



AGENDA
BASEHOR CITY COUNCIL
JANUARY 21, 2013 7:00 p.m.
Basehor City Hall

1. **Roll Call** by Mayor David K. Breuer and Pledge of Allegiance
2. **Consent Agenda** *(Items to be approved by Council in one motion, unless objections raised)*
 - a. December 17, 2012 City Council Minutes
 - b. Treasurer's Report

3. Call to Public

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

4. **Unfinished Business** - (None at this time)

New Business

5. Atmos Energy Utility Relocation Agreement (Resolution No. 2013-2)
6. Consolidated Water Utility Relocation Agreement (Resolution No. 2013-3)
7. **City Administrator's Report**
8. **Mayor's Report**
9. **Council Members Report**
10. **Executive Session** (if needed)
11. **Adjournment**



Basehor City Council Meeting Minutes Basehor City Hall, December 17, 2012

1. **Roll Call** by Travis Miles and Pledge of Allegiance

City Council President Travis Miles called the meeting to order at 7:00 p.m. and led the audience in the Pledge of Allegiance.

A moment of silence was given for Newtown, CT., Topeka, KS and Washington County, MO.

Council Members present: Travis Miles, Richard Drennon, Brian Healy, Vernon Fields, Ty Garver

Not Present: Mayor David K. Breuer

Staff Present: Interim City Administrator/Police Chief Lloyd Martley, City Engineer Mitch Pleak, City Superintendent Gene Myracle, City Clerk/Finance Director Corey Swisher

2. **Consent Agenda**

- a. November 19 & December 3, 2012 City Council Minutes
- b. Treasurer's Report

Miles moved to approve the Consent Agenda with Fields seconding. The motion passed unanimously, 5-0.

3. **Call to Public** – None at this time

4. **Unfinished Business** - None at this time

New Business

5. Public Hearing for 2012 Budget Amendments

Motion to open was made by Healy and seconded by Garver, motion passed, 5-0. Motion was made to close by Healy and seconded by Garver, motion passed unanimously, 5-0.

6. Consider 2012 Budget Amendment

Motion to pass was made by Healy and seconded by Garver, motion passed unanimously, 5-0.

7. Consider Personnel Manual Updates

Motion to pass was made by Fields and seconded by Healy, motion passed unanimously, 5-0.

8. Interim City Administrator Salary Adjustment

Motion to open was made by Miles and seconded by Drennon, motion passed unanimously, 5-0.

9. Construction Release Agreement

Motion to pass was made by Drennon and seconded by Garver, motion passed unanimously, 4-0, Healy abstained.

10. Resolution Authorizing Sale of Bonds

Motion to pass was made by Healy and seconded by Fields, motion passed unanimously, 5-0.

11. Establish Bond Sale Date and Terms

Motion to pass was made by Drennon and seconded by Garver, motion passed unanimously, 5-0.

12. Lots 1, 2, 54, and 55 of Briarwood Estates West Subdivision Revised Legal Description and setting a public hearing for Annexation.

Motion to pass was made by Healy and seconded by Drennon, motion passed unanimously, 5-0.

13. City Administrator's Report

Martley thanked Council for their support throughout the year.

14. Mayor's Report – There was none.

15. Council Members Report

Drennon made the announcement that the stop light at 158th and 24-40 Hwy will go live on December 19, 2012.

Garver wished everyone Happy Holidays.

16. Executive Session – There was none.

17. Adjournment

Healy moved to adjourn the meeting at approximately 7:20 p.m. with Garver seconding. Motion passed, 5-0.

David K. Breuer, Mayor

Attest:

Corey Swisher, City Clerk



The City of Basehor

Date: January 17, 2013

To: Basehor Mayor & City Council
Lloyd Martley, Interim City Administrator

From: Corey Swisher, City Clerk/Finance Director

Re: January 2013, Treasurer's Report

Background:

The attached report contains the financial summaries of the revenue and expenditure activities of the City of Basehor for the month ending December 31, 2012.

Attachments:

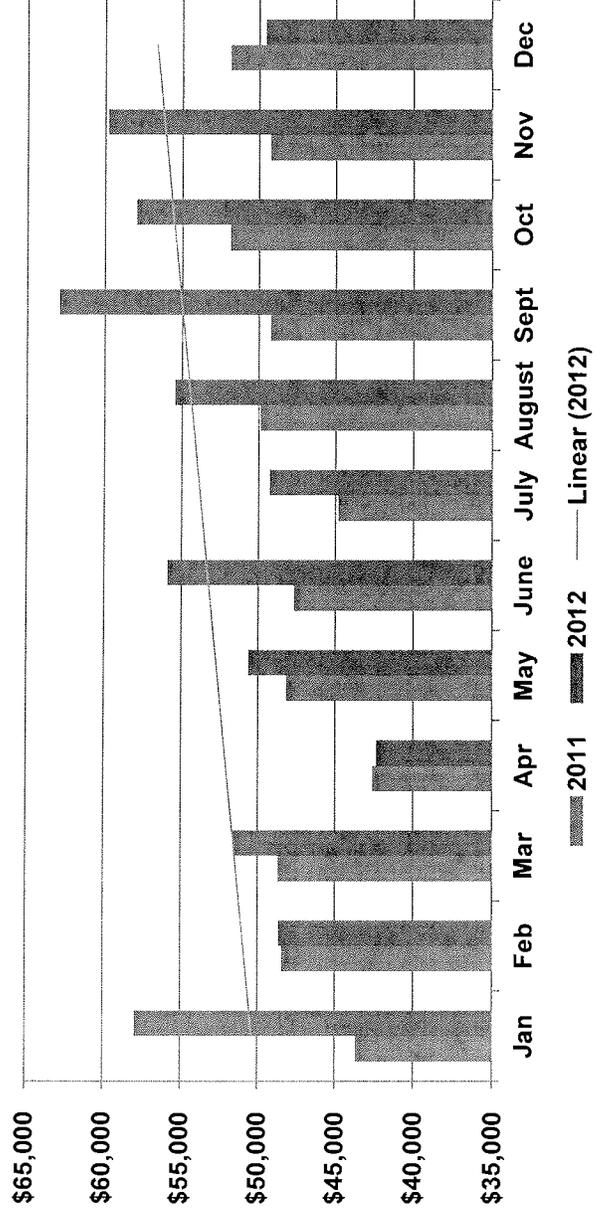
City-Wide Financial Snapshot
Monthly Sales Tax Report
Solid Waste Enterprise Fund Report
Sewer Enterprise Fund Report
Monthly Check Register

MONTHLY SALES TAX COLLECTIONS 2008-2012

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>Monthly Diff.</u> <u>'11 - '12</u>	<u>%</u> <u>Difference</u>	<u>2012 YTD</u>	<u>Diff. '11 - '12</u>	<u>%</u> <u>Difference</u>
Jan	43,516.85	43,726.32	44,933.16	43,677.78	57,962.61	14,284.83	32.7%	57,962.61	14,284.83	32.7%
Feb	46,544.07	49,937.92	59,338.25	48,453.55	48,668.43	214.88	0.4%	92,131.33	14,499.71	15.7%
Mar	46,125.81	59,417.29	44,064.14	48,692.52	51,596.39	2,903.87	6.0%	140,823.85	17,403.58	12.4%
Apr	41,298.70	41,900.26	46,686.51	42,633.11	42,372.82	-260.29	-0.6%	183,456.96	17,143.29	9.3%
May	44,634.80	41,070.02	47,865.00	48,186.99	50,639.59	2,452.60	5.1%	231,643.95	19,595.89	8.5%
June	52,647.16	43,320.60	48,059.05	47,682.94	55,921.34	8,238.40	17.3%	279,326.89	27,834.29	10.0%
July	47,720.81	46,612.85	43,151.43	44,834.43	49,304.00	4,469.57	10.0%	324,161.32	32,303.86	10.0%
Aug	47,209.53	50,284.61	52,935.19	49,903.11	55,484.63	5,581.52	11.2%	373,412.16	38,537.65	10.3%
Sept	50,855.51	52,550.48	52,062.71	49,250.84	62,953.65	13,702.81	27.8%	425,295.24	49,608.22	11.7%
Oct	48,068.36	52,382.92	47,483.47	51,883.08	57,986.12	6,103.04	11.8%	477,178.32	55,711.26	11.7%
Nov	43,264.92	47,111.87	44,789.92	49,270.35	59,821.88	10,551.53	21.4%	526,448.67	66,262.79	12.6%
Dec	43,884.31	56,073.14	46,693.70	51,874.96	49,586.00	-2,288.96	-4.4%	576,343.00	65,954.46	11.4%
	555,770.83	584,388.28	578,062.53	576,343.66	642,297.46	65,953.80	11.4%			

2012 TDD \$11,898.38

2011-12 Month to Month Comparison



CITY OF BASEHOR

JANUARY 2013 FINANCIAL SNAPSHOT

Funds

Fund	Budget	Revenues	Expenditures	% Collected	% Utilized	Current Balance
General	\$1,867,561	\$1,775,024	\$1,452,270	95%	78%	\$607,841
Special Park	\$25,000	\$12,096	\$23,887	48%	96%	\$125,574
Sewer	\$1,379,625	\$5,725,184	\$5,684,394	415%	412%	\$712,576
Cedar Lake Maintenance	\$40,000	\$15,545	\$30,764	39%	77%	\$13,394
Bond & Interest	\$702,234	\$2,127,405	\$1,928,922	303%	275%	\$981,863
Solid Waste	\$280,897	\$269,451	\$196,032	96%	70%	\$130,862
Special Highway	\$715,000	\$485,189	\$419,168	68%	59%	\$2,140,391
Municipal Equip. Reserve	\$8,840	\$852	\$45,966	10%	520%	\$309,624
Capital Improvement	\$0	\$73,657	\$0	0%	100%	\$1,374,034
Employee Benefit	\$489,630	\$468,610	\$395,859	96%	81%	\$130,668
LCSD#3	\$33,000	\$20,602	\$23,589	62%	71%	\$22,876
	\$5,541,787	\$10,973,615	\$10,200,852	198%	184%	\$6,549,703

Department

General	Budget	Expenditures	Remaining Balance	% Utilized
Clerk	\$306,950	\$277,982	\$28,968	91%
Street	\$183,100	\$165,393	\$17,707	90%
Governing Body	\$44,614	\$37,105	\$7,509	83%
Police	\$771,650	\$658,907	\$112,743	85%
Facilities	\$131,775	\$108,002	\$23,773	82%
Administrator	\$141,600	\$41,965	\$99,635	30%
Park & Recreation	\$32,955	\$31,600	\$1,355	96%
Miscellaneous	\$85,518	\$16,447	\$69,071	19%
HR	\$16,000	\$19,788	-\$3,788	124%
Planning	\$153,400	\$95,080	\$58,320	62%
	\$1,867,562	\$1,452,270	\$415,292	78%



SOLID WASTE FUND HIGHLIGHTS

For the Month of December 2012

MONTH	2011	2012	% DIFFERENCE
	SOLID WASTE COUNT	SOLID WASTE COUNT	
January	1,639	1,653	0.85%
February	1,635	1,655	1.21%
March	1,633	1,665	1.92%
April	1,638	1,672	2.03%
May	1,639	1,690	3.02%
June	1,642	1,688	2.73%
July	1,639	1,690	3.02%
August	1,639	1,701	3.64%
September	1,645	1,701	3.29%
October	1,647	1,697	2.95%
November	1633	1696	3.71%
December	1639	1697	3.42%
AVERAGE	1,639	1,684	2.66%

MONTH	2011	2012	% DIFFERENCE
	SOLID WASTE BILLED	SOLID WASTE BILLED	
January	\$16,413.01	\$23,276.77	29.49%
February	\$23,010.32	\$23,320.00	1.33%
March	\$22,959.12	\$23,379.98	1.80%
April	\$23,033.99	\$23,518.26	2.06%
May	\$23,040.15	\$23,794.81	3.17%
June	\$23,065.60	\$23,774.99	2.98%
July	\$23,017.69	\$23,719.21	2.96%
August	\$23,030.35	\$23,858.00	3.47%
September	\$23,112.81	\$23,922.17	3.38%
October	\$23,166.10	\$23,821.96	2.75%
November	\$23,016.61	\$23,784.36	3.23%
December	\$14,899.96	\$23,856.66	37.54%
TOTAL	\$261,765.71	\$284,027.17	7.84%

MONTH	2011	2012	% DIFFERENCE
	AVERAGE BILL	AVERAGE BILL	
January	\$10.01	\$14.08	28.91%
February	\$14.07	\$14.09	0.14%
March	\$14.06	\$14.04	-0.14%
April	\$14.06	\$14.07	0.07%
May	\$14.06	\$14.08	0.14%
June	\$14.05	\$14.07	0.14%
July	\$14.04	\$14.04	0.00%
August	\$14.05	\$14.03	-0.14%
September	\$14.05	\$14.06	0.07%
October	\$14.07	\$14.04	-0.21%
November	\$14.09	\$14.02	-0.50%
December	\$14.06	\$14.06	0.00%
AVERAGE	\$13.72	\$14.06	2.38%



SEWER FUND HIGHLIGHTS

For the Month of November 2012

MONTH	2011 SWR COUNT	2012 SWR COUNT	% DIFFERENCE
January	1679	1789	6.15%
February	1676	1792	6.47%
March	1679	1797	6.57%
April	1774	1799	1.39%
May	1781	1801	1.11%
June	1779	1798	1.06%
July	1778	1799	1.17%
August	1781	1806	1.38%
September	1774	1805	1.72%
October	1777	1806	1.61%
November	1770	1806	1.99%
December	1776	1801	1.39%
AVERAGE	1752	1800	2.66%

MONTH	2011 SWR BILLED	2012 SWR BILLED	% DIFFERENCE
January	\$80,781.73	\$89,188.63	10.41%
February	\$80,627.21	\$89,662.48	11.21%
March	\$80,471.02	\$88,970.52	10.56%
April	\$80,010.76	\$89,233.29	11.53%
May	\$90,216.49	\$91,548.66	1.48%
June	\$89,998.38	\$89,646.47	-0.39%
July	\$89,284.06	\$90,508.05	1.37%
August	\$90,683.38	\$90,985.23	0.33%
September	\$91,270.81	\$92,083.69	0.89%
October	\$91,521.37	\$90,721.14	-0.87%
November	\$86,644.10	\$90,453.78	4.40%
December	\$86,654.61	\$90,682.84	4.65%
TOTAL	\$1,038,163.92	\$1,083,684.78	4.38%

MONTH	2011 AVERAGE SWR BILL	2012 AVERAGE SWR BILL	% DIFFERENCE
January	\$48.11	\$49.85	3.61%
February	\$48.11	\$50.03	4.00%
March	\$47.93	\$49.51	3.30%
April	\$45.10	\$49.60	9.97%
May	\$50.65	\$50.83	0.36%
June	\$50.59	\$49.86	-1.44%
July	\$50.22	\$50.31	0.18%
August	\$50.92	\$50.38	-1.06%
September	\$51.45	\$51.02	-0.83%
October	\$51.50	\$50.23	-2.47%
November	\$48.95	\$50.09	2.33%
December	\$48.79	\$50.35	3.20%
AVERAGE	\$49.36	\$50.17	1.64%

Check Register Report

Date: 12/14/2012

Time: 10:51 AM

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City Of Basehor

BANK: First State Bank

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
First State Bank Checks							
20197	12/13/2012	Printed		ADVANCE IN	ADVANCE INSURANCE COMPANY	GROUP ADD/LIFE/LTD/STD	603.56
20198	12/13/2012	Printed		AFFINIS	AFFINIS CORP	DESIGN SVCS/WC PKWY IMPRVMENTS	31,742.49
20199	12/13/2012	Printed		AFLAC	AFLAC	EMPLOYEE CAFETERIA PLAN/NOV	1,476.63
20200	12/13/2012	Printed		APACKANSA	APAC-KANSAS INC	ROCK/DITCH REPAIR-HOLLINGSWORTH	316.46
20201	12/13/2012	Printed		ATMOS ENER	ATMOS ENERGY	GAS USAGE	449.04
20202	12/13/2012	Printed		BASEHOR CH	BASEHOR CHAMBER OF COMMERCE	CITY MEMBERSHIP/REP-SWISHER	110.00
20203	12/13/2012	Printed		BLUE CROSS	BLUE CROSS & BLUE SHIELD OF KS	GROUP MEDICAL INSURANCE	15,173.88
20204	12/13/2012	Printed		CARTER WAT	CARTER WATERS CORPORATION	ASPHALT-COLD PATCH W/ FIBER	190.45
20205	12/13/2012	Printed		CUSSEN	JACK D CUSSEN P.E.	TRNG/3 PHASE ELECT/WWTF OPER	680.00
20206	12/13/2012	Printed		ETS	ETS	CITYWIDE CREDIT CARD FEES	158.25
20207	12/13/2012	Printed		FASTENAL	FASTENAL COMPANY	1/2" IMPACT DRIVER/PWD	296.17
20208	12/13/2012	Printed		HARBOUR	HARBOUR CONSTRUCTION INC	2012 CHIP SEAL PROGRAM ADDTL	111,890.00
20209	12/13/2012	Printed		HARTFORD	HARTFORD RETIREMENT PLANS	401/457 RETIREMENT CONTRIB	2,713.81
20210	12/13/2012	Printed		HEALTHY	HEALTHY SOLUTIONS INC	FLU SHOTS/PUBLIC AND EMPLOYEES	50.00
20211	12/13/2012	Printed		HR HAVEN	HR-HAVEN INC	MONTHLY RETAINER SVC/DEC	1,199.95
20212	12/13/2012	Printed		IDEAL LAWN	IDEAL LAWN & LANDSCAPE	BASEHOR BLVD MOWING-OCT 2012	45.00
20213	12/13/2012	Printed		JOHNSON CL	JOHNSON COUNTY GOVERNMENT	BI-MO FACILITY FLOW TEST/11-15	333.00
20214	12/13/2012	Printed		KA-COMM	KA-COMM, INC.	EQUIP CHIEF'S NEW POLICE CAR	4,094.14
20215	12/13/2012	Printed		KBI LAB	KANSAS BUREAU OF INVESTIGATION	COURT ORDERED COSTS/LAB FEES	400.00
20216	12/13/2012	Printed		KANSAS ONE	KANSAS ONE-CALL SYSTEMS, INC.	MONTHLY LOCATE SVC/NOV/54 LOC	75.60
20217	12/13/2012	Printed		KANSAS PAY	KANSAS PAYMENT CENTER	PAYROLL DIRECTED DEDUCTIONS	658.73
20218	12/13/2012	Printed		KPF EFT	KPF EFT PROGRAM	POLICE RETIREMENT CONTRIB	4,892.21
20219	12/13/2012	Printed		LV SHERIFF	LEAVENWORTH COUNTY SHERIFF	JAIL BOARD FEES	105.00
20220	12/13/2012	Printed		MICROFLEX	MICROFLEX	(3)CA LATEX GLOVES/WWTF OPER	324.15
20221	12/13/2012	Printed		NAT SIGN	NATIONAL SIGN COMPANY INC	MISC SUPPLIES/PWD	560.00
20222	12/13/2012	Printed		PRAY	WILLIAM E. PRAY	MUNICIPAL JUDGE SERVICES	300.00
20223	12/13/2012	Printed		R & S EQUI	R & S EQUIPMENT	REPAIR/REPLACE ITEMS-BLOWER	27.65
20224	12/13/2012	Printed		SELECT IMA	SELECT IMAGING	FILE BOUND HOST FEE/FINAL PAY	300.00
20225	12/13/2012	Printed		SHAVER	CHIRS & CHRISTINA SHAVER	YOUTH SPORTS REBATE X2	52.50
20226	12/13/2012	Printed		SMITH & LO	SMITH & LOVELESS INC	NEW VALVE CVR/158 & HICKORY	1,368.13
20227	12/13/2012	Printed		SPECTRA	SPECTRA	ODOR CONTROL/LIFT STATIONS	1,245.32
20228	12/13/2012	Printed		SPOTS OFF	SPOTS OFF LLC	CAR WASHES/PLAN/NOV	8.00
20229	12/13/2012	Printed		SPRINGSTED	SPRINGSTED	BASIC SERVICES FEE	250.00
20230	12/13/2012	Printed		TYLER TECH	TYLER TECHNOLOGIES, INC.	RECEIPT TAPE/RIBBONS-UB PAY	136.10
20231	12/13/2012	Printed		UV DOCTOR	UV DOCTOR LAMPS LLC	(12)AMALGAM LAMPS/WWTF	1,813.21
20232	12/13/2012	Printed		VISION SER	VISION SERVICES PLAN	GROUP VISION INSURANCE	421.40
20233	12/13/2012	Printed		WESTAR	WESTAR ENERGY	ELECTRIC USAGE	4,744.45
20234	12/13/2012	Printed		WHITE GOSS	WHITE GOSS BOWERS MARCH	CONTRACT LEGAL SERVICES	7,340.00
20235	12/13/2012	Printed		ZEE MED	ZEE MEDICAL SERVICE	REPLENISH 1ST AID CAB/WWTF	59.00
20236	12/14/2012	Printed		HAMMONS	GEORGE HAMMONS	REIMB CITATION OVERPAY	25.00

Check Register Report

Date: 12/14/2012

Time: 10:51 AM

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City Of Basehor

BANK: First State Bank

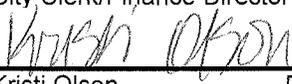
Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
First State Bank Checks							
20236	12/14/2012	Printed		HAMMONS	GEORGE HAMMONS	REIMB CITATION OVERPAY	25.00
20237	12/14/2012	Printed		KBI LAB	KANSAS BUREAU OF INVESTIGATION	COURT ORDERED COSTS/LAB FEES	400.00
20238	12/14/2012	Printed		SIBERT	DORIAN & JENNY SIBERT	YOUTH SPORTS REBATE X3	135.00
				Total Checks: 42	Checks Total (excluding void checks):		197,164.28

 12-14-12

Lloyd Martley Date
Interim City Administrator

 12/14/12

Corey Swisher Date
City Clerk/Finance Director

 12/14/12

Kristi Olson Date
Accounting Clerk

Check Register Report

Date: 12/19/2012

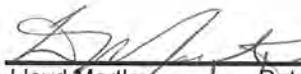
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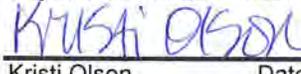
City Of Basehor

BANK: First State Bank

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
First State Bank Checks							
20239	12/19/2012	Printed		BASEHOR T	BASEHOR TOWN SQUARE LLC	WOLF CREEK PKWY IMPRVMENTS	40.00
20240	12/19/2012	Printed		BREUER R	RAPHAEL D & ANN E BREUER	WOLF CREEK PKWY IMPROVMNTS	20.00
20241	12/19/2012	Printed		HEALY	BRIAN & DEBORAH HEALY	SETTLEMNT/GRINDER PUMP	1,200.00
20242	12/19/2012	Printed		LAND CO	LAND CO REAL ESTATE SVCS INC	ROW ACQUISITION SVCS/WOLF CREEK	495.00
20243	12/19/2012	Printed		MYRACLE/GE	GENE MYRACLE	TRVL REIMB/EMPORIA/WW TRAINING	136.82
Total Checks: 5						Checks Total (excluding void checks):	1,891.82


 Lloyd Martley Date 12-19-12
 Interim City Administrator


 Corey Swisher Date 12/19/12
 City Clerk/Finance Director


 Kristi Olson Date 12/19/12
 Accounting Clerk

Check Register Report
FINAL 2012 BUDGET CHECKS

Date: 01/15/2013
Time: 9:30 AM
Page: 1

City Of Basehor

BANK: First State Bank

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
First State Bank Checks							
20266	12/31/2012	Printed		AFFINIS	AFFINIS CORP	DESIGN SVCS/WC PKWY IMPROVMNT	16,477.15
20267	12/31/2012	Printed		ASPHALT	ASPHALT SALES COMPANY INC	HOT MIX ASPHALT/STREET REPAIRS	359.20
20268	12/31/2012	Printed		BVAC	BVAC	AMMO	1,115.90
20269	12/31/2012	Printed		CINTAS	CINTAS	WEEKLY CLEAN SVC-WWTF/12-27	54.03
20270	12/31/2012	Printed		COMMERCE	COMMERCE PURCHASING CARD	CITYWIDE PCARD CHARGES	58,137.59
20271	12/31/2012	Printed		CONS	CONS RURAL WATER DISTRICT #1	WATER USAGE/DEC	262.89
20272	12/31/2012	Printed		DEFFENBAU	DEFFENBAUGH DISPOSAL SVC	SLUDGE REMOVAL FRM WWTF/DEC	21,097.28
20273	12/31/2012	Printed		DESIGN ENE	DESIGN ENERGY GROUP	CODE REVIEW/COUNTY LIVING PL	960.00
20274	12/31/2012	Printed		ETS	ETS	CITYWIDE CREDIT CARD FEES/DEC	170.77
20275	12/31/2012	Printed		FASTENAL	FASTENAL COMPANY	REPLACE TOOL BOX/PWD, WWTF	832.19
20276	12/31/2012	Printed		HAYNES EQU	HAYNES EQUIPMENT CO	GRINDER PUMP/CEDAR LK, GLENWOOD	7,248.24
20277	12/31/2012	Printed		INDEP SALT	INDEPENDENT SALT COMPANY	HIWAY TREATMNT ROCK SALT	6,480.30
20278	12/31/2012	Printed		KS CHF POL	KANSAS ASSOC FOR CHIEF OF	MBRSHP/MARTLEY, LLOYD	55.00
20279	12/31/2012	Printed		KANSAS ONE	KANSAS ONE-CALL SYSTEMS, INC.	MONTHLY LOCATE/DEC/57 CALLS	79.80
20280	12/31/2012	Printed		KS TREASUR	KANSAS STATE TREASURER	STATE MANDATED COURT FINES/DEC	1,202.50
20281	12/31/2012	Printed		KELLY	MICHAEL E KELLY	CITY PROSECUTOR FEES/NOV & DEC	918.50
20282	12/31/2012	Printed		KUPM	KU PUBLIC MANAGEMENT CENTER	TRNG/CPM PROGRAM/SWISHER	1,100.00
20283	12/31/2012	Printed		LAND CO	LAND CO REAL ESTATE SVCS INC	ROW ACQUIST SVCS/155TH ST PROJ	495.00
20284	12/31/2012	Printed		LAWRENCE	LAWRENCE JOURNAL WORLD	LEGAL-AMEND BUDGET/PUBLIC	78.00
20285	12/31/2012	Printed		LCDC	LCDC	REG/ANNUAL MTG/7 STAFF	175.00
20286	12/31/2012	Printed		LVN PROBAT	LEAVENWORTH CITY & COUNTY	COURT SVCS/OCT-DEC 2012	2,739.15
20287	12/31/2012	Printed		LUCAS	DORIS LUCAS	YOUTH SPORTS REBATE	67.50
20288	12/31/2012	Printed		PIERCE R A	ROBERT A PIERCE	REIMB TUITION/VOTECH-WELDING	1,393.25
20289	12/31/2012	Printed		REGISTER	REGISTER OF DEEDS	LAREDO BILLING/NOV 2012	60.00
20290	12/31/2012	Printed		SELECT IMA	SELECT IMAGING	FILEBOUND HOST FEE/DEC/FINAL	590.00
20291	12/31/2012	Printed		SPECTRA	SPECTRA	REPLACE DRILL BITS/PWD	1,768.96
20292	12/31/2012	Printed		SUBURBAN	SUBURBAN WATER	WATER/LIFT STATION-RMV DEBRIS	125.00
20293	12/31/2012	Printed		VERIZON	VERIZON WIRELESS	CELL PHONE USAGE/DEC 2012	868.68
20294	12/31/2012	Printed		WESTAR	WESTAR ENERGY	ELECTRIC USAGE/DEC	10,702.80
20295	12/31/2012	Printed		WHITE GOSS	WHITE GOSS BOWERS MARCH	LEGAL SVCS THRU 12/13/12	3,367.50
20296	12/31/2012	Printed		HOLLINS C	CHAD & JULIE HOLLINS	REIMB RE-PLAT EXPENSES/154TH P	929.23
20297	12/31/2012	Printed		JOHNSON CL	JOHNSON COUNTY GOVERNMENT	BI MONTH FLOW TEST/WWTF/12-27	249.50
20298	12/31/2012	Printed		STRICK & C	STRICK & COMPANY	PINEHURST SOUTH REPLAT	482.50
20299	12/31/2012	Printed		WESTAR	WESTAR ENERGY	ELECTRIC USAGE (STREET LIGHTS)/DEC	4,845.62
20300	12/31/2012	Printed		WRIGHT EX	WRIGHT EXPRESS	CITYWIDE FUEL CHARGES/DEC 2012	2,542.55

35

Checks Total (excluding void checks):

147,631.58

Lloyd Martley 1-15-13

Lloyd Martley Date
Interim City Administrator

Corey Swisher 1/15/13

Corey Swisher Date
City Clerk/Finance Director

Kristi Olson 1/15/13

Kristi Olson Date
Accounting Clerk

Check Register Report

Date: 12/28/2012
 Time: 2:23 PM
 Page: 1

City Of Basehor

BANK: First State Bank

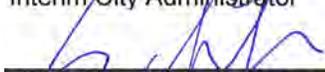
Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
First State Bank Checks							
20244	12/28/2012	Printed		AFLAC	AFLAC	EMP CAFETERIA PLAN/DEC 2012	984.42
20245	12/28/2012	Printed		AMER SECUR	AMER SECURITY CONTRACTORS LLC	MONTHLY MONITOR/PWD/DEC	117.00
20246	12/28/2012	Printed		BRANDT FAB	BRANDT FABRICATING	RMV BROKEN LIGHT SAFETY SYSTEM	1,063.50
20247	12/28/2012	Printed		FASTENAL	FASTENAL COMPANY	MISC SHOP SUPPLYS/MAINT REPAIR	183.22
20248	12/28/2012	Printed		HARTFORD	HARTFORD RETIREMENT PLANS	401/457 RETIREMENT CONTRIB	2,769.11
20249	12/28/2012	Printed		HOLLIDAY	HOLLIDAY SAND & GRAVEL CO	ROAD SAND-WINTER STORMS	323.93
20250	12/28/2012	Printed		JOHNSON CL	JOHNSON COUNTY GOVERNMENT	BI MONTHLY FACILITY FLOW TEST	154.00
20251	12/28/2012	Printed		KANSAS PAY	KANSAS PAYMENT CENTER	PAYROLL DIRECTED DEDUCTION	658.73
20252	12/28/2012	Printed		KPF EFT	KPF EFT PROGRAM	POLICE RETIREMENT CONTRIB	4,765.93
20253	12/28/2012	Printed		LEAGUE KM	LEAGUE OF KS MUNICIPALITIES	LKM PUBLICATION AND SHIPPING	37.07
20254	12/28/2012	Printed		LEE	MARK LEE	TRVL REIMB/MILEAGE-TONGIE	155.40
20255	12/28/2012	Printed		LITTLE ANG	LITTLE ANGELS LEARNING CENTER	YOUTH SPORTS REBATE	30.00
20256	12/28/2012	Printed		POLYDYNE	POLYDYNE INC	55 GAL DRMS/POLIMER CLARIFLOC	1,080.00
20257	12/28/2012	Printed		SALINA ATC	SALINA AREA TECHNICAL COLLEGE	TRAINING/MYRACLE, G/EMPORIA	105.00
20258	12/28/2012	Printed		SHAHER KRY	KRYSTELLE SHAHER	REIMB CITATION OVERPAYMENT	5.00
20259	12/28/2012	Printed		SHAVER	CHRIS & CHRISTINA SHAVER	YOUTH SPORTS REBATE	22.50
20260	12/28/2012	Printed		SONNTAG	SONNTAG LAW OFFICE	COURT APPOINTED ATTORNEY FEE	400.00
20261	12/28/2012	Printed		SPECTRA	SPECTRA	BIO BLOCKS/LIFT STATION MAINT	1,379.00
20262	12/28/2012	Printed		SPOTS OFF	SPOTS OFF LLC	CAR WASHES/NOV/POLICE	68.95
20263	12/28/2012	Printed		HEART BUIL	STEPHEN R MARSDEN	JANITORIAL SVC/CITY HALL/DEC	774.00
20264	12/28/2012	Printed		US POSTAL	UNITED STATES POSTAL SERVICE	REPLENISH UB MAILING PERMIT	2,000.00
20265	12/28/2012	Printed		WRIGHT EX	WRIGHT EXPRESS	CITY FUEL CHARGES/DEC 2012	3,021.06

Total Checks: 22

Checks Total (excluding void checks):

20,097.82


 Lloyd Martley Date 1-17-13
 Interim City Administrator


 Corey Swisher Date 12/28/12
 City Clerk/Finance Director


 Kristi Olson Date 12/28/12
 Accounting Clerk

City of Basehor
Agenda Item Cover Sheet

Agenda Item No. 5

Topic:

Consider an agreement between the City and Atmos Energy to relocate utilities for Wolf Creek Parkway (155th Street to 158th Street) and 155th Street (US-24/40 to Wolf Creek Parkway) projects.

Action Requested:

Consider Resolution 2013-02 to enter into an agreement with Atmos Energy.

Narrative:

In June of 2011 and July of 2012 the City entered into an agreements with the Kansas Department of Transportation (KDOT) regarding the construction of Wolf Creek Parkway (155th Street to 158th Street), 155th Street (US-24/40 to Wolf Creek Parkway), and 158th Street (US-24/40 to Wolf Creek Parkway). Per the agreements, the City will move or adjust all utilities necessary to construct the projects. The project budget set for utility relocation is \$288,000. 42% of the relocation is within private easements held by Atmos Energy. The relocation of lines in private easements will be at the expense of the City. The estimated cost to the City is \$29,581.90.

Presented by:

Mitch Pleak, City Engineer

Administration Recommendation:

Approve Resolution 2013-02.

Committee Recommendation:

Attachments:

Memo Mitch Pleak 1.16.13 (1 page)

Resolution 2013-02 (2 pages)

Project Agreement No. 24-52 KA-2277-01 (14 pages)

Project Agreement No. 24-52 KA-2818-01 (14 pages)

Project Agreement No. 24-52 KA-2819-01 (14 pages)

Projector needed for this item?

No

Memorandum

To: Mr. Mayor and City Council
CC: Chief Lloyd Martley
From: Mitch Pleak
Date: 1.16.13
Re: Wolf Creek Parkway Project - Consolidated Rural Water District No. 1
Water Main Relocations Agreement.

In June of 2011 and July of 2012 the City entered into an agreements with the Kansas Department of Transportation (KDOT) regarding the construction of Wolf Creek Parkway (155th Street to 158th Street), 155th Street (US-24/40 to Wolf Creek Parkway), and 158th Street (US-24/40 to Wolf Creek Parkway). Per the agreements, the City will move or adjust all utilities necessary to construct the projects. The project budget set for utility relocation is \$288,000.

December 5, 2012, Consolidated Rural Water District No. 1 (District) identified water mains in need of relocation due to the project. The water mains are located in private easements held by the District. The relocation of lines in private easements will be at the expense of the City. The estimated cost to the City is \$205,436.50.

An agreement between the City and District is attached for consideration. The relocation will be paid from the Consolidated Highway Fund.

RESOLUTION NO. 2013-3

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN AGREEMENT BETWEEN BY AND BETWEEN THE CITY OF BASEHOR, KANSAS AND CONSOLIDATED RURAL WATER DISTRICT NO. 1, LEAVENWORTH COUNTY, KANSAS, REGARDING THE RELOCATION OF FACILITIES FOR THE US-24/40 CORRIDOR MANAGEMENT PROJECT IN BASEHOR, LEAVENWORTH COUNTY, KANSAS.

WHEREAS, the City of Basehor, Kansas wishes to enter into the Water Line Relocation Agreement with Consolidated Rural Water District No. 1, attached hereto as **Exhibit A**.

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

Section 1. That the Governing Body approves and hereby authorizes the Mayor to execute the Water Line Relocation Agreement with Consolidated Rural Water District No. 1, substantially in the form attached as **Exhibit A**.

Section 2. That this resolution shall become effective upon passage.

PASSED by the Governing Body this 21st day of January, 2013.

APPROVED by the Mayor this 21st day of January, 2013.

[SEAL]

David K. Breuer, Mayor

ATTEST:

Corey Swisher, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

Exhibit A
Water Line Relocation Agreement

To be attached.

WATER LINE RELOCATION AGREEMENT

THIS WATER LINE RELOCATION AGREEMENT (hereinafter "Agreement"), is made and entered into in duplicate this _____ day of _____, 2013, by and between the **City of Basehor, Kansas**, a Kansas municipality (hereinafter "City"), and **Consolidated Rural Water District No. 1, Leavenworth County, Kansas**, (hereinafter "the District").

WITNESSETH:

WHEREAS, the City has commenced or will be commencing a construction project to construct a new street, "Wolf Creek Parkway", extending west from 155th St. to 158th St., (KDOT Project No. 24-52 KA-2277-01) and improving 155th St. from State Ave north approximately one thousand one hundred feet (KDOT Project No. 24-52 KA-2818-01) (hereinafter the "Street") in the City; and

WHEREAS, the construction of the Street will also affect:

- a. Approximately 600 feet of 8-inch diameter water pipeline (running parallel to the north side of the proposed Wolf Creek Parkway),
- b. Approximately 120 feet of twelve-inch diameter water pipeline (crossing the proposed Wolf Creek Parkway),
- c. Approximately 120 feet of 6-inch water pipeline (crossing the proposed Wolf Creek Parkway approximately 600 feet west of 155th St.),
- d. Approximately 60 feet of 12-inch water pipeline casing (crossing under 155th St. from west to east at Wolf Creek Parkway),
- e. Approximately 110 feet of 8-inch water pipeline (crossing under 155th St. at private entrance approximately 300 feet north of State Avenue), and
- f. Approximately 200 feet of 6-inch water pipeline (northwest corner of 155th St. and State Avenue)

(all of the above being hereinafter collectively referred to as the "Pipelines"); and

WHEREAS, the Pipelines are located on privately-owned land on which the District owns a dedicated water line easement and/or cross City Right of Way and/or other property interests; and

WHEREAS, the Project will require the District to relocate certain of the Pipelines and to encase certain pipelines; and

WHEREAS, the District will relocate and encase such Pipelines as necessary to accommodate the Project upon terms provided by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the City and the District, they do hereby agree as follows:

1. **Permission to use City's Utility Easement.** The City hereby grants the District the right to construct the certain relocated pipeline to replace that described in paragraph a., above, in the City's Utility Easement ("Utility Easement") and thereafter the right to use the Utility Easement to operate, maintain, repair or replace that pipeline. The District is not required to pay any monetary compensation or any other compensation or consideration other than as set forth in this Agreement, in consideration for receiving such rights from the City.

In the event that the relocated pipelines are constructed in the City's Right of Way, a right of way permit shall be obtained prior to the commencement of the Project.

2. **Relocation of Pipelines.** The District shall relocate certain of the Pipelines and encase certain of its pipelines as determined necessary to accommodate the Project by its engineers based on review of the Project drawings prepared for the City and provided to the District. A description of the preliminary estimate of materials and work to be performed by the District, obtained from the engineer's relocation report, is attached hereto as Exhibit "A". The estimated total cost thereof is Two Hundred Five Thousand Four Hundred Thirty Six Dollars and Fifty Cents (\$205,436.50). This estimated cost may change during the actual detail design of the relocations and as a result actual construction costs may vary from this estimate.

3. **Payment by City of Costs for Line Relocation.** The City agrees to pay the District 100% of the actual costs incurred by the District to relocate and construct the new pipelines of like kind in the City's Right-of-Way, Utility Easement and/or private easement, such costs to include the costs to construct the new pipelines, to encase pipelines, and to pay related costs, including material, labor, management overhead, surveying, engineering, inspection and legal expenses. Such amount shall be paid within 30 days after the new pipeline construction/relocation project has been completed and the District has sent an invoice to the City for the same.

4. **Future Relocation.** In the event the City ever requests the District to relocate the relocated pipelines from the City's Right of Way, Utility Easement or private easement to another location or locations, or if the relocated pipelines should be relocated due to conflict with street or storm sewer, sanitary sewer or other utility improvements, as determined by the City in consultation with the District, the City shall pay for all costs of such relocation. Such costs shall include, but not be limited to, the costs of material, labor, management overhead, surveys, engineering, inspection and legal expenses, and costs of acquiring City Right of Way, Utility Easements or private easements as the District may require.

5. **Indemnities.** The parties agree to indemnify each other, their officers, employees and representatives, against any liability, loss, damage, cost, claim or action caused by their actions or the actions of their officers, employees or representatives while working on the street, right-of-way and/or the Utility Easement on account of personal injuries, death, damage to property or damage to the environment.

6. **No Interference.** The District will not unreasonably interfere with any existing facilities, either above or below ground, in the Right of Way and/or the Utility Easement.

7. **Assignment of Agreement.** Except as provided in the Section immediately following this Section, this Agreement may not be assigned or transferred by either party without the written consent of the other.

8. Successors. In the event of any occurrence rendering the City or the District incapable of performing under this Agreement, any successor of the City or the District, whether the result of legal process, assignment, or otherwise, will succeed to the rights and obligations of the City and the District, respectively, hereunder.

9. Severability. In the event any provision of this Agreement is determined to be illegal, invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate, render unenforceable or otherwise affect any other provision hereof.

10. Modification. No provision of this Agreement may be modified, altered or amended by the individual action of either party. All such modifications, alterations or amendments must be agreed to in writing by both parties.

11. Governing Law and Regulations. This Agreement will be governed by and construed in accordance with the laws and regulations of the State of Kansas.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject matters contained herein and no representations or understandings not contained herein will be binding upon the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this _____ day of _____ 201__.

CITY OF BASEHOR, KANSAS

By: _____
David K. Breuer, Mayor

ATTEST:

By: _____
COREY SWISHER, City Clerk

CONSOLIDATED RURAL WATER DISTRICT
NO. 1, LEAVENWORTH COUNTY, KANSAS

By: _____
GREG PIKE, Chairman



December 5, 2012

363-212044.2

Mike Fulkerson, Manager
CONSOLIDATED RWD NO. 1
LEAVENWORTH COUNTY, KANSAS
PO Box 419
Basehor, KS 66007

LEAVENWORTH CONSOLIDATED RURAL WATER DISTRICT NO. 1
WATER MAIN RELOCATIONS:
WOLF CREEK PARKWAY KDOT PROJECT NO. 24-52 KA-2277-01
155TH STREET KDOT PROJECT NO. 24-52 KA-2818-01

We have reviewed the construction drawings prepared by Affinis Corp for the above referenced projects. It appears that the District will need to relocate the following water mains:

1. The 12-inch water main along 155th Street where it crosses the proposed Wolf Creek Parkway for approximately 120 feet due to a conflict with the proposed storm sewer and the need to install a casing pipe under the proposed pavement.
2. Approximately 600 feet of 8-inch pipe that runs west from 155th Street along the north side of the existing strip mall where it will be in conflict with the new pavement for Wolf Creek Parkway.
3. Approximately 120 feet of the 6-inch main that goes south across proposed Wolf Creek Parkway into the commercial development from the west end of the 8-inch main due to conflict with the proposed improvements and the need to case this main under the proposed pavement.
4. The District will need to add approximately 60 feet of 20-inch diameter casing pipe to the existing 12-inch main crossing of 155th Street on the south side of Wolf Creek Parkway.
5. A new bored and cased (approximately 70 linear feet of 16-inch casing) 8-inch main crossing (approximately 110 feet of RJ 8-inch main) of 155th Street at the private street south of Wolf Creek Parkway due to conflict with storm sewer and need to encase the pipe.
6. Approximately 200 feet of 6-inch main at the northwest corner of Highway 24 and 155th street due to conflict with a storm sewer inlet.



PONZER-YOUNGQUIST, P.A.

Consulting Engineers and Land Surveyors

227 E. Dennis Ave., Olathe, KS 66061 • 913/782-0541 FAX 913/782-0109

We have attached a Preliminary Opinion of Probable Cost based on our conceptual plan for the relocations. Of course the Probable Cost is an estimate at this point in time and the District should expect to be reimbursed for actual costs which may be more or less than the Probable Cost.

Please let us know how you wish to proceed and call if you have any questions.

A handwritten signature in cursive script that reads "James W. Challis".

James W. Challis, P.E.

Enc.

363\212044\corresp\I-Fulkerson-WolfCreekParkway KDOT No. 24-52 KA-2277-01

PRELIMINARY OPINION OF PROBABLE PROJECT COST

Leavenworth Consolidated RWD No. 1

Like Kind 12", 8" & 6" Water Main Relocations

City of Basehor/KDOT Project No. 24-52 KA-2277-01 & 24-52 KA-2818-01

Wolf Creek Parkway - 155th Street to 158th Street and 155th Street

30-Nov-12

No.	Description	Quantity/Unit	Price/Unit	Total
1	12" Restrained Joint PVC Pipe	60 LF @	\$ 50.00 /LF	\$ 3,000.00
2	12" DIP	60 LF @	65.00 /LF	3,900.00
3	8" PVC Pipe	555 LF @	18.00 /LF	9,990.00
4	8" Restrained Joint PVC Pipe	110 LF @	35.00 /LF	3,850.00
5	8" DIP	40 LF @	55.00 /LF	2,200.00
6	6" PVC Pipe	220 LF @	15.00 /LF	3,300.00
7	6" Restrained Joint PVC Pipe	60 LF @	30.00 /LF	1,800.00
8	6" DIP	80 LF @	40.00 /LF	3,200.00
9	20" Steel Casing Open Cut Installation	50 LF @	100.00 /LF	5,000.00
10	20" Steel Casing Extension Open Cut	60 LF @	200.00 /LF	12,000.00
11	16" Steel Casing Bored Installation	70 LF @	250.00 /LF	17,500.00
12	12" Steel Casing Open Cut Installation	45 LF @	85.00 /LF	3,825.00
13	12" GV	3 EA @	2,000.00 /EA	6,000.00
14	8" GV	4 EA @	1,200.00 /EA	4,800.00
15	6" GV	4 EA @	800.00 /EA	3,200.00
16	Service Reconnection	2 LS @	500.00 /LS	1,000.00
17	Service Relocation	1 LS @	850.00 /LS	850.00
18	2" PVC Casing for Service	45 LF @	6.00 /LF	270.00
19	3/4" Service Line	120 LF @	10.00 /LF	1,200.00
20	Fire Hydrant Assembly	2 EA @	3,000.00 /EA	6,000.00
21	Fittings	3,743 LBS @	5.00 /LB	18,715.00
22	12" Straddle Block	1 EA @	1,500.00 /EA	1,500.00
23	8" Straddle Block	2 EA @	1,000.00 /EA	2,000.00
24	6" Straddle Block	5 EA @	750.00 /EA	3,750.00
25	Connection 12" Main - 155th North	1 EA @	5,000.00 /EA	5,000.00
26	Connection 12" Main - 155th South	1 EA @	5,000.00 /EA	5,000.00
27	Connection 8" Main - South St. West	1 EA @	1,500.00 /EA	1,500.00
28	Connection 8" Main - South St. East	1 EA @	3,000.00 /EA	3,000.00
29	Connection 6" Main - 155th & Hy 24 N	1 EA @	2,000.00 /EA	2,000.00
30	Connection 6" Main - 155th & Hy 24 W	1 EA @	2,000.00 /EA	2,000.00
31	Conn 6" Main - Wolf Creek STA 24+50	1 EA @	2,000.00 /EA	2,000.00
32	Seeding	880 LF @	2.00 /LF	1,760.00
	Total Probable Construction Cost			\$ 141,110.00
	Construction Contingency (15%)			21,166.50
	Subtotal			\$ 162,276.50
	Engineering			\$ 25,560.00
	Construction Staking			2,500.00
	Inspection			15,100.00
	Easements			TBD
	Subtotal			\$ 43,160.00
	Total			\$ 205,436.50

ORIGINAL

Agreement No. 92-11

RECEIVED
JUL 05 2011

TRANSPORTATION PLANNING
DEPT. OF TRANSPORTATION

PROJECT NO. 24-52 KA-2277-01
CONSTRUCTION
CITY OF BASEHOR, KANSAS

AGREEMENT

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

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

Collectively referred to as the "Parties."

PURPOSE: The Secretary has authorized a Non-National Highway System city street construction project, hereinafter referred to as the "Project." The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets. The City desires to construct Wolf Creek parkway between 158th St and 155th St Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways. However, to be eligible for above mentioned financing, such work is required to be done in accordance with the laws of Kansas.

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

Construction of a collector street North of US-24/40 between 158th St and 155th St in Basehor.

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 the 20th day of June, 2011.

ARTICLE I

THE SECRETARY AGREES:

1. To reimburse the City for one-hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items), but not to exceed a maximum reimbursement of \$1,000,000. The Secretary shall not be responsible for any construction (which includes the costs of all construction contingency items) costs that exceed \$1,000,000. The Secretary agrees to make partial payments to the 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 the City that the Project is

being constructed within substantial compliance of the plans and specifications. The Secretary shall not be responsible for the total actual costs of preliminary engineering, right of way acquisition, utility adjustments, and construction engineering for the Project.

ARTICLE II

THE CITY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, to let the contract, to construct the Project in accordance with the design plans, specifications, and the City's approved KDOT Project Procedures Manual, supervise the construction and administer the payments due the contractor, including the portion of cost borne by the Secretary. The City agrees to furnish the Secretary one (1) set of plans for his or her records. The 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, the City's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

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

- a. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the consultant's control.

- b. Language requiring the consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- c. Language making the Secretary of Transportation of the State of Kansas a third party beneficiary in the agreement between the City and the consultant. Such language shall read:

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

4. The City and any consultant retained by the 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 the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the 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, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the City.

5. A duly appointed representative of the City is authorized to sign for the City any or all routine reports as may be required or requested by the 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. The City agrees the necessary rights of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the Bureau of Local Projects, such right of way, easements and access rights have been acquired. The 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 the Secretary if there will be any displaced persons on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive and Kansas Administrative Regulations 36-16-1 *et seq.*

8. To provide all legal descriptions required for right of way acquisition work. The 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. The 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 the 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 the 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 the 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. The 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. The City further agrees to certify to the Secretary on forms supplied by the Secretary all utilities are required to be moved prior to construction have either been moved or a date provided by the City as to when, prior to construction, they will be moved. The 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. The City will indemnify, hold harmless, and save the Secretary and the construction contractor for damages incurred by the Secretary and construction contractor because identified utilities have not been moved or adjusted timely or accurately.

12. To certify to the 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 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 the 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 the Secretary. The 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, the City's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable, and administer the payments due the contractor, including the portion of the cost borne by the Secretary and the City.

15. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the 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 the City, the City's employees, agents, or subcontractors. The City shall not be required to defend, indemnify, hold

harmless, and save the Secretary for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

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

17. To provide (or have provided by a consultant who is certified in construction inspection areas applicable to this Project) 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, the City's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

The project plans, specifications, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for construction engineering services (if applicable) and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

If the City does not have sufficient qualified engineering employees to accomplish the construction engineering inspection services on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary construction engineering inspection services. However, any consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the Federal Highway Administration and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications. The City may provide personnel who are fully qualified to perform the services in a competent and professional manner, but must provide the Secretary with a list of assigned inspectors and their certifications.

If funding is available and the City elects to use the funds for construction engineering inspection services on this Project, another agreement shall be specifically written for the construction engineering inspection services on this Project.

The City will require at a minimum all personnel, whether City or consultant to

comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

18. To be responsible for one hundred percent (100%) of the construction (which includes the costs of all construction contingency items) costs exceeding \$1,000,000. The City further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, right of way acquisition, utility adjustments, and construction engineering for the Project.

19. To be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the 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 the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the 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, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The 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 discovered on right of way, easements and access rights acquired by the City. The City shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims and costs incurred by the Secretary from any hazardous waste site discovered on right of way, easements and access rights acquired by the City prior to commencement of construction of the Project. The City shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. The 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, the City shall hold harmless, defend and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources.

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.

The City, by signing this Agreement with the 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 the City. The 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 the 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 the 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 the 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 the 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 the Secretary.

26. To control the construction or use of any entrances along the Project within the 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 the Secretary.

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

29. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of the KDOT and all costs incurred by the 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 the 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, the 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 the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE III

THE PARTIES MUTUTALLY AGREE:

1. Plans for handling traffic during construction must be included in the design plans provided by the City and must be in conformity with the latest version, as adopted by the

Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be noted on the design plans.

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

3. If any items are found to be non-participating by the Secretary, 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 the City.

4. Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the 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 the Secretary to make final payments to the City in a timely manner. The Single Audit Standards set forth in federal O.M.B. Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" require the City to comply in accordance with those standards.

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

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

7. 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.

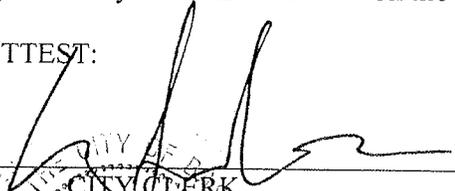
8. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the City, and their successors in office.

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

10. 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.

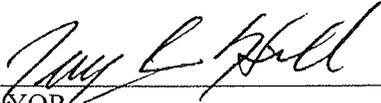
IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:



CITY CLERK
CORPORATE
SEAL
SEAL OF THE CITY OF BASEHOR, KANSAS
(SEAL)

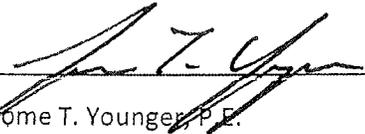
THE CITY OF BASEHOR, KANSAS



MAYOR

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



BY: 

Jerome T. Younger, P.E.
Deputy Secretary and
State Transportation Engineer

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

NOTIFICATION

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

CLARIFICATION

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

Nondiscrimination Clauses

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

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

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

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 04-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

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

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

PROJECT NO. 24-52 KA-2818-01
CONSTRUCTION
CITY OF BASEHOR, KANSAS

A G R E E M E N T

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

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

Collectively referred to as the "Parties."

PURPOSE: The Secretary has authorized a Non-National Highway System city street construction project, hereinafter referred to as the "Project." The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets. The City desires to construct a median on 155th Street at US-24 and widen 155th Street from US-24 to Wolf Creek Parkway. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways. However, to be eligible for above mentioned financing, such work is required to be done in accordance with the laws of Kansas.

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

Intersection improvements at US-24/40 & 155th Street to construct a 36-foot roadway section 800 feet in length including pavement markings, asphalt pavement, curb & gutter, sidewalks, enclosed drainage system, pedestrian infrastructure and median.

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 the 30th day of July, 2012

ARTICLE I

THE SECRETARY AGREES:

1. To reimburse the City for one-hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items), up to \$620,000. The Secretary shall not be responsible for any construction (which includes the costs of all construction contingency items) costs that exceed \$620,000. The Secretary agrees to make partial payments to the 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 professional engineer licensed in the State of Kansas and employed by the City that the Project is being constructed within substantial compliance of the plans and specifications. The Secretary shall not be responsible for the total actual costs of preliminary engineering, right of way acquisition, utility adjustments and construction engineering for the Project.

ARTICLE II

THE CITY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, to let the contract, to construct the Project in accordance with the design plans, specifications, and the City's approved KDOT Project Procedures Manual, supervise the construction and administer the payments due the contractor, including the portion of cost borne by the Secretary. The City agrees to furnish the Secretary one (1) set of plans for his or her records. The 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 Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.
3. Upon completion thereof, the design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to the Secretary by a professional engineer licensed in the State of Kansas attesting to the conformity of the design plans with the items in paragraph 2 above. Contracts between the 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. In addition, any contract between the City and any consultant retained by them to do the design for the Project covered by this Agreement shall also contain the following:
 - a. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the consultant's control.
 - b. Language requiring the consultant to submit to the City (and to the

Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

- c. Language making the Secretary of Transportation of the State of Kansas a third party beneficiary in the agreement between the City and the consultant. Such language shall read:

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

4. The City and any consultant retained by the 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 the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the 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, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the City.

5. A duly appointed representative of the City is authorized to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project undertaken under this Agreement. The design plans must be signed and sealed by the professional engineer licensed in the State of Kansas who is 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. The City agrees the necessary rights of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the Bureau of Local Projects, such right of way, easements and access rights have been acquired. The 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 the Secretary if there will be any displaced persons on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive and Kansas Administrative Regulations 36-16-1 *et seq.*
8. To provide all legal descriptions required for right of way acquisition work. The 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. The 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 the 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 the 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 the 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. The 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. The City further agrees to certify to the Secretary on forms supplied by the Secretary all utilities are required to be moved prior to construction have either been moved or a date provided by the City as to when, prior to construction, they will be moved. The 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. The City will indemnify, hold harmless, and save the Secretary and the construction contractor for damages incurred by the Secretary and construction contractor because identified utilities have not been moved or adjusted timely or accurately.

12. To certify to the 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 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 the 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 the Secretary. The City further agrees to administer the construction of the Project in accordance with the final design plans, the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable, and administer the payments due the contractor, including the portion of the cost borne by the Secretary and the City.

15. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the 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 the City, the City's employees, agents, or subcontractors. The City shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

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

17. To provide (or have provided by a consultant who is certified in construction inspection areas applicable to this Project) the construction inspection in accordance the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

The project plans, specifications, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for construction engineering services (if applicable) and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

If the City does not have sufficient qualified engineering employees to accomplish the construction engineering inspection services on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary construction engineering inspection services. However, any consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the Federal Highway Administration and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications. The City may provide personnel who are fully qualified to perform the services in a competent and professional manner, but must provide the Secretary with a list of assigned inspectors and their certifications.

If funding is available and the City elects to use the funds for construction engineering inspection services on this Project, another agreement shall be specifically written for the construction engineering inspection services on this Project.

The City will require at a minimum all personnel, whether City or consultant to comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

18. To be responsible for one hundred percent (100%) of the construction (which includes the costs of all construction contingency items) costs exceeding \$ 620,000. The City further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, right of way acquisition, utility adjustments, and construction engineering for the Project.
19. To be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the 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 the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the 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, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The 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 discovered on right of way, easements and access rights acquired by the City. The City shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims and costs incurred by the Secretary from any hazardous waste site discovered on right of way, easements and access rights acquired by the City prior to commencement of construction of the Project. The City shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. The 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, the City shall hold harmless, defend and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any

finances 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.

The City, by signing this Agreement with the 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 the City. The 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 the 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 the 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 the 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 the 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 the Secretary.

26. To control the construction or use of any entrances along the Project within the 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 the Secretary.

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

29. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of the KDOT and all costs incurred by the 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 the 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, the 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 the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE III

THE PARTIES MUTUTALLY AGREE:

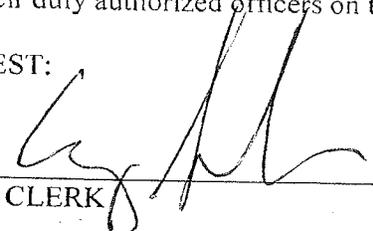
1. Plans for handling traffic during construction must be included in the design plans provided by the City and must be in conformity with the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be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

2. The final design plans for the Project are by reference made a part of this Agreement.
3. If any items are found to be non-participating by the Secretary, 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 the City.
4. Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the 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. To participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after the date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the City for items considered non-participating, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.
6. The City agrees to comply with all appropriate state and federal laws and regulations for this Project.
7. 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.
8. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the City, and their successors in office.
9. No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a Party to this Agreement to maintain a suit for damages pursuant to the terms of provisions of this Agreement.
10. 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.

The signature page immediately follows this paragraph.

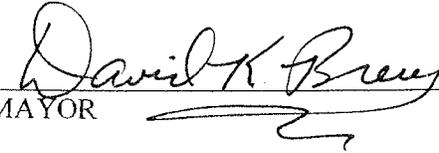
IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:



CITY CLERK

THE CITY OF BASEHOR, KANSAS

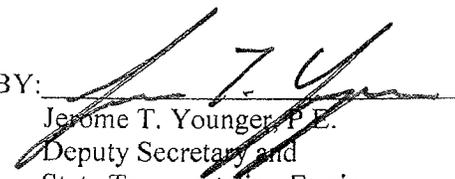


MAYOR

(SEAL)




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

BY: 

Jerome T. Younger, P.E.
Deputy Secretary and
State Transportation Engineer

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 10-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

NOTIFICATION

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

CLARIFICATION

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

Nondiscrimination Clauses

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

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

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

PROJECT NO. 24-52 KA-2819-01
CONSTRUCTION
CITY OF BASEHOR, KANSAS

A G R E E M E N T

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

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

Collectively referred to as the "Parties."

PURPOSE: The Secretary has authorized a Non-National Highway System city street construction project, hereinafter referred to as the "Project." The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets. The City desires to widen 158th Street from US-24 to Wolf Creek Parkway. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways. However, to be eligible for above mentioned financing, such work is required to be done in accordance with the laws of Kansas.

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

Intersection improvements at US-24/40 & 158th Street to construct a 36-foot roadway section 750 feet in length including pavement markings, asphalt pavement, curb & gutter, sidewalks, enclosed drainage system and pedestrian infrastructure.

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 the 30th day of July, 2012.

ARTICLE I

THE SECRETARY AGREES:

1. To reimburse the City for one-hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items), up to \$458,000. The Secretary shall not be responsible for any construction (which includes the costs of all construction contingency items) costs that exceed \$458,000. The Secretary agrees to make partial payments to the 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 professional engineer licensed in the State of Kansas and employed by the City that the Project is being constructed within substantial compliance of the plans and specifications. The Secretary shall not be responsible for the total actual costs of preliminary engineering, right of way acquisition, utility adjustments and construction engineering for the Project.

ARTICLE II

THE CITY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, to let the contract, to construct the Project in accordance with the design plans, specifications, and the City's approved KDOT Project Procedures Manual, supervise the construction and administer the payments due the contractor, including the portion of cost borne by the Secretary. The City agrees to furnish the Secretary one (1) set of plans for his or her records. The 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 Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.
3. Upon completion thereof, the design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to the Secretary by a professional engineer licensed in the State of Kansas attesting to the conformity of the design plans with the items in paragraph 2 above. Contracts between the 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. In addition, any contract between the City and any consultant retained by them to do the design for the Project covered by this Agreement shall also contain the following:
 - a. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the consultant's control.

- b. Language requiring the consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- c. Language making the Secretary of Transportation of the State of Kansas a third party beneficiary in the agreement between the City and the consultant. Such language shall read:

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

4. The City and any consultant retained by the 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 the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the 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, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the City.

5. A duly appointed representative of the City is authorized to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project undertaken under this Agreement. The design plans must be signed and sealed by the professional engineer licensed in the State of Kansas who is 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. The City agrees the necessary rights of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the Bureau of Local Projects, such right of way, easements and access rights have been acquired. The 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 the Secretary if there will be any displaced persons on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive and Kansas Administrative Regulations 36-16-1 *et seq.*

8. To provide all legal descriptions required for right of way acquisition work. The 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. The 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 the 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 the 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 the 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. The 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. The City further agrees to certify to the Secretary on forms supplied by the Secretary all utilities are required to be moved prior to construction have either been moved or a date provided by the City as to when, prior to construction, they will be moved. The 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. The City will indemnify, hold harmless, and save the Secretary and the construction contractor for damages incurred by the Secretary and construction contractor because identified utilities have not been moved or adjusted timely or accurately.
12. To certify to the 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 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 the 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 the Secretary. The City further agrees to administer the construction of the Project in accordance with the final design plans, the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable, and administer the payments due the contractor, including the portion of the cost borne by the Secretary and the City.
15. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the 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 the City, the City's employees, agents, or subcontractors. The City shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

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

17. To provide (or have provided by a consultant who is certified in construction inspection areas applicable to this Project) the construction inspection in accordance the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

The project plans, specifications, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for construction engineering services (if applicable) and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

If the City does not have sufficient qualified engineering employees to accomplish the construction engineering inspection services on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary construction engineering inspection services. However, any consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the Federal Highway Administration and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications. The City may provide personnel who are fully qualified to perform the services in a competent and professional manner, but must provide the Secretary with a list of assigned inspectors and their certifications.

If funding is available and the City elects to use the funds for construction engineering inspection services on this Project, another agreement shall be specifically written for the construction engineering inspection services on this Project.

The City will require at a minimum all personnel, whether City or consultant to comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

18. To be responsible for one hundred percent (100%) of the construction (which includes the costs of all construction contingency items) costs exceeding \$ 458,000. The City further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, right of way acquisition, utility adjustments, and construction engineering for the Project.
19. To be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the 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 the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the 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, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The 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 discovered on right of way, easements and access rights acquired by the City. The City shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims and costs incurred by the Secretary from any hazardous waste site discovered on right of way, easements and access rights acquired by the City prior to commencement of construction of the Project. The City shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. The 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, the City shall hold harmless, defend and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any

finances 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.

The City, by signing this Agreement with the 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 the City. The 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 the 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 the 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 the 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 the 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 the Secretary.

26. To control the construction or use of any entrances along the Project within the 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 the Secretary.

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

29. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of the KDOT and all costs incurred by the 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 the 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, the 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 the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE III

THE PARTIES MUTUTALLY AGREE:

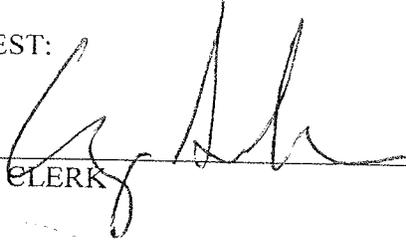
1. Plans for handling traffic during construction must be included in the design plans provided by the City and must be in conformity with the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be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

2. The final design plans for the Project are by reference made a part of this Agreement.
3. If any items are found to be non-participating by the Secretary, 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 the City.
4. Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the 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. To participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after the date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the City for items considered non-participating, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.
6. The City agrees to comply with all appropriate state and federal laws and regulations for this Project.
7. 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.
8. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the City, and their successors in office.
9. No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a Party to this Agreement to maintain a suit for damages pursuant to the terms of provisions of this Agreement.
10. 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.

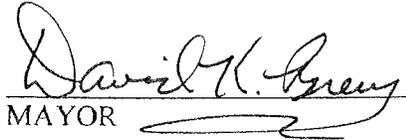
The signature page immediately follows this paragraph.

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 CLERK

THE CITY OF BASEHOR, KANSAS


MAYOR



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

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

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 10-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

NOTIFICATION

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

CLARIFICATION

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

Nondiscrimination Clauses

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

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

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

City of Basehor
Agenda Item Cover Sheet

Agenda Item No. 6

Topic:

Consider an agreement between the City and Consolidated Rural Water District No. 1 to relocate utilities for Wolf Creek Parkway (155th Street to 158th Street) and 155th Street (US-24/40 to Wolf Creek Parkway) projects.

Action Requested:

Consider Resolution 2013-03 to enter into an agreement with Consolidated Rural Water District No. 1.

Narrative:

In June of 2011 and July of 2012 the City entered into an agreements with the Kansas Department of Transportation (KDOT) regarding the construction of Wolf Creek Parkway (155th Street to 158th Street), 155th Street (US-24/40 to Wolf Creek Parkway), and 158th Street (US-24/40 to Wolf Creek Parkway). Per the agreements, the City will move or adjust all utilities necessary to construct the projects. The project budget set for utility relocation is \$288,000. The cost of relocation within private easements held by the Consolidated Rural Water District No. 1 will be at the City's expense. The estimated cost to the City is \$205,436.50.

Presented by:

Mitch Pleak, City Engineer

Administration Recommendation:

Approve Resolution 2013-03.

Committee Recommendation:

Attachments:

Memo Mitch Pleak 1.2.13 (1 page)

Resolution 2013-03 (2 pages)

Draft Agreement (4 pages)

12.5.12 Utility Relocation Letter (3 pages)

Project Agreement No. 24-52 KA-2277-01 (14 pages)

Project Agreement No. 24-52 KA-2818-01 (14 pages)

Project Agreement No. 24-52 KA-2819-01 (14 pages)

Projector needed for this item?

No

Memorandum

To: Mr. Mayor and City Council

CC: Chief Lloyd Martley

From: Mitch Pleak

Date: 1.16.13

Re: Wolf Creek Parkway Project – Atmos Energy Utility Relocation Agreement.

In June of 2011 and July of 2012 the City entered into an agreements with the Kansas Department of Transportation (KDOT) regarding the construction of Wolf Creek Parkway (155th Street to 158th Street), 155th Street (US-24/40 to Wolf Creek Parkway), and 158th Street (US-24/40 to Wolf Creek Parkway). Per the agreements, the City will move or adjust all utilities necessary to construct the projects. The project budget set for utility relocation is \$288,000.

January 9, 2013, Atmos Energy identified gas lines in need of relocation due to the project. 42% of the relocation is within private easements held by Atmos Energy. The relocation of lines in private easements will be at the expense of the City. The estimated cost to the City is \$29,581.90.

An agreement between the City and Atmos Energy is attached. The relocation will be paid from the Consolidated Highway fund.

RESOLUTION NO. 2013-2

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN AGREEMENT BETWEEN BY AND BETWEEN THE CITY OF BASEHOR, KANSAS AND ATMOS ENERGY CORPORATION REGARDING THE RELOCATION OF FACILITIES FOR THE US-24/40 CORRIDOR MANAGEMENT PROJECT IN BASEHOR, LEAVENWORTH COUNTY, KANSAS.

WHEREAS, the City of Basehor, Kansas wishes to enter into the Gas Main Relocation Agreement with Atmos Energy Corporation, attached hereto as **Exhibit A**.

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

Section 1. That the Governing Body approves and hereby authorizes the Mayor to execute the Gas Main Relocation Agreement with Atmos Energy Corporation, attached as **Exhibit A**.

Section 2. That this resolution shall become effective upon passage.

PASSED by the Governing Body this 21st day of January, 2013.

APPROVED by the Mayor this 21st day of January, 2013.

[SEAL]

David K. Breuer, Mayor

ATTEST:

Corey Swisher, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

Exhibit A
Gas Main Relocation Agreement

To be attached.

GAS MAIN RELOCATION AGREEMENT

THIS GAS MAIN RELOCATION AGREEMENT, made and entered into by and between ATMOS ENERGY CORPORATION, hereinafter referred to as "the Company" and the City of Basehor, Kansas, hereinafter referred to as "the City".

WITNESSETH:

WHEREAS, the City proposes a road improvement project described as US-24/40 Corridor Management Project (158th Street, Wolf Creek Parkway 155th to 158th, and 155th Street) KDOT Project Nos. 24-52 KA-2819-01, 24-52 KA-2277-01, and 24-52 KA-2818-01.

and

WHEREAS, the Company is the owner of certain natural gas distribution pipelines and facilities located wholly or in part on private easements as shown in the plans of said project, and said pipelines or facilities are not located entirely upon existing road right-of-way

and

WHEREAS, the Company certifies that its facilities located in or about the area to be traversed by said road improvement are on location where it has right of occupancy either by holding the fee, an easement or other property interest.

NOW, THEREFORE, IT IS AGREED:

1. That the Company will relocate the natural gas pipeline and facilities in accordance with Paragraph 13 of this Agreement, and Exhibit "A" and "B" attached hereto.

2. The City will reimburse and pay to the Company all of the Company's cost of construction, relocation and/or inspection of those parts of the natural gas pipeline located within private easement in accordance with the job drawing. It is understood that the estimated total cost to construct, relocate and/or inspect the pipeline is \$ 69,933.56 as shown on Exhibit "B". The percentage of actual costs of construction, relocation and/or inspection to be borne by the City, and payable to Company, is 42.3% (\$ 29,581.90) as shown on Exhibit "B".

3. The Company will develop the cost of the construction, relocation and inspection by using actual and related indirect costs accumulated in accordance with standard work order accounting procedures, and the Company shall keep a detailed and accurate account of all labor, materials, supplies, incidentals, administrative, engineering, inspection, and other necessary cost involved in such work. The City, or any other authorized agent of the City, shall have access at all reasonable times to such Company records. It is understood that these Company records are kept at the Company's divisional office located in Denver, CO and all costs incurred by the City related to the inspection of the project records shall be borne by the City.

4. Upon completion and relocation of the existing pipelines and facilities in accordance with the said job drawing, the City will promptly reimburse the Company for the costs of such upon submitting of an itemized invoice for such cost to the City. Company hereby reserves the right, at its sole discretion, to submit monthly invoices on such projects that span several months.

5. The City grants the Company the right to construct relocated pipelines and facilities within the new road right-of-way as shown on Exhibit "A" as per the Company's franchise agreement with the City, and in accordance with its right of way permit, which shall be subject to the provisions contained in paragraph 6 of this Relocation Agreement, and which shall be obtained prior to the commencement of the relocation work

6. The City will reimburse Company costs, for pipelines and facilities previously located on Company's private easement but now remaining upon street right-of-way under the terms of this agreement, when at any time in the future the City requests that said pipelines and facilities be relocated.

8. That the construction involved with the relocation of the Company's facilities shall be {32233 / 65827; 422836. }

completed within a reasonable length of time after the City notifies the Company, in writing, that the alterations may proceed.

9. The Company will maintain its facilities in a manner which will not endanger the vehicular traffic.

10. The Company agrees to indemnify and hold harmless the City against and from any and all liability, loss and expense and shall defend all claims resulting from loss of life or damage or injury to persons or property where causation is directly or indirectly resulting from the work performed by the Company, except those claims resulting from the negligent acts of agents or employees of said City.

12. The City will provide at its expense center line or right-of-way and grade staking at minimum intervals of 200 feet for the use of the Company in relocating its facilities.

13. Description of relocation work to be performed:

Install approximately 300 feet of 4-inch and 350 feet of 2-inch polyethylene pipe and appurtenances to clear the proposed roadway improvement as shown on Exhibits "A" and B".

Estimated total cost of work to be performed is \$69,933.56 with the percentage of total actual costs of completed work to be borne by the City is 42.3 % (\$ 29,581.90).

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on this _____ day of _____, 2013.

EXECUTED BY THE CITY THIS
____ day of _____, 2013

BY: _____
Mayor: City Of Basehor, Kansas

ATTEST: _____

EXECUTED BY THE COMPANY THIS
____ day of _____, 2013
ATMOS ENERGY CORPORATION

BY: _____
Bart Armstrong - Vice President, Operations

ATTEST: _____

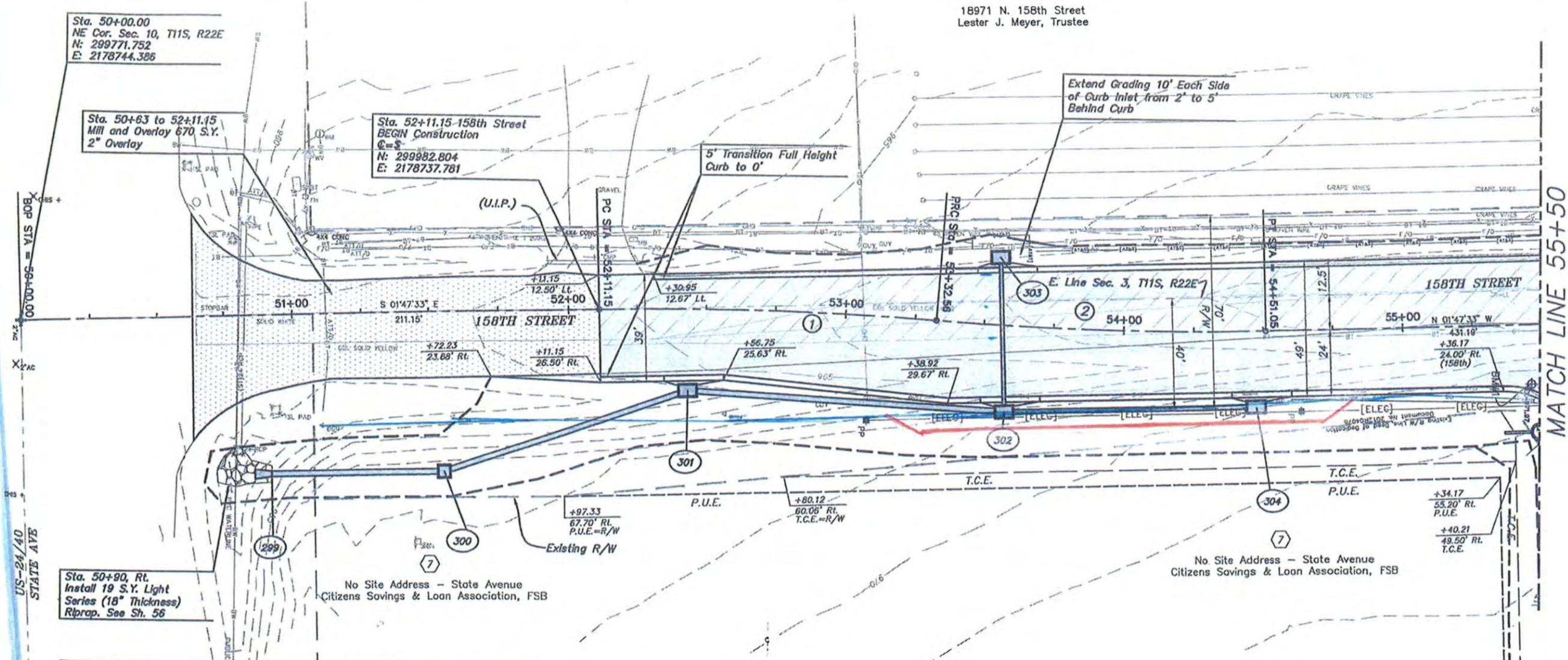
"Exhibit A"

Existing Pipe

Proposed Relocation



303 Sta. 53+54.45, 24.48' Lt.
Construct 6' x 4' Curb Inlet
Slope Top 2% from Curb
Install 56.0 L.F. 15" RCP (E)
See Sh. No. 8, 47, 54 & 57



Sta. 50+00.00
NE Cor. Sec. 10, T11S, R22E
N: 299771.752
E: 2178744.386

Sta. 50+63 to 52+11.15
Mill and Overlay 670 S.Y.
2" Overlay

Sta. 52+11.15-158th Street
BEGIN Construction
C=5'
N: 299982.804
E: 2178737.781

18971 N. 158th Street
Lester J. Meyer, Trustee

Sta. 50+90, Rt.
Install 19 S.Y. Light
Series (18" Thickness)
R/prop. See Sh. 56

No Site Address - State Avenue
Citizens Savings & Loan Association, FSB

- 300 Sta. 51+54.91, 58.05' Rt.
Construct 4' x 4' Junction Box
Install 63.1 L.F. 24" RCP (S)
See Sh. No. 8, 49, 54 & 57
- 301 Sta. 52+43.57, 29.56' Rt.
Construct 6' x 4' Curb Inlet
Install 92.2 L.F. 24" RCP (SE)
See Sh. No. 8, 47, 54 & 57
- 302 Sta. 53+59.08 31.32' Rt.
Construct 6' x 4' Curb Inlet
Install 113.9 L.F. 24" RCP (S)
See Sh. No. 8, 47, 54 & 57
- 304 Sta. 54+47.25 27.50' Rt.
Construct 6' x 4' Curb Inlet
Install 90.5 L.F. 15" RCP (S)
See Sh. No. 8, 47, 54 & 57
- 299 Sta. 50+91.85, 57.70' Rt.
Install 24" End Section (RC)
See Sh. No. 24 & 55

1 Centerline Curve Data
Rad. Pt.
N: 300019.211
E: 2179901.212
R=1164'
Δ=5°58'34"
L=121.41'
T=60.76'

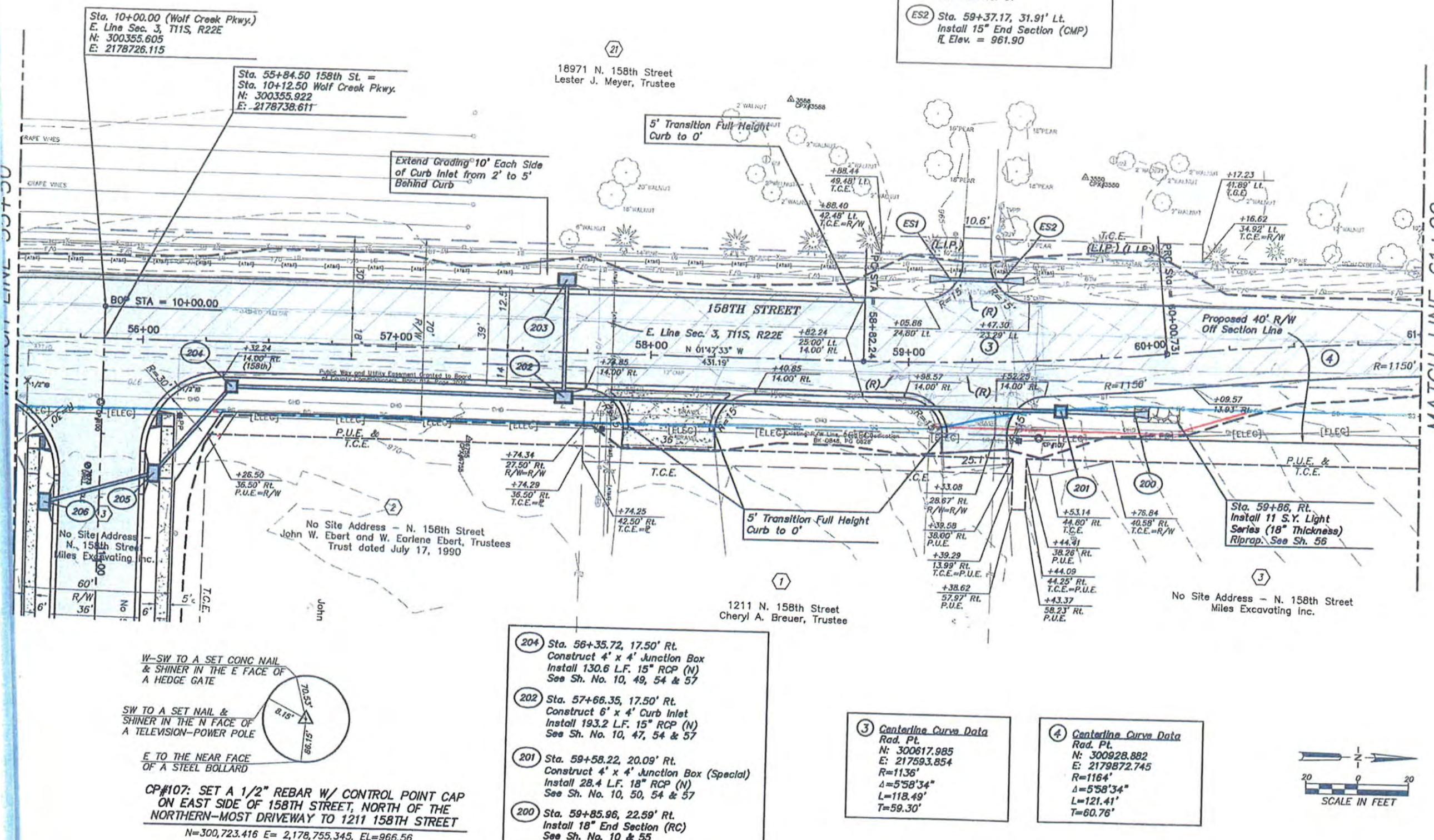
2 Centerline Curve Data
Rad. Pt.
N: 300187.010
E: 2177607.341
R=1136'
Δ=5°58'34"
L=118.49'
T=59.30'

Benchmark #1:
Found a Railroad Spike in the West face of a
power pole located on the East side of 158th
Street and 550'+/- North of State Avenue.
Elevation=971.97'

Affinis corp
 ENGINEERS • PLANNERS • CONSULTANTS
 CITY OF BASEHOR, KANSAS
 US-24/40 CORRIDOR MANAGEMENT PROJECT
 158TH STREET PLAN
 PROJECT 24-52 KA-2819-01
 07
 07 OF 145

7401 West 129th Street, Suite 110
 Overland Park, Kansas 66213
 Phone: 913-239-1100
 Toll Free: 877-527-5488
 Fax: 913-239-1111
 www.affinis.us

ISSUE: 10-21-11
 DATE: 10-21-11
 DRAWN: FLD/CHS
 CHECKED: DEW/CHS



Sta. 10+00.00 (Wolf Creek Pkwy.)
 E. Line Sec. 3, T11S, R22E
 N: 300355.605
 E: 2178726.115

Sta. 55+84.50 158th St. =
 Sta. 10+12.50 Wolf Creek Pkwy.
 N: 300355.922
 E: -2178738.611

18971 N. 158th Street
 Lester J. Meyer, Trustee

Extend Grading 10' Each Side
 of Curb Inlet from 2' to 5'
 Behind Curb

5' Transition Full Height
 Curb to 0'

- (203) Sta. 57+66.35, 28.50' Lt.
 Construct 6' x 4' Curb Inlet
 Slope Top 2% from Curb
 Install 46.0 L.F. 15" RCP (E)
 See Sh. No. 10, 47, 54 & 57
- (ES1) Sta. 59+16.60, 32.61' Lt.
 Install 15" End Section (CMP)
 Install 20.0 L.F. 15" CMP (N)
 R Elev. = 962.50
 See Sh. No. 57
- (ES2) Sta. 59+37.17, 31.91' Lt.
 Install 15" End Section (CMP)
 R Elev. = 961.90

MATCH LINE 61+00

MATCH LINE 61+00

No Site Address - N. 158th Street
 Miles Excavating, Inc.

No Site Address - N. 158th Street
 John W. Ebert and W. Earlene Ebert, Trustees
 Trust dated July 17, 1990

1211 N. 158th Street
 Cheryl A. Breuer, Trustee

No Site Address - N. 158th Street
 Miles Excavating, Inc.

W-SW TO A SET CONC NAIL
 & SHINER IN THE E FACE OF
 A HEDGE GATE

SW TO A SET NAIL &
 SHINER IN THE N FACE OF
 A TELEVISION-POWER POLE

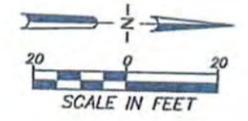
E TO THE NEAR FACE
 OF A STEEL BOLLARD

CP#107: SET A 1/2" REBAR W/ CONTROL POINT CAP
 ON EAST SIDE OF 158TH STREET, NORTH OF THE
 NORTHERN-MOST DRIVEWAY TO 1211 158TH STREET
 N=300,723.416 E= 2,178,755.345, EL=966.56

- (204) Sta. 56+35.72, 17.50' Rt.
 Construct 4' x 4' Junction Box
 Install 130.6 L.F. 15" RCP (N)
 See Sh. No. 10, 49, 54 & 57
- (202) Sta. 57+66.35, 17.50' Rt.
 Construct 6' x 4' Curb Inlet
 Install 193.2 L.F. 15" RCP (N)
 See Sh. No. 10, 47, 54 & 57
- (201) Sta. 59+58.22, 20.09' Rt.
 Construct 4' x 4' Junction Box (Special)
 Install 28.4 L.F. 18" RCP (N)
 See Sh. No. 10, 50, 54 & 57
- (200) Sta. 59+85.96, 22.59' Rt.
 Install 18" End Section (RC)
 See Sh. No. 10 & 55

(3) Centerline Curve Data
 Rad. Pt.
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 E: 217593.854
 R=1136'
 Δ=5°58'34"
 L=118.49'
 T=59.30'

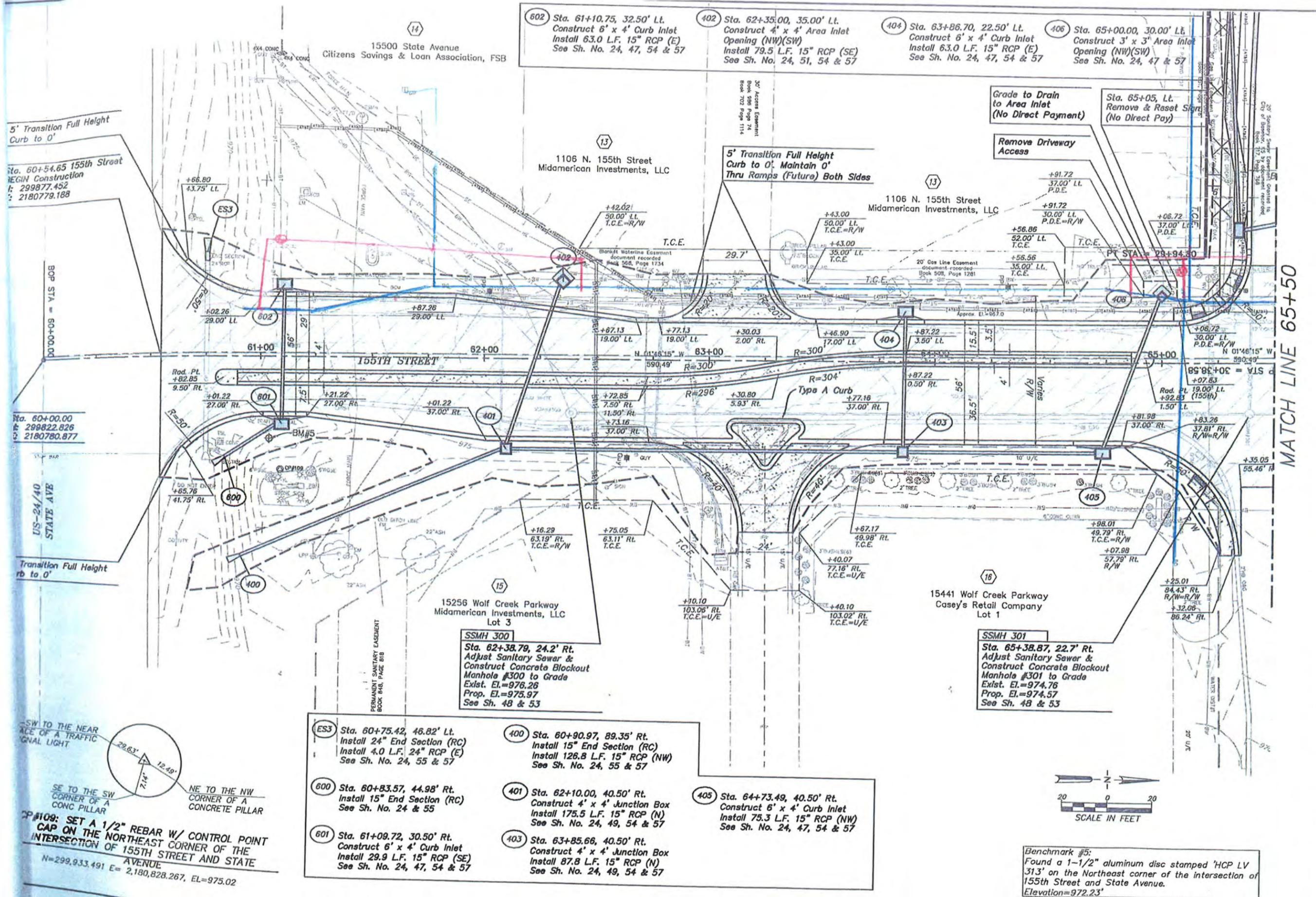
(4) Centerline Curve Data
 Rad. Pt.
 N: 300928.882
 E: 2179872.745
 R=1164'
 Δ=5°58'34"
 L=121.41'
 T=60.76'



Drawn: Checked: App
 10-21-11 Field Check
 7401 West 129th Street, Suite 110
 Overland Park, Kansas 66213
 Toll Free: 877-527-5488
 Phone: 913-239-1100
 Fax: 913-239-1111

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CITY OF BASEHOR, KANSAS
 US-24/40 CORRIDOR MANAGEMENT PROