

AGENDA

BASEHOR CITY COUNCIL

October 20, 2008

6:00 p.m.

Basehor City Hall

WORK SESSION - 6:00 p.m. Discussion of agenda items

REGULAR MEETING – 7:00 p.m.

1. Roll Call by Mayor Chris Garcia and Pledge of Allegiance

2. Consent Agenda

(Consent Agenda Items will be acted upon by one motion unless a Council Member requests an item be removed for discussion and separate action.)

- a. Approve Minutes
 1. October 6, 2008 Work Session & Regular Meeting
 2. October 13, 2008 Work Session (to be emailed later in the week)
- b. Approve Treasurer's Report & Vendor Payments
- c. Approve investment recommendations
- d. Approve calendar of events

3. Call to Public

Members of the public are welcome to use this time to comment about any matter relating to City business that is listed on this Agenda. The comments that are discussed under "Call to Public" may or may not be acted upon by the Council during this meeting. There is a five-minute time limit. (Please wait to be recognized by the mayor then proceed to the podium; state your name and address).

- a. Lois Fulkerson, Steven Rosenthal – Street conditions at 2954-56 N. 155th Terr.

4. Scheduled Discussion Items

5. Business

- a. Consider approval of an ordinance authorizing the establishment of a KDHE loan for the wastewater treatment plan expansion.
- b. Approve KDOT agreements for receipt of corridor management funds
- c. Consider resolution ordering demolition of structure at 2805 N. 155th Street.
- d. Consider renewal of an auditing contract with Lowenthal, Singleton, Webb and Wilson for 2008.

6. City Administrator Report

7. Mayor's Report

8. Council Member Reports

9. Executive Session

- a. Acquisition of real estate - proposals for obtaining right-of-way and easements for the 150th Street improvement project
- b. Personnel matters of non-elected personnel

10. Adjournment

Basehor City Council reserves the right to amend the agenda following its publication in the Basehor Sentinel newspaper. Citizens are encouraged to attend all public meetings. Updates to the agenda may be viewed at www.cityofbasehor.org

Minutes
BASEHOR CITY COUNCIL
October 6, 2008
6:00 p.m.
Basehor City Hall

Official Presiding: Mayor Chris Garcia

**Members Present: Pres. Iris Dysart, Terry Hill, Roger McDowell, Keith Sifford,
and Jim Washington**

Members Absent: None

**Staff Present: Carl Slaugh, Lloyd Martley, Mary Mogle, Gene Myracle
Dave Lutgen, Patrick Reavey**

Newspaper: Lara Hastings, *Basehor Sentinel*

WORK SESSION - 6:00 p.m.

All members present with the exception of Councilmember Hill. The city attorney was in attendance. *(Tape 1, Side A)*

Discuss MHS Solutions work within the city.

At the September 15th Council meeting, Councilmember Washington expressed his concern with MHS Solutions performing work for the school district, Sewer District No. 3, and the City. He felt it was a conflict of interest and suggested the city engineer Joe McAfee update the Council on the work MHS Solutions was performing in the area.

Mr. McAfee reported his company has four projects they are working on in the area. He gave timelines for each project. *(Councilmember Hill arrived at 6:09 p.m.)*

- USD #458 Elementary School and Middle School as civil engineer
- Sewer District No. 3, County project.
- Hidden Ridge permitting requirements
- Fox Ridge of Prairie Gardens

Mr. McAfee explained he received permission from the Council to perform work for developers of Pinehurst Development and Prairie Gardens. About eight months ago he received permission from the Council to perform work for the school district on the new schools. He explained First State Bank contacted him regarding permitting issues on Hidden Ridge. MHS Solutions researched and found that the development failed to obtain several permits. That work was billed to the City of Basehor, and then Basehor bills First State Bank for their work. The actual permit application work was being billed directly to First State Bank. MHS Solutions took on this project in an effort to

protect the City from a liability standpoint. They were recently awarded the bid for engineering services regarding the decommissioning of the Glenwood lagoon. Mr. McAfee reported he was unhappy that MHS Solutions was not hired to perform the inspections on the wastewater treatment facility expansion as well as other past projects that his staff was qualified to perform.

Councilmember Washington stated the Council did not have any question regarding Mr. McAfee's qualifications, but it was an issue of perception. He did agree with the solution for Hidden Ridge but did not recall a discussion regarding his work for the school district. Mr. McAfee stated he did come to Council about working with the school district prior to entering into a contract. Mayor Garcia asked Mr. McAfee to give a weekly report informing the Council of projects he was working on in the area. Mr. McAfee stated he would communicate more with Council in the future. Councilmember Sifford stated he remember him coming before the Council. Mr. Reavey stated he remembered the conversation and that Mr. McAfee was advised to step away from project if conflict arose between the school district and the City. President Dysart asked if he was through with Fox Ridge. Mr. McAfee stated he did not think Fox Ridge would be doing any work in the near future based on the economy. She noted she felt it was a conflict of interest working for a developer. Councilmember Washington asked the city attorney if there was a problem with MHS working with Hidden Ridge. Mr. Reavey stated the only problem he could see if there was a dispute MHS Solutions would need to step away from the project.

Discussion of agenda items.

Ed McIntosh, Benchmark Management reported in the last month he has made progress with KDOT regarding the 150th Street and 24-40 Hwy intersection. Although KDOT denied his request for a right-in/right-out access at 153rd Street, they have agreed that changes needed to be made at the intersection of 150th Street and 24-40 Hwy and are willing to assist with procuring additional right-of-way (triangle section of ground east of the current intersection), fund design work, clean up tires, and fund tearing down the existing building. Miles Excavating would have a full service intersection that would service the top eight acres. He requested permission for the city administrator to work with KDOT and himself to finalize the necessary paperwork. KDOT would pay him for the 153rd Street right-in/right-out with the money going toward improvements to 150th Street connection. The final documents would be submitted to the city attorney and council for final approval. Councilmember Washington stated it was a good solution and supports the intent of the Corridor plan. The city administrator was directed to place the item on the October 13th work session for discussion.

i. Consider ordinance and lease agreement with KDOT for certain communication equipment.

Mr. Reavey reported statues allow State agencies to issue funds for public equipment. He noted Councilmember Washington had a concern with the ordinance allowing for the mayor and city clerk to make changes after adoption of the ordinance. Mr. Reavey

explained that was typical language and the interest rate still had to be inserted when bonds were sold.

Chief Martley reported the lease would include twenty-four radios. The pricing should read \$68,832.06 with an administrative fee of \$6,000 reducing the cost to \$74,832.06. This would allow Basehor to communicate with the County's dispatch center and other public service agencies. Chief Martley thought the administrative fee included insurance coverage as well. Councilmember Sifford asked if the ordinance was ready for approval. Mr. Reavey stated it was ready for adoption as submitted.

Five-minute break (6:57 p.m.)

REGULAR MEETING – 7:00 p.m.

ROLL CALL BY MAYOR CHRIS GARCIA AND PLEDGE OF ALLEGIANCE

All members present. The city attorney was in attendance. *(Tape 1, Side B)*

CONSENT AGENDA

(Consent Agenda Items will be acted upon by one motion unless a Council Member requests an item be removed for discussion and separate action.)

- b. Approve Minutes
 - 1. September 8, 2008 Cedar Lake Public Hearing
 - 2. September 15, 2008 Work Session & Regular Meeting
- b. Approve Treasurer's Report & Vendor Payments
- c. Approve investment recommendations
- d. Approve calendar of events

A motion was made by Councilmember Sifford and seconded by Councilmember McDowell to approve the Consent Agenda as presented. A show of hands was taken with all members voting in favor. Motion passed 5-0.

CALL TO PUBLIC

Members of the public are welcome to use this time to comment about any matter relating to City business that is listed on this Agenda. The comments that are discussed under "Call to Public" may or may not be acted upon by the Council during this meeting. There is a five-minute time limit. (Please wait to be recognized by the mayor then proceed to the podium; state your name and address).

- a. *Lois Fulkerson, Steven Rosenthal – Street conditions at 2954-56 N. 155th Terr. (moved to 10/20/08)*

Jeff Scherer (1706 N. 150th Street) provide a letter to Council regarding changes to the proposed Zoning Regulations. He noted he would like to see the maximum density in the

multi-family zoning district increased from eight units up to twelve which would be at the end of the scale for the surrounding communities.

Cathy Stueckemann (15501 Cedar Lane) spoke regarding Business Item “c” and “d”. Mrs. Stueckemann thanked her husband and Cedar Lake for their contents and decorum at the public hearing on September 8th. She noted some discrepancies in the minutes of September 8 Cedar Lake Public Hearing. The home owners of Cedar Lakes feel that the City cannot thrive on residential roof top taxes and the City should concentrate on economic development. She pointed out the minutes should have reference time, date, and place per State statute. She asked how many commissioners read through all the statements provided. Mayor Garcia and Councilmember Washington stated they reviewed the statements and President Dysart stated she was satisfied with the testimony at the hearing and would use the statements for review if necessary. Mrs. Stueckemann asked if Council had contacted each other via telephone or email to discuss the matter. No contact had been made. Councilmember Washington noted that would be a violation of the Open Meetings Act. She asked if anyone spoke with the city administrator about the issue and if any of the questions been addressed. Mayor Garcia stated he had spoke with the administrator. Mr. Slauch stated the questions had not been addressed at this time. Finally, she noted the Cedar Lake residents’ expectations were that Council review all the written statements provided at the hearing and also expected the Council to act on an ordinance rejecting or approving the annexation. She asked Council to clarify the procedure.

Mr. Reavey stated the public hearing was held pursuant to State statute. The resolution was not sent by certified mail and all property owners receive notice and by operation of law the notice provision was not followed. If Council wants to pursue the annexation the City would need to send out new notices and hold another public hearing. Mrs. Stueckemann felt the residents should have been notified prior to this meeting or insert the language in the agenda letting the residents know that the process was going to start over. Councilmember Washington pointed out that Item “c” posed the question if the process should start over.

John Flower (15515 Cedar Lane) appeared on behalf of the Planning Commission to addressed Business Item “g”. From a planning commission perspective they realized they had not reviewed the driveway situation of the split lot for Lots C-5A and C-5B. Currently there are four driveways on the split property; however, they are shared and do not line up with existing drives to the north. They are asking that one driveway be removed from lot.

Councilmember Washington asked the planning director what process had been taken since the last meeting and why weren’t minutes provided. Mr. Smith explained the planning commission reversed the condition for the shared access and then was reviewed again by the planning commission on September 2. An excerpt of the September 2 minutes were included in the packet. Mr. Flower explained later the Council made the decision he asked the planning director the plat. After further review, he realized a mistake was made and brought it back to the planning commission for reconsideration.

President Dysart asked what the City's regulations were for entrances within 506 ft. Mr. Smith did not know of any regulations stipulating footage between driveways. Mr. Flower noted the planning commission granted four drive ways and three were defined, but the fourth driveway would be up to the property owner to decide where it would go. He explained the change in driveways would align with the existing driveways across the street.

Councilmember Washington confirmed there would be two driveways on C5A and another drive on C5B and one left for C6.

Jennifer Yanes (15768 Pine Ct.) asked who made the decision not pursue the [Cedar Lake Estates annexation] ordinance. Mayor Garcia stated he thought it was based on issues brought up at the hearing. Mr. Reavey stated there was not much decision to be made, if the Council would have chosen to adopt an ordinance, it would be null and void. As a legal matter, the process needs to be started over.

Closed public portion of the meeting.

SCHEDULED DISCUSSION ITEMS

a. LCDC Quarterly Report by Steve Jack

Tony Kramer, LCDC President, appeared on behalf of Leavenworth County Development Corporation (LCDC). Mr. Kramer reported LCDC held a successful golf tournament. Area governing body members and county officials will be invited to attend a breakfast roundtable meeting to discuss regional issues. A restructuring of committees was also underway. Committees would meet in a task force situation on an "as needed" basis. Annual meeting would be held on December 5th and on December 12th a VIP Event would be held in an effort to build a network between members and area business owners.

Steve Jack, LCDC Executive Director, introduced Victoria Rowley as the new Economic Development Coordinator. Mrs. Rowley will lead a more aggressive company baseline, improving informational brochures such as tax information. Mr. Jack reported on new leads and prospects. Out of seventeen prospects, only two are still interested in the area. He felt this year would bring in the same amount of prospects as last year. He explained the reason for project elimination was based on the fact that Leavenworth County did not have existing building space large enough to accommodate their needs.

Councilmember Sifford asked if the two leads were interested in the Basehor area and how many companies located in Basehor as a direct result of LCDC. Mr. Jack stated one company was looking at a site north of 24-40 Highway and only two companies have located in Leavenworth County in the past year.

b. Pinehurst Excise Tax Refund/Credit - Jeff Sutton representing Pinehurst Development

Mr. Sutton, legal counsel for Pinehurst Development, explained there were some issues regarding excise tax paid at the time the property was platted. The property has since been rezoned at the request of the developer. He suggested issuing a tax credit to Pinehurst Development rather than issue a check back to the developer. This would allow the tax to go back to the property owner and the City would not be out all the money in one lump sum.

Councilmember Sifford asked the city attorney to give a legal opinion. Mr. Reavey explained the ordinance reads that the “excise tax is levied by this article and platting of real property or building in the City”. The excise tax must be paid when platted and that is what the developer did initially. After payment was made, the developer decided they wanted to develop the land as residential rather than commercial. So what was being asked is to refund excise tax and treat as a residential project. Mr. Reavey noted the ordinance included provisions to allow for credits; however, he did not feel “change of zoning” applied. He asked Mr. Sutton if there was a particular article that he felt applied. Mr. Sutton stated Article D provided for credit toward taxes previously levied. Mr. Reavey stated he did not see legally any requirement for refund. Mr. Sutton wanted to clarify it was not a “refund” but a “credit”.

Councilmember Sifford pointed out whether the property was commercial or residential, the developer would receive the money back when the lots were sold. Mr. Sutton stated there was no guarantee when the property would be sold. Councilmember Washington stated it was very clear that this tax was charged at the time of platting and it was incumbent on the developer to get back when property sold. Councilmember Hill agreed. Mr. Sutton stated there were court cases where changes were made after the fact, and credits had been issued. Councilmember Hill stated the change was requested by the developer, not something beyond the developer or City’s control.

c. Consider request by USD 458 to waive excise tax fees.

David Howard (14206 Madden Lane) explained at the last Council meeting the Council denied waiving the building permit and excise tax fees for the new elementary school. Tonight USD #458 School District was requesting waive of excise tax fees only. He noted it was reasonable for two taxing entities to work together. He pointed out the services the district currently provides for the community and City. He requested the discussion item move to an action item this evening.

A motion was made by Councilmember Washington and seconded by President Dysart to add Business Item “j” to the agenda to consider waive of excise tax fees for the school district. A show of hands was taken with all members voting in favor. Motion passed 5-0.

BUSINESS***a. Consider approval of Authorization No. 3 for professional engineering services (resident observer) to Burns & McDonnell Engineering Company, Inc.***

Jeff Keller, Burns & McDonnell, explained the city administrator has provided in his report the revised fees of \$190,666 for the resident inspector and provided a report that explained the company's reason for allowing the resident inspector to come under their jurisdiction. The additional hours included engineering services and support as needed. Also the State Revolving Loan fund paperwork was developed with the understanding that the resident inspector would be provided through their company. Mr. Reavey stated at the last meeting there was some questions regarding the liability insurance for the resident observer. Upon his review of the parent agreement, Burns & McDonnell was not liable for anything under the contract. The contract language stated Burns & McDonnell was not responsible for project costs or making sure that the plans were followed by the contractor. Mr. Reavey stated Burns & McDonnell's legal counsel echoed his findings.
(Tape 2, Side A)

Councilmember Sifford stated the situation was bothersome to him. According to legal counsel Burns & McDonnell was not liable no matter what. He noted that Mr. Mitchell gave him the impression if the City did not use Burns & McDonnell for resident inspector, there would be overruns and he would not guarantee engineering support. Councilmember Sifford noted there was too great of a cost difference between Burns & McDonnell and the other companies that provided bids. Councilmember Hill stated it was relayed to Council that communication would be better if the resident inspector worked for Burns & McDonnell and asked if there was a comparison on change orders. Mr. Keller stated it was not a \$60,000 difference, it was a difference of \$19 per hour and that typically it was utility companies who provided their own inspectors. The average of change orders was approximately 4-6%. Councilmember Washington referenced an email received from Rod Geisler, KDHE, that stated large projects such as Basehor's typically did not use inspectors outside of the engineering firm and recommended using Burns & McDonnell's inspector. He also noted that KDHE was the City's banker on this project; therefore, the City should follow their recommendations.

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to approve Authorization #3 with Burns & McDonnell in the amount not to exceed \$191,000. A show of hands was taken with all members voting in favor with the exception of Councilmember Sifford. Motion passed 4-1.

b. Consider approval of the revolving loan (KWPCRF) Agreement with KDHE for Wastewater Treatment Plant Expansion.

Mr. Slaugh provided Council with corrected loan information with the estimated loan amount excluded line rehab. He explained since the bids came in higher than anticipated, the amount of the loan needed to be increased and recommended setting the loan amount to \$6,424,516 and increase the term of the loan from twelve years to twenty. The interest rate of 2.82% would remain the same for the twenty-year loan. If Council

chose to go with the twenty-year payback, it would increase the interest amount by \$905,000. Over the last six months, the City has used reserve funds within the Sewer Capital Improvement Fund to make engineering payments. This has left the reserve fund unable to fund line rehabilitation cost. However, the City could request reimbursement for engineering costs through the State Revolving Loan.

Councilmember Sifford asked if there was some way to earmark additional sewer fees to go toward the loan payment. Councilmember Washington was concerned that adding additional language might "muck" up the process at this point. President Dysart questioned why the loan amount continues to change. Mr. Slaugh explained the administrative legal fees were reduced by \$30,000 and line rehab was removed. President Dysart questioned the amount of engineering fees paid to date. Mr. Keller stated the \$30,000 was part of the \$362,000 figure. Total engineering fees are \$741,566. Mr. Slaugh reported the City has already paid \$52,400 and \$362,000. If the Council decided not to ask for reimbursement for those fees, there would not be enough money in the Sewer Capital Improvement Fund for line rehab. Mr. Slaugh reminded Council the figures provided are projected. The actual costs would not be known until the end of the project.

President Dysart stated when the 24-40 benefit district was formed, the auditor recommended payment be placed in the sewer fund rather than the bond & interest fund. She had an issue taking general fund money and transferring to sewer fund for payment of SRL. Mr. Slaugh stated Council could continue to transfer from General Fund to Sewer Fund to help pay for line rehabilitation. If the City keeps up with the consistent rate increases and growth rate, the fund should keep a float. President Dysart noted the original loan amount submitted by Burns & McDonnell was \$4 million, now it has increased to over \$4.9 million and felt sewer bills would be so high that no one would want to build in Basehor. Councilmember Sifford stated the reason for going with a twenty-year plan was so rates would not be so high and if the expansion did not occur, there would be a moratorium placed on building. Councilmember Hill noted the City recently passed a benefit district for a major development across from city hall and the City needed the expansion in order to grow. Mr. Slaugh stated the City had sewer rate studies performed in order to get to the point where they are today.

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to approve the loan application with KDHE in the amount of \$6,424,516 for a term of 20 years and authorize the mayor to sign the necessary documents. A show of hands was taken with all members voting in favor. Motion passed ~~4-0~~ 5-0

c. Consider starting the annexation process over again for the Cedar Lake Estates subdivision.

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to start the annexation process over again for the Cedar Lake Estates subdivision. A show of hands was taken with all members voting in favor. Motion passed 5-0.

d. Consider a proposal to begin the effort in annexing the Cedar Lake Estates subdivision.

Mayor Garcia commented if Council set a new hearing date now, the hearing would be held during the holidays since State statues had a 60-70 day notice requirement. He also reminded Council that about 50% of the governing body may be changing in April 2009.

Mr. Slaugh stated the City needs to prepare documents and resolution first. He suggested using MHS Solutions to prepare the necessary documents. Their fee would be \$2,630.00. Mr. Lutgen stated he would have the documents ready by the November 3rd meeting.

A motion was made by Councilmember Washington and seconded by Councilmember McDowell to approve MHS Solutions to prepare [Cedar Lake Estates annexation] documents not to exceed \$2700.00. A show of hands was taken with all members voting in favor. Motion passed 5-0.

e. Consider ordinance adopting by reference proposed Zoning Regulations

Planning Director Dustin Smith stated to go from 8 to 12 units per acre as requested by Jeff Scherer was excessive. Certain amenities are given a certain point value according to the list. Developers can add other amenities in exchange for items on the list but must be approved by the planning commission.

Councilmember Sifford stated Mr. Scherer provided information regarding the density requirements from surrounding cities and asked if it would be a deterrent to Basehor to lower the density requirements. Mr. Smith stated if Council did not adopt the proposed changes, it would go back to the planning commission for further review.

Mayor Garcia asked if schools and churches would require a conditional use permit under the proposed changes. Mr. Smith stated his reasoning behind the decision was that conditional use permits were designed to have a higher level of review since there were higher impacts on a residential area and would allow the City to place additional requirements. Councilmember Hill asked if a dance studio or Montessori school need a conditional use permit. Mr. Smith said a dance studio would not be permitted and a Montessori school would require a special use permit.

Mr. Slaugh stated he did not feel churches and schools should be a conditional use since it was unlikely a school would be torn down in five years. Mr. Smith said it was also an effort to notify property owners in the area as well.

Councilmember Washington would like to see the planning commission address the church/school issue and look into the density requirements as well as Basehor's square foot requirement since Basehor's proposed change was higher than area.

Mr. Reavey asked if churches and schools have a particular zoning district. Mr. Smith stated that was not typical of zoning districts. Councilmember McDowell asked if it was

typical to have schools obtain special use permits. Mr. Smith reported he surveyed twelve cities and of those twelve, six required special use permits.

A motion was made by Councilmember Washington and seconded by Councilmember Hill to forward the changes back to the planning commission for further review of density requirements and requirements for conditional use permits for schools and churches. A show of hands was taken with all governing members voting in favor with the exception of Councilmember Hill. Motion passed 5-1.

f. Consider ordinance to revise guidance on use of right-of-way to include designated easements.

Mr. Slaugh reported currently there were no ordinances in place governing use of right-of-way in designated easements.

Mr. Reavey stated he thought it would be best to direct staff to research the matter prior to adopting an ordinance. He did not think the city could legally impose requirements on easements since they are normally an agreement between property owners and utility companies.

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to direct staff to research guidelines . A show of hands was taken with all members voting in favor. Motion passed 5-0.

g. Reconsideration of lot split of Lot C-5, Pinehurst North, as requested by Gary Holst.

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to affirm the action of the planning commission. A show of hands was taken with all members voting in favor. Motion passed 5-0.

h. Consider approval of bids for street maintenance projects for 2008.

Project engineer Dave Lutgen pointed out a change that was made to the 2008 Street Maintenance Project following the September 15th meeting. Elm Street ponds with water and was not sure they would be able to do the project this year since it was a major repair project due to the weather. He provided two alternates for Council approval. Total project cost estimated at \$148,645. Holland Construction was low bidder at \$142,256.25.

Engineers Base Estimate		\$126,409.00
Alternate #1	155 th Street Terrace from Walnut Court to Crestwood	\$ 11,789.30
Alternate #2	Walnut Court from 155 th St. Terrance to Cul-De-Sac	\$ 10,446.70

A motion was made by Councilmember Washington and seconded by Councilmember Sifford to approve Holland Construction's bid and approve to do Alternate #1 and

Alternate #2. A show of hands was taken with all members voting in favor. Motion passed 5-0.

i. Consider ordinance and lease agreement with KDOT for certain communication equipment.

A motion was made by Councilmember McDowell and seconded by Councilmember Hill to approve the ordinance and lease agreement as written. A show of hands was taken with all members voting in favor. Motion passed 5-0.

j. Consider waiver of excise tax fee for USD #458 for Elementary School in the amount of \$42,000.

A motion was made by Councilmember Washington and seconded by President Dysart to waive excise tax for elementary school at Basehor Twon Center in the amount of \$42,000. A show of hands was taken with all members voting in favor with the exception of Councilmember Sifford. Motion passed 4-1.

CITY ADMINISTRATOR REPORT

- League of Kansas Municipaliteis Conference, Wichita, KS – October 12-14th
- Legislative Breakfast Meeting - Dec. 2nd at Lansing Community Center
- 150th Intersection – place on agenda for October 13th work session.

MAYOR'S REPORT

- Commended the Basehor Historical Museum Society for a great job at their Open House held on October 4th.
- Alley on 155th Terr. – Mayor Garcia questioned the city superintendent if the alley located on 155th Terr. [south of Leavenworth Road] ever been maintained by city staff. He explained he received a phone call from Lois Fulkerson stating the City caused the problem. He asked city staff to contact Mrs. Fulkerson and Mr. Rosenthal to see the matter could be resolved. Mr. Slauch reported he spoke with J.D. McDowell and the alley has been used as a private drive for two properties. He recommended vacating the alley and returning the land back to the two property owners and let them deal with the issue.

Mr. Smith stated a lot of homes in the older part of town have alleys behind the homes and did not recommend vacating any alley. Mr. Slauch stated the alley only benefits two property owners. Councilmember McDowell stated Mrs. Fulkerson indicated the City caused an erosion problem by some work they had done in the past. Mr. Myracle explained two years ago, the property owners created a brush pile and

created flooding issues. The City excavated the old tube out and replaced the tube. He noted the property owners were advised at that time the city did not maintain alleys. The only other work performed on 155th Terrace was a street overlay and trimmed trees back to the right-of-way.

COUNCIL MEMBER REPORTS

Iris Dysart

- Casey's Law Suit - President Dysart questioned how the Casey's court hearing came out. Mr. Slauch stated the case did not go to court. The city prosecutor stated the City should add language to their ordinance to handle situations like Casey's in the future. At this point Casey's has denied access to staff to inspect the grease traps and felt the City should to add a couple of paragraphs similar to Johnson County which requires an inspection of grease traps every 90 days.
- Mayor & Council Pay Increase – President Dysart posed the question of mayor and city council pay increase. The city clerk reported the 2009 Budget included \$17,200 for the governing body's wages which had been decided during the budget process. Councilmember Washington confirmed that council members would receive \$200 per month and the mayor would receive \$100 per week.

Roger McDowell.

Councilmember McDowell asked if certain controversial issues could be moved to the beginning of the meeting. Mayor Garcia stated council members could vote at the beginning of the meeting to amend the agenda.

Keith Sifford

Councilmember Sifford stated he was glad to see the issue involving USD #458 was finally resolved. He explained he voted against the agenda item because he felt the school district should have included the fees in their bond issue and it was the cost of doing business.

EXECUTIVE SESSION

None

ADJOURNMENT

There being no further business to discuss, a motion was made by Councilmember McDowell and seconded by Councilmember Sifford to adjourn the meeting. A show of hands was taken with all members voting in favor. Motion passed 5-0. Meeting adjourned at 9:50 p.m.

Submitted for Council approval with/without corrections or additions this 20th day of October, 2008.

Mayor Chris Garcia

Attest:

Mary A. Mogle, CMC, City Clerk

CHECK REGISTER REPORT

AS OF 10/13/08

Date: 10/13/2008

Time: 1:29pm

Page: 1

City Of Basehor

BANK: First State Bank

Check Nur	Check Date	Status	Vendor Number	Vendor Name	Check Description	Amount
15849	10/08/2008	Printed	VISA	VISA	ANTIVIRUS SOFTWARE INSTALLED	450.00
15850	10/13/2008	Printed	ADVANCE PE	ADVANCE PEST CONTROL	PEST CONTROL @ WTF & PARK	96.80
15851	10/13/2008	Printed	AT&T	AT&T	PHONE SERVICES WTF/LIFT STATIO	33.16
15852	10/13/2008	Printed	ATMOS ENER	ATMOS ENERGY	UTILITIES - GAS	84.85
15853	10/13/2008	Printed	BON SP FOR	BONNER SPRING FORD	EXTRA KEY/PROGRAM TIRE SENSORS	72.95
15854	10/13/2008	Printed	CARVER	SHELLEY CARVER	MEMBERSHIP/KACE FALL CONFERENC	160.00
15855	10/13/2008	Printed	CASEYS	CASEY'S GENERAL STORES	GAS CITY VEHICLES 08/08	3,155.94
15856	10/13/2008	Printed	CCMFOA	CCMFOA	2009 ANNUAL DUES	75.00
15857	10/13/2008	Printed	CENTRAL DD	CENTRAL POWER SYSTEM & SERVICE	REPAIR FACILITY GENERATOR	2,100.33
15858	10/13/2008	Printed	CINTAS	CINTAS	WEEKLY CLEANING SERVICES	33.45
15859	10/13/2008	Printed	BASEHOR CI	CITY OF BASEHOR	SEWER & SOLID WASTE SERVICES	104.91
15860	10/13/2008	Printed	CONS WATER	CONS RURAL WATER DISTRICT #1	WATER SERVICES	146.82
15861	10/13/2008	Printed	DATAMAX	DATAMAX	BASE RATES/EXCESS COPY CHARGES	264.31
15862	10/13/2008	Printed	E. EDWARDS	E. EDWARDS WORK WEAR	LIGHT WEIGH JACKET-A. JOHNSON	20.00
15863	10/13/2008	Printed	EFTPS	EFTPS	FIT/SS/MEDI WITHHOLDING PYMT	9,368.84
15864	10/13/2008	Printed	FINANCIAL	FINANCIAL PRINTING RESOURCE	ISSUE TEMP NOTES-TOWN CENTER	1,861.46
15865	10/13/2008	Printed	GILMORE B	GILMORE BELL	LEGEL SERVICES-TEMP NOTES BTC	13,350.00
15866	10/13/2008	Printed	GRIFFIN/WI	WILLIAM GRIFFIN	BANKRUPTCY WITHHOLDING PYMT	200.00
15867	10/13/2008	Printed	HARRINGRTO	HARRINGTON FLORAL	PLANT/DELIVERY FUNERAL SERVICE	66.00
15868	10/13/2008	Printed	HEART TOW	HEARTLAND TOW INC	R/R FRONT BRAKES/MOUNT TIRES	522.52
15869	10/13/2008	Printed	JADE ALARM	JADE ALARM COMPANY	ALARM SERVICES CITY HALL/WTF	134.70
15870	10/13/2008	Printed	JOCO ENVIR	JOHNSON COUNTY ENVIRONMENTAL	SAMPLE TESTING 09/11 & 09/18	289.75
15871	10/13/2008	Printed	KS DOR WTH	KANSAS DEPARTMENT OF REVENUE	KS STATE WITHHOLDING	1,359.50
15872	10/13/2008	Printed	KANSAS PAY	KANSAS PAYMENT CENTER	CHILD SUPPORT WITHHOLDING PYMT	379.50
15873	10/13/2008	Printed	KS TREASUR	KANSAS STATE TREASURER	STATE MANDATED COURT FEES	1,017.00
15874	10/13/2008	Printed	KPF EFT	KPF EFT PROGRAM	KPF RETIREMENT WITHHOLDING PYM	2,919.78
15875	10/13/2008	Printed	LAWRENCE	LAWRENCE JOURNAL WORLD	NOTICES/ADVERTISEMENTS	438.45
15876	10/13/2008	Printed	LCDC	LCDC	LCPA BOARD MEETING REGISTRATIO	14.00
15877	10/13/2008	Printed	LEAGUE KM	LEAGUE OF KS MUNICIPALITIES	CITY OFFICIAL/LEADERSHIP ACADE	305.00
15878	10/13/2008	Printed	LEAV PROB	LEAV CTY & CO PROBATION OFFICE	JULY-SEPT PROBATION SERVICES	2,625.00
15879	10/13/2008	Printed	MAAC CLEAN	MAAC CLEANING SPECIALISTS	CLEANING @ CITY HALL	225.00
15880	10/13/2008	Printed	MCAFFEE HEN	MCAFFEE HENDERSON SOLUTIONS	ENGINEERING SERVICES	5,767.50
15881	10/13/2008	Printed	PIERCE	ROBERT PIERCE	REIMBURSE DRINK/ICE-TRAINING	10.04
15882	10/13/2008	Printed	PRAY	WILLIAM E. PRAY	MUNICIPAL COURT JUDGE SERVICES	250.00
15883	10/13/2008	Printed	QUILL	QUILL	OFFICE SUPPLIES	307.84
15884	10/13/2008	Printed	REAVEY LAW	REAVEY LAW LLC	LEGAL SERVICES PROVIDED	1,650.00
15885	10/13/2008	Printed	SMITH VET	SMITH VETRINARY CLINIC INC	BOARDING ANIMALS - CATS	123.00
15886	10/13/2008	Printed	SPAN PUBLI	SPAN PUBLISHING INC	2009 NATIONAL DIRECTORY LAW EN	143.10
15887	10/13/2008	Printed	SUNFLOWER	SUNFLOWER BROADBAND	CABLE/INTERNET/TELEPHONE SERV	462.49
15888	10/13/2008	Printed	SUNFLOW EM	SUNFLOWER EMBROIDERY	EMBROIDERY CITY LOGO-GOV BODY	45.00
15889	10/13/2008	Printed	TRAINING A	TRAINING AT YOUR PLACE	CHANGES WARRENT/30 DAY LTR	170.00
15890	10/13/2008	Printed	TUTTLE VET	TUTTLE VETERINARY CLINIC	IMPOUND CHARGES ANIMALS	55.00
15891	10/13/2008	Printed	TYLER TECH	TYLER TECHNOLOGIES, INC.	ANNUAL MAINTENANCE AGREEMENT	3,188.00
15892	10/13/2008	Printed	WESTAR GRP	WESTAR ENERGY	UTILITIES / STREET LIGHTING	9,042.62
15893	10/13/2008	Printed	WINGFOOT C	WINGFOOT COMMERCIAL TIRE	8 TIRES - PATROL UNITS 01 & 09	880.96

Total Checks:	45	Bank Total:	63,970.57
Total Checks:	45	Grand Total:	63,970.57

BALANCE SHEET

AS OF 10/13/08

Page: 1
10/13/2008
1:39 PM
Balances

Of Basehor

As of: 10/31/2008

Fund: 13 - SUMMATION OF ALL FUNDS

Assets

001 FSB CHECKING ACCOUNT	45,943.86
002 FSB MONEY MARKET ACCOUNT	3,065,127.92
005 BASEHOR TOWN CENTER ACCOUNT	3,642,591.66
016 103-3 OVERNIGHT ACCT MIP	86,199.90
031 30433 CNB 3.10% DUE 10/18/08	800,000.00
045 418000021 COMMERCE 2.5% 11/10	1,400,000.00

Total Assets

9,039,863.34

Liabilities

214 SEWER FUND MONTHLY BALANCE	370,212.35
215 SOLID WASTE MONTHLY BALANCE	86,702.82
216 GENERAL FUND MONTHLY BALANCE	1,539,890.19
218 MUNICIPAL EQUIP FUND MO BAL	140,068.83
219 CAPITAL IMPROVE FUND MO BAL	937,165.75
220 SPECIAL PARK & REC FUND MO BAL	135,890.27
221 CONS HIGHWAY FUND MONTHLY BAL	2,040,946.20
226 BOND & INTEREST MONTHLY BAL	96,601.43
230 TOWN CENTER PROJECT MO BALANCE	3,626,281.20
300 CL MAINTENANCE MONTHLY BALANCE	66,104.30

Total Liabilities

9,039,863.34

Total Liabilities & Balances

9,039,863.34

**REVENUE/EXPENDITURE REPORT
AS OF 10/13/08**

City Of Basehor

or the Period: 1/1/2008 to 10/31/2008	Original Bud.	Amended Bud.	YTD Actual	CURR MTH
Fund: 01 - GENERAL FUND				
Revenues	2,467,360.00	2,467,360.00	1,603,422.90	19,577.50
Expenditures	2,178,959.00	2,178,959.00	1,382,286.72	66,057.46
Net Effect for GENERAL FUND	288,401.00	288,401.00	221,136.18	-46,479.96
Fund: 04 - SPECIAL PARK & RECREATION FUND				
Revenues	35,348.00	35,348.00	17,840.44	200.00
Expenditures	19,500.00	19,500.00	4,610.32	0.00
Net Effect for SPECIAL PARK & RECREATION FUND	15,848.00	15,848.00	13,230.12	200.00
Fund: 05 - SEWER FUND				
Revenues	5,851,539.00	5,851,539.00	678,408.49	3,085.00
Expenditures	5,715,259.00	5,715,259.00	1,185,745.63	14,396.66
Net Effect for SEWER FUND	136,280.00	136,280.00	-507,337.14	-11,311.66
Fund: 07 - CEDAR LAKES MAINTENANCE				
Revenues	14,119.00	14,119.00	10,919.82	0.00
Expenditures	10,500.00	10,500.00	8,338.11	0.00
Net Effect for CEDAR LAKES MAINTENANCE	3,619.00	3,619.00	2,581.71	0.00
Fund: 08 - BOND & INTEREST FUND				
Revenues	890,969.00	890,969.00	1,040,839.85	0.00
Expenditures	1,011,084.00	1,011,084.00	1,010,963.97	0.00
Net Effect for BOND & INTEREST FUND	-120,115.00	-120,115.00	29,875.88	0.00
Fund: 09 - SOLID WASTE FUND				
Revenues	162,744.00	162,744.00	121,290.59	17.46
Expenditures	162,182.00	162,182.00	103,727.94	1,244.52
Net Effect for SOLID WASTE FUND	562.00	562.00	17,562.65	-1,227.06
Fund: 10 - CONSOLIDATED HIGHWAY FUND				
Revenues	787,548.00	787,548.00	376,465.14	0.00
Expenditures	588,700.00	588,700.00	167,316.74	2,527.50
Net Effect for CONSOLIDATED HIGHWAY FUND	198,848.00	198,848.00	209,148.40	-2,527.50
Fund: 11 - MUNICIPAL EQUIP RESERVE FUND				
Revenues	218,247.00	218,247.00	2,352.24	0.00
Expenditures	225,000.00	225,000.00	65,357.57	0.00
Net Effect for MUNICIPAL EQUIP RESERVE FUND	-6,753.00	-6,753.00	-63,005.33	0.00
Fund: 12 - CAPITAL IMPROVEMENT FUND				
Revenues	388,976.00	388,976.00	223,504.92	0.00
Expenditures	375,000.00	375,000.00	0.00	0.00
Net Effect for CAPITAL IMPROVEMENT FUND	13,976.00	13,976.00	223,504.92	0.00
Fund: 18 - BASEHOR TOWN CENTER PROJECT				
Revenues	0.00	0.00	3,780,366.66	0.00
Expenditures	0.00	0.00	154,085.46	15,211.46
Net Effect for BASEHOR TOWN CENTER PROJECT	0.00	0.00	3,626,281.20	-15,211.46

City of Basehor
October 2008 Monthly Calendar of Events

Date	Time	Event	Location
1	8:00 a.m.	Chamber of Commerce Board Mtg	First State Bank & Trust
4	11:00 a.m.	Historical Museum Open House	Museum
6	6:00 p.m.	City Council Work Session & Meeting	City Hall Meeting Room
7	6:30 p.m.	Planning Commission Work Session and Meeting	City Hall Meeting Room
8	4:00 p.m.	Park Advisory Board Meeting	City Hall Meeting Room
9	11:30 a.m.	LCDC Board Meeting	LCDC Office
11 to 14		LKM Annual Conference	Wichita
	6:00 p.m.	City Council Work Session	City Hall Meeting Room
14	1:00 p.m.	Municipal Court	City Hall Meeting Room
20	6:00 p.m.	City Council Work Session & Meeting (Charter Ord. 19, 20, 21, and 22 become law. No protests filed.)	City Hall Meeting Room
23	Noon	Chamber Membership Meeting	Reece Nichols Office
28	3:00 p.m.	LCDC Infrastructure Meeting	LCDC Office
29	11:45 a.m.	Port Authority Meeting	Heritage Center, 109 Delaware
31	9-Noon	Halloween-Daycares & Preschools to Trick or Treat at City Hall	City Hall

Next Meetings:

- November 3, 2008 Work Session & Regular Meeting
- November 10, 2008 Work Session
- November 17, 2008 Work Session & Regular Meeting

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider a request by Lois Fulkerson to resolve issues regarding an alley on 155th Terrace

Department: Administration

Background/Description of Item:

An alley is platted between two duplexes at 2954 and 2956 N. 155th Terrace. Although the alley shows that it goes through the block the use has changed over time so that the alley only serves as an access to the two private duplexes.

Storm drainage from north and south directions on 155th Terrace converges at this alley and keeps washing out the gravel.

The owner of the property to the north, J.D. McDowell made an offer in 2007, after a visit with city staff at the site, to pave the driveway if he could negotiate an agreement with the property owner to the south. He has not managed to make contact with the property owner, but stated in a telephone conversation Oct. 6 that he was still willing to work towards that goal.

The property to the south is managed by Steve Rosenthal.

One option is to vacate the alley, at least the portion between 155th Terrace and the east edge of the north/south alley since the alley is only used for private purposes for the two adjoining property owners. All of the other duplexes along the street have their own private paved driveways.

Another option is for the owners of the two properties to have an agreement and make some lasting improvements to the access.

In either case there remains a problem with the drainage from the street, which is a city responsibility to deal with. An engineer will be requested to look at a low cost solution to the drainage situation that will be consistent with improvements in the area.

If the drive were to be paved and a drainage tube installed the cost might be assessed evenly to both property owners.

Funding Source: Transportation

Recommendation: Discuss the options and give direction to staff.

Prepared by: Carl E. Slaugh, City Administrator
Council Date: October 20, 2008



100 50 0 Feet

LEAVENWORTH RD

ALLEY

155TH TERR

ALLEY



Legend



155 Terrace Alley Vacation

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider approval of an ordinance approving the Kansas Water Pollution Control Revolving Loan Fund (KWPCRLF) for the Wastewater Treatment Plant expansion and other system improvements.

Department: Administration, Sewer

Background/Description of Item:

With the approval by the city council on Oct. 6, 2008 of the WWTF loan amount of \$6,424,516 and the repayment term of 20 years, KDHE has finalized the loan agreement and prepared the accompanying ordinance.

The interest rate of 2.82% is the same for either a 12-year or 20-year payback. Payments start two years after the first draw or one year after completion of the project, whichever comes first.

There is no repayment penalty.

Total repayment is based on the total amount of the loan. Once the project is completed a final amortization will be provided based on the final project cost.

Once the ordinance is passed KDHE will give approval to award the construction contract to CAS Construction, LLC.

\$ 741,566	Eng Design & Mngt
\$ 4,933,000	Construction
\$ -	Line Rehab
\$ 10,000	Admin, legal, other
\$ 739,950	Contingencies 15%
\$ 6,424,516	Total Loan Amount

An ordinance authorizing the execution of a loan agreement between the City of Basehor, Kansas and the State of Kansas, acting by and through the Kansas Department of Health and Environment for the purpose of obtaining a loan from the Kansas Water Pollution Control Revolving Fund for the purpose of financing a wastewater treatment project; establishing a dedicated source of revenue for repayment of such loan; authorizing and approving certain documents in connection therewith; and authorizing certain other actions in connection with the loan agreement.

Recommendation: Approve Ordinance 2008-__ authorizing filing an application with the KDHE for a Loan in the principal amount of approximately \$6,424,516 and a 20-year payback under the Kansas Water Pollution Control Revolving Fund Act for the Wastewater Treatment Facility and authorize the Mayor to sign the necessary documents.

Prepared by: Carl E. Slaugh, City Administrator
Council Date: October 20, 2008



Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

Division of Environment

October 10, 2008

The Honorable Chris Garcia, Mayor
and City Council
City Hall – PO Box 406
2620 N. 155th Street
Basehor, Kansas 66007

Re: Basehor, Kansas
KWPCRF Project No.: C20 1767 01
Final Loan Agreement for Low Interest Loan

Dear Mayor Garcia:

We are pleased to forward two complete copies of the final Loan Agreement documents for the Kansas Water Pollution Control Revolving Fund (KWPCRF) low interest loan financing for the Wastewater Treatment Plant Expansion and Upgrade project and the sewer rehabilitation to reduce I/I project for your review. A copy of these documents has also been forwarded to the City Attorney, Mr. Patrick Reavey, at his office in Kansas City, Missouri for information.

The enclosed documents include the Final Loan Agreement, Draft Form of Opinion of Municipality's Counsel as included in Exhibit G of the Loan Agreement to be executed by the City Attorney, Draft Form of Ordinance of the Governing Body to sign the Loan Agreement, and Draft Form of Excerpt of Minutes regarding Council decision to enter into the Loan Agreement as included in Exhibit F of the Loan Agreement to be passed by the Governing Body and published in the local newspaper.

Presently the City has opened bids September 8, 2008 and a construction contract must be awarded no later than November 7, 2008. Please note the final Loan Agreement includes a completed Exhibit B - Dedicated Source of Revenues and Loan Repayments Schedule, and the interest rate of the loan as shown on Page 6 of the document is 2.82% as developed in accordance with KDHE regulations. The first repayment is due September 1, 2010 and the necessary user charge rates are now in place to insure adequate funds are collected for repayments and increased operation and maintenance costs.

The City Attorney should proceed to execute the Form of Opinion of Municipality's Counsel, and during a council meeting the City should act on the Ordinance of the Governing Body to enter into the Loan Agreement. Following this the authorized representative can sign the Loan Agreement itself, and all required additional

signature pages, and the City Clerk complete and sign the Excerpt of Minutes Regarding Council Decision to enter into the Loan Agreement. Upon return of executed Loan Agreement documents the City may proceed to request payments under this Loan Agreement.

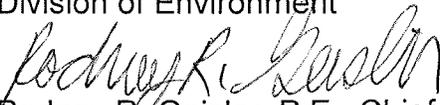
The following items must be returned with the signed loan agreement to the attention of Brenda Diegel, Finance Section:

1. **A copy of the adopted ordinance for the execution of a loan agreement between the municipality and KDHE. (This Form is available by e-mail transmittal in a Word or PDF Format, by contacting Ms. Brenda Diegel at 785-296-4262.)**
2. **A copy of the Affidavit in Proof of Publication for the above mentioned ordinance.**
3. **An original copy of the excerpt of minutes indicating the date the above mentioned ordinance was adopted. (This Form is available by e-mail transmittal in a Word or PDF Format, by contacting Ms. Brenda Diegel at 785-296-4262.)**
4. **The original Opinion of Counsel letter from the City Attorney. (This Form is available by e-mail transmittal in a Word or PDF Format, by contacting Ms. Brenda Diegel at 785-296-4262.)**

We look forward to an early response and working with the City in completing this project. If you should have any questions, please contact Mr. Larry Molder, the KDHE Project Engineer, at 785-296-1567, e-mail lmolder@kdhe.state.ks.us, or me at 785-296-5527, e-mail rgeisler@kdhe.state.ks.us.

Sincerely yours,

Division of Environment


Rodney R. Geisler, P.E., Chief
Municipal Programs Section
Bureau of Water

RRG:eam

Enclosure

Final Loan Agreement

Pc: 2.1 File w/enclosure
Mr. Patrick Reavey, City Attorney w/enclosure
Jeff Keller, Burns & McDonnell w/enclosure
Northeast District
Larry Molder, Rod Geisler

City of Basehor

LOAN AGREEMENT

Between

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
ACTING ON BEHALF OF
THE STATE OF KANSAS

AND

CITY OF BASEHOR, KANSAS
KWPCRF PROJECT NO. C20 1767 01

EFFECTIVE AS OF SEPTEMBER 29, 2008

The interest of the Kansas Department of Health and Environment ("KDHE") in the Loan Repayments to be made by the Municipality and certain other revenues (the "Revenues") under this Loan Agreement have been pledged and assigned to the Kansas Development Finance Authority (the "Authority") pursuant to a Pledge Agreement, between KDHE and the Authority. The interest of the Authority in the Revenues has been pledged as security for the payment of the principal of, redemption premium, if any, and interest on the Authority's Kansas Water Pollution Control Revolving Fund Revenue Bonds, pursuant to a Master Bond Resolution adopted by the Authority.

LOAN AGREEMENT

Table of Contents

Recitals	1
ARTICLE I - DEFINITIONS	
Section 1.01 Definitions	2
Section 1.02 Rules of Interpretation	5
ARTICLE II - LOAN TERMS	
Section 2.01 Amount of the Loan	6
Section 2.02 Interest Rate	6
Section 2.03 Disbursement of Loan Proceeds	6
Section 2.04 Schedule of Compliance; Completion of Project	7
Section 2.05 Repayment of the Loan	8
Section 2.06 Additional Payments	8
ARTICLE III - REPRESENTATIONS AND COVENANTS OF MUNICIPALITY	
Section 3.01 Representations of the Municipality	9
Section 3.02 Particular Covenants of the Municipality	10
ARTICLE IV - ASSIGNMENT	
Section 4.01 Assignment and transfer by KDHE	14
Section 4.02 Assignment by the Municipality	14
ARTICLE V - EVENTS OF DEFAULT AND REMEDIES	
Section 5.01 Notice of Default	15
Section 5.02 Remedies on Default	15
Section 5.03 Expenses	15
Section 5.04 Application of Moneys	16
Section 5.05 No Remedy Exclusive; Waiver; Notice	16
Section 5.06 Retention of Rights	16
Section 5.07 Financial and Management	16

ARTICLE VI - MISCELLANEOUS

Section 6.01 Notices..... 17

Section 6.02 Binding Effect 18

Section 6.03 Severability 18

Section 6.04 Amendments, Supplements and Modifications 18

Section 6.05 Execution in Counterparts 18

Section 6.06 Governing Law and Regulations..... 18

Section 6.07 Consents and Approvals 18

Section 6.08 Further Assurances 18

Signatures and Seal 19

Exhibit A - Description of the Project 20

Exhibit B - Dedicated Source of Revenues and Loan
Repayment Schedule 21

Exhibit C - Conditions Applicable to Construction of the Project..... 23

Exhibit D - Use of Loan Proceeds..... 28

Exhibit E - Instructions for Requesting Disbursements 29

Exhibit F - Form of Municipality Ordinance 33

Exhibit G- Form of Opinion of Municipality's Counsel 39

Exhibit H - Municipality's Notice Address..... 42

**KANSAS WATER POLLUTION CONTROL REVOLVING FUND
LOAN AGREEMENT**

THIS LOAN AGREEMENT, effective as of September 29, 2008 by and between the KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT ("KDHE"), acting on behalf of THE STATE OF KANSAS (the "State"), and THE CITY OF BASEHOR, KANSAS, a "Municipality" according to K.S.A. 65-3321 hereinafter referenced as the "Municipality";

WITNESSETH:

WHEREAS, the Federal Water Quality Act of 1987 (the "Federal Act") established a state revolving fund program as a means to phase-out the Environmental Protection Agency (EPA) construction grants program and replace it with a revolving loan program operated by the individual states; and

WHEREAS, to fund the state revolving fund program, the EPA will make annual capitalization grants to the states, on the condition that each state provide a state match for such state's revolving fund; and

WHEREAS, by passage of the Kansas Water Pollution Control Revolving Fund Act, K.S.A. 65-3321 through 65-3329, inclusive (the "Loan Act"), the State of Kansas (the "State") has established the Kansas Water Pollution Control Revolving Fund (the "Revolving Fund") for purposes of the Federal Act; and

WHEREAS, under the Loan Act, the Secretary (the "Secretary") of the Kansas Department of Health and Environment ("KDHE") is given the responsibility for administration and management of the Revolving Fund; and

WHEREAS, the Secretary, the Kansas Department of Administration, Division of Accounts and Reports ("the DOA"), and the Kansas Development Finance Authority (the "Authority") have entered into an Inter-Agency Agreement effective March 1, 1999, (the "Inter-Agency Agreement"), to define the cooperative relationship between KDHE, DOA, and the Authority, to jointly administer certain provisions of the Loan Act; and

WHEREAS, the Authority and KDHE have supplemented the Inter-Agency Agreement by entering into a Combined Master Pledge Agreement, dated as of November 1, 1992, as the same has been amended and may be further amended and supplemented from time to time, (jointly the "Pledge Agreement"), pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities (as defined in the Loan Act) for Wastewater Treatment Projects (the "Projects") and to pledge the Loan Repayments received pursuant to such Loan Agreements and certain other revenues to the Authority; and

WHEREAS, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the "Bonds") for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act);

WHEREAS, the Municipality has made timely application to KDHE for a Loan to finance all or a portion of the Project Costs; and

WHEREAS, KDHE has approved the Municipality's application for a Loan, subject to the receipt of capitalization grants from the EPA pursuant to the Federal Act and proceeds of the Bonds when issued by the Authority; and

NOW, THEREFORE, for and in consideration of the award of the Loan by KDHE, the Municipality agrees to complete its Project and to perform under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as a part hereof, as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

"Act" means the Constitution and laws of the State, including particularly the Loan Act and K.S.A. 74-8905(a), as amended and supplemented.

"Additional Payments" means the payments described in **Section 2.06** hereof.

"Additional Revenue Obligations" means any obligation for the payment of money undertaken by the Municipality which is payable from or secured by a pledge of, or lien upon, the System Revenues incurred after the date of execution and delivery of this Loan Agreement, and all Existing Revenue Obligations.

"Authority" means the Kansas Development Finance Authority, a public body politic and corporate and an instrumentality of the State, and its successors and assigns.

"Authorized Municipality Representative" means any person authorized pursuant to a resolution of the governing body of the Municipality to perform any act or execute any document relating to the Loan, or this Loan Agreement.

"Bonds" means the Kansas Development Finance Authority, Water Pollution Control Revolving Loan Fund Revenue Bonds, issued in one or more series, pursuant to Master Bond Resolution No. 37, and supplements thereto.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations thereunder promulgated by the Department of the Treasury.

"Dedicated Source of Revenue" shall have the meaning ascribed thereto in *Exhibit B* attached hereto.

"EPA" means the Environmental Protection Agency of the United States, its successors and assigns.

"Event of Default" means any occurrence of the following events:

(a) failure by the Municipality to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due;

(b) failure by the Municipality to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Municipality by KDHE, unless KDHE shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in such notice is correctable but cannot be corrected within the applicable period KDHE may not unreasonably withhold its consent to an extension of such time up to 90 days from the delivery of the written notice referred to above if corrective action is instituted by the Municipality within the applicable period and diligently pursued until the Event of Default is corrected;

(c) failure by the KDHE to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Agreement which shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to KDHE by the Municipality, unless the Municipality shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Municipality may not unreasonably withhold its consent to an extension of such time up to 90 days from the delivery of the written notice referred to above if corrective action is instituted by KDHE within the applicable period and diligently pursued until the Event of Default is corrected;

(d) any representation made by or on behalf of the Municipality contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is intentionally false or misleading in any material respect;

(e) any representation made by or on behalf of KDHE contained in this Agreement, or in any instrument furnished in compliance with or with reference to this Agreement, is intentionally false or misleading in any material respect;

(f) a petition is filed by or against the Municipality under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Municipality, such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal;

(g) the Municipality shall generally fail to pay its debts as such debts become due;

(h) failure of KDHE to promptly pay any Project Costs when reasonably requested to do so by the Municipality pursuant to **Section 2.03** hereof.

"Existing Revenue Obligation" means any obligation for the payment of money undertaken by the Municipality, which is payable from or secured, by a pledge of, or lien upon, the System Revenues existing or outstanding at the time of execution and delivery of this Loan Agreement by the Municipality.

"Federal Act" means the Federal Water Quality Act of 1987, as amended.

"GAAP" means generally accepted accounting principles as applicable to municipal utility systems.

"Indebtedness" means any financial obligation of the Municipality evidenced by an instrument executed by the Municipality, including this Loan, Existing Revenue Obligations, Additional Revenue Obligations, general obligation bonds or notes, lease or lease-purchase agreement or similar financial transactions.

"KDHE" means the Kansas Department of Health and Environment or its successors in interest.

"Loan Act" means the Constitution and laws of the State of Kansas, including particularly K.S.A. 65-3321 through 65-3329, inclusive, as amended and supplemented.

"Loan Agreement" means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Loan Repayments" means the payments payable by the Municipality pursuant to **Section 2.05** of this Loan Agreement.

"Loan Terms" means the terms of this Loan Agreement provided in **Article II** hereof.

"Municipality" means Basehor, Kansas, its successors and assigns.

"Project" means the acquisition, construction, improvement, repair, rehabilitation or extension of the System described in **Exhibit A** hereto, which constitutes a project pursuant to the Loan Act for which KDHE is making a Loan to the Municipality pursuant to this Loan Agreement.

"Project Costs" means all costs or expenses which are necessary or incident to the Project and which are directly attributable thereto, including, but not limited to: (a) costs of any Loan reserves; (b) interest on the Loan during the construction of the Project; (c) principal of and interest on any temporary financing obligations issued by the Municipality to pay Project Costs; and (d) financing and administrative costs associated with the Loan Agreement.

"Regulations" means Kansas Administrative Regulations (K.A.R.) 28-16-110 to 28-16-138, and any amendments thereto promulgated by KDHE pursuant to the Loan Act.

"Revolving Fund" means the Kansas Water Pollution Control Revolving Fund established by the Loan Act.

"SEC Rule" means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as may be amended from time to time or such other similar rule regarding disclosure of information in securities transactions.

"Secretary" means the Secretary of KDHE

"State" means the State of Kansas, acting, unless otherwise specifically indicated, by and through KDHE, and its successors and assigns.

"System" means the wastewater collection and treatment system of the Municipality, as the same may be modified or enlarged from time to time, including the Project described in **Exhibit A**, for which the Municipality is making the borrowing under this Loan Agreement, which constitutes or includes a Wastewater Treatment System.

"System Revenues" means all revenues derived by the Municipality from the ownership and operation of the System.

"Wastewater Treatment System" means any Wastewater Treatment Works, as defined in the Federal Act, that is publicly owned, and as further described in the Regulations.

Section 1.02. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(c) All references in this Loan Agreement to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this Loan Agreement as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or other subdivision.

(d) The Table of Contents and the Article and Section headings of this Loan Agreement shall not be treated as a part of this Loan Agreement or as affecting the true meaning of the provisions hereof.

ARTICLE II

LOAN TERMS

Section 2.01. Amount of the Loan. Subject to all of the terms, provisions and conditions of this Loan Agreement, and subject to the availability of State and Federal funds and proceeds of Bonds, KDHE will loan an amount not to exceed Six Million Four Hundred Seventeen Thousand Sixteen Dollars [\$6,417,016] to the Municipality to pay all or a portion of Project Costs described in **Exhibit A** hereto. The final actual amount of the Loan may be reduced without revision of any other terms, provisions or conditions of this Loan Agreement, other than the Loan Repayment Schedule (**Exhibit B** hereto), to reflect reductions in the estimated or actual total Project Costs as impacted by opening of bids for construction, change orders, final actual costs, and prepayments. The Municipality shall be responsible for any costs incurred by the Municipality in connection with the Project in addition to the amount of the Loan. Any amendment to **Exhibit B** shall be effected by written amendment to the Loan Agreement executed by all parties.

Section 2.02. Interest Rate. The interest rate on the loan shall be [Gross Loan Rate] 2.82% per annum, which shall be assessed on the unpaid principal balance to be paid as set out in the Loan Repayment Schedule, **Exhibit B** hereto. This interest rate consists of a net loan interest rate, and a service fee, as described in **Exhibit B**. Any subsequent revision to the amount of the Loan or **Exhibit B** hereto shall not change the gross interest rate on the Loan.

Section 2.03. Disbursement of Loan Proceeds.

(a) Subject to the conditions described in this Section, KDHE agrees to disburse the proceeds of the Loan during the progress of the Project for Project Costs. Requests for disbursement may be submitted by the Municipality (in substantially the form attached hereto as **Exhibit E**), not more than once per month, in accordance with the procedures set forth by KDHE. Any request for disbursement must be supported by proper invoices and a certificate of the Authorized Municipality Representative to the effect that all representations made in this Loan Agreement remain true as of the date of the request

and, based upon that information then available to such person, no adverse developments affecting the financial condition of the Municipality or its ability to complete the Project or to repay the Loan have occurred.

The Municipality may request disbursement for the following Project Costs:

(1) any eligible planning/design costs incurred prior to execution of this Loan Agreement;

(2) disbursement for eligible Project Costs if such Project Costs have been incurred and are due and payable to Project contractors (actual payment of such Project Costs by the Municipality is not required as a condition of the payment request); or

(3) interest becoming due on the Loan prior to the initial scheduled payment of principal; and

(4) the principal of and interest on any temporary financing obligations issued by the Municipality to pay Project Costs.

(b) KDHE shall not be under any obligation to disburse any Loan proceeds to the Municipality under this Loan Agreement unless:

(1) there are moneys available in the Revolving Fund to fund the Loan, as determined solely by KDHE;

(2) the Municipality shall certify to KDHE that it has executed a Project contract or contracts and has funds available to pay for that portion of the Project Costs not eligible (pursuant to the Loan Act or the Federal Act) to be funded under this Loan Agreement, if any;

(3) no Event of Default by the Municipality shall have occurred and be continuing; and

(4) the Municipality continues to maintain reasonable progress towards completion of the Project.

Section 2.04. Schedule of Compliance; Completion of Project.

(a) The Municipality agrees to complete the Project in accordance with the Conditions Applicable to Construction of the Project set forth in **Exhibit C** attached hereto.

(b) The completion of the construction of the Project shall be evidenced to KDHE by a certificate signed by the Authorized Municipality Representative stating: (1) that the construction of the Project has been completed in accordance with the plans and specifications therefore; and (2) that all Project Costs have been paid, except Project Costs the payment of which is not yet due or is being retained or contested in good faith by the Municipality. Such certificate shall be given not later than the date established by KDHE, which shall be approximately the date that the Project is capable of being placed into operation by the Municipality. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 2.05. Repayment of the Loan.

(a) *Loan Repayments.* The Municipality shall pay to KDHE, on or before the due dates, installments of principal and interest on the Loan in accordance with *Exhibit B* attached hereto, until the Loan has been paid in full. Installments of principal and interest on the Loan shall be computed and paid in accordance with the Loan Repayment Schedule on *Exhibit B* as in effect at any time under this Loan Agreement. Notwithstanding any other provision of this Loan Agreement, the first payment of principal and interest due on the Loan shall be made the earlier of two years after receipt by the Municipality of the first disbursement under the Loan or one year after Project completion. The final installment of principal under the Loan shall be fully repaid not later than 20 years after Project completion.

(b) *Prepayment of the Loan.* The Municipality may prepay the outstanding principal of the Loan, in whole, or in part, at any time, without penalty, upon giving 60 days written notice to KDHE of its intent to so prepay; provided, however, a partial prepayment may be made only if the prepayment amount is the greater of 10% of the original principal amount of the Loan or \$50,000. A new *Exhibit B* will be prepared by KDHE following receipt of any acceptable partial prepayment, re-amortizing the remaining principal amount over the remaining term of the Loan.

Section 2.06. Additional Payments. The Municipality shall pay as Additional Payments the following amounts:

(a) Any amounts required to be paid by the Authority to the United States of America as arbitrage rebate, arising due to the Municipality's failure to expend proceeds of the Loan at the times certified to KDHE by the Municipality, that result in arbitrage rebate liability for the Authority, but only to the extent that the funds in the Rebate Fund established by the Master Resolution are insufficient to make such payments; and.

(b) All other payments of whatever nature which the Municipality has agreed to pay or assume hereunder.

ARTICLE III

REPRESENTATIONS AND COVENANTS OF MUNICIPALITY

Section 3.01. Representations of the Municipality. The Municipality makes the following representations:

(a) ***Organization and Authority.***

(1) The Municipality is a municipal corporation duly created and validly existing under and pursuant to the constitution and statutes of the State.

(2) The Municipality has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain its System, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement.

(3) The Ordinance (adopted substantially in the form attached hereto as ***Exhibit F***) and other proceedings of the Municipality's governing body approving this Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Municipality, and authorizing the Municipality to undertake and complete the Project have been duly and lawfully adopted.

(4) This Loan Agreement has been duly authorized, executed and delivered on behalf of the Municipality, and, constitutes the legal, valid and binding obligation of the Municipality enforceable in accordance with its terms.

(b) ***Full Disclosure.*** To the best knowledge of the Municipality, there is no fact that the Municipality has not disclosed to KDHE in writing on the Municipality's application for the Loan or otherwise that materially adversely affects or that will materially adversely affect the properties, activities, or its System, or the ability of the Municipality to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreement under this Loan Agreement.

(c) ***Non-Litigation.*** There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way: (1) the legal organization of the Municipality; (2) its boundaries; (3) the right or title of any of its officers to their respective offices; (4) the legality of any official act taken in connection with obtaining the Loan; (5) the constitutionality or validity of the indebtedness represented by the Loan Agreement; (6) any of the proceedings had in relation to the authorization or execution of this Loan Agreement; (7) the collection of revenues of the System; (8) the levy and collection of unlimited *ad valorem* taxes to pay the principal of and interest on the Loan; or (9) the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(d) **Compliance with Existing Laws and Agreements.** To the best knowledge of the Municipality, the authorization, execution and delivery of this Loan Agreement by the Municipality, and the performance by the Municipality of its duties, covenants, obligations and agreements thereunder will not result in any breach of any existing law or agreement to which the Municipality is a party.

(e) **No Defaults.** No event has occurred and no condition exists that would constitute an Event of Default. The Municipality is not presently aware of any violation of any agreement, which would materially adversely affect the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(f) **Compliance with Law.** The Municipality has, to the best of the Authorized Municipality's Representative's knowledge:

(1) complied with all laws, ordinances, governmental rules and regulations to which it is subject, including, without limitation, any public hearing or public notice requirements or environmental review requirements contained in the Loan Act, the Regulations and the Federal Act, the failure to comply with which would materially adversely affect the ability of the Municipality to conduct its activities, enter into this Loan Agreement or undertake or complete the Project; and

(2) obtained all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property which, if not obtained, would materially adversely affect the ability of the Municipality to complete the Project or operate the Project.

(g) **Use of Loan Proceeds.** The Municipality will apply the proceeds of the Loan as described in **Exhibit D**: (1) to finance or refinance a portion of the Project Cost; and (2) where applicable, to reimburse the Municipality for a portion of the Project Costs, which portion was paid or incurred in anticipation of reimbursement by KDHE and is eligible for such reimbursement pursuant to the Regulations and the Code.

(h) **Project Costs.** The Municipality certifies that the Project Costs, as listed in **Exhibit D**, is a reasonable and accurate estimation and, upon direction of KDHE, will supply the same with a certificate from its engineer stating that such Costs are reasonable and accurate estimations, taking into account investment income to be realized during the course of construction of the Project, if any, and other lawfully available money that would, absent the Loan, have been used to pay the Project Costs.

Section 3.02. Particular Covenants of the Municipality.

(a) **Dedicated Source of Revenue for Repayment of the Loan.** The Municipality hereby establishes the Dedicated Source of Revenue described on **Exhibit B** attached hereto, which Dedicated Source of Revenue is hereby pledged to the Loan Repayments, Additional Payments and all other obligations of the Municipality under this Loan Agreement.

(b) **Performance Under Loan Agreement.** The Municipality covenants and agrees in the performance of its obligations under this Loan Agreement:

(1) to comply with all applicable State and federal laws, rules and regulations (including, but not limited to the conditions set forth in **Exhibit C** hereto) as are applicable to this Loan Agreement; and

(2) to cooperate with KDHE in the observance and performance of the respective duties, covenants, obligations and agreements of the Municipality and KDHE under this Loan Agreement (including, without limitation the requirements contained in **Exhibit C** hereto).

(c) **Completion of Project and Provision of Moneys Therefore.** The Municipality covenants and agrees:

(1) to exercise its best efforts in accordance with prudent utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date set forth in **Exhibit C** hereto; and

(2) to provide, from its own financial resources, all moneys, in excess of the total amount of proceeds it receives under the Loan, required to complete the Project.

(d) **Delivery of Documents and Payment of Fees.** Concurrently with the delivery of this Loan Agreement and the closing of the Loan, the Municipality will cause to be delivered to KDHE:

(1) fully executed counterparts of this Loan Agreement;

(2) copies of the ordinance of the governing body of the Municipality authorizing the execution and delivery of this Loan Agreement, certified by an Authorized Municipality Representative, which shall be in substantially the form attached hereto as **Exhibit F** together with an affidavit of publication thereof in the official newspaper of the Municipality;

(3) an opinion of the Municipality's counsel substantially in the form set forth in **Exhibit G** attached hereto;

(4) such other certificates, documents, opinions and information as KDHE may reasonably require.

(e) **Operation and Maintenance of System.** The Municipality covenants and agrees that it shall, in accordance with prudent wastewater treatment utility practice:

(1) at all times operate the properties of its System in an efficient manner in accordance with applicable laws and regulations;

(2) maintain its System, making all necessary and proper repairs, renewals, replacements, additions, betterments and improvements necessary to maintain its System in good repair, working order and operating condition;

(3) implement any modification of the rates fees and charges for use of the System that comprise the Dedicated Source of Revenues as the Secretary may require to ensure repayment of the Loan in accordance with the provisions of the Loan Act; and

(4) take such other action as the Secretary may require in accordance with powers granted to the Secretary under the Loan Act and the Regulations.

(f) **Disposition of System.** The Municipality shall not sell, lease or otherwise transfer ownership of all or substantially all of its System without the consent of the Secretary. In no event shall the Municipality sell, abandon or otherwise transfer ownership of the System to any person or entity other than a city, county, township, sewer district, improvement district, or other political subdivision of the State, or any combination thereof, that has legal responsibility to treat wastewater. The Municipality shall provide the Secretary with ninety (90) days' prior written notice to KDHE of such sale, lease or transfer. No such sale, lease or transfer shall be effective unless compliance is with the provisions of *Section 4.02* hereof, assuming such sale, lease or transfer is deemed to be an assignment for the purposes of such Section. The provisions of this paragraph shall not be construed to prohibit the lease of portions of the System by the Municipality in connection with a lease-purchase transaction to finance improvements to the System; provided that a termination or an event of default by the Municipality under such arrangement shall not have a material adverse effect on the Municipality's Dedicated Source of Revenues.

(g) **Records and Accounts**

(1) The Municipality shall keep accurate records and accounts for its System (the "System Records"), separate and distinct from its other records and accounts (the "General Accounts"). Such System Records shall be audited annually in accordance with generally accepted auditing standards if the total Disbursement of Loan Proceeds exceed \$25,000 for the Municipalities fiscal year. This audit shall be completed by an independent certified public accountant or firm of independent certified public accountants, or by an independent registered municipal accountant, and may be part of the single agency audit made on the Municipality's General Accounts in accordance with the Federal Single Audit Act of 1984, OMB Circular No. A-133, **Audits of States, Local Governments, and Non-Profit Organizations** as amended in 1996 and 2003 and as may be further amended and revised. Such System Records and General Accounts shall be made available for inspection by KDHE at any reasonable time, and a copy of the Municipality's annual audit, including all written comments and recommendations of such accountant, shall be furnished to KDHE within 270 days of the close of the Municipal Fiscal Year being so audited.

(2) The Municipality shall maintain Project accounts in accordance with generally accepted government accounting standards defined in the Government Accounting, Auditing, and Financial Reporting Manual (1994 Ed.), or any revised edition, issued by the Government Finance Officers Association.

(h) **Inspections.** The Municipality shall permit the EPA, KDHE and any party designated by KDHE to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, including the System Records and General Accounts, and shall supply such reports and information as the EPA and KDHE may reasonably require in connection therewith.

(i) **Financial Information.** The Municipality specifically agrees to provide to KDHE a reasonable number of copies of such financial information and operating data of the Municipality and the System to the extent necessary for KDHE to comply with its continuing disclosure obligations set forth in the SEC Rule and the Pledge Agreement. Such financial information shall be accompanied by an audit report prepared in accordance with the provisions of *subsection (g)(2)* hereof, unless such subsection exempts the Municipality from such audit report requirement. The financial information shall be prepared in accordance with GAAP, unless the Municipality has received a waiver from such requirement as permitted by State Law. Any such requested financial information and operating data shall be supplied to KDHE within 270 days after the end of the Municipal Fiscal Year. Such requirement may be satisfied by submitting the Municipality's comprehensive annual financial report (CAFR) and/or annual report of its System, unless KDHE notifies the Municipality of the need for additional information. If an audit report is required to be prepared, but is not available within 270 days of the end of the Municipal Fiscal Year, un-audited financial information shall be provided to KDHE pending receipt of the audit report. In addition, the Municipality shall provide KDHE with prompt notification of the occurrence of certain material events. For purposes of this paragraph, "material event" shall mean: (a) principal and interest payment delinquencies on any Indebtedness; (b) non-payment related defaults in agreements authorizing any Indebtedness; (c) rating changes on any Indebtedness; (d) adverse tax opinions or events affecting the tax-exempt status of any Indebtedness; or (e) unscheduled draws on debt service reserves or credit enhancements on any Indebtedness reflecting financial difficulties.

(j) **Insurance.** The Municipality will carry and maintain such reasonable amount of all-risk insurance on all properties and all operations of its System as would be carried by similar municipal operators of Systems, insofar as the properties are of an insurable nature. The Municipality also will carry general liability insurance in amounts not less than the maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, or other similar future law (currently \$500,000 per occurrence).

(k) **Notice of Material Adverse Change.** The Municipality shall promptly notify KDHE of any material adverse change in the activities, prospects or condition (financial or otherwise) of the System, or in the ability of the Municipality to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(l) **Additional Covenants and Requirements.** The parties hereto acknowledge that this Loan Agreement may be assigned or pledged to secure financings of the Authority. Should it be necessary to modify any covenants or obtain or enhance the security of the financings, the parties agree to take all reasonable actions and make reasonable covenants and agreements necessary to accomplish such purpose to the extent permitted by applicable laws.

ARTICLE IV

ASSIGNMENT

Section 4.01. Assignment and Transfer by KDHE. The Municipality hereby approves and consents to any assignment or transfer of this Loan Agreement that KDHE deems necessary in connection with the operation and administration of the Revolving Fund. The Municipality hereby specifically approves the assignment and pledging of the Loan Repayments and Additional Payments to the Authority, and the Authority's pledging of all or a portion of the same to the Bonds.

Section 4.02. Assignment by the Municipality. This Loan Agreement may not be assigned by the Municipality for any reason, unless the following conditions shall be satisfied:

(a) KDHE and the Authority shall have approved said assignment in writing;

(b) the assignee is a city, county, township, sewer district, improvement district or other political subdivision of the State or any combination thereof that has legal responsibility to treat wastewater;

(c) the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Municipality's duties, covenants, and obligations under this Loan Agreement; provided, however, such assignment shall not relieve the Municipality of its duties, covenants, and obligations under this Loan Agreement;

(d) the assignment will not adversely impact KDHE's ability to meet its duties, covenants and obligations to the Authority under the Pledge Agreement, nor may the sale endanger the exclusion from gross income for federal income tax purposes of the interest on the Bonds; and

(e) the Municipality shall, at its expense, provide KDHE and the Authority with an opinion of a qualified attorney that each of the conditions set forth in *subparagraphs (b), (c), and (d)* hereof have been met.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Notice of Default. If an Event of Default shall occur, the non-defaulting party shall give the party in default and the Authority prompt telephonic notice of the occurrence of such Event of Default, provided the non-defaulting party has knowledge of such Event of Default. Such telephonic notice shall be immediately followed by written notice of such Event of Default given in the manner set forth in **Section 6.01** hereof.

Section 5.02. Remedies on Default.

(a) Whenever an Event of Default shall have occurred and be continuing, KDHE or the Municipality shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and to become due or to enforce the performance and observance of any obligation or agreement of KDHE or the Municipality (including, without limitation, withholding remaining Loan disbursements, cancellation of the Loan Agreement and acceleration of the remaining scheduled principal payments set forth on **Exhibit B**, or such other remedies provided to the Secretary in the Loan Act and the Regulations.

(b) Upon the occurrence of an Event of Default on the part of KDHE, and to the extent permitted by law and availability of appropriated funds by the Kansas Legislature, KDHE shall, on demand, pay to the Municipality the reasonable fees and expenses incurred by the Municipality in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of KDHE contained herein. Prior to incurring any such expenses, the Municipality shall provide written notice to KDHE that it intends to incur such expenses; provided, however, a failure by the Municipality to give such notice shall not affect the Municipality's right to receive payment for such expenses. Upon request by KDHE, the Municipality shall provide copies of statements evidencing the fees and expenses for which the Municipality is requesting payment.

Section 5.03. Expenses. Upon the occurrence of an Event of Default on the part of the Municipality, and to the extent permitted by law, the Municipality shall, on demand, pay to KDHE the reasonable fees and expenses incurred by KDHE in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the Municipality contained herein. Prior to incurring any such expenses, KDHE shall provide written notice

to the Municipality that it intends to incur such expenses; provided, however, a failure by KDHE to give such notice shall not affect KDHE's right to receive payment for such expenses. Upon request by the Municipality, KDHE shall provide copies of statements evidencing the fees and expenses for which KDHE is requesting payment.

Section 5.04. Application of Moneys. Any moneys collected by KDHE pursuant to **Section 5.02** hereof shall be applied: (a) first, to pay interest on the Loan as the same becomes due and payable; (b) second, to pay principal due and payable on the Loan; (c) third, to pay expenses owed by the Municipality pursuant to **Section 5.03** hereof; and (d) fourth, to pay any other amounts due and payable hereunder as such amounts become due and payable.

Section 5.05. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Parties hereto is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. The parties hereto, in good faith, shall exercise such remedies with due diligence in a timely manner, however, no delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the parties hereto to exercise any remedy reserved to them in this **Article V**, it shall not be necessary to give any notice, other than such notice as may be required in this **Article V**.

Section 5.06. Retention of Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the parties hereto shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the defaulting party at law or in equity, as such party may, in its discretion, deem necessary to enforce the obligations of the defaulting party pursuant to this Loan Agreement.

Section 5.07. Financial and Management. Upon failure of the Municipality to pay one or more installments of the Loan Repayments in a timely manner, or in the event that the Secretary deems it advisable or necessary, the Secretary, after consultation with the governing body of the Municipality, may require the Municipality to undergo a financial and management operations review. The governing body shall correct any deficiencies noted during such review and adopt charges or surcharges as may be required by the Secretary during the term of this Loan Agreement.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when: (a) hand delivered; (b) mailed by registered or certified United States mail, postage prepaid; or (c) via telefax, with confirmation in the manner set forth in *subsection (b)*, to the parties hereinafter set forth at the following addresses:

- (1) to KDHE:

Department of Health and
Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367
Attention: Bureau of Water

with a copy to its General Counsel

- (2) to the Authority:

Kansas Development Finance
Authority
555 South Kansas Avenue, Suite 202
Topeka, Kansas 66603
Attention: President,

with a copy to its General Counsel

- (3) to the Municipality:

at the address set forth on *Exhibit H*.

All notices given by telefax as aforesaid shall be deemed given as of the date of evidence of receipt thereof by the recipient. All notices given by registered or certified mail as aforesaid shall be deemed duly given as of the date they are so deposited in the United States Postal Service, if postage is prepaid. Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

Section 6.02. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon KDHE and the Municipality and their respective successors and assigns.

Section 6.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 6.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Authority.

Section 6.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 6.06. Governing Law and Regulations. This Loan Agreement shall be governed by and construed in accordance with the laws of the State, including the Loan Act and the Regulations, which Regulations are, by this reference thereto, incorporated herein as a part of this Loan Agreement.

Section 6.07. Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the Secretary.

Section 6.08. Further Assurances. The Municipality shall, at the request of KDHE, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be reasonably necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

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IN WITNESS WHEREOF, KDHE and the Municipality have caused this Loan Agreement to be executed, sealed and delivered, effective as of the date above first written.



THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT, acting on behalf of THE STATE OF KANSAS

By: 
Title: Secretary

"KDHE"

Date: 10/9/08

BASEHOR, KANSAS

(Seal)

By: _____
Title: Mayor

"Municipality"

Date: _____

ATTEST:

By: _____
Title: Clerk

EXHIBIT A

DESCRIPTION OF THE PROJECT

Upgrade and expansion of the wastewater treatment facility and sewer rehabilitation for inflow and infiltration reduction.

EXHIBIT B

DEDICATED SOURCE OF REVENUES AND LOAN REPAYMENT SCHEDULE

Dedicated Source of Revenue.

The Municipality shall impose and collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide System Revenues or levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce amounts which are sufficient to (a) pay the cost of the operation and maintenance of the System, (b) pay the principal of and interest on the Loan as and when the same become due, and (c) pay all other amounts due at any time under the Loan Agreement; provided, however, no lien or other security interest is granted by the Municipality to KDHE on the System Revenues under this Agreement. In the event that the System Revenues are insufficient to meet the obligations under the Loan and the Loan Agreement, the Municipality shall levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce the amounts necessary for the prompt payment of the obligations under the Loan and Loan Agreement.

The Municipality and KDHE have agreed that interest becoming due semiannually on the Loan during the construction period for the Project may be capitalized and repaid as a part of the Loan. In this regard, KDHE shall give the Municipality written notice of each semiannual installment of interest becoming due during the construction period. At its option, the Municipality may elect to pay such amounts, and if so elected, must pay such amounts within 30 days of receipt of the notice of their becoming due. If the Municipality does not elect to pay such amounts within 30 days of receipt of such notice, the amount then due and owing as semiannual interest on the Loan shall be capitalized and added to the principal amount of the Loan and shall bear interest at the rate of interest set forth in **Section 2.02** hereof.

KANSAS WATER POLLUTION CONTROL REVOLVING LOAN FUND

Estimated Draws - Actual Interest Rate
Amortization of Loan Costs

Project Principal: 6,360,508.00
Interest During Const.: 51,498.43
Service Fee During Const.: 5,009.57
Gross Loan Costs: 6,417,016.00

Prepared for:
City of Basehor, Project No. C20 1767-01

9/30/2008
Gross Rate: 2.82%
Service Fee Rate: 0.25%
Loan Interest Rate: 2.57%
1st Payment Date: 9/1/2010
Number of Payments: 40

Payment Number	Payment Date	Beginning Balance	Interest Payment	Principal Payment	Service Fee	Total Payment	Ending Balance
1	9/1/2010	6,417,016.00	82,458.66	120,514.74	8,021.26	210,994.66	6,296,501.26
2	3/1/2011	6,296,501.26	80,910.04	122,214.00	7,870.62	210,994.66	6,174,287.26
3	9/1/2011	6,174,287.26	79,339.59	123,937.21	7,717.86	210,994.66	6,050,350.05
4	3/1/2012	6,050,350.05	77,747.00	125,684.72	7,562.94	210,994.66	5,924,665.33
5	9/1/2012	5,924,665.33	76,131.95	127,456.88	7,405.83	210,994.66	5,797,208.45
6	3/1/2013	5,797,208.45	74,494.13	129,254.03	7,246.50	210,994.66	5,667,954.42
7	9/1/2013	5,667,954.42	72,833.21	131,076.51	7,084.94	210,994.66	5,536,877.91
8	3/1/2014	5,536,877.91	71,148.88	132,924.69	6,921.09	210,994.66	5,403,953.22
9	9/1/2014	5,403,953.22	69,440.80	134,798.92	6,754.94	210,994.66	5,269,154.30
10	3/1/2015	5,269,154.30	67,708.63	136,699.59	6,586.44	210,994.66	5,132,454.71
11	9/1/2015	5,132,454.71	65,952.04	138,627.05	6,415.57	210,994.66	4,993,827.66
12	3/1/2016	4,993,827.66	64,170.69	140,581.69	6,242.28	210,994.66	4,853,245.97
13	9/1/2016	4,853,245.97	62,364.21	142,563.90	6,066.55	210,994.66	4,710,682.07
14	3/1/2017	4,710,682.07	60,532.26	144,574.05	5,888.35	210,994.66	4,566,108.02
15	9/1/2017	4,566,108.02	58,674.49	146,612.53	5,707.64	210,994.66	4,419,495.49
16	3/1/2018	4,419,495.49	56,790.52	148,679.78	5,524.36	210,994.66	4,270,815.71
17	9/1/2018	4,270,815.71	54,879.98	150,776.16	5,338.52	210,994.66	4,120,039.55
18	3/1/2019	4,120,039.55	52,942.51	152,902.11	5,150.04	210,994.66	3,967,137.44
19	9/1/2019	3,967,137.44	50,977.72	155,058.03	4,958.91	210,994.66	3,812,079.41
20	3/1/2020	3,812,079.41	48,985.22	157,244.35	4,765.09	210,994.66	3,654,835.06
21	9/1/2020	3,654,835.06	46,964.63	159,461.49	4,568.54	210,994.66	3,495,373.57
22	3/1/2021	3,495,373.57	44,915.55	161,709.90	4,369.21	210,994.66	3,333,663.67
23	9/1/2021	3,333,663.67	42,837.58	163,990.01	4,167.07	210,994.66	3,169,673.66
24	3/1/2022	3,169,673.66	40,730.31	166,302.27	3,962.08	210,994.66	3,003,371.39
25	9/1/2022	3,003,371.39	38,593.32	168,647.13	3,754.21	210,994.66	2,834,724.26
26	3/1/2023	2,834,724.26	36,426.21	171,025.05	3,543.40	210,994.66	2,663,699.21
27	9/1/2023	2,663,699.21	34,228.53	173,436.51	3,329.62	210,994.66	2,490,262.70
28	3/1/2024	2,490,262.70	31,999.88	175,881.96	3,112.82	210,994.66	2,314,380.74
29	9/1/2024	2,314,380.74	29,739.79	178,361.90	2,892.97	210,994.66	2,136,018.84
30	3/1/2025	2,136,018.84	27,447.84	180,876.80	2,670.02	210,994.66	1,955,142.04
31	9/1/2025	1,955,142.04	25,123.58	183,427.16	2,443.92	210,994.66	1,771,714.88
32	3/1/2026	1,771,714.88	22,766.54	186,013.48	2,214.64	210,994.66	1,585,701.40
33	9/1/2026	1,585,701.40	20,376.26	188,636.28	1,982.12	210,994.66	1,397,065.12
34	3/1/2027	1,397,065.12	17,952.29	191,296.05	1,746.32	210,994.66	1,205,769.07
35	9/1/2027	1,205,769.07	15,494.13	193,993.32	1,507.21	210,994.66	1,011,775.75
36	3/1/2028	1,011,775.75	13,001.32	196,728.63	1,264.71	210,994.66	815,047.12
37	9/1/2028	815,047.12	10,473.36	199,502.50	1,018.80	210,994.66	615,544.62
38	3/1/2029	615,544.62	7,909.75	202,315.49	769.42	210,994.66	413,229.13
39	9/1/2029	413,229.13	5,309.99	205,168.13	516.54	210,994.66	208,061.00
40	3/1/2030	208,061.00	2,673.58	208,061.00	260.08	210,994.66	0.00
41	9/1/2030	0.00	0.00	0.00	0.00	0.00	0.00
		Totals	1,843,446.97	6,417,016.00	179,323.43	8,439,786.40	

EXHIBIT C

CONDITIONS APPLICABLE TO CONSTRUCTION OF THE PROJECT

1. Municipality agrees to expeditiously initiate and complete the Project in accordance with the following schedule:

Wastewater Treatment Facility Contract

- a. Advertising for bids within 30 days of authorization to advertise.
- b. Bid opening within 30 days of advertisement for bids.
- c. Contract award within 60 days of bid opening.
- d. Issuance of notice to proceed within 30 days of contract award.
- e. Initiation of operation within 365 days of notice to proceed or no later than March 1, 2010.
- f. Finalization of construction within 400 days of notice to proceed.
- g. Project Performance Certification 365 days following Initiation of Operation.

Sewer Rehabilitation I/I Reduction Contract

- a. Advertising for bids within 30 days of authorization to advertise.
- b. Bid opening within 30 days of advertisement for bids.
- c. Contract award within 60 days of bid opening.
- d. Issuance of notice to proceed within 30 days of contract award.
- e. Initiation of operation within 365 days of notice to proceed or no later than March 1, 2010.
- f. Finalization of construction within 400 days of notice to proceed.
- g. Project Performance Certification 365 days following Initiation of Operation.

No change may be implemented by the Municipality, which will delay or accelerate this schedule without prior approval of KDHE. KDHE must be promptly notified of any proposed changes.

2. A final plan of operation and draft operation and maintenance manual shall be submitted by the Municipality for approval by KDHE at or prior to 50 percent construction completion. The plan of operation must include, but is not limited to, an assessment of the employee skills necessary to carry out the operation and maintenance function and a training plan designed to provide employees with the necessary skills. Details on the skills assessment must be submitted along with the final plan of operation. Necessary training as indicated by the skills assessment must be provided in accordance with the approved training plan.
3. The final operation and maintenance manual must be submitted to KDHE at or prior to 90 percent construction completion.

4. The rates and ordinances enacting the approved user charge system and sewer use requirements as approved by KDHE shall be enacted prior to initiation of operation.
5. The Municipality agrees to make prompt payment to its contractor(s) of sums due for construction and to retain only such amounts as may be justified by specific circumstances and provisions of this Loan Agreement or the construction contract.
6. The Municipality will obtain a signed Certificate of Non-Segregated Facilities from the prime contractor prior to the award of a construction contract if the contract exceeds \$10,000 and is not exempt from the provisions of the equal opportunity clause. The Municipality will assure that the prime contractor obtains a signed copy of Certificate of Non-Segregated Facilities from each subcontractor prior to the award of any subcontract exceeding \$10,000, which is not exempt from the provisions of the equal opportunity clause. The certificate signed by the prime contractor is to be kept on file with the Municipality; and certificates signed by subcontractors are to be kept on file with the prime contractor.
7. The Municipality agrees that all bid solicitations will include the following statement in the "Advertisement for Bids" for this project:

Nondiscrimination in Employment

Bidders on this work will be required to comply with the President's Executive Order No. 11246 as amended. Requirements for bidders and contractors under this order are explained in the specifications.

8. a. The Municipality agrees 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. as provided by law and to include those provisions in every contract or purchase order so that they are binding upon such subcontractors or vendors.
- b. The Municipality agrees that all bid solicitations will include the following statement in the "Information to Bidders" for this project:

"Bidders on this work, including subcontractors or vendors, will be required 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.)".

Currently there is no reporting procedure associated with this requirement.

9.
 - a. The Municipality hereby agrees to take affirmative steps set out in 40 CFR - 31.36(e), as required by K.A.R. 28-16-133, to contract with minority and women owned disadvantaged businesses; and ensure that its consultant(s)/contractor(s) take affirmative steps to contract with Disadvantaged Business Enterprises during all phases of work funded under this Loan Agreement. Accordingly, the Municipality should include the following prescribed information in solicitation documents: EPA Region VII Procedures for Implementation of 40 CFR 31.36(e), the KDHE Disadvantaged Business Enterprise Information Sheet, and the Minority and Women's Enterprise Utilization Worksheet.
 - b. The Municipality agrees to submit to KDHE a completed EPA Form 5700-52A within 15 days after the end of each Federal fiscal quarter during which the recipient or its contractors award any subagreements to a minority or women's disadvantaged business for building and building-related services and supplies.
10. The Municipality agrees and is required to utilize the following affirmative steps in accordance with Section 129 of Public Law 100-590, Small Business Administration Reauthorization and Amendment Act of 1988, when awarding any contracts under this loan.
 - a. Placing Small Businesses in Rural Areas (SBRA) on solicitation lists;
 - b. Making sure that SBRA's are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRA's;
 - d. Establishing delivering schedules, where the requirements of work will permit, which would encourage participation by SBRA's;
 - e. Using the services of Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and
 - f. Requiring the contractor to take the affirmative steps in subparagraphs a. through e. of this part if subcontracts are awarded.
11. The Municipality hereby assures that the engineering firm principally responsible for supervising construction and for providing engineering services during construction will continue its relationship with the Municipality for a period of up to one year after initiation of operation of the Project. During this period, the engineering firm shall direct the operation of the Project, train operating personnel and prepare curricula and training material for operating personnel. The following specific requirements apply:

- a. The Municipality agrees the performance standards applicable to the Project are:
 - (1) All Construction deficiencies are resolved.
 - (2) The upgraded and expanded wastewater treatment facility is operating in full conformance with the NPDES permit.
 - (3) Infiltration and Inflow have been reduced as planned.
 - b. The final plan of operation (50 percent payment) submitted in accordance with Exhibit C, Condition No. 2 must include a draft proposal for these extended start-up services, based on the complexity of the Project, size and experience of the Municipality's operating staff, effluent characteristics, discharge requirements and other pertinent factors.
 - c. The final operation and maintenance manual (90 percent payment) submitted in accordance with Exhibit C, Condition No. 3 must be accompanied by a final proposal for these services.
 - d. One year after completion of construction and initiation of operation of the Project, the Municipality shall certify to KDHE whether or not such Project meets the design specifications and effluent limitations contained in subparagraph a. of this condition. Any statement of non-compliance must be accompanied by a corrective action report containing: an analysis of the cause of the Project's inability to meet performance standards; actions necessary to bring it into compliance, and a reasonably scheduled date for positive certification of the Project. Timely corrective action will be executed by the Municipality.
 - e. Municipality agrees to furnish KDHE with a quarterly report describing actions taken to date to achieve positive certification, planned future activities, the Project's status and potential for positive certifications.
12. The Municipality agrees that all bid solicitations will include the following statement:
- "The prospective participants must certify by submittal of EPA Form 5700-49 "Certification Regarding Debarment, Suspension and Other Responsibility Matters" that, to the best of its knowledge and belief, it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency."

The Municipality acknowledges that doing business with any party appearing in the "List of Parties Excluded from Federal Procurement or Non Procurement Programs" may result in disallowance of federal funds under this Loan Agreement and may also result in suspension or debarment under this Part.

13. The Municipality shall follow applicable state procurement laws and regulations, and procedures established by the Secretary of KDHE as presented in Water Quality Policy Memorandum No. 98-1 dated February 2003 - Final. KDHE approval is required prior to procurement.
14. This Project is consistent with the Kansas Water Quality Management Plan, subject to the provisions of Section 208(d) and 208(e) of the Federal Water Pollution Control Act, as amended. Service by the Project will not be denied or conditioned on the basis of factors or issues unrelated to wastewater management.
15. The Environmental Clearance Document "Finding of No Significant Impact" (FONSI) will be placed on 30 day public notice for comment. The Municipality agrees and consents to KDHE's authority to monitor and enforce compliance with any mitigative measures identified as a result of the environmental clearance process. Any such mitigative measures will be presented within an Amendment to this Loan Agreement.
16. The municipality hereby agrees to implement measures to mitigate all known adverse environmental effects of this project. The following mitigative actions are required: Subject to environmental clearance.

EXHIBIT D

USE OF LOAN PROCEEDS

The proposed project will provide for upgrade and expansion of the wastewater treatment facility and sewer rehabilitation for inflow and infiltration reduction.

The loan proceeds will be utilized to pay the costs of:

1. Construction: All actual construction costs of the wastewater collection, pumping, and treatment plant modifications.
2. Engineering: All actual costs of construction services including basic services, design, bidding, inspection, final plan of operation, user charge and sewer use ordinance development, one year project performance evaluation, and all items as included in the engineering contract between
3. Administrative: All reasonable costs of legal and financial administrative support directly provided for the project.

Unallowable Costs: The costs of full time employees of the municipality, purchase of land and easements, repairs and replacement of privately owned sewers outside the easement or public right-of-way.

EXHIBIT E

INSTRUCTIONS FOR REQUESTING DISBURSEMENTS

1. All payment requests must be filed on the Outlay Report and Request for Disbursement Form and represent the actual completion level of the project at the date the request is prepared.
2. All cost entries must be based upon allowable work in place, which is due and payable. This means that you may **not** request payment for:
 - a. Any work or services, which have not been explicitly approved by the KDHE in the Loan Agreement or subsequent amendments.
 - b. Any work performed under a change order unless written approval of the change order has been given by the State.
 - c. Any ineligible project costs.
 - d. Any retainage which you are withholding from the construction contractor, engineer, etc.
 - e. Expenditures relating to site acquisition, easements, rights-of way, EXCEPT:
 - (1) additional work required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act such as appraisal and certification services;
 - (2) when the site itself is allowable in accordance with Federal SRF regulations and guidance; and
 - (3) costs incurred in eminent domain proceedings.
 - f. Costs associated with the approval, preparation, issuance and sale of Bonds, and other costs incidental to normal operating overhead of a Municipality, whether performed by Municipal employees, the engineer, or the attorney.

It is essential that you understand the cost basis of the approved Loan amount. It is, therefore, necessary that you read the Loan Agreement (including all conditions) and its transmittal letter, any Loan amendments and Project correspondence, and that you maintain current and accurate files on all approved change orders. Failure to follow these procedures may result in your requesting and subsequently receiving overpayment of loan funds, which later may, in turn, result in substantial inconvenience to you and the Municipality. This could include repayment or crediting to KDHE the interest earned on overpaid funds, and any penalties that can result from this action.

3. **INSTRUCTIONS** - Please type or print legibly. Items 4, 5, 6, and 8.o. are self-explanatory; specific instructions for other items are as follows:

Item	Entry	Item	Entry
2.	This space is reserved for the assigned KDHE project number. Enter complete project identification number e.g., C20 0681 02.	8f	Enter inspection and audit fees of construction and related programs.
3	Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project.	8g	Enter those amounts associated with the actual construction of, addition to, or restoration of a facility.
7.	The employer identification number assigned by the U.S. Internal Revenue Service MUST be entered to assist in processing of your Disbursement Request.	8h	Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.
8.	Use only columns (a), (b), and (c).	8i	Enter the amounts for all items not specifically mentioned above.
8a	Enter amounts expended for such items as travel, legal fees, rental of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.	8j	Enter the total cumulative amount to date which should be the sum of lines a through i.
8b	Enter amounts pertaining to the work of location and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.	8k	Enter the total amount of program income applied to the loan agreement. Identify on a separate sheet of paper the sources and types of the income.
8c	Enter all amounts directly associated with the acquisition of land, existing structures and related right-of-way.	8l	Enter the net cumulative amount to date which should be the amount shown on line j minus the amount on line k.
8d	Enter basic fees for services of architectural engineers.	8m	Enter the amount of reimbursements paid to date.
8e	Enter other architectural engineering services. Do not include any amounts shown on line d.		

- n Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines l and m. If different, explain on a separate sheet.
- 9b Leave blank, this is to be completed by the funding agency official representative who is certifying to the percent of project completion as provided for in the terms of the loan agreement.
- 9a To be completed and signed by the duly authorized recipient official. The date should be the actual date the form is submitted to the funding agency.

4. **NOTE: ONE ORIGINAL SIGNATURE DISBURSEMENT REQUESTS AND ONE SET OF SUPPORTING DOCUMENTATION MUST BE SUBMITTED. Submit disbursement requests directly to:**

Kansas Department of Health & Environment
Bureau of Water
Municipal Programs
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367

You should retain one copy for your records.

- 5. The Authorized Municipality Representative identified in the Loan Agreement remains the principal contact for all project matters.

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EXHIBIT E

KWPCRF or KPWSLF OUTLAY REPORT AND REQUEST FOR DISBURSEMENT e Instructions)	1. AGENCY TO WHICH THIS REPORT IS SUBMITTED: KDHE - BUREAU OF WATER MUNICIPAL PROGRAMS SECTION OR PUBLIC WATER SUPPLY SECTION	2. KDHE PROJECT NUMBER ASSIGNED KWPCRF PROJECT # C20 _____ KPWSLF PROJECT # _____
--	--	---

3. TYPE OF REQUEST: FINAL _____ PARTIAL _____	4. PAYMENT REQUEST NUMBER # _____	5. PERIOD COVERED BY THIS REPORT FROM (Mo, day, year) TO (Mo, day, year)
--	--------------------------------------	---

6. RECIPIENT ORGANIZATION INFORMATION NAME : NO. & STREET : CITY : STATE AND ZIP CODE	7. FEIN NUMBER:
---	-----------------

8. TO: THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT, ACTING ON BEHALF OF THE STATE OF KANSAS UNDER THE LOAN AGREEMENT EFFECTIVE AS OF _____, BETWEEN KDHE AND the _____.

The undersigned hereby requests that the following amounts be paid to the following payees for the following Project Costs as defined in said Agreement:

CLASSIFICATION	(a) Total amount requested	(b) Payee	(c) Description	Total Approved (KDHE use only)
a. Administrative expense				See KDHE Attached Sheet or Reverse Side
b. Preliminary expense (Planning and Design)				
c. Land, structures, right-of-way (Not allowable)				
d. Architectural engineering basic fees				
e. Other architectural engineering fees				
f. Project inspection fees				
g. Construction and project improvement cost				
h. Equipment (By Separate Contract)				
i. Miscellaneous cost				
Total cumulative to date (sum of lines a thru i)	\$0.00			
k. Deductions for program income				
l. Net cumulative to date (Line j minus line k)	\$0.00			
m. Disbursements Paid to Date				
n. Amount due this Request (Line l minus Line m)	\$0.00			
o. Percentage of physical completion of project				

9. CERTIFICATION: I hereby state and certify that: (i) the amounts requested are or were necessary and appropriate in connection with the purchase, construction and installation of the Project, have been properly incurred and are a proper disbursement of the proceeds of the Loan and that an inspection has been performed and all work is in accordance with the terms of the Loan; have been paid or are justly due to the persons whose names and addresses are stated above; and have not been the basis of any previous requisition from the proceeds of the Loan; (ii) as of this date, except for the amounts specified above, there are no outstanding statements which are due and payable for labor, wages, materials, supplies or services in connection with the acquisition, purchase, construction, improvement, repair, rehabilitation or extension of the Wastewater Treatment Works or the Water Supply/Treatment/Distribution Works; (iii) all representations made in the Agreement remain true as of the date of this request; and (iv) no adverse developments affecting the financial condition of the Recipient or its ability to complete the Project or to repay the Loan have occurred.

a. RECIPIENT:	b. KDHE Representative Certifying to line 8.n. Rodney R. Geisler or David F. Waldo
Signature of Authorized Certifying Official	Signature of Authorized Certifying Official See KDHE Attached Sheet or Reverse Side
Typed or Printed Name and Title	Typed or Printed Name and Title Chief, Municipal Programs Section or Public Water Supply
Date Submitted	Telephone (Area Code, number & ext.)
Date Approved	Telephone (Area Code, number & ext.) 785-296-5527 or 296-5503

*** AMOUNT ROUNDED DOWN TO NEAREST WHOLE DOLLAR PER KWPCRF PROGRAM REQUIREMENT.**

EXHIBIT F

FORM OF MUNICIPALITY ORDINANCE

* * * * *

EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF BASEHOR, KANSAS
HELD ON [ORDINANCE DATE]

The Governing Body of the City met in [regular/special] session at the usual meeting place in the City, at [meeting time], the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

(Other Proceedings)

Thereupon, there was presented an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN THE CITY OF BASEHOR, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS WATER POLLUTION CONTROL REVOLVING FUND FOR THE PURPOSE OF FINANCING A WASTEWATER TREATMENT PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENT.

Thereupon, Council member _____ moved that said Ordinance be passed. The motion was seconded by Council member _____. Said Ordinance was duly read and considered, and upon being put, the motion for the passage of said Ordinance was carried by the vote of the Governing Body, the vote being as follows:

Yes: _____.

No: _____.

Thereupon, the Mayor declared said Ordinance duly passed and the Ordinance was then duly numbered Ordinance No. _____ and was signed and approved by the Mayor and attested by the Clerk. The Clerk was directed to publish the Ordinance one time in the official newspaper of the City.

(Other Proceedings)

On motion duly made, seconded and carried, the meeting thereupon adjourned.

(SEAL)

Clerk

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(Published in [Official City Newspaper] on [publication date])

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN THE CITY OF BASEHOR, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS WATER POLLUTION CONTROL REVOLVING FUND FOR THE PURPOSE OF FINANCING A WASTEWATER TREATMENT PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENT.

WHEREAS, the Federal Water Quality Act of 1987 (the "Federal Act") established revolving fund program for public wastewater treatment systems to assist in financing the costs of infrastructure needed to achieve or maintain compliance with the Federal Act and to protect the public health and authorized the Environmental Protection Agency (the "EPA") to administer a revolving loan program operated by the individual states; and

WHEREAS, to fund the state revolving fund program, the EPA will make annual capitalization grants to the states, on the condition that each state provide a state match for such state's revolving fund; and

WHEREAS, by passage of the Kansas Water Pollution Control Revolving Fund Act, K.S.A. 65-3321 through 65-3329, inclusive (the "Loan Act"), the State of Kansas (the "State") has established the Kansas Water Pollution Control Revolving Fund (the "Revolving Fund") for purposes of the Federal Act; and

WHEREAS, under the Loan Act, the Secretary of the Kansas Department of Health and Environment ("KDHE") is given the responsibility for administration and management of the Revolving Fund; and

WHEREAS, the Kansas Development Finance Authority (the "Authority") and KDHE have entered into a Pledge Agreement (the "Pledge Agreement") pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities for public wastewater treatment projects (the "Projects") and to pledge the Loan Repayments (as defined in the Pledge Agreement) received pursuant to such Loan Agreements to the Authority; and

WHEREAS, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the "Bonds") for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act); and

WHEREAS, the City of Basehor, Kansas (the "Municipality") is a municipality as said term is defined in the Loan Act which operates a wastewater collection and treatment system (the "System"); and

WHEREAS, the System is a public Wastewater Treatment Works, as said term is defined in the Loan Act; and

WHEREAS, the Municipality has, pursuant to the Loan Act, submitted an Application to KDHE to obtain a loan from the Revolving Fund to finance the costs of improvements to its System consisting of the following:

Upgrade and expansion of the wastewater treatment facility and sewer rehabilitation for inflow and infiltration reduction (the "Project"); and

WHEREAS, the Municipality has taken all steps necessary and has complied with the provisions of the Loan Act and the provisions of K.A.R. 28-16-110 to 28-16-138 (the "Regulations") applicable thereto necessary to qualify for the loan; and

WHEREAS, KDHE has informed the Municipality that it has been approved for a loan in amount of not to exceed Six Million Four Hundred Seventeen Thousand Sixteen Dollars [\$6,417,016] (the "Loan") in order to finance the Project; and

WHEREAS, the governing body of the Municipality hereby finds and determines that it is necessary and desirable to accept the Loan and to enter into a loan agreement and certain other documents relating thereto, and to take certain actions required in order to implement the Loan Agreement.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BASEHOR, KANSAS:

Section 1. Authorization of Loan Agreement. The Municipality is hereby authorized to accept the Loan and to enter into a certain Loan Agreement, with an effective date of September 29, 2008, with the State of Kansas acting by and through the Kansas Department of Health and Environment (the "Loan Agreement") to finance the Project Costs (as defined in the Loan Agreement). The Mayor and Clerk are hereby authorized to execute the Loan Agreement in substantially the form presented to the governing body this date, with such changes or modifications thereto as may be approved by the Mayor and the City Attorney, the Mayor's execution of the Loan Agreement being conclusive evidence of such approval.

Section 2. Establishment of Dedicated Source of Revenue for Repayment of Loan. Pursuant to the Loan Act, the Municipality hereby establishes a dedicated source of revenue for repayment of the Loan. In accordance therewith, the Municipality shall impose and collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide System Revenues or levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce amounts which are sufficient to (a) pay the cost of the operation and maintenance of the System, (b) pay the principal of and interest on the Loan as and when the same become due, and (c) pay all other amounts due at any time under the Loan Agreement; provided, however, no lien or other security interest is granted by the Municipality to KDHE on the System Revenues under this Agreement. In the event that the System Revenues are insufficient to meet the obligations under the Loan and the Loan Agreement, the Municipality shall levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce the amounts necessary for the prompt payment of the obligations under the Loan and Loan Agreement.

In accordance with the Loan Act, the obligations under the Loan and the Loan Agreement shall not be included within any limitation on the bonded indebtedness of the Municipality.

Section 3. Further Authority. The Mayor, Clerk and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, and to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 4. Governing Law. The Ordinance and the Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

Section 5. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

PASSED by the governing body of the City on [Ordinance Date] and [signed][and **APPROVED**] by the Mayor.

(SEAL)

Mayor

ATTEST:

Clerk

[APPROVED AS TO FORM ONLY.]

[City Attorney]

EXHIBIT G

FORM OF OPINION OF MUNICIPALITY'S COUNSEL

[Closing Date]

Kansas Development Finance Authority
Topeka, Kansas

The Kansas Department of Health and
Environment, acting on behalf of
The State of Kansas
Topeka, Kansas

Re: Loan Agreement effective as of September 29, 2008, between the Kansas Department of Health and Environment ("KDHE"), acting on behalf of the State of Kansas (the "State"), and the City of Basehor, Kansas (the "Municipality")

I have acted as counsel to the Municipality in connection with the authorization, execution and delivery of the above referenced Loan Agreement (the "Loan Agreement"). In my capacity as counsel to the Municipality, I have examined original or certified copies of minutes, ordinances of the Municipality and other documents relating to the authorization of the Project, the authorization, execution and delivery of the Loan Agreement, and the establishment of a Dedicated Source of Revenue (as defined in the Loan Agreement) for repayment of the Loan evidenced by the Loan Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement.

In this connection, I have examined the following:

7. an executed or certified copy of the Loan Agreement;
7. proceedings adopted or taken by the Municipality to authorize and approve the Project to be constructed with the proceeds of the Loan evidenced by the Loan Agreement;

- I Ordinance No. _____ of the Municipality (the "ordinance") adopted on [Ordinance Date], and other proceedings of the Municipality taken and adopted in connection with the authorization, execution and delivery of the Loan Agreement, and the establishment of a Dedicated Source of Revenue for repayment of the Loan evidenced by the Loan Agreement; and
7. such other proceedings, documents and instruments as I have deemed necessary or appropriate to the rendering of the opinions expressed herein.

In this connection, I have reviewed such documents, and have made such investigations of law, as deemed relevant and necessary as the basis for the opinions hereinafter expressed.

Based upon the foregoing, it is my opinion, as of the date hereof, that:

7. The Municipality is a municipal corporation duly created, organized and existing under the laws of the State.
7. The Municipality operates a public Wastewater Treatment Works, as said term is defined in the Loan Act.
7. The Project has been duly authorized by the Municipality.
7. The Municipality has all requisite legal power and authority to, and has been duly authorized under the terms and provisions of the Ordinance to, execute and deliver, and perform its obligations under, the Loan Agreement.
7. The Loan Agreement has been duly authorized, executed and delivered by the Municipality and constitutes a valid and binding agreement of the Municipality enforceable in accordance with its terms, subject as to enforcement of remedies to any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting creditors' rights heretofore or hereafter enacted, and subject further to the exercise of judicial discretion in accordance with general principles of equity. In rendering this opinion I have assumed due authorization, execution and delivery of the Loan Agreement by the State, acting by and through KDHE.
7. The Municipality has duly authorized the Dedicated Source of Revenue for repayment of the Loan to be made pursuant to the Loan Agreement.

7. To the best of my knowledge, the execution and delivery of the Loan Agreement by the Municipality will not conflict with or result in a breach of any of the terms of, or constitute a default under, any ordinance, indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Municipality is a party or by which it or any of its property is bound or any of the rules or regulations applicable to the Municipality or its property or of any court or other governmental body.

Very truly yours,

EXHIBIT H

MUNICIPALITY'S NOTICE ADDRESS

City of Basehor, Kansas
Attn: City Administrator
City Hall – PO Box 406
2620 N. 155th Street
Basehor, Kansas 66007-0406

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider approval of agreements with the Kansas Department of Transportation for receipt of corridor management funding for street projects in Basehor.

Department: Administration and Public Works

Background/Description of Item:

At a meeting with Kansas Department of Transportation (KDOT) officials on March 27, 2008 it was stated that \$600,000 in FY 2009 corridor management funds would be made available to the City of Basehor for corridor projects. At the March 17 city council meeting a decision was made to submit the north portion of 150th Street from Craig Road to Parallel as a number one priority.

At the work session on April 14 more discussion took place on the current and projected projects that may be eligible for corridor funds and their priority. At the April 21, 2008 city council meeting a decision was made to put #1 priority as 150th Street from Craig Road north to Parallel and request \$100,000 in funding and Wolf Creek Parkway from 153rd to 150th Street as #2 priority with a request for \$500,000 in funding.

KDOT reviewed and approved the requested projects. The attached agreements will provide reimbursement of 67% of the total actual costs (right of way acquisition and construction) up to a maximum amount of \$100,000 for 150th Street (Agreement No. 225-08) and a maximum amount of \$500,000 for Wolfcreek Parkway (Agreement No. 224-08).

After discussion at the September 15 city council meeting a recommendation was made to incorporate some deadlines for completion of the projects to ensure that funding remained available or might be shifted to other projects to allow use of the funding within the city. The last revision includes a requirement to have a notice to proceed issued by June 1, 2009 with a projected completion date before July 1, 2010 or the city may request approval of another eligible project in writing to the Secretary by June 1, 2009.

The documents were distributed for discussion at the work session Oct. 13, 2008.

32. To issue a Notice to Proceed for the Project by June 1, 2009 with a projected completion date before July 1, 2010. City may request Secretary's approval of another eligible project within City, provided said request is submitted in writing to Secretary by June 1, 2009. Requests for extension of said dates must also be in writing and approved by Secretary.

Funding Source: Transportation, TDD and Corridor Management Funds

Recommendation: Approve Agreements No. 224-08 (\$500,000) and No. 225-08 (\$100,000) with the Kansas Department of Transportation for construction and right of way acquisition projects with funding in the total amount of \$600,000 and authorize the mayor to sign the necessary documents.

Prepared by: Carl E. Slaugh, City Administrator
Council Date: Oct. 20, 2008

**COOPERATIVE AGREEMENT
REGARDING TRANSPORTATION IMPROVEMENTS
AT THE INTERSECTION OF 150TH STREET AND U.S. HIGHWAY 24/40**

By and Between

THE CITY OF BASEHOR, KANSAS

and

BASEHOR PROPERTIES, L.L.C.

Dated _____, 2008

**COOPERATIVE AGREEMENT
REGARDING TRANSPORTATION IMPROVEMENTS
AT THE INTERSECTION OF 150TH STREET AND U.S. HIGHWAY 24/40**

This Agreement is entered into by and between the CITY OF BASEHOR, KANSAS, a municipal corporation (the "City") and BASEHOR PROPERTIES, L.L.C., a Kansas limited liability company (the "Property Owner") (collectively referred to as the "Parties") and is dated and effective as of the date executed by both parties. In consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

Section 1. Purpose.

The purpose of this Agreement is to outline the rights and obligations of the City and the Property Owner regarding land acquisition and preliminary engineering costs related to the reconstruction of the north portion of 150th Street at its intersection with U.S. Highway 24/40 ("Hwy 24/40") in Basehor, Kansas. It is the intent of the Parties to work together to realign that portion of 150th Street immediately north of its intersection with Hwy 24/40 to a four way intersection design and at the newly constructed intersection (the "Project").

Section 2. The Parties.

(A) The City is a municipal corporation and a city of the third class under the laws of the state of Kansas (the "State"), exercising governmental powers and organized and existing pursuant to K.S.A. 15-101 *et seq.*, and is acting herein according to the authority granted by Article 12, §5 of the Constitution of the State (the "Act") and local implementing legislation. The principal office and mailing address of the City is: 2620 North 155th Street, Basehor, Kansas 66007, Attention: Carl Slaugh, City Administrator. The City has the lawful power and authority to enter into this Agreement and to carry out its obligations under this Agreement. By proper action of its governing body, the City has been duly authorized to execute and deliver this Agreement.

(B) The Property Owner is a limited liability company duly organized and existing under the laws of the state of Kansas. Throughout the term of this Agreement, Property Owner agrees to maintain its status as a domestic corporation, in good standing and authorized to do business in the State. The principal office and mailing address of the Property Owner is: Basehor Properties L.L.C., P.O. Box 516, Basehor, Kansas 66007, Attention: Ed McIntosh, President. Property Owner has the lawful power and authority to enter into this Agreement. By proper action of its members, Property Owner has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized members and officers.

Section 3. 150th Street Right of Way.

(A) The Kansas Department of Transportation ("KDOT") and the City shall enter into an agreement with the City in substantially the form attached hereto as Exhibit A to this Agreement, ("City/KDOT Agreement") wherein KDOT commits to provide \$325,000 in funding for the acquisition and preliminary engineering costs for the Project. Said funding shall be allocated to the Project costs as follows:

Not to exceed \$122,000.00 for acquisition of right of way for the Project;

Not to exceed \$ 78,000.00 for real estate commission fees, title and legal fees, filing fees, building demolition, tire disposal costs, additional site cleanup and delinquent real property taxes; and

Not to exceed \$125,000.00 for preliminary engineering for the Project.

- (B) Property Owner owns real property with frontage on Hwy 24/40 in the City (the "Property"). A certificate of survey of the Property is set forth on Exhibit B to this Agreement.
- (C) Property Owner controls a triangular piece of real property (the "Triangle") located due east of the Property, less the existing 150th Street right of way which crosses the northwest portion of the Triangle. The legal description of the Triangle property is set forth on Exhibit C of this Agreement.
- (D) Property Owner agrees to acquire the Triangle property with funds Property Owner receives from the City as earmarked from the funds received by the City pursuant to the City/KDOT Agreement and agrees to hold the Triangle property as acquired until such times as the necessary right of way is conveyed to the City under the terms of this Agreement. At such time as the Project is designed and the commitments to fund are in place, Property Owner will convey to City the right of way necessary for the realignment of that portion of 150th Street immediately north of Hwy 24/40 at no cost to the City.
- (E) Property Owner agrees to hold harmless, defend and indemnify the City, its agents and employees against and from all damages, expenses and costs incurred by any person for determining and undertaking remedial actions regarding any hazardous waste site which may be discovered on land to be conveyed to the City for the right of way of the newly aligned 150th Street.

It is specifically agreed between the Parties executing this Agreement that any provision of this hazardous waste clause is not intended to make the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party of this Agreement to maintain a suit for personal injuries, property damages, or hazardous waste claims. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third Parties shall remain as imposed by law.

Property Owner, by signing this Agreement with City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any hazardous waste on any right of way acquired by City. City reserves the right to bring any action against any third party for any hazardous waste site on any right of way, easements, and access rights acquired by City.

- (F) At completion of the construction of the Project, City agrees to implement proceedings to vacate the existing 150th Street right of way upon which the street is currently located with the intended result of the Property Owner acquiring the ownership of same via its ownership of the Triangle in which the existing 150th Street right of way traverses as required by law. The legal description of the original right of way conveyance from Alice Drysdale to the City is set forth in Exhibit D of this Agreement. In addition, the City agrees to implement proceedings to vacate the older existing 150th Street right of way which is located on the east boundary of the Triangle property with the intended

result of the Property Owner acquiring the ownership of ½ of said vacated right of way area via its ownership of the Triangle and as required by law.

Section 4. The Project

- (A) Property Owner further agrees to cause the demolition of any existing buildings on the Triangle, dispose of all tires located on the Triangle and any additional site cleanup, with funds Property Owner receives from the City as earmarked from the funds received by the City pursuant to the City/KDOT Agreement.
- (B) Property Owner agrees to cause the preparation of the preliminary design of the Project, with funds Property Owner receives from the City as earmarked from the funds received by the City pursuant to the City/KDOT Agreement
- (C) Parties agree that the Property Owner shall cause the construction of the Project.
- (D) In the event the negotiation of the terms for the commitment to fund the construction of the realigned 150th Street is not completed as evidenced by a State of Kansas approval of the City's application to the State Revolving Loan fund for the Project, all within ninety (90) days of the effective date of this Agreement, then Property Owner shall retain ownership of the entire Triangle and shall commence development of the Property as originally planned.

Section 5. Project Costs Payment Procedures.

(A) The City agrees to pay to the Property Owner, or their agents or contractors the following Project costs in the not to exceed allocations:

- (i) Not to exceed \$122,000.00 for acquisition of right of way for the Project;
- (ii) Not to exceed \$ 78,000.00 for real estate commission fees, title and legal fees, filing fees, building demolition, tire disposal costs, additional site cleanup and delinquent real property taxes; and
- (iii) Not to exceed \$125,000.00 for preliminary engineering for the Project.

(B) The Property Owner shall submit to the City Administrator an invoice signed by the Authorized Property Owner Representative, with supporting documentation identifying the Project Costs for which the Property Owner seeks payment. If applicable, the Property Owner shall provide evidence that no liens exist nor are likely with respect to any construction related costs for which payment is sought, and such other documentation as the City shall reasonably request.

The invoice shall contain a certification by the Authorized Property Owner Representative that the costs submitted for reimbursement are for Project Costs under this Agreement, that such expense has been incurred by the Property Owner, and that such expense has not been previously paid.

For purposes of this Agreement, the term "Authorized Property Owner Representative" shall mean such person as is designated to act on behalf of the Property Owner as evidenced by written certificate furnished to the City, containing the specimen signature of such person and signed on behalf of the Property Owner by its President or any Vice President. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Property Owner Representative.

(C) The City Administrator shall determine whether the cost submitted is for a Project Cost within twenty (20) business days of the date the invoice is submitted by the Property Owner. If the City Administrator determines that such cost is not for a Project Cost under this Agreement, the City Administrator shall notify the Property Owner of such determination in writing. The Property Owner may appeal such denial of payment to the Governing Body by filing with the City Clerk, within seven (7) business days of the receipt of the written denial, a written request to be heard by the Governing Body. The Governing Body shall determine any such request in its sole discretion.

(D) The requested payment shall be made to the Property Owner, its agents or contractors within fifteen (15) days of the approval by the City Administrator or the Governing Body, if required.

Section 6. Default and Remedies.

(A) The failure or delay by either of the Parties to this Agreement to perform any term or provision of this Agreement required of such party, shall be a default under this Agreement, subject to rights of cure and Permitted Delays, as specified below.

(B) Any party to this Agreement claiming a default (the "Claimant") shall give written notice of such claimed default to the other party, describing such default. Such notices shall be given at the addresses of the Parties stated in Section 2 of this Agreement.

(C) A Claimant shall not institute legal proceedings against the other party nor be entitled to damages if, within 14 days from the receipt of a notice of claimed default, the other party undertakes acts to cure, correct or remedy such claimed default, proceeds with due diligence to complete such cure, correction or remedy and such cure correction or remedy is completed within thirty days of the date such party received a notice of default, provided, however, if such default requires more than 30 days to correct, the nonperforming party shall not be deemed in default hereunder if such party commences curing the default within 14 days after receipt of written notice thereof and diligently prosecutes the cure to completion.

Section 7. Governing Law, Jurisdiction.

(A) This Agreement shall be governed by, interpreted and enforced pursuant to the laws of the state of Kansas.

(B) The Parties agree that any legal actions arising out of this Agreement will be instituted in the District Court of Leavenworth County, Kansas or, in the case of federal jurisdiction, in the Federal District Court of the District of Kansas.

Section 8. Rights and Remedies Cumulative, Waivers.

Except as otherwise expressly provided in this Agreement, the rights and remedies of the Parties shall be cumulative, and the exercise by one party of one or more such rights shall not preclude the exercise by it, at the same or different times, of any other rights or remedies specified herein. Any failure or delay by either party in asserting any of its rights and remedies as to any default hereunder shall not operate as a waiver of such default or of any rights or remedies specified hereunder, or deprive either party of its right to assert and enforce any such right or remedy.

Section 9. Amendments.

The Property Owner and the City agree to cooperate and consider reasonable requests for amendments to this Agreement, provided that, any such amendments must be approved by the Governing Body and the Property Owner, shall be in writing, and shall not substantially alter the basic business terms of this Agreement.

Section 10. Notices, Demands, Communications Among Parties.

Written notices, demands and other communications between the City and Property Owner shall be deemed delivered under this Agreement if given by personal service, registered or certified mail, postage prepaid and return receipt requested, or by overnight courier, to the principal offices of the City and the Property Owner set forth in Section 2 of this Agreement.

Section 11. Entire Agreement.

This Agreement is executed in duplicate originals, each of which shall be considered an original. This Agreement includes pages 1 through 5, and Exhibits A, B, and C which constitutes the entire agreement and understanding of the Parties.

This Agreement supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all of any part of the subject matter of this Agreement.

Section 12. Severability.

The invalidity or inability to enforce any one or more phrases, sentences, clauses or sections of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement.

Section 13. No Liability of City Officials or Employees.

All liabilities under this Agreement on the part of the City are solely corporate liabilities of the City, and, no officer, employee, or agent of the City shall have any personal or individual liability under this Agreement for anything done or omitted to be done by the City hereunder.

[Remainder of page intentionally left blank. Signature page follows.]

10/-20/08

DRAFT

IN WITNESS WHEREOF, the Parties have caused this Agreement to be fully executed on _____, 2008 and represent that the individuals executing this Agreement on behalf of the Parties have the express authority to do so.

CITY OF BASEHOR, KANSAS

_____, Mayor

Attest:

City Clerk

BASEHOR PROPERTIES, L.L.C.

By: Ed McIntosh
Title: _____

Attest:

By:
Title:

10/-20/08

DRAFT

EXHIBIT A

**PRELIMINARY DESIGN AND ACQUISITION AGREEMENT
BY AND BETWEEN THE CITY OF BASEHOR, KANSAS
AND
THE KANSAS DEPARTMENT OF TRANSPORTATION**

EXHIBIT B
PROPERTY LEGAL DESCRIPTION

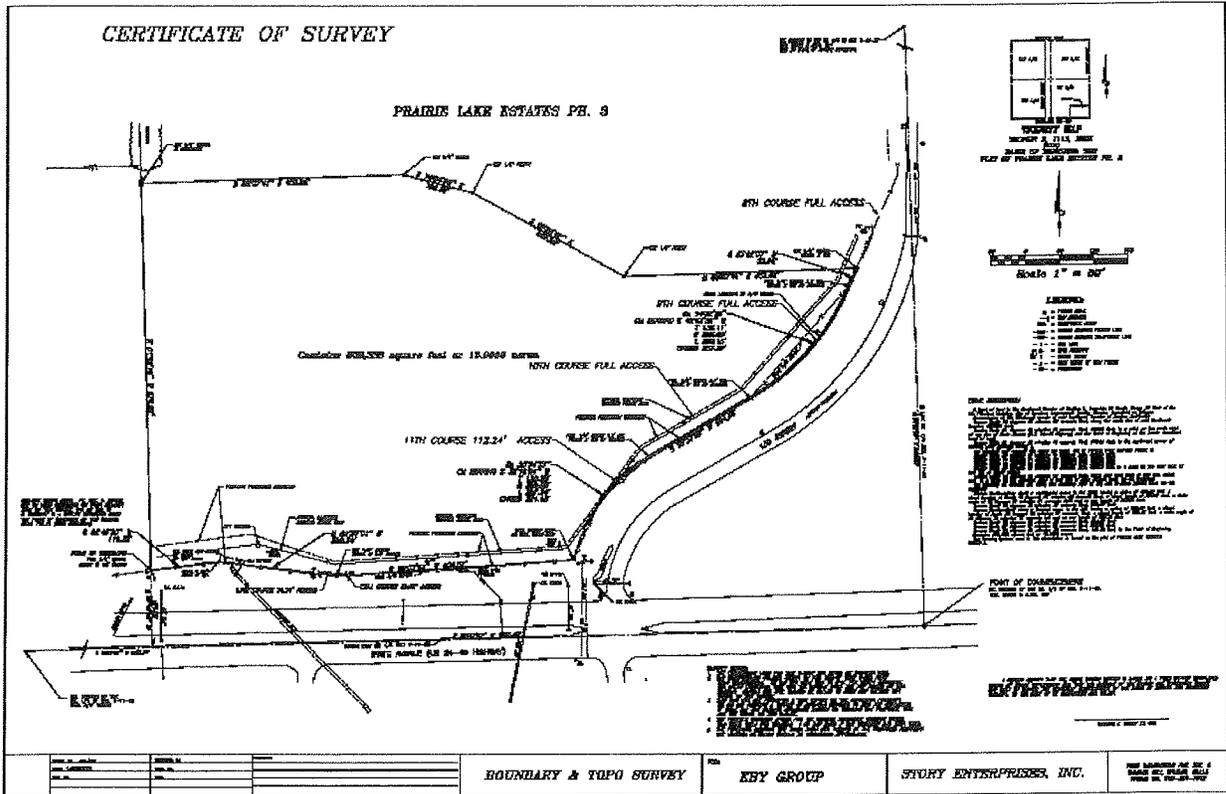


Exhibit D

**LEGAL DESCRIPTION OF DRYSDALE CONVEYANCE OF RIGHT OF WAY
FOR 150TH STREET**

PROJECT NO. 52 KA-1456-01

RIGHT OF WAY ACQUISITION AND ROAD CONSTRUCTION

CITY OF BASEHOR, KANSAS

A G R E E M E N T

PARTIES: **Debra L. Miller, Secretary of Transportation**, Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary," and

City of Basehor, Kansas, hereinafter referred to as the "City,"

Collectively referred to as the "Parties."

PURPOSE: Secretary has authorized a Non-National Highway System city street right of way and construction project, hereinafter referred to as the "Project." Secretary and City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets. City desires to construct the Project on 150th Street from Craig Street north to Parallel Avenue in Basehor, Kansas. Cities, under certain circumstances, are entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such aid, such work is required to be done in accordance with the laws of Kansas.

PROJECT: Secretary and City desire to enter into this Agreement for right of way acquisition and construction of the Project, which is described as follows:

Right of way acquisition and construction of new two-lane road with asphalt, curb and gutter, storm sewer, sidewalk, and street lights on 150th Street from Craig Street north to Parallel Avenue, in conformance with the KDOT Corridor Management Policy.

EFFECTIVE

DATE: The Parties, in consideration of the premises and to secure the approval and construction of the Project, mutually agree to perform in accordance with this Agreement on _____, 200__.

ARTICLE I

SECRETARY AGREES:

1. To provide technical information upon request to help City acquire right of way in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of the KDOT such that City may obtain participation of State funds in the cost of the Project.

2. To reimburse City for sixty-seven percent (67%) of the total actual costs of right of way acquisition and construction (which includes the costs of all construction contingency items), but not to exceed a maximum reimbursement of \$100,000. Secretary shall not be responsible for any right of way acquisition and construction (which includes the costs of all construction contingency items) costs that exceed \$150,000. Secretary agrees to make partial payments to City for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer employed by City that the Project is being constructed within substantial compliance of the plans and specifications. Secretary shall not be responsible for the total actual costs of preliminary engineering, utility adjustments, and construction engineering for the Project.

3. Funding for this Project will remain available until the last day of State Fiscal Year 2009 (June 30, 2009). If a Notice to Proceed for the Project has not been issued by June 1, 2009 with a projected completion date before July 1, 2010, then City may request Secretary's approval of another eligible project within City, provided said request is submitted in writing to Secretary by June 1, 2009. Requests for extension of said dates must also be in writing and approved by Secretary. If a Notice to Proceed has not been issued by June 1, 2009 with a projected completion date before July 1, 2010 or a request for another eligible project has not been made, Secretary may allocate the funds to any project throughout the state that she sees fit.

ARTICLE II

CITY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, to let the contract, to construct the Project in accordance with the design plans, specifications, and City's approved KDOT Project Procedures Manual, supervise the construction and administer the payments due the contractor, including the portion of cost borne by Secretary. City agrees to furnish Secretary one (1) set of plans for his or her records. City further agrees the specifications will require the contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

2. To design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Project Development Manual for Non-National Highway System Local Government Road and Street Projects, Volumes I and II, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, City's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy,

the KDOT Corridor Management Policy, and the latest version, as adopted by Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

3. Upon completion thereof, the design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to Secretary by a licensed professional engineer attesting to the conformity of the design plans with the items in paragraph 2 above. Contracts between City and any consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement shall contain language requiring conformity with paragraph 2 above.

4. City and any consultant retained by City shall have the sole responsibility for the adequacy and accuracy of design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Any review of these items performed by Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of City's and its consultant's duty to provide adequate and accurate design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Such reviews are not done for the benefit of the consultant, the construction contractor, City, or other political subdivision, nor the traveling public. Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or City.

5. A duly appointed representative of City is authorized to sign for City any or all routine reports as may be required or requested by Secretary in the completion of the Project undertaken under this Agreement. The design plans must be signed and sealed by the licensed professional engineer responsible for preparation of the design plans. Geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies. Right of way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the right of way descriptions.

6. It will, in its own name as provided by law, acquire by purchase, dedication or condemnation all of the right of way, easements and access rights shown on the final design plans in accordance with the schedule established by KDOT. City agrees the necessary right of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. City shall certify to Secretary, on forms provided by the Bureau of Local Projects, that such right of way, easements and access rights have been acquired. City further agrees that they will have recorded in the Office of the

Register of Deeds all right of way deeds, dedications, permanent easements and temporary easements.

7. To contact Secretary if there will be any displaced persons on the Project prior to making the offer for the property. The Parties mutually agree Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive and Kansas Administrative Regulations 36-16-1 *et seq.*

8. To provide all legal descriptions required for right of way acquisition work. City further agrees to acquire right of way in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of the KDOT. City agrees copies of all documents including recommendations and coordination for appeal, bills, contracts, journal entries, case files or documentation requested by the Office of Chief Counsel will be sent to the Office of Chief Counsel within the time limits set by Secretary.

9. If federal funds are used in the acquisition of the right of way, any disposal of or change in the use of right of way or in the access after Project construction will require prior written approval by Secretary.

10. It will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipe lines, meters, manholes, and other utilities, publicly or privately owned, which may be necessary to construct the Project in accordance with the final design plans. New or existing utilities 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.

Except as provided by state and federal laws, the expense of the removal or adjustment of the utilities located on public right of way shall be borne by the owners. The expense of the removal or adjustment of privately owned utilities located on private right of way or easement shall be borne by City except as provided by state and federal laws.

11. It will expeditiously take such steps as are necessary to facilitate the early adjustment of utilities, will initiate the removal or adjustment of the utilities, and will proceed with reasonable diligence to prosecute this work to completion. City further agrees to move or adjust or cause to be moved or adjusted all necessary utilities sixty (60) days prior to the scheduled construction letting except those necessary to be adjusted during construction and those which would disturb the existing street surface. City further agrees to certify to Secretary on forms supplied by Secretary all utilities are required to be moved prior to construction have either been moved or a date provided by City as to when, prior to construction, they will be moved. City will initiate and proceed to complete adjusting the remaining utilities that are not required to be moved during construction in order the contractor shall not be delayed in construction of the Project. City will indemnify, hold harmless, and save Secretary and the

construction contractor for damages incurred by Secretary and construction contractor because identified utilities have not been moved or adjusted timely or accurately.

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

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

14. To let the contract for the Project and shall award the contract to the lowest responsible bidder upon concurrence in the award by Secretary. City further agrees to administer the construction of the Project in accordance with the final design plans, the current Project Development Manual for Non-National Highway System Local Government Road and Street Projects, Volumes I and II, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, City's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable, and administer the payments due the contractor, including the portion of the cost borne by Secretary and City.

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

16. To require the contractor to indemnify, hold harmless, and save Secretary and City 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 Secretary or City defends a third party's claim, the contractor shall indemnify Secretary and City for damages paid to the third party and all related expenses that either Secretary or City or both incur in defending the claim.

17. To provide the construction inspection in accordance the current Project Development Manual for Non-National Highway System Local Government Road and Street

Projects, Volumes I and II, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, City's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

18. To be responsible for thirty-three percent (33%) of the total actual costs of right of way and construction (which includes the costs of all construction contingency items), up to \$150,000. In addition, City agrees to be responsible for one hundred percent (100%) of the right of way and construction (which includes the costs of all construction contingency items) costs exceeding \$150,000. City further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, utility adjustments, and construction engineering for the Project.

19. To be responsible for one hundred percent (100%) of any Project costs incurred by City for the Project prior to the funding for the Project being authorized, obligated, and approved by Secretary.

20. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the right of way shown on the final design plans for this Project, and it will initiate and proceed with diligence to remove or require the removal of the encroachments. It is further agreed all such encroachments be removed before the Project is advertised for letting (provided, however, if Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between City and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project, Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). City further agrees it will not in the future permit the erection of gas and fuel dispensing pumps upon the right of way of the Project and will require that any gas and fuel dispensing pumps erected, moved or installed along the Project be placed no less than twelve (12) feet back of the right of way line. All right of way provided for the Project shall be used solely for public street purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the right of way limits except as provided by state and federal laws.

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

22. To locate and be responsible for all costs necessary to remedy or clean up any hazardous waste site, including, but not limited to, leaking underground storage tanks discovered on right of way, easements and access rights acquired by City. City shall be responsible to Secretary for all damages, fines or penalties, expenses, claims and costs incurred by Secretary from any hazardous waste site discovered on right of way, easements and access rights acquired

by City prior to commencement of construction of the Project. City shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. City will investigate any and all hazardous waste sites discovered during construction of the Project on City owned land within the Project boundary and shall take appropriate action to contain or remediate such hazardous waste sites.

For any hazardous waste site, including, but not limited to, leaking underground storage tanks, City shall hold harmless, defend and indemnify Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources.

It is specifically agreed between the Parties executing this Agreement that any provision of this hazardous waste clause is not intended to make the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party of this Agreement to maintain a suit for personal injuries, property damages, or hazardous waste claims. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third Parties shall remain as imposed by law.

City, by signing this Agreement with Secretary has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any hazardous waste on any right of way, easements, and access rights acquired by City. City reserves the right to bring any action against any third party for any hazardous waste site on any right of way, easements, and access rights acquired by City.

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

The standards to establish cleanup of a hazardous waste site include, but is not limited to, federal programs administered by the E.P.A., State of Kansas environmental laws and regulations, and City and County standards where the hazardous waste site is located.

23. To 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 Secretary may deem necessary to permit free flowing traffic throughout the length of the improvement covered by this Agreement.

24. The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may safely and expeditiously be served and shall adopt and enforce such rules and regulations governing traffic movements as may be deemed necessary or desirable by Secretary.

25. To maintain the control of access rights and to prohibit the construction or use of any entrances or access points along the Project within City other than those shown on the final design plans, and in accordance with the KDOT Corridor Management Policy, unless prior approval is obtained from Secretary.

26. To control the construction or use of any entrances along the Project within City including those shown on the final design plans.

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

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

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

30. When the Project is completed and final acceptance is issued, it will, at its own cost and expense, maintain the Project, and will make ample provision each year for such maintenance. Upon notification by the State Transportation Engineer of any unsatisfactory maintenance condition, City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

31. If it cancels the Project, it will reimburse Secretary for any costs incurred by Secretary prior to the cancellation of the Project. City agrees to reimburse Secretary within thirty (30) days after receipt by City of Secretary's statement of the costs incurred by Secretary prior to the cancellation of the Project.

32. To issue a Notice to Proceed for the Project by June 1, 2009 with a projected completion date before July 1, 2010. City may request Secretary's approval of another eligible project within City, provided said request is submitted in writing to Secretary by June 1, 2009. Requests for extension of said dates must also be in writing and approved by Secretary. City further agrees that if a Notice to Proceed has not been issued by June 1, 2009 with a projected completion date before July 1, 2010 or a request for another eligible project has not been made by City, Secretary may allocate the funds to any project throughout the state that she sees fit.

ARTICLE III

THE PARTIES MUTUTALLY AGREE:

1. Plans for handling traffic during construction must be included in the design plans provided by City and must be in conformity with the latest version, as adopted by Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be noted on the design plans.

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

3. If any items are found to be non-participating by Secretary, acting on his or her own behalf or on behalf of the Federal Highway Administration, the total cost of these items will be paid for by City.

4. Representatives of Secretary may make periodic inspection of the Project and the records of City as may be deemed necessary or desirable. City will direct or cause its contractor to accomplish any corrective action or work required by Secretary's representative as needed for a determination of federal participation. Secretary does not undertake (for the benefit of City, the contractor, the consultant, or any third party) the duty to perform the day-to-day detailed inspection of the Project, or to catch the contractor's errors, omissions, or deviations from the final design plans and specifications.

5. It is the policy of Secretary to make final payments to City 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" require City to comply in accordance with those standards.

Secretary may pay the final amount due for authorized work performed based upon City's most recent "Single Audit Report" available and a desk review of the claim by the Contract Audit Section of the Bureau of Fiscal Services. City, 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. Secretary and City agree that as the "Single Audit Report" becomes available for the reimbursement period, Secretary will review the "Single Audit Report" for items which are declared as not eligible for reimbursement. City agrees if payment has been made to City for items subsequently found to be not eligible for reimbursement by audit, City will refund to Secretary the total amount of monies paid for same.

City agrees to comply with all appropriate state and federal laws and regulations for this Project.

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

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

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

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

10. Funding for this project will remain available until the last day of State Fiscal Year 2009 (June 30, 2009). If a Notice to Proceed for the Project has not been issued by June 1, 2009 with a projected completion date before July 1, 2010, then City may request Secretary's approval of another eligible project within City, provided said request is submitted in writing to Secretary by June 1, 2009. Requests for extension of said dates must also be in writing and approved by Secretary. If a Notice to Proceed has not been issued by June 1, 2009 with a projected completion date before July 1, 2010 or a request for another eligible project has not been made, Secretary may allocate the funds to any project throughout the state that she sees fit.

Signature Page Immediately Follows.

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

ATTEST:

CITY OF BASEHOR, KANSAS

CITY CLERK

MAYOR

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

(SEAL)

BY: _____
Jerome T. Younger, P.E.
Deputy Secretary for Engineering and
State Transportation Engineer

PROJECT NO. _____

PRELIMINARY DESIGN AND ACQUISITION AGREEMENT

CITY OF BASEHOR, KANSAS

A G R E E M E N T

PARTIES: Debra L. Miller, Secretary of Transportation, Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary;" and

City of Basehor, Kansas, hereinafter referred to as the "City;"

Collectively referred to as the "Parties."

PURPOSE: Secretary has authorized a National Highway System design and city street right of way project, hereinafter referred to as the "Project." Secretary and City are empowered by the laws of Kansas to enter into agreements for the design and acquisition of city streets in the City utilizing state funds. City desires to design the Project and acquire property for the Project north of the intersection of US-24/40 and 150th Street.

PROJECT: Secretary and City desire to enter into this Agreement for the preliminary engineering and property acquisition of the Project within the City, and City assumes sponsorship of the Project, which is described as follows:

Preliminary design and right of way acquisition for the straightening of 150th Street north of its intersection with US-24/40.

EFFECTIVE

DATE: The Parties, in consideration of the premises and to secure the approval and construction of the Project, shall mutually agree to perform in accordance with this Agreement on _____ 200__.

ARTICLE I

SECRETARY AGREES:

1. To provide technical information upon request to City or City's consultant in accordance with the laws and procedures established by KDOT.
2. To provide technical information upon request to help the City acquire right of way in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of KDOT such that City may obtain participation of State funds in the cost of the Project.

3. To reimburse City for the actual costs of preliminary engineering and right of way acquisition, but not to exceed a maximum reimbursement of \$325,000, broken down as follows:

- a) Right of Way Acquisition: reimbursement for actual acquisition of right of way shall not exceed \$122,000; additional right of way expenditures not related to the purchase price shall not exceed \$78,000; and
- b) Preliminary Engineering: reimbursement shall not exceed \$125,000.

Secretary shall not be responsible for any design plan and acquisition costs exceeding the above identified reimbursement limits. Secretary agrees to make partial payments to City for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer employed by City. Secretary shall not be responsible for the total actual costs of construction, utility adjustments, and construction engineering for the Project.

4. Funding for this Project will remain available until the last day of State Fiscal Year 2009 (June 30, 2009). If a Notice to Proceed for the Project has not been issued by June 1, 2009 with a projected completion date before July 1, 2010, then City may request Secretary's approval of another eligible project within City, provided said request is submitted in writing to Secretary by June 1, 2009. Requests for extension of said dates must also be in writing and approved by Secretary. If a Notice to Proceed has not been issued by June 1, 2009 with a projected completion date before July 1, 2010 or a request for another eligible project has not been made, Secretary may allocate the funds to any project throughout the state that she sees fit.

ARTICLE II

THE CITY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. City agrees to furnish Secretary one (1) final set of plans for his or her records.

2. To design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Project Development Manual for Non-National Highway System Local Government Road and Street Projects, Volumes I and II, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the City's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway

and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

3. Upon completion thereof, the design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to Secretary by a licensed professional engineer attesting to the conformity of the design plans with the items in paragraph 2 above. Contracts between City and any consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement shall contain language requiring conformity with paragraph 2 above.

4. City and any consultant retained by City shall have the sole responsibility for the adequacy and accuracy of design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Any review of these items performed by Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of City's and its consultant's duty to provide adequate and accurate design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Such reviews are not done for the benefit of the consultant, the construction contractor, City, or other political subdivision, nor the traveling public. Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or City.

5. A duly appointed representative of City is authorized to sign for City any or all routine reports as may be required or requested by Secretary in the completion of the Project undertaken under this Agreement. The design plans must be signed and sealed by the licensed professional engineer responsible for preparation of the design plans. Geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies. Right of way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the right of way descriptions.

6. It will, in its own name as provided by law, acquire by purchase, dedication or condemnation all of the right of way, easements and access rights shown on the final design plans in accordance with the schedule established by KDOT. City agrees the necessary right of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. City shall certify to the Secretary, on forms provided by the Bureau of Local Projects, that such right of way,

easements and access rights have been acquired. City further agrees they will have recorded in the Office of the Register of Deeds all right of way deeds, dedications, permanent easements and temporary easements.

7. To contact Secretary if there will be any displaced persons on the Project prior to making the offer for the property. The Parties mutually agree Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive and Kansas Administrative Regulations 36-16-1 *et seq.*

8. To provide all legal descriptions required for right of way acquisition work. City further agrees to acquire right of way in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of KDOT. City agrees that copies of all documents including recommendations and coordination for appeal, bills, contracts, journal entries, case files or documentation requested by the Office of Chief Counsel will be sent to the Office of Chief Counsel within the time limits set by Secretary.

9. If federal funds are used in the acquisition of the right of way, any disposal of or change in the use of right of way or in the access after Project construction will require prior written approval by Secretary.

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

11. To require the consultant to indemnify, hold harmless, and save Secretary and City 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 Secretary or City defends a third party's claim, the contractor shall indemnify Secretary and City for damages paid to the third party and all related expenses that either Secretary or City or both incur in defending the claim.

12. To be responsible for zero percent (0%) of the total actual costs of right of way up to \$200,000 and zero percent (0%) of the total actual costs of preliminary engineering up to \$125,000. In addition, City agrees to be responsible for one hundred percent (100%) of the total actual costs right of way acquisition exceeding \$200,000 and one hundred percent of the total actual costs of preliminary engineering exceeding \$125,000. City further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, utility adjustments, and construction engineering for the Project.

13. To be responsible for one hundred percent (100%) of any Project costs incurred by City for the Project prior to the funding for the Project being authorized, obligated, and approved by Secretary.

14. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the right of way shown on the final design plans for this Project, and it will initiate and proceed with diligence to remove or require the removal of the encroachments. It is further agreed that all such encroachments be removed before the Project is advertised for letting (provided, however, if Secretary is satisfied, with respect to any encroachment, that the physical removal thereof has been fully provided for between City and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project, Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). City further agrees it will not in the future permit the erection of gas and fuel dispensing pumps upon the right of way of the Project and will require that any gas and fuel dispensing pumps erected, moved or installed along the Project be placed no less than twelve (12) feet back of the right of way line. All right of way provided for the Project shall be used solely for public street purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the right of way limits except as provided by state and federal laws.

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

16. To locate and be responsible for all costs necessary to remedy or clean up any hazardous waste site, including, but not limited to, leaking underground storage tanks discovered on right of way, easements and access rights acquired by City. City shall be responsible to Secretary for all damages, fines or penalties, expenses, claims and costs incurred by Secretary from any hazardous waste site discovered on right of way, easements and access rights acquired by City prior to commencement of construction of the Project. City shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. City will investigate any and all hazardous waste sites discovered during construction of the Project on City owned land within the Project boundary and shall take appropriate action to contain or remediate such hazardous waste sites.

For any hazardous waste site, including, but not limited to, leaking underground storage tanks, City shall hold harmless, defend and indemnify Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources.

It is specifically agreed between the Parties executing this Agreement that any provision of this hazardous waste clause is not intended to make the public, or any member

thereof, a third party beneficiary hereunder, or to authorize anyone not a party of this Agreement to maintain a suit for personal injuries, property damages, or hazardous waste claims. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third Parties shall remain as imposed by law.

City, by signing this Agreement with Secretary has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any hazardous waste on any right of way, easements, and access rights acquired by City. City reserves the right to bring any action against any third party for any hazardous waste site on any right of way, easements, and access rights acquired by City.

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

The standards to establish cleanup of a hazardous waste site include, but is not limited to, federal programs administered by the E.P.A., State of Kansas environmental laws and regulations, and City and County standards where the hazardous waste site is located.

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

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

19. If it cancels the Project, it will reimburse Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. City agrees to reimburse Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the costs incurred by Secretary prior to the cancellation of the Project.

20. To issue a Notice to Proceed for the Project by June 1, 2009 with a projected completion date before July 1, 2010. City may request Secretary's approval of another eligible project within City, provided said request is submitted in writing to Secretary by June 1, 2009. Requests for extension of said dates must also be in writing and approved by Secretary. City further agrees that if a Notice to Proceed has not been issued by June 1, 2009 with a projected completion date before July 1, 2010 or a request for another eligible project has not been made by City, Secretary may allocate the funds to any project throughout the state that she sees fit.

ARTICLE III

THE PARTIES MUTUALLY AGREE:

1. The final design plans for the Project are by reference made a part of this Agreement.
2. If any items are found to be non-participating by Secretary, acting on his or her own behalf or on behalf of the Federal Highway Administration, the total cost of these items will be paid for by City.
3. Representatives of Secretary may make periodic inspection of the Project and the records of City as may be deemed necessary or desirable. City will direct or cause its contractor to accomplish any corrective action or work required by Secretary's representative as needed for a determination of federal participation. Secretary does not undertake (for the benefit of City, the contractor, the consultant, or any third party) the duty to perform the day-to-day detailed inspection of the Project, or to catch the contractor's errors, omissions, or deviations from the final design plans and specifications.
4. It is the policy of Secretary to make final payments to City 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" require the City to comply in accordance with those standards.

Secretary may pay the final amount due for authorized work performed based upon City's most recent "Single Audit Report" available and a desk review of the claim by the Contract Audit Section of the Bureau of Fiscal Services. City, 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. Secretary and City agree as the "Single Audit Report" becomes available for the reimbursement period, Secretary will review the "Single Audit Report" for items which are declared as not eligible for reimbursement. City agrees if payment has been made to City for items subsequently found to be not eligible for reimbursement by audit, City will refund to Secretary the total amount of monies paid for same.

City agrees to comply with all appropriate state and federal laws and regulations for this Project.

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

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

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

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

9. Funding for this project will remain available until the last day of State Fiscal Year 2009 (June 30, 2009). If a Notice to Proceed for the Project has not been issued by June 1, 2009 with a projected completion date before July 1, 2010, then City may request Secretary's approval of another eligible project within City, provided said request is submitted in writing to Secretary by June 1, 2009. Requests for extension of said dates must also be in writing and approved by Secretary. If a Notice to Proceed has not been issued by June 1, 2009 with a projected completion date before July 1, 2010 or a request for another eligible project has not been made, Secretary may allocate the funds to any project throughout the state that she sees fit.

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

ATTEST:

CITY OF BASEHOR, KANSAS

CITY CLERK

MAYOR

(SEAL)

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

BY: _____
Jerome T. Younger, P.E.
Deputy Secretary for Engineering and
State Transportation Engineer

WORK SESSION AGENDA ITEM INFORMATION FORM

Agenda Item: Demolition of 2805 North 155th Street, abandoned and vacant structure.

Department: Planning & Zoning

Background/Description of Item:

- The first contact made with Mr. Cooper concerning the exterior code violations was made on June 13th, 2007; this item pertained to the tractors and other miscellaneous items stored on the property.
- On June 19th, 2007 an inspection was conducted by the Building Inspector and the Fire Inspector on the interior of the building after a coffee shop was opened to the public, it was at this time that several code violations and life safety issues were found. After discussions with Mr. Cooper concerning these issues it was determined at that time that the building needed to be condemned in order to protect the safety and welfare of the public.
- On June 25th, 2007 all utilities were removed from the building.
- On September 6th, 2007 at a City Council meeting it was agreed upon by the Council that the building was an immediate danger and needed to be demolished a public hearing to consider the item was set at that time. It was at that time the City Council passed resolution (2007-07) setting a Public Hearing date.
- On December 17th, 2007 a Public Hearing was held regarding the demolition or remodeling of the structure. Mr. Cooper was at that time given 90 days to remove the structure or begin repairs and to diligently pursue these repairs to the structure thus rectifying the life safety and code violation issues.
- Around February 14th, 2008 some repairs began on the structure.
- On May 3rd, 2008 a Stop Work order was placed on the structure due to concerns of the presence of lead paint and/or asbestos containing materials.
- After talking with Patrick Reavey, the stop work order should not have been issued and thus it was lifted on March 26th, 2008 and Mr. Cooper was allowed to continue to proceed but no further action was taken to rectify the issues.
- On June 28th, 2008 a letter was sent to Mr. Cooper in regards to the work that was to be conducted. In the letter it stated that he was given 90 days to complete the work on the violations. Also in this letter a time of 10 days was given to Mr. Cooper to contact city staff and give us an update and a plan of action to correct these issues. No contact from Mr. Cooper was ever received.
- Sometime in July Mr. Slauch and Mark Lee met with Mr. Cooper at the site and discussed his options. It was at that time that we again gave Mr. Cooper 10 days to come up with some kind of plan to address the violations and present it to City Staff. Mr. Cooper made no attempt to provide us with a plan.
- October 2nd, 2008 a final letter was sent to Mr. Cooper notifying him that the demolition of the structure located at 2805 North 155th Street would be on the council agenda for the October 20th, 2008 meeting. We have had no response from Mr. Cooper concerning this issue as of October 13th, 2008.

Funding Source:

Recommendation: It is recommended by City Staff to pass the enclosed resolution requiring the demolition of the structure located at 2805 North 155th Street. We can rewrite the resolution giving Mr. Cooper a short time limit (10 days) to have the structure demolished by a contractor of his choosing or we can look into the bids we received last year and proceed immediately.

Prepared by: Mark Lee, Building Inspector
Council Date: October 13, 2008

RESOLUTION NO. _____

A RESOLUTION DIRECTING STAFF TO MAKE ARRANGEMENTS FOR DEMOLITION OF THE STRUCTURE LOCATED AT 2805 N. 155TH STREET AND TO MAKE THE PREMISES SAFE AND SECURE

WHEREAS, pursuant to Resolution No. 2007-12, the Governing Body determined that the structure located at 2805 North 155th Street is unsafe and dangerous; and

WHEREAS, the owners of record were notified of the Governing Body's determination and given until March 16, 2008 to commence repair or removal of the structure to make the premises safe and secure; and

WHEREAS, the structure at 2805 North 155th Street remains unsafe and dangerous due to the owners failing to commence or complete the repair or removal of the same in order to make the premises safe and secure.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BASEHOR, KANSAS, AS FOLLOWS:

Section 1: City Staff is directed to obtain bids for, and complete, the demolition of the structure located at 2805 North 155th Street, and salvage of any materials therein, all in accordance with K.S.A. 12-1755.

Section 2: Description of Property. The structure to be demolished is located at 2805 North 155th in the City of Basehor, the legal description of which is set forth below:

CAMA# 157-35-0-20-05-006.00
LOT: BLOCK: 1
TOWN OF BASEHOR

Section 3: Effective Date. This Resolution will become effective upon its adoption by the Governing Body.

ADOPTED _____, 2008.

CITY OF BASEHOR, KANSAS

Mayor, Chris Garcia

(SEAL)

ATTEST:

City Clerk, Mary Mogle

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider approval of an audit contract for 2008 with Lowenthal, Singleton, Webb and Wilson CPA firm.

Department: Administration

Background/Description of Item:

The previous audits for the city have been performed using the “Kansas Municipal Audit Guide” to obtain reasonable assurance that financial statements are free of material misstatement. The City of Basehor in the past prepared its financial statements according to the cash basis and budget laws of the State of Kansas rather than the accounting principles generally accepted in the United States (GAAP).

Audit references – discussion of GAAP (Generally Accepted Accounting Principles, <http://cpaclass.com/gaap/gaap-us-01a.htm>) waiver and GASB 34 (Governmental Accounting Standards Board Statement 34, www.gasb.org).

The audit for 2007 was conducted in accordance with accounting standards generally accepted in the United States of American (GAAP) and also included GASB 34 requirements.

The cost for the 2007 contract amount was for \$17,300. To continue with the GASB 34 requirements for year 2008, the contract amount will be \$17,800.

Staff has continued to update the inventory list and documents in accordance with GASB 34 auditing requirements. Those requirements involve a complete inventory of city assets, including sewer lines, roads, facilities, buildings and equipment. Each item on the inventory will have an estimated value, life cycle and depreciation figure. The information will then be used to build a budget that will include provisions for maintenance or replacement at the end of the life cycle.

Proposed 2008 Audit – GAAP standards, gross fee, including all expenses, shall not exceed \$17,800.

Funding Source: General Fund 01, Dept 1 Admin, 785 Accounting and Audit

Recommendation: Approve an auditing contract with Lowenthal, Singleton, Webb & Wilson for the 2008 calendar year using GAAP accounting in the amount not to exceed \$17,800 and authorize the mayor to sign the required contract documents.

Prepared by: Carl E. Slaugh, City Administrator
Council Date: October 20, 2008

LOWENTHAL SINGLETON WEBB & WILSON
P R O F E S S I O N A L A S S O C I A T I O N

CERTIFIED PUBLIC ACCOUNTANTS

900 Massachusetts, Suite 301
Lawrence, Kansas 66044-2868
Phone: (785) 749-5050
Fax: (785) 749-5061
E-mail: lswwcpa@lswwcpa.com

David A. Lowenthal, CPA
Thomas E. Singleton, CPA
Patricia L. Webb, CPA
Thomas G. Wilson, CPA
Audrey M. Odermann, CPA

Abram M. Chrislip, CPA
Brian W. Nyp, CPA

Members of American Institute
and Kansas Society of
Certified Public Accountants

October 7, 2008

Mayor and City Council
City of Basehor
2650 N. 155th Street
Basehor, KS 66007

We are pleased to confirm our understanding of the services we are to provide the City of Basehor, Kansas, (the City) for the year ended December 31, 2008. We will audit the financial statements of the governmental activities, the business-type activities, each major fund, budgetary comparison schedules and the aggregate remaining fund information, which collectively comprise the basic financial statements of the City as of and for the year ended December 31, 2008.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management discussion and analysis (MD&A), to accompany the City's basic financial statements. You have advised us that this information will not be presented and we will modify our auditor's report on the financial statements accordingly.

Supplementary information other than RSI, such as combining and individual fund financial statements, also accompanies the City's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and will provide an opinion on them in relation to the basic financial statements: combining statements and individual fund statements.

Audit Objective

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to above when considered in relation to the basic financial statements taken as a whole. Our audit will be conducted in accordance with U.S. generally accepted auditing standards and will include tests of the accounting records and other procedures we consider necessary to enable us to express such opinions. If our opinions on the financial statements are other than unqualified, we will fully discuss the reasons with you in advance. If for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

Management Responsibilities

Management is responsible for establishing and maintaining internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; and for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, each major fund, budgetary comparison schedules and the aggregate remaining fund information of the City's and the respective changes in financial position and where applicable, cash flows, in conformity with U.S. generally accepted accounting principles. Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. You have requested that we prepare

the financial statements that are the subject matter of this audit and the capital assets depreciation schedule for the year ended December 31, 2008, hereinafter referred to as nonattest services. You are responsible for those financial statements and for the selection of useful lives, depreciation methods and capitalization thresholds used in this capital assets depreciation schedule. You are responsible for the substantive outcomes of these nonattest services, for making any decisions involving management functions related to the nonattest services and for accepting full responsibility for such decisions.

Management is responsible for making all financial record and related information available to us and for the accuracy and completeness of that information. Management is responsible for adjusting the financial statements to correct material misstatements and for confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud and illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud and illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations. With regards to the electronic dissemination of audited financial statements, including financial statements published electronically on your website (if any), you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Audit Procedures-General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws and governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity.

Because an audit is designed to provide reasonable, but not absolute, assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will also require certain written representations from you about the financial statements and related matters.

Audit Procedures-Internal Control

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under professional standards.

Audit Procedures-Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with applicable laws and regulations and the provisions of contracts and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Audit Administration, Fees and Other

We understand that this agreement is subject to the following specifications: the gathering of preliminary information will be done by November 15, 2008; the fieldwork will be completed by April 15, 2009; and the final report shall be delivered to the City by June 1, 2009, absent circumstances beyond our control. When delivered to the City, the audit reports and financial statements produced in connection with this engagement letter are public records and may be used (a) to fulfill the requirements of continuing disclosure under SEC Rule 15c2-12, (b) as inserts or incorporated by reference in offering documents issued by the City, and (c) for any lawful purpose of the City, all without subsequent consent from us. Any official statements in connection with debt issuances which include the above mentioned audit reports and financial statements shall contain the following: "Our independent auditor has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. The independent auditor also has not performed any procedures relating to this official statement."

In the interest of facilitating our services to your organization, we may communicate by facsimile transmission or send electronic mail over the Internet. Such communications may include information that is confidential to your organization. Our firm employs measures in the use of facsimile machines and computer technology designed to maintain data security. While we will use our best efforts to keep such communications secure in accordance with our obligations under applicable laws and professional standards, you recognize and accept that we have no control over the unauthorized interception of these communications once they have been sent and consent to our use of these electronic devices during this engagement.

We may prepare a general ledger trial balance for use during the audit. Our preparation of the trial balance will be limited to formatting information in the general ledger into a working trial balance. Also, as part of the audit we will prepare a draft of your financial statements and related notes. You will be required to review and approve those financial statements prior to their issuance and have a responsibility to be in a position in fact and appearance to make an informed judgment on those financial statements. Further, you are required to designate a qualified management-level individual to be responsible and accountable for overseeing our services.

Our audit engagement ends on delivery of our audit report. Any follow-up services that might be required will be a separate, new engagement. The terms and conditions of that new engagement will be governed by a new, specific engagement letter for that service.

The workpapers for this engagement are our property and constitute confidential information. However, we may be requested to make certain workpapers available to others pursuant to authority given by law, regulation or other legal process. If requested, access to such workpapers will be provided under the supervision of firm personnel. Furthermore, upon request, we may provide photocopies of selected workpapers to governmental agencies who may intend or decide to distribute the photocopies or information contained therein to others, including other governmental agencies. You agree to reimburse us for our personnel and other costs associated with our compliance with such requests. Our policy is to retain workpapers for five years after the engagement. During the term of this engagement, we agree to comply with the provisions of K.S.A. 44-1030.

You agree that the term "those charged with governance", as used in Statement on Auditing Standards No. 114 for defining our communication responsibilities under that standard, consists of the mayor, city council, and the city administrator.

It is understood that the services provided by our firm necessarily rely, to some extent, on information provided by your organization, including management representations, as well as information and documents. Accordingly, your organization indemnifies our firm and its owners and employees, and holds them harmless from all claims, liabilities, losses or costs in connection with services provided by our firm that are affected in any way by

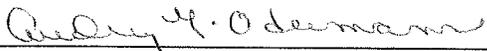
erroneous, misleading, or incomplete information furnished by your organization. This indemnification will survive any terminations under this letter.

We agree that our gross fee, including all expenses, for the above services shall not exceed \$17,800, except as noted above. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit, including delays resulting from the untimely delivery of and incomplete preparation of schedules and questionnaires we have requested from your staff. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to the City of Basehor, Kansas and believe this letter accurately summarized the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

LOWENTHAL, SINGLETON, WEBB & WILSON
Professional Association
Certified Public Accountants

By 

RESPONSE:

This letter correctly sets forth the understanding of the City of Basehor, Kansas.

By: _____

Title: _____

Date: _____

c. Lessor agrees to provide initial programming of the leased Communication Equipment and any reprogramming of leased Communication Equipment, at no charge to the Lessee, when updates are issued from the manufacturer thereof.

Section 5.2. Obligations or Requirements of Lessee.

a. Lessee shall bear the risk of any loss or damage to any of the Communication Equipment during the Lease Term and, in the event of loss or damage to any of the Communication Equipment during the Lease Term, Lessee shall remain obligated pursuant to the terms of this Lease Agreement.

b. Lessee shall make no alteration, addition, or improvement to the Communication Equipment in any way without the prior written approval and authorization of Lessor (with the prior written approval of the Authority and one hundred percent (100%) of the Owners of the Bonds). Any such alterations, additions, and/or improvements made by the Lessee shall be paid for by Lessee and shall become the property of the Lessor upon termination of this Lease Agreement pursuant to **Section 3.3** or **Section 13.2** hereof, but otherwise shall be and remain the property of Lessee upon payment of all Lease Payments pursuant to **Section 4.1** for the Maximum Lease Term or purchase of the Communication Equipment pursuant to **Section 11.1** hereof. Lessor shall have the right to remove, or require Lessee to remove, all alterations, fixtures, and improvements at the Lessee's cost upon termination of this Lease Agreement pursuant to **Section 3.3** or **Section 13.2** hereof.

c. Subsequent to the expiration of any applicable warranty period, Lessee shall be responsible for and shall pay the costs incurred by it in operating or using the Communication Equipment and for all necessary maintenance and repairs to the Communication Equipment, except such maintenance and repairs as may be necessitated by or as a result of the fault or negligence during the Lease Term of Lessor or any agent of Lessor.

d. Lessee agrees to allow Lessor to perform an annual inventory, inspection, and audit of the Communication Equipment at such reasonable times as shall be determined by Lessor, and Lessee shall make such Communication Equipment available to Lessor at the Lessor's regional radio facility or shop then closest in proximity to the location of the Communication Equipment required to be inventoried all so as to effect the completion of such requirements of Lessor and to otherwise cooperate with Lessor to the fullest extent required by Lessor to perform such inventory.

e. Lessee during the Lease Term shall be responsible for paying all of any costs necessary to keep the Communication Equipment in compliance with all applicable FCC rules and regulations or the rules and regulations of any other agency having proper jurisdiction over said Communication Equipment.

f. During the Lease Term, the Lessee will not permit the use of any portion of the Communication Equipment in a trade or business carried on by any person other than a Qualified User without first obtaining an Opinion of Bond Counsel.

g. The Lessee (to the extent within its power or direction) shall not use or permit the use of the Communication Equipment, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would adversely affect the exclusion of the interest on any of the Bonds from gross income for federal income tax purposes.

h. Neither the Lessee nor any related party to the Lessee shall purchase any of the Bonds during the Lease Term.

*KDOT
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Equipment Lease Agreement

and interests of the Authority under the Pledge of Revenues Agreement and of the Owners of the Bonds under and with respect to the Pledge of Revenues Agreement and the Bond Resolution. Except as expressly provided in this Article, Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor, the Authority and any Owner of the Bonds for any expense incurred by any of them in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

**ARTICLE XI
LESSEE'S OPTION TO PURCHASE
THE COMMUNICATION EQUIPMENT**

Section 11.1. Lessee's Option to Purchase the Communication Equipment. Lessee shall have the option to purchase Lessor's interest in the Communication Equipment, free and clear of any right or interest of Lessor, the Authority or the Owners of the Bonds, upon giving written notice to Lessor at least thirty (30) days before the date of purchase (which notice shall state the date of purchase), at the following times and upon the following terms:

- a. On any Lease Payment Date upon payment in full of the Lease Payments then due hereunder plus the then applicable Purchase Price to Lessor; or
- b. In the event of substantial damage to or destruction or condemnation (other than condemnation by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Communication Equipment, on the Lease Payment Date Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option given pursuant to **Section 12.1**, upon payment in full of the Lease Payments then due hereunder plus the Purchase Price to Lessor.

Section 11.2. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Lease Payments hereunder during the Original Term and any Renewal Term represent the fair value of the use of the Communication Equipment, and that the amount required to exercise Lessee's option to purchase Lessor's interest in the Communication Equipment pursuant to **Section 11.1** represents, as of the end of the applicable Lease Payment Date, the fair purchase price of the Communication Equipment. Lessee hereby determines that the Lease Payments do not exceed a reasonable amount so as to place Lessee under an economic practical compulsion to renew this Lease Agreement or to exercise its option to purchase the Communication Equipment hereunder. In making such determinations, Lessee and Lessor have given consideration to the Costs of the Communication Equipment, the uses and purposes for which the Communication Equipment will be employed by Lessee, the benefit to Lessee by reason of the acquisition, construction, equipping and installation of the Communication Equipment and the use and occupancy of the Communication Equipment pursuant to the terms and provisions of this Lease Agreement and Lessee's option to purchase the Communication Equipment. Lessee hereby determines and declares that the acquisition, construction, equipping and installation of the Communication Equipment and the leasing of the Communication Equipment pursuant to this Lease Agreement will result in a Communication Equipment of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition, construction, equipping and installation of the Communication Equipment were performed by Lessee other than pursuant to this Lease Agreement. Lessee hereby determines and declares that the Maximum Lease Term does not exceed the useful life of the Communication Equipment.

Section 11.3. Delivery of Communication Equipment upon Payment of Purchase Price. Upon payment in full of all Lease Payments due hereunder plus the then applicable Purchase Price to Lessor the Communication Equipment shall be delivered to Lessee free and clear of any right or interest of Lessor.

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Equipment Lease Agreement

EXHIBIT B-1

COMMUNICATION EQUIPMENT
EQUIPMENT LEASE AGREEMENT
CSEL Project No. 080053

Lessee's Notice Address is: City of Basehor, Kansas
City Hall
2620 North 155th Street
Basehor, Kansas 66007

Attn: City Clerk

Kansas Required Statements Pursuant to K.S.A. 10-1116c(d):

a. The amount of capital cost required to acquire the Communication Equipment if paid for by cash; \$68,832.06.

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b. The annual average effective interest cost for the Lease Payments: not to exceed 6% and

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c. The amount included in the Lease Payments and Additional Lease Payments for service, maintenance, insurance or other charges exclusive of the capital cost and interest cost: \$6,000.

Blended Interest Rate: 4.67%

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Lessee's Fiscal Year: January 1 to the next succeeding December 31.

Lease Payment Date: Each March 1 and September 1, commencing March 1, 2009;

Final Lease Payment Date: March 1, 2020

Lease Payments: The sum of:

- (1) the amount of interest becoming due on the Bonds then outstanding on the next succeeding April 1 or October 1;
- (2) the amount of principal becoming due on the Bonds then outstanding by maturity, mandatory redemption or otherwise on the next succeeding April 1 or October 1; and
- (3) the amount of moneys required to redeem Bonds then outstanding on the next succeeding April 1 or October 1 to the extent such Bonds have been called for redemption pursuant to the terms of the Bond Resolution; and
- (4) the amount of all fees and expenses of the Bond Registrar and Paying Agent relating to the Bonds and any other fees and expenses relating to the Bonds due on or before the next succeeding April 1 or October 1;

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d. Lessee hereby consents to the location of the Communication Equipment on the sites owned by Lessee (the "Sites") and agrees, subject to the attornment agreement provided in subsection (c) of this Section 3.5, that the Authority may, at any time after the occurrence and during the continuation of an Event of Default under the Bond Resolution or an event of nonappropriation under the Pledge Agreement or this Lease Agreement, enter upon the Sites and remove and use the Communication Equipment located there without any liability whatsoever to Lessee, except for any damages caused to Lessee's buildings or other improvements on the Sites directly caused by any failure of the Authority to remove and use the Communication Equipment with reasonable care. Lessee hereby waives, relinquishes and releases all interest in, right or claim to or lien on the Communication Equipment, including (without limitation) any right of levy or distraint upon the Communication Equipment for rent with respect to the Sites.

e. Lessee agrees not to take any action to terminate Lessor's right to have the Communication Equipment located on the Sites without thirty days' prior written notice to the Authority during which the Authority shall be entitled to exercise remedies with respect to the Communication Equipment as provided in the Pledge Agreement and this Lease Agreement. Lessee shall notify any purchaser of any Site, or any party obtaining a mortgage or other lien on any Site, of the waiver and disclaimer contained in this Section 3.5. Such waiver and disclaimer shall be binding upon the successors and assigns of Lessee and inure to the benefit of the Authority.

f. The foregoing waiver and disclaimer shall be continuing, absolute and unconditional, with no act of any kind taken or not taken by the Authority at any time to affect or impair such waiver and disclaimer. Such waiver and disclaimer shall remain in full force and effect so long as any of the Bonds are Outstanding under the Bond Resolution.

ARTICLE IV PROVISIONS FOR PAYMENT OF LEASE PAYMENTS

Section 4.1. Lease Payments. Lessee shall promptly make Lease Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor on each Lease Payment Date in such amounts as are described on *Exhibit B*. Lessee shall pay Lessor a charge on any Lease Payment not paid on the Lease Payment Date such Lease Payment is due at the rate of (i) the interest rate set forth under the heading "Blended Interest Rate" on *Exhibit B* plus four hundred (400) basis points per annum or (ii) the maximum rate permitted by law, whichever is less, from such due date until paid. A portion of each Lease Payment is paid as, and represents payment of, interest, as set forth on *Exhibit B*.

Section 4.2. Additional Lease Payments. Lessee shall pay, subject to the provisions of Section 3.3, as Additional Lease Payments (i) all Impositions (as defined in Article VII); (ii) all amounts required under Section 4.5 or 14.5 and all other payments of whatever nature which Lessee has agreed to pay or assume under this Lease Agreement; and (iii) all expenses, including attorneys' fees, incurred in connection with the enforcement of any rights under this Lease Agreement by or on behalf of Lessor. (iv) incurred in connection with the enforcement of any rights under this Lease Agreement by or on behalf of Lessor. Amounts required to be paid under this Section shall be paid directly by Lessee to the person or entity owed; and the annual administrative fee described at *Exhibit A* (b).

Section 4.3. Lease Payments and Additional Lease Payments Constitute Current Expense. The obligation of Lessee to pay the Lease Payments and the Additional Lease Payments and other amounts payable hereunder is subject to the provisions of Section 3.3, constitutes a current expense of Lessee and does not constitute a general obligation or indebtedness of Lessee for which Lessee is obligated to levy or pledge any form of taxation or for which Lessee has levied or pledged any form of taxation; such obligation shall not be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement, but in each Fiscal Year shall be payable solely from the amounts budgeted or appropriated therefor out of the income and revenue provided for such Fiscal Year, any proceeds of the Communication Equipment and the Net Proceeds of any insurance or condemnation awards.

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