

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, AUGUST 31, 2011

4:00 p.m.

-Convene

-Consider approval of a proclamation declaring September as "National Preparedness Month" (Teri Smith/Jillian Rodrique)

-Consider approval of a proclamation declaring September 5-12, 2011 as "Just Food Fight Hunger Week" (Jeremy Farmer)

-Consider approval of the minutes of August 3 and August 10, 2011

CONSENT AGENDA

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

(b) Consider approval of Agreement for Engineering Services for engineering design of US-56 widening improvements from Bullpup Drive through the E 1600 Road intersection near Baldwin City, Project No. 56-23 KA-2294-01. (Keith Browning); and

(c) Consider approval of agreement for appraisal and R/W acquisition services, Route 1055 (6th Street) improvements from US-56 highway to Route 12, Project No. 2010-20 (Keith Browning)

REGULAR AGENDA

(2) Consider amending Lone Star Lake Park Rules and Regulations (Keith Browning)

(3) Discuss possible treatment of exotic nuisance plant at Lone Star Lake (Keith Browning)

(4) Authorize execution of contract for purchase of 34 acres from PDO investors for future Public Works facilities (Craig Weinaug)-Backup to follow

(5) Other Business

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

(b) Appointments:

Board of Zoning Appeals - 10/2011

Building Code Board of Appeals - vacancy

Douglas County Advocacy Council on Aging – vacancy

Douglas County Community Corrections Advisory Board - 12/2011

Douglas County Senior Services, Inc. Board of Directors - 12/2011

Jayhawk Area Agency on Aging Board of Directors – 09/30/11

Jayhawk Area Agency on Aging Tri-County Advisory Council - vacancy

Fire/EMS District No. 1 - 12/2011

(c) Miscellaneous

(d) Public Comment

RECESS

RECONVENE

6:35 p.m.

(6) Public Hearing for Rural Water District No. 4 petition to attach lands (Clerk's office)

(7) Adjourn

WEDNESDAY, SEPTEMBER 7, 2011

6:35 p.m.

- Consider proclamation for September 7, 2011 as "International Literacy Day" (Betty Parks)
- Presentation by AmeriCorps (Leah Noakes & Johnna Godinez)

WEDNESDAY, SEPTEMBER 14, 2011

-Receive information regarding the Kansas Forest Service partnership with the Planning and Development Services Department to conduct an assessment of the forest resource in Douglas County. The staff memo and attachments outlines the goals of the assessment, describes the process, and defines the Planning Departments participation in the project. (Mary Miller is the Planner)

WEDNESDAY, SEPTEMBER 21, 2011

WEDNESDAY, SEPTEMBER 28, 2011

WEDNESDAY, OCTOBER 5, 2011

-CPA-10-8-10: Consider Comprehensive Plan Amendment to Chapter 14 – Southeast Area Plan, to reference and reflect the accepted Preliminary Alignment Study for 31st Street and to update the plan to reflect changes since adoption. (PC Item 7; approved 8-0 on 8/24/11) Michelle Leininger is the Planner.

Note: *The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:35 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.*



PROCLAMATION

NATIONAL PREPAREDNESS MONTH SEPTEMBER 2011

WHEREAS, National Preparedness Month is a nationwide effort held each September; and

WHEREAS, the goal of the eighth annual National Preparedness Month is to increase public awareness about the importance of preparing for emergencies and to encourage individuals to take action; and

WHEREAS, no community is truly prepared for a disaster until every individual, family and business takes personal responsibility for preparedness; and

WHEREAS, the U.S. Department of Homeland Security, through its *Ready* campaign and Citizens Corps program, works with a wide variety of organizations, including local, state and federal government agencies and the private sector, to highlight the importance of emergency preparedness and to promote individual involvement through events and activities across the nation; and

WHEREAS, all Americans need to take some simple steps to prepare for emergencies, including making a family emergency plan, getting an emergency supply kit, being informed about local threats and getting involved in preparing their communities; and

WHEREAS, the flooding, record and near-record snowfall, straight-line winds and tornadoes that affected both Kansas and Douglas County in 2011, illustrate the potential devastation to communities and highlight the importance of preplanning disaster response and sheltering operations;

NOW, THEREFORE, the Board of County Commissioners of Douglas County, Kansas, proclaims the month of September, 2011 to be

“National Preparedness Month”

in Douglas County and encourages citizens of Douglas County to join with citizens across the nation to ensure a community of citizens who are disaster aware and disaster prepared.

ADOPTED this 31st day of August, 2011.

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

Jim Flory, Chairman

Mike Gaughan, Vice-Chair

Nancy Thellman, Member



Office of the County Commission
PROCLAMATION
For Douglas County, Kansas

WHEREAS, Douglas County is proud to recognize Just Food, the Food Bank in Douglas County in its continued efforts to fight hunger; and

WHEREAS, On September 12, 2011, Just Food's 1st Annual Golf Tournament sponsored by the Pilot Club of Lawrence, Johnny's West and Clinton Parkway Hy-Vee will take place with all proceeds benefitting Just Food to feed Douglas County residents; and

WHEREAS, Monthly, Just Food distributes between 30 and 40 tons of food to more than 2500 Douglas County residents and coordinates efforts with partner pantries; and

WHEREAS, Just Food continues to live up to its mission to provide food to those who are food insecure while seeking to raise awareness and promote action to combat hunger in Douglas County; and

NOW, THEREFORE, the Board of County Commissioners of Douglas County, Kansas, do proclaim the week of September 5-12, 2011 as **"JUST FOOD FIGHT HUNGER WEEK"** SPONSORED BY CLINTON PARKWAY HY-VEE, And urge citizens to support Just Food's mission to fight hunger in Douglas County, Kansas.

ADOPTED this 31st day of August, 2011.

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

Jim Flory, Chairman

Mike Gaughan, Vice-Chair

Nancy Thellman, Member

MEMORANDUM

To : Board of County Commissioners

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

Date : August 23, 2011

Re : Consider approval of Agreement for Engineering Services
US-56 widening from Bullpup Drive to E 1600 Road near Baldwin City
Corridor Management Construction Project No. 56-23 KA-2294-01

You will recall the BOCC approved a project agreement with KDOT to widen US-56 highway from Bullpup Drive through the E 1600 Road intersection. Construction of the project is being funded 100% by KDOT through their corridor management construction program. The estimated construction cost is \$551,000. Local entities are responsible for preliminary engineering, rights-of-way acquisition, utility relocations, and construction engineering. Baldwin City and Douglas County have agreed to share the local costs 40%/60%, respectively.

After going through the selection process, a selection committee consisting of Douglas County Public Works and Baldwin City Public Works personnel has selected BG Consultants, Inc. as the top ranked firm for design of this project. BG has submitted a not-to-exceed fee of \$69,660.88 for design engineering services. In our application to KDOT for corridor management funding, we estimated design engineering costs to be \$66,120. After reviewing BG's proposal, we find the proposed not-to-exceed fee is reasonable. Baldwin City agrees the proposed fee is reasonable.

This project will need to be added to the CIP at the next update, currently scheduled for this fall. Until the project is included in the CIP, we propose to pay for design engineering services from CIP Project #93, Contingency for Unplanned Road Projects.

Action Required: Authorize the BOCC Chair to sign three (3) original copies of the Engineering Services Agreement for engineering design of US-56 widening improvements from Bullpup Drive through the E 1600 Road intersection near Baldwin City, Project No. 56-23 KA-2294-01.

ENGINEERING SERVICES AGREEMENT
PROJECT NO. 56-23 KA-2294-01
US-56, Bullpup Drive west through E 1600 Road (Route 11)

THIS Engineering Services Agreement is entered into by and between Douglas County, Kansas ("County") and BG Consultants, Inc. ("Engineer"), as of the _____ day of _____ 2011 (the "Effective Date").

RECITALS

WHEREAS, County desires to employ Engineer to provide professional engineering services in the design of certain road(s) and/or bridge(s) in Douglas County, Kansas, in connection with Douglas County Project No. 56-23 KA-2294-01 (the "Project"); and

WHEREAS, Engineer agrees to provide such services.

TERMS OF AGREEMENT

NOW THEREFORE, in consideration of the promises contained in this Agreement, County employs Engineer and Engineer agrees to provide professional engineering services as follows:

I. DEFINITIONS

In addition to other terms defined in the body of this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this Agreement, and other forms of any defined words shall have a consistent meaning:

"Additional Services" means any services requested by County which are not covered by Exhibit A.

"Agreement" means this contract and includes change orders issued in writing.

"County Engineer" means the person employed by County with the title of County Engineer, who is licensed to practice engineering in the State of Kansas.

"Engineer" means the company or individual identified in the preamble of this Agreement. Engineer shall employ for the services rendered engineers, architects, landscape architects, and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.

"Contract Documents" means those documents identified in the Contract for Construction of the Project, including Engineering Documents. All terms defined in the General Conditions of the Contract for Construction shall have the same meaning when used in this Agreement unless otherwise specifically stated, or in the case of a conflict, in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

"Engineering Documents" means all plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums and correspondence related to the Engineering Services.

“Engineering Services” and “Services” mean the professional services and other acts or duties required of Engineer under this Agreement, together with Additional Services as County may request and as evidenced by a supplemental agreement pursuant to the terms of this Agreement.

“Project” means the Douglas County project identified above in the Recitals. “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment, and appropriate professional interpretations of all of the foregoing.

II. COMPENSATION

Engineer’s compensation and related matters are as follows:

A. MAXIMUM TOTAL FEE AND EXPENSE

Engineer’s fee shall be based on the actual hours expended on the Project at the rates indicated in the attached Estimate of Engineering Fee (attached hereto as Exhibit B and incorporated herein by reference) and the actual reimbursable expenses permitted under this Agreement and incurred on this Project, with the fee and reimbursable expenses not to exceed \$69,660.88 (“Total Maximum Fee”). The Total Maximum Fee is based on the scope of Services outlined in Exhibit A, attached hereto and incorporated herein by reference, which Services shall be completed on or before December 1, 2013. Engineer’s fees and expenses shall not exceed the amounts for each phase as detailed in Exhibit B. Additional or alternative methods of compensation shall be paid only with written approval of the County Engineer.

B. HOURLY RATE

Any Additional Services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule in Exhibit B and reimbursable expenses not contemplated in this Agreement will be charged at actual cost. No Additional Services or costs shall be incurred without written approval by County.

C. REIMBURSABLE EXPENSES

Reimbursable expenses shall be included in the Total Maximum Fee and shall be reimbursed at Engineer’s actual cost, without mark-up. Reimbursable expenses must be authorized by County and include expenses of transportation in connection with the Project, expenses in connection with authorized out-of-town travel, long-distance communications, expenses of printing and reproductions, postage and facsimile transmissions, expenses of renderings and models requested by County, and other costs as authorized by County. Reimbursable expenses will not include overhead costs or additional insurance premiums, which are included in the hourly rate structure. Unit rates for reimbursable expenses are included in Exhibit B. Records documenting reimbursable expenses shall be made available to County if requested in writing. Production of these documents shall be made at Engineer’s office during normal business hours within a reasonable time of request, at a date and time mutually convenient to both parties.

D. SALES TAX EXCLUDED

Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on the amount of compensation, fees or services. Should such taxes be legally imposed, County shall reimburse Engineer for such taxes in addition to the contractual amounts provided. Engineer, however, shall use County's sales tax exemption where applicable, and County need not reimburse Engineer for sales or use taxes Engineer pays in transactions legally exempt from such tax.

E. BILLING

Engineer shall bill County monthly for all its fees and reimbursable expenses. Monthly pay requests must generally be received by the 5th day of the month. The bill submitted by Engineer shall itemize the Services and reimbursable expenses for which payment is requested, and shall be deemed to include a representation by Engineer to County that the Services have proceeded to the point stated in the bill and that amounts requested in the bill are due and owing pursuant to this Agreement. County agrees to pay Engineer within 10 days after approval by the governing body or 30 days after the invoice is received, whichever is later.

F. COUNTY'S RIGHT TO WITHOLD PAYMENT

In the event County becomes credibly informed that any material representations of Engineer provided in its monthly billing are wholly or partially inaccurate, County may withhold payment of disputed sums then, or in the future, otherwise due Engineer until the inaccuracy and the cause thereof is corrected to County's reasonable satisfaction. In the event County questions some element of an invoice, that fact shall be made known to Engineer as soon as reasonably possible. Engineer will assist in resolution of the matter and transmit a revised invoice if necessary. County shall pay the undisputed portion of any invoice as provided in Paragraph E above.

G. PROGRESS REPORTS WITH PAY APPLICATIONS

A written progress report, as set out in Exhibit C (attached hereto and incorporated herein by reference) must be submitted with each monthly bill, indicating the percentage completion of each specific design task and those tasks that will be performed the following month. This report will serve as support for payment to Engineer.

H. CHANGES IN SCOPE

For substantial modifications in authorized Project scope and/or substantial modifications of drawings and/or specifications previously accepted by County, when requested by County and through no fault of Engineer, Engineer shall be compensated for the time required to incorporate such modifications at Engineer's standard hourly rates per Exhibit B. An increase in Total Maximum Fee or contract time, however, must be requested by Engineer and must be approved through a written supplemental agreement prior to performing such Services. Engineer shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Engineer's negligence, error, or omission.

I. ADDITIONAL SERVICES

Engineer shall provide services in addition to those described in this Agreement, including Exhibit A, when such services are requested in writing by County. Prior to providing any such Additional Services, Engineer shall submit a proposal outlining the Additional Services and an estimation of total hours and a maximum fee, based upon the Fee Schedule in Exhibit B. Payment to Engineer, as compensation for these Additional Services, shall be in accordance with the Fee Schedule in Exhibit B. Reimbursable expenses incurred in conjunction with Additional Services shall be paid at actual cost. Reimbursable expenses will not include overhead costs or additional insurance premiums, which are included in the hourly rate structure. Unit rates for reimbursable expenses are included in Exhibit B. Records of reimbursable expenses pertaining to Additional Services shall be made available to County if requested in writing. Production of these documents shall be made at Engineer's office during normal business hours within a reasonable time of request, at a date and time mutually convenient to both parties.

III. RESPONSIBILITIES OF ENGINEER

Engineer shall furnish and perform the Engineering Services in all phases of the Project, as specifically provided in Exhibit A and which are required for the completion of the Project, according to the Project Schedule set forth in Exhibit D, attached hereto and incorporated herein. Such services shall include the following services during the following Project phases:

A. PRELIMINARY DESIGN PHASE

Engineer shall do the following during the preliminary design phase:

1. Services: Engineer shall provide the services during this phase as described in Exhibit A.
2. Preliminary Design Documents: Engineer shall furnish County with 3 copies of the preliminary design documents for review as set out in Exhibit A.
3. Probable Cost: Engineer shall furnish County an opinion of probable Project cost based on Engineer's experience and qualifications. If the probable cost exceeds the amount budgeted for the Project, County may terminate this Agreement at the completion of this phase. If directed by County, Engineer shall modify the drawings and specifications as necessary to achieve compliance with the budgeted construction cost, and be compensated as Additional Services.

B. FINAL DESIGN PHASE

Engineer shall do the following during the final design phase:

1. Services: Engineer shall provide the services during this phase as described in Exhibit A.
2. Final Design Documents: Engineer shall furnish County with raster files and hard copies of the final plans in an accepted format as specified in Exhibit A.

The raster files, as well as the hard copies, shall contain all required signatures from County and the signature and seal of the design engineer.

3. Contract Documents: County standard Contract Documents shall be used and Engineer shall furnish all details and specifications that are unique for the Project.

C. BIDDING PHASE

Engineer shall do the following during the bidding phase:

1. Services: Engineer shall provide the Services during this phase as described in Exhibit A.
2. Bids Exceeding Cost Estimate: If bids exceed the estimated probable Project cost, County may discuss with Engineer and the lowest responsible bidder ways to reduce the cost, and Engineer shall provide suggestions for reducing the Project costs. This discussion will be accomplished at no additional cost to County.

D. CONSTRUCTION PHASE

Engineer shall do the following during the construction phase:

1. Services: Provide the Services during this phase as described in Exhibit A.
2. Administration: County will provide in-house administration of the construction contract; however, Engineer shall consult with and advise County and act as County's representative when requested. If County requests, Engineer shall provide contract for construction administration and observation services as Additional Services.
3. Contract Interpretation: When requested by County, Engineer shall visit the site and issue necessary interpretations and clarifications of the Contract Documents. Engineer shall provide such services at no additional cost to County.
4. Additional Drawings: If, during construction, situations arise which require additional drawings or details, or revision of the plan drawings or details, Engineer agrees to provide such additional drawings or revisions at no additional cost to County when such changes are required to correct Engineer's errors or omissions in the original design and preparation of construction drawings. If additional drawings or details are required through no fault of Engineer, or are beyond its control, both parties agree to negotiate an equitable payment to Engineer for its services rendered, which shall be accomplished through a supplemental agreement.
5. Shop Drawings: Engineer shall review and take appropriate action on each contractor's shop drawings and samples, and the results of tests and inspections and other data which each contractor is required to submit for the limited purposes of checking for compliance with the design concept and

information shown in the Contract Documents. Such review shall not extend to means, methods, sequences, techniques, quantities, fabrication processes, procedures of construction, coordination of the work with other trades, or to safety precautions and programs incident thereto, all of which are the sole responsibility of the contractor, unless an obvious defect or deficiency exists, in which case Engineer shall advise County of such defect or deficiency so the same can be prevented.

E. GENERAL DUTIES AND RESPONSIBILITIES

Engineer shall have the following general duties and responsibilities:

1. Personnel: Engineer shall assign only qualified personnel to perform the Engineering Services. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project: David J. Hamby, P.E. ("Project Principal"). The Project Principal shall be the primary contact with County and shall have authority to bind Engineer. So long as the Project Principal remains actively employed or retained by Engineer, this individual shall continue to serve as the Project Principal.
2. Independent Contractor: Engineer is an independent contractor and as such is not an employee of County.
3. Special Services: Engineer may be called upon to serve as a witness in any litigation, arbitration, legal or administrative proceeding arising out of the Project. If Engineer is requested in writing by County to appear as a witness, Engineer will be paid its hourly fee as reflected on the Fee Schedule in Exhibit B; provided, however, that Engineer shall not be paid its hourly fee if the appearance is to defend Engineer's Engineering Services.
4. Subsurface Borings and Testing: If County requests subsurface boring or other tests for design, in addition to those described in Exhibit A, Engineer shall prepare specifications for the taking of the additional testing. Such testing may be provided by Engineer through other contractors. Payment to Engineer will be negotiated in writing.
5. Service by and Payment to Others: Any work authorized in writing by County and performed by a party other than Engineer or its approved subcontractors shall be contracted for and paid for by County directly to the third party. Fees for such work shall be subject to negotiation between County and the third party and shall be approved by County prior to the performance of any such work.
6. Subcontracting or Assignment of Services: Engineer shall not subcontract or assign any of the Engineering Services to be performed under this Agreement without first obtaining the written consent of County regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Unless otherwise stated in County's written consent to a subcontract or assignment, no subcontract or assignment will release or discharge Engineer from any obligation under this Agreement.

7. Endorsement: Engineer shall sign and seal all final plans, specifications, estimates and engineering data furnished by Engineer. Any review or approval by County of any documents prepared by Engineer, including, but not limited to, the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent with County's construction program and intent. No review of such documents shall relieve Engineer of its responsibility for their accuracy. It is Engineer's responsibility to verify the existence of any and all rights-of-way and easements, including temporary construction easements, that are necessary for the Project. Rights-of-way and easements shown on the plans shall have proper legal verification to prove their existence.
8. Professional Responsibility: Engineer will exercise reasonable skill, care and diligence in the performance of the Engineering Services as is ordinarily possessed and exercised by a licensed professional engineer performing the same services under similar circumstances. Engineer represents to County that Engineer is professionally qualified to provide such services and is licensed to practice engineering by all public entities having jurisdiction over Engineer and the Project.
9. Inspection of Documents: Engineer shall maintain all Project records for inspection by County during the term of this Agreement and for 3 years following the completion of the Project.

IV. RESPONSIBILITIES OF COUNTY

A. GENERAL DUTIES AND RESPONSIBILITIES

County shall have the following general duties and responsibilities:

1. Communication: County shall provide to Engineer information and criteria regarding County's requirements for the Project, examine and timely respond to Engineer's submissions, and give notice to Engineer whenever County observes or otherwise becomes aware of any defect in the Engineering Services.
2. Access: County shall procure and provide access agreements for Engineer to enter public and private property when necessary.
3. Program and Budget: County shall provide full information stating County's objectives, schedule, budget with reasonable contingencies, and necessary design criteria.
4. Other Engineers: County may contract with "specialty" engineers when such services are requested by Engineer.
5. Testing: County shall furnish any tests required to supplement the scope of services or tests required by law.
6. Bond Forms: County shall furnish all bond forms required for the Project.

7. Project Representative: County Engineer, or County Engineer's designee, shall represent County in coordinating the Project with Engineer, with authority to transmit instructions and define policies and decisions of County.
8. Payment: Pay Engineer its fees and reimbursable expenses in accordance with this Agreement.

V. PROJECT SCHEDULE

The Project Schedule is set forth in Exhibit D, attached hereto and incorporated by reference. Engineer shall perform the Engineering Services in a timely manner; provided, however, if, during its performance, for reasons beyond the control of Engineer, protracted delays occur, Engineer shall promptly provide written notice to County describing the circumstances preventing continued performance and Engineer's efforts to resume performance.

VI. SUSPENSION OR TERMINATION OF THE CONTRACT

A. SUSPENSION BY ENGINEER

Engineer may suspend performance of the Services under this Agreement if County consistently fails to fulfill County's material obligations under this Agreement, including County's failure to pay Engineer its fees and costs, within 15 days of Engineer's delivery to County of written notice of such default; provided, however, that Engineer may not suspend performance of Services based upon non-payment of fees or costs that is subject to a bona fide dispute, for which this Agreement authorizes County to withhold payment. Any such suspension shall serve to extend the contract time on a day for day basis.

B. TERMINATION BY ENGINEER

Engineer may terminate this Agreement upon 15 days written notice to County if (i) County suspends performance of the Services for its convenience for a period of 60 consecutive days through no act or fault of Engineer or a subcontractor or their agents or employees or any other persons or entities performing portions of the Engineering Services under direct or indirect contract with Engineer, or (ii) Engineer has suspended the performance of its Services for a period of 60 consecutive days pursuant to Section VI.A. above; and, during said 15 day written notice period, County has failed to cure its default. If Engineer terminates this Agreement, County shall pay Engineer such amounts as if County terminated this Agreement for its convenience pursuant to Section VI.E.

C. TERMINATION BY COUNTY FOR CAUSE

County may terminate this Agreement for cause upon 7 days written notice to Engineer: (i) persistently or repeatedly refuses or fails to supply enough qualified workers or proper materials; (ii) assigns or subcontracts any part of the Engineering Services without County's prior written consent; or (iii) otherwise is guilty of substantial breach of this Agreement; and, during said 7 day written notice period, Engineer fails to cure its default.

If County terminates this Agreement for cause, Engineer shall immediately transfer to County digital and mylar copies of all Engineering Documents completed or partially

completed at the date of termination. In addition, County may without prejudice to any other rights or remedies of County, finish the Engineering Services for the Project by whatever reasonable method County may deem expedient, including through contract with an alternate engineer, and bill Engineer for the sum of the amounts County pays Engineer pursuant to this Agreement, plus the costs County incurs in completing the Engineering Services, reduced by the Total Maximum Fee. Upon request of Engineer, County shall furnish Engineer a detailed accounting of the costs incurred by County in completing the Engineering Services. If County terminates this Agreement for cause Engineer shall not be entitled to receive further payment until the Engineering Services are completed.

If the Engineer for any reason is not allowed to complete all the Services called for by this Agreement, the Engineer shall not be held responsible for the accuracy, completeness of constructability of the construction documents prepared by the Engineer if changed or completed by the County or by another party. Accordingly, the County agrees, to the fullest extent permitted by the law, to waive and release the Engineer, its officers, directors, employees, and subconsultants from any damages, liabilities or costs, including reasonable attorney's fees and defense costs arising from such change or completion by any other party of any construction documents prepared by the Engineer.

D. SUSPENSION BY COUNTY FOR CONVENIENCE

County may, without cause, order Engineer in writing to suspend, delay or interrupt the Engineering Services in whole or in part for such period of time as County may determine.

The Total Maximum Fee and contract time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption.

E. TERMINATION BY COUNTY FOR CONVENIENCE

County may, at any time, terminate this Agreement for County's convenience and without cause. Upon receipt of written notice from County of such termination for County's convenience, Engineer shall: (i) except for Engineering Services directed to be performed prior to the effective date of termination as stated in the notice, cease operations under this Agreement; and (ii) take actions necessary or that County may direct, for the protection and preservation of the Engineering Services and Engineering Documents.

If County terminates this Agreement for its convenience, Engineer shall immediately transfer to County digital and mylar copies of all Engineering Documents completed or partially completed at the date of termination. County shall compensate Engineer for all Services completed prior to receipt of the termination notice or performed pursuant to the termination notice. County need not pay, and Engineer waives, compensation for Engineering Services not actually provided, anticipatory profit or consequential damages.

VII. GENERAL PROVISIONS

A. DISPUTE RESOLUTION

County and Engineer agree that disputes relative to the Project should first be addressed by direct negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any

such dispute and assuming County has not terminated this Agreement, Engineer shall proceed with the Services in accordance with this Agreement as if no dispute existed.

B. OWNERSHIP OF ENGINEERING DOCUMENTS

All documents and electronic files prepared or furnished by Engineer pursuant to this Agreement are instruments of Engineer's professional service, and Engineer shall retain an ownership and property interest therein. Engineer grants the County a perpetual license to use and modify instruments of Engineer's professional services for the purpose of constructing, occupying, maintaining, altering and adding to the Project and future projects relating to, incorporating, or in the vicinity of the Project. Topographic data collected by the Engineer pursuant to this Agreement shall be considered a part of the instruments of Engineer's professional service and the County's license to use this information pertains only to the portions of this data directly related to this Project. Reuse or modification of any such licensed documents, electronic files or other data by the County, shall be at the County's sole risk and without liability to Engineer, and the County agrees to indemnify and hold Engineer harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse by the County or by others acting through the County, except the County does not agree to indemnify or hold engineer harmless from Engineer's own negligence.

C. INSURANCE

Engineer shall maintain throughout the term of this Agreement the following insurance coverage:

1. Professional Liability: Professional Liability Insurance in an amount not less than \$1,000,000 per claim and in the annual aggregate, which insurance shall be maintained not only during the term of this Agreement but also for a period of 3 years after completion of the Project.
2. Commercial General Liability: Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the general aggregate. The policy shall include personal injury, products/completed operations, and contractual liability,
3. Worker's Compensation: Worker's Compensation Insurance in accordance with statutory requirements.
4. Employer's Liability: Employer's Liability Insurance in amounts not less than the following:

Bodily Injury by Accident	\$100,000	(each accident)
Bodily Injury by Disease	\$500,000	(policy limit)
Bodily Injury by Disease	\$100,000	(each employee)
5. Automobile Insurance: Automobile Liability Insurance in an amount not less than \$1,000,000 per accident to protect against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle.

6. Subcontractor's Insurance: If a part of this Agreement is subcontracted, Engineer shall either:
 - a) Cover all subconsultants in its insurance policies; or
 - b) Require each subconsultants not so covered to secure insurance which will protect against all applicable hazards or risks of loss in the amounts applicable to Engineer.
7. Valuable Papers Insurance. Valuable papers insurance to assure the restoration of any plats, drawings, notes or other similar data relating to the Engineering Services in the event of their loss or destruction.
8. Industry Ratings: Unless mutually agreed upon by County and Engineer to vary the requirements, Engineer shall provide County with evidence to substantiate that any insurance carrier providing insurance required under this Agreement satisfies the following requirements:
 - a) Is licensed to do business in the State of Kansas;
 - b) Carries a Best's Policyholder rating of A or better; and
 - c) Carries at least a Class X financial rating.

All general and automobile liability insurance shall be written on an occurrence basis. County shall be shown as an additional insured on all required insurance policies except professional liability, automobile, and worker's compensation. Each required insurance policy shall contain a provision by which County must be given 30 days notice prior to any insurance policy cancellation. Engineer shall provide County with acceptable certificates of such insurance evidencing the required insurance coverage before County issues its Notice to Proceed, at County's reasonable request, from time to time during the term of this Agreement.

D. INDEMNITY

Engineer hereby agrees to indemnify and hold harmless County and its departments, divisions, officers, employees and elected officials from all loss, damage, cost and expenses, including reasonable attorneys' fees and expenses, incurred by or on behalf of any of the foregoing arising out of or related to personal or bodily injury or property damage, that to the extent arise from or related to the wrongful acts or negligent acts, errors or omissions of Engineer or its employees, agents or subconsultants. The provisions of this section shall survive the termination of this Agreement.

E. ENTIRE AGREEMENT; NO VERBAL AMENDMENTS

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement, including the Maximum Fee and contract time and other terms and conditions, may be amended only by a written supplemental agreement signed by County and Engineer, except in the case of an emergency situation, in which case County Engineer may give verbal and facsimile approval to be followed by a written and signed supplemental agreement. If notice of any change affecting the general scope of the Engineering Services or provisions of this Agreement, including, but not limited to, Maximum Fee and contract

time, is a requirement of any insurance policy held by Engineer as a requirement of this Agreement, the provision of such notice shall be Engineer's responsibility.

F. APPLICABLE LAW

This Agreement shall be governed by, and is to be construed and enforceable in accordance with, the laws of the State of Kansas and the codes and established policies of County.

G. ASSIGNMENT OF AGREEMENT

This Agreement shall not be assigned or transferred by either party without the written consent of the other party.

H. THIRD PARTY BENEFICIARIES

Except for the following provisions relating to the Secretary of Transportation of the State of Kansas, nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party:

Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the County and the Engineer. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the County or both incurred or will incur because the Engineer failed to comply with its contract obligations under this Agreement or because of the Engineer's negligent acts, errors, or omissions. Nothing in this provision precludes the County from seeking recovery or settling any dispute with the Engineer as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

I. FEDERAL LOBBYING ACTIVITIES (Only applies to projects receiving federal funds via County)

31 U.S.C. Section 1352 requires all subgrantees, contractors, and engineers who receive federal funds via County to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal contract, grant, loan or cooperative agreement. In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period. Engineer shall obtain the necessary forms from County, execute such forms, and return such forms to County. Engineer shall also obtain executed forms from any of its subcontractors who fall within the provisions of the statute and provide such forms to County.

J. COVENANT AGAINST CONTINGENT FEES

Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working for Engineer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of

this warranty, County may terminate this Agreement without liability or may, in its discretion, deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

K. COMPLIANCE WITH LAWS

Engineer shall abide by applicable federal, state and local laws, ordinances and regulations applicable to this Project that are in effect as of the date of Services rendered until the Engineering Services required by this Agreement are complete. Engineer shall secure all occupational and professional licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement.

L. NOTICES

Any notice or other communication required or permitted by this Agreement shall be made in writing to the address specified below:

Engineer: David J. Hamby, P.E.
BG Consultants, Inc.
1405 Wakarusa Drive
Lawrence, KS 66049

County: Keith A. Browning, P.E.
Douglas County, Kansas
1242 Massachusetts
Lawrence, KS 66044

Nothing contained in this Section, however, shall be construed to restrict the transmission of routine communications between Engineer and County.

M. TITLES AND SUBHEADINGS

Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement.

N. SEVERABILITY CLAUSE

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for any reason, such provision shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

O. NON-DISCRIMINATION

Engineer agrees: (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 every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if Engineer is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by County; and (f) if it is determined that Engineer has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by County.

P. WAIVER

A waiver by either County or Engineer of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

Q. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of the parties.

R. RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed to make County a partner, joint venturer, or associate of Engineer, nor shall either party be deemed the agent of the other.

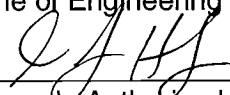
S. AUTHORITY TO SIGN

The individual signing this Agreement on behalf of Engineer represents that such person is duly authorized by Engineer to execute this Agreement on behalf of Engineer and, in doing so, that Engineer becomes bound by the provisions hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the Effective Date.

ENGINEER:

BG Consultants, Inc.
(Name of Engineering Firm)

By: 
Engineer's Authorized Signatory

David J. Hamby, P.E.
Printed Name

Principal
Title

COUNTY:

DOUGLAS COUNTY, KANSAS by the BOARD OF
DOUGLAS COUNTY, KANSAS COMMISSIONERS

By: _____

Printed Name

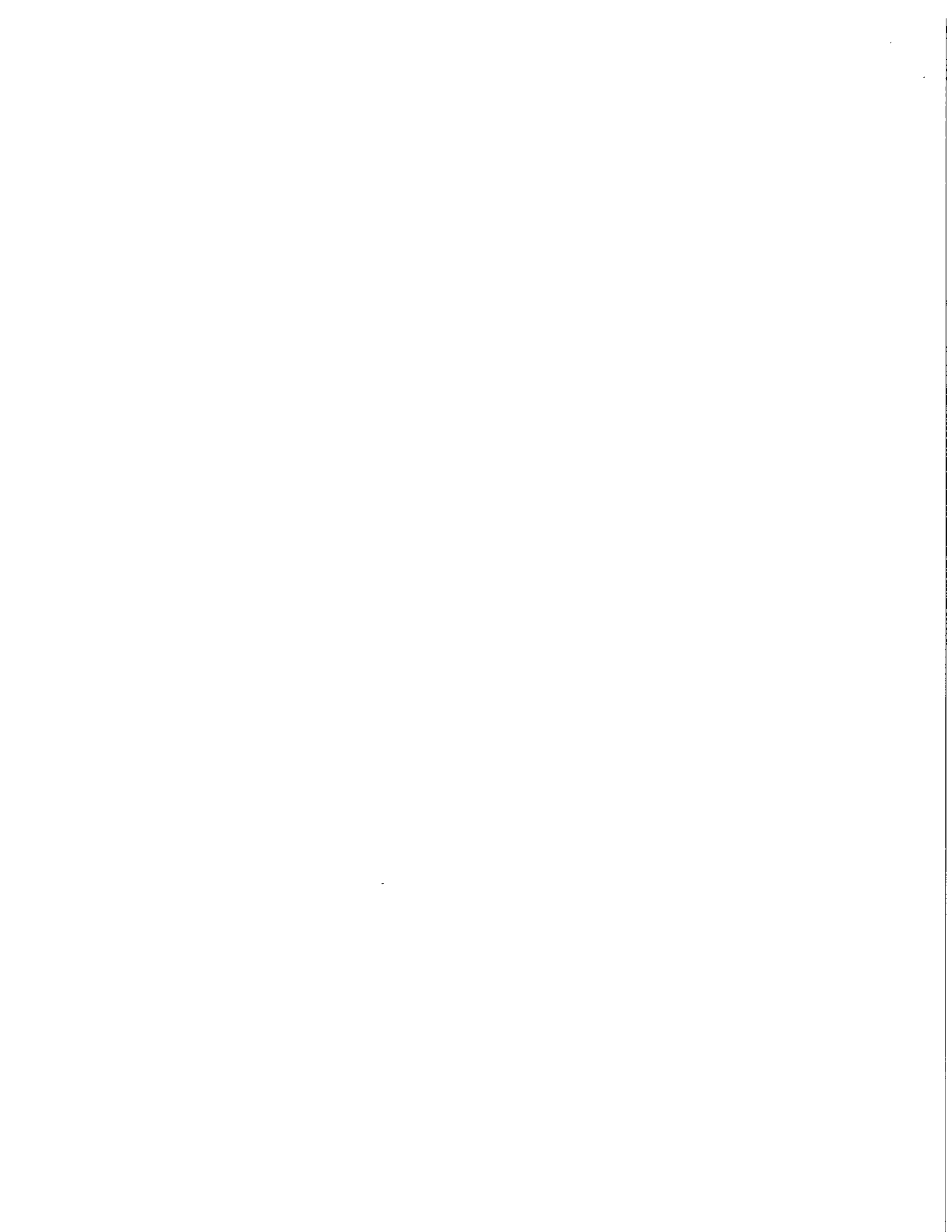
Title: Chair

ATTEST:

Douglas County, Clerk

Exhibits:

- A. Scope of Services
- B. Fee Schedule
- C. Form of Progress Reports
- D. Project Schedule
- E. CAD Requirements (if referenced in Exhibit A)



PROJECT NO. 56-23 KA-2294-01
US-56, Bullpup Drive west through E 1600 Road (Route 11)
EXHIBIT A
SCOPE OF SERVICES

I. PROJECT LOCATION AND DESCRIPTION

Provide professional services described as follows: Design and prepare construction drawings and specifications for improvements to US-56 Highway from Bullpup Drive through E 1600 Road. Improvements to US-56 Highway include extending the existing 3-lane cross section from Bullpup Drive west through the E 1600 Road intersection, then tapering down to match the existing 2-lane section west of E 1600 Road.

II. PRELIMINARY DESIGN PHASE (Field Check)

1. Meet with County staff to determine specific project needs and general project desires. Also, review and receive available information and plans. Project budget will be provided by County staff.
2. Perform design and cadastral surveys as required to prepare plan and profile sheets in order to provide sufficient control, location, and land information necessary to prepare a complete set of construction plans and to prepare any legal descriptions required for easement acquisition. All surveys and point coordinates for the Project must tie into and be in the Kansas State Plane (North Zone). Cadastral surveys shall include locating the position of pertinent PLSS corners (including quarter and sixteenth corners) pertaining to the project and shall conform to the accuracy standards as set forth by the Kansas State Board of Technical Professions. All survey data must be provided to County in digital format allowing insertion into AutoCad environment using standard fieldbook format (PNEZD space delimited).
3. Obtain information from utility companies who have facilities within the Project limits. Utility companies shall be required to locate their facilities within the Project limits. Include utility locations in survey data. Provide preliminary utility coordination. Horizontal location is required for all utilities.
4. Obtain ownership and easement information on the properties that abut the Project site. Copies of all ownership maps and recorded plats will be obtained from the Douglas County Public Works Department.
5. Review traffic engineering study prepared by TranSystems on August 4, 2009. Prepare concept drawing for Option 2 based on lane configurations and geometrics recommended in this study.
6. Provide services of a geotechnical consultant to determine the adequacy of subgrade and pavement condition. Complete a pavement evaluation and a determination of appropriate cross section and pavement to handle the design traffic volumes. Provide a written report concerning geotechnical findings and make recommendations on pavement cross-section for this project.

7. Prepare a hydrological study and analysis to establish recommendations concerning appropriate waterway opening for all drainage structures, length of the structure, and roadway profile. If appropriate, perform watershed analysis and computer flow modeling using HECRAS or other hydraulic software approved by the County. Provide a written report of the results of this hydraulic analysis with recommendations for this project and provide copies of any computer digital data.
8. Design storm drainage systems in accordance with the current KDOT Drainage Design Manual. Prepare a hydrologic and hydraulic analysis to establish recommendations concerning storm drainage design. Include pipe/box sizes, alignments, grades, drainage easements, and associated Project design items. Perform watershed analysis and, if appropriate, computer flow modeling using appropriate hydraulic software approved by the County. Provide a written report of the results of this hydraulic analysis with recommendations for the Project and copies of any computer digital data.
9. Review alternative design concepts with the County and KDOT prior to progressing to the detail aspects of the Project. Concurrence in the selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by Engineer. The feasibility of increasing the length of the existing vertical curve east of the US 56 and E 1600 Road intersection will be evaluated. Design speed and vertical curvature length will be evaluated to determine what improvements can be built within the construction cost budget.
10. Prepare Field Check plans in sufficient detail for County and KDOT to review. These documents shall include horizontal and vertical alignments, storm sewer design, drainage area map, drainage design data, and preliminary right-of-way and easement acquisitions.
11. The following will be needed, as a minimum, to develop Field Check plans:
 - a) Prepare the base drawing with a plan portion showing existing topography, contours, utilities, property lines, right-of-way, and profiles of any existing structures and approach roadways. The base drawings shall later be used as full scale base drawings for right-of way and final design plans.
 - b) The Field Check plans shall be prepared in conformity with the state and federal design criteria appropriate for the Project, in accordance, as appropriate, with the current Project Development Manual for Non-National Highway System Local Government Road and Street Projects, Volumes I and II, Bureau of Local Projects (BLP) Project Memorandums, current KDOT Design Manuals, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design Road Memorandums, the County's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and with any necessary Project Special Provisions. Plans shall also conform to A Policy on Geometric Design of Highways and Streets (current edition, the "Green Book") prepared

by AASHTO, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices prepared by the FHWA.

- c) The Field Check plans shall include existing and proposed easement and right-of-way limits, property lines and ownerships, section lines, townships and ranges, city limits, a general outline of the construction staging, and other critical design items.
 - d) The plan view scale shall be 1 inch = 20 feet. The profile view scale shall be 1 inch = 20 feet horizontal and 1 inch = 5 feet vertical.
12. The Consultant shall be responsible for verification, furnishing, and recording of any legal land corners necessary for legal descriptions used in easement documents. The Consultant shall tie the approved centerline or corner to established land corners.
 13. Prepare Field Check estimate of probable construction cost for the Project.
 14. Prepare two full size set of Field Check plans for County and KDOT review. Allow three weeks for County and KDOT review. If Project is over budget, a determination of alternates will be required. Contract may be terminated if additional funds are not available or project modifications cannot be made.
 15. Once Field Check plans have been reviewed by County and KDOT, the Consultant shall arrange a Field Check meeting with County staff to discuss all review comments. All review comments made by County and KDOT shall be discussed and addressed. Changes to the plans required by these comments shall be considered part of the project development process and shall not be a basis for additional design fees unless the original project scope is changed.

III. FINAL DESIGN PHASE (Office Check)

1. If needed, attend one (1) Board of County Commissioners meeting or public meeting to discuss the proposed improvements and their impact on the adjacent properties.
2. Prepare a right-of-way strip map and furnish County with the original and two copies of the strip map as well as digital files in pdf format. Also, furnish County with 8 1/2" x 11" exhibits and legal descriptions of each property required for right-of-way or easement acquisition. The Consultant shall be responsible for making revisions to the right-of-way and construction plans resulting from negotiations with the property owners.
3. Prepare all applications, exhibits, drawings, and specifications necessary to obtain all required permits including the National Pollutant Discharge Elimination System (NPDES) Permit for Construction Activities, U.S. Army Corps of Engineers 404 Permit, and/or the Kansas Department of Agriculture, Division of Water Resources permits. Applications shall be prepared for the County's execution and submittal. Assist the County in obtaining permit approvals by

furnishing additional information about the Project design. The County will submit and pay for all permits. If necessary, provide for inclusion in the specifications, a list of the permits which must be obtained by the construction contractor.

4. The Office Check plans shall include a detailed traffic control plan with an outline for construction staging conforming to the requirements of the Manual on Uniform Traffic Control Devices and the Kansas Department of Transportation standards. The traffic control plan requires submittal to County for review and approval prior to inclusion in the final design plans.
5. The Office Check plans shall include detailed stormwater pollution prevention plans (SWP3) as required by the State.
6. The Consultant shall prepare computations for all Office Check plan quantities and bid items. If requested by Douglas County, the Consultant shall provide copies of design calculations and/or supporting documentation.
7. The Consultant shall design the plans in conformance with KDOT specifications. The Consultant shall design and detail all structures or improvements not covered by KDOT standard detail sheets or detail sheets provided by the supplier.
8. Prepare Office Check plans, incorporating all Field Check comments from County staff.
9. As a minimum, the Office Check plans shall include the following:
 - a) Title Sheet
 - b) Typical Sections
 - c) Plan Sheets
 - d) Profile Sheets
 - e) Traffic Control Plan Sheets
 - f) Stormwater Pollution Prevention Plan
 - g) Drainage Area Map
 - h) Hydrologic and hydraulic data for drainage systems
 - i) Permanent Signing Quantity Sheets
 - j) KDOT Standard Detail Sheets
 - k) Earthwork Quantities, Cross Sections and Entrance Sections with existing and proposed grades
 - l) Miscellaneous Detail Sheets, non-standard details
 - m) Summary of Quantities listed as bid items

Additional plans and information may be required to complete Office Check plans.

10. Provide all utility companies a set of Office Check plans for their use. Meet with each utility company to discuss the relocation of their facilities and the time schedule.

11. Prepare Office Check estimate of probable construction cost for the Project.
12. Submit Office Check plans to County for review. Allow three weeks for County and KDOT review. All review comments made by County and KDOT shall be discussed and addressed. Changes to the plans required by these comments shall be considered part of the project development process and shall not be a basis for additional design fees unless the original project scope is changed.
13. Provide any required Special Provisions to the KDOT construction specifications as needed for construction items on the plans. The County will prepare the Project Specifications including front end documents and the KDOT construction specifications.
14. After all comments from the County and KDOT are made on the plans, submit two sets of final signed and sealed plans to the County for County signature, including all Special Provisions as detailed in Exhibit E.
14. Once all signatures have been placed on the plans, the Consultant shall provide a digital version of the final signed and sealed plans in both .pdf and .dwf format. The AutoCad .dwf files or .pdf files are to be supplied to the County in lieu of original mylars as detailed in Exhibit E.
15. At any time prior to completion and final acceptance of the construction contract for this Project, the Consultant shall be responsible for correcting all errors and omissions due to the negligence of the Consultant and submitting revised final plans to the County.

IV. BIDDING PHASE

1. Answer questions from contractors regarding the final plans. If necessary, issue any requested addenda.
2. If requested by the County, attend a pre-bid meeting to explain any extraordinary conditions or designs and to answer questions regarding the plans.
3. Review and make recommendations regarding proposed alternates or value engineering proposals by the contractor.

V. CONSTRUCTION PHASE

1. If requested by the County, attend a pre-construction meeting with the County and the contractor once the Project has been awarded to explain any extraordinary conditions or designs and to answer questions regarding the plans.
2. Answer all questions from the contractor regarding the design and interpretation of the plans. Provide consultation concerning conditions encountered during construction that conflict with or were not addressed by the final plans.

3. As requested by the County, review and comment, or approve, each contractor's shop drawings and samples, the results of tests and inspections, and other data which each contractor is required to submit for the purposes of checking for compliance with the design concept and conformance with the requirements of the Contract Documents.
4. If Consultant is hired to perform construction inspection, provide County with a complete set of as-built drawings for the Project. The as-built drawings shall be provided as a digital copy, as detailed in Exhibit E (attached hereto and incorporated herein), and one set of plans on bond paper.
5. A separate agreement for construction inspection will be executed at a later date if desired by the County.

VI. GENERAL

1. Prepare the design plans for the Project for such parts and sections, and in such order of completion, as designated by the County and in conformance with the Project's current official schedule. Further, Consultant agrees to complete all design plan development stages no later than the due dates on the Project's current official schedule (Exhibit D), exclusive of delays beyond the Consultant's control.
2. Provide written monthly progress reports as detailed in Exhibit C.
3. The Consultant must notify County of additional costs for service requested prior to performing the service. For example, if Consultant is asked to attend a meeting not included in the scope of service, the cost must be determined before attending.
4. Written notes from any meetings with state, federal, or other agencies will be provided to County by the Consultant. These need not be "formal minutes" but notes on discussion topics and requirements imposed.
5. All documents must be provided in the current version of Microsoft Word as designated by the County at the time of execution of this contract.
6. All drawings must be prepared on 24"x36" sheets in general conformance with KDOT standards. Also, final plans, field notes, and other pertinent Project mapping records are to be provided to County on digital format, as detailed in Exhibit E.

VII. ITEMS CONSIDERED AS ADDITIONAL SERVICES

MEMORANDUM

To : Board of County Commissioners

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

Date : August 26, 2011

Re : Consider approval of agreement for appraisal and R/W acquisition services
Route 1055 (6th Street) improvements from US-56 highway to Route 12
Project No. 2010-20

Our consultant, Bartlett & West, is preparing construction plans for the referenced project. Plans are at a stage where required easements and rights-of-way are known. Construction is planned for next year, so acquisition of easements and rights-of-way needs to begin as soon as possible.

We received proposals for appraisal and acquisition services from six firms and interviewed three firms during the selection process. The selection committee consisted of Douglas County and Baldwin City public works personnel. The selection committee selected the firm Land and Title Services to provide appraisal and acquisition services. Land and Title Services submitted a cost proposal of \$750/tract for appraisal services and \$400/tract for acquisition services.

Under terms of our cooperation agreement, Baldwin City is responsible for right-of-way acquisition from properties within the city limits and Douglas County is responsible for acquisition from properties outside the city limits. There are 33 total tracts within the project from which easements or right-of-way acquisition is required – 27 tracts within Baldwin City and 6 tracts outside Baldwin City. Douglas County will pay invoices for appraisal and acquisition services, and Baldwin City will reimburse Douglas County for their share of the costs.

An agreement between Douglas County and the firm Land and Title Services is attached. The not-to-exceed cost for the appraisal and acquisition services is \$32,200. This total assumes 28 total tracts for which we need the consultant's services. For the additional five tracts, Baldwin City and Douglas County anticipate acquiring the needed right-of-way by dedication without negotiation. Of Douglas County's six total tracts, we anticipate no negotiation will be required for three of the tracts.

Action Required: Approve the attached agreement with Land and Title Services for appraisal and right-of-way and easement acquisition services for Project No. 2010-20, improvements to Route 1055 (6th Street) from US-56 highway to Route 12. The BOCC Chair should sign three (3) original copies of the agreement.

APPRAISAL AND RIGHT OF WAY ACQUISITION SERVICES AGREEMENT

THIS Agreement is entered into by and between Douglas County, Kansas ("County") and Land and Title Services ("Consultant"), as of the _____ day of _____, 2011 (the "Effective Date").

RECITALS

WHEREAS, County desires to employ Consultant to provide appraisal and acquisition services for the acquisition of right-of-way and easements in Douglas County, Kansas, in connection with Douglas County Project No. 2010-20 (the "Project"); and

WHEREAS, Consultant agrees to provide such services.

TERMS OF AGREEMENT

NOW THEREFORE, in consideration of the promises contained in this Agreement, County employs Consultant and Consultant agrees to provide appraisal and acquisition services as follows:

I. DEFINITIONS

In addition to other terms defined in the body of this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this Agreement, and other forms of any defined words shall have a consistent meaning:

"Additional Services" means any services requested by County which are not covered by Exhibit A.

"Agreement" means this contract and includes change orders issued in writing.

"County Engineer" means the person employed by County with the title of County Engineer, who is licensed to practice engineering in the State of Kansas.

"Consultant" means the company or individual identified in the preamble of this Agreement.

"Services" mean the professional services and other acts or duties required of Consultant under this Agreement, together with Additional Services as County may request and as evidenced by a supplemental agreement pursuant to the terms of this Agreement.

"Project" means the Douglas County project identified above in the Recitals.

II. COMPENSATION

Consultant's compensation and related matters are as follows:

A. MAXIMUM TOTAL FEE AND EXPENSE

Consultant's fee shall be based on a cost per tract for parcels on the Project with the fee not to exceed \$32,200.00 ("Total Maximum Fee"). The Total Maximum Fee is based on the scope of Services outlined in Exhibit A, attached hereto and incorporated herein by reference, which Services shall be completed on or before December 31, 2011.

Consultant's fees shall not exceed the amounts for each phase: Appraisal Phase \$750.00 per tract, Acquisition Phase \$400.00 per tract. Additional or alternative methods of compensation shall be paid only with written approval of the County Engineer.

B. HOURLY RATE

Any Additional Services which are not set forth in this Agreement will be negotiated before the service is performed. No Additional Services or costs shall be incurred without written approval by County.

C. REIMBURSABLE EXPENSES

Reimbursable expenses are not included in this Agreement. Any expenses Consultant believes should be reimbursable must be authorized by County before the expense is incurred.

D. SALES TAX EXCLUDED

Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on the amount of compensation, fees or services. Should such taxes be legally imposed, County shall reimburse Consultant for such taxes in addition to the contractual amounts provided. Consultant, however, shall use County's sales tax exemption where applicable, and County need not reimburse Consultant for sales or use taxes Consultant pays in transactions legally exempt from such tax.

E. BILLING

Consultant shall bill County for each tract as follows: For the Appraisal Phase, after an acceptable appraisal has been completed and submitted to the County; and for the Acquisition Phase, after there is a fully executed contract which has been approved by the proper governing body. The bill submitted by Consultant shall itemize the tracts for which payment is requested, and shall be deemed to include a representation by Consultant to County that the Services have proceeded to the point stated in the bill and that amounts requested in the bill are due and owing pursuant to this Agreement. County agrees to pay Consultant within 10 days after approval by the governing body or 30 days after the invoice is received, whichever is later.

F. COUNTY'S RIGHT TO WITHHOLD PAYMENT

In the event County becomes credibly informed that any material representations of Consultant provided in its billing are wholly or partially inaccurate, County may withhold payment of disputed sums then, or in the future, otherwise due Consultant until the inaccuracy and the cause thereof is corrected to County's reasonable satisfaction. In the event County questions some element of an invoice, that fact shall be made known to Consultant as soon as reasonably possible. Consultant will assist in resolution of the matter and transmit a revised invoice if necessary. County shall pay the undisputed portion of any invoice as provided in Paragraph E above.

G. CHANGES IN SCOPE

For substantial modifications in authorized Project scope, when requested by County and through no fault of Consultant, Consultant shall be compensated at a rate of \$1,150.00 per additional tract. An increase in Total Maximum Fee or contract time, however, must be requested by Consultant and must be approved through a written supplemental agreement prior to performing such Services. Consultant shall correct or revise any errors or deficiencies in its documents without additional compensation when due to Consultant's negligence, error, or omission.

H. ADDITIONAL SERVICES

Consultant shall provide services in addition to those described in this Agreement, including Exhibit A, when such services are requested in writing by County. Prior to providing any such Additional Services, Consultant shall submit a proposal outlining the Additional Services and an estimation of a maximum fee. Records of additional expenses pertaining to Additional Services shall be made available to County if requested in writing. Production of these documents shall be made at Consultant's office during normal business hours within a reasonable time of request, at a date and time mutually convenient to both parties.

III. RESPONSIBILITIES OF CONSULTANT

Consultant shall furnish and perform the Services, as specifically provided in Exhibit A and which are required for the completion of the Project, according to the Project Schedule set forth in Exhibit A, attached hereto and incorporated herein. Such Services shall include the following:

1. To perform all work necessary to acquire the title to all tracts, parcels, and property rights required for said project in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.

2. The negotiator(s) to be utilized by the Consultant shall be approved by the Douglas County prior to beginning actual acquisition work as specifically provided in Exhibit A.
3. To comply with the following provisions in regard to appraisal and acquisition work:
 - A. The Consultant shall provide property appraisals of each tract prepared by a licensed or certified Kansas Real Property Appraiser.
 - B. The Consultant shall examine the certificates of title furnished by Douglas County and shall determine by his/her own investigation, at the appropriate county offices, the title owner of record of the tracts to be acquired at the time of purchase. The Consultant shall provide Douglas County with sufficient documentation to clearly indicate accurate ownership and to explain any discrepancies or deficiencies in the certificate of title provided by Douglas County. The Consultant shall obtain all mortgage releases and any other documents required to secure a clear title to the tract or sign.
 - C. The Consultant shall compare the legal descriptions against the plans to verify their accuracy.
 - D. The Consultant shall be prepared to discuss and answer owner's questions regarding the offer of just compensation.
 - E. The Consultant shall personally contact, if possible, all resident owners of the assigned tracts at a time and place convenient to the owner. There shall be a sufficient number of personal contacts with each owner, at a minimum of three (3), to either settle the tract or clearly indicate that an impasse has been reached and further contacts would be unproductive. The Consultant further agrees non-resident owners will be contacted, at a minimum of three (3) times, by certified mail, return receipt requested.
 - F. The Consultant shall prepare, discuss, and present the offer letter to the owner. The Consultant shall specifically note the date and presentation of the offer letter in the Negotiation Notes more fully described in paragraph 3L below. All offers shall be made in a timely manner and well in advance of this contract end date of December 31, 2011.
 - G. The Consultant shall inquire if the owner has received the KDOT Real Property Acquisition for Kansas Highways, Roads, Streets and Bridges brochure, and if owner has not, the Consultant shall provide him/her with a copy of said brochure and be prepared to discuss any and all items contained in said brochure.
 - H. The Consultant shall discuss the scope of the project with the owner including but not limited to the type of road improvement, the length and location of the improvement, the effect on traffic during construction, and the date scheduled for construction letting.
 - I. The Consultant shall describe to the owner the plans in general and the specific tract(s) affecting the owner.

- J. The Consultant shall verify with the owner his or her ownership findings as a result of his or her research identified in paragraph 3B above. The Consultant shall assure himself and the Secretary that there are no additional liens, mortgages, court proceedings, or easements affecting the property.
 - K. The Consultant shall prepare negotiation notes on each tract on which negotiation was attempted, giving the date, place of contact, persons present, offers made, counter-offers and research results and recommendations regarding those counter-offers, reasons why settlements could not be reached, feedback and concerns from the property owner, description of title problems and how they were solved, mortgage information if applicable including contact persons, signature of the negotiator, and any other data pertinent to the negotiations.
 - L. The Consultant shall prepare and obtain appropriate signatures and necessary information on all purchase documents including but not limited to purchase contracts, deeds, releases and disclaimers, performance bonds, disposition of improvements forms, relocation notices, W-9 forms, payment vouchers and administrative settlements.
 - M. In the event of failure to reach an agreement, the Consultant shall continue negotiations with the owner in an effort to resolve outstanding differences. No unauthorized agreements or settlements in amounts greater than the approved just compensation shall be offered without prior approval of Douglas County. Just compensation will be determined by Douglas County and will be an amount which is fair to both the owner and the public for the acquisition of the property, with consideration taken of such criteria as the market value of the property and the resulting damage to the remaining property. Recommendations for settlements above the approved compensation shall be discussed and reflected in the Consultant's negotiation notes, more clearly defined in paragraph 3K.
- 4. To keep and maintain individual tract files, including appraisal reports, purchase documents, and all related correspondence and reports in connection with and incidental to the performance of this Agreement, and to make said files available at any time for inspection by Douglas County. All such information shall become the property of Douglas County under this Agreement and shall be immediately delivered to Douglas County on a continuous basis as tracts are acquired. The Consultant further agrees all information gained regarding the appraisals and the acquisitions on these project(s) shall be kept confidential.
 - 5. To provide Douglas County on a bi-weekly basis a progress report in writing indicating the current status of all acquisition activities. If requested by Douglas County or Baldwin City, the Consultant shall attend progress meetings to verbally report the acquisition work in progress. The Consultant shall be ready and able to present a brief summary of the status of each tract at said meetings and be prepared to identify and discuss any and all problems that may arise and recommend solutions.

6. To complete all appraisal and acquisition work and submit all required documentation by the dates established in Exhibit A.
7. If the acquisition services and related documentation are deficient in any respect and are not to the satisfaction of the County, the Consultant shall immediately make the necessary corrections and/or furnish the additional information or documentation required upon notification from the County. No additional payment will be paid to the Consultant for correcting these deficiencies.
8. The Consultant has no direct or indirect, present or contemplated, or future interest in such properties or in any way benefit from the acquisition of the properties to be acquired under this Agreement. The Consultant further agrees fees to be received under the terms of this Agreement will not be duplicated under any other employment agreement or contractual relationship he or she may now have with either Douglas County or Baldwin City.

E. GENERAL DUTIES AND RESPONSIBILITIES

Consultant shall have the following general duties and responsibilities:

1. Personnel: Consultant shall assign only qualified personnel to perform the Appraisal and Acquisition Services. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project: RC Masonbrink ("Project Principal"). The Project Principal shall be the primary contact with County and shall have authority to bind Consultant. So long as the Project Principal remains actively employed or retained by Consultant, this individual shall continue to serve as the Project Principal.
2. Independent Contractor: Consultant is an independent contractor and as such is not an employee of County.
3. Special Services: Consultant may be called upon to serve as a witness in any litigation, arbitration, legal or administrative proceeding arising out of the Project. If Consultant is requested in writing by County to appear as a witness, Consultant will be paid an hourly fee or other compensation to be negotiated later; provided, however, that Consultant shall not be paid its hourly fee or other compensation if the appearance is to defend Consultant's Appraisal and Acquisition Services.
4. Service by and Payment to Others: Any work authorized in writing by County and performed by a party other than Consultant or its approved subcontractors shall be contracted for and paid for by County directly to the third party. Fees for such work shall be subject to negotiation between County and the third party and shall be approved by County prior to the performance of any such work.
6. Subcontracting or Assignment of Services: Consultant shall not subcontract or assign any of the Appraisal and Acquisition Services to be performed under this Agreement without first obtaining the written consent of County regarding the Services to be subcontracted or assigned and the firm or

person proposed to perform the Services. Unless otherwise stated in County's written consent to a subcontract or assignment, no subcontract or assignment will release or discharge Consultant from any obligation under this Agreement.

7. Professional Responsibility: Consultant will exercise reasonable skill, care and diligence in the performance of the Appraisal and Acquisition Services as is ordinarily possessed and exercised by a licensed appraiser and acquisition agent performing the same Services under similar circumstances. Consultant represents to County that Consultant is professionally qualified to provide such Services.
9. Inspection of Documents: Consultant shall maintain all Project records for inspection by County during the term of this Agreement and for 3 years following the completion of the Project.

IV. RESPONSIBILITIES OF COUNTY

A. GENERAL DUTIES AND RESPONSIBILITIES

County shall have the following general duties and responsibilities:

1. Communication: County shall provide to Consultant information and criteria regarding County's requirements for the Project, examine and timely respond to Consultant's submissions, and give notice to Consultant whenever County observes or otherwise becomes aware of any defect in the Appraisal and Acquisition Services.
2. Project Representative: County Engineer, or County Engineer's designee, shall represent County in coordinating the Project with Consultant, with authority to transmit instructions and define policies and decisions of County.
3. Payment: Pay Consultant its fees and reimbursable expenses in accordance with this Agreement.
4. Plans: To furnish plans and strip maps showing the proposed location of the road for which the County contemplates the acquisition of land for right-of-way and/or easements. These plans will show the property lines, owner's names, and area to be acquired.
5. Title Certificates: To furnish copies of certificates of title of tracts of land, portions, or all of which will be affected by the acquisition of right-of-way or easements for the road construction.
6. Legal Descriptions: To furnish a description either by legal description or metes and bounds of the various tracts, parcels, or property rights to be acquired.
7. Right-of-Way Stakes: To furnish right-of-way stakes set in the ground showing the limits of the land on which the acquisition is to be made.

V. PROJECT SCHEDULE

The Project Schedule is set forth in Exhibit A, attached hereto and incorporated by reference. Consultant shall perform the Appraisal and Acquisition Services in a timely manner; provided, however, if, during its performance, for reasons beyond the control of Consultant, protracted delays occur, Consultant shall promptly provide written notice to County describing the circumstances preventing continued performance and Consultant's efforts to resume performance.

VI. SUSPENSION OR TERMINATION OF THE CONTRACT

A. SUSPENSION BY CONSULTANT

Consultant may suspend performance of the Services under this Agreement if County consistently fails to fulfill County's material obligations under this Agreement, including County's failure to pay Consultant its fees and costs, within 15 days of Consultant's delivery to County of written notice of such default; provided, however, that Consultant may not suspend performance of Services based upon non-payment of fees or costs that is subject to a bona fide dispute, for which this Agreement authorizes County to withhold payment. Any such suspension shall serve to extend the contract time on a day for day basis.

B. TERMINATION BY CONSULTANT

Consultant may terminate this Agreement upon 15 days written notice to County if (i) County suspends performance of the Services for its convenience for a period of 60 consecutive days through no act or fault of Consultant or a subcontractor or their agents or employees or any other persons or entities performing portions of the Appraisal and Acquisition Services under direct or indirect contract with Consultant, or (ii) Consultant has suspended the performance of its Services for a period of 60 consecutive days pursuant to Section VI.A. above; and, during said 15 day written notice period, County has failed to cure its default. If Consultant terminates this Agreement, County shall pay Consultant such amounts as if County terminated this Agreement for its convenience pursuant to Section VI.E.

C. TERMINATION BY COUNTY FOR CAUSE

County may terminate this Agreement for cause upon 7 days written notice to Consultant: (i) persistently or repeatedly refuses or fails to supply enough qualified workers or proper materials; (ii) assigns or subcontracts any part of the Appraisal and Acquisition Services without County's prior written consent; or (iii) otherwise is guilty of substantial breach of this Agreement; and, during said 7 day written notice period, Consultant fails to cure its default.

If County terminates this Agreement for cause, Consultant shall immediately transfer to County digital copies of all documents completed or partially completed at the date of termination. In addition, County may without prejudice to any other rights or remedies of County, finish the Appraisal and Acquisition Services for the Project by whatever reasonable method County may deem expedient, including through contract with an alternate consultant, and bill Consultant for the sum of the amounts County pays Consultant pursuant to this Agreement, plus the costs County incurs in completing the Appraisal and Acquisition Services, reduced by the Total Maximum Fee. Upon request of Consultant, County shall furnish Consultant a detailed accounting of the costs incurred by County in

completing the Appraisal and Acquisition Services. If County terminates this Agreement for cause Consultant shall not be entitled to receive further payment until the Appraisal and Acquisition Services are completed.

If the Consultant for any reason is not allowed to complete all the Services called for by this Agreement, the Consultant shall not be held responsible for the accuracy and completeness of the documents prepared by the Consultant if changed or completed by the County or by another party. Accordingly, the County agrees, to the fullest extent permitted by the law, to waive and release the Consultant, its officers, directors, employees, and subconsultants from any damages, liabilities or costs, including reasonable attorney's fees and defense costs arising from such change or completion by any other party of any documents prepared by the Consultant.

D. SUSPENSION BY COUNTY FOR CONVENIENCE

County may, without cause, order Consultant in writing to suspend, delay or interrupt the Appraisal and Acquisition Services in whole or in part for such period of time as County may determine.

The Total Maximum Fee and contract time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption.

E. TERMINATION BY COUNTY FOR CONVENIENCE

County may, at any time, terminate this Agreement for County's convenience and without cause. Upon receipt of written notice from County of such termination for County's convenience, Consultant shall: (i) except for Appraisal and Acquisition Services directed to be performed prior to the effective date of termination as stated in the notice, cease operations under this Agreement; and (ii) take actions necessary or that County may direct, for the protection and preservation of the Appraisal and Acquisition Services and documents.

If County terminates this Agreement for its convenience, Consultant shall immediately transfer to County digital copies of all documents completed or partially completed at the date of termination. County shall compensate Consultant for all Services completed prior to receipt of the termination notice or performed pursuant to the termination notice. County need not pay, and Consultant waives, compensation for Appraisal and Acquisition Services not actually provided, anticipatory profit or consequential damages.

VII. GENERAL PROVISIONS

A. DISPUTE RESOLUTION

County and Consultant agree that disputes relative to the Project should first be addressed by direct negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute and assuming County has not terminated this Agreement, Consultant shall proceed with the Services in accordance with this Agreement as if no dispute existed.

B. OWNERSHIP OF DOCUMENTS

All documents and electronic files prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein. Consultant grants the County a perpetual license to use and modify instruments of Consultant's professional Services for the purpose of constructing, occupying, maintaining, altering and adding to the Project and future projects relating to, incorporating, or in the vicinity of the Project. Data collected by the Consultant pursuant to this Agreement shall be considered a part of the instruments of Consultant's professional service and the County's license to use this information pertains only to the portions of this data directly related to this Project. Reuse or modification of any such licensed documents, electronic files or other data by the County, shall be at the County's sole risk and without liability to Consultant, and the County agrees to indemnify and hold Consultant harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse by the County or by others acting through the County, except the County does not agree to indemnify or hold consultant harmless from Consultant's own negligence.

C. INDEMNITY

Consultant hereby agrees to indemnify and hold harmless County and its departments, divisions, officers, employees and elected officials from all loss, damage, cost and expenses, including reasonable attorneys' fees and expenses, incurred by or on behalf of any of the foregoing arising out of or related to personal or bodily injury or property damage or liability or damages to others, that to the extent arise from or related to the failure of Consultant or its employees, agents or subconsultants to comply with the requirements of this Agreement or their wrongful acts or negligent acts, errors or omissions. The provisions of this section shall survive the termination of this Agreement.

D. ENTIRE AGREEMENT; NO VERBAL AMENDMENTS

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement, including the Maximum Fee and contract time and other terms and conditions, may be amended only by a written supplemental agreement signed by County and Consultant, except in the case of an emergency situation, in which case County Engineer may give verbal and facsimile approval to be followed by a written and signed supplemental agreement. If notice of any change affecting the general scope of the Appraisal and Acquisition Services or provisions of this Agreement, including, but not limited to, Maximum Fee and contract time, is a requirement of any insurance policy held by Consultant as a requirement of this Agreement, the provision of such notice shall be Consultant's responsibility.

F. APPLICABLE LAW

This Agreement shall be governed by, and is to be construed and enforceable in accordance with, the laws of the State of Kansas and the codes and established policies of County.

G. ASSIGNMENT OF AGREEMENT

This Agreement shall not be assigned or transferred by either party without the written consent of the other party.

H. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

I. COVENANT AGAINST CONTINGENT FEES

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, County may terminate this Agreement without liability or may, in its discretion, deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

J. COMPLIANCE WITH LAWS

Consultant shall abide by applicable federal, state and local laws, ordinances and regulations applicable to this Project that are in effect as of the date of Services rendered until the Appraisal and Acquisition Services required by this Agreement are complete. Consultant shall secure all occupational and professional licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement.

K. NOTICES

Any notice or other communication required or permitted by this Agreement shall be made in writing to the address specified below:

Consultant: _____

County: Keith A. Browning, P.E.
Douglas County, Kansas
1242 Massachusetts
Lawrence, KS 66044

Nothing contained in this Section, however, shall be construed to restrict the transmission of routine communications between Consultant and County.

L. TITLES AND SUBHEADINGS

Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement.

M. SEVERABILITY CLAUSE

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for any reason, such provision shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

N. NON-DISCRIMINATION

Consultant agrees: (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 every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if Consultant is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by County; and (f) if it is determined that Consultant has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by County.

O. WAIVER

A waiver by either County or Consultant of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

P. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the directors, officers, partners, successors, executors, administrators, permitted assigns, and legal representatives of the parties.

Q. RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed to make County a partner, joint venturer, or associate of Consultant, nor shall either party be deemed the agent of the other.

R. AUTHORITY TO SIGN

The individual signing this Agreement on behalf of Consultant represents that such person is duly authorized by Consultant to execute this Agreement on behalf of Consultant and, in doing so, that Consultant becomes bound by the provisions hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the Effective Date.

CONSULTANT:

Land and Title Services

By: _____
Consultant's Authorized Signatory

Printed Name

Title

COUNTY:

DOUGLAS COUNTY, KANSAS by the BOARD OF
DOUGLAS COUNTY, KANSAS COMMISSIONERS

By: _____

Printed Name
Title: Chair

ATTEST:

Douglas County, Clerk

Exhibits:

A. Scope of Services

MEMORANDUM

To : Board of County Commissioners

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

Date : August 18, 2011

Re : Consider amending Lone Star Lake Park rules and regulations

The current Lone Star Lake Park rules and regulations (Section 8-201 of the Douglas County Code) were last amended in 2005. Attached for BOCC consideration is a resolution amending the rules and regulations. The resolution stipulates the revised regulations would be effective January 1, 2012. Also attached is a copy of the current regulations.

Proposed changes to the current rules and regulations are summarized as follows:

Sect. 8-201.1.f.

Under this amendment, the use of fireworks in the Park is no longer allowed. This department spends significant time and money each year monitoring and cleaning up 4th of July fireworks. In addition to the annual expense, allowing fireworks use in county parks may be a liability to Douglas County. Fireworks are currently not allowed in state parks within Douglas County. Fireworks are not allowed in Johnson or Wyandotte county parks. Shawnee County allows fireworks in county parks two days prior to July 4th, but not on July 4th. Riley County does not allow individual use of fireworks in parks, but does have an organized display on July 4th. Franklin, Jefferson, and Leavenworth counties do not have county parks.

Sect. 8-201.1.j.

Added language to allow dogs to be off-leash in designated areas. We plan to designate an off-leash area near the southern portion of the lake. Under current regulations, there are no areas where dogs can be off-leash.

Sect. 8-201.1.i.

Added all-terrain vehicles to the list of prohibited vehicles.

Sect. 8-201.1.o

Added language to limit swimming to the period May 1 through September 15. These dates coincide with the dates that fishing is currently prohibited in the designated swimming area. Also added language prohibiting swimming beneath docks.

Sect. 8-201.1.p

Added language to allow inflatable watercraft manufactured and designed primarily for fishing. We have had complaints that fishermen cannot use such craft under the current regulations.

MEMORANDUM
August 18, 2011

Sect. 8-201.3.e.

Revised language to prohibit any boats left unattended on the lake overnight. The current regulations require unattended boats to be docked at the marina boat docks. These docks no longer exist.

Sect. 8-201.4.e

Changed the allowable ski dates, and added holidays, in an effort to alleviate the need for the BOCC to pass a resolution each year stipulating allowable ski dates.

Sect. 8-201.5.e

Changed the word "tents" to "camping shelters".

Sect. 8-201.7

Changed daily camp site fees to \$11.00 (no electricity) and \$16.00 (with electricity). Current daily fees are \$7.00 and \$12.00.

Other than outlined above, we are proposing no additional regulations regarding swimming at Lone Star Lake. It is not clear that additional regulations would have prevented the two tragic drowning accidents at Lone Star Lake this summer. Lone Star Lake has existed since the 1930's with very few drowning accidents over the life of the lake. It has a good safety record. Implementing regulations that severely limit swimming would greatly affect the lake experience many people now safely enjoy, perhaps without alleviating the risk of another tragic accident.

Action Required: Consider approval of resolution amending rules and regulations for Lone Star Lake Park to be effective January 1, 2012.

RESOLUTION NO. 11-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS AMENDING THE RULES AND
REGULATIONS APPLICABLE TO LONE STAR LAKE PARK

WHEREAS, K.S.A. 19-2803a authorizes the Board of County Commissioners of Douglas County, Kansas (the "Board") to adopt reasonable rules and regulations regulating and licensing the use and enjoyment of Lone Star Lake Park in Douglas County, Kansas; and

WHEREAS, pursuant to the foregoing authorization, the Board has previously adopted certain rules and regulations relating to the use and enjoyment of Lone Star Lake Park; and

WHEREAS, the previously adopted rules and regulations have been incorporated by reference at Section 8-201 of the Douglas County Code; and

WHEREAS, the Board has determined it necessary and desirable to amend those rules and regulations as set forth herein.

NOW, THEREFORE, the Board of County Commissioners of Douglas County, Kansas, sitting in regular session this _____ day of _____, 2011, does hereby resolve as follows:

SECTION 1. Amendment to Rules and Regulations. Section 8-201 of the Douglas County Code is hereby amended and restated to read as follows:

8-201 The Rules and Regulations governing Lone Star Lake Park (hereinafter the "Park") are as follows:

GENERAL RULES AND REGULATIONS

8-201.1 GENERAL RULES AND REGULATIONS. The following use rules and regulations for the Park are hereby adopted:

a. Except as provided herein, the Park is open to the public. Visitors are welcome to use it for the various activities permitted during the times permitted. Fees are charged for certain activities as described herein.

b. All Park rules and regulations shall be enforced 24 hours a day by the Douglas County Sheriff. The Concessionaire, the Camp Host, and County employees shall report observed violations to the Douglas County Sheriff.

c. The Park shall be open only during the hours of 6:00 a.m. to 10:00 p.m. with the exception of those in the Park area for the express and demonstrated purpose of fishing or camping. Quiet hours shall be observed from 10:00 p.m. until 6:00 a.m. in all areas of the Park.

d. The destruction of any sign, guidepost, or property of any kind is unlawful. This includes the peeling of bark, carving and chopping trees, cutting

branches, driving nails, digging ground from roots, and the removal of trees, shrubs and plants, picking wild flowers, and other destruction of public property.

e. To carry or possess firearms in the Park is unlawful.

f. The use of fireworks in the Park is unlawful.

g. Throwing of cans, bottles, paper, junk or refuse of any kind on the ground or in the Lake is prohibited. The alteration, destruction or removal of seats, tables, park buildings, and other park equipment is prohibited.

h. Washing or throwing of waste of any kind around water faucets or fountains or the use of woods as toilets, or the use of toilets as bathhouses is prohibited.

i. Building or starting fires in the open or in any place except in county provided fire rings and grills, or personal grills used for cooking purposes only is prohibited.

j. No cats, dogs or other pets shall be allowed (a) in the swimming area, (b) on the swimming beach, or (c) on any dock. Unless in a designated Off-Leash area, dogs shall not be allowed in other areas of the Park unless restrained by a chain or controlled by a leash of no longer than 6 feet. This paragraph shall not apply to dogs present to assist the blind, the visually impaired and persons who are otherwise disabled, pursuant to the legislative declaration of public policy set forth at K.S.A. 39-1101 *et seq.* and amendments thereto.

k. The speed limit on Park roads is 20 miles per hour except where otherwise posted.

l. Horseback riding in the Park is prohibited. Driving automobiles, all-terrain vehicles (ATV's), motorcycles or other motorized vehicles anywhere other than on developed roads and in developed parking lots is prohibited.

m. Camping in the Park is prohibited except by permit in the designated camping area. Persons using the campground must comply with the Park Rules and Regulations Pertaining to Camping (see Section 8-201.5).

n. It is prohibited to engage in disorderly conduct at the Park. Disorderly conduct shall include:

(a) Those acts prohibited by K.S.A. 21-4101, and amendments thereto, which is hereby incorporated herein by this reference; or

(b) Intoxication due to the consumption of alcohol, drugs, or controlled substances or a combination thereof.

o. There is no lifeguard is on duty. All persons swim at their own risk. Bathing, swimming, and wading is prohibited, except in the designated swimming area from May 1 through September 15 from dawn (30 minutes before sunrise) to dusk (30 minutes after sunset). Bathing, swimming and wading in the cabin arm of Lone Star Lake (hereinafter the "Lake") by lake front property owners or their guests is permitted only within 50 feet of each lake front property owner's shoreline. Swimming beneath docks or dock catwalks is prohibited anywhere in the Lake including the designated swimming area and in the cabin arm of the Lake.

p. The use of rubber rafts, air mattresses, tubes and other flotation devices which are not U.S. Coast Guard approved is prohibited (i) outside of public swimming areas and (ii) more than 50 feet from the shoreline in public swimming areas. This prohibition does not include inflatable float tubes, inflatable pontoon boats, inflatable

canoes, inflatable kayaks, or other inflatable personal watercraft manufactured and designed primarily for fishing while such watercraft is used for fishing activities.

q. Ice skating, ice boating, ice sledding, and ice fishing on the Lake are prohibited.

r. The Park is a game sanctuary. Hunting, shooting, killing, trapping, injuring, pursuing, or molesting in any way any bird or animal on or within the Park is prohibited.

s. The use of water craft on the Lake is subject to State of Kansas laws and regulations, and amendments thereto, which are incorporated herein by this reference, and rules and regulations set forth in Section 8-201.3 and Section 8-201.4.

t. The possession, use or consumption on Park property of any controlled substance in violation of K.S.A. 65-4101 *et seq.*, and amendments thereto, is prohibited. The possession, use or consumption of alcohol, alcoholic liquor or beer, as such terms are defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverage, as such term is defined in K.S.A. 41-2701, and amendments thereto, is prohibited in or on the designated beach area(s), any floating dock, the established swimming area, and where otherwise prohibited by State of Kansas law. No alcohol, alcoholic liquor, or cereal malt beverage may be possessed, used or consumed in or from containers with a capacity in excess of one U.S. gallon.

u. The Official County Concessionaire has the exclusive right to provide concessions in the Park.

v. The Board may adopt special rules to govern special events.

v. Parking is prohibited on Park roads at such locations as the Board or the Director of Public Works determines necessary or advisable to facilitate traffic flow or enhance the safety or enjoyment of the patrons of the Park; provided that the Director of Public Works shall post appropriate "No Parking" signage prior to enforcement. Without limiting No Parking areas on other Park roads, each of the following locations are designated and shall be appropriately signed to prohibit parking:

- i. The road across the Lake Dam and the Spillway, more particularly described as follows: Commencing at the east end of the Lake Dam Flood Wall, which is 230 feet east of the intersection of Douglas County Route No. 1-W, also known as E. 582 Road, and Douglas County Route No. 1-E, also known as E. 715 Road, thence westerly across the Lone Star Lake Dam a distance of approximately 1,880 feet, thence southerly on a curve to the left across the Lone Star Lake Spillway a distance of 380 feet to the intersection with a side road leading toward the lake and terminating at said intersection.
- ii. The road past the Marina and Swimming Beach area, more particularly described as follows: Beginning at a point approximately 277.47 feet North and 218.60 feet East of the Southeast corner of the North half of the Northeast Quarter (N. ½, N.E. ¼) of Section 14, Township 14 South, Range 18 East of the Sixth Principal Meridian, said point being on the centerline of Route 1-E, thence Westerly on the centerline of said Route 1-E to a point approximately 460.82 feet North and 724.28 feet West of the Southeast corner of the North half of said Northeast Quarter (N. ½, N.E. ¼) and terminating at said point. Also, from a

point on said centerline of Route 1-E, approximately 650 feet westerly from said point of beginning, thence southerly along the centerline of a side road 400 feet and terminating at that point.

RULES AND REGULATIONS PERTAINING TO FISHING

8-201.2 **RULES AND REGULATIONS PERTAINING TO FISHING.** The following rules and regulations pertaining to fishing are hereby adopted:

a. Fishing in the Lake is subject to State of Kansas laws and regulations. All laws of the State of Kansas, as amended, pertaining to fishing in state lakes are hereby adopted and incorporated herein by reference.

b. It shall be unlawful for any person to fish in the Lake with more than two poles with two hooks each, or to fish in the swimming area from May 1st through September 15th or to fish in any part of the Lake where “No Fishing” signs have been posted. Fishing with a seine, throwline, trotline, spear, hand fishing or any other method than with a pole and line is illegal.

RULES AND REGULATIONS PERTAINING TO BOATS, MOTORS AND BOATING

8-201.3 **RULES AND REGULATIONS PERTAINING TO BOATS, MOTORS AND BOATING.** The following rules and regulations pertaining to boats, boating and motors are hereby adopted:

a. The boating and watercraft regulations of the State of Kansas as set forth in K.S.A. 32-1101 *et seq.*, and amendments thereto, and the regulations adopted pursuant thereto, are hereby adopted and incorporated herein by reference.

b. All persons keeping, maintaining, operating or riding in boats on the Lake do so entirely at their own risk.

c. The use of inboard motor boats, jet skis, wave runners, and similar personal watercraft is prohibited on the Lake. Inboard-outboard and outboard motor boats shall be permitted.

d. From May 1st through September 15th all boats are prohibited in the designated swimming area except, the Director of Public Works or his designee may authorize nonprofit groups to operate canoes in the established swimming area between the hours of 6:00 a.m. and 10:00 a.m., on any weekday provided that any minors involved in such activity are supervised by persons 21 years of age or older and there is no interference with swimming activities of the Lake patrons. All approved groups shall first notify the Operations Division Manager at 785-331-1330 prior to using the swimming area for canoeing purposes as provided herein.

e. No boats shall be left unattended on the Lake overnight. Cabin owners may use their own private docks. All boats shall be launched at boat ramps.

f. Except when fishing or going to or from the shore, no motor boats shall be operated within 100 feet of shoreline. Operators of motor boats shall be extremely

**RULES AND REGULATIONS PERTAINING TO
WATER SKIING AND BOAT SPEED**

8-201.4 **RULES AND REGULATIONS PERTAINING TO WATER SKIING AND BOAT SPEED.** The following ski and speed regulations are hereby adopted:

- a. The minimum crew of any skiing boat shall be not less than one pilot and one observer.
- b. No owner or person in possession of a ski boat shall permit a person under 14 years of age to operate the ski boat. Persons 14 through 17 years of age shall not operate a ski boat unless accompanied and under the direct and audible supervision of a parent or other person 21 years of age or older.
- c. All skiers shall wear U.S. Coast Guard approved life preservers while skiing, and all other State of Kansas safety regulations shall apply to both skier and boat. Those waiting to ski shall not wade or swim.
- d. All areas of the Lake are “No Wake” areas, except for the designated ski area. The speed limit in the designated ski area on non-ski days is 8 mph. Skiing outside of the ski buoy markers is prohibited.
- e. Skiing is allowed on Lone Star Lake only on and between May 20 and September 15 each year on Wednesday through Sunday of each week, on Memorial Day, the Fourth of July, and Labor Day, and on such other days as the Board of County Commissioners of Douglas County, Kansas approve. Skiing is only allowed on such days between 12:00 noon and 8:00 p.m., and at such other times as the Board approves. Skiing is prohibited on all other days and at all other times.
- f. Speed limits in “Fishing Only” water shall be trolling speed which shall not create a wake.

**RULES AND REGULATIONS
PERTAINING TO CAMPING**

8-201.5 **RULES AND REGULATIONS PERTAINING TO CAMPING.** The following rules and regulations pertaining to camping are hereby adopted:

- a. The Park camping season shall be from April 1st to October 15th. The Park shall be closed for camping from October 16th through March 31st. A Park Permit for camping is required. No reservations are accepted.
- b. Quiet hours shall be observed from 10:00 p.m. to 6:00 a.m. No noise or activity shall be discernible outside each campsite during such quiet hours.
- c. No camping term at the Park shall exceed fourteen continuous calendar days. Any camping term in excess of fourteen continuous calendar days shall be followed by an absence of at least five continuous calendar days.
- d. Camping shall be allowed only at developed sites designated for camping.

- e. A maximum of two camping shelters shall be allowed per camping site. A maximum of four adults (over 18 years of age) shall be allowed to camp overnight in each camping site.
- f. An approved camping shelter is required.
- g. Violation of any camping regulation shall result in immediate revocation of the camping permit and expulsion from the Park. In addition, penalties as described in Section 8-201.8 may be enforced.

**RULES AND REGULATIONS PERTAINING TO
THE SPILLWAY**

8-201.6 **RULES AND REGULATIONS PERTAINING TO THE SPILLWAY.** Douglas County Home Rule Resolution No. HR-01-8-2, codified at Section 8-202 of the Douglas County Code, relating to the Lake Spillway located at the west end of the earthen dam forming the north shore of the Lake, stipulates that unauthorized access to the spillway is restricted in the following areas:

All areas within 25 feet on either side of the concrete portion of the spillway from the northern edge of County Route No. 1-West where it crosses the spillway to the northern edge of the spillway stilling basin where the spillway becomes Washington Creek.

As set forth in Section 8-202 (c) of the Douglas County Code, any person who violates those restrictions shall be guilty of a misdemeanor, punishable by a fine in the amount of \$250.00. See Section 8-202 of the Douglas County Code for further information concerning regulating access to and use of the spillway.

**FEES FOR PERMITS
ISSUED FOR THE LONE STAR LAKE PARK.**

8-201.7 **FEES FOR PERMITS ISSUED FOR THE LONE STAR LAKE PARK.** The following permit fees for camping are hereby adopted:

- | | | | |
|----|-----------|----------------|-------------------|
| a. | Camp Site | No Electricity | \$11.00 (per day) |
| b. | Camp Site | w/Electricity | \$16.00 (per day) |

PENALTIES FOR FAILURE TO COMPLY

8-201.8 **PENALTIES FOR FAILURE TO COMPLY.** The following are hereby adopted:

- a. Any violation of any of the rules and regulations set forth in Section 8-201.1 through this Section 8-201.8, inclusive, shall be deemed a misdemeanor punishable upon conviction thereof by a fine not exceeding \$100.00, or a term of confinement not exceeding thirty days in the county jail, or both such fine and imprisonment.
- b. In addition to any other method of initiating a criminal proceeding under applicable law, criminal proceeding may be initiated for violation of any provision of Section 8-201.1 through this Section 8-201.8 by making an offense report and serving a

uniform complaint and notice to appear upon the accused. The offense report shall be forwarded to the district attorney for prosecution.

c. Each day that any violation occurs shall constitute a separate offense and shall be punishable as a separate violation. Provided, however, that if any person is found guilty of a violation hereunder and it shall appear to the court that the violation complained of is continuing, then in addition to the penalty set forth, the court shall enter such order as it deems appropriate to cause the violation to be abated.

d. Compliance with the rules and regulations set forth in Section 8-201.1 through 8-201.7, inclusive, is mandatory and is a prerequisite to the use and enjoyment of the Park. Therefore, in addition to the penalties set forth in Section 8-201.8.a, the privilege of any person to use and enjoy the Park may be temporarily suspended or revoked by the Douglas County Sheriff, the Director of Public Works, or their designees for violation of any of the rules and regulations contained herein. Such suspension or revocation may apply to the use or enjoyment of all Park facilities or may be limited to specific items, such as operation of a boat on the Lake. Any such suspension or revocation shall, but only at the request of the alleged violator, be reviewed within two (2) working days by the County Administrator or his/her designee who shall either affirm or reverse the action. A decision to affirm may be appealed to the Board of County Commissioners but such appeal shall be filed within three working days. Revocation of the privilege of a person to operate a boat on the Lake may only be restored by making application to the Board of County Commissioners. The Douglas County Sheriff shall enforce any temporary suspension or revocation. Violation of a temporary suspension or revocation shall be unlawful and shall give rise to a separate offense hereunder.

DESIGNATION OF AREAS AND MAPS

8-201.9 DESIGNATION OF AREAS AND MAPS. Whenever these regulations reference designated areas, such as designated swimming area, designated skiing area, or designated camping areas, the reference shall mean those areas designated by the Director of Public Works for such use. The Director of Public Works shall appropriately mark all designated areas and may cause maps of the Park to be prepared and distributed providing information as to the location of each designated area.

SECTION 2. Repeal. Section 8-201 of the Douglas County Code and Resolution No. 05-17 and Resolution No. 06-15, as existing prior to the effective date of this Resolution, are hereby repealed.

SECTION 3. Effective Date. This Resolution shall take effect on January 1, 2012, and be in force from and after its publication once each week for the three consecutive weeks in the official county newspaper.

ADOPTED, the year and day set forth above.

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

Jim Flory, Chair

Mike Gaughan, Member

Nancy Thellman, Member

ATTEST:

Jameson D. Shew, County Clerk

RESOLUTION NO. 05- 17

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS AMENDING THE RULES AND
REGULATIONS APPLICABLE TO LONE STAR LAKE PARK

WHEREAS, K.S.A. 19-2803a authorizes the Board of County Commissioners of Douglas County, Kansas (the "Board") to adopt reasonable rules and regulations regulating and licensing the use and enjoyment of Lone Star Lake Park in Douglas County, Kansas; and

WHEREAS, pursuant to the foregoing authorization, the Board has previously adopted certain rules and regulations relating to the use and enjoyment of Lone Star Lake Park; and

WHEREAS, the previously adopted rules and regulations have been incorporated by reference at Section 8-201 of the Douglas County Code; and

WHEREAS, the Board has determined it necessary and desirable to amend those rules and regulations as set forth herein.

NOW, THEREFORE, the Board of County Commissioners of Douglas County, Kansas, sitting in regular session this 4th day of April, 2005, does hereby resolve as follows:

SECTION 1. Amendment to Rules and Regulations. Section 8-201 of the Douglas County Code is hereby amended and restated to read as follows:

8-201 The Rules and Regulations governing Lone Star Lake Park (hereinafter the "Park") are as follows:

GENERAL RULES AND REGULATIONS

8-201.1 GENERAL RULES AND REGULATIONS. The following use rules and regulations for the Park are hereby adopted:

- a. Except as provided herein, the Park is open to the public. Visitors are welcome to use it for the various activities permitted during the times permitted. Fees are charged for certain activities as described herein.
- b. All Park rules and regulations shall be enforced 24 hours a day by the Douglas County Sheriff. The Concessionaire, the Camp Host, and County employees shall report observed violations to the Douglas County Sheriff.
- c. The Park shall be open only during the hours of 6:00 a.m. to 10:00 p.m. with the exception of those in the Park area for the express and demonstrated purpose of fishing or camping. Quiet hours shall be observed from 10:00 p.m. until 6:00 a.m. in all areas of the Park.
- d. The destruction of any sign, guidepost, or property of any kind is unlawful. This includes the peeling of bark, carving and chopping trees, cutting branches, driving nails, digging ground from roots, and the removal of trees, shrubs and plants, picking wild flowers, and other destruction of public property.
- e. To carry or possess firearms in the Park is unlawful.

f. Throwing of cans, bottles, paper, junk or refuse of any kind on the ground or in the Lake is prohibited. The alteration, destruction or removal of seats, tables, park buildings, and other park equipment is prohibited.

g. Washing or throwing of waste of any kind around water faucets or fountains or the use of woods as toilets, or the use of toilets as bathhouses is prohibited.

h. Building or starting fires in the open or in any place except in county provided fire rings and grills, or personal grills used for cooking purposes only is prohibited.

i. No cats, dogs or other pets shall be allowed (a) in the swimming area, (b) on the swimming beach, or (c) on any dock. Dogs shall not be allowed in other areas of the Park unless restrained by a chain or controlled by a leash of no longer than 6 feet. This paragraph shall not apply to dogs present to assist the blind, the visually impaired and persons who are otherwise disabled, pursuant to the legislative declaration of public policy set forth at K.S.A. 39-1101 *et seq.* and amendments thereto.

j. The speed limit on Park roads is 20 miles per hour except where otherwise posted.

k. Horseback riding in the Park is prohibited. Driving automobiles, or other motorized vehicles anywhere other than on developed roads and in developed parking lots is prohibited.

l. Camping in the Park is prohibited except by permit in the designated camping area. Persons using the campground must comply with the Park Rules and Regulations Pertaining to Camping (see Section 8-201.5).

m. It is prohibited to engage in disorderly conduct at the Park. Disorderly conduct shall include:

(a) Those acts prohibited by K.S.A. 21-4101, and amendments thereto, which is hereby incorporated herein by this reference; or

(b) Intoxication due to the consumption of alcohol, drugs, or controlled substances or a combination thereof.

n. There is no lifeguard is on duty. All persons swim at their own risk. Bathing, swimming, and wading is prohibited, except in the designated swimming area from dawn (30 minutes before sunrise) to dusk (30 minutes after sunset). Bathing, swimming and wading in the cabin arm of Lone Star Lake (hereinafter the "Lake") by lake front property owners or their guests is permitted only within 50 feet of each lake front property owner's shoreline.

o. The use of rubber rafts, air mattresses, tubes and other flotation devices which are not U.S. Coast Guard approved is prohibited (i) outside of public swimming areas and (ii) more than 50 feet from the shoreline in public swimming areas.

p. Ice skating, ice boating, ice sledding, and ice fishing on the Lake are prohibited.

q. The Park is a game sanctuary. Hunting, shooting, killing, trapping, injuring, pursuing, or molesting in any way any bird or animal on or within the Park is prohibited.

r. The use of water craft on the Lake is subject to State of Kansas laws and regulations, and amendments thereto, which are incorporated herein by this reference, and rules and regulations set forth in Section 8-201.3 and Section 8-201.4.

s. The possession, use or consumption on Park property of any controlled substance in violation of K.S.A. 65-4101 *et seq.*, and amendments thereto, is prohibited. The possession, use or consumption of alcohol, alcoholic liquor or beer, as such terms are defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverage, as such term is defined in K.S.A. 41-2701, and amendments thereto, is prohibited in or on the

designated beach area(s), any floating dock, the established swimming area, and where otherwise prohibited by State of Kansas law. No alcohol, alcoholic liquor, or cereal malt beverage may be possessed, used or consumed in or from containers with a capacity in excess of one U.S. gallon.

t. The Official County Concessionaire has the exclusive right to provide concessions in the Park.

u. The Board may adopt special rules to govern special events.

v. Parking is prohibited on Park roads at such locations as the Board or the Director of Public Works determines necessary or advisable to facilitate traffic flow or enhance the safety or enjoyment of the patrons of the Park; provided that the Director of Public Works shall post appropriate "No Parking" signage prior to enforcement. Without limiting No Parking areas on other Park roads, each of the following locations are designated and shall be appropriately signed to prohibit parking:

- i. The road across the Lake Dam and the Spillway, more particularly described as follows: Commencing at the east end of the Lake Dam Flood Wall, which is 230 feet east of the intersection of Douglas County Route No. 1-W, also known as E. 582 Road, and Douglas County Route No. 1-E, also known as E. 715 Road, thence westerly across the Lone Star Lake Dam a distance of approximately 1,880 feet, thence southerly on a curve to the left across the Lone Star Lake Spillway a distance of 380 feet to the intersection with a side road leading toward the lake and terminating at said intersection.
- ii. The road past the Marina and Swimming Beach area, more particularly described as follows: Beginning at a point approximately 277.47 feet North and 218.60 feet East of the Southeast corner of the North half of the Northeast Quarter (N. ½, N.E. ¼) of Section 14, Township 14 South, Range 18 East of the Sixth Principal Meridian, said point being on the centerline of Route 1-E, thence Westerly on the centerline of said Route 1-E to a point approximately 460.82 feet North and 724.28 feet West of the Southeast corner of the North half of said Northeast Quarter (N. ½, N.E. ¼) and terminating at said point. Also, from a point on said centerline of Route 1-E, approximately 650 feet westerly from said point of beginning, thence southerly along the centerline of a side road 400 feet and terminating at that point.

RULES AND REGULATIONS PERTAINING TO FISHING

8-201.2 **RULES AND REGULATIONS PERTAINING TO FISHING.** The following rules and regulations pertaining to fishing are hereby adopted:

a. Fishing in the Lake is subject to State of Kansas laws and regulations. All laws of the State of Kansas, as amended, pertaining to fishing in state lakes are hereby adopted and incorporated herein by reference.

b. It shall be unlawful for any person to fish in the Lake with more than two poles with two hooks each, or to fish in the swimming area from May 1st through September 15th, or to fish in any part of the Lake where "No Fishing" signs have been posted. Fishing with a seine, throwline, trotline, spear, hand fishing or any other method than with a pole and line is illegal.

RULES AND REGULATIONS PERTAINING TO BOATS, MOTORS AND BOATING

8-201.3 RULES AND REGULATIONS PERTAINING TO BOATS, MOTORS AND BOATING. The following rules and regulations pertaining to boats, boating and motors are hereby adopted:

- a. The boating and watercraft regulations of the State of Kansas as set forth in K.S.A. 32-1101 *et seq.*, and amendments thereto, and the regulations adopted pursuant thereto, are hereby adopted and incorporated herein by reference.
- b. All persons keeping, maintaining, operating or riding in boats on the Lake do so entirely at their own risk.
- c. The use of inboard motor boats, jet skis, wave runners, and similar personal watercraft is prohibited on the Lake. Inboard-outboard and outboard motor boats shall be permitted.
- d. From May 1st through September 15th all boats are prohibited in the designated swimming area except, the Director of Public Works or his designee may authorize nonprofit groups to operate canoes in the established swimming area between the hours of 6:00 a.m. and 10:00 a.m., on any weekday provided that any minors involved in such activity are supervised by persons 21 years of age or older and there is no interference with swimming activities of the Lake patrons. All approved groups shall first notify the Operations Division Manager at 785-331-1330 prior to using the swimming area for canoeing purposes as provided herein.
- e. All boats left unattended on the Lake overnight shall be docked at the boat docks provided at the marina. Cabin owners may use their own private docks. All boats shall be launched at boat ramps.
- f. Except when fishing or going to or from the shore, no motor boats shall be operated within 100 feet of shoreline. Operators of motor boats shall be extremely careful and prudent at all times so as not to endanger life or safety, unnecessarily discomfort others, or interfere with any person who may be fishing from the shore.

RULES AND REGULATIONS PERTAINING TO WATER SKIING AND BOAT SPEED

8-201.4 RULES AND REGULATIONS PERTAINING TO WATER SKIING AND BOAT SPEED. The following ski and speed regulations are hereby adopted:

- a. The minimum crew of any skiing boat shall be not less than one pilot and one observer.
- b. No owner or person in possession of a ski boat shall permit a person under 14 years of age to operate the ski boat. Persons 14 through 17 years of age shall not operate a ski boat unless accompanied and under the direct and audible supervision of a parent or other person 21 years of age or older.
- c. All skiers shall wear U.S. Coast Guard approved life preservers while skiing, and all other State of Kansas safety regulations shall apply to both skier and boat. Those waiting to ski shall not wade or swim.
- d. All areas of the Lake are "No Wake" areas, except for the designated ski area. The speed limit in the designated ski area on non-ski days is 8 mph. Skiing outside of the ski buoy markers is prohibited.

e. On and between June 1 and Labor Day each year skiing shall be allowed only on Tuesday, Wednesday and Thursday of each week and at such other times approved by Resolution of the Board of County Commissioners of Douglas County, Kansas. Skiing shall only be allowed on such days between 10:00 a.m. and 9:00 p.m. and at such other times as approved by the Board.

f. Speed limits in "Fishing Only" water shall be trolling speed which shall not create a wake.

RULES AND REGULATIONS PERTAINING TO CAMPING

8-201.5 RULES AND REGULATIONS PERTAINING TO CAMPING. The following rules and regulations pertaining to camping are hereby adopted:

a. The Park camping season shall be from April 1st to October 15th. The Park shall be closed for camping from October 16th through March 31st. A Park Permit for camping is required. No reservations are accepted.

b. Quiet hours shall be observed from 10:00 p.m. to 6:00 a.m. No noise or activity shall be discernible outside each campsite during such quiet hours.

c. No camping term at the Park shall exceed fourteen continuous calendar days. Any camping term in excess of fourteen continuous calendar days shall be followed by an absence of at least five continuous calendar days.

d. Camping shall be allowed only at developed sites designated for camping.

e. A maximum of two tents shall be allowed per camping site. A maximum of four adults (over 18 years of age) shall be allowed to camp overnight in each camping site.

f. An approved camping shelter is required.

g. Violation of any camping regulation shall result in immediate revocation of the camping permit and expulsion from the Park. In addition, penalties as described in Section 8-201.8 may be enforced.

RULES AND REGULATIONS PERTAINING TO THE SPILLWAY

8-201.6 RULES AND REGULATIONS PERTAINING TO THE SPILLWAY. Douglas County Home Rule Resolution No. HR-01-8-2, codified at Section 8-202 of the Douglas County Code, relating to the Lake Spillway located at the west end of the earthen dam forming the north shore of the Lake, stipulates that unauthorized access to the spillway is restricted in the following areas:

All areas within 25 feet on either side of the concrete portion of the spillway from the northern edge of County Route No. 1-West where it crosses the spillway to the northern edge of the spillway stilling basin where the spillway becomes Washington Creek.

As set forth in Section 8-202 (c) of the Douglas County Code, any person who violates those restrictions shall be guilty of a misdemeanor, punishable by a fine in the amount of \$250.00. See Section 8-202 of the Douglas County Code for further information concerning regulating access to and use of the spillway.

**FEEES FOR PERMITS
ISSUED FOR THE LONE STAR LAKE PARK.**

8-201.7 FEEES FOR PERMITS ISSUED FOR THE LONE STAR LAKE PARK. The following permit fees for camping are hereby adopted:

- | | | | |
|----|-----------|----------------|-------------------|
| a. | Camp Site | No Electricity | \$7.00 (per day) |
| b. | Camp Site | w/Electricity | \$12.00 (per day) |

PENALTIES FOR FAILURE TO COMPLY

8-201.8 PENALTIES FOR FAILURE TO COMPLY. The following are hereby adopted:

a. Any violation of any of the rules and regulations set forth in Section 8-201.1 through this Section 8-201.8, inclusive, shall be deemed a misdemeanor punishable upon conviction thereof by a fine not exceeding \$100.00, or a term of confinement not exceeding thirty days in the county jail, or both such fine and imprisonment.

b. In addition to any other method of initiating a criminal proceeding under applicable law, criminal proceeding may be initiated for violation of any provision of Section 8-201.1 through this Section 8-201.8 by making an offense report and serving a uniform complaint and notice to appear upon the accused. The offense report shall be forwarded to the district attorney for prosecution.

c. Each day that any violation occurs shall constitute a separate offense and shall be punishable as a separate violation. Provided, however, that if any person is found guilty of a violation hereunder and it shall appear to the court that the violation complained of is continuing, then in addition to the penalty set forth, the court shall enter such order as it deems appropriate to cause the violation to be abated.

d. Compliance with the rules and regulations set forth in Section 8-201.1 through 8-201.7, inclusive, is mandatory and is a prerequisite to the use and enjoyment of the Park. Therefore, in addition to the penalties set forth in Section 8-201.8.a, the privilege of any person to use and enjoy the Park may be temporarily suspended or revoked by the Douglas County Sheriff, the Director of Public Works, or their designees for violation of any of the rules and regulations contained herein. Such suspension or revocation may apply to the use or enjoyment of all Park facilities or may be limited to specific items, such as operation of a boat on the Lake. Any such suspension or revocation shall, but only at the request of the alleged violator, be reviewed within two (2) working days by the County Administrator or his/her designee who shall either affirm or reverse the action. A decision to affirm may be appealed to the Board of County Commissioners but such appeal shall be filed within three working days. Revocation of the privilege of a person to operate a boat on the Lake may only be restored by making application to the Board of County Commissioners. The Douglas County Sheriff shall enforce any temporary suspension or revocation. Violation of a temporary suspension or revocation shall be unlawful and shall give rise to a separate offense hereunder.

DESIGNATION OF AREAS AND MAPS

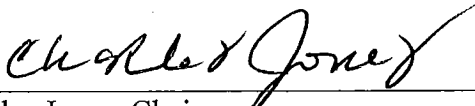
8-201.9 DESIGNATION OF AREAS AND MAPS. Whenever these regulations reference designated areas, such as designated swimming area, designated skiing area, or designated camping areas, the reference shall mean those areas designated by the Director of Public Works for such use. The Director of Public Works shall appropriately mark all designated areas and may cause maps of the Park to be prepared and distributed providing information as to the location of each designated area.

SECTION 2. Repeal. Section 8-201 of the Douglas County Code and Resolution No. 02-05, as existing prior to the effective date of this Resolution, are hereby repealed.

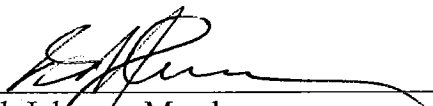
SECTION 3. Effective Date. This Resolution shall take effect and be in force from and after its publication once each week for the three consecutive weeks in the official county newspaper.

ADOPTED, the year and day set forth above.

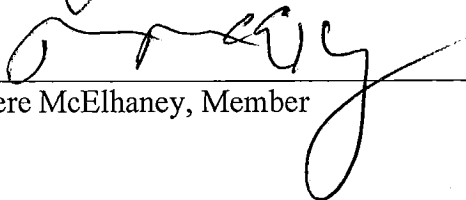
**BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS**



Charles Jones, Chair

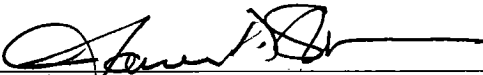


Bob Johnson, Member



Jere McElhaney, Member

ATTEST:



Jameson D. Shew, County Clerk

MEMORANDUM

To : Board of County Commissioners

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

Date : August 26, 2011

Re : Discuss possible treatment of exotic nuisance plant at Lone Star Lake

Richard Sanders, KDWP fisheries biologist, notified us he saw Eurasian watermilfoil (EWM) growing in Lone Star Lake. This plant is an exotic plant that can quickly become a nuisance. Following is information from Richard Sanders:

Unlike curlyleaf pondweed, EWM does not die off early in the summer, rather it continues to grow throughout the growing season. EWM is a submersed plant rooted to the bottom and growing up to the surface. It commonly occupies water down to 15 feet deep, but has been reported down to 30 feet in very clear water. A dense canopy often forms at the surface of the water, which interferes with recreational uses of water such as boating, fishing, and swimming. Excessive growth of the species may alter aquatic ecosystems by decreasing native plant and animal diversity and abundance and by affecting the predator/prey relationships of fish. A healthy lake is damaged because heavy infestations of EWM lower dissolved oxygen under the canopy, increase daily pH shifts, reduce water movement and wave action, increase sedimentation rates and reduce turbidity. I recommend treating it now with a herbicide to try to eradicate it before it proliferates.

We did a more thorough survey of the lake with Richard, and found EWM growing in several areas of the lake. The most extensive coverage was in the swimming cove east of the dam.

While Richard recommends treating EWM with an herbicide, at the time of this writing we are not ready to recommend we treat the EWM this fall. It may be more effective to wait until next spring to treat the EWM. We are gathering more information on this issue, and will discuss further at the BOCC meeting.

Action Required: Discuss the growth of Eurasian watermilfoil in Lone Star Lake, and provide direction on treatment as appropriate.



JAMIE SHEW
DOUGLAS COUNTY CLERK
1100 Massachusetts
Lawrence, KS 66044
Phone: 785-832-5267
Fax: 785-832-5192

Carrie F. Moore
Chief Deputy Clerk

Benjamin Lampe
Deputy Clerk-Elections

CERTIFICATE OF SUFFICIENCY SIGNATURES OF PETITION

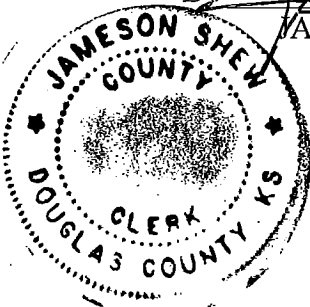
STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

I, the undersigned, County Clerk of Douglas County, Kansas, do hereby certify that the Petition titled "Petition for Attachment of Lands to Rural Water District No 4 Douglas County, Kansas" filed with the Board of County Commissioners, requesting that the Board of County Commissioners attach lands described to Rural Water District No 4, has been signed by not less than 50% of the owners of lands to be attached. The lands sought to be attached are described as follows: A tract of land located in South Half (S 1/2) of the Northwest Quarter (NW 1/4) of Section Twenty-Seven (S27), Township Thirteen South (T13S), Range Twenty East (R20E) of the 6th P.M., Douglas County, Kansas, more particularly described as follows: Commencing at the Southwest corner of the Northwest Quarter (NW 1/4); thence North 89°51'40" East a distance of 1,313.43 feet to the point of beginning, said point being on the South line of the Northwest Quarter (NW 1/4); thence North 00°27'01" East a distance of 662.68 feet; thence North 89°50'42" East a distance of 437.70 feet; thence South 00°27'01" West a distance of 662.80 feet, said point being on the South line of the Northwest Quarter (NW 1/4); thence South 89°51'40" West a distance of 437.70 feet to the point of beginning, also known as tract 5B consisting of 6.65 acres more or less.

WITNESS my hand and seal as of August 9, 2011.

DOUGLAS COUNTY, KANSAS

By 
JAMESON D. SHEW, County Clerk



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KS

In the Matter of the Petition for
Attachment of Lands to Rural
Water District No. 4,
Douglas County, Kansas

PETITION FOR APPROVAL OF ATTACHMENT OF LANDS
TO RURAL WATER DISTRICT NO. 4, DOUGLAS COUNTY, KANSAS

TO: THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

Petitioners, being landowners of Douglas County, Kansas, represent and state as follows:

1. That the undersigned Petitioners are all the owners of certain land within Douglas County and desire the same to be annexed and attached to Rural Water District No. 4; the boundaries of such land are defined by metes and bounds as follows:
2. That attached hereto is a verification of the enumeration of landowners taken from the tax rolls of Douglas County.
3. That the lands within such boundaries are without an adequate supply of water and can be economically served by the facilities of Rural Water District No. 4, Douglas County, Kansas.
4. That the attachment to Rural Water District No. 4, Douglas County, Kansas of the land contained within the boundaries of the described areas will be conducive to and will promote the public health, convenience, and welfare.
5. That some or all of the land to be attached is within the three-mile fringe area of a city and therefore a 3/4 majority of the Board of County Commissioners must approve the Petition.

WHEREFORE, Petitioners pray that the Board of County Commissioners of Douglas County, Kansas, fix a time and place within thirty (30) days from the date of filing of this

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DOUGLAS COUNTY CLERK
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2011 APR -9 PM 1:14

Petition for a hearing of the same; that the County Clerk of Douglas County, Kansas, at least seven days before the hearing date, send written notice by first class mail of the time and place of such hearing together with a copy of this Petition, to each of the owners of land within the areas to be attached, to the office of the Board of Directors of Rural Water District No. 4, Douglas County, Kansas, and to the Chief Engineer, Division of Water Resources, State Board of Agriculture [to the City of Lawrence, Baldwin City or Eudora, and to the Lawrence/Douglas County Planning Commission]. That the Board of County Commissioners, upon hearing, make appropriate findings and approve the annexation and attachment of such lands to Rural Water District No. 4, Douglas County, Kansas, and thereupon enter upon its records full minutes of such hearing, together with a declaration that henceforth the District shall include the described land in the District, all as provided in K.S.A. §82a-622 to §82a-624 inclusive [and KSA 19-270].

PETITIONERS

Kyle Walker

Shelly L Walker

VERIFICATION OF ENUMERATION

State of Kansas

County of Douglas

Kyle Walker, being first duly sworn on oath, deposes and states that he is [one of the landowners of the above described land sought to be attached] [an attorney representing the landowners/petitioners], that an enumeration of the owners of land in the boundaries of the area to be annexed and attached to Rural Water District No. 4 has been taken from the tax rolls of the County, is attached hereto and is true and correct. This verification is provided pursuant to K.S.A. 82a-622.

Kyle Walker

Subscribed and sworn to before me this 9th day of August, 2011.

Julia A. Hanna
Notary Public

My Commission Expires: 7/10/2014

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KS

In the Matter of the Petition for
Attachment of Lands to Rural
Water District No. 4;
Douglas County, Kansas

REQUEST FOR PETITION FOR ATTACHMENT OF LANDS TO
RURAL WATER DISTRICT NO. 4

The following owners of land in areas currently located outside the boundaries of Rural Water District No. 4, Douglas County, Kansas, whose signatures appear below, finding that the supply of water to our land is inadequate; that our land can be economically served by the facilities of Rural Water District No. 4; and that the same will be conducive to and will promote the public health, convenience and welfare, do hereby request that a Petition be prepared, signed on our behalf by _____ our Attorneys, and filed with the County Clerk of Douglas County, seeking the approval of attachment of lands to Rural Water District No. 4, by the Board of County Commissioners of Douglas County, Kansas.

NAME

ADDRESS

Kyle Walker
Sign Name

2501 Cranley Ct Lawtona, KS 66046

Kyle Walker
Print Name

Shelly L Walker
Sign Name

2501 Cranley Ct

Shelly L Walker
Print Name

Sign Name

Print Name

Note: 82a-622 permits a Petition to be signed "on behalf of" landowners, when the Petition is accompanied by a request for petitioning signed by at least 50% of the owners of land within the area. This form could be used for that purpose..

Name and Address of Title Insurance Company:

First American Title Insurance Company
1 First American Way, Santa Ana, CA 92707

FIRST AMERICAN TITLE INSURANCE COMPANY
SCHEDULE A

Policy Number: 5011420-0010199e File No.: L1107070
Amount of Insurance: \$25,000.00
Date of Policy: July 22, 2011 at 3:14:00 PM

1. Name of Insured:

Kyle Walker and Shelly Walker

2. The estate or interest in the Land that is insured by this policy is: Fee Simple

3. Title is vested in:

Kyle Walker and Shelly Walker

4. The Land referred to in this policy is described as follows:

TRACT 5B:

A tract of land located in the South Half (S ½) of the Northwest Quarter (NW ¼) of Section Twenty-Seven (S27), Township Thirteen South (T13S), Range Twenty East (R20E) of the 6th P.M., Douglas County, Kansas, more particularly described as follows: Commencing at the Southwest corner of the Northwest Quarter (NW ¼); thence North 89°51'40" East a distance of 1,313.43 feet to the point of beginning, said point being on the South line of the Northwest Quarter (NW ¼); thence North 00°27'01" East a distance of 662.68 feet; thence North 89°50'42" East a distance of 437.70 feet; thence South 00°27'01" West a distance of 662.80 feet, said point being on the South line of the Northwest Quarter (NW ¼); thence South 89°51'40" West a distance of 437.70 feet to the point of beginning.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

Authorized Signatory