

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, AUGUST 21, 2013

6:35 p.m.

-Consider approval of the minutes for July 31, 2013.

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) The Commission is being asked to consider the following:
 - 1) Appoint the membership of the Douglas County Emergency Management Board;
 - 2) Nominate the members to the State Emergency Response Commission as the Local Emergency Planning Committee for Douglas County (Teri Smith);
- (c) Consider approval of a 3-party agreement with KDOT and the City of Lawrence for construction of a new K-10 interchange at Bob Billings Parkway (Keith Browning); and
- (d) Consider approval of KDOT agreement for purchase of Safety Edge Shoe for asphalt paver KDOT, Project No. 106 C-0484-01 (Keith Browning); and
- (d) Consider approval to continue working with GFOA through the next three phases of the project: RFP development, System selection and Contract negotiations for t total cost of \$57,740. (Marni Penrod)

REGULAR AGENDA

- (2) **CUP-13-00193**: Consider a Conditional Use Permit for a private landing strip, located at 2215 N 500 Rd. Submitted by Robert and Angela Murray, property owners of record. (PC Item 4; approved 6-0 on 7/22/13) Mary Miller will present the item.
- (3) (a) Consider approval of Accounts Payable (if necessary)
 - (b) Appointments
 - (c) Public Comment
 - (d) Miscellaneous
- (4) Adjourn

WEDNESDAY, AUGUST 28, 2013

6:35 p.m.

-Consider Conditional Use Permit final approval for proposed Penny's Sand excavation and extraction facility near N 1500 Road/E 1850 Road; CUP-12-00099 (Keith Browning)

WEDNESDAY, SEPTEMBER 4, 2013

WEDNESDAY, SEPTEMBER 11, 2013

-Agritourism assembly item (Linda Finger)

WEDNESDAY, SEPTEMBER 18, 2013

WEDNESDAY, SEPTEMBER 25, 2013

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.

MEMO

To: Douglas County Commission
From: Teri Smith
Date: August 1, 2013
Re: Emergency Management Board

The Commission is being asked to consider the following:

1. Appoint the membership of the Douglas County Emergency Management Board
2. Nominate the members to the State Emergency Response Commission as the Local Emergency Planning Committee for Douglas County

This action will fulfill the requirements of the federal Emergency Planning and Community Right-to-Know Act (CRF99-499) and the related Kansas statutes (65-6701).

The Douglas County Emergency Management Board operates as an advisory group to the Douglas County Commission on local emergency management issues. The Board members work closely with Douglas County Emergency Management staff on all aspects of the department functions and serve as the Citizen Corps Advisory Council. The Board membership must include representatives of groups specified in the federal legislation, and is officially appointed by the State of Kansas Commission on Emergency Response and Planning upon nomination from the Board of County Commissioners.

Executive Committee members and Board officers are elected by the membership. The Executive Board meets monthly. The full membership of the Emergency Management Board meets quarterly. The Emergency Management Department budget funds Board activities. Attached is the membership list for the 2013-2014 year.

**2013-2014
Douglas County, KS
Emergency Management Advisory Board
&
Local Emergency Planning Committee Members**

Functional Groups	Member
GOVERNING BODIES	Appointed by Governing Bodies
	Bob Newton, Appointee of Douglas County Commission
	Bill Winegar, Appointee of Baldwin City Council
	Bud Waugh, Appointee of Lawrence City Commission
	Ken Keiter, Appointee of Eudora City Council
	Wayne Riley, Appointee of Lecompton City Council
EMERGENCY SUPPORT FUNCTIONS	Agency Head and/or Appointee
Transportation ESF#1	Mike Sweeten, Lawrence Transit System/University of Kansas Transit System
Emergency Communications ESF#2	Scott Ruf, Emergency Communications Center
Public Works & Infrastructure ESF#3	Keith Browning, Douglas County Public Works
	Tammy Bennett, Lawrence Public Works
	Jeanette Klamm, City of Lawrence Utilities
Fire ESF#4	Will Shockley, Douglas County Fire Chief's Association
Emergency Management ESF#5	Richard Ziesenis, Lawrence/Douglas Co. Health Dept.
	John Marmon, University of Kansas Public Safety
Human Services/Mass Care ESF#6	Jane Blocher, Douglas County Red Cross
Resource Management ESF #7	Lori Johns, Roger Hill Volunteer Center
Health & Medical ESF#8	Charlie Bryan, Lawrence/Douglas Co. Health Dept.
	Tom Damewood, Lawrence Memorial Hospital
Search & Rescue ESF#9	Shaun Coffey, Lawrence-Douglas County Fire Medical
HazMat ESF#10	Shaun Coffey, Lawrence-Douglas County Fire Medical
Agriculture/Animals ESF#11	Midge Grinstead, State Animal Response Team
	Dori Villalon, Lawrence Humane Society

Utility/Energy ESF#12	Chuck Hoag, Black Hills Energy Stone Junod, Westar Energy
Law Enforcement ESF#13	Ken McGovern, Douglas County Sheriff Paul Fellers, Lawrence Police Department Greg Neis, Baldwin City Police Chief Bill Edwards, Eudora Police Chief Ralph Oliver, University of Kansas Public Safety Chief
Public Information ESF#15	Megan Gilliland, Lawrence Communications Manager
Chemical Preparedness	Drew Fleming, ChemTrade Kate Grover, Hallmark Cards
Community Group	Marcia Epstein, Headquarters Counseling Center Nicole Rials, Bert Nash Mental Health Center
Education	Ron May, Lawrence Public Schools Don Grosdidier, Eudora Public Schools Paul Dorathy, Baldwin City Public Schools Mike Russell, University of Kansas Jamison Honeycutt, Haskell Indian Nations University Patricia Long, Baker University
Environment	Dwayne Fuhlhage, ProSoCo Shane Munsch, ICL
Facility, Industry	Joe Souders, API Foils
Social Service Agency	Shannon Oury, Lawrence Housing Authority
	2013-2014 Executive Committee Members
	Jeanette Klamm, Chair
	Shaun Coffey, Vice Chair
	Nicole Rials
	Ron May
	Paul Fellers



DOUGLAS COUNTY PUBLIC WORKS

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

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

MEMORANDUM

To : Board of County Commissioners

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

Date : August 12, 2013

Re : Consent Agenda approval of 3-party agreement
KDOT/City of Lawrence/Douglas County
Bob Billings Parkway/K-10 interchange construction project
KDOT Project No. 10-23 KA-1826-01

The attached 3-party agreement between KDOT, the City of Lawrence, and Douglas County stipulates Douglas County is responsible for \$528,000 of the actual costs to construct a new K-10 interchange at Bob Billings Parkway. Under terms of the agreement, Douglas County must send its share to KDOT within 50 days after the project's bid letting. KDOT plans to open bids for this project in March 2014.

Under terms of the agreement, KDOT is designing the project, acquiring easements and rights-of-way, and administering the construction contract. The City of Lawrence is responsible for \$1,000,000 of the actual costs to construct the project.

Douglas County's cost share of \$528,000 for this project is as planned. This exact amount is included in the CIP.

The BOCC should sign three (3) original copies of the agreement. A fully executed original copy of the agreement will be returned to Douglas County.

Action Required: Consent Agenda approval of a 3-party agreement with KDOT and the City of Lawrence for construction of a new K-10 interchange at Bob Billings Parkway.

PROJECT NO. 10-23 KA-1826-01
NHPP-A182(601)
INTERCHANGE CONSTRUCTION
CITY OF LAWRENCE, KANSAS
DOUGLAS COUNTY, KANSAS

A G R E E M E N T

This Agreement is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”), the **City of Lawrence, Kansas** (“City”), and **Douglas County, Kansas** (the “County”), **collectively**, the “Parties.”

RECITALS:

- A. The Secretary has authorized an interchange construction project, as further described in this Agreement.
- B. The Secretary, the County, and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System.
- C. The Secretary desires to construct the Project on K-10, a city connecting link for the State Highway System, and the City agrees to the Project in the City.
- D. The Secretary, the County, and the City desire to enter into an Agreement to make improvements to the state highway through the use of state, local, or federal funds or a combination of state, federal, and local funds.
- E. Under the terms of the Federal-Aid Highway Act and the rules and regulations of the Federal Highway Administration (FHWA), state and cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of roads and streets, provided however, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of the State of Kansas and federal requirements.

NOW THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. **“City”** means the City of Lawrence, Kansas, with its place of business at 6 E. 6th Street, Lawrence, KS 66044.

3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
4. **“County”** means the County of Douglas, Kansas, with its place of business at 1242 Massachusetts Street, Lawrence, KS 66044.
5. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
6. **“Effective Date”** means the date this Agreement is signed by the Secretary or his designee.
7. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
8. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
9. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
10. **“Letting” or “Let”** means the process of receiving bids and awarding a Construction contract for any portion of the Project.
11. **“Non-Participating Costs”** means the costs of any items or services which the Secretary reasonably determines are not Participating Costs.
12. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
13. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, the City, and the County.
14. **“Project”** means all phases and aspects of the construction endeavor to be undertaken by the Secretary, being: **Interchange construction at K-10 and Bob Billings Parkway in Lawrence, Kansas**, and is the subject of this Agreement.
15. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
16. **“Secretary”** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.

17. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water, and other similar commodities, including fire and police signal systems which directly and/or indirectly serves the public.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Project Construction.** The Secretary shall undertake and complete the Project except as otherwise modified by this Agreement.
2. **Right of Way Acquisition.** Except as otherwise provided, in the name of the Secretary, the Secretary will perform appraisal and acquisition work including condemnation, if necessary, for Right of Way as shown on the Design Plans. All costs for Right of Way as shown on the Design Plans will be paid for with state or federal funds or a combination of state and federal funds. The Secretary will receive and disburse all funds directly to the parties involved in acquisition of Right of Way.
3. **Design, Letting, and Administration.** The Secretary will prepare the Design Plans, Let the contract for the Project, administer the Construction of the Project as required by the FHWA, negotiate with and report to the FHWA, and administer the payments due the Contractor. Except as otherwise provided, all Construction items included in the Design Plans shall be paid for with state or federal funds or a combination of state and federal funds.
4. **General Indemnification.** To the extent permitted by law and subject to the Kansas Tort Claims Act, including but not limited to the exceptions and maximum liability provisions, the Secretary shall defend, indemnify, hold harmless, and save the City, the County, and their authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the Secretary, the Secretary’s employees, or subcontractors. The Secretary shall not be required to defend, indemnify, hold harmless, and save the City or the County for negligent acts or omissions of the City, the County, or their authorized representatives or employees.
5. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary, the City, 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, the City, or the County defends a third party’s claim, the Contractor shall indemnify the Secretary, the City, and the County for damages paid to the third party and all related expenses the Secretary, the City, or the County incur in defending the claim.
6. **Utilities.**
 - (a) **Utility Relocation.** The Secretary will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or

existing utilities that have to be 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.

(b) Cost of Relocation.

(i) If the City has a population of less than 2,501 (based on the U.S. Bureau of Census- 2010 Census), the Secretary agrees to be responsible for the expense to remove or adjust City owned Utilities located on public Right of Way as necessary to construct the Project in accordance with the final Design Plans. The payment of such expense by the Secretary shall be by a separate Utility adjustment agreement between the Secretary and the City.

(ii) If the City has a population of more than 2,500 (based on the U.S. Bureau of Census-2010 Census), the Utility owners shall be responsible for the expense to remove or adjust all Utility facilities on public Right of Way as necessary to construct the Project in accordance with the final Design Plans. The expense of removal or adjustment of Utilities located on private easements shall be reimbursed to the Utility owners by the Secretary. The payment of such expense by the Secretary shall be by separate Utility adjustment agreement between the Secretary and the Utility owners.

ARTICLE III

CITY RESPONSIBILITIES:

1. Legal Authority. The City shall, by resolution or other official act, authorize the Secretary to undertake and complete the Project within the corporate limits of the City. The City further agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

2. Right of Way.

(a) Use of City Right of Way. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final Design Plans, for the purpose of constructing and maintaining the Project. Neither the Secretary nor the FHWA shall participate in the cost of the City's Right of Way or easements, unless the Secretary determines the City will incur an unnecessary hardship. The City shall execute the appropriate deeds and easements transferring its property rights to the Secretary. Further, the City acknowledges the execution and transferring of the deeds and easements by the City to the Secretary is an obligation of the City for this Agreement and Construction of the Project.

(b) Cooperation in Right of Way Acquisition. The City acknowledges the Secretary will be performing appraisal and acquisition work including condemnation, if necessary, for Right of Way as shown on the Design Plans. The City will cooperate in that purpose, as necessary, for completion of the Project.

3. **Removal of Encroachments.** The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner thereof have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

4. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved or installed along the Project be placed no less than the distance permitted by the National Fire Code from the Right of Way line.

5. **Use of Right of Way.** All Right of Way provided for the Project shall be used solely for public highway purposes.

6. **Trails and Sidewalks on KDOT Right of Way.** With regard to any bike or pedestrian paths or sidewalks (“Trail/Sidewalk”) constructed pursuant to the Design Plans, the City agrees as follows:

(a) **City Responsible for Repairs and Providing Alternative Accessible Routes.** The City agrees that the primary purpose of KDOT Right of Way is for the construction and maintenance of K-10. In the event that the construction or maintenance of K-10 reasonably requires the Trail/Sidewalk on KDOT Right of Way to be damaged or removed, the City shall be responsible for all repairs to the Trail/Sidewalk made necessary as a result of K-10 construction or maintenance. In the event the Trail/Sidewalk on KDOT Right of Way is temporarily closed or removed for any reason and for any length of time, the City will be wholly responsible for providing an alternative accessible path and for compliance with all laws and regulations relating to accessibility.

(b) **Interference with KDOT Right of Way.** If the Secretary, in his or her sole judgment, determines that continued use of the Trail/Sidewalk is or will interfere with KDOT use of its Right of Way or is otherwise rendered impractical, inconvenient, or unsafe for use by the traveling public, the City will remove the Trail/Sidewalk and restore the KDOT Right of Way location to its original condition prior to the Construction of the Trail/Sidewalk.

(c) **Incorporation of Trail/Sidewalk into Local Transportation System.** The City agrees to take all steps necessary to designate the Trail/Sidewalk component of the Project as an integral part of its local transportation system, being primarily for transportation purposes and having only incidental recreational use for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135.

