

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, AUGUST 5, 2009

6:35 p.m. – County Commission Meeting

-Convene

-Consider approval of the minutes of July 27, 2009

CONSENT AGENDA

(1)(a) Consider approval of Commission Orders;

REGULAR AGENDA

(2) Consider approval of Supplemental Agreement No. 1 with KDOT concerning the extension of E 1326 Road from Berg Acres area to Route 458, in conjunction with US-59 freeway construction project (Keith Browning)

(3) Discussion of pedestrian issues in Eudora (John Drees, Eudora Pedestrian Safety Committee)-
No Backup

(4) Consider approving revised **CPA-2004-02**, a Comprehensive Plan Amendment to Horizon 2020, Chapter 7: Industrial and Employment Related Land Use and consider adopting Joint City Ordinance No. 8402/County Resolution (PC Approved 8-0 on 4/22/09; CC Approved 2nd Reading 5-0 on 6/9/09) Amy Brown is the Planner. *Deferred from the 7/15/09 meeting.* (Amy Brown is the Planner)-PLEASE BRING BACKUP FROM 07-15-09 MEETING

(5) Other Business

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

(b) Appointments

(c) Miscellaneous

(d) Public Comment

(6) Adjourn

MONDAY, AUGUST 10, 2009

-Consider adoption of Resolution relating to the issuance of bonds to finance improvements in Southeast Lawrence Sanitary Sewer Main Benefit Districts No. 1, No. 2, and No. 3 (Evan Ice)

-Lawrence Chamber Program of Work - 2nd Quarter Progress Report (Tom Kerns)

-Discussion of meeting schedule of County Commission (Craig Weinaug)

WEDNESDAY, AUGUST 12, 2009

MONDAY, AUGUST 17, 2009 (Light Agenda)

WEDNESDAY, AUGUST 19, 2009

-Public Hearing for 2010 Budget

-Consider approval of a Consent Decree for the Big Springs Quarry (Mary Miller)

MONDAY, AUGUST 24, 2009

- Tentative date for consideration of request from the City of Lawrence to declare Douglas County as a recovery zone for the purposes of using special recovery zone financing and allocating \$2 million of the

County's Economic Development bond allocation to the City's project to extend water and sewer to the airport.

WEDNESDAY, AUGUST 26, 2009

MONDAY, AUGUST 31, 2009

WEDNESDAY, SEPTEMBER 2, 2009

MONDAY, SEPTEMBER 7, 2009

-No Commission Meeting in Observation of Labor Day

WEDNESDAY, SEPTEMBER 9, 2009

MONDAY, SEPTEMBER 14, 2009

WEDNESDAY, SEPTEMBER 16, 2009

MONDAY, SEPTEMBER 21, 2009 (Light Agenda)

WEDNESDAY, SEPTEMBER 23, 2009

MONDAY, SEPTEMBER 28, 2009

WEDNESDAY, SEPTEMBER 30, 2009

WEDNESDAY, NOVEMBER 4, 2009

-Lone Star Weed Discussion

Note: The Douglas County Commission meets regularly on Mondays at 8:10 A.M. and Wednesdays at 6:35 P.M. at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.



DOUGLAS COUNTY PUBLIC WORKS

1242 Massachusetts Street
Lawrence, KS 66044-3350
(785) 832-5293 Fax (785) 841-0943
dgcopubw@douglas-county.com
www.douglas-county.com

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

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer *KAB*

Date : July 29, 2009

Re : Consider approval of Supplemental Agreement No. 1 with KDOT
Extension of E 1326 Road from Berg Acres area to Route 458

As part of the US-59 freeway construction project, KDOT intends to remove existing US-59 access at N 1056 Road and N 1082 Road. With these access points removed, E 1326 Road south of N 1100 Road would provide the lone access to Berg Acres. The concern is that the intersection of E 1326 Road with N 1100 Road is below the base (100-year) flood elevation. It is conceivable that Berg Acres would be inaccessible during severe flooding.

Douglas County executed an agreement dated June 1, 2006 with KDOT to extend E 1326 Road from its current terminus in the Berg Acres area south to Route 458. The current terminus is approximately ¼-mile north of Route 458. The road extension is to provide alternate access to the Berg Acres area in the event the intersection of E 1326 Road/N 1100 Road is impassable due to flooding. In the agreement, KDOT agreed to pay the actual cost of design and road construction up to a maximum \$210,000. Douglas County subsequently hired an engineering design consultant, and plans are complete. Also, in the original agreement, KDOT was responsible for obtaining the required right-of-way for the road extension. They intended to acquire the R/W as part of the US-59 acquisition process.

