

AGENDA

BASEHOR CITY COUNCIL WORK SESSION

October 13, 2008

6:00 p.m.

Basehor City Hall

1. Discuss proposed improvements to the 150th Street and U.S. Highway 24-40 intersection including financing options and land purchase agreements.
2. Review KDOT Corridor funding agreements for the 150th Street and Wolfcreek Parkway projects.

Mary Mogle

From: Patrick Reavey [patrick@reaveylaw.com]
Sent: Monday, October 13, 2008 3:01 PM
To: cityclerk@cityofbasehor.org
Subject: RE: 10/13/08 Agenda

I have it. I was in De Soto on Thursday and Friday so that's why I missed it. I have looked at main elements in list by Mr. Pickett for proposed agreement. No major concerns on my end. Mr. McIntosh should have his lawyer prepare draft of agreement for review by me and KDOT -- I think that's what McIntosh proposed at meeting.

Thanks Mary!

Patrick G. Reavey
REAVEY LAW LLC
Livestock Exchange Building
1600 Genessee, Suite 303
Kansas City, Missouri 64102
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(816) 474-6302 (FAX)
patrick@reaveylaw.com
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From: Mary Mogle [mailto:cityclerk@cityofbasehor.org]
Sent: Monday, October 13, 2008 2:39 PM
To: Patrick Reavey
Subject: RE: 10/13/08 Agenda

Don't know what happened because I sent the packet to you last Wednesday. Carl is at the conference if you need anything.

10/13/2008

Mary A. Mogle, CMC

City of Basehor

P. O. Box 406

Basehor, Ks 66007-0406

913-724-1370 ext. 28

Live life as if there is no tomorrow...treat your loved ones as if it were your last day together...live, laugh, and love.

From: Patrick Reavey [mailto:patrick@reaveylaw.com]
Sent: Monday, October 13, 2008 2:13 PM
To: cityclerk@cityofbasehor.org
Subject: RE: 10/13/08 Agenda

I am heading to the League conference this evening so I won't be at meeting. I never received anything from Carl on Agreement with McIntosh?

Patrick G. Reavey
REAVEY LAW LLC
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10/13/2008

AGENDA ITEM INFORMATION FORM

Agenda Discussion Item: 150th Street and U.S. Highway 24-40 Intersection Improvements.

Department: Public Works and Administration

Background/Description of Item:

Ed McIntosh, Benchmark Management, has been working with KDOT on an agreement for improvements at 150th Street and U.S. Highway 24-40. At the present time KDOT has proposed to purchase a 2.5 acre track of land that would contain the right-of-way (ROW) necessary to realign 150th Street.

Purchase of the 2.5-acre parcel would compensate for the lack of a right-in/right-out access at 153rd Street and 24-40. KDOT originally proposed to provide the funding to the City of Basehor and the City would contract with Benchmark Management to purchase the land. The property is currently under contract for purchase by Benchmark Management.

Benchmark would prefer to retain title for the 2.5-acre parcel and deed the necessary ROW to the City.

KDOT has agreed to use MKEC for design of the project and pay design fees.

The City of Basehor would need to take responsibility for notifying the residents on the south side of 24-40 who use the 150th Street access. That access would become a right-in/right-out only access.

Unresolved is the method of funding the \$3.0 million project, \$1.5 for Wolfcreek Parkway and \$1.5 million for the 150th Intersection. Under one option proposed by Benchmark, the \$500,000 corridor management funding would be placed in escrow to pay the interest on a loan while Transportation Development District (TDD) funding would accumulate to pay the principle. The TDD was planned to fund the \$1.5 million improvement to Wolfcreek Parkway, but not an additional \$1.5 million. The City is not in a position to commit \$1.5 million towards the intersection project.

Proposed elements of the agreement and background material are attached.

Funding Source: Consolidated Street and Highway

Recommendation: Work on elements of a three-party agreement for improvements to the 150th Street and U.S. Highway 24-40 Intersection.

Prepared by: Carl E. Slaugh, City Administrator
Council Date: October 13, 2008

Wolf Creek Parkway and 150th St Loan Coverage

Wolf Creek Marketplace estimated Annual Sales	\$ 15,400,000
TDD Tax rate	<u>0.75%</u>
Annual Tax Revenue to pay loan	\$ 115,500
Loan amortization - COB	<u>\$ (208,785)</u>
Annual deficit	<u>\$ (93,285)</u>
Initial Escrow fund	\$ 500,000
Years of coverage from escrow	5.36

Loan Calculation

150th St. Improvements

Loan Amount	\$ 3,000,000
Interest Rate (APR)	3.500%
Amortization Periods	240
Payment	\$17,398.79
Annual Payment	\$208,785.50

<u>Pmt #</u>	<u>Principal</u>	Fully Amortized <u>Payment</u>	<u>Interest</u>	Prin <u>Reduction</u>	<u>New Principal</u>
1	3,000,000	(\$17,398.79)	\$8,750.00	(\$8,648.79)	2,991,351
2	2,991,351	(\$17,398.79)	\$8,724.77	(\$8,674.02)	2,982,677
3	2,982,677	(\$17,398.79)	\$8,699.48	(\$8,699.32)	2,973,978
4	2,973,978	(\$17,398.79)	\$8,674.10	(\$8,724.69)	2,965,253
5	2,965,253	(\$17,398.79)	\$8,648.66	(\$8,750.14)	2,956,503
6	2,956,503	(\$17,398.79)	\$8,623.13	(\$8,775.66)	2,947,727
7	2,947,727	(\$17,398.79)	\$8,597.54	(\$8,801.25)	2,938,926
8	2,938,926	(\$17,398.79)	\$8,571.87	(\$8,826.92)	2,930,099
9	2,930,099	(\$17,398.79)	\$8,546.12	(\$8,852.67)	2,921,247
10	2,921,247	(\$17,398.79)	\$8,520.30	(\$8,878.49)	2,912,368
11	2,912,368	(\$17,398.79)	\$8,494.41	(\$8,904.38)	2,903,464
12	2,903,464	(\$17,398.79)	\$8,468.44	(\$8,930.36)	2,894,533
13	2,894,533	(\$17,398.79)	\$8,442.39	(\$8,956.40)	2,885,577
14	2,885,577	(\$17,398.79)	\$8,416.27	(\$8,982.53)	2,876,594
15	2,876,594	(\$17,398.79)	\$8,390.07	(\$9,008.72)	2,867,586
16	2,867,586	(\$17,398.79)	\$8,363.79	(\$9,035.00)	2,858,551
17	2,858,551	(\$17,398.79)	\$8,337.44	(\$9,061.35)	2,849,489
18	2,849,489	(\$17,398.79)	\$8,311.01	(\$9,087.78)	2,840,402
19	2,840,402	(\$17,398.79)	\$8,284.50	(\$9,114.29)	2,831,287
20	2,831,287	(\$17,398.79)	\$8,257.92	(\$9,140.87)	2,822,146
21	2,822,146	(\$17,398.79)	\$8,231.26	(\$9,167.53)	2,812,979
22	2,812,979	(\$17,398.79)	\$8,204.52	(\$9,194.27)	2,803,785
23	2,803,785	(\$17,398.79)	\$8,177.70	(\$9,221.09)	2,794,563
24	2,794,563	(\$17,398.79)	\$8,150.81	(\$9,247.98)	2,785,316

Benchmark Management

Costs of Acquiring ROW at 150th and US 24-40 Highway

Cost to Purchase ROW	\$146,820.00
Site Clean Up and Grading <i>+ Engineering</i>	\$178,180.00
Total Cost	<hr/> \$325,000.00

Benchmark Management

PURCHASE of ROW at 150th and US 24-40 Highway

Purchase price of land	\$	122,000
Delinquent taxes due		7,500
Demolition of building		10,000
Disposal of tires		13,180
Real estate commission		7,320
Legal fees for title and ROW		7,500
Filing fees		2,500
Clean up site and rough grade		<u>30,000</u>
	\$	<u><u>200,000</u></u>

Benchmark Management

PURCHASE of ROW at 150th and US 24-40 Highway

Purchase price of land	\$122,000.00
Delinquent taxes due	7,500.00
Demolition of building	10,000.00
Disposal of tires	13,180.00
Real estate commission	7,320.00
Legal fees for title and ROW	7,500.00
Filing fees	2,500.00
Clean up site and rough grade	<u>30,000.00</u>
	<u>\$ 200,000</u>
Engineering for 150th MKEC	\$ 125,000.00
PROJECT TOTAL	\$325,000.00

Carl Slaugh

From: Ed McIntosh [emcintosh@sunflower.com]
Sent: Tuesday, October 07, 2008 11:17 AM
To: 'Jim Pickett'
Cc: 'Carl Slaugh'
Subject: here is my first attempt
Attachments: drft1ofthreepartyagreement.doc

Jim and Carl here is my first attempt at a list for the lawyer add or adjust as you see fit.

Ed McIntosh
Benchmark Management, Inc.
P.O. Box 516
Basehor, Kansas 66007

(913) 724-3154 Office
(913) 724-3124 Fax
(913) 208-5826 Cell

Items to be included in agreement

- A. The agreement to be written on KDOT form and will be a " Three Party Agreement
- B. Basehor Properties attorney will draft the agreement for review by City and KDOT revise and provide final agreement for signatures.
- C. KDOT will reimburse/ fund the purchase of right of way for City Basehor, Basehor will purchase right of way from Basehor Properties. Basehor properties will provide blanket easement to give COB necessary property for right of way to be determined by MKEC'S design plan for 150th. BP will hold the ownership of excess properties. In the event that the future 150th is not constructed the COB shall release easement back to BP.
- D. After closing of right of way purchase BP will immediately facilitate the removal of tires, removal of existing structure.
- E. MKEC be retained by BP to design 150th
- F. COB and BP agree to pay MKEC for design work and will be reimbursed by KDOT up to \$125,000.00 MKEC will design the city portion to city standard, plans t be reviewed by COB the portion of the project on KDOT right of way to be reviewed by KDOT.
- G. The existing funds of \$500,000.00 that have been granted to COB from Corridor Management Fund and committed to BP for Wolf Creek Parkway will be placed in a reserve account and used for Repayment of the future Transportation Revolving loan. Theses funds will be placed in an interest Bearing account determined by the COB and all interest should be retained in this account until such time the account is depleted and or unneeded COB will retain any excess funds. In the event that future funding of 150th does not materialize these funds will be used to construct Wolf Creek parkway as designed.
- H. In the event that funding is found COB agrees to transfer the excess and existing right of way back to BP once the new 150th is constructed. Including the right of way for the existing 150th street which will no longer be needed.
- I. BP and KDOT both understand that neither party is either making any payment or accepting any payment for the access issues that are being discussed. Although both parties agree that this is an attempt to come to that resolve neither party is admitting fault or agreeing to settlement of this issue. Both parties however do agree that in the event of a settlement the funds that KDOT has contributed \$375,000.00 will be credited to any amount of compensation that may be awarded to BP in the future.

Carl Slaugh

From: Ed McIntosh [emcintosh@sunflower.com]
Sent: Monday, October 06, 2008 11:13 AM
To: 'Jim Pickett'; 'Jerry Younger'
Cc: 'Carl Slaugh'
Subject: RE: 150th Street at Basehor

I think that I would agree for the most part however I would like to see item C line b say Basehor Properties would hold ownership and give City a blanket easement to provide the necessary right of way build new street. That way if the parties can't reach and agreement to build the new street we are not held up for an unfair length of time in finishing our development. And I understand that the money spent on this would be considered as part of the compensation should we go to another means of settlement for the access dispute.

Ed McIntosh
Benchmark Management, Inc.
P.O. Box 516
Basehor, Kansas 66007

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(913) 208-5826 Cell

From: Jim Pickett [mailto:Pickett@ksdot.org]
Sent: Friday, October 03, 2008 7:49 PM
To: Jerry Younger
Cc: 'Ed McIntosh'; 'Carl Slaugh'
Subject: RE: 150th Street at Basehor

Jerry,

I had forgotten to add the total of KDOT's contribution of \$325,00 (\$200,000 + \$125,000) will be counted as a credit offset toward the value of the access break along the north side of US 24-40.

Jim

From: Jim Pickett
Sent: Friday, October 03, 2008 4:57 PM
To: Jerry Younger
Cc: 'Ed McIntosh'; 'Carl Slaugh'
Subject: 150th Street at Basehor

Jerry,

I met with Ed McIntosh and Kevin Barclay of Benchmark Management this morning and had a telephone conversation with Carl Slaugh of the City of Basehor this afternoon. I have suggested an action plan list and am sharing it with you and the parties for review.

My suggestions are:

10/8/2008

- A. The agreement be a "Three Party Agreement".
- B. Determination needs to be made on who will prepare the agreement for the others to review. Ed said they don't care but they will have it prepared if it will speed up the agreement process.
- C. Key items of the agreement would include:
 - a. Reimburse the city \$200,000 for acquiring the triangular piece of property, pending acceptable appraisal.
 - b. Ownership of the property to be held by the city.
 - c. Benchmark will remove the existing structure(s), remove tires and other items that have been dumped on the property.
 - d. The consultant (MKEC) will be retained by Benchmark.
 - e. Design fees to be paid to MKEC by the city and the city reimbursed by KDOT in an amount not to exceed \$125,000.
 - f. MKEC will develop a design that will meet the city's and KDOT's respective design requirements in accordance with an agreed upon scope.
 - g. Corridor management funds in the amount of \$500,000 be held in escrow for early debt service that could be used for the construction of Wolf Creek Parkway and or 150th Street. This is not new funding, it refers to the existing funding amount that has been already prioritized by the city.
 - h. If funding is found to construct the new 150th Street alignment, the needed right of way for its construction, as determined during the design process, will be retained by the city. Right of way determined to be excess right of way when the new roadway is complete (the existing 150th Street alignment), will be transferred to Benchmark.

The City's next council meeting is October 20.

Please review and advise of any errors, omissions or flaws in this "get started on an agreement" outline.

Sincerely,

Jim Pickett

From: Ed McIntosh [mailto:emcintosh@sunflower.com]

Sent: Friday, October 03, 2008 3:41 PM

To: Jim Pickett

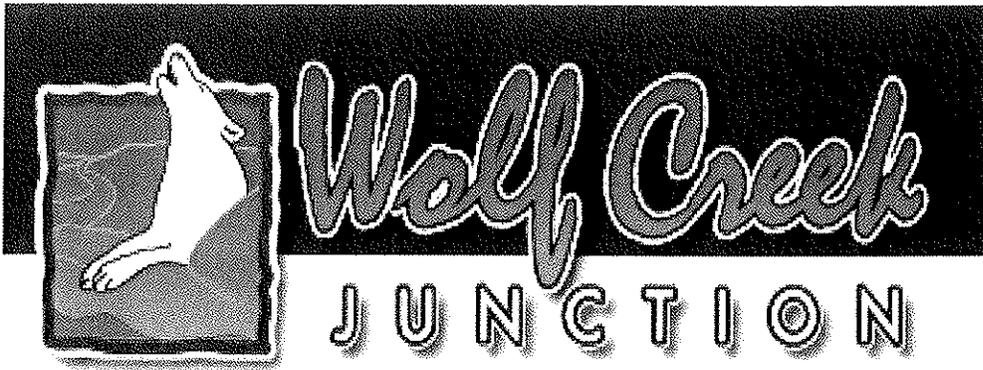
Subject: list

Jim could you send me the list of items to be contained in the Three party agreement that way I can mull it over I think you covered it all but wouldn't hurt to look at again to see if I have any thing to add or the City.

Ed McIntosh
Benchmark Management, Inc.
P.O. Box 516
Basehor, Kansas 66007

(913) 724-3154 Office
(913) 724-3124 Fax
(913) 208-5826 Cell

10/8/2008



July 25, 2008

Senator Roger Pine
Kansas State Capitol
300 SW 10th St., Room 142E
Topeka, KS 66612

20758 Golden Rd
Linwood, KS 66052

**RE: Wolf Creek Junction
Highway 24/40**

Dear Senator Pine:

My name is Ed McIntosh and I was given your contact information by John Flower, who is running for Leavenworth County Commissioner. He met you at a social function recently and briefly discussed an issue in Basehor regarding access issues on Highway 24/40. As briefly as possible, I will explain the situation and provide you a little history on our project. I would like the opportunity to meet you and provide a complete picture of the situation and seek your advice on how to proceed so we can bring our grocery store to the Basehor area.

In November of 2004, my partner John Bell and I purchased roughly 25 acres of property located at the north-east corner of 155th St. and Hwy 24/40 in Basehor, KS. Our plans were to develop a grocery store anchored retail and office development (Wolf Creek Junction) on this land. In January of 2006 we purchased an additional 15 acre parcel adjacent and to the east of the original property which gave us control of the entire frontage from 150th to 155th along the north side of Highway 24/40 (see attached map labeled E-1 showing the original property bordered in yellow and the second property bordered in red). Our motives behind purchasing the second (red) property were two-fold: 1) we wanted to complete Wolf Creek Parkway, the reverse frontage road between 155th and 150th without having to negotiate with a third party; and 2) the second (red) property had five deeded access points (as shown on attachment E-2) with direct access to Hwy 24/40 which would provide direct access to our grocery store assuming a right-in-right-out (RIRO) off of Hwy 24/40.

Shortly after purchasing the red property, we contacted Mick Halter, the then acting district engineer for KDOT, regarding access to Hwy 24/40. After several weeks of communication, we were asked by Mr. Halter to wait until the corridor study was

Senator Pine
Pg. 2

completed and that the study would be done in fall of 2006 (see attachment E-3). We also discussed KDOT's opinion that the exiting location for the RIRO was not acceptable. We were told that while KDOT was not in the habit of giving new access, they would consider relocating to a better location which is what we preferred, but we would need to work through the corridor study to achieve that goal.

After over two years of working with the Hwy 24/40 Corridor groups and attending nearly every public meeting, as well as serving on the Citizen Advisory committee, the study was completed and no RIRO's were ever addressed, only full service signalized intersections. On numerous occasions, John Flower and I asked specifically that the RIRO issue be discussed and we were told by representatives from the engineering firm handling the study that they would get to that later. Of course they never did.

When the City of Basehor (COB) was in preparation to sign the memorandum of understanding for the corridor study, the COB, KDOT, and the remaining members of the corridor group held a meeting to discuss the RIRO request for our development. That meeting was in the early fall of 2007. During the meeting Chris Huffman (former KDOT Assistant Bureau Chief, Bureau of Transportation Engineering) stated that the RIRO was not a desirable access break. To paraphrase Mr. Huffman: "We are not saying no at this point, however we would rather consider other improvements to relative intersections."

Shortly thereafter Mr. Huffman was removed from the project (see attachment E-4). There have been numerous meetings regarding this issue and time and time again the City has offered their support for the RIRO or improvements to 150th and 24/40 in writing and sent it to Mr. Pickett in the form of a statement signed by all Council members as well as the Mayor, Chris Garcia (see attachment E-5). These requests have fallen upon deaf ears.

On July 11, 2008 I met with Jim Pickett and Steve, whose last name I can't recall, to discuss a possible settlement. I can't begin to tell you my frustration and disgust with the offer they brought to the table. KDOT offered us \$50,000 (combined \$100,000) per access to Hwy 24/40 (We own two parcels of property that have deeded access rights to Hwy 24/40: the property in question and a parcel directly south (E-1 bordered in blue) and across and abutting Hwy 24/40).

Based upon KDOT's own formula (roughly 30% of value) from compensating the previous property owners of the red parcel (see attached E-6), a fair and equivalent offer would be \$596,337. This is derived by using KDOT's formula applied to our appraised value of the yellow property of \$1,222,500 and the appraised value of the blue property of \$750,000 (see attached E-7).

Another way to look at the value is "What loss in value will we sustain from not having the RIRO?" As you can see on the attached Retail Phasing Plan (see E-8), losing the RIRO will significantly change the value and ultimately our ability to sell lots in Phase I.

Senator Pine
Pg. 3

While waiting on KDOT to make a decision as to whether we would be allowed to construct the RIRO we are entitled to, or what compensation they were going to provide in lieu of the RIRO, be it monetary or KDOT improvements to the 150th St. intersection, we have incurred significant costs, primarily in the form of interest expense on the loans against the properties. From March of 2006 to July of 2008, we have incurred \$661, 655 of interest expense waiting on KDOT to make a decision (see attached E-9). Currently, our interest expense on the property loans is \$775.90 **per day**. That's real money out of our pockets. Additionally, we have lost approximately \$22,000,000 in gross revenue from grocery sales. This revenue projection is derived from our market study from Dakota Worldwide (see attachment E-10) and assumes a store opening of 1/1/07.

Ironically, during this time period the COB, Leavenworth County, and the State of Kansas have lost approximately \$1,600,000 in sales tax revenue that would have been generated from the above grocery sales. To take that point one step further, the grocery store will create approximately 120 full and part-time jobs which, during this time frame, would have generated approximately \$2,500,000 in salaries. At a flat 5%, Kansas lost an additional \$125,000 in income tax revenue, not to mention the trickle down effect of having 120 new jobs created.

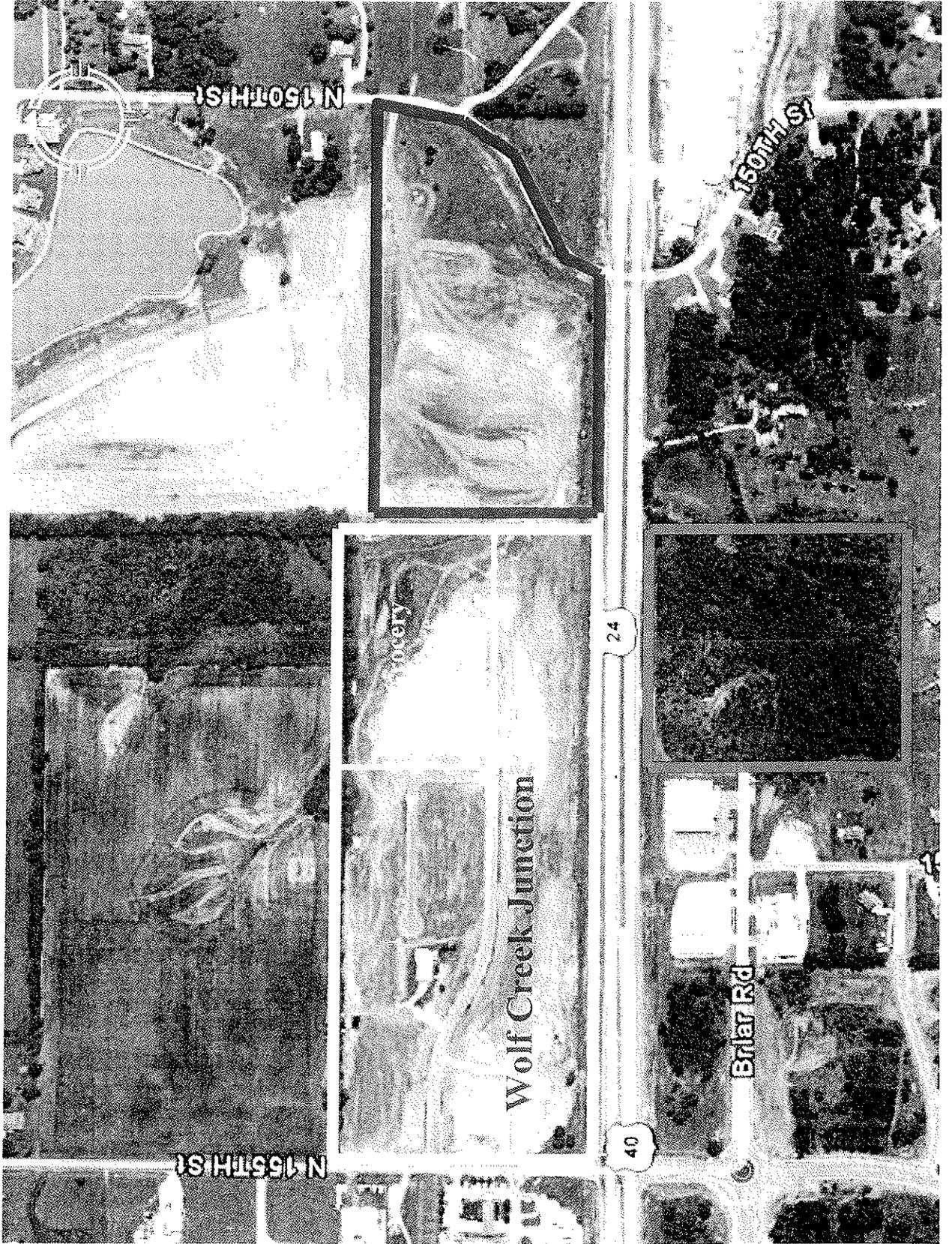
Throughout this process, I have been cooperative with the KDOT representatives as well as the COB, which has been a great supporter of our efforts. It is painfully obvious that KDOT has not reciprocated the same respectful businesslike approach to resolving this issue.

We have patiently waited more than should be expected and as our project, and more importantly our budget, can stand no more delays, I respectfully ask that you review this letter and the supporting information attached hereto in hopes that you can assist with some reasonable resolution. I would greatly appreciate the opportunity to meet with you and discuss my dilemma in detail. As I'm sure your schedule stays full, I will call you in the next couple of days to set an appointment that works for your calendar. I am positive that the registered voters in Leavenworth and western Wyandotte Counties would be thrilled to hear that their Senator is trying to help them get the grocery store that they so desperately want. I look forward to talking to you soon.

Sincerely,

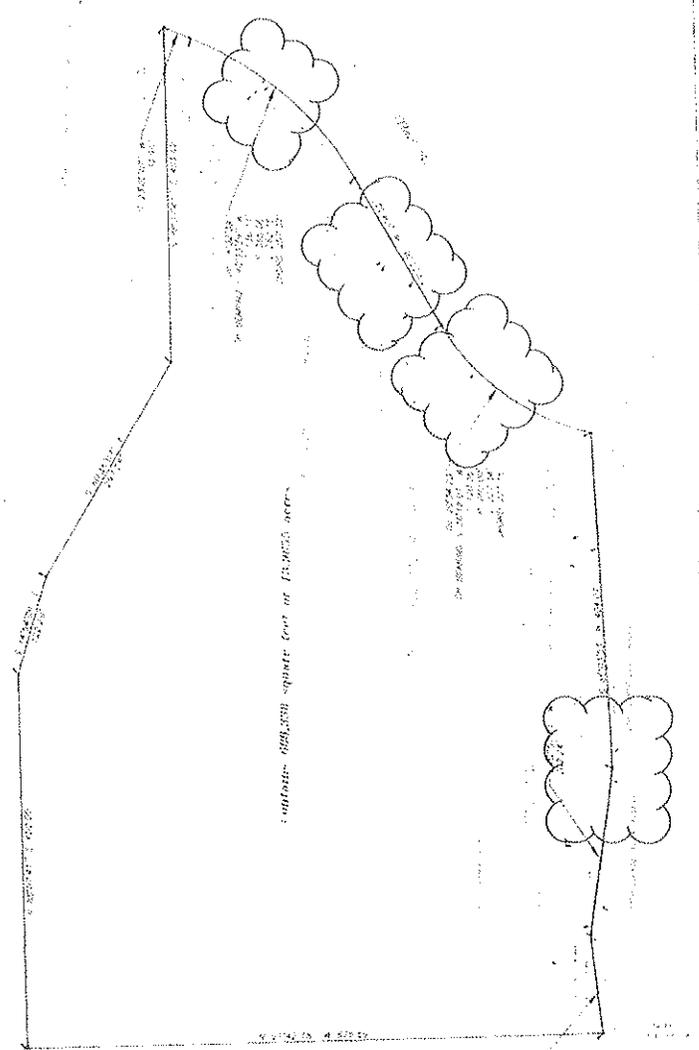
Edward McIntosh
Managing Member
Benchmark Enterprises, LLC
Basehor Properties, LLC

E-1



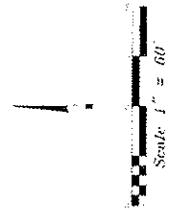
CERTIFICATE OF SURVEY

PEMBROKE LAKE ESTATES PB. 3



APPROX. MAP

DESIGNED BY: [illegible]
 DRAWN BY: [illegible]
 CHECKED BY: [illegible]



LEGEND:

[illegible text]

DATE OF COMPLETION

BOUNDARY & TOPO SURVEY	EDDY GROUP	STONER ENTERPRISES, INC.	PEMBROKE LAKE ESTATES PB. 3
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From: Mick Halter [mailto:Mick@ksdot.org]
Sent: Wednesday, April 26, 2006 7:24 PM
To: Ed McIntosh
Cc: Chris Huffman; David Behzadpour; Kristina Pyle; LuAnn Roth; Alicia Turk; Angel Fitzgerald; Mike Stock
Subject: RE: any word on access 24/40

Ed, I agree the legal description for the property in the northwest quadrant of US-24 and 150th Street indicated a location of a break in access control. At the location of the break in access control is an agricultural field entrance. However any change in the type of access, how the access is used, requires approval of the Kansas Department of Transportation.

In our earlier conversations you indicated a willingness / desire to relocate the existing break in access control to a location that is closer to a mid-point between 150th Street and 155th Street, and I agree that would be preferable to the current location. In previous e-mails I did not mean to indicate KDOT would not permit a relocation of the break in access control and the desired commercial entrance. What I did say is KDOT could not commit to a relocated break in access control and a commercial entrance until the pending US-24 Corridor Study provided sufficient direction to make the appropriate decision. I gave you a late 2006 or early 2007 time frame because I did not wish to be overly optimistic, however it is possible the necessary information would be available earlier.

I will provide you with a Highway Permit for Highway Access application, however not to prejudice the study I do not believe KDOT will approve the permit without having sufficient information to make a decision.

If you desire a meeting with the Department to discuss your desire for an access I will be happy to arrange the meeting. Please let me know if that is your desire and I will schedule a time and location.

Mick Halter, P.E.
Metro Engineer
Kansas Department of Transportation
Mick@ksdot.org
Phone: (913) 677-5963
Cell: (816) 289-0154
Fax: (913) 677-1214

From: Ed McIntosh [mailto:emcintosh@sunflower.com]
Sent: Tuesday, April 25, 2006 1:40 PM
To: Mick Halter
Subject: RE: any word on access 24/40

Mick thank you for your response regarding the access perhaps you could clear up a couple of questions for me. I believe I sent you a copy of the survey which showed the location of the access points or break in access control however one wishes to word it, are we in agreement as to the location of the breaks of access control? Not only are we interested in the access onto 24/40 we are planning to use the access easements that exist on the west side of 150th Street.

As you know we purchased the property with the prior knowledge that all the access were granted to the property and registered at the Leavenworth County Courthouse. " Book 700 Page 1819. The existence of the multiple access points weighed heavily on our decision to purchase

the property. Although we are not assuming that you are denying access we certainly feel it necessary to make it clear we have every intention of pursuing the right to use the appurtenances that come with the purchase of this property. In regards to the 24/40 corridor study we are getting ready to go to the final design for our development and hope to start construction late summer to early fall the location of the access will be an important issue we therefore have concerns with your projected date of late this year or early 2007. I would ask that the committee might take a look at our location first and see if that decision could be expedited. If there is a formal procedure to start this process would you please get me the information or forms that I need to get it started?

In the copy of the deed filed at the court house it clearly states the following " This conveyance is made for the purpose of a controlled access highway and the grantors hereby releases and relinquishes to the grantor any and all abutters rights of access to said highway, appurtenant to grantors remaining property; except and reserving however, to the grantor and his heirs and assigns the right of access to the said highway over and across the following described courses" these courses we put on the survey that I emailed you earlier and we done so by a professional licensed surveyor. This was also part of our title work when we purchased the land. We would be glad give you a copy of this deed or encourage you to visit the courthouse and retrieve a copy.

As we have discussed we are not opposed to relocating the point of access to a more suitable location namely in the area that would be the center point of 24/40 between 150th and 155th on the north side of the highway. We are greatly opposed to being denied access as granted to us by the deed along with having our project delayed. Along with what we feel are our legal rights we have the support of the City with us. We are not asking the Department for any special considerations only to give us their cooperation and help make this a smooth and friendly project. We would be happy to meet with you and anyone involved with the 24/40 study to discuss our options to insure this matter gets handled in a manner good for all concerned.

Ed McIntosh
Benchmark Management, Inc.
P.O. Box 516
Basehor, Kansas 66007

(913) 724-3154 Office
(913) 724-3124 Fax
(913) 208-5826 Cell

From: Mick Halter [mailto:Mick@ksdot.org]
Sent: Tuesday, April 25, 2006 10:29 AM
To: Ed McIntosh
Subject: RE: any word on access 24/40

I did get an answer last week and I apologize for not getting back with you earlier. The property in the northwest quadrant of US-24 and 150th Street has a break in access control and a field type entrance. There was no arrangement in the terms of the right of way agreement that gave any special consideration to the property owner.

The Mid America Regional Council in partnership with the Kansas Department of Transportation, the Cities of Basehor and Tonganoxie, and Leavenworth County are preparing to conduct a corridor study of US-24 from south of Tonganoxie to K-7 Highway. Because the purpose of the

study is to determine the best management practices for US-24 and because KDOT does not wish to prejudices the study it is the position of the Department that no new access or upgrade to an existing access will be approved until the study is complete. It is anticipated the study will be to a stage where a new access or an access upgrade will be considered by late this year or early 2007.

Mick Halter, P.E.

Metro Engineer

Kansas Department of Transportation

Mick@ksdot.org

Phone: (913) 677-5963

Cell: (816) 289-0154

Fax: (913) 677-1214

From: Ed McIntosh [mailto:emcintosh@sunflower.com]

Sent: Monday, April 24, 2006 1:57 PM

To: Mick Halter

Subject: any word on access 24/40

Just checking in to see what your review of our access easement on the Wolf Creek Junction Property in Basehor had turned up.

Ed McIntosh

Benchmark Management, Inc.

P.O. Box 516

Basehor, Kansas 66007

(913) 724-3154 Office

(913) 724-3124 Fax

(913) 208-5826 Cell

From: Chris Huffman [mailto:Huffman@ksdot.org]
Sent: Wednesday, March 05, 2008 8:14 PM
To: Ed McIntosh
Cc: Kristina Pyle
Subject: RE: how are things going

Hi Ed,

I can try to get you some additional contact information, but I've been told to stay away.

If things are not progressing well, then my suggestion is to contact Chris Herrick (Thomas's boss) or Mike Crow (the division director of planning).

The numbers can be found on the KDOT website, or I can send them to you the next time I'm on-line.

Kristi will also have them, if you can reach her.

Good luck with this.

-----Original Message-----

From: "Ed McIntosh" <emcintosh@sunflower.com>
To: "Chris Huffman" <Huffman@ksdot.org>
Sent: 3/5/08 1:43 PM
Subject: how are things going

Good afternoon Chris just thought I would drop you a line and see how you were doing. We haven't made a lot of progress on this end with the 24/40 but it appears that Thomas is trying to get it on track. It sounds like he is swamped, any way I just hope someone in the loop has as much experience in dealing with funding items as you had but so far I am not getting that feeling. If you know anyone still working in that department I would appreciate a name or contact info.

Ed McIntosh
Benchmark Management, Inc.
P.O. Box 516
Basehor, Kansas 66007
(913) 724-3154 Office
(913) 724-3124 Fax
(913) 208-5826 Cell

-----Original Message-----

From: Chris Huffman [mailto:Huffman@ksdot.org]
Sent: Friday, January 11, 2008 6:48 PM
To: Ed McIntosh
Subject: RE:

I honestly don't know if this is a good thing or a bad thing, sometimes things just are what they are.

I was looking forward to working with you, too. I'll be happy to hear from you anytime.

-----Original Message-----

From: "Ed McIntosh" <emcintosh@sunflower.com>
To: "Chris Huffman" <Huffman@ksdot.org>
Sent: 1/11/08 4:42 PM
Subject: RE:

Thanks for the update Chris I was looking forward to working with you but I hope this is a good change for you I will call you and visit from time to time

Ed McIntosh
Benchmark Management, Inc.
P.O. Box 516
Basehor, Kansas 66007
(913) 724-3154 Office
(913) 724-3124 Fax
(913) 208-5826 Cell

From: Chris Huffman [mailto:Huffman@ksdot.org]
Sent: Friday, January 11, 2008 4:23 PM
To: Ed McIntosh
Cc: Kristina Pyle; Thomas Dow
Subject: RE:

Ed,

I appreciate the information that you've sent. Corridor Management has been reorganized under our Bureau of Transportation Planning and I will no longer be directly involved.

I cannot imagine, however, that Kristi and Thomas Dow are not eager to work with you and I cannot imagine that KDOT's commitments to that corridor will not be honored.

I'm leaving for Washington D.C. tomorrow and won't be back in my office until next Friday, but you're welcome to call me at my mobile number below and I'll be happy to speak with you.

Chris Huffman, P.E.
Assistant Bureau Chief, B.T.E.
(P) (785) 296-7436
(M) (785) 817-1012

From: Ed McIntosh [mailto:emcintosh@sunflower.com]
Sent: Friday, January 11, 2008 4:15 PM
To: Chris Huffman
Subject:

Chris I sent out a couple of emails to Christine and your self are you still going to be involved in the 24/40 corridor issues

Ed McIntosh
Benchmark Management, Inc.
P.O. Box 516
Basehor, Kansas 66007
(913) 724-3154 Office

The City of Basehor



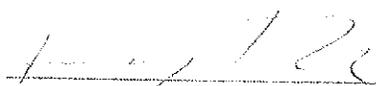
2620 N. 155th Street
P.O. Box 406
Basehor, Kansas 66007-0406

(913) 724-1370
FAX (913) 724-3388
www.basehor.org

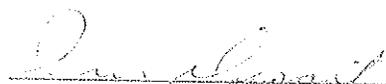
We, the members of the City Council for the City of Basehor, Kansas, do hereby formally and fully support Benchmark Management's application for right-in-right-out access to the west bound lane of 24/40 Highway (State Avenue) at 153rd Street in Basehor, Kansas.

In lieu of approving this request, we formally petition the Kansas Department of Transportation (KDOT) to immediately commence the engineering study to re-align 150th Street in preparation for a full access intersection including signalization.

As Benchmark has been waiting on KDOT to complete the Corridor Study for over two (2) years, we hereby demand resolution of this issue without further delay.

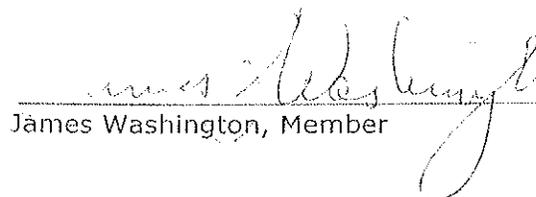

Terry Thomas, Council President

 5-6-08
Chris Garcia, Mayor


Iris Dysart, Member


Terry Hill, Member


Keith Sifford, Member


James Washington, Member

RECEIVED

2095
JUL 5 1995BUREAU OF RIGHT OF WAY
DEPT. OF TRANSPORTATION#29- Landauer
24-75 X 4441-01 - I
C/A 2095

TRACT NO. 29

Joseph Frank Landauer, Jr. and Anna Mary Landauer, husband and wife, owners, 1111 North Street, Basehor, Kansas 66007.

(a) A PERMANENT EASEMENT for controlled access highway right of way and removal of borrow material over and upon a tract of land in the Southwest Quarter of Section 2, Township 11 South, Range 22 East of the 6th P.M., described as follows: BEGINNING at the Southeast corner of said Quarter Section, the South line of said Quarter Section having an assumed bearing of South 88 degrees 34 minutes 22 seconds West; thence North 02 degrees 04 minutes 03 seconds West along the East line of said Quarter Section, 128.31 feet; THENCE SOUTH 88 DEGREES 33 MINUTES 25 SECONDS WEST, 501.24 FEET; THENCE NORTH 34 DEGREES 00 MINUTES 34 SECONDS WEST, 172.05 FEET TO THE EASTERLY RIGHT OF WAY LINE OF A PUBLIC ROAD; thence South 88 degrees 33 minutes 25 seconds West, 60.00 feet to the Westerly right of way line of said public road; thence South 01 degree 52 minutes 59 seconds East, 273.13 feet to the South line of said Quarter Section; thence North 88 degrees 34 minutes 22 seconds East along said South line, 653.15 feet to the place of beginning. The above contains 33,707 square feet, more or less, exclusive of the existing highway.

Lands abutting said highway shall have no right or easement of access thereto.

(b) A PERMANENT EASEMENT for controlled access highway right of way and removal of borrow material over and upon a tract of land in the West Half of the Southeast Quarter of Section 2, Township 11 South, Range 22 East of the 6th P.M., described as follows: BEGINNING at the Southwest corner of said West Half, the South line of said West Half having an assumed bearing of North 88 degrees 29 minutes 24 seconds East; thence North 02 degrees 04 minutes 03 seconds West along the West line of said West Half, 128.31 feet; THENCE NORTH 88 DEGREES 33 MINUTES 25 SECONDS EAST, 1236.07 FEET; THENCE NORTH 82 DEGREES 50 MINUTES 47 SECONDS EAST, 82.90 FEET TO A POINT ON THE EAST LINE OF SAID WEST HALF LYING 135.01 FEET NORTH OF THE SOUTH LINE OF SAID WEST HALF; thence South 01 degrees 57 minutes 09 seconds East along said East line, 135.01 feet to said South line; thence South 88 degrees 29 minutes 24 seconds West along said South line, 1318.36 feet to the place of beginning. The above contains 1.67 acres, more or less, exclusive of the existing highway. Lands abutting said highway shall have no right or easement of access thereto.

Copy to
Suff 7-5-95

Tract No. 29 Cont.

#29- Landauer
24-750K 4441-01 I
C/A 2095

2095 RECEIVED

JUL 5 1995

BUREAU OF RIGHT OF WAY
DEPT. OF TRANSPORTATION

(c) A TEMPORARY EASEMENT for removal, salvage or demolition of a structure located wholly or in part on the tract described below and including the right to eradicate foundations, floors or debris and to level and grade the area in conjunction with the construction of the highway on adjacent right of way over and upon a tract of land in the East Half of the Southwest Quarter of Section 2, Township 11 South, Range 22 East of the 6th P.M., described as follows: BEGINNING at a point on the Northerly right of way line of the proposed highway, which point is North 74 degrees 39 minutes 26 seconds West, 444.26 feet from the Southeast corner of said East Half, the South line of said East Half having an assumed bearing of South 88 degrees 34 minutes 22 seconds West; thence South 88 degrees 33 minutes 25 seconds West along said right of way line, 55.00 feet; thence North 01 degree 26 minutes 35 seconds West, 40.00 feet; thence North 88 degrees 33 minutes 25 seconds East, 55.00 feet; thence South 01 degree 26 minutes 35 seconds East, 40.00 feet to the place of beginning. The above contains 2,200 square feet, more or less.

This easement expires three years after legal possession through condemnation or thirty days after the removal or demolition has been completed or whichever comes first.

APPRAISEMENT:

VALUE OF ENTIRE PROPERTY OR INTEREST BEFORE TAKING	\$ 215,000.00
VALUE OF THAT PORTION OF THE PROPERTY OR INTEREST REMAINING AFTER TAKING	\$ 150,000.00
TOTAL COMPENSATION & MEASURE OF DAMAGES	\$ 65,000.00

0.*

65,000.00 ÷
215,000.00 =
0.30232558139*

1,222,500.00 +
750,000.00 +

002

1,972,500.00 *

1,972,500.00 ×
0.30232558139 =
596,337.209291*

**REAL PROPERTY APPRAISAL
SUMMARY REPORT**

**WOLF CREEK JUNCTION
NEC OF 155TH AND HIGHWAY 24/40
BASEHOR, KANSAS 66007**

*Effective Date of Valuation
October 17, 2007*

*Date of the Report
October 22, 2007*

Prepared for

*Mr. Lynn McClure
First State Bank & Trust*

Prepared by

KELLER & ASSOCIATES, INC.

Wolf Creek Junction

A 20% profit factor has been used.

ITEM			AMOUNT
Land	28.86 acres	\$107,500/acre	\$3,102,450
Development Costs	14 Commercial Lots	Developer's Estimate	\$1,525,000
Subtotal			\$4,627,450
Profit and Carry		20%	\$ 925,490
Total Cost Approach			\$5,552,940
Excess Land*	15.00 Acres	\$81,500/acre	\$1,222,500
Total			\$6,775,440

*The same attributable value for the land was applied to the excess land, but the development costs that were already spent on the project were subtracted, this amount was equal to approximately \$26,000/acre.

Rounded – Say, \$6,780,000

Value Indication by the Cost Approach: \$6,780,000

**REAL PROPERTY APPRAISAL
SUMMARY REPORT**

**VACANT LAND
15251 STATE AVENUE
BASEHOR, KANSAS 66007**

Effective Date of Valuation
March 28, 2008

Date of the Report
April 2, 2008

Prepared for

Mr. Dean Krouse
First State Bank of Goff

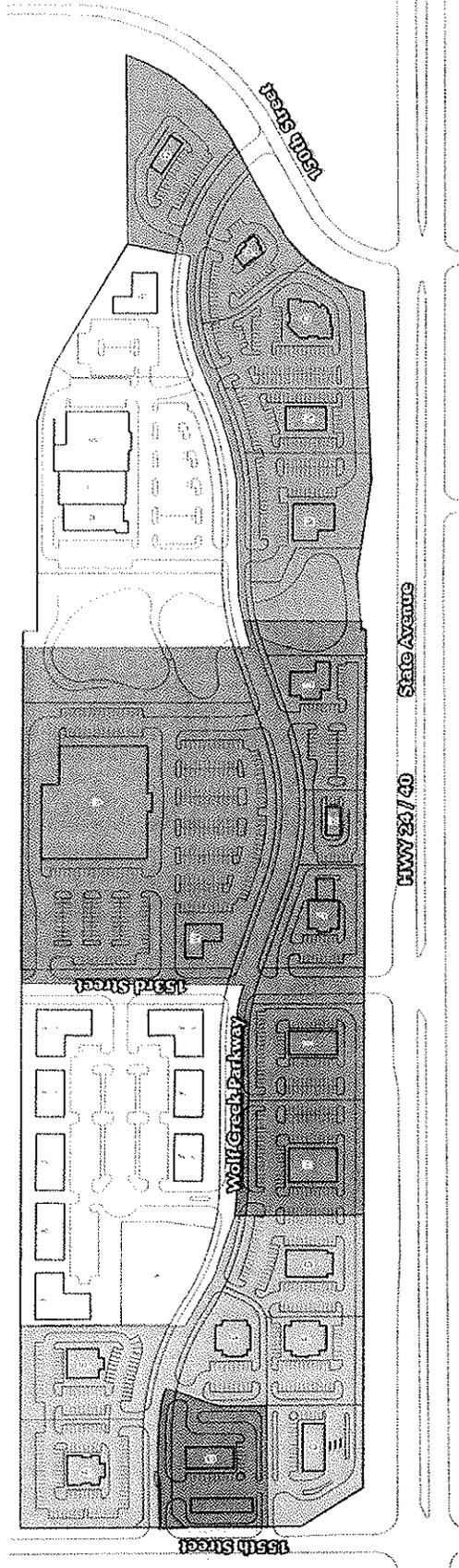
Prepared by

KELLER & ASSOCIATES, INC.

EXECUTIVE SUMMARY



NAME	Vacant Land	
LOCATION	15251 State Avenue Basehor, Kansas 66007	
TYPE OF PROPERTY	Vacant Land	
EFFECTIVE DATE OF VALUE	March 28, 2008	
INTEREST APPRAISED	fee simple estate	
LAND AREA		
SQUARE FEET	426,888	
ACRES	9.80	
ZONING	Current	Proposed
	B-3/General Business.	R-3/Multi-Family
OWNER OF RECORD	Vincent A. Stonestreet & Larry J. Grosko	
HIGHEST AND BEST USE	Multi-Family	
VALUE INDICATIONS	"As Is"	"As Improved"
COST APPROACH		\$1,280,000
SALES COMPARISON APPROACH	\$750,000	\$1,150,000
FINAL VALUE ESTIMATE	\$750,000	\$1,200,000

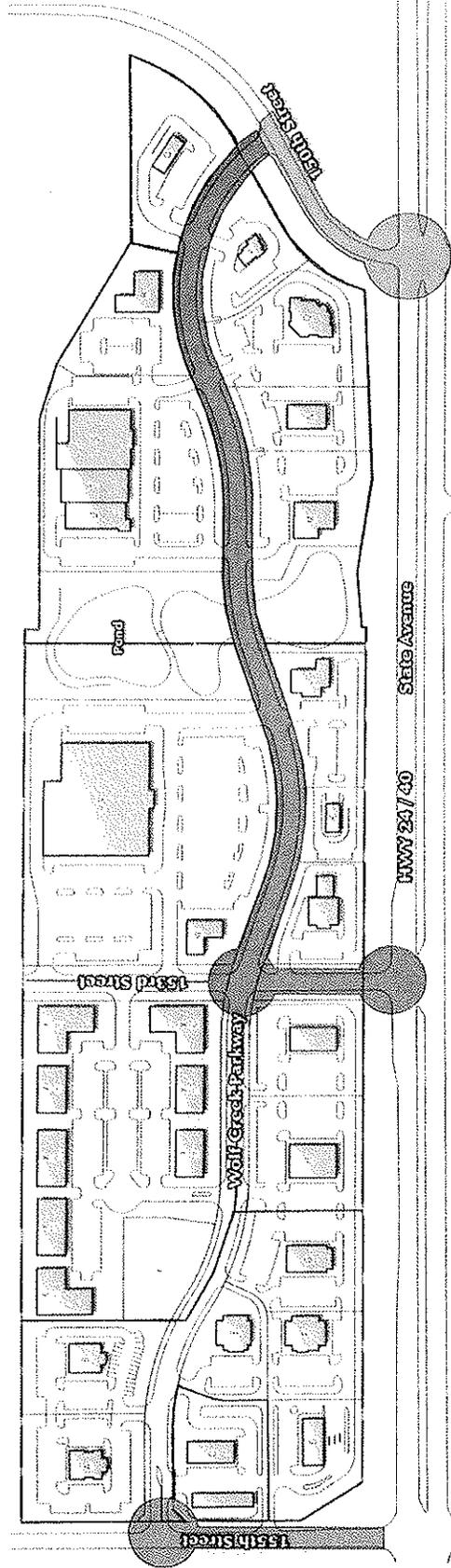


Retail Phasing Plan

Wolf Creek Junction



03/20/16



- Phase 1
- ◐ Phase 2
- ◑ Phase 3



NTS

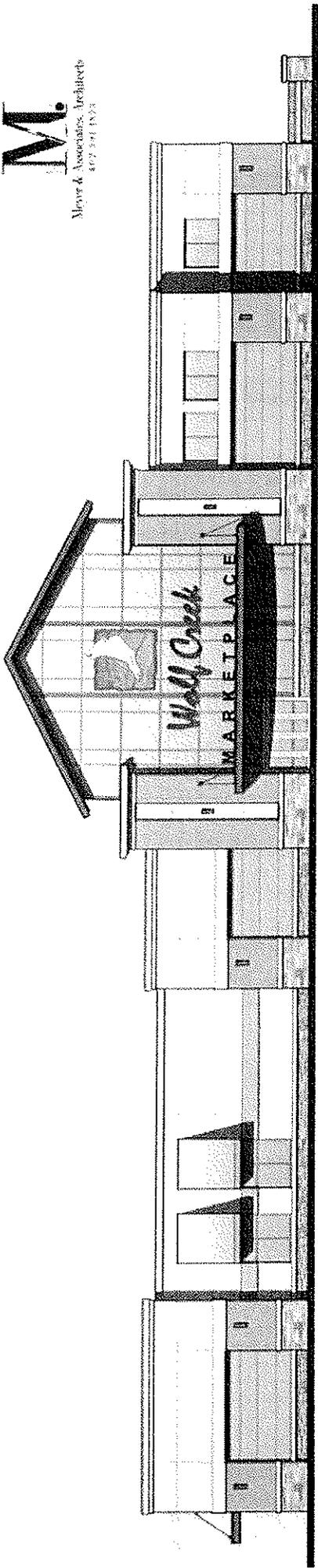
Construction Phasing Plan

Wolf Creek Junction

MKEC

03.24.16

M.
Meyer & Associates, Architects
407 5th Floor





July 23, 2008

Ed Mc Intosh
Managing Member
Benchmark Enterprises, LLC
Basehor Properties, LLC
P. O. Box 516
Basehor, KS 66007

RE: Wolfe Creek Junction
150th-155th Street, State Avenue, Hwy 24-40, Basehor, KS

Dear Ed:

Per your request, we have confirmed your calculation of interest expense on the subdivision for the time period from March 15, 2006 to July 22, 2008. The total interest for both loans totaled approximately \$661,655.

If you have any questions, or need any additional information, please feel free to contact me at 913-721-1774.

Sincerely,

Steven R. Gumm
Senior Vice President

Table 1 Three Year Growth Pattern Weekly Sales			
	1st Year June 2007	2nd Year June 2008	3rd Year June 2009
Scenario 1			
Weekly Sales	\$277,343	\$288,436	\$299,530
Sales/SF	\$6.93	\$7.21	\$7.49
Scenario 2			
Weekly Sales	\$284,725	\$296,114	\$307,503
Sales/SF	\$6.33	\$6.58	\$6.83
Scenario 3			
Weekly Sales	\$291,199	\$302,847	\$314,495
Sales/SF	\$5.82	\$6.06	\$6.29

Scenarios:

- Scenario 1:** A 40,000 total square foot (30,000 sales area square foot) Lipari's Price Chopper opens at Site 1000 at the intersection of 155th Street and State Avenue.
- Scenario 2:** A 45,000 total square foot (34,000 sales area square foot) Lipari's Price Chopper opens at Site 1000 at the intersection of 155th Street and State Avenue.
- Scenario 3:** A 50,000 total square foot (37,000 sales area square foot) Lipari's Price Chopper opens at Site 1000 at the intersection of 155th Street and State Avenue.

Dakota Worldwide Corp.

4801 81st Street, Suite 105 • Minneapolis, MN 55437
Telephone 800.475.4505 • Fax 952.835.4461

Carl Slaugh

From: David Gurss [dgurss@ksdot.org]
Sent: Thursday, October 02, 2008 9:57 AM
To: Carl Slaugh
Cc: David Gurss
Subject: KDOT/Basehor corridor management revised agreements
Attachments: KDOT agreement Wolf Creek Pkwy 2008 10 02.pdf; KDOT agreement 150th-Parallel 2008 10 02.pdf

Carl,

I've attached the two revised agreements with the performance date language added in 3 locations (pages 2, 9 and 10). The text is changed some from what I sent you earlier, but has the same dates.

Article 1 (Secretary Agrees)

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.

Article 2 (City Agrees)

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.

Article 3 (The Parties Mutually Agree)

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 you have questions, or wish to propose additional or substitute language, please contact me at 785-296-3267 or dgurss@ksdot.org.

If the agreements are satisfactory, make three original documents of each agreement for your Chairman's signature and mail the signed copies to me for our Secretary's signature. Please attach a copy of Special Attachment No. 1 and the Contractual Provisions Attachment to all agreements.

Thanks,
David

David Gurss

10/8/2008

KDOT Transportation & Land Use Planning Coordinator
785-296-3267; dgurss@ksdot.org

From: Carl Slaugh [mailto:cityadm@cityofbasehor.org]
Sent: Wednesday, September 17, 2008 9:26 AM
To: David Gurss; Jim Pickett
Cc: Gene Myracle; cityclerk@cityofbasehor.org
Subject: Corridor Management Projects

David,

I discussed the corridor management projects Monday at our city council meeting and the desire to have some type of wording in the agreement that would require action by a certain date. The council agreed in principal, but expressed concern; first that the funding would not be withdrawn; second, that the city would have an option of selecting another suitable project eligible for corridor funding, and third that the option of extending the funding deadline might be considered based on a vote of the city council.

Proposed statement: Funding for this project will remain available until July 31, 2009. If a notice to proceed for the project has not been issued by July 31, 2009 and project completion projected for July 31, 2010 then reallocation of funds to another project within the City of Basehor will be directed.

Thanks, Carl

Carl E. Slaugh, City Administrator
City of Basehor (913) 724-1370 x33
2620 N. 155th St. (913) 231-0630 cell
Basehor, KS 66007

PROJECT NO. (US) 24-52 KA-1451-01

RIGHT OF WAY ACQUISITION AND REVERSE FRONTAGE 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 parallel to US-24 on Wolf Creek Parkway in the City between the intersection of US-24 and 150th Street and US-24 and 153rd Street. 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, ~~reverse frontage roads~~ with asphalt, curb and gutter, storm sewer, sidewalk one side and street lights, between the intersection of US-24/40 and 150th Street and US-24 and 153rd Street 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 _____, 2008.

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 \$500,000. 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 \$750,000. 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.

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, 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 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 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 not required to be moved during construction in order to ensure 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 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 \$250,000. 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 \$750,000. 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 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 are

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 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 cost 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.

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 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.

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. 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, reverse frontage road with asphalt, curb and gutter, storm sewer, sidewalk one side 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.

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, 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 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 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 not required to be moved during construction in order to ensure 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 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 \$50,000. 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 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 are

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 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 cost 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.

ARTICLE III

THE PARTIES MUTUALLY 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 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.

Signature Page Immediately Follows.