of the Summary of Legislation from the Kansas Legislative Research Department also states that "[t]he bill allows the authority to continue to exercise zoning, land use, planning, and permitting authority within the authority's territorial boundaries, with regard to the siting of new

South Hutchinson Planning Commission  
February 10, 2022

Furthermore, the Supplemental Note on Senate Substitute for House Bill No. 2131 from the 2016 Session, enclosed with this Memorandum, further conflicts an interpretation of K.S.A. § 66-2019 to apply to private property. Page 6 of this Supplemental Note contains nearly identical language to that quoted above from page 3, and in the footnote below from page 4, of the Kansas Legislative Research Department's Summary of Legislation. And nowhere in the Supplemental Note is private property referenced. Finally, page 16 of the Supplemental Note includes an objection to House Bill 2131 from the League of Kansas Municipalities, which states:

"[E]nactment of the bill could have a fiscal effect upon cities that currently have agreements with telecommunications companies regarding colocation of equipment and possibly on cities that subsequently would be approached by telecommunications companies. The League is unable, however, to determine the extent of the effect."

If the League of Kansas Municipalities believed that House Bill 2131 also applied to private property, surely it would have mentioned the impact it would have on its power to govern zoning and land use in its jurisdictions. The fact that its objection related only to public property where cities have contracted with telecommunications companies again suggests that no one, including opponents of the bill, believed it applied to private property.

These contemporaneous records (the Summary of Legislation, the letter from the carriers, and the Supplemental Note) from the time House Bill 2131 was being evaluated by the Legislature are directly relevant to how K.S.A. § 66-2019 should be interpreted and applied because they show the Legislature's intent in enacting the statute. The Kansas Supreme Court has repeatedly held that the intent of the Legislature governs the interpretation of a statute. See *Ward v. Ward*, 272 Kan. 12, syl. ¶ 1 (2001) ("It is a fundamental rule of statutory construction to which all other rules are subordinate that the intent of the legislature governs if that intent can be ascertained."); *Clifford v. Eacrett*, 163 Kan. 471, 183 P.2d 861 (1947) ("The function of courts is to ascertain the legislative intent and purpose and this may be done by all legitimate methods."); *Shellabarger v. Bd. of Commissioners of Jackson County*, 50 Kan. 138, 142, 32 P. 132, 133 (1893) ("A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter, and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers, and such construction ought to be put upon it as does not suffer it to be eluded."). Here, because the contemporaneous records cited above demonstrate that the Kansas Legislature did not intend K.S.A. § 66-2019 to apply to proposed telecommunications facilities on private property, then the statute does not apply to Harmoni's CUP request for a new cell tower to be constructed on private property.

Fifth, other municipalities have adopted ordinances which interpret K.S.A. § 66-2019 as governing and applying to the public right-of-way. For example, De Soto, Kansas adopted Ordinance No. 2412, which included the finding that K.S.A. § 66-2019 "prohibits the City from imposing certain requirements on applicants who desire to locate and place wireless facilities (e.g.

or the modification of existing wireless structures." Again, this statement is inconsistent with an interpretation of the statute as applying to both public and private property.

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6

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South Hutchinson Planning Commission  
February 10, 2022

poles, antenna, "small cell facility") within the City right-of-way." (see <https://www.desotoks.us/DocumentCenter/View/243/Ordinance-2413-PDF>) (*emphasis added*). This, too, supports a reading of K.S.A. § 66-2019(f) which imposes restrictions only on facilities within the public right-of-way.

For these reasons, although K.S.A. § 66-2019(f) contains broad language about how it applies to "consideration of every application," that subsection, just like the rest of the statute, only applies to proposed facilities on public property, not on private property. There was no reason to for the Legislature to use more restrictive language in that subsection because only public property was within the intended scope of the statute generally. As such, the restrictions set out in K.S.A. § 66-2019(f) do not have any impact on the South Hutchinson Land Development Code as applied to Harmoni's request to site the proposed cell tower.

#### **IV. The 150-day timeline to make a decision on an application is not at issue here**

K.S.A. § 66-2019(h) provides that an authority shall review and make a final decision to approve or disapprove the application within 150 calendar days of receiving an application for a new wireless support structure. No application has ever been provided by Harmoni for the proposed tower, meaning this 150-day clock never began to run. The statute does not require that the 150-day period begin running when a potential applicant first contacts the local authority about wanting to site a cell tower. Instead, the statute is clear that the 150-day period begins counting when the local authority receives an application. Because Harmoni has not provided an application for conditional use permit, there is no current time limit for South Hutchinson to make a decision regarding the proposed new tower.

For these reasons, I respectfully request that the Planning Commission recommend Harmoni's request to construct the proposed cell tower be denied.

Sincerely,

*/s/ Patrick A. Edwards*

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7

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Luke R. VanFleteren

DIRECT 316.268.7985

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April 8, 2022

Matt Mock  
Code Enforcement Officer for City of South Hutchinson  
[Mock@southhutch.com](mailto:Mock@southhutch.com) (sent via email)

Re: Opposition to Harmoni's Request for New Cell Tower

Dear South Hutchinson Planning Commission members:

I attended your January 11, 2022 meeting where the siting of a new cell tower near Crupper's Corner Appliance Store was discussed, and my colleague Patrick Edwards provided a letter on February 10, 2022 following that meeting. I write (1) to confirm that I look forward to attending your upcoming meeting on April 11, 2022, and (2) to reiterate SBA Towers V, LLC's position taken in our February 10, 2022 correspondence. I respectfully request that you pass this letter along to the City Attorney and the Planning Commission members prior to this Monday's Planning Commission meeting.

My firm represents SBA Towers V, LLC ("SBA"), which owns and operates a 340-foot-tall cell phone tower located just southwest of 96 Highway and north of West Trail West Road near Crupper's Corner Appliance Store ("the Existing SBA Tower"), approximately 3 miles south of South Hutchinson. The Existing SBA Tower was built in 2008, but it is technologically up-to-date. The Existing SBA Tower currently serves wireless carrier AT&T at 337 feet and has space available to add additional wireless carriers and equipment – including FirstNet and 5G. I appeared on behalf of SBA at the South Hutchinson Planning Commission meeting on January 11, 2022 to oppose the request to construct a new cell phone tower ("the Applicant's Proposed Tower") that was made by Harmoni Towers and B+T Group (collectively referred to as "the Applicant"). At this meeting, I handed out an aerial map showing the location of the Existing SBA Tower and the Applicant's Proposed Tower, as well as propagation maps that compared cell coverage on the Existing SBA Tower with likely cell coverage on the Applicant's Proposed Tower, which demonstrate that the Applicant's Proposed Tower would not noticeably improve cell coverage in the area.

At the January 11, 2022 meeting, concerns were raised regarding whether K.S.A. § 66-2019 – the Kansas law regarding siting of wireless infrastructure – applies to the Applicant's permit request or precludes certain considerations. These issues were addressed in Mr. Edwards' February 10, 2022 letter, and I will not restate SBA's position in full in this letter.<sup>1</sup> Should you like to refer to that information, I have enclosed a copy of Mr. Edwards' letter to this correspondence. However, I write to detail SBA's position in light of the Applicant's application materials which were provided

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<sup>1</sup> However, it is worth noting that the Applicant still does not satisfy South Hutchinson Land Development Code § 27-104(24)(A) because the Applicant's Proposed Tower is not "at least an equal distance from all property lines as it is in height." Rather, the Applicant's Proposed Tower, which would be 338-feet-tall, is only 260.6 feet from the south property line and 162.2 feet from the east property line. Regardless of whether K.S.A. § 66-2019 applies, this setback requirement must still be enforced, and it prohibits construction of the Proposed Tower.

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CORI/3521750.0006/173727861 3

1

Matt Mock, South Hutchinson Code Enforcement Officer  
 April 8, 2022

recently. During the January 11, 2022 meeting, the Applicant took the position that the Planning Commission should not consider the existence of the nearby Existing SBA Tower, or the fact that SBA already housed AT&T equipment on its nearby tower. As explained in Mr. Edwards' previous letter, SBA disagrees and maintains that K.S.A. § 66-2019 does not apply to zoning of private property, and even if it did, the statute does not preclude these considerations.

However, it is important to note that the Applicant's own application materials make clear that the Existing SBA Tower is only 0.3 miles southwest of the Applicant's Proposed Tower<sup>2</sup>, and AT&T currently leases space on the Existing SBA Tower. In its March 17, 2022 application cover letter, the Applicant (not AT&T or any of AT&T representative) asserts that the Existing SBA Tower "has become a high-cost antenna site structure for AT&T" and "AT&T has requested tower rent reduction from SBA," but "[u]nlike other tower companies, SBA has resisted an economically sustainable cost structure" and its leases "have become economically burdensome for AT&T." The application cover letter goes on to mention the alleged significant capital cost AT&T bears when decommissioning a wireless facility and relocating to the Applicant's Proposed Tower, but AT&T goes on to argue that the Applicant's Proposed Tower still "remains a better co-location option for AT&T."<sup>3</sup> (1) This is simply untrue. AT&T has made absolutely no contact to SBA's Site Marketing Manager requesting a rent reduction for the Existing SBA Tower or otherwise suggesting there have been any issues with the Existing SBA Tower's performance or costs. We look forward to providing additional information on this issue during the April 11, 2022 meeting if requested. (2) The Applicant cannot take this position and simultaneously suggest that the Planning Commission cannot consider the Existing SBA Tower or the coverage AT&T is already affording residents of South Hutchinson as a result of its equipment on the Existing SBA Tower. The application materials have made suggestions regarding the Existing SBA Tower and AT&T's business decisions. That bell cannot be un-rung, and SBA should be permitted to provide its response.

I look forward to addressing these issues in person at the April 11, 2022 meeting.

Sincerely,

*/s/ Luke R. VanFleteren*

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<sup>2</sup> Notably, the Applicant's own Application identifies this project as the "Harmoni Towers 'Cruppers Corner' project" – the same intersection on which the Existing SBA Tower is located.

<sup>3</sup> In the Application itself, the Applicant also argues that the parcel is suitable for the proposed development because the "Location promotes competition to lower costs to provide cell service." These statements that the Applicant voluntarily provided in the Application and the cover letter are nothing but the "applicant's business decisions with respect to [] the applicant's designed service", "information that concerns the specific need for wireless support service", and "the availability of other potential locations for the placement of wireless support structures", all of which are topics the Applicant argues that SBA cannot provide and the City cannot consider in evaluating the Application. The Applicant cannot have it both ways.



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April 11, 2022

City of South Hutchinson Planning Commission

**RE: Conditional Use Permit Application for a new 338' Telecommunications Tower by Harmoni Towers, LLC**

Dear Commissioners:

My name is Susan Mulvaney, and I am the Site Marketing Manager for SBA Communications Corporation ("SBA") in Kansas. It is my job to interact with carriers, such as AT&T, who have located, or are interested in locating, onto an SBA cell tower. I maintain an open line of communication with the carriers to discuss tenant issues, including but not limited to collocation, new equipment, centerline placement of equipment onto SBA cell towers and other related matters. This would include the 340-foot cell tower SBA has owned, operated, and maintained since January 2011 in the City of South Hutchinson's ETJ on property commonly known as 12 W. Trail West Road, South Hutchinson, KS ("Existing Cell Tower").

Harmoni Towers, LLC has submitted a Conditional Use Permit Application to the City of South Hutchinson requesting to construct a new 338-foot guyed tower on behalf of AT&T a mere 1711 feet from the Existing Cell Tower. As with all other matters AT&T has been directed to send any communication related to SBA's cell towers in Kansas to my attention. Accordingly, I was quite surprised by Harmoni's request. In my prior communications with AT&T, they have not mentioned any concerns with their lease terms. In fact, AT&T recently amended their lease in September 2019. At no point prior to or since this time has AT&T contacted me advising of any issues with their lease terms or desire to install additional equipment.

AT&T is currently a tenant on over 6,000 SBA cell towers nationwide. Given our relationship with AT&T we would certainly appreciate the opportunity to work with AT&T to remain collocated on the Existing Cell Tower. By AT&T collocating onto the Existing Cell Tower this would prevent the unnecessary and needless proliferation of telecommunication towers.

Having reviewed my corporate records, I can confirm SBA most certainly can accommodate additional equipment for AT&T on the Existing Cell Tower, including 5G and FirstNet equipment. There is ample structural capacity for the Existing Cell Tower to handle more equipment as SBA constructed the Existing Cell Tower to house multiple tenants.

We look forward to continuing to work with AT&T and the City of South Hutchinson to provide access to wireless networks via SBA's telecommunications infrastructure.

Very truly yours,

*/s/ Susan Mulvaney*

Susan Mulvaney  
Site Marketing Manager, Site Leasing

April 29, 2022

*Sent via Email*

Matt Mock, Code Enforcement  
[mock@southhutch.com](mailto:mock@southhutch.com)

Joseph Turner, City Administrator  
[josephturner@southhutch.com](mailto:josephturner@southhutch.com)

Re: Factors that May Be Considered Regarding Harmoni's Special Use Permit Application

Dear Mr. Mock and Mr. Turner,

I am writing to address a few statements made at the South Hutchinson Planning Commission meeting on April 11, 2022. At that meeting, one Commission member indicated it may be helpful to have more information regarding the interaction between federal law and the City's zoning requirements, and this letter addresses those issues. It is my understanding that the City has not retained an attorney for purposes of this matter. However, if an attorney is retained or consulted, I ask that you provide this letter to that person.

The City of South Hutchinson's Land Development Code requires conditional use permits for "[r]adio or television broadcasting towers and/or stations, microwave transmitting and/or receiving towers and/or stations, or any tower or other similar structure 50 feet or more in height; whether publicly or privately owned." South Hutchinson Code, 27-104(24). These towers (or similar structures 50 feet or more in height) must be located "such that [they are] at least an equal distance from all property lines as it is in height." South Hutchinson Code, 27-104(24)(A). At the April 11, 2022 Planning Commission meeting, I explained how this 1:1 setback requirement is not optional, and the proposed Harmoni tower ("the Proposed Tower") does not meet the Code's setback requirements. Specifically, the proposed 340-foot tower<sup>1</sup> is designed to sit only 162.2 feet from the east property line and only 260.6 feet from the south right of way line. Accordingly, as designed and proposed to the Planning Commission meeting, the Proposed Tower does not comply with the Code's clear setback requirements.

In response to this, Harmoni asserted that the South Hutchinson Code's requirement violates federal law. This is not true.

**The Federal Telecommunications Act Does Not Override South Hutchinson's Code Requirements**

There are two provisions of the Federal Telecommunications Act ("FTCA") which are relevant to the issues before the City. The first such provision – Section 253, titled "Removal of barriers to entry" – provides:

- (a) In general. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

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<sup>1</sup> We received two sets of design drawings in the Harmoni application materials. One set, stamped by an engineer on 12/20/21, describes a 340-foot tower, while the other set (described as "preliminary") proposes a 338-foot tower.

Matt Mock and Joseph Turner  
April 29, 2022  
Page 2

(b) State regulatory authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 [47 USCS § 254], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) State and local government authority. Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

...

47 U.S.C. § 253(a)-(c) (emphasis added). There is nothing in Section 253 that invalidates or otherwise precludes the City's setback requirements. Section 253 provides that the state or local body may not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. However, the federal law does not prohibit states or localities from imposing setback requirements for the siting of tower. Here, the denial of the CUP Application for a new cell tower will not prohibit anyone from providing telecommunications service in the area. To the contrary, SBA currently operates a cell tower 1/3 mile away from the Proposed Tower.<sup>2</sup> AT&T is a current tenant on the existing SBA tower, and AT&T's antennas and other equipment are already mounted on the existing SBA tower. Additionally, the existing SBA tower has space and capacity available for new and additional wireless carriers and equipment. Allowing the Applicants' Proposed Tower to be built will not improve existing service in the area and is not necessary to bring in new carriers to the area. For this very reason, the denial of the CUP Application based on the enforcement of the City's setback requirement also would not prohibit any entity from providing telecommunications services to the area under Section 253.

The second provision of the FTCA that is relevant to the issues before the City is Section 332, and this Section explicitly states that local authorities are permitted to maintain their zoning authority with respect to placement and construction of wireless services facilities, subject to limited conditions. Section 332(7) provides:

§ 332. Mobile services

...

(7) Preservation of local zoning authority.

(A) General authority. Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof

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<sup>2</sup> In fact, there also is another existing tower that is owned and operated by another tower infrastructure company that is located less than 1/2 mile to the southwest of the existing SBA tower. Thus, the threat of the proliferation of towers in this area is very real.

Matt Mock and Joseph Turner  
 April 29, 2022  
 Page 3

over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations.

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

47 U.S.C. § 332 (emphasis added). Section 332 of the FTCA makes clear that the Act is not intended to limit or affect the authority of local governments to control zoning, except for certain specifically spelled-out situations. The TCA does not permit local governments to discriminate among providers or prohibit provision of wireless services, neither of which are being done by applying the City's setback requirements as detailed in the South Hutchinson Code. AT&T is the only carrier who would be sited on the Applicants' proposed tower, and denial of the Applicants' use permit would not prohibit AT&T from providing wireless

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Matt Mock and Joseph Turner  
 April 29, 2022  
 Page 4

services in the area because AT&T is already located on the existing SBA tower. Discrimination is not an issue here because AT&T is providing service to the area regardless of how the County rules on the CUP Application.<sup>3</sup>

Outside of this, the only other major requirement imposed by the FTCA is that any decision to deny a request to construct wireless service facilities must be in writing and supported by "substantial evidence contained in a written record." Courts have made clear that this requirement is not intended to be overly burdensome on local governments. The FTCA's requirement that State or local government's finding be "in writing" does not require formal findings of fact or conclusions of law, and the board's written decision does not need to state every fact in the record that supports its decision. *U.S. Cellular Corp. v. Bd. of Adjustment of City of Seminole, Okla.*, 180 F. App'x 791, 794 (10th Cir. 2006).

To insist on a more detailed description of the reasons for denial would place an undue burden on lay zoning boards. As explained by another court considering denial of a variance for a communications tower, "[l]ocal zoning boards are lay citizen boards, and while their decisions must be in writing, the boards need not make extensive factual findings in support of their ultimate decision." [] Stated another way, "council members ... are not technocrats, and substantial evidence review does not require that the arguments and determinations be stated with exacting precision so long as the ultimate conclusion is undergirded by reasonable evidence."

*Id.* at 801 (internal citations omitted).

### **Kansas Law Similarly Does Not Require the City to Ignore its Code Requirements**

As addressed in our prior correspondence and during the January and April 2022 Planning Commission meetings, SBA maintains that K.S.A. § 66-2019 (the Kansas wireless siting statute) does not apply to Harmoni and B+T Group's CUP application, because the new tower is proposed to be located on private property and the Kansas statute only applies to public property. However, even if K.S.A. § 66-2019 did apply, it would not preclude South Hutchinson from enforcing its setback requirement for towers. The only provision in the Kansas statute that relates in any way to setbacks is K.S.A. § 66-2019(f)(17), which provides that a local authority may not "impose a greater setback or fall-zone requirement for a wireless support structure than for other types of commercial structure of a similar size." Accordingly, even if this state statute were to apply to this application for a tower on private property, the state law does not prohibit setback requirements. Instead, such requirements must be applied uniformly for structures of similar size, so that wireless towers are not unfairly targeted by setback requirements that are larger than requirements for similar structures. South Hutchinson's Code is clear that its 1:1 setback requirement applies not only to the proposed tower at issue, but also applies to similar structures. Specifically, the Code notes that its setback requirements apply to "[r]adio or television broadcasting towers and/or stations, microwave transmitting and/or receiving towers and/or stations, or any tower or other similar structure 50 feet or more in height;

<sup>3</sup> Similarly, discrimination amongst tower infrastructure companies also is not an issue here. The denial of the CUP Application is not preventing Harmoni from building a new cell tower in South Hutchinson – it would just be denying Harmoni from building an unnecessary tower in a manner that violates the City's Code setback requirements. Harmoni is free to try to build elsewhere in the City.

Matt Mock and Joseph Turner  
 April 29, 2022  
 Page 5

whether publicly or privately owned." South Hutchinson Code, 27-104(24) (emphasis added). Accordingly, the Code does not unfairly target wireless communication towers with different setback requirements, and instead applies those requirements to similar structures of 50 feet or more in height. As such, the South Hutchinson Code's setback requirements do not violate Kansas law, and more specifically do not violate K.S.A. § 66-2019 even if it were found to apply here.

**Because South Hutchinson's Setback Requirements Do Not Violate Federal or State Law, the Requirements Must Be Enforced**

Municipalities may exercise their general police powers to regulate land use through reasonable zoning regulations promoting the public good. *Lambert v. City of Leawood*, 471 P.3d 36, \*3 (Kan. Ct. App. 2020) (citing *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 387-88 (1926)). As part of this authority, municipalities are permitted to impose reasonable setback requirements. *Id.* at \*3. Importantly, South Hutchinson's zoning regulations govern CUPs, and any conditional use that is permitted "must be reasonable and conform to standards or conditions designed to protect the interests of adjoining owners." *Neis v. Bd. of Cty. Comm'rs of Douglas Cty.*, 293 P.3d 168, \*8 (Kan. Ct. App. 2013). Kansas law permits municipalities to grant CUPs; however, any such grant is subject to the local authority's codes which govern the issuance of special use or conditional use permits. *Id.*

While Kansas law allows for local authorities to issue conditional use permits (a type of permit which authorizes property owners to use property in a manner which would not otherwise comply with the local zoning code), CUPs must conform to the standards set by those local authorities. Here, South Hutchinson has established setback requirements for wireless towers and other structures of similar height. These requirements are not optional and must be complied with. Because the Proposed Tower does not meet the setback requirements, it cannot be permitted under the language of the City's Code.

**Kansas Case Law Issued Following the Enactment of the FTCA Demonstrates that Impact Aesthetics and Community Opposition Can Legally Justify the Denial of a Conditional Use Permit for a Proposed New Cell Tower**

While the FTCA prohibits local zoning authorities from discriminating against providers and prohibiting the provision of wireless services, and requires local authorities to support their determinations with "substantial evidence contained in a written record," the FTCA does not otherwise meaningfully limit local authorities' power to make zoning decisions. During both the January and April Planning Commission meetings, Mr. Mock indicated that he had received a written comment from a property owner who opposed the siting of Harmoni's new tower. At the April Planning Commission, a South Hutchinson property owner (who owned multiple properties in town) spoke regarding his opposition to the specific placement of the Proposed Tower, and this property owner specifically noted aesthetic/visual concerns with the Proposed Tower. While the Proposed Tower's failure to meet the setback requirement requires the CUP be denied on its own, the additional presence of community opposition and aesthetic concerns further suggest the CUP application should be denied.

The cases of *Stout & Co., LLC* and *R.H. Gump Revocable Tr.* discussed below are Kansas cases that were decided while the FTCA was in effect, and in both cases, the Courts confirmed that localities could

1625 N. Waterfront Parkway, Suite 300, Wichita, KS 67206

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CORE/3521750.0006/173839792.2

Matt Mock and Joseph Turner  
 April 29, 2022  
 Page 6

consider local zoning regulations as well as aesthetic concerns in denying permit applications for construction of cell towers.

*Stout & Co., LLC v. City of Bel Aire, Kansas*, No. 2:15-CV-09323-JTM, 2016 WL 3759440, at \*2 (D. Kan. July 14, 2016).<sup>4</sup>

In this case, Bel Aire's zoning regulations contained a number of factors for the city council to consider when evaluating zoning changes. *Id.* at \*3. Bel Aire denied an application for a wireless telecommunication facility, and the Court held that Bel Aire set forth substantial evidence in support of its determination noting "[t]he substantial evidence standard does not create a substantive federal limitation on local land use regulatory power. [] Rather, the inquiry depends upon state and local law, with the court looking to the local zoning law for the substantive criteria to be applied and determining whether substantial evidence existed to support the city's decision." *Id.* at \*8 (internal citations omitted). The Court found that the reasons for denying the application were consistent with Bel Aire's zoning regulations, and the Court stated the locality could properly consider aesthetic concerns because "[n]othing in the TCA required the city council to cast aside its common sense in evaluating the visual impact of a galvanized tower rising five times the height of surrounding homes in the midst of a residential neighborhood." *Id.* at \*9.

*R.H. Gump Revocable Tr. v. City of Wichita*, 35 Kan. App. 2d 501, 131 P.3d 1268 (2006)

In this case, the Court of Appeals of Kansas evaluated the denial of a conditional use permit to allow construction of a cellular communications tower. The court held that substantial evidence existed under the FTCA to support the decision. The Court allowed the City to rely on aesthetic concerns for the denial of the conditional use permit, reasoning that such concerns "may be considered as a basis for zoning rulings." *Id.* at 512. The Court held that the City's decision to deny an applicant's permit application for a cellular communications tower was not improper, even though the "City's determination was based solely upon the visual impact and aesthetics of the proposed stealth tower." *Id.* at 509. While the application met the technical requirements of the City's master plan, it was nonetheless rejected, because of the negative visual appeal of the tower. *Id.* at 511. In evaluating "substantial evidence" under the FTCA, the Court reasoned that the Act gives ultimate authority to local governing bodies to make zoning decision. *Id.* at 512.

### **Proper Notice to Affected Property Owners is Required Before a Permit Can be Issued**

It is my understanding that there may have been some confusion regarding the notice required for the Planning Commission meeting. K.S.A. § 12-757(b) provides rules regarding the required notice. For zoning within city limits, written notice of the proposed amendment must be mailed at least 20 days before the hearing to all owners of record of real property within the area to be altered and to all owners of record of real property located within at least 200 feet of the area proposed to be altered. K.S.A. § 12-757(b). However, "[i]f a city proposes a zoning amendment to property located adjacent to or outside the city's limits, the area of notification of the city's action shall be extended to at least 1,000 feet in the unincorporated area." *Id.* It is my understanding that the proposed tower is outside South Hutchinson's city limits but within its zoning jurisdiction. Assuming that is the case, the 1,000 foot (not 200 foot) area of notification would apply.

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<sup>4</sup> Notably, the *Stout* case was issued just 2 weeks after K.S.A. § 66-2019 was enacted into law, although the *Stout* case does not reference the Kansas statute in its ruling.

Matt Mock and Joseph Turner  
April 29, 2022  
Page 7

If there has been an error in the notice provided, that would impact the City's ability to legally make a zoning change. If there has been an error in the notice provided, SBA requests that the City re-notice Harmoni's CUP request in compliance with the procedures set forth in K.S.A. § 12-757 and start the process over before the Planning Commission.

### **Conclusion**

I hope this letter is helpful in clarifying any issues or concerns that were addressed in the Planning Commission meetings and which will be addressed to the City Council. I would request that this letter be provided to the members of the City Council, and we will provide this information during the public comment portion of the City Council's May 2, 2022 meeting as well. At the conclusion of the Planning Commission meeting, one member stated that it would be helpful to have more information on the FTCA and its interaction with the City's setback requirement, as that argument during the Planning Commission meeting came as a surprise. While SBA maintains that the City's setback requirements are clear, and Harmoni's request for a CUP should be denied, another option for the City Council is to return the matter to the planning commission (without approving or denying) for additional consideration based on this additional information regarding the City's setback requirements and their interaction with the FTCA.

Sincerely,

*/s/ Luke R. VanFleteren*

cc:

1625 N. Waterfront Parkway, Suite 300, Wichita, KS 67206

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**Meeting Date:** May 2, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** Market South Hutchinson Appointment

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**Background/Analysis** – In 2005, the City of South Hutchinson entered into an agreement with Market South Hutchinson (MSH) who is responsible for promoting convention and tourism in our city through the development of marketing initiatives, programs, or events/projects. MSH is funded through the transient guest tax (TGT) levied on visitors staying in local hotels, motels, and different types of short-term rentals.

The MSH bylaws state that its board shall consist of seven (7) members from various organizations. The City of South Hutchinson is allotted one seat on the board. Matt Mock, a current employee, used to occupy that seat before he became the chairman of the board. Consequently, the City seat is now vacant.

**Financial Impact** – None.

**Recommendation** – Staff recommends the Council appoint the city administrator or his/her designee to be appointed as the City's representative on the Market South Hutchinson board.

**Meeting Date:** May 2, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** GIS/Asset Management Software Vendor Agreement

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**Background/Analysis** – The Council previously identified infrastructure as the most important focus area in previous workshops. Within the infrastructure category, locating and mapping water and sewer infrastructure assets through GIS software was identified as a high priority.

Staff have reviewed vendors and determined that Aktivov Asset Management software is the preferred option. There are limited players in the space and Aktivov was superior to other options when you considered the following factors:

- Initial start-up costs/fees
- Annual maintenance charges
- Customer service
- User-friendly interface
- Inclusion of work request and work order modules and other features

The first-year cost for this software will include an \$8,000 set up/roll out plus an annual maintenance charge of \$10,000. Year two charges will be the \$10,000 annual maintenance charge. These costs will be split evenly between the water and sewer departments.

There are some additional incidental on-time costs related to acquisition of a GIS mapping device of approximately \$1,000.

**Financial Impact** – Costs for 2022 and 2023 will be \$18,000 and \$10,000, respectively, with these amounts split between the water and sewer utilities.

**Recommendation** – Staff recommends the Council authorize city administrator to enter into an agreement with Aktivov Asset Management to provide GIS/asset management software solutions.

**Exhibit F** – Proposal & Agreement with Aktivov Asset Management



## **AKTIVOV PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Services Agreement", or "Agreement") is between AKTIVOV LLC ("SERVICE PROVIDER"), a Washington corporation, with its principal place of business at 24919 SE 41st Dr, Issaquah, WA, 98029, and the City of South Hutchinson, a Kansas Corporation, with its principal place of business at 2 South Main, South Hutchinson, KS 67505 (CLIENT) (individually a "Party" and collectively the "Parties").

### **WITNESSETH:**

WHEREAS, the CLIENT desires to have certain services and/or tasks performed as set forth in Appendix A (Scope of Work in excel file module selection), below requiring specialized skills and other supportive capabilities; and

WHEREAS, the SERVICE PROVIDER represents that the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement; and

WHEREAS, the Parties have entered into a Software License Agreement and an Annual Software Subscription Agreement (Appendix A) contemporaneously with this Agreement (collectively, the "Agreements"), and the three Agreements are an integrated agreement between the Parties providing for the CLIENT to pay for and use (1) a license from the SERVICE PROVIDER for Licensed Software, (2) an annual subscription for the maintenance of the Licensed Software, and (3) for professional services related to the installation and implementation of the Licensed Software and other associated services e.g. GIS, GPS, integration with other systems etc.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

### **1. SCOPE OF SERVICES**

This Agreement covers only the professional services work as mentioned in the scope of work and quotation attached herewith in Appendix A. The SERVICE PROVIDER shall perform such services and accomplish such tasks, as identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in the attached Appendix A, attached hereto and incorporated herein. The CLIENT will help the SERVICE PROVIDER by furnishing all required materials, equipment, remote and onsite access to CLIENT's infrastructure, appropriate staff, and anything else as necessary for full performance of services mentioned in attached quotation. This



Agreement can be amended in writing with added scope of work and budget with mutual agreement from both Parties.

## **2. TERM**

Work shall begin no earlier than the effective date (signed date) referenced below, and shall be completed per schedule as negotiated between the SERVICE PROVIDER and the CLIENT. Note that the schedule may be adjusted in consultation with both parties during the course of the work to account for lags, delays, and resource availability of both Parties.

## **3. COMPENSATION AND METHOD OF PAYMENT**

A. One invoice in full will be raised at the start of the implementation including any applicable State sales tax, in accordance with the attached quotation, copy attached hereto and incorporated herein in full by this reference.

B. The SERVICE PROVIDER shall submit invoices to the CLIENT's supervising Project Manager. The CLIENT shall initiate authorization for payment after receipt of said invoice and shall make payment to the SERVICE PROVIDER within thirty (30) calendar days from the date of the invoice.

C. Non-payment of any invoices: Invoices will be raised according to the payment schedule as mentioned in the attached quotation. If payment is not received for any invoice within thirty (30) calendar days from the date of invoice, the SERVICE PROVIDER will notify the CLIENT of payment oversight and allow additional fifteen (15) calendar days for payment. The SERVICE PROVIDER will charge six percent (6%) penalty if payment is not made by the end of the additional fifteen (15) calendar days and thereafter will charge two percent (2%) per month interest in addition to any legal procedures costs that may be incurred to recover pending payments including penalties and interest. The SERVICE PROVIDER also reserves the right to terminate this Agreement and discontinue any remaining components of any remaining tasks of the professional services due to non-payment.

## **4. INDEPENDENT CONTRACTOR RELATIONSHIP**

A. Both parties intend that an independent contractor relationship will be created by this Agreement.

B. No agent, employee, servant or representative of the CLIENT shall be deemed to be an employee, servant or representative of the SERVICE PROVIDER for any purpose, and vice versa. The employees of the CLIENT are not entitled to any of the benefits the SERVICE PROVIDER provides for its employees, and vice versa.





C. In the performance of the services herein contemplated the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work and tasks in order to meet the desired outcomes. The CLIENT will help the SERVICE PROVIDER to achieve implementation goals in all reasonable ways.

## **5. HOLD HARMLESS AND INDEMNIFICATION**

A. The SERVICE PROVIDER shall indemnify and hold the CLIENT and its agents, employees, and/or officers, harmless from any and all claims, demands, suits, at law or equity, actions, penalties, loss, damages, or costs, of whatsoever kind or nature including reasonable attorney fees and costs, brought against the CLIENT arising out of, or in connection with, or incident to, the SERVICE PROVIDER'S performance or failure to perform any aspect of this Agreement;

B. The CLIENT shall indemnify and hold the SERVICE PROVIDER and its agents, employees, and/or officers, contractors harmless from any and all claims, demands, suits, at law or equity, actions, penalties, loss, damages, or costs, of whatsoever kind or nature including reasonable attorney fees and costs, brought against the SERVICE PROVIDER arising out of, or in connection with, or incident to, the CLIENT'S performance or failure to perform any aspect of this Agreement;

C. If such claims are caused by or result from the concurrent negligence of the CLIENT and the SERVICE PROVIDER and its agents, employees, and/or officers, the indemnity provisions provided by the SERVICE PROVIDER shall be valid and enforceable only to the extent of the negligence of the SERVICE PROVIDER;

D. Nothing herein shall require either Party to hold harmless or defend the other Party (Party at fault), its agents, employees, and/or officers for damages or loss caused by the Party at fault's negligence or errors or mistakes.

E. The provisions of this section shall survive the expiration or termination of this Agreement. No liability shall attach to the SERVICE PROVIDER by reason of entering into this Agreement except as expressly provided herein.

F. This Services Agreement is made entirely for the benefit of the CLIENT and the SERVICE PROVIDER and their successors in interest, and no third party or person shall have any rights hereunder whether by agency, as a third party beneficiary, or otherwise.

## **6. COMPLIANCE WITH LAWS**



A. Both Parties in the performance of this Agreement, shall comply with all applicable (applicable to own organization) federal, state or local laws and ordinances, and is solely responsible for the payment of such taxes applicable to the services performed under this Agreement, including regulations for licensing, certification and operation of facilities, maintenance of insurance and records, programs and accreditation, licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services. The SERVICE PROVIDER shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance or unemployment compensation programs or otherwise assuming the duties of an employer with respect to CLIENT or any of the CLIENT's employees or the CLIENT's other independent contractors, and vice versa.

B. This Agreement shall be construed and enforced in accordance with, and be governed by, the laws of the State of Washington without reference to conflict of laws principles. Both Parties hereby consent to pursue any legal procedures at the Superior Court of King County, State of Washington, and waive their rights to change venue.

## **7. NONDISCRIMINATION**

A. Nondiscrimination in Employment: In the performance of this Agreement, both Parties will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age, sexual orientation, religion, veteran's status, or the presence of any sensory, mental or physical handicap or any other bases prohibited by applicable Federal, State, or local law; provided that the prohibition against discrimination in employment is because of the particular work involved. Both parties shall ensure that own employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

B. Nondiscrimination in Services: Both Parties will not discriminate against any recipient of any services, or benefits provided for in this Agreement of the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

## **8. SUBCONTRACTING**

The SERVICE PROVIDER may subcontract its performance or any portion of its performance or tasks under this Agreement (see Appendix A) or any portion of this Agreement as deemed necessary at the SERVICE PROVIDER's discretion for the execution and implementation of the scope of work, and shall inform the CLIENT about it in writing and obtain consent from the CLIENT. It is already known and agreed between the parties that the SERVICE PROVIDER will use subcontractor(s) in India for this implementation and support. Other subcontractors may be used as needed at the sole discretion of the SERVICE



PROVIDER to perform services. The SERVICE PROVIDER shall be held responsible for all performance related to the SERVICE PROVIDER pursuant to this agreement. However, the SERVICE PROVIDER is not responsible for any performance pursuant to this agreement that is related to the CLIENT and is the responsibility of the CLIENT.

## **9. CHANGES**

Either Party may request additions to the scope of services to be provided hereunder; however, no change or addition to this Agreement shall be valid or binding upon either Party unless such change or addition be in writing and signed by both Parties. Such amendments (scope and associated budget) shall be attached to and made a part of this Agreement.

## **10. PROHIBITED INTEREST**

No member, officer, or employee of the CLIENT shall have any unlawful interest, direct or indirect, in this Agreement or in the SERVICE PROVIDER or the proceeds thereof.

## **11. TERMINATION**

If this Agreement is terminated for convenience by CLIENT, the SERVICE PROVIDER shall be paid all associated costs, including but not limited to, damage and loss of work cost and close-out costs due to this Agreement, and costs on task performed up to the time of termination of this Agreement. The SERVICE PROVIDER shall promptly submit a termination claim to the CLIENT within (30) calendar days of such termination. If this Agreement is terminated for convenience by SERVICE PROVIDER, the CLIENT shall promptly pay SERVICE PROVIDER for all services provided up to the date of termination. If either Party has any property in its possession belonging to the other Party, then each Party will hand over or dispose of the property in the manner reasonably directed by the concerned Party.

## **12. NOTICE**

Notice provided for in this Agreement shall be sent by certified mail or email to the addresses designated for the parties as below. Each Party will update the notice contact information below in writing (mail or email) if anything changes within 10 business days of such change.

**Arnab Bhowmick**  
 AKTIVOV LLC  
 24919 SE 41st Dr,  
 Sammamish, WA 98029  
 Email: [arnab@akavs.com](mailto:arnab@akavs.com)

**Joseph Turner**  
 City Administrator  
 2 South Main,  
 South Hutchinson, KS 67505  
 Email: [joseph@southhutch.com](mailto:joseph@southhutch.com)



### **13. DISPUTE RESOLUTION**

Both Parties will attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator to be chosen by both Parties within thirty (30) calendar days after written notice by one of the Parties demanding non-binding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator. By mutual agreement, however, the SERVICE PROVIDER and the CLIENT or Licensee may postpone arbitration until both parties have completed reasonable discovery about the dispute. If the Parties are unable to agree upon a mediator, then a mediator shall be assigned by the presiding judge of the Superior Court of King County, State of Washington. Each Party shall pay its own attorney fees and costs incurred in the mediation. Any dispute which cannot be resolved by the Parties through mediation within ninety (90) calendar days of the initial demand for it by one of the Parties, may be submitted to the Superior Court of King County, State of Washington, for resolution. Both Parties consent to jurisdiction by such court. Both Parties confirm that any such litigation may be subject to the applicable rules for arbitration of matters in Superior Court of King County, State of Washington. Both Parties agree that this dispute shall be decided either by an arbitrator pursuant to said rules or by a judge, and both Parties knowingly and fully and forever waive the right to have any dispute between the Parties resolved by a jury. Nothing shall prevent either of the parties from resorting to the judicial proceedings mentioned in this paragraph if (a) good faith efforts to attempt resolution of the dispute under these procedures have been unsuccessful; or (b) interim relief from the court is necessary to prevent serious and irreparable injury to one of the parties or others.

### **14. ATTORNEY'S FEES AND COSTS**

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing Party shall be entitled to recover from the other Party, in addition to any other relief to which such Party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding, including any such fees and costs incurred on appeal.

### **15. SEVERABILITY**

If, for any reason, any part, term or provision of this Agreement is held by the Superior Court of King County, State of Washington to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.



If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

**16. ENTIRE AGREEMENT**

Both parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modifications of this Agreement shall be in writing and signed by both Parties. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of any other provisions of this Agreement, or the waiver of the same provision thereafter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective, valid, and binding upon the Parties as of the date set forth below as executed by their duly authorized representatives ("Effective Date").

Accepted and Agreed:

**AKTIVOV LLC**

**CITY OF SOUTH HUTCHINSON, KS**

Name:   Arnab Bhowmick  

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

Title:   Founder  

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

Date:   04/27/2022  

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_



## APPENDIX A

### AKTIVOV SOFTWARE LICENSE AGREEMENT

This is a SOFTWARE LICENSE AGREEMENT (Agreement) for the use of AKTIVOV software as laid out in detail below. This Agreement is between AKTIVOV LLC (AKTIVOV), a Washington corporation, with its principal place of business at 24919 SE 41st Dr, Issaquah, WA, 98029, and the City of South Hutchinson, a Kansas Corporation, with its principal place of business at 2 South Main, South Hutchinson, KS 67505 (Licensee) (individually a "Party" and collectively the "Parties").

This Agreement will be signed together with the AKTIVOV SOFTWARE SUBSCRIPTION AGREEMENT to enable the Licensee to access the AKTIVOV software as mentioned under Licensed Software section.

AKTIVOV is the owner or authorized licensor of all the AKTIVOV Software modules (as hereinafter mentioned as "AKTIVOV" or "software" or "Licensed Software"). "AKTIVOV" means the actual copy or instance of all or any portion of the computer programs provided or hosted by AKTIVOV and accessed by the Licensee or subscribed from AKTIVOV as listed in Licensed Software section, inclusive of backups, updates, or merged copies permitted hereunder or subsequently provided by AKTIVOV. AKTIVOV gives the Licensee certain limited rights under this Agreement to access and use AKTIVOV proprietary hosted Licensed Software and any relevant materials. All rights not specifically granted to the Licensee or anyone else in this Agreement are reserved to AKTIVOV.

**Relevant Materials:** Relevant materials means any printed material, user documentation, training documentation, videos used for training of the software, and confidential activation code (if any) or any relevant documents for AKTIVOV supplied by AKTIVOV under this Agreement. All these materials are treated as confidential and should not be provided to or accessed by any third parties.

**Effective Date:** This date shall mean the date on which this Agreement is signed between the Licensee and AKTIVOV.

**Licensed Software:** AKTIVOV grants to the Licensee a non-exclusive, non-transferable license to use the AKTIVOV software modules obtained under this Agreement. Modules granted for usage in an "as is" condition and are mentioned in the attached quote. ("As is" indicates that there may be some "errors or bugs" where adjustments or repairs may be needed that will be fixed by AKTIVOV over time as necessary to maintain functionality. This in no way indicates that the program will not operate.).



**License Fees:** The Licensee will pay AKTIVOV a total one-time initial product License or Usage fee (License Fee) in one full invoice including any applicable sales tax for the "Licensed Software" at the start of the implementation according to the quotation, copy attached hereto and incorporated herein in full by this reference, provided to the Licensee for this matter. This fee has been negotiated and agreed between the Licensee and AKTIVOV. AKTIVOV must receive full payment within thirty (30) calendar days after each invoice is raised following the payment schedule (see quote). If payment is not received within this time, AKTIVOV will notify the Licensee of payment oversight and allow additional fifteen (15) calendar days for payment remedy. Otherwise, AKTIVOV reserves rights to terminate this agreement immediately and cut off all access to Licensed Software usage and relevant materials.

**Term:** This Agreement shall become effective on the Effective Date (signature date) and shall be valid for as long as Licensee complies with the "Permitted Uses" and "Uses Not Permitted" provisions of this Agreement and no harm is done in any way to AKTIVOV. AKTIVOV may terminate this Agreement by 30 calendar days' prior written notice to Licensee if the Licensee fails to comply with the "Permitted Uses" and "Uses Not Permitted" provisions of this Agreement. The Licensee shall have thirty (30) calendar days after receiving notice of the alleged failed compliance from AKTIVOV to address the issue and correct it. If this Agreement is terminated in accordance with the terms in this Agreement or any other reason the Licensee shall then return to AKTIVOV or stop subscribing to AKTIVOV Licensed Software, relevant modules, relevant updates, and any whole or partial copies, codes, modifications, and merged portions in any form. The parties hereby agree that all provisions which operate to protect the intellectual rights of AKTIVOV shall remain in force should any breach or termination occur. AKTIVOV will not refund any money or payments to the Licensee on any reason for termination.

**Grant of License:** AKTIVOV retains exclusive rights, title and ownership of any copy or form of Licensed Software and all relevant materials, and grants to the Licensee a personal, nonexclusive, nontransferable license to access and use the hosted Licensed Software and relevant materials pursuant to the terms and conditions of this Agreement. From the Effective Date, the Licensee agrees to use reasonable effort to protect Licensed Software and all relevant materials from unauthorized use, reproduction, reverse engineering, distribution, leak, or publication.

**Copyright:** Licensed Software and all relevant materials are owned by AKTIVOV and are protected by United States copyright laws and applicable international treaties and/or conventions.

**Permitted Uses:**

- The Licensee may use the Licensed Software for the number of users and modules of Licensed Software as mentioned in Section "License Software" for which License Fees have been paid.



- License Fees paid by the Licensee is for the Licensee's own internal use only. The Licensee will not grant usage of Licensed Software to anyone else other than its own employees. If the Licensee wishes to grant usage of the Licensed Software to anyone else, additional costs must be discussed with AKTIVOV before such written usage authorization is granted by AKTIVOV to the Licensee.
- The Licensee's vendors or partners can observe the software usage on a Licensee's device operated by a Licensee's employee. Licensee's employee(s) must be present to operate the software if any of the Licensee's vendor or partner request to view software usage. The Licensee's vendors or partners cannot access, download, install or use AKTIVOV software without written permission from AKTIVOV.
- The Licensee must pay the annual subscription fee (refer to Annual Software Subscription Agreement for maintenance and support) in order to keep using the software beyond first year of usage or as set forth in the attached quotation.
- The Licensee may only use the Licensed Software subject to the terms and conditions of this Agreement.

#### **Uses Not Permitted:**

- The Licensee shall not resell, lease, rent, license or sub-license, time-share, lend, loan, assign, allow using, transferring, or exporting, in whole or in part to any other unlicensed third parties, or provide access (on Licensee's or third parties' hardware) to prior or present or future versions of Licensed Software, any updates, or the Licensee's rights under this Agreement. Nothing in this Section shall prevent use of and access to Licensed Software by the Licensee's employees.
- The Licensee shall not copy, alter, modify, merge, reproduce, and create derivative works of the software or relevant materials accessible to the Licensee under this Agreement. The Licensee shall not reverse engineer, decompile, or disassemble Licensed Software, or make any attempt to unlock or bypass Licensed Software's security or authorization codes, as applicable, subject to governing laws.
- The Licensee shall neither provide any Licensee's device to its vendors or partners to use the Licensed Software nor provide the Licensed Software to be installed or accessed by its vendors' or partners' on their devices for usage.
- The Licensee shall not remove or obscure any AKTIVOV copyright or trademarks or notices from anywhere.





**Annual Subscription:** Refer to the Annual Software Subscription Agreement for details.

**Assignment:** AKTIVOV may allow any portion of this Agreement as deemed necessary to another organization and will notify the Licensee of any such agreements. It is already known and agreed between the parties that AKTIVOV will use subcontractor(s) in India. Any portion of this agreement that AKTIVOV may subcontract to another party would be as a subcontractor to AKTIVOV to fulfill AKTIVOV's responsibility under this contract. Any negotiation or contract with the Licensee will be with AKTIVOV LLC exclusively as an USA entity.

**Limited Warranty:** AKTIVOV warrants that it owns or has the full right and authority and all associated intellectual property rights necessary to grant the Licensee rights and licenses set forth in this Agreement to Licensed Software and relevant materials. AKTIVOV only warrants the Licensed Software for the authorized purpose of capturing data for computerized maintenance management. AKTIVOV DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO LICENSED SOFTWARE. AKTIVOV DOES NOT WARRANT THAT THE OPERATIONS OF ITS RESPECTIVE SOFTWARE AND RELEVANT MATERIALS WILL BE ALWAYS UNINTERRUPTED AND/OR ERROR FREE.

**Limitation of Liability:** AKTIVOV shall not be liable for indirect, special, incidental, or consequential damages relevant to or arising from the Licensee's use of Licensed Software. IN NO EVENT SHALL AKTIVOV BE LIABLE TO THE LICENSEE FOR COSTS OF PROCUREMENT OF LICENSED SOFTWARE OR SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOST SALES OR BUSINESS EXPENDITURES, INVESTMENTS, OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR USE OF THE SOFTWARE AND RELEVANT MATERIALS.

**Indemnity:** Licensee will not make any unauthorized alterations or modifications to the Licensed Software. AKTIVOV will not indemnify or defend the Licensee from any infringement claim resulting from the Licensee's unauthorized use, modification, or alteration of Licensed Software or relevant materials.

**Export Regulations:** The Licensee agrees not to export Licensed Software to a country which does not have copyright laws that will protect AKTIVOV's proprietary rights. The Licensee also agrees not to export Licensed Software into any other country or anywhere without written authorization from AKTIVOV.

**Force Majeure:** Either Party shall not be liable for failure or delay in the performance of a required obligation during any period where such failure or delay is caused by strike, riot, fire, flood, natural disaster, and other similar cause beyond that Party's



control, provided that such Party gives written notice to the other Party and resumes its performance within reasonable time.

**Severability:** If any provision(s) of this Agreement shall be held to be invalid, illegal, or unenforceable by Superior Court of King County, State of Washington, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The remaining provisions of this Agreement shall be enforceable to the extent permissible under the laws of the State of Washington.

**No Implied Waivers:** No failure or delay by AKTIVOV or the Licensee in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by AKTIVOV or the Licensee.

**Order of Precedence:** Any conflict between the terms of this License Agreement and any other agreements or other terms shall be resolved in favor of the terms of this License Agreement.

**Governing Law:** This Agreement shall be construed and enforced in accordance with, and be governed by, the laws of the State of Washington without reference to conflict of laws principles. Both AKTIVOV and the Licensee hereby consent to pursue any legal procedures in Superior Court of King County, State of Washington, and waive their rights to change venue.

**Dispute Resolution:** Both Parties will attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator to be chosen by both Parties within thirty (30) calendar days after written notice by one of the Parties demanding non-binding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator. By mutual agreement, however, AKTIVOV and the Licensee may postpone arbitration until both parties have completed reasonable discovery about the dispute. If the Parties are unable to agree upon a mediator, then a mediator shall be assigned by the presiding judge of the Superior Court of King County, State of Washington. Each Party shall pay its own attorney fees and costs incurred in the mediation. Any dispute which cannot be resolved by the Parties through mediation within ninety (90) calendar days of the initial demand for it by one of the Parties, may be submitted to the Superior Court of King County, State of Washington, for resolution. Both Parties consent to jurisdiction by such court. Both Parties confirm that any such litigation may be subject to the applicable rules for arbitration of matters in Superior Court of King County, State of Washington. Both Parties agree that this dispute shall be decided either by an arbitrator pursuant to said rules or by a judge, and both Parties knowingly and fully and forever waive the right to have any dispute between the Parties resolved by a jury. Nothing shall prevent either of the parties from resorting to the judicial proceedings mentioned in this paragraph if (a) good faith efforts to attempt resolution of the dispute under these procedures have been



unsuccessful; or (b) interim relief from the court is necessary to prevent serious and irreparable injury to one of the parties or others.

**Entire Agreement:** This Agreement constitutes the sole and entire Software License Agreement of the parties as to the matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating hereto. Except as otherwise expressly provided herein, any Amendments to this Agreement must be in writing and signed by an authorized representative of each Party.

**Data Confidentiality Statement:** The Parties recognize that the Licensee's data hosted by AKTIVOV will remain the Licensee's property, and may be subject to public disclosure. Data provided by either Party, either before or after the Effective Date of this Agreement shall only be used for its intended purpose. Neither Party shall utilize nor distribute the data in any form without the prior expressed written approval of the Party that owns the data.

While providing the Services under this Agreement, both Parties may encounter personal information, licensed technology, software, documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary," or "Business Secret". Note that all information related AKTIVOV are Confidential, and should be protected from any competitor(s) by the Licensee. No Party shall disclose or publish the information and material received or used in performance of this Agreement. This obligation is perpetual; provided, the Agreement imposes no obligation upon a Party with respect to confidential information which the Party can establish that: (i) was in the possession of, or was rightfully known by the Party without an obligation to maintain its confidentiality prior to receipt from another Party; (ii) is or becomes generally known to the public without violation of this Agreement; (iii) is obtained by the receiving Party in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, (iv) is independently developed by a Party without the participation of individuals who have had access to that Party's or the third party's confidential information. If either Party is required by law to disclose confidential information, the disclosing Party shall notify the other Party of such requirement prior to disclosure.

If any software, data and related materials, exchanged between the Parties are to be protected under the law, both Parties shall clearly identify each such item with words such as "CONFIDENTIAL", "PROPRIETARY," or "BUSINESS SECRET." If a request is made for disclosure of such item, each Party shall determine whether the material should be made available under applicable Washington law and inform the other Party. If the material or parts thereof are determined by any Party to be exempt from public disclosure, those exempted documents or information or portions thereof shall not be released. If any Party determines the material is not exempt from public disclosure law, or any Party is not in the position to make such a determination, the Party shall notify the other Party of the public records request and allow the other Party fifteen (15) business days to obtain a court order enjoining the Party from disclosing the requested public record or portions thereof. If any Party fails or neglects to obtain such a court order within said period, the other Party shall



release the requested public records. By signing this Agreement, both Parties agree to the procedure set forth in this Subsection and shall have no claim against each other on account of actions taken under such procedure.

**Notices:** The following contact information will be used for mailing any notices by email or certified mail. Each Party will update the notice contact information below in writing (mail or email) if anything changes within 10 business days of such change.

**Arnab Bhowmick**  
AKTIVOV LLC  
24919 SE 41st Dr,  
Sammamish, WA 98029  
Email: [arnab@akavs.com](mailto:arnab@akavs.com)

**Joseph Turner**  
City Administrator  
2 South Main,  
South Hutchinson, KS 67505  
Email: [joseph@southhutch.com](mailto:joseph@southhutch.com)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective, valid, and binding upon the Parties as of the date below as executed by their duly authorized representatives.

Accepted and Agreed:

**AKTIVOV LLC**

**CITY OF SOUTH HUTCHINSON, KS**

Name: Arnab Bhowmick

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

Title: Founder

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

Date: 04/27/2022

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_



## **AKTIVOV ANNUAL SOFTWARE SUBSCRIPTION AGREEMENT**

This ANNUAL SOFTWARE SUBSCRIPTION AGREEMENT (Agreement) is between AKTIVOV LLC (AKTIVOV), a Washington corporation, with its principal place of business at 24919 SE 41st Dr, Issaquah, WA, 98029, and the City of South Hutchinson, a Kansas Corporation, with its principal place of business at 2 South Main, South Hutchinson, KS 67505 (Licensee) (individually a "Party" and collectively the "Parties"). This Subscription Agreement is for annual maintenance and support, and it supplements the Software License Agreement (Agreement) entered into and between the Parties contemporaneously with this Subscription Agreement to enable the Licensee to access the AKTIVOV Software modules.

AKTIVOV is the owner and authorized licensor of all the AKTIVOV Software modules (as hereinafter mentioned as "AKTIVOV" or "software" or "Licensed Software"). AKTIVOV grants the Licensee certain limited rights under this Agreement to use AKTIVOV' proprietary Licensed Software and any relevant materials. All rights not specifically granted to the Licensee or anyone else in this Agreement are reserved to AKTIVOV.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

### **AGREEMENT**

This Agreement and the terms and conditions hereof shall govern all access and usage of the subscribed Licensed Software codes, support, and related user manuals or training materials, and any base updates, modifications or enhancements to such software product, which have been developed by, or on behalf of AKTIVOV, and provided to Licensee by AKTIVOV. All software Subscription and Support will be governed by the terms of this Agreement.

### **1. DEFINITIONS**

- a. "Proprietary or Confidential Information" shall have the meaning given such term in the Agreement.
- b. "Licensed Software" shall mean the particular AKTIVOV software modules and functionalities within those modules hosted by AKTIVOV as identified in the Agreement, including all programs and source codes, machine-readable codes, and relevant documentation.
- c. "Documentation" shall mean all relevant end-user documentation, training materials or videos, specifications, notes and technical documents and



materials sufficient to permit the Licensee to use the Licensed Software hosted by AKTIVOV.

- d. "Error(s) or Bug(s)" shall mean defect(s) in the Licensed Software which prevent it from performing in accordance with Aktivov specifications as mutually determined. Severity level should be reported as below:
  - i. Level 1: Urgent; software has totally stopped.
  - ii. Level 2: Non-Urgent, can wait; software has not totally stopped.
- e. "Response Remedies" shall mean the response times for errors or bugs severity levels.
- f. "Subscription Start Date" shall mean July 1 of every year; "Subscription End Date" shall mean June 30 of every year. Subscription year for any yearly term will be from July 1 of the starting year through June 30 of the next year.
- g. "Object Code" shall mean the computer software code which results from the translation or processing of source code by a computer into machine executable or intermediate code, such code is not readily understandable to a human being but is appropriate for execution or interpretation by a computer.
- h. "Software Fixes" shall mean corrections and bug fixes to the Licensed Software to correct issues and deviations in the Licensed Software. All such fixes delivered to the Licensee shall become part of the base Licensed Software under the Agreement.
- i. "Software Customizations" shall mean all customized additions to the Licensed Software, which adds to or alters the function(s) of the Licensed Software or integrates with other software, as requested by the Licensee. This may include, but not be limited to, any scripts, interfaces, reports or program code requested by the Licensee that provide specific functionality uniquely designed for the Licensee. Separate cost structure will be worked out and agreed between AKTIVOV and the Licensee for any customizations and annual maintenance/ upkeep/ upgrade of such customizations.
- j. "Software Updates" are software fixes, patches, new features that become part of the base License Software, and changes to object codes (including original codes). AKTIVOV will have full ownership and licensing rights of such software updates, and retains the right to implement, utilize, modify, enhance or decommission such software updates as AKTIVOV deems appropriate.



- k. "Successor Products" shall mean any software product under any name released by AKTIVOV that provides at least the same functionality of the then current version of the Licensed Software, provided AKTIVOV ceases to offer Subscription for the Licensed Software as named in the Agreement.
- l. "Amendment or Modification to this Subscription Agreement" shall mean that both Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein, except the Agreement, are excluded. Further, any modifications of this Agreement shall be in writing and signed by both Parties.

## 2. SUBSCRIPTION

- a. Unlimited phone, email, ad hoc, and remote support per month will be provided to the Licensee during the Annual Subscription period. Anything beyond regular support related to the released version of the software (e.g. any negotiated custom work) will be handled as Time and Materials work (\$200 per hour, 10% increase year on year) or lump-sum basis (if appropriate) with prior authorization from the Licensee. Note that time spent internal to AKTIVOV to program and deploy updates, patches, bug fixes, security updates etc. are automatically included in annual subscription.
- b. A Client Services Manager (CSM) will be assigned to the Licensee as one point of contact. The Licensee will identify a resource to serve as one point of contact from the Licensee's side. These two points of contact will work with each other to solve issues.
- c. The services to be provided during the Annual Subscription period include Software Updates to the Licensed Software. This does not include any annual maintenance for any additional modules, features and functions that has not been bought yet under the current contract.
- d. The services to be provided during the Annual Subscription period include software fixes, patches, security updates etc. to the Licensed Software. Note that the Licensee must provide AKTIVOV with written specific narratives about the bugs and errors in the system and the manner in which the Licensed Software is not functioning properly with pictures and screenshots to the best of the Licensee staff's ability.
- e. The Licensee should try to resolve all problems internally before reporting a problem or issue or bug with AKTIVOV. If the Licensee solves an issue or problem on its own, the Licensee should document the problem and the resolution and send an email report to AKTIVOV. If the problem still persists, the Licensee should report it to AKTIVOV by raising a ticket in AKTIVOV online help desk (bug tracking system). Moreover, the Licensee should first isolate the problems and issues as Licensed Software related and not something related to any other software or system used by the Licensee.
- f. Subscription shall mean



- i. Delivery to Licensee of all base revisions of modules bought by the Licensee in final form together with all accompanying documentation, if any. Note that any custom developments done and paid by any other customers do not automatically become available to the Licensee, but custom developments paid by the Licensee becomes available to the Licensee.
- ii. AKTIVOV's compliance with the Response Remedies to the severity levels of bugs and errors are specified below:
  - 1. Level 1: Response provided within 24 to 48 hours.
  - 2. Level 2: Response provided within 5 to 7 business days.
- g. AKTIVOV shall make all reasonable efforts to provide the Software Updates that are necessary to assure the Licensed Software is functioning properly.
- h. AKTIVOV will provide Email, Phone or Web support during normal business hours, 8 AM to 5 PM U.S. Pacific Time, Monday through Friday except holidays. Special support may be extended after regular work hours making this a 24 x 7 support on a case to case basis for emergencies only (additional costs may be incurred for this kind of special support). After hours (5 PM though 8AM U.S. Pacific Time, Monday through Friday except holidays) emergency/ very critical support phone or email will be provided to the Licensee for very urgent support that stops work for several Licensee's staff during emergency or critical situations. AKTIVOV will make all reasonable efforts to acknowledge and respond to the request for support for critical problems that occur outside of normal business hours within 24 to 48 hours of receipt of the call or email from a designated and authorized Licensee representative.
- i. The Licensee will allow AKTIVOV's access to the Licensee's systems in order to perform thorough remote diagnostics and effect remote repairs, upgrades, and fixes if needed.
- j. Depending upon the type of problem reported (urgent or non-urgent), AKTIVOV staff may need to travel. Travel (actual expenses with actual receipts, mileage reimbursed at the IRS mileage rate at the time of expense) related expenses shall be all the reasonable expenses incurred by AKTIVOV while conducting business authorized by Licensee, including, but not limited to, air and surface transportation, lodging, car rental, meals, and incidentals. All travel expenses must be approved in advance by the appropriate Licensee representative. In emergency situations, AKTIVOV may travel without the Licensee's approval but still the Licensee agrees to reimburse AKTIVOV for all travel related expenses. AKTIVOV will pay for all travel expenses, and then the Licensee will reimburse AKTIVOV per the expense statements submitted by AKTIVOV.
- k. If any problems reported are not related to AKTIVOV Licensed Software, AKTIVOV will negotiate with the Licensee and charge for reasonable resource time and costs incurred to resolve such unrelated problems. This will be invoiced to the Licensee (\$200 per hour, 10% increase year on year) beyond regular Subscription costs as consulting or professional services costs to identify or solve non-Aktivov issues.





### 3. INVOICE AND PAYMENT

- a. AKTIVOV will raise any invoices owed by Licensee, stating, without limitation, all amounts due from Licensee to AKTIVOV under this Agreement. The foregoing invoice shall contain sufficient detail (including the separate itemization of the Tasks, Subtasks, Support, Maintenance, Subscription, license, customizations, travel, and any other fees under the Agreement as appropriate) to allow Licensee to determine the accuracy of the amount(s) billed. All invoices shall be paid in U.S. dollars. All payments will be made in full within thirty (30) calendar days from the date of the invoice.
- b. Subscription invoice will be paid at the beginning of each subscription year. The Licensee will pay this invoice in full within thirty (30) calendar days of the invoice date.
- c. Any other invoices including customization or any other additional work will be issued separately on a case to case basis. The Licensee will pay this invoice in full within thirty (30) calendar days from the invoice date.
- d. Non-payment of any invoices:
  - i. Annual subscription invoice for maintenance and support needs to be paid upfront each year for that subscription year. The invoice will be sent for payment at the beginning of each subscription year for that subscription year. If payment is not received for Annual Subscription invoice within thirty (30) calendar days from invoice date, AKTIVOV will notify Licensee of payment oversight and allow additional fifteen (15) calendar days for payment remedy. Otherwise, AKTIVOV reserves all rights to terminate this Agreement and the AKTIVOV Software License Agreement immediately and discontinue Licensee's access to the Licensed Software and any Subscription for the Licensed Software.
  - ii. If payment is not received for any other invoice within thirty (30) calendar days from the date of invoice, AKTIVOV will notify the CLIENT of payment oversight and allow additional fifteen (15) calendar days for payment. AKTIVOV will charge a six percent (6%) penalty if payment is not made by the end of the additional fifteen (15) days and thereafter will charge two percent (2%) per month interest in addition to any legal procedures costs that may be incurred to recover pending payments including penalties and interest. AKTIVOV also reserves rights to



terminate this Agreement and the Aktivov Software License Agreement immediately and discontinue access to the Licensed Software and any Subscription for the Licensed Software.

- iii. If access to the Licensed Software and any Subscription for the Licensed Software is cut off for any issues/ reasons, AKTIVOV will charge a Time and Materials fee (\$200 per hour, 10% increase year on year) to turn on all access after the issues/ reasons have been cured.

**4. AGREEMENT RENEWAL.**

The term of this Annual Subscription Agreement shall be two (2) years, commencing on the year after the initial implementation year with a 5% increase or overall CPI percent increase, whichever is higher, in the renewal price year on year until further notice. Both AKTIVOV and the Licensee have negotiated and agreed upon the yearly Subscription fees as provided in the attached quotation. The Annual Subscription Agreement may be renewed for multi-year terms at the end of the initial term under mutually acceptable payment terms. Changes to the subscription price as mutually agreed for further renewal cycles will be provided to the Licensee two (2) months before renewal.

**5. NOTICE.**

The following contact information will be used for mailing any notices using email or certified mail. Each Party will update the notice contact information below in writing (mail or email) if anything changes within 10 business days of such change.

**Arnab Bhowmick**  
 AKTIVOV LLC  
 24919 SE 41st Dr,  
 Sammamish, WA 98029  
 Email: [arnab@akav.com](mailto:arnab@akav.com)

**Joseph Turner**  
 City Administrator  
 2 South Main,  
 South Hutchinson, KS 67505  
 Email: [joseph@southhutch.com](mailto:joseph@southhutch.com)

**6. EXCLUSIONS**

AKTIVOV excludes the following items from Subscription under this Agreement:

- a. Analysis or interpretation of any inputs and outputs (data, results, information related to the Licensee) related to the Licensed Software.



- b. Questions related to computer systems, operating systems, hardware, and peripherals that are not related to the use of the Licensed Software
- c. Licensee's data analysis, correction, debugs, data migration, loading into the Licensed Software etc.
- d. Any services necessitated as a result of any cause other than authorized ordinary and proper use by the Licensee of the Licensed Software, including but not limited to neglect, abuse, unauthorized modification, unauthorized updates or electrical, fire, water or other damage.
- e. Any services regarding customization of the Licensed Software including, but not limited to, custom features and functions, custom modules, custom scripts or interfaces or codes, custom integration with other systems etc. Any additional or custom functions, design, layouts, user experience or interfaces, and features etc. will not be part of regular subscription activity. These additional items will be scoped separately, and professional services for customization will be provided at an additional cost depending on the scope.
- f. Mobile hand-held or any hardware device or associated costs and upgrade/replacements costs of any hardware or device are not included in regular subscription. Also note that any other software acquisition, update, or upgrade cost e.g. Windows OS upgrade cost on Licensee's machines etc. are not included in regular subscription.
- g. Any additional module or additional functionalities that the Licensee will desire to buy and use will be priced separately at the time of purchase. This Agreement will be amended accordingly to provide subscription and support for such additional modules or functionalities.
- h. If the Licensee acquires more service connections or provide service to additional area, this Agreement will be amended to provide support for additional data for additional areas or service connections.

This Subscription Agreement shall be construed and enforced in accordance with, and be governed by, the laws of the State of Washington without reference to conflict of laws principles. Both AKTIVOV and Licensee agree to only pursue any legal procedures or actions in the Superior Court of King County, State of Washington, and waive their rights to change venue or pursue legal procedures or actions in any other forum.

IN WITNESS WHEREOF, the parties hereto have executed this Subscription Agreement to be effective, valid, and binding upon the parties as of the date below as executed by their duly authorized representatives.



Accepted and Agreed:

**AKTIVOV LLC**

**CITY OF SOUTH HUTCHINSON, KS**

Name: Arnab Bhowmick

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

Title: Founder

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

Date: 04/27/2022

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_



# Quote

**Aktivov Asset Management**

**QUOTE # SHUTCHK/2022/01**

**DATE: 04/18/22**

**VALID TILL: 05/31/22**

**Attn: Joseph Turner**

City Administrator

City of South Hutchinson, KS

ITEM DESCRIPTION	Base Price YEAR 1	Annual Maintenance YEAR 2
<p><b>A. Aktivov Asset Management Software (hosted system) Enterprise license and Professional Services for Rollout:</b>  <b>Modules included:</b></p> <ul style="list-style-type: none"> <li>a. Please refer to attached excel file for the modules selected by you.</li> <li>b. Implementation Timeline: 3 to 4 months</li> </ul>	<p>\$20,000 - \$2,000                      = \$18,000  <b>(10% special discount provided)</b></p> <p>Initial Lic. Fee=\$10,000                      Prof. Serv.=\$8,000  <b>Total year 1=\$18,000</b></p>	<p>\$10,000</p>
<p><b>B. Develop GIS data, layouts on the WWTP, lift stations. One time effort to get you started:</b></p> <ul style="list-style-type: none"> <li>a. Create your GIS for free for water, wastewater, and streets assets according to the 2 CAD/PDF files provided to us.</li> <li>b. Develop and setup 1 WWTP and 12 lift station layouts</li> </ul>	<p>\$5,000 - \$5,000=\$0                      (100% discount provided)</p>	<p>There is no annual GIS maintenance contract at this point.</p>

**Total \$7,000 discount provided to get you started.**

**ANNUAL MAINTENANCE is included for YEAR 1 in the BASE PRICE YEAR 1. No separate annual maintenance will be charged in YEAR 1. We have deep discounted the license and the professional services fees to help you get started. Applicable State sales tax will be collected on the price.**



The following items are included in the price:

- 1. Everything Unlimited:**
  - a. All users will have concurrent and unlimited access to web based system on desktop/ laptop and on mobile phones and tablets. We will provide unlimited user logins per user (same login on different devices) for concurrent login on the web and multiple mobile devices.
  - b. Unlimited number of Users
  - c. Unlimited number of Devices
  - d. Unlimited Assets
  - e. Unlimited Annexations and Growth
  - f. Unlimited Cloud Space for storage, backup, DR, fail-over etc.
  - g. Unlimited Departments and Divisions
- 2. Devices Supported:**
  - a. Latest computers, smart phones and tablets from 2018 onwards
  - b. Chrome web browser
  - c. iOS 9x and upwards
  - d. Android 5x and upwards
  - e. Windows 8x and upwards
- 3. High level tasks:**
  - a. Project Kickoff
  - b. Workshop Preps and Background Info Review
  - c. Advanced Design/ Workflow Workshops
  - d. Configuration, Customizations Workshops
  - e. All Documentations
  - f. Perform all configurations, and implementations
  - g. Test Cycles
  - h. Training
  - i. GO LIVE
  - j. Project Management
- 4. Professional Services required for Rollout includes:**
  - a. All asset types that you handle.
  - b. All related PM meetings, project related meetings, and ad hoc meetings included
  - c. Workshops and meetings as needed (remote or in person as needed) to gather requirements for configurations, user levels, access, read/ write, lookup tables, system security etc.
  - d. Design documentation for configurations for the modules purchased (as needed)
  - e. Perform Configurations and Set up
  - f. User testing and acceptance
  - g. Fix bugs
  - h. Test cycles – alpha, beta, GO LIVE
  - i. Unlimited and Free Training
  - j. Production Rollout
- 5. Annual Maintenance/Support Subscription for Aktivov Software starts at the beginning of the subscription year for the subscription year.**



- a. Unlimited cloud space, training, data storage, backup, disaster recovery, training, patches, updates/ upgrades of purchased modules
- b. Access to support, web training, online learning center, and bug ticketing system
- c. Monitor and fix all bugs as reported
- d. Unlimited Phone, web, and email support

Thank you for your business. Please contact me if you have any questions. We are looking forward to get you started.

Thanks and Best Regards,

A handwritten signature in black ink that reads "Arnab Bhowmick".

**Arnab Bhowmick,**

**Aktivov Asset Management.**

[arnab@akavs.com](mailto:arnab@akavs.com)

425.245.3569

**Meeting Date:** May 2, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** Independence Day Fireworks Show

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**Background/Analysis** – City staff have been working to coordinate our Independence Day Fireworks Show for Saturday, July 2. Here is an update on some items:

1. We are game planning something along the lines of 5 PM to approximately 9:30 when the fireworks show would start
2. Wichita Tractor has agreed to allow us to use their vacant parcel for parking
3. Ronnie and I have met with bounce house vendors to discuss options and vendor electrical needs
  - a. We have also discussed the installation of a permanent electrical outlet/infrastructure for this and future events
4. Ronnie and I met with Zak Kirk about any planned baseball events. He is attempting to put together a tournament
5. I have contacted Eagle Radio to explore the possibility of them doing a live broadcast of one of their station's music during the event
6. No outreach at this time as of yet to food vendors
7. I have had preliminary discussions with Matt Mock, the chairman of Market South Hutch to gauge interest in funding this event and I have received positive feedback



**Meeting Date:** May 2, 2022  
**Department:** Administration  
**Prepared By:** Joseph Turner, City Administrator  
**Agenda Title:** Review & Update of Land Development Code

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**Background/Analysis** – Recent projects, issues, and communications between the city administrator, members of the governing body, and residents indicate that there is quite a bit of unease and concern as to whether our current land development code and zoning districts adequately reflect the desires of the governing body and community.

This includes, but is not limited to, the following:

1. Main Street development
2. Size of buildings relative to lot size and neighboring buildings/structures
3. Building type/appearance relative to neighboring buildings/structures and its impact on property values
4. Housing density

Our current code was last updated in 2001. Since that time, considerable changes have occurred in the type of housing now generally available to the public, business and commerce, along with the impact of technological advancements in the areas of working from home and homebased businesses.

## Activity Report May 2<sup>nd</sup>, 2022

- Scheduling annual truck and air pack testing with other departments for a price break.
- 2 - Fire Extinguisher Classes coming up for OneOk.
- Working with HCC and KSFFA on the Regional School for May 21<sup>st</sup> and 22<sup>nd</sup>.
- Scheduling a station tour with the South Hutch After Kids program.
- Going live with our new reporting program May 1<sup>st</sup>.
- June 5<sup>th</sup> the Fire Department will be hosting a Pancake Feed Fundraiser. We are raising money towards a thermal imaging camera for our Brush Truck and Coats for our Firefighters.
- Greg Henke has accepted the position of 2<sup>nd</sup> Assistant Fire Chief. He has over 25 years of experience, a degree in Fire Science, EMT, Haz Mat Technician, and experience as a Training Officer. He will be assisting with maintaining equipment and other station duties. We are honored and excited about his moving up to an Officer.
- Hutchinson Fire Department sent a letter thanking the department for the assistance and support during the Cottonwood Complex Fires, see attached.
- We currently have 5 Fireworks applications turned in.





# CITY OF HUTCHINSON FIRE DEPARTMENT

Steven Beer  
Fire Chief

April 25, 2022

South Hutchinson Fire Department  
2 S Main St  
South Hutchinson, KS 67505

Dear South Hutchinson Fire Department,

On behalf of the members of the Hutchinson Fire Department and the City of Hutchinson, I would like to extend my sincere appreciation and thanks to you and your team for the support you provided on March 5<sup>th</sup> -16<sup>th</sup>, 2022. The skill and professionalism you and your team demonstrated during the Cottonwood Complex Fire shows your dedication and commitment to the Fire Service and to our citizens. Getting this wildfire under control and eliminating hotspots takes a great deal of time and effort. Without your assistance, we would have had a much greater disaster than we did.

The Hutchinson Fire Department is thankful to have mutual aid partners like you and your team who are willing to come to our aid to selflessly help in an emergency situation! Please give my thanks, to your members for their prompt and efficient response.

With Sincere Gratitude,

Steven Beer  
Fire Chief

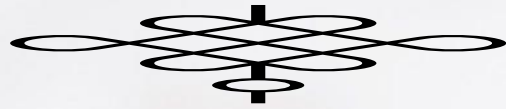


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Page 91



# PANCAKE BREAKFAST FUNDRAISER



SUNDAY, JUNE 5<sup>TH</sup>, 2022

8:30 AM TO 1:00 PM

SOUTH HUTCHINSON FIRE DEPARTMENT

20 EAST BLANCHARD

FREE WILL DONATIONS



## PUBLIC WORKS REPORT

To: Honorable Mayor and City Council

From Ronnie Pederson, Public Works Superintendent

Re: Public Works Superintendent report for May 2<sup>nd</sup> City Council Meeting

Date: April 28<sup>th</sup>, 2022

### Streets

- Cut eyebrows off 6<sup>th</sup> street and Scott boulevard. (21 dump truck loads of dirt removed)
- Stop sign and street sign replacement at Morningside and glass manor. (Hit by vehicle)
- Pulled crane on sewer service truck to replace hydraulic lines that broke.
- Changed out road grader cutting edge blades on unit.
- Ordered 2 pallets of crafco pothole patch. (Received)
- Serviced front end loader.
- Mowed hike bike trails.
- Mowed irrigated city properties.
- Mowed some rough-cut city properties.
- Stocked community building with restroom supplies.

### Water

- New water service installed at 45 Detroit.
- New water service installed at 421 Sunnydale.
- Started new 2" irrigation water service installation at 421 Sunnydale.
- Apple boring bored 3 lines for the city for new water service installs.
- Hydro excavated water service at 13 William's for possible leak. (Customer side leak)
- 100 block of East Ave B tapped main for service line replacement and new setter/pit due to leak on the city's side of water meter.
- Replaced water service at 222 E Forrest. pit/setter and lines due to leak on city side.
- Temp water meter repair on Des Moines.
- Multiple water meter checks for possible leaks.
- Water meter checks for high water consumption.
- Red tag shut offs.
- One call utility locates.

## PUBLIC WORKS REPORT (cont.)

### Wastewater

- Daily and weekly checks, inspections, and lab testing completed at the wastewater facility and lift stations.
- Wasted sludge at treatment facility.
- Pressed sludge at treatment plant.
- Pulled 503 sludge regulation samples from digesters for yearly analysis.
- Completed and sent application for our wastewater permit renewal to KDHE.
- Monthly KDHE state wastewater samples collected.
- Working with Hach to replace the dissolved oxygen sensor on the aeration basin that we are having the diffusers replaced in. It will need to be upgraded to a current model LD02 sensor.
  
- Clean infusion has started the aeration basin diffuser replacement project at the wastewater treatment facility. The old system has already been removed and the new system is being installed.
  
- We received a quote from stainless-steel manufacturing on repairs to a baffle in the east aeration basin at the wastewater plant. (\$7,825.00) This baffle is where the diffuser replacement project has been started by clean infusion. After assessing the repairs and price the public works department did the repairs in house for (\$135.00) in materials.
  
- Changed out new pump at trails west lift station with rebuilt pump. (New pump back in storage for spare)
- One call utility locates.

### Parks

- Zenor electric has completed the new pole and light install at the ball fields and repaired any issues caused from wind damage to all remaining lights and fixtures.
- Cleaned area and sprayed weeds at Voss water park.
- Cleaned up and weeded playground area at ball field.

## **CITY ADMINISTRATOR'S REPORT**

**To:** Honorable Mayor and City Council

**From:** Joseph Turner, City Administrator

**Re:** City Administrator Report for May 2<sup>nd</sup> Regular City Council Meeting

**Date:** April 29, 2022

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### **Independence Day Festival**

City staff have been working on the organization and planning of this event. Will report in more detail during the discussion item.

### **Surplus Auction Update**

The wheel loader sold for \$48,500 on an auction site. We are pleased with this number. A vendor in the region offered us \$40,000 before we put it up for sale. The crack sealing equipment is live now and will be up for bid over the next couple of weeks.

### **City Brush Pile**

Our brush pile will be open from 8 am to 5 pm on the second Saturday of each week beginning on May 14<sup>th</sup>. An announcement has been made on Facebook and we will attempt to get the word out through other channels.

### **Garage Sale/Citywide Clean-up**

This year our citywide garage sale and clean-up will occur on Saturday, June 11.

### **KDHE Consent Order**

We received an update from KDHE stating that they are still working on the final consent order. It is taking longer than we expected and as a result we expect the timeline we initially submitted to be extended an additional three months.

### **Special Projects & Associated Research**

I have been working extensively on special projects discussed at the previous council meeting including, but not limited to, the development of workforce housing, Sunday alcohol sales, and sales tax revenues. I have also been researching the process on how to transition to a second class city and exploring the positive and negative consequences of such a move. However, I do not have any substantive information to share publicly at this time.