Shirley Flory owns the property through which the road is to be extended. Renters occupy the house. During project design, this department and our consultant met with Ms. Flory and her family several times to develop a road alignment to best serve their needs. However, the Flory's would prefer the road not extend through their property. They currently have no desire to develop the property and would prefer the property to remain as-is. KDOT did not acquire the R/W needed from the Flory's for the E 1326 Road extension.

Removal of the existing US-59 access points at N 1056 Road and N 1082 Road will occur late in the US-59 construction process, likely in 2012. Therefore, the E 1326 Road extension is not needed until that time. Given KDOT's need to begin US-59 construction, and the Flory's reluctance to sell R/W to KDOT, KDOT approached this department about amending the original agreement so that Douglas County would acquire the R/W needed for the road extension with KDOT reimbursing the County's cost for R/W acquisition. We agreed in principle to that arrangement. Letters concerning this amendment are attached.

MEMORANDUM

July 29, 2009

Page Two

The attached Supplemental Agreement No. 1 amends the original agreement as follows:

- Increases maximum KDOT contribution for design and construction from \$210,000 to \$294,000
- Makes Douglas County responsible to obtain R/W required for E 1326 Road extension with KDOT responsible for 100% of acquisition costs

We estimate construction costs for the road extension to be approximately \$250,000. Consultant design engineering services cost \$29,352.

A copy of the original June 2006 agreement is also attached.

Action Required: Consider approval of Supplemental Agreement No. 1 with KDOT concerning the extension of E 1326 Road in conjunction with the US-59 freeway construction project.

PROJECT NO. 59-23 K-7888-03
GRADING, SURFACING, AND SEEDING
DOUGLAS COUNTY, KANSAS

S U P P L E M E N T A L A G R E E M E N T N o . 1

This Agreement made and entered into effective the date signed by the Secretary or designee, by and between the county of Douglas, Kansas, hereinafter referred to as the "County," and the Secretary of Transportation of the state of Kansas, hereinafter referred to as the "Secretary." Collectively referred to as the "Parties".

R E C I T A L S :

WHEREAS, the Secretary and the County entered into an Agreement dated June 6, 2006, hereinafter referred to as the "Original Agreement" for providing State Highway Funds to the County to provide additional property access by constructing an extension of East 1326 Road in advance of Project 59-23 K-7888-01 and Berg Acres, a residential development in the County, will close two of their three access points to US-59 as a result of the 59-23 K-7888-01 Project, and

WHEREAS, the Secretary and the County mutually desire that the Secretary increase the funding amount of participation to cover inflation for the Project, and

WHEREAS, the Secretary and the County would like to clarify responsibility regarding acquisition of rights-of-way.

NOW, THEREFORE, in consideration of this premise, the Parties hereto agree as follows:

1. On page 2 of the Original Agreement, under **ARTICLE I, THE SECRETARY AGREES**, paragraph 1 be replaced in its entirety to read as follows:

1. To reimburse the County one-hundred percent (100%) of the total actual costs of preliminary engineering, construction (which includes the costs of all construction contingency items) and construction engineering, but not to exceed a maximum of \$294,000 for the Project. The Secretary shall not be responsible for the total actual costs of preliminary engineering, construction (which includes the costs of all construction contingency items) and construction engineering that exceed \$294,000 for the Project. The Secretary shall be responsible for one hundred percent (100%) of the total actual costs of rights-of-way purchased for the E 1326 Road extension by the County pending review and approval of the offer by the Secretary for the property. The Secretary shall not be responsible for the total actual costs of utility adjustments for the Project.

THIS SUPPLEMENTAL AGREEMENT, shall not be construed to alter, modify, or void the terms, provisions or conditions of the Original Agreement, incorporated herein by reference, except as herein specifically provided.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:

DOUGLAS COUNTY, KANSAS

COUNTY CLERK

CHAIRPERSON

MEMBER

MEMBER

Kansas Department of Transportation
Debra L. Miller, Secretary of Transportation

(SEAL)

By: _____ (Date)
Jerome T. Younger, P.E.
Deputy Secretary for Engineering and
State Transportation Engineer

KANSAS DEPARTMENT OF TRANSPORTATION Construction Project Authorization

Sheet 1 of 4

Revised Cost & Max. State Funding for PE, CE & Const Work Phases		Project Funding			Route, Co., Proj. No.		(U)59-23 K-7888-03	
		Fund Source	Percent	Maximum	FA Project No.		State Funds	
District		State #	100	\$294,000	Program Fiscal Year		2010	
County		County #			Scheduled Letting Date		January 2010 LOCAL	
Length (mi)		State ##	100		Fund Class		PE, CE, Const = K/Co # RW = K ##	
STP Class					Prog Cat	Sub Cat	MM	RIM
Env. Class.					3R / AASHTO Stds.		N/A	
Oversight					Leaders:			
Funct Cl./Syst.					Area Engineer		Earl C Bosak	
KDOT Fund #					Road Design		Howard Lubliner	
DA Index #					Bridge Design			

LOCATION: E 1326 ROAD, FROM N 1000TH ROAD, NORTH TO N 1031ST ROAD
STAGE : E 1326 ROAD, FROM N 1000TH ROAD, NORTH TO N 1031ST ROAD

SCOPE OF IMPROVEMENT:
 To provide funds to Douglas County for grading and surfacing a 2-lane roadway based on Douglas County Standards. The above work is being done by the County as a result of Project No. 59-23 K-7888-01.

JUSTIFICATION/REASON FOR CHANGE:
 Revised cost to reflect most recent estimate from Douglas County and the Bureau of Right of Way. Increased Maximum State Funding for PE, CE and Const Work Phases from \$280,000 to \$294,000, as discussed with Howard Lubliner, Road Design Leader, on December 23, 2008.

Inflation Rate	12.100	Base Year	2007	2010	SUBTOTALS
Roadway Type	Length (mi)	Cost Per Mi.	Construction Cost		Construction Cost
GR	0.30	416,666	125,000		140,000
SU	0.30	326,666	98,000		110,000
SEE ATTACHED SHEET FOR STRUCTURES				0	0
Total Construction Cost				0	250,000*
Construction Engineering				5.60%	14,000
Right-Of-Way Cost				24.00%	60,000
Utility Cost				0.00%	0
Preliminary Engineering				12.00%	30,000
CURRENT TOTAL PROJECT COST					354,000

*This project is not exempt for the payment of sales tax

Initiated By: Bureau of Program & Project Mgmt (Coufal) **Signature:** **Date:** 12/24/2008

Comments:

1/20/2009
 Chief of Program & Project Management Date

FHWA Concurrence <input type="checkbox"/> Proposed Environmental Classification <div style="border: 1px solid black; width: 100px; height: 20px; margin-top: 10px;"></div> <p style="text-align: right;">Date</p>	STE PROJECT AUTHORIZATION <input checked="" type="radio"/> Approve <input type="radio"/> Disapprove Comments: <div style="border: 1px solid black; width: 100px; height: 20px; margin-top: 10px; display: flex; align-items: center;"> <input checked="" type="checkbox"/> </div> <p style="text-align: right;">Date 01/21/09</p>
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**KANSAS DEPARTMENT OF TRANSPORTATION
Construction Project Authorization**

Sheet 2 of 4

Project Schedule

Milestones/Checkpoints & Responsibility

* denotes automatically assigned dates

Project : K-7888-03 Loc Desc: E 1326 ROAD, FROM N 1000TH ROAD, NORTH TO N 1031ST ROAD
 Rte/Cnty : U059 /023 SI: E Stg Desc: E 1326 ROAD, FROM N 1000TH ROAD, NORTH TO N 1031ST ROAD
 Status ACTIV Work Type: FUNDS Date Baselined: 02/21/2008 Ver: 4
 Rd Cnsl
 Br Cnsl

KDOT Prg AFCTP AFTER COMPREHENSIVE TRANSPORTATION PRO Program Cat: MM

<u>M/CP</u>	<u>Name</u>	<u>BI Start</u>	<u>Act Start</u>	<u>OBS</u>	<u>Resp Manager</u>
M15	KAUTH	08/24/2005	08/23/2005	PPT	PROTASIO, CHARLES
M17	LETTG	01/15/2010		PPT	PROTASIO, CHARLES

KANSAS DEPARTMENT OF TRANSPORTATION
Construction Project Authorization

(U)59-23 K-7888-03

Sheet 3 of 4

Location Detail

East 1326 Road, from N 1000th Road, North to N 1031st Road.

Project Notes

State Participation will be 100% of the PE, CE and Const costs up to a maximum of \$294,000. Douglas County will be responsible for the balance. Douglas County will be responsible for plan preparation and project development.

Right of Way will be acquired by Douglas County, State Participation in ROW cost will be 100%.

If Utilities need to be relocated, the cost will be the responsibility of Douglas County.

Schedule Notes

As requested in email dated 2/21/08 and via revised 883, project letting moved from 1/2008 to 1/2010.
LSF 2/26/08

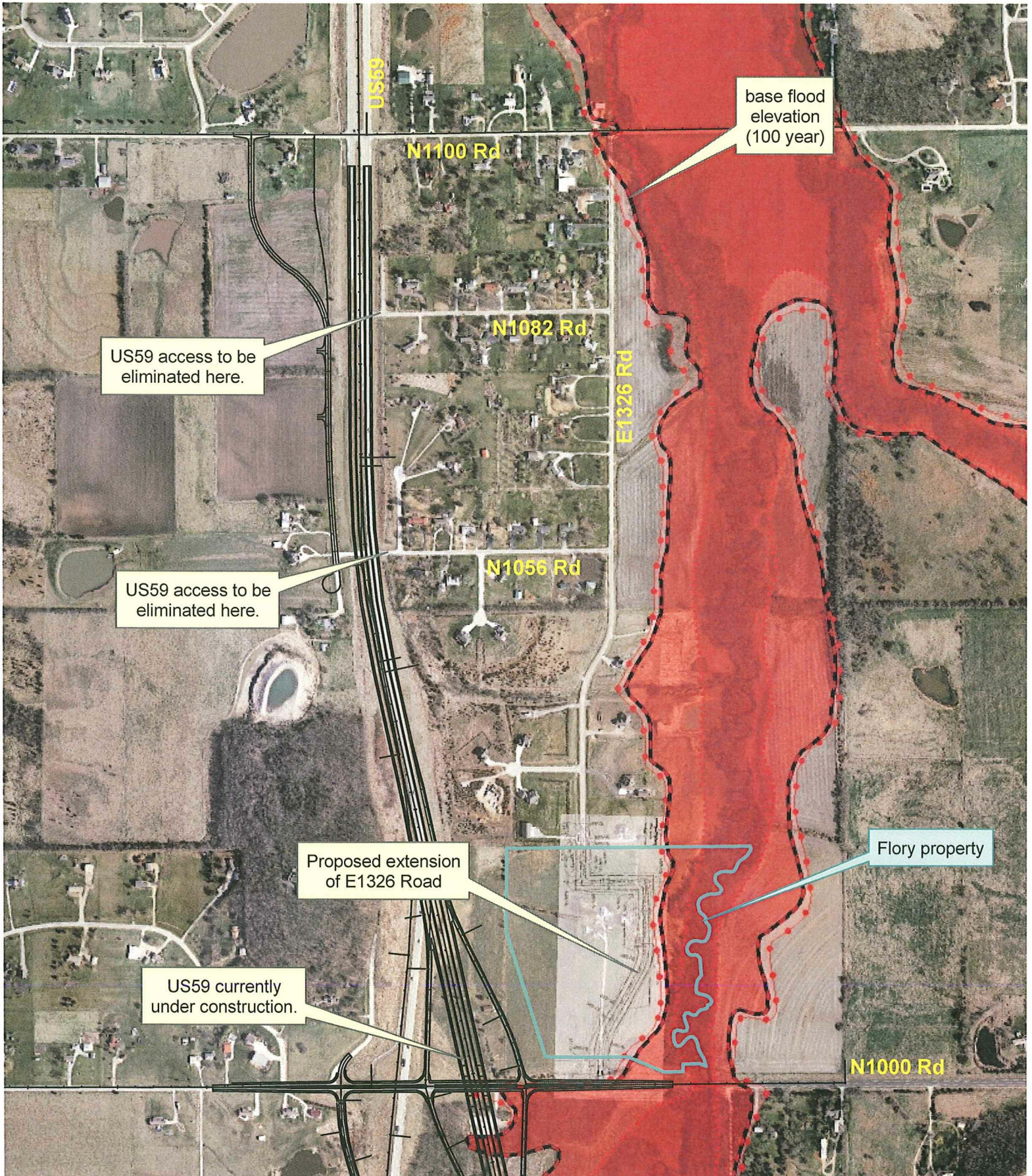
No schedule change for revised 883 dated 12/24/08. LS Fritton 1/9/09

E1326 Road Extension



1 inch = 700 feet

700 350 0 700 Feet



US59 access to be eliminated here.

US59 access to be eliminated here.

Proposed extension of E1326 Road

US59 currently under construction.

base flood elevation (100 year)

Flory property

N1100 Rd

N1082 Rd

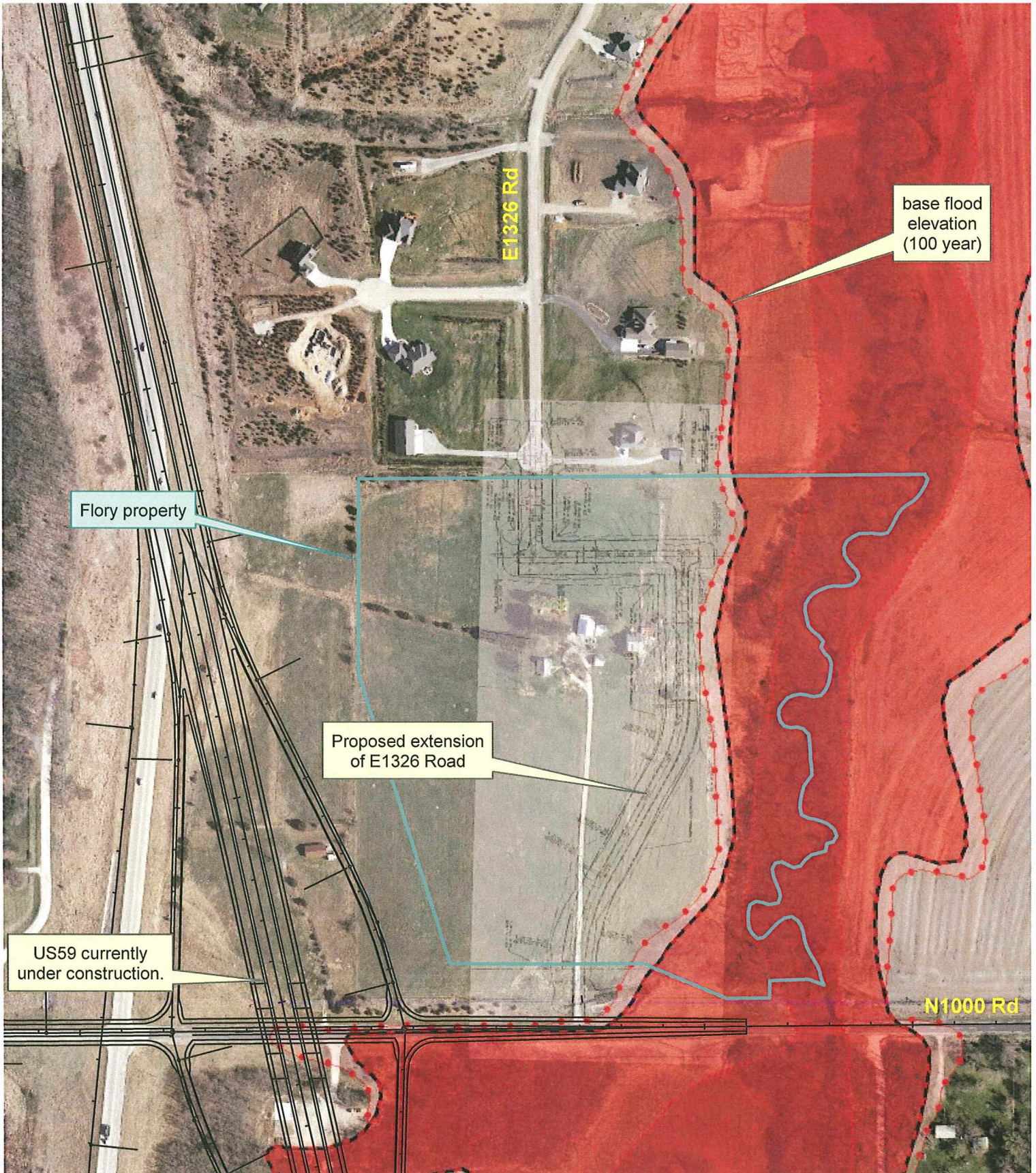
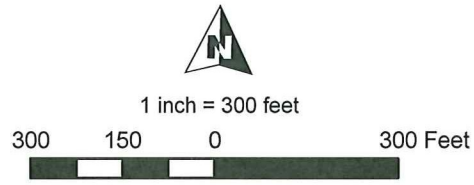
N1056 Rd

E1326 Rd

N1000 Rd

US59

E1326 Road Extension



Copy Original

Agreement No. 183-05

PROJECT NO. 59-23 K-7888-03

GRADING, SURFACING, AND SEEDING

DOUGLAS COUNTY, KANSAS

AGREEMENT

PARTIES: DEBRA L. MILLER, Secretary of Transportation, hereinafter referred to as the "Secretary"
Kansas Department of Transportation (KDOT)

Douglas County, Kansas, hereinafter referred to as the "County"

PURPOSE: The Secretary desires to partner with the County by providing State Highway Funds to the County for providing additional property access by constructing an extension of East 1326 Road in advance of Project 59-23 K-7888-01 (grading and bridges for a 4-lane freeway on offset alignment) construction in accordance with Project 59-106 K-6318-01 (APE Study) recommendations. Berg Acres, a residential development in the County, will close two of their three access points to US-59 as a result of the 59-23 K-7888-01 Project. The Secretary further desires to enter into an Agreement with the County to participate in the cost of the Project by use of State Highway funds.

EFFECTIVE

DATE: The parties in consideration of the premises and to secure the approval and construction of the Project shall mutually agree to perform in accordance with this Agreement as of the 1st day of June, 2006.

DEFINITIONS

Project – grading, surfacing, and seeding of a 2-lane roadway designed and constructed in accordance with Douglas County Road Standards, and as described in the current KDOT Project Authorization Form 883 for the Project.

Project Description - the location of the Project from its point of beginning to its ending point, the road construction Project being located as follows: East 1326 Road, from North 1000th Road north to North 1031st Road.

TERMS OF AGREEMENT

ARTICLE I

THE SECRETARY AGREES:

1. To reimburse the County one-hundred percent (100%) of the total actual costs of preliminary engineering, construction (which includes the costs of all construction contingency items) and construction engineering, but not to exceed a maximum of \$210,000 for the Project. The Secretary shall not be responsible for the total actual costs of preliminary engineering, construction (which includes the costs of all construction contingency items) and construction engineering that exceed \$210,000 for the Project. The Secretary shall acquire and be responsible for one hundred percent (100%) of the total actual costs of rights-of-way under project number 59-23 K-7888-01. The Secretary shall not be responsible for the total actual costs of utility adjustments for the Project.

2. To make such payment to the County as soon as reasonably possible after construction of the Project is completed, and after receipt of proper billing and attestation in writing by a licensed professional engineer employed by the County that the Project was designed and constructed within substantial compliance of the County's design standards and specifications.

ARTICLE II

THE COUNTY AGREES:

1. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the County will defend, indemnify, hold harmless, and save the Secretary and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the County, the County's employees, agents, or subcontractors. The County shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

2. To require the contractor to indemnify, hold harmless, and save the Secretary and the County from personal injury and property damage claims arising out of the act or omission of the contractor, the contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary of the County defends a third party's claim, the contractor shall indemnify the Secretary and the County for damages paid to the third party and all related expenses that either the Secretary or the County or both incur in defending the claim.

3. To prepare or contract to have prepared, the design plans, specifications, and cost estimate (PS&E) for the Project, to let the contract and award the contract to the lowest responsible bidder. The County agrees to construct or have constructed the Project in accordance with the final design plans and specifications; inspect or have inspected the

construction; administer the Project; and make the payments due the contractor, including the portion of cost borne by the Secretary. The County shall design the Project or contract to have the Project designed in conformity with the County's Road Design Standards and Specifications. The County and any consultant retained by the County shall have the sole responsibility for the adequacy and accuracy of the design plans, specifications, and estimates. Any review of these items that may be performed by the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the County's and its consultant's duty to provide adequate and accurate design plans, specifications, and estimates. Such reviews are not done for the benefit of the consultant, the construction contractor, the County, or other political subdivision, nor the traveling public. The Secretary makes no representation, expressed or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, and estimates or any other work performed by the consultant or the County.

4. That the County will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipelines, meters, manholes, and other utilities, publicly or privately owned, which may be necessary for construction of the Project in accordance with the final design plans. All costs associated with the removal or adjustment of the utilities and encroachments located on public right of way or easement shall be borne by the owner or the County.

5. To adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.

6. It is understood that the County shall determine the manner in which traffic is to be handled during construction in accordance with the latest version, adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD)

7. That the location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by a public authority, or other agency as authorized by K.S.A. 8-2005, shall conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to the approval of the Secretary.

8. That the final design plans shall depict the entire Project location. The County shall have the final design plans signed and sealed by a licensed professional engineer. The County further agrees that the specifications will require the contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

9. With the following: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*)(ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in

(a) through (c) in every contract, subcontract or purchase order so that they are binding upon such contractor, subcontractor or vendor; (e) that a failure to comply with any applicable requirements of (a) through (d) above or if the County is found guilty of any violation by federal or state agencies having enforcement jurisdiction for those Acts, such violation shall constitute a breach of the Agreement; (f) if the Secretary determines that the County has violated applicable provisions of ADA, that violation shall constitute a breach of the Agreement; (g) if (e) or (f) occurs, the Agreement may be cancelled, terminated or suspended in whole or in part.

10. To require the contractor to pay prevailing wages. The County will incorporate into the construction contract the current general wage decision for the county in which the Project is being constructed. The County may obtain the current wage decision from the KDOT Bureau of Construction and Maintenance, Topeka, Kansas.

11. To provide the construction engineering necessary to determine substantial compliance with the final design plans, specifications, and this Agreement.

12. The County upon completion of the Project shall have a licensed professional engineer employed by the County attest in writing to the KDOT Bureau of Local Projects Urban Engineer that the Project was completed in substantial compliance with the final design plans and specifications.

13. That upon request by the Secretary, to provide the Secretary an accounting of all actual costs of the project.

14. That it will request payment from the Secretary after the County has paid the contractor in full, and a licensed professional engineer has attested in writing that the Project has been completed in conformance with the plans and specifications.

ARTICLE III

THE SECRETARY AND THE COUNTY MUTUALLY AGREE:

1. That the final design plans and specifications are by reference made a part of this Agreement.

2. That it is the policy of the Secretary to make final payments to the County in a timely manner. The Single Audit Standards set forth in federal O.M.B. Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" that require the County to comply in accordance with those standards.

3. The Secretary may pay the final amount due for authorized work performed based upon the County's most recent "Single Audit Report" available and a desk review of the claim by the Contract Audit Section of the Bureau of Fiscal Services. The County, by acceptance of this Agreement, acknowledges that the final payment is subject to all single audits which cover the time period of the expenses being claimed for reimbursement. The Secretary and the County agree that as the "Single Audit Report" becomes available for the reimbursement period, that the

Secretary will review the "Single Audit Report" for items which are declared as not eligible for reimbursement. The County agrees that if payment has been made to the County for items subsequently found to be not eligible for reimbursement by audit, that the County will refund to the Secretary the total amount of monies paid for same.

4. The County shall agree to comply with all appropriate state and federal laws and regulations applicable to this Project.

5. That the Special Attachment No. 1 attached hereto, pertaining to the implementation of the Civil Rights Act of 1964, is hereby made a part of this Agreement.

6. That this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the County and their successors in office.

7. That no third party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

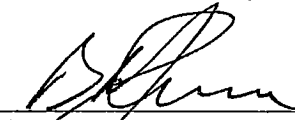
IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:

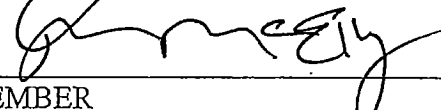
DOUGLAS COUNTY, KANSAS



COUNTY CLERK



CHAIRPERSON



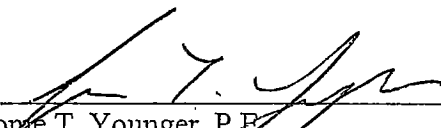
MEMBER



MEMBER

Debra L. Miller
Secretary of Transportation

(SEAL)

By: 

Jerome T. Younger, P.E.
Assistant Secretary and
State Transportation Engineer



KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL
JUSTICE IN MINORITY POPULATIONS AND LOW INCOME POPULATIONS (1994), and
any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 3555) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such ACT, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively insure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following seven "Nondiscrimination Clauses".

CLARIFICATION

Where the term "consultant" appears in the following seven "Nondiscrimination Clauses", the term "consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- (1) Compliance with Regulations: The consultant will comply with the Regulations of the U. S. Department of Transportation relative to nondiscrimination in federally-

assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

- (2) Nondiscrimination: The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.
- (4) Information and Reports: The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) Employment: The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- (6) Sanctions for Noncompliance: In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,

- (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) Disadvantaged Business Obligation
- (a) Disadvantaged Businesses as defined in the Regulations, shall have a level playing field to compete fairly for contracts financed in whole or in part with Federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- (8) Executive Order 12898
- (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the state of Kansas and use such information in complying with this Order.
- (9) Incorporation of Provisions: The consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

February 4, 2008

Keith Browning, P.E.
Douglas County Engineer
1242 Massachusetts
Lawrence, Kansas 66044-3350

Dear Mr. Browning:

Subject: Project No. 59-23 K-7888-01 in Douglas County

This letter will document our phone conversation of February 2, 2008, relating to the extension of East 1326 Road south to North 1000 Road (Wells Overlook Road).

As you know, this has been an on-going issue for the past several months and we are rapidly approaching the date when we need to have the right-of-way cleared for construction of the US-59 improvement.

After reviewing the right-of-way acquisition alternatives for the extension of East 1326 Road with our executive staff, we want to present one additional option for the county's consideration before we proceed with the acquisition.

Option 1: Proceed with the acquisition of the right-of-way according to the current plans and per your letter of January 24, 2008. This option would provide the right-of-way to construct the US-59 highway improvement and the extension of East 1326 Road as currently designed. This design carries East 1326 Road around the east side of the Flory farmstead.

Option 2: Separate the right-of-way required for the US-59 project from that required for the East 1326 Road extension. The Kansas Department of Transportation (KDOT) would proceed with the acquisition of the right-of-way required for the US-59 project and the county would acquire the right-of-way necessary for the extension of East 1326 Road at a future date. Funding for the acquisition of East 1326 Road would be provided by KDOT pending review of the offer. This option would allow additional time for the county to carry on discussions with the property owner. Specific items involving timing and costs would be worked out in a revised agreement between the county and KDOT.

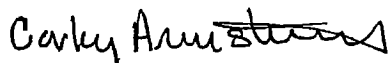
Keith Browning, P.E.
Page 2
February 4, 2008

At this point in time, KDOT is willing to proceed with either of the two options noted above, pending direction from Douglas County. We request that you carefully consider the options and send a reply with your selected option to KDOT by February 15, 2008.

If you have any questions or need further clarification, please do not hesitate to contact me at (785) 296-3901 or via e-mail at corky@ksdot.org.

Sincerely,

Jim L. Kowach, P.E.
Chief, Bureau of Design



Corky Armstrong, P.E.
Road Design Engineer

LCA:js

c: Howard Lubliner, Road Design Leader

Douglas County

Department of Public Works

Keith A. Browning, P.E.

Director of Public Works/County Engineer

February 13, 2008

Corky Armstrong, P.E.
Road Design Engineer
Kansas Department of Transportation
Bureau of Design
Dwight D. Eisenhower State Office Building
700 S.W. Harrison Street
Topeka, KS 66603-3745

Re: Extension of E 1326 Road in conjunction with US-59 freeway project
KDOT Project No. 59-23 K-7888-01; DGCO Project No. 2006-11

Dear Mr. Armstrong:

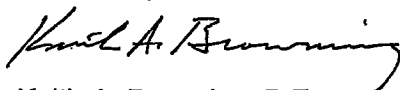
We are in receipt of your letter dated February 4, 2008 regarding right-of-way acquisition alternatives for the extension of E 1326 Road from the Berg Acres area to Route 458. In the letter, you presented two options for acquisition of E 1326 Road right-of-way for county consideration.

Douglas County agrees that Option 2 is the most appropriate option given current circumstances. Under this option, KDOT will proceed with acquiring the necessary right-of-way for the US-59 project, and at a future date Douglas County will negotiate with the landowner to acquire necessary right-of-way for the E 1326 Road extension project. Although Douglas County will negotiate with the landowner to acquire right-of-way, KDOT will remain responsible for all right-of-way costs for the E 1326 Road extension project. We understand KDOT must review and approve any offer prior to our presenting it to the landowner.

As stated in your letter, Option 2 would require a revised agreement between Douglas County and KDOT. Under terms of our current 2006 agreement, KDOT capped its contribution toward construction and engineering costs at \$210,000. Our most recent estimate of road construction costs is approximately \$250,000, which does not include engineering design costs. Under Option 2, we would anticipate acquiring right-of-way and constructing the project in 2010. Douglas County respectfully requests the revised agreement include a revised not-to-exceed KDOT contribution amount inflated from 2006 costs to 2010 costs.

Please confirm KDOT will prepare a revised agreement for Douglas County consideration. If you have questions or wish to further discuss, please contact me.

Very truly yours,



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

KAB:lsb