

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, OCTOBER 3, 2012

4:00 p.m.

-Consider approval of the Minutes of August 29 and September 5, 2012.

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
(b) Consider Acquisition to Print and Mail Tax Statements (Paula Gilchrist); and
(c) Consider approval of First Amendment to Lease Agreement with Community Wireless Communications, Co. (Craig Weinaug)

REGULAR AGENDA

- (2) Consider approval of a revision to the road classification for N 1250 Rd, to the north of the Baker Wetland's (proposed) Visitor's Center, by amending Exhibit 9-506 of the Access Management Regulations, [HR Resolution 11-4-2]. (Linda Finger/Keith Browning)
- (3) Consider revised project agreement for corridor management funding, US-56 reconstruction from Bullpup drive west through E1600 Road intersection. (Keith Browning)-Backup to follow
- (4) Discuss scope of improvements to the Route 442 curves ½-mile east of Shawnee County line as part of the larger project to improve Route 442 from the Shawnee County line to Stull (Keith Browning)
-No backup
- (5) Other Business
 - (a) Consider approval of Accounts Payable (if necessary)
 - (b) Appointments **-Board of Zoning Appeals 11/2012 (New Appointee)**
-Bicycle Advisory Committee 12/2012 (eligible for reappointment)
-Douglas County Corrections & Youth Services –Reappointment for Mental Health Position (David Johnson)
-Food Policy Council 12/2012
 - (c) Public Comment
 - (d) Miscellaneous
- (6) Adjourn

WEDNESDAY, OCTOBER 10, 2012

THURSDAY, OCTOBER 11, 2012

3-6 p.m. – Douglas County Senior Services 40th Anniversary Event

WEDNESDAY, OCTOBER 17, 2012

SATURDAY, OCTOBER 20, 2012

4-7 p.m.-Douglas County Senior Services Chili Cook off

WEDNESDAY, OCTOBER 24, 2012

-Consider approving a proclamation for "Kansas Food Day "October 24, 2012 (Eileen Horn)

WEDNESDAY, OCTOBER 31, 2012

WEDNESDAY, NOVEMBER 7, 2012

WEDNESDAY, NOVEMBER 14, 2012- Tentatively Cancelled

THURSDAY, NOVEMBER 15, 2012

9:00 a.m. – Election Canvass (Two or more Commission will be in attendance.)

***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.*



DOUGLAS COUNTY ADMINISTRATIVE SERVICES

Division of Purchasing

1100 Massachusetts Street
Lawrence, KS 66044-3064
(785) 832-5286 Fax (785) 838-2480
www.douglas-county.com

MEMO TO: The Board of County Commissioners
Craig Weinaug, County Administrator

FROM: Jackie Waggoner, Purchasing Director
Division of Purchasing

SUBJECT: Consider Acquisition to Print and Mail Tax Statements

DATE: September 27, 2012

Each year the Douglas County Treasurer's Office distributes approximately 90,000 tax statements and tax information sheets. The process requires a company who can print and merge data to the statements. Not all printing companies have this capability.

For the past four years we used a company, Mail Services, which provides online statement preview and editing functionalities. This ability has proven to be time saving for staff, and creates efficiencies for the Treasurer's Office. I have contacted other companies that can print and merge data, but none offers this online editing function.

Mail Services has experience working with the XML file produced by Manatron (contractor for new tax system) to print the tax statements. The reconciliation of data from the old system with the new system proved more difficult than anticipated, and it is the Treasurer's preference to retain the same supplier to ensure we don't have any issue with the tax statements.

Mail Services has submitted a quote for printing of statements (including information sheet) and envelopes, folding and inserting, online preview and editing, and postage. Their cost of \$.565 each equates to \$50,850 based on an estimated volume of 90,000. We are recommending that the Board provide the County Administrator with the authority to approve change orders up to 10% (\$5,085) of the total cost to accommodate volume increases.

Next year we intend to look at establishing a multi-year agreement for the printing and mailing of the tax statements. This agreement will come back to your for approval. It is staff's preference to contract with Mail Services for the 2013 tax statements. This action would require the Board to waive our formal bidding process. Paula Gilchrist will be available at the commission meeting to answer any questions you may have.

Suggested Motion: The Board of County Commissioners waives the formal bidding process, authorizes a contract with Mail Services in an estimated amount of \$50,850, and authorizes the County Administrator to approve change orders up to 10% of that amount.

**FIRST AMENDMENT
TO
LEASE AGREEMENT**

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "**Amendment**") is signed and entered into effective as of September 29, 2012, by and between DOUGLAS COUNTY, KANSAS, having a mailing address of 1100 Massachusetts Street, Lawrence KS 66044 (hereinafter referred to as "**Landlord**") and COMMUNITY WIRELESS COMMUNICATIONS CO., a Kansas for-profit corporation, having a mailing address of P.O. Box 3532, 2321 Ponderosa Drive, Lawrence KS 66046 (hereinafter referred to as "**Tenant**").

BACKGROUND

WHEREAS, owns that certain tract of land, together with all rights and privileges arising in connection therewith, generally located at 111 E. 11th Street, Lawrence, Douglas County, Kansas (the "**Property**").

WHEREAS, Landlord owns and maintains a communications tower (the "**Tower**") on the Property and Landlord and Tenant have entered into that certain Lease Agreement (the "**Lease**") by which Landlord leased Tenant desires certain space on the Tower (the "**Premises**") to use in Tenant's authorized communications business of providing wireless Internet access, as more particularly described in the Lease.

WHEREAS, Landlord desire to amend the Lease as set forth in this Amendment.

TERMS OF AMENDMENT

NOW, THEREFORE, the parties enter into this Amendment, agreeing to amend the Lease as follows:

1. **Capitalized Terms.** Capitalized terms not otherwise defined in this Extension shall have the same definition as set forth in the Lease.

2. **Specification of Commencement Date.** The parties agree that the Commencement Date of the Term of the Lease was May 11, 2011.

3. **Amendment to Rent Payment Schedule.** Section 5 of the Lease is amended and restated to read as follows:

3. **RENT.** Tenant shall pay Landlord annual rent ("Rent") of \$5,000 in equal monthly installments of \$416.67, each in advance on or before the 11th day of every month, at such place as Landlord shall specify from time to time. The parties agree that installments of Rent have been paid through October 10, 2012 and that the next monthly installment is due on or before October 11, 2012. If Tenant shall fail to pay any installment of Rent or any other amount due under this Lease when due, Tenant shall pay to Landlord an additional "Late Charge" equal to 5% of the delinquent amount, not as a penalty but as liquidated damages to defray part of the cost of collection and, in addition, such delinquent amount shall bear interest at the rate of 10% per annum. Notwithstanding the foregoing, Landlord will not impose a Late Charge as to the first late payment in

any calendar year, unless Tenant fails to pay the late payment to Landlord within 5 business days after the delivery of notice from Landlord to Tenant demanding the late payment be paid, but Landlord may impose a Late Charge without advance notice to Tenant on any subsequent late payment in the same calendar year.

4. **Amendment to Default Provisions.** Section 12 of the Lease is amended and restated to read as follows:

12. **TENANT DEFAULT AND LANDLORD REMEDIES.** Tenant shall be in default under this Lease if: (i) Tenant defaults in the payment of any installment of Rent when due; provided, however, that Tenant shall not be in default for the first late payment in any calendar year unless such default is not cured within 10 days following written notice from Landlord specifying such default Tenant, but Landlord need not send any notice to Tenant on any subsequent late payment in the same calendar year; (ii) Tenant fails to make any payment other than an installment of Rent when due and such default is not cured within 10 days following written notice from Landlord specifying such default; (iii) Tenant defaults in the performance of any other provisions of this Lease and such default is not cured within 10 days following written notice from Landlord specifying such default; provided, however, that not advance notice is required if Tenant violates Section 7 or does anything that Landlord concludes causes or creates a health or safety hazard; (iv) if a petition in bankruptcy is filed by or against Tenant (provided Tenant shall have 90 calendar days to stay any involuntary proceeding); or (v) Tenant make an assignment for the benefit of its creditors, or a receiver is appointed for Tenant and such receiver is not dismissed within 60 days of his appointment. Upon the occurrence of any such event of default, Landlord may, without any further notice or demand, in addition to and not in limitation of any other remedy permitted by law or equity or by this Lease:

(1) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, but if Tenant shall fail so to do, Landlord may, without further notice and without prejudice to any other remedy Landlord may have for possession or arrearage in Rent, enter upon the Premises and expel or remove Tenant and its personal property, without being liable to prosecution or any claim for damages therefore. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including but not limited to: the cost of recovering possession of the Premises, together with any and all costs incurred by Landlord for the taking of an inventory of, removal of and/or storage of any and all property left in, upon or about the Premises by Tenant.

(2) Landlord may, as agent of Tenant, do whatever Tenant is obligated to do by the provisions of this Lease, including, but not by limitation, making any payment, other than Rent, that Tenant is required to make pursuant to the terms of this Lease, or perform any action Tenant is obligated to perform, and may enter the Premises in order to accomplish this purpose. Tenant agrees to pay to Landlord, as additional Rent, immediately upon demand any expenses which Landlord may incur in effecting compliance with this Lease on behalf of Tenant, and Tenant further agrees that Landlord shall not be liable for any damages resulting to a Tenant from such action.

(3) Tenant shall pay Landlord all reasonable attorney fees Landlord incurs in connection with any default of Tenant, whether or not litigation is commenced.

(4) The mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy Landlord might have, either in law or in equity, nor shall the waiver of or redress for any violation of any covenant or condition contained in this Lease prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of Rent with knowledge of the breach of covenant contained in this Lease shall not be deemed a waiver of such breach.

5. **Reaffirmation of Lease.** Except as amended by this Amendment, the Lease is reaffirmed and ratified.

IN WITNESS WHEREOF, the parties have entered into this Amendment, effective as of the date stated above, which is the date of the last party to sign this Amendment.

Landlord:

Douglas County, Kansas, by
Board of Douglas County Commissioners

By: _____
Mike Gaughan, Chair

Date: _____

Attest:

By: _____
Jamie Shew, Douglas County Clerk

Date: _____

Tenant:

Community Wireless Communications Co.

By: 
Joshua Montgomery, President

Date: 9/29/2012

RESOLUTION NO. HR 12-_____

A Home Rule Resolution of the Board of County Commissioners of Douglas County, Kansas, Amending the Road Classification Map Associated With The Douglas County Access Management Standards, Initially Adopted By Resolution No. HR 06-10-7 and Subsequently Amended, as Codified at Article 5 of Chapter IX of the Douglas County Code

WHEREAS, K.S.A. 19-101a, and amendments thereto, authorizes the Board of County Commissioners (hereinafter after the “Board”) to transact all County business and perform all powers of local legislation and administration it deems appropriate.

WHEREAS, by Resolution No. 06-10-7, as Codified at Article 5 of Chapter IX of the Douglas County Code, the Board has adopted Access Management Standards, which establish (i) initial road classifications for roads in the unincorporated areas of Douglas County, (ii) minimum frontage requirements depending upon the functional classification of the road, and (iii) minimum entrance spacing standards for driveways and public road spacing requirements depending upon the functional classification of the road (as amended, hereinafter “Access Management Standards”).

WHEREAS, the Board has subsequently amended the Access Management Standards, most recently by Resolution No. 11-4-2, in which Resolution the Board, among other things, adopted a new Road Classification Map, identified as Exhibit 9-506 in the Access Management Standards.

WHEREAS, the Board desires to amend foregoing Road Classification Map, Exhibit 9-506.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, SITTING IN REGULAR SESSION THIS ___ DAY OF _____, 2012 AND INTENDING TO EXERCISE THE POWERS OF HOME RULE LEGISLATION PURSUANT TO K.S.A. 19-101a, DOES HEREBY RESOLVE AS FOLLOWS:

1. Amendment to Road Classification Exhibit Map. Exhibit 9-506, Road Classifications, and Exhibit 9-506a, SLT Detail View, in the form presented to the Board at its meeting are adopted as the Road Classification Maps for the Access Management Standards.

2. Amendment to Section 9-506. Section 9-506 is amended to read as follows:

9-506. The road classification shown on Exhibit 9-506, Road Classifications, and Exhibit 9-506a, SLT Detail View, are adopted as the Road Classification Maps for the Access Management Standards.

3. Incorporation by Reference; Amendment to County Code. The Road Classification Maps, as adopted by Section 1 of this Resolution, are incorporated into this Resolution by this reference, as if fully set forth herein, and shall be identified as Exhibit 9-506 and Exhibit 9-506a of the Access Management Standards, and shall be Codified at Article 5 of Chapter IX of the Douglas County Code. The Road Classification Maps and amendments made to the Access Management Standards shall be reflected in the official copies on file with the County Clerk.

4 Repeal. Exhibit 9-506, as adopted in Resolution No. 11-4-2 as the Road Classification Map for the Access Management Standards, and Section 9-506, are revoked.

5. Effective Date. This Resolution shall take effect and be in force from and after its adoption and publication once in the official County newspaper.

IN WITNESS WHEREOF, the foregoing Resolution was adopted this ____ day of _____, 2012.

BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS

Mike Gaughan, Chair

Jim Flory, Commissioner















Nancy Thellman, Commissioner

ATTEST:

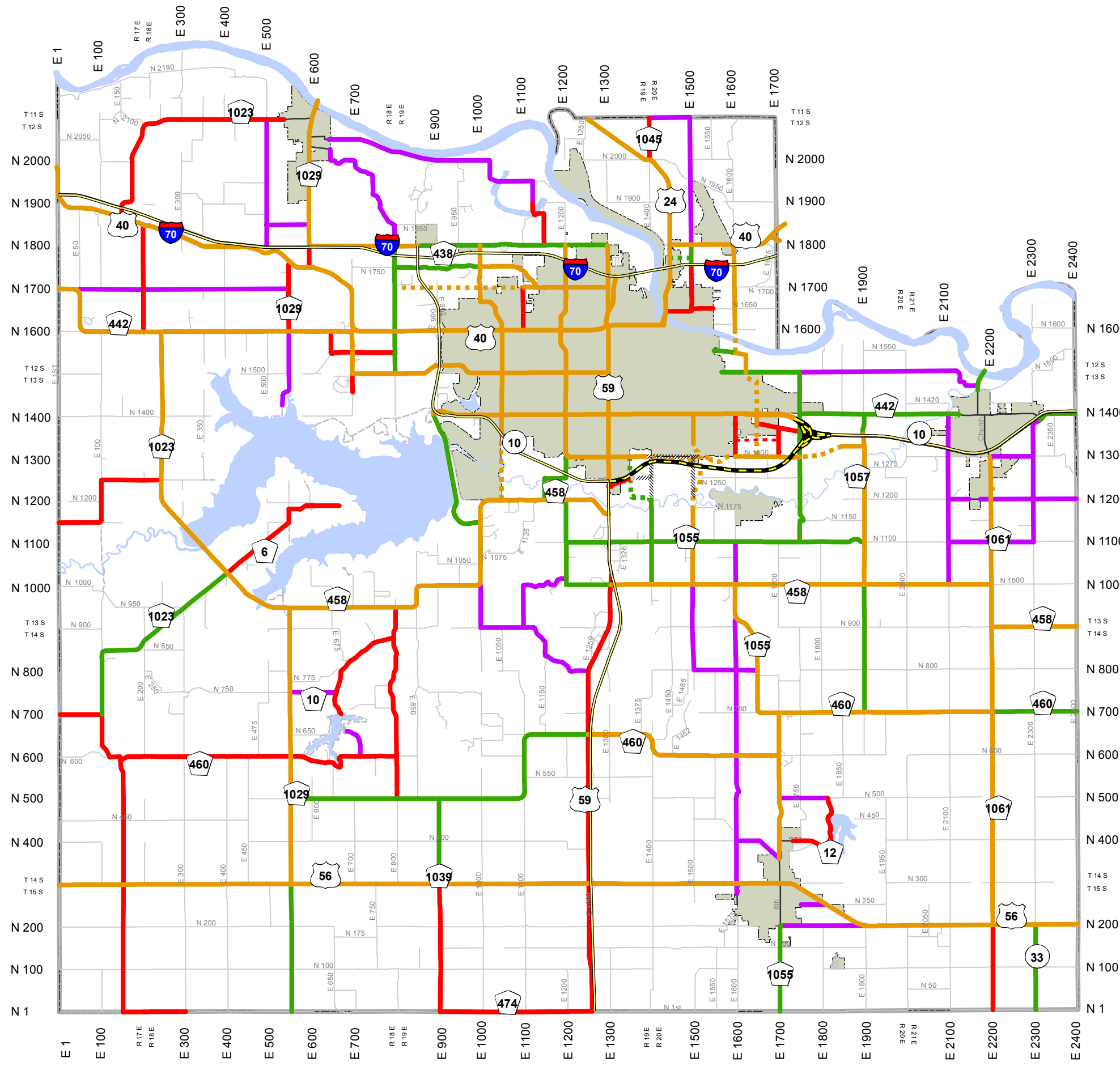
Jameson D. Shew, County Clerk

Exhibit 9-506

Road Classifications

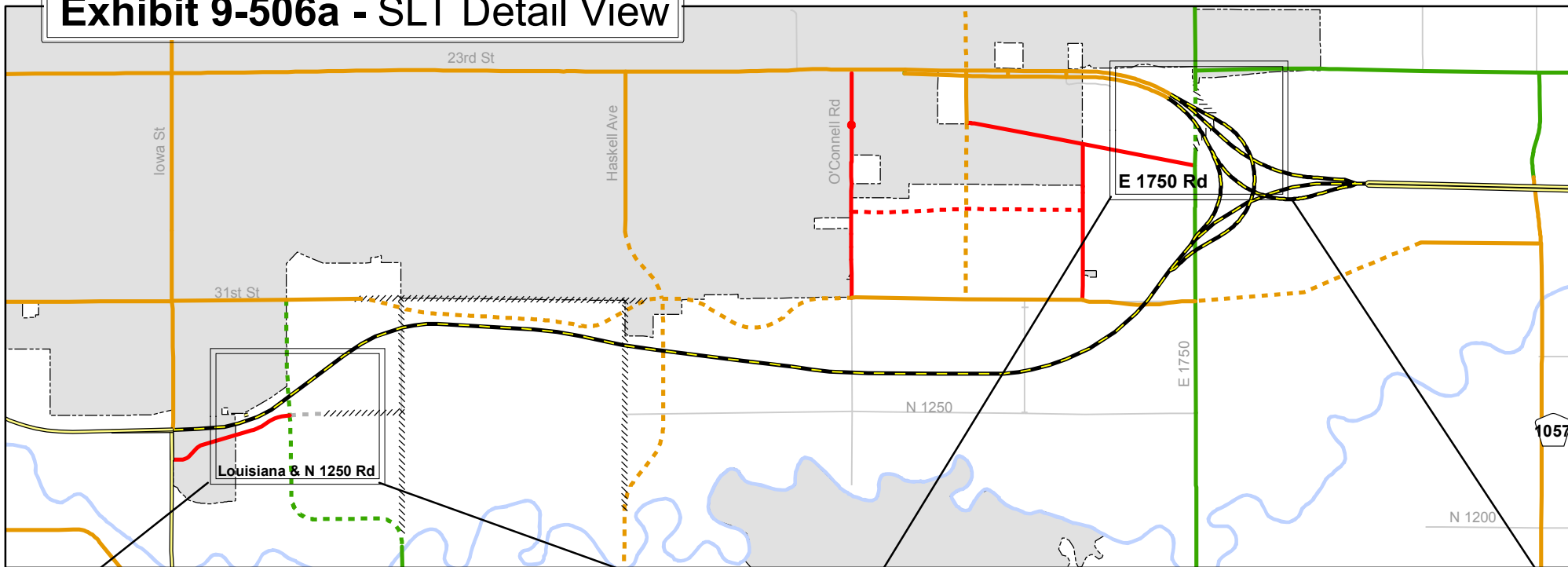
-  Freeway
-  Future Freeway
-  Principal Arterial
-  Future Principal Arterial
-  Major Collector
-  Future Major Collector
-  Minor Arterial
-  Future Minor Arterial
-  Minor Collector
-  Future local/rural
-  Roads eradicated after completion of SLT
-  Park Road*
-  City Road*
-  Local Road

* Shown for informational purposes, not part of road classification.



MAP DISCLAIMER: All data, information, and maps are provided "as is" without warranty or any representation of accuracy, timeliness of completeness. The burden for determining accuracy, completeness, timeliness, merchantability and fitness for or the appropriateness for use rests solely on the requester. Douglas County makes no warranties, express or implied, as to the use of the information obtained here. There are no implied warranties of merchantability or fitness for a particular purpose.

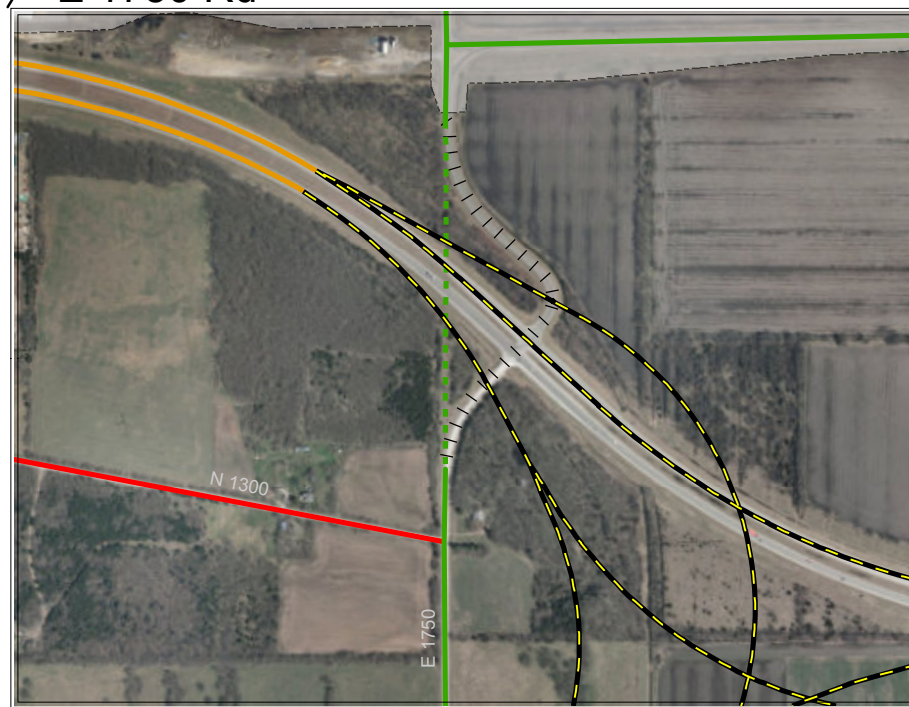
Exhibit 9-506a - SLT Detail View



Louisiana & N 1250 Rd



E 1750 Rd



MEMORANDUM

To : Board of County Commissioners

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

Date : September 28, 2012

Re : Consider revised Project Agreement for Corridor Management funding
US-56 reconstruction from Bullpup Drive west through E 1600 Road intersection
Project No. 56-23 KA-2294-01

You will recall in July 2011 the BOCC executed a project agreement with KDOT to widen US-56 highway from Bullpup Drive west through the E 1600 Road intersection near Baldwin City. Since the execution of that agreement, KDOT expressed interest in not only widening US-56, but also lowering the profile of the highway through the hill just east of the E 1600 Road intersection (to accommodate 60 mph design speed).

KDOT prepared a revised agreement in May 2012 to reflect the revised project scope. During the May 30, 2012 meeting, the BOCC discussed the revised project scope and estimated costs. There were some terms in the revised agreement to which our county counselor objected, and the BOCC did not sign the revised agreement. We asked KDOT to draft a second revised project agreement, which now needs approval. As was the case in the May 2012 draft agreement, the most recent version dictates that KDOT will let the contract and pay the contractor directly (as opposed to reimbursing Douglas County). They will also provide and pay for construction engineering services (this was County responsibility under the previous agreement).

You will recall Baldwin City agreed to pay for 40% of the local project costs with Douglas County paying the remaining 60%. By lowering the highway's profile, we will have additional right-of-way acquisition costs and utility relocation costs. However, these additional costs are somewhat offset by KDOT's paying the cost of construction engineering. Since the May 30, 2012 discussion, we received the cost estimate for relocating the RWD#4 water line, which was higher than anticipated.

Attached is the most current project cost estimate. We currently estimate Douglas County's project cost will be approximately \$109,200, and Baldwin City's cost will be approximately \$72,800. We have \$87,000 allocated for this project in the CIP.

Action Required: Consider approval of a revised Project Agreement with KDOT for Project No. 56-23 KA-2294-01, Corridor Management Program improvements to US-56 highway from Bullpup Drive west through the E 1600 Road intersection.

Date: 9/28/2012
 By: KAB

US-56 highway from Bullpup Drive through E 1600 Rd intersection

KDOT Corridor Management Project

KDOT pays 100% construction costs and CE costs
 Locals responsible for PE, R/W, Util's,
 Baldwin & DGCO agreed to share local costs 40/60

Estimated Costs:

	<u>Local Costs</u>	<u>Total Costs</u>
Construction		\$ 787,677
Prel. Engineering	\$ 71,961	
Const. Engineering	10%	\$ 78,768
R/W acquisition*	\$ 40,000	
Util. relocation	\$ 60,000	
Environmental mitigation	<u>\$ 10,000</u>	
Total Local costs	\$ 181,961	<u>\$ 181,961</u>
 Total Project costs		 \$ 1,048,406

**Assumes donation of R/W by School District*

Douglas County costs:

Construction	\$ -	
Prel. Engineering	\$ 43,177	
Const. Engineering	\$ -	
R/W acquisition	\$ 24,000	
Util. relocation	\$ 36,000	
Environmental mitigation	<u>\$ 6,000</u>	
Total DGCO costs	\$ 109,177	10.41%

Baldwin City costs:

Construction	\$ -	
Prel. Engineering	\$ 28,784	
Const. Engineering	\$ -	
R/W acquisition	\$ 16,000	
Util. relocation	\$ 24,000	
Environmental mitigation	<u>\$ 4,000.0</u>	
Total Baldwin City costs	\$ 72,784	6.94%

PROJECT NO. 56-23 KA 2294-01
ROAD IMPROVEMENT
DOUGLAS COUNTY, KANSAS

A G R E E M E N T

PARTIES: **MICHAEL S. KING, Secretary of Transportation,** Kansas Department of Transportation (KDOT), hereinafter referred to as the “Secretary,”

Douglas County, Kansas, hereinafter referred to as the “County,”

Collectively referred to as the “Parties.”

PURPOSE: The Secretary has authorized a road improvement project on US-56 highway in Douglas County described more fully below under PROJECT, hereinafter referred to as the "Project." The Secretary and the County are empowered by the laws of Kansas to enter into agreements for the sharing of responsibilities for the design, construction and reconstruction of state highways that also serve the needs of the county.

PROJECT: The Secretary and the County desire to enter into this Agreement for the design and construction of the Project, which is described as follows:

Construction of a 3-lane section on US-56 from Bullpup Drive west through E 1600 Road, for turn lanes and reduce the vertical curve to improve intersection sight distance.

EFFECTIVE

DATE: This Agreement is effective as of the date signed by the Secretary or the Secretary’s designee.

IN CONSIDERATION OF THE PREMISES SET FORTH ABOVE, and in order to proceed with the Project, the County and the Secretary mutually agree as follows:

ARTICLE I

THE SECRETARY AGREES:

1. To provide technical information upon request to help the County acquire rights of way in accordance with the law and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of KDOT.
2. To let the contract for the Project and award the contract to the lowest responsible bidder (“Contractor”) upon concurrence by the County in the award. The Secretary further

agrees, as agent for the County, to administer the construction of the Project in accordance with the final design plans and administer the payments due the Contractor.

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

4. To be responsible for one-hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering. The Secretary shall not be responsible for the total actual costs of preliminary engineering, rights of way acquisition and utility adjustments for the Project.

5. After receipt of the final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the County is responsible and shall then transmit the complete and final billing to the County.

ARTICLE II

THE COUNTY AGREES:

1. For the Project to be undertaken, prosecuted and completed for and on behalf of the County by the Secretary acting in all things as its agent, and to constitute and appoint the Secretary as its agent. The County further agrees that all things done by the Secretary after execution of this Agreement in connection therewith are authorized, adopted, ratified, and confirmed by the County to the same extent and with the same effect as though done directly by the County acting in its own individual corporate capacity instead of by its agent.

2. That the Secretary is authorized by the County to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of state aid for the Project.

3. To design the Project or contract to have the Project designed in conformity with the state design criteria appropriate for the Project in accordance with the current AASHTO A Policy on Geometric Design of Highways & Streets, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Traffic Engineering's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions.

4. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Upon completion thereof, the

design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to the Secretary by a licensed professional engineer attesting to the conformity of the design plans with the items in paragraph 3 above. Contracts between the County and any consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement shall contain language requiring conformity with paragraph 3 above.

5. To include in the following in any contract between the County and any consultant retained by them to do the design for the Project:

- a. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the consultant's control.
- b. Language requiring the consultant to submit to the County (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- c. Language making the Secretary of Transportation of the State of Kansas a third party beneficiary in the agreement between the County and the consultant. Such language shall read:

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 Consultant. 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 Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the County from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

6. That the County and any consultant retained by the County shall have the sole responsibility for the adequacy and accuracy of design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Any review of these items performed by the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the County's and its consultant's duty to provide adequate and accurate design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies

for the Project. Such reviews are not done for the benefit of the consultant, the Contractor, the County, or other political subdivision, nor for the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the County.

7. To appoint a duly authorized representative of the County to sign for the County on any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

8. To have the design plans prepared for the Project signed and sealed by the licensed professional engineer responsible for preparation of the design plans; to have geological investigations or studies signed and sealed by either a licensed geologist or licensed professional engineer responsible for the preparation of the geological investigations or studies in accordance with K.S.A. 74-7042; and to have , ; Right of way descriptions signed and sealed by a licensed land surveyor responsible for the preparation of the right of way descriptions.

9. To acquire, in its own name, as required by law, by purchase, dedication or condemnation, all rights of way, easements, and access rights shown on the final design plans in accordance with the schedule established by the Kansas Department of Transportation. The County further agrees the necessary rights of way, easements, and access rights shall be acquired 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. The County shall certify to the Secretary, on forms provided by the Bureau of Local Projects, such rights of way, easements, and access rights have been acquired. The County further agrees it will have recorded in the Office of the Register of Deeds all rights of way, deeds, dedications, permanent easements, and temporary easements.

10. To contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in 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 as provided in 49 C.F.R., pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

11. To provide all legal descriptions required for right of way acquisition work. The County further agrees to acquire rights of way, easements, and access rights in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of the Kansas Department of Transportation such that the County may obtain participation of state funds in the cost of the Project. The County agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case

files, or documentation requested by the Office of Chief Counsel will be sent to the Office of Chief Counsel within the time limits set by the Secretary.

12. To give the Secretary the right to utilize any land owned or controlled by the County, lying inside or outside the limits of the County as shown on the final design plans, for the purpose of constructing the Project. The Secretary shall not participate in the cost of these rights of way or easements.

13. To provide for the following with regard to structures or utilities affecting the Project:

a. To move or adjust, or cause to be moved or adjusted, and to be responsible for such removal or adjustment, of all existing structures, pole lines, pipe lines, meters, manholes, and other utilities, publicly or privately owned, which may be necessary to construct the Project in accordance with the final design plans. New or existing utilities installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented. The County further agrees that, except as provided by state law, the expense of the removal or adjustment of the utilities located on public rights of way shall be borne by the owners thereof. The expense of the removal or adjustment of privately-owned utilities located on private rights of way or easements shall be borne by the County except as provided by state law. Except where the utility adjustments are participating costs for the Project, the expense of the removal or adjustment of only privately owned utilities located on private rights of way or easements shall be borne by the County.

b. To expeditiously take such steps as are necessary to facilitate the early adjustment of utilities, to initiate the removal or adjustment of the utilities, and to proceed with reasonable diligence to prosecute this work to completion. The County further agrees to move or adjust or cause to be moved or adjusted all necessary utilities sixty (60) days prior to the scheduled construction letting except those necessary to be adjusted during construction and those which would disturb the existing road surface.

c. To certify to the Secretary on forms supplied by the Secretary that all utilities required to be moved prior to construction have either been moved or a date provided by the County as to when, prior to construction, they will be moved. The County further agrees it will initiate and proceed to complete adjusting the remaining utilities not required to be moved during construction so that the Contractor shall not be delayed in construction of the Project.

d. To indemnify, hold harmless, and save the Secretary and the Contractor from damages incurred by the Secretary and Contractor resulting from the failure of identified utilities to be moved or adjusted timely or accurately.

e. To furnish the Secretary a list of existing and known utilities affected, together with locations and proposed adjustments of the same and designate an individual to be

responsible for coordinating the necessary removal or adjustment of utilities.

f. To certify to the Secretary all privately owned utilities occupying public rights of way required for the construction of the Project are permitted thereon by franchise, ordinance, agreement or permit, and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of road or highway improvements.

14. To be responsible for one hundred percent (100%) of the total costs of preliminary engineering, rights of way acquisition, and utility adjustments for the Project.

15. To make any payments due the Secretary within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

16. To participate and cooperate with the Secretary in an annual audit of the Project. The County further agrees to make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the County for items considered non-participating, the County shall promptly reimburse the Secretary for such items upon notification by the Secretary.

17. If it cancels the Project, to reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project by the County

18. To adopt an ordinance or resolution requiring the removal of all encroachments either on or above the limits of the right of way shown on the final design plans for this Project, and it will initiate and proceed with diligence to remove or require the removal of the encroachments. The County further agrees to remove all such encroachments before the Project is advertised for letting (provided, however, if the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the County and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed).

19. To not permit the erection of gas and fuel dispensing pumps in the future upon the rights of way of the Project, and to require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed no less than twelve (12) feet back of the right of way line. All rights of way provided for the Project shall be used solely for public highway purposes and no signs, posters, billboards, roadside stands, fences, structures, or other private installations shall be permitted within the right of way limits except as provided by state law.

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

21. To take be responsible for the following with regard to hazardous waste:

- a. To locate and be responsible for all costs necessary to remedy or clean up any hazardous waste site, including, but not limited to, leaking underground storage tanks discovered on rights of way, easements, and access rights acquired by the County; to take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project; and to investigate any and all hazardous waste sites discovered during construction of the Project on County owned land within the Project boundary and take appropriate action to contain or remediate such hazardous waste sites.
- b. To be responsible to the Secretary for all damages, fines or penalties, expenses, claims, and costs incurred by the Secretary from any hazardous waste site discovered on rights of way, easements, and access rights acquired by the County prior to commencement of construction of the Project.
- c. To be responsible to the Secretary for all damages, fines or penalties, expenses, claims, and costs incurred by the Secretary from any hazardous waste site discovered on rights of way, easements, and access rights acquired by the County prior to commencement of construction of the Project.
- d. For any hazardous waste site, including, but not limited to, leaking underground storage tanks, to hold harmless, defend, and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources.
- e. To specifically agree that no provision of this paragraph or any subsection thereunder is intended to make the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party of this Agreement to maintain a suit for personal injuries, property damages, or hazardous waste claims. The County further agrees that the duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- f. To state that by signing this Agreement, the County has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any hazardous waste on any rights of way, easements, and access rights acquired by the County. The County further reserves the right to bring any action against any third party for any hazardous waste site on any rights of way, easements, and access rights acquired by the County.
- g. The term hazardous waste, as used in this Agreement includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state

and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, are incorporated by reference and include but not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 1990 Supp. 65-3431 *et seq.*, Hazardous Waste. The standards to establish cleanup of a hazardous waste site include, but is not limited to, federal programs administered by the E.P.A., State of Kansas environmental laws and regulations, and county standards where the hazardous waste site is located.

22. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the County to any party outside of KDOT and all costs incurred by the County not to be reimbursed by the KDOT for preliminary engineering, rights of way, utility adjustments, and construction work phases, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

ARTICLE III

THE PARTIES MUTUALLY AGREE:

1. Plans for handling traffic during construction must be included in the design plans provided by the County and must be in conformity with the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be noted on the design plans. The Secretary or his or her authorized representative may act as the County's agent with full authority to determine the dates when any road closings shall commence and terminate. The Secretary or his or her authorized representative shall notify the County of the determinations made pursuant to this section.

2. The final design plans for the Project are by reference made a part of this Agreement.

3. If any items are found to be non-participating by the Secretary, the total cost of these items will be paid by the County.

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

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

6. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

7. If, in the judgment of KDOT, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, KDOT may terminate this Agreement at the end of its current fiscal year. KDOT will participate in all costs approved by KDOT incurred prior to the termination of the Agreement.

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

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

THE REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK.

SIGNATURES APPEAR ON THE FOLLOWING PAGE.

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

DOUGLAS COUNTY, KANSAS

ATTEST:

COUNTY CLERK

CHAIRMAN

(Date)

MEMBER

(SEAL)

MEMBER

KANSAS DEPARTMENT OF TRANSPORTATION

Michael S. King, Secretary of Transportation

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