(d) **Maintenance.** When the Project is completed and final acceptance is issued, the City, at its own cost and expense, will maintain, including snow removal, the Trail/Sidewalk on KDOT Right of Way and make ample provision each year for such

maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within a reasonable period and will prosecute the work continuously until it is satisfactorily completed. Any notification by the State Transportation Engineer, however, is not intended to and shall not be construed to be an undertaking of the City's absolute duty and obligation to maintain the Trail/Sidewalk.

7. **Parking Control.** The City shall prohibit parking of vehicles on the city connecting link and on the acceleration and deceleration lanes of all connecting streets and highways and on additional portions of the connecting streets and highways as the Secretary may deem necessary to permit free flowing traffic throughout the length of the Project covered by this Agreement.

8. **Access Control.** The City will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

9. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for preliminary engineering, right of way, utility adjustments, construction, and construction engineering work phases, or any other major expense associated with the Project.

ARTICLE IV

SPECIAL CONDITIONS:

1. **Financial Obligation.** The City and County will participate in the funding of the Project. The Project will utilize City and County funds as follows:

(a) The City will be responsible for \$1,000,000.00 of the actual costs to construct the Project. The City shall deposit its share of the Project costs with the Secretary one (1) year after the Letting date of the Project, but no sooner than January 1, 2015.

(b) The County will be responsible for \$528,000.00 of the actual costs to construct the Project. The County shall deposit its share of the Project costs with the Secretary fifty (50) days after the Letting date of the Project.

2. **Payment of Final Billing.** If any payment is due to Secretary by the County, that payment shall be made within thirty (30) days after receipt of a billing from Secretary's Chief of Fiscal Services.

3. **Reimbursement Payment to City.** The Secretary will pay the City an amount not to exceed \$12,000.00 in state funds, as reimbursement for the City's performance through its own forces or by its contractor, of the following work: construction of gravel access (driveway) at the West end of Lake Pointe Drive, Lawrence, Kansas, for purposes of providing Lake Pointe Drive cul-de-sac access to the Breithaupt property. The Secretary agrees to make partial payments to the City for amounts not less than \$1,000.00 and no more frequently than monthly. Such payments will be made after receipt of

proper billing.

4. **Cash Basis and Budget Laws.** Nothing in this Agreement is intended to violate the provisions of the Kansas Cash Basis Law (K.S.A. 10-1100 et seq.) and the Kansas Budget Law (K.S.A. 7925 et seq.) and at all times should be construed and interpreted so as to ensure that the City is at all times in compliance with such laws.

ARTICLE V

GENERAL PROVISIONS:

1. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.

2. **Traffic Control.** The Parties agree to the following with regard to traffic control for the Project:

(a) **Temporary Traffic Control.** The Secretary shall determine in consultation with the City and the County the manner in which traffic is to be handled during Construction. Before the final Design Plans have been completed, detour routes and street closings, if necessary, shall be agreed upon by authorized representatives of the City, the County, and the Secretary, and noted on the final Design Plans. If revisions to the traffic handling plan are proposed during the progress of Construction, the City, the County, and the Secretary shall approve such revisions before they become effective.

(b) **Permanent Traffic Control.** 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, must conform to the manual and specifications adopted under K.S.A. 8-2003 and any amendments thereto are incorporated by reference and shall be subject to the approval of the Secretary.

3. **City Connecting Link.** The Parties have in the past entered into an agreement covering routine maintenance of the city connecting link and it is the Parties' intention that the agreement for routine maintenance shall remain in full force and effect and the mileage set out in the city connecting link maintenance agreement is not be affected by this Agreement. If necessary, the Parties will execute a new city connecting link maintenance agreement to include the Project.

4. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

5. **Contractual Provisions.** 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 hereof.

6. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder,

the Secretary may terminate this Agreement. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.

7. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not be deemed to control or affect the meaning or construction or the provisions herein.

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

9. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

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

Signatures continue on following page

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

APPROVED this ___ day of _____, 20__, by the governing body of DOUGLAS COUNTY, KANSAS.

ATTEST:

DOUGLAS COUNTY, KANSAS

COUNTY CLERK (Date)

CHAIRPERSON

(SEAL)

MEMBER

MEMBER

Signatures continue on following page

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

APPROVED this ___ day of _____, 20__, by the governing body of THE CITY OF LAWRENCE, KANSAS.

ATTEST:

THE CITY OF LAWRENCE, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

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

Nondiscrimination Clauses

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

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"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."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- 2. Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- 4. Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 5. Anti-Discrimination Clause:** The contractor 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 the contractor 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 the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor 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 the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- 6. Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
- 8. Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
- 9. Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
- 10. Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
- 11. Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
- 12. The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
- 13. Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.



DOUGLAS COUNTY PUBLIC WORKS

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

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

MEMORANDUM

To : Board of County Commissioners

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

Date : August 12, 2013

Re : Consent Agenda approval of KDOT agreement
Purchase of Safety Edge Shoe for asphalt paver
KDOT Project No. 106 C-0484-01

The Federal Highway Administration (FHWA) is making federal funds available to purchase equipment to facilitate construction of a "safety edge" along hot mix asphalt roadways. KDOT is administering the federal funds and will purchase the equipment. The attached agreement stipulates KDOT is responsible for 90% of the actual equipment cost, and Douglas County is responsible for 10% of the equipment cost. Douglas County's cost responsibility should be less than \$500.

The safety edge is one of the proven countermeasures that FHWA is promoting to reduce roadway fatalities and injuries. The safety edge shoe mounts on the screed of an asphalt lay down machine, and places a sloped surface at the edge of the pavement as opposed to a near-vertical edge. In the event of gravel shoulder erosion along the edge of the road, the safety edge allows vehicles to return to the travelled way without rubbing their tires against a vertical pavement edge.

The BOCC should sign two (2) original copies of the agreement. A fully executed original copy of the agreement will be returned to Douglas County.

Action Required: Consent Agenda approval of an agreement with KDOT stipulating Douglas County will reimburse KDOT for 10% of the purchase cost of equipment to facilitate construction of a safety edge along hot mix asphalt roads.

PROJECT NO. 106 C-0484-01
HRRR-C-048(401)
FHWA SAFETY EDGE TECHNOLOGY PROJECT
DOUGLAS COUNTY, KANSAS

AGREEMENT

This Agreement is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and Douglas County, Kansas (“County”), **collectively**, the “Parties.”

RECITALS:

- A. The Secretary has authorized a federal-aid Project, as further described in this Agreement.
- B. The Secretary and the County are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of County roads utilizing federal funds.
- C. Counties are, under certain circumstances, entitled to receive assistance in the construction and reconstruction of roads, provided however, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of Kansas.

NOW THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. **“County”** means the County of Douglas, Kansas, with its place of business at 1242 Massachusetts, Lawrence, KS 66044.
3. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
4. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
5. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
6. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the County.
7. **“Project”** means all phases and aspects of the endeavor to be undertaken by the Secretary and the County, as and when authorized by the Secretary, being as follows: **Purchase of a qualified**

asphalt paving and edging device (“Safety Edge Shoe”) for County installation to new or existing pavers, and is the subject of this Agreement.

8. **“Secretary”** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.
9. **“Vendor”** means the entity or entities awarded the procurement contract for the Project by the Secretary, and any subcontractors working for the Vendor with respect to the Project.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Purchase of Project Equipment.** The Secretary shall undertake procurement of the Project equipment in accordance with the procedures established by KDOT’s Bureau of Fiscal Services and Bureau of Local Projects. The Secretary further agrees, as agent for the County, to administer the Project as required by the FHWA, to negotiate with and report to the FHWA, and administer the payments due the Vendor, including the portion of the cost borne by the County.
2. **Payment of Costs.** The Secretary agrees to be responsible for ninety percent (90%) of the total actual costs of the Project.
3. **Final Billing.** After receipt of FHWA acknowledgement of 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 III

COUNTY RESPONSIBILITIES:

1. **Secretary Authorization.** The Project shall be undertaken, prosecuted and completed for and on behalf of the County by the Secretary acting in all things as its agent, and the County hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection with the Project are hereby by the County authorized, adopted, ratified and confirmed 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. 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 the current Federal-Aid Transportation Act for this Project.
2. **Legal Authority.** The County agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.
3. **Authorization of Signatory.** The County shall authorize a duly appointed representative to sign for the County any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

4. **Financial Obligation.** The County will be responsible for ten percent (10%) of the total actual costs of the Project.

5. **Remittance of Estimated Share.** The County shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The County will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of Funds received by the County from the Secretary. The date indicated for the County to deposit its estimated share of the total Project expenses is fifty (50) days after the procurement award date.

6. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

7. **Project Requirements.**

(a) **Ownership.** The County shall hold title to all Project equipment purchased pursuant to this Agreement. Project equipment, serial, or identification numbers will be incorporated into this Agreement by separate attachment after execution of this Agreement and without the need for written amendment.

(b) **Maintenance.** The County shall maintain at its expense, all Project equipment in accordance with the detailed maintenance and inspection schedules furnished by the manufacturer. Further, the County shall meet the management requirements of 49 C.F.R. 18.32(d) to include, but not limited to, physical inventory, control systems, and maintenance procedures.

(c) **Use and Disposal.** The County shall comply with 49 C.F.R. 18.32, OMB Circular A-133 "Audits of State and Local Governments, and Non-Profit Organizations" including, but not limited to disposition procedures, and the Secretary's procedures with regard to the Project equipment acquired under this Agreement. If the Project equipment is permanently withdrawn from service, the County will provide written notice to the Secretary; any disposition of the Project equipment will be subject to the Secretary's approval with FHWA concurrence.

(d) **Inspection and Reporting.** The County agrees to permit periodic inspection of the Project equipment and the pertinent records of the County as may be deemed necessary or desirable by the Secretary or the FHWA. Further, the County agrees to provide reports to the Secretary concerning the utilization, inventory status, and condition of the Project equipment, at such times and in such a manner as the Secretary may require.

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

9. **Audit.** All local governmental units, Non-Profit Organizations, and Indian Tribal governments shall comply with Federal-Aid Transportation Act and OMB Circular A-133 “Audits of State and Local Governments, and Non-Profit Organizations.” Further, the County agrees to the following provisions:

(a) **Common Rule.** It is the policy of the Secretary to make any final payments to the County for services related to the Project in a timely manner. The Single Audit Standards set forth in Federal O.M.B. Circular A-133, “Audits of States, Local Governments and Non Profit Organizations” in 49 C.F.R. Part 18 (Common Rule), require an audit be performed by an independent certified public accountant in accordance with these standards. All information audited shall comply with 49 C.F.R. Part 18 (Common Rule).

(b) **Single Audit.** The Secretary may pay any final amount due for the authorized work performed based upon the County’s most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of KDOT’s Bureau of Fiscal Services. The County, by acceptance of this Agreement, acknowledges the final payment is subject to all single audits which cover the time period of the expenses being claimed for reimbursement. The Parties agree as the Single Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the Secretary will review the Single Audit Report for items which are declared as not eligible for reimbursement. The County agrees to refund payment made by the Secretary to the County for items subsequently found to be not eligible for reimbursement by audit.

10. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the County shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the County to any party outside of the Secretary and all costs incurred by the County not to be reimbursed by the Secretary for any other major expense associated with the Project.

11. **Organizational Registration Requirements.**

(a) **Dun & Bradstreet.** If it has not already done so, the County shall obtain a Data Universal Numbering System (DUNS) number, which may be obtained from Dun and Bradstreet, Inc. (D & B) by telephone (currently 866-705-5711) or the Internet (currently <http://fedgov.dnb.com/webform>).

(b) **System for Award Management.** The County agrees it shall maintain current registrations in the System for Award Management (<http://www.sam.gov>) at all times during which it has active federal awards.

ARTICLE IV

GENERAL PROVISIONS:

1. **Civil Rights Act.** The “Special Attachment No. 1,” pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

2. **Contractual Provisions.** 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 hereof.

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

4. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not be deemed to control or affect the meaning or construction or the provisions herein.

5. **Binding Agreement.** 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.

6. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

DOUGLAS COUNTY, KANSAS

COUNTY CLERK (Date)

CHAIRPERSON

(SEAL)

MEMBER

MEMBER

Michael S. King, Secretary of Transportation
Kansas Department of Transportation

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

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

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

Nondiscrimination Clauses

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

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

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Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"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."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor 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 the contractor 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 the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor 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 the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.



JAMIE SHEW
DOUGLAS COUNTY CLERK
1100 Massachusetts
Lawrence, KS 66044

Marni Penrod-Chief Deputy Clerk
Benjamin Lampe-Deputy Clerk Elections

MEMORANDUM

TO: Board of County Commissioners

FROM: Marni Penrod, Chief Deputy County Clerk

DATE: August 14, 2013

RE: GFOA, ERP project

As we discussed briefly during a recent budget session, Douglas County is again working with Mike Mucha, of Government Finance Officers Association (GFOA), to research, choose and implement a new finance system. GFOA is a non-profit professional organization. They are well respected in the field for their independent, expert analysis specifically for public sector finance. Douglas County has an ongoing agreement with GFOA for professional services regarding our financial system since March 2007.

The steering committee includes: Paula Gilchrist, Treasurer; Jim Lawson, Information Technology Director; Sarah Plinsky, Asst. County Administrator and Jamie Shew, County Clerk.

Last week, Mike Mucha spent a day with the steering committee outlining the steps for full implementation of an ERP system by 2016. A three phase process was selected to issue an RFP, select a vendor and negotiate a contract by early 2014. Douglas County's current finance system was launched in 1999. The need for a new financial system has been researched and discussed for many years. We are finally ready to move forward and choose a system which meets the needs of Douglas County. Our goal is to establish business processes supported by a robust financial system which provides answers to the following important questions: How much money do we have? Whom do we owe? Who owes us? What are our current assets, both human and capital? Additionally, the new system will allow the County to move to GAAP accounting compliance. Funds for the project are currently set aside and available in Equipment Reserve, fund 232. In the first quarter of 2014, we plan to return to the Commission and recommend a financial system to purchase.

ACTION REQUIRED: Consent agenda approval to continue working with GFOA through the next three phases of the project: RFP development, System selection and Contract negotiations. The total cost is \$57,740.

GFOA Costs in Detail:

Phase	Milestone	Cost
1	RFP and Requirements Development	\$ 18,220.00
	Finalize Requirements and RFP	
	Risk Identification Report	
	System Procurement Plan	
2	System Selection Services	\$ 25,780.00
	Proposal Assessment Report	
	System Demonstration Staffing	
3	Contract Negotiations	\$ 13,740.00
	Request for Clarification Letters	
	Discovery Facilitation	
	Contract Negotiations/Statement of Work	
TOTAL		\$ 57,740.00

PLANNING COMMISSION REPORT
Regular Agenda

PC Staff Report
7/22/13

ITEM NO. 4: CONDITIONAL USE PERMIT; PRIVATE LANDING STRIP; 2215 N 500 (MKM)

CUP-13-00193: Consider a Conditional Use Permit for a private landing strip, located at 2215 N 500 Rd. Submitted by Robert and Angela Murray, property owners of record.

STAFF RECOMMENDATION: Staff recommends approval of the Conditional Use Permit for the private airstrip and forwarding it to the Board of County Commissioners with a recommendation for approval based on the findings of fact found in the body of the staff report subject to the following conditions:

- 1) The provision of a revised Conditional Use Site Plan with the following changes:
 - a. Addition of the following note: "The CUP will expire 10 years from the approval date unless an extension is requested from the County Commission before that date. If the CUP expires, the use of the airstrip will require rezoning or approval of a new CUP."
- 2) Federal Aviation Administration (FAA) determination of 'no objection' or a 'conditional determination' of the airstrip shall be provided to the Planning Office prior to the release of the CUP to the Zoning and Codes Office. Any conditions placed on the airstrip by the FAA must be met prior to release of the CUP to the Zoning and Codes Office.
- 3) Any conditions applied by the FAA in their determination will be conditions of the CUP.

Reason for Request: *"Allow continued use of existing grass runway for personal use by landowner."*

KEY POINTS

- A Conditional Use Permit, CUP-10-13-02, was approved by the Board of County Commissioners on January 13, 2003 subject to conditions of approval. The airstrip was in use until the CUP expired in 2013.

ATTACHMENTS

- A** – CUP Plan
- B** – 2002 FAA Letter of Determination

DESCRIPTION OF USE

The applicant is requesting a Conditional Use Permit to allow the continued use of a 60 ft x 1656 ft turf runway at 2215 N 500 Road.

ASSOCIATED CASES/OTHER ACTION REQUIRED

- Approval of Conditional Use by the Board of County Commissioners.
- FAA Determination of 'no objection' or conditional determination on airstrip. If the FAA determination is conditional, all conditions must be met before the CUP plan is released to the Zoning and Codes Office.
- Conditional Use Permit Plan released to the Zoning and Codes Office.
- Issuance of permit for the Conditional Use by the Zoning and Codes Department following application and determination that all conditions have been met.

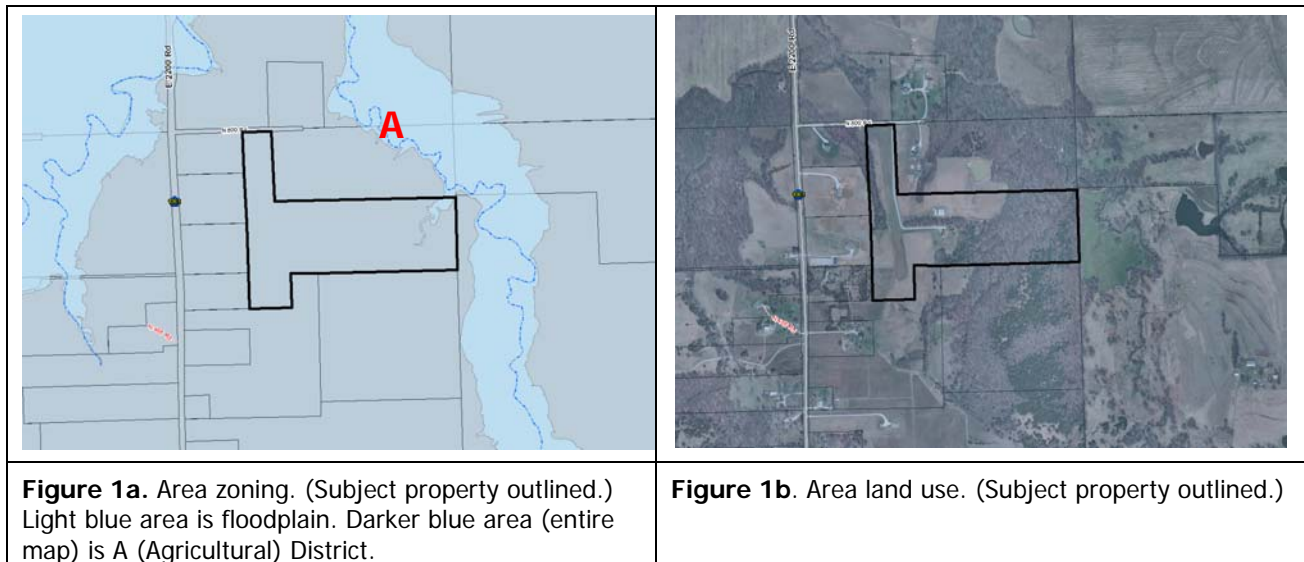
PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- No public comment has been received.

GENERAL INFORMATION

Current Zoning and Land Use: A (Agricultural) District and F-F (Floodway Fringe Overlay) District; Rural residence, agriculture and woodland.

Surrounding Zoning and Land Use: A (Agricultural) District in all directions and F-F (Floodway Fringe Overlay) District along Captain Creek and its tributaries to the east and west; Rural residences, agriculture, and woodlands. (Figure 1)



I. ZONING AND USES OF PROPERTY NEARBY

The surrounding area is zoned A (Agricultural) District and rural residences and agriculture are the principal land uses. Rural residences line E 2200 Road and N 500 Road in this area. Large areas of woodland are also present, particularly in the location of Captain Creek and its tributaries. The F-F (Floodway Fringe Overlay) District also follows the path of Captain Creek and its tributaries.

Staff Finding – Nearby properties are zoned A (Agricultural) and F-F (Floodway Fringe Overlay) Districts. Agriculture and rural residences are the principal land uses in the area.

II. CHARACTER OF THE AREA

The subject property is located on N 500 Road in the southeastern portion of the county, approximately 2 miles from the east county boundary. This is a rural area with agriculture and rural residences being the primary land uses. Natural features in the area include Captain Creek and its tributaries and associated floodplain, as well as woodlands. The subject property takes access from N 500 Road, a local road which ends approximately 250 ft to the east of the drive. E 2200 Road/County Route 1061, to the west of the subject property, is a principal arterial.

Staff Finding -- The area is rural in character containing primarily residential and agricultural land uses. A private runway with limited use may be compatible with the character of the area.

III. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

Applicant's response:

"Allow continued use of existing grass runway for personal use by landowner."

The property is zoned A (Agricultural) with a small portion also zoned F-F (Floodway Fringe Overlay) District. The A District permits many different agriculture-related uses in addition to animal hospitals, commercial dog kennels, residences, churches, and schools. *Airports and Landing Fields* are allowed in the A District with approval of a Conditional Use Permit. The subject property is suited to the uses to which it has been restricted with the A Zoning. The proposed request will not revise the underlying zoning district. The grass airstrip has been in use since 2002.

Staff Finding –The property is well suited for uses which are permitted within the A District.

IV. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Staff Finding – The property is currently developed with a residence, outbuildings and an airstrip.

V. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

Applicant's Response:

"There should be no detrimental affect on nearby property. All nearby landowners are aware of the grass runway. Several of them purchased lands and built homes knowing the runway existing."

Section 12-319-1.01 of the County Zoning Regulations notes that *"certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district, certain conditional uses listed in section 12-319-4 below, when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified, in any district from which they are prohibited."* The proposed use is listed in Section 12-319-4 Conditional Uses Enumerated, of the *Douglas County Zoning Regulations*.

The airstrip was approved in 2002 and was in operation until the CUP expired in February of 2013. No complaints regarding this airstrip were registered with the Douglas County Zoning and Codes Office during that time. The runway lies generally north and south to the east of E 2200 Road/County Route 1068. Several residences are located in the area with the nearest being approximately 250 ft from the runway. The nearest structures to the end of the airstrip are about 400 ft to the northeast, and about 620 ft to the southwest.

The location of the airstrip is reviewed based on comments from Ed Young, KDOT's Director of Aviation and Federal Aviation Administration (FAA) circulars and regulations. Zones or surfaces are created around the airstrip in which obstacles are not permitted. The surfaces

are referenced in the previous FAA conditional determination letter, Attachment B, and are explained in more detail later in this staff report.

Possible detrimental effects of an airstrip would be noise and safety issues. Noise can be limited with restrictions on the frequency of use. The 2002 CUP approval limited the use to the private use of the property owner only and restricted to the airplane registered to the applicant. This limitation should also apply to the current CUP to minimize the impact on nearby properties.

The FAA will review the proposed airstrip in relation to other approved airstrips in the area and will provide a letter of determination. A letter of determination was provided with the previous CUP request in 2002 (attached). The letter included conditions regarding the surfaces surrounding the airstrip which must be met in order to insure safety. Compliance with the FAA determination and conditions should minimize safety risks.

Staff Finding – It is possible that the removal of restrictions could detrimentally affect nearby property through the placement of an airstrip in close proximity to residences which may result in safety or noise issues. As the airstrip has been in use for 10 years, public complaints would be the measure of the impacts related to noise or other features. No public complaints have been received by Zoning and Codes regarding the airstrip during its time of operation. The same restrictions related to use that applied to the previous CUP should also apply to this CUP. An FAA determination of 'no objection' or compliance with all conditions required on a 'conditional' FAA determination should be required to insure the airstrip is located appropriately relative to nearby structures.

VI. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PETITIONER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS

Applicant's Response:

"There would be no gain to the public health, safety and welfare and no destruction of value of the petitioner's property and no hardship imposed on the individual landowner."

Evaluation of the relative gain weighs the benefits to the community-at-large vs. the benefit of the owners of the subject property.

Denial of the request for a Conditional Use Permit would prohibit the use of the airstrip by the landowner. Denial of the CUP request would not benefit the public health, safety, and welfare as the airstrip has been in use the past 10 years, unless the FAA determines the use of the airstrip would pose a safety hazard.

One requirement the FAA places on their approval is that the surface areas (approach and transitional) remain free of obstacles. The following conditions were required on the FAA's 2003 conditional determination letter:

- 1) The runway is to be constructed to an alignment of 163°/343° magnetic.
- 2) Maintain a clear approach to each runway for a minimum 20:1 slope. The approach slope begins 200 ft beyond the end of a paved runway or at runway end if a turf runway, and slopes upward at an angle of 20' (horizontal) to 1' (vertical).

If taking off to the south, be aware of the high tension power line located south of the airport.

- 3) Maintain a clear transitional surface for a 7:1 slope. The transitional surface extends outward and upward beginning at the edge of the runway at a slope of 7:1 from the sides of the primary surface and from the sides of the approach surfaces.

The airstrip will be reviewed in relation to these conditions later in this report. As the airstrip owner does not control the land under the approach and transitional surfaces, the continued use of the airstrip is dependent upon development in the area; therefore a time period on the use and additional review following new construction in the area is appropriate.

The FAA considers other approved airstrips in the area with their review to insure there is no airspace conflict. The 2002 FAA conditional determination letter required that the applicant complete the FAA Form 5010-5, *Facilities Information Request*, within 15 days after completion of the airport construction. The letter noted, "*In order to avoid placing any unfair restrictions on users of the navigable airspace, this determination is valid until February 4, 2005. Should the airport not be established by this date, an extension of our determination should be requested at least 15 days prior to the expiration noted above.*" Our FAA contact, Angela Muder—Airports Airspace Specialist, indicated that the form was not provided and an extension was not requested within this time frame; therefore, the FAA will review this CUP request with other approved airstrips in the area.

If a conditional FAA determination is provided, compliance with all FAA conditions will be required prior to release of the CUP to insure the safety of the facility.

In staff's opinion there would be no benefit to the public from the denial of the airstrip, provided all FAA conditions are met, as there have been no complaints filed with the Zoning and Codes Office related to the use of the airstrip or associated noise.

Staff Finding – If the FAA finds the airstrip acceptable there would be no public benefit from the denial of the request provided all conditions of approval required by the FAA are met prior to the release of the CUP to the Zoning and Codes Office.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response:

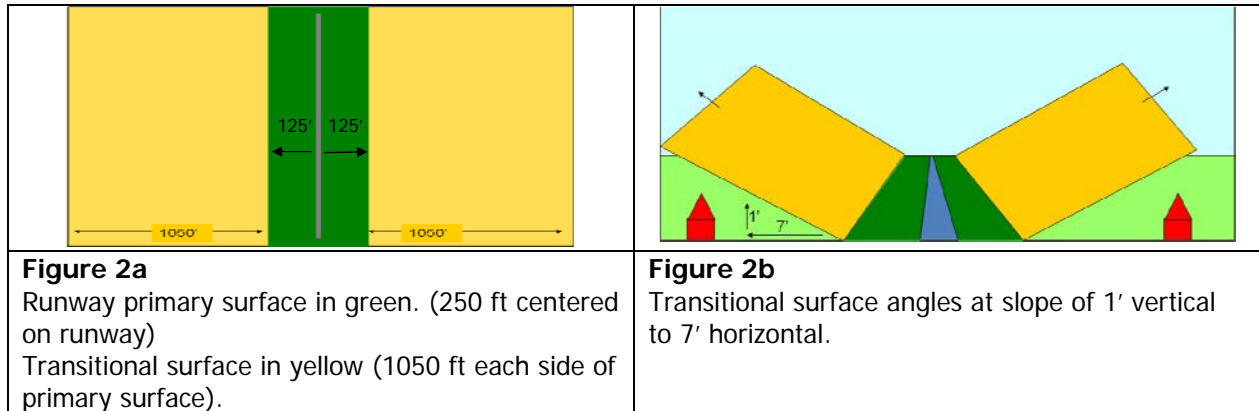
"The conditional use permit for the runway does not impact and is not impacted by the Comprehensive Plan, Horizon 2020."

An evaluation of the conformance of a Conditional Use Permit request with the comprehensive plan is based on the strategies, goals, policies and recommendations contained within *Horizon 2020*. The comprehensive plan does not directly address Conditional Use Permits; however Chapter 12 Economic Development Policy 1.2, Goal 1 of Transportation Goals and Policies recommends that the Lawrence Municipal Airport be protected from encroachment. The airstrip does not encroach on the Lawrence Municipal Airport airspace.

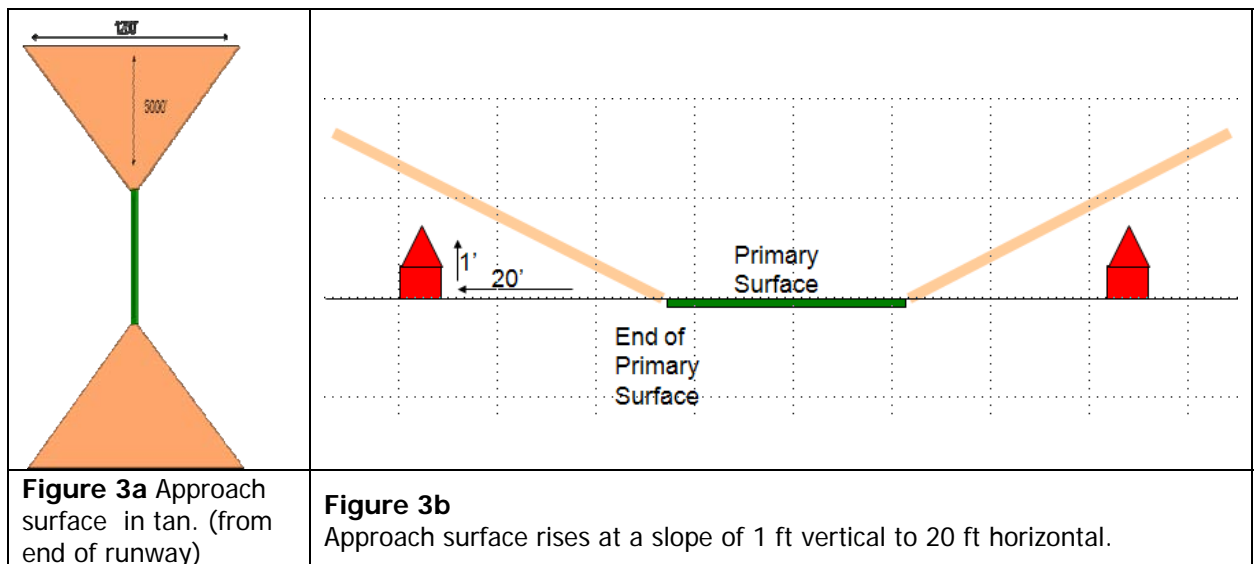
Staff Finding – *Horizon 2020* does not directly address the issuance of CUPs but Chapter 12, Economic Development recommends that the Lawrence Municipal Airport approaches and air space should be protected from encroachment. This proposed airstrip does not conflict with the air space of the Lawrence Municipal Airport.

STAFF REVIEW

The FAA has established zones or surfaces which extend outward and upward from the runway within which there can be no obstructions. The surface area is 250 ft in width centered on the actual runway. The transitional surface extends 1050 ft to each side of the surface area. (Figure 2a) Figure 2b illustrates how the transitional surface extends outward and upward at a rate of 1 ft vertical for 7 ft horizontal.



The approach zone extends from each end of the runway for a distance of 5000 ft and widens from the 250 ft of the runway to a final width of 1250 ft. (Figure 3a) The approach zone rises at a rate of 1 ft vertical for 20 ft horizontal. (Figure 3b)



The FAA conditional determination provided in 2002 required that no obstructions occur in these zones. It is possible to calculate the height of the transitional surface or approach surface at the location of nearby structures to determine if they extend into these surfaces. If the FAA approves the CUP with the conditions that no obstacles occur in the transition or approach surface, staff will evaluate the CUP with the height and location of the existing buildings to determine compliance with the condition.

As the airstrip owner does not control the property under the transition or approach surface, it will be necessary for staff to monitor development occurring in the vicinity of the airstrip to determine if new structures extend into the surface areas. If this occurs, the FAA will be

contacted to see if a realignment of the runway or other change could resolve the conflict and keep the airstrip in compliance with the CUP.

Conclusion

Approval of a Conditional Use can be tailored to address specific issues such as intensity or frequency of use. The airstrip is limited to private use to minimize the impact of the airstrip on nearby residences. A 10-year expiration date will allow the impact of the airstrip on the surrounding area to be re-evaluated.

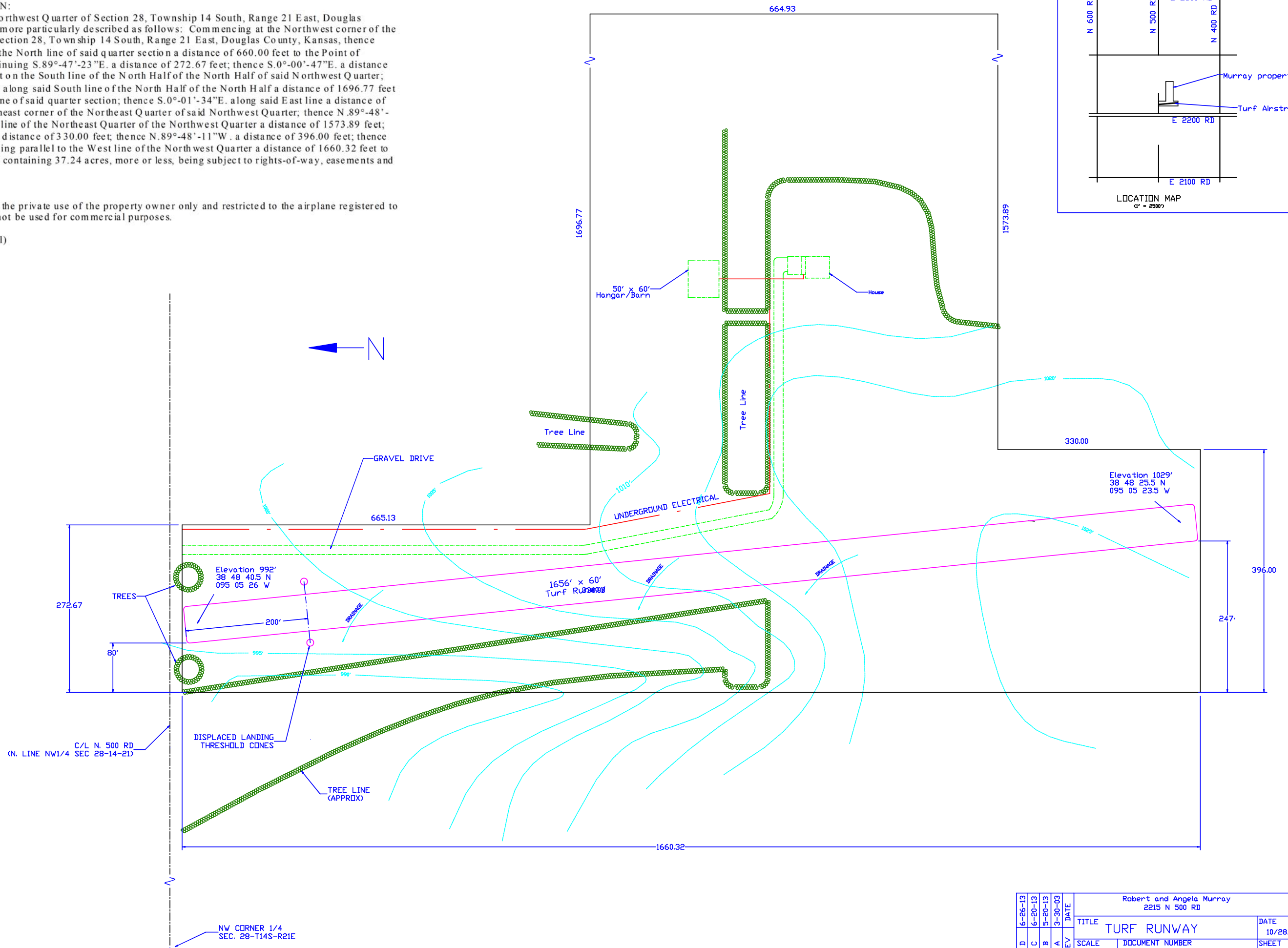
LEGAL DESCRIPTION:

A tract of land in the Northwest Quarter of Section 28, Township 14 South, Range 21 East, Douglas County, Kansas, being more particularly described as follows: Commencing at the Northwest corner of the Northwest Quarter of Section 28, Township 14 South, Range 21 East, Douglas County, Kansas, thence S.89°-47'-23"E. along the North line of said quarter section a distance of 660.00 feet to the Point of Beginning; thence continuing S.89°-47'-23"E. a distance of 272.67 feet; thence S.0°-00'-47"E. a distance of 665.13 feet to a point on the South line of the North Half of the North Half of said Northwest Quarter; thence S.89°-47'-47"E. along said South line of the North Half of the North Half a distance of 1696.77 feet to a point on the East line of said quarter section; thence S.0°-01'-34"E. along said East line a distance of 664.93 feet to the Southeast corner of the Northeast Quarter of said Northwest Quarter; thence N.89°-48'-11"W. along the South line of the Northeast Quarter of the Northwest Quarter a distance of 1573.89 feet; thence S.0°-00'00"W a distance of 330.00 feet; thence N.89°-48'-11"W. a distance of 396.00 feet; thence N.0°-0'-00"E. and running parallel to the West line of the Northwest Quarter a distance of 1660.32 feet to the Point of Beginning, containing 37.24 acres, more or less, being subject to rights-of-way, easements and restrictions of record.

NOTES:

The landing field is for the private use of the property owner only and restricted to the airplane registered to the applicant and may not be used for commercial purposes.

Zoning: A (Agricultural)



6-26-13	6-20-13	5-20-13	3-30-03	Robert and Angela Murray 2215 N 500 RD		DATE
D	C	B	A	TITLE		10/28/02
REV	DATE	SCALE		DOCUMENT NUMBER	SHEET	
		1" = 50'		185-1027	1/1	



U.S. Department
Of Transportation

**Federal Aviation
Administration**

Central Region
Iowa, Kansas
Missouri, Nebraska

901 Locust
Kansas City, Missouri 64106-2325

August 7, 2003

Robert Murray
2215 N 500 Road
Eudora, KS 66025

RE: Murray
Notice of Airspace Determination/Establishment
Airspace Case No. 2003-ACE-162-NRA

We have completed an airspace analysis of the proposed private owned, private-use airport. As studied, the location of the 1660' x 60' turf runway is approximately 7 nautical miles from Eudora, Kansas at latitude N 38° 48' 31" and longitude W 095° 05' 24" (NAD 83).

Our aeronautical study has determined that the establishment of your proposed airport will not adversely affect the safe and efficient use of airspace by aircraft provided the following conditions are adhered to:

- 1. The runway is constructed to an alignment of 163°/343° magnetic.**
- 2. Maintain a clear approach to each runway for a minimum 20:1 slope. The approach slope begins 200' beyond the end of a paved runway or at runway end if a turf runway, and slopes upward at an angle of 20' (horizontal) to 1' (vertical). If taking off to the south, be aware of the high tension power line located south of the airport.**
- 3. Maintain a clear transitional surface for a 7:1 slope. The transitional surface extends outward and upward beginning at the edge of the runway at a slope of 7:1 from the sides of the primary surface and from the sides of the approach surfaces.**

This determination does not mean FAA approval or disapproval of the physical development involved in the proposal. It is a determination with respect to the safe and efficient use of airspace by aircraft and with respect to the safety of persons and property on the ground.

In making the determination, the FAA has considered matters such as the effect the proposal would have on existing or planned traffic patterns of neighboring airports, the effects it would have on the existing airspace structure and projected programs of the FAA, the effects it would have on the safety of persons and property on the ground, and the effects that existing or proposed manmade objects (on file with the FAA) and known natural objects within the affected area would have on the airport proposal.

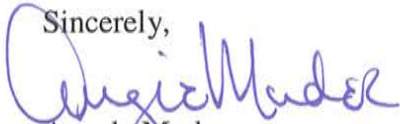
The FAA cannot prevent the construction of structures near an airport. The airport environs can only be protected through such means as local zoning ordinances or acquisitions of property rights. This determination in no way preempts or waives any ordinances, laws, or regulations of any government body or agency.

Please complete the enclosed FAA Form 5010-5, Facilities Information request, within 15 days after completion of airport construction. (Instructions for completion of the form are included with this correspondence.) Completion of this form will also ensure your facility is assigned a site number and a location identifier. Please indicate on FAA Form 5010-5 if charting is requested. We review all requests for charting of private-use airports for landmark value. We currently do not chart private-use airports that do not have landmark value.

In order to avoid placing any unfair restrictions on users of the navigable airspace, this determination is valid until February 4, 2005. Should the airport not be established by this date, an extension of our determination should be requested at least 15 days prior to the expiration noted above.

If you have any questions concerning this letter or in filling out Form 5010-5, please contact me at (816) 329-2620.

Sincerely,

A handwritten signature in blue ink that reads "Angela Muder". The signature is written in a cursive style with a large initial "A".

Angela Muder
Airports Airspace Specialist

Enclosures

cc:

KDOT

ACE-520

AAS-330 (w/enclosures)



CUP-13-00193: Consider a Conditional Use Permit
for a private landing strip, located at 2215 N 500 Rd



ITEM NO. 4 CONDITIONAL USE PERMIT; PRIVATE LANDING STRIP; 2215 N 500 (MKM)

CUP-13-00193: Consider a Conditional Use Permit for a private landing strip, located at 2215 N 500 Rd. Submitted by Robert and Angela Murray, property owners of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item. She said one of the conditions was that the Federal Aviation Administration (FAA) would provide a determination. She said the FAA usually provides a determination of no objection or a conditional determination in which they list conditions that must be met.

APPLICANT PRESENTATION

Mr. Robert Murray, was present for questioning.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Rasmussen asked if the condition was for a new letter to be obtained from the FAA. He asked about the process.

Ms. Miller said yes. She said the applicant would provide plans to the FAA.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Rasmussen, to approve the Conditional Use Permit for the private airstrip and forwarding it to the Board of County Commissioners with a recommendation for approval based on the findings of fact found in the body of the staff report subject to the following conditions:

- 1) The provision of a revised Conditional Use Site Plan with the following changes:
 - a. Addition of the following note: "The CUP will expire 10 years from the approval date unless an extension is requested from the County Commission before that date. If the CUP expires, the use of the airstrip will require rezoning or approval of a new CUP."
- 2) Federal Aviation Administration (FAA) determination of 'no objection' or a 'conditional determination' of the airstrip shall be provided to the Planning Office prior to the release of the CUP to the Zoning and Codes Office. Any conditions placed on the airstrip by the FAA must be met prior to release of the CUP to the Zoning and Codes Office.
- 3) Any conditions applied by the FAA in their determination will be conditions of the CUP.

Unanimously approved 6-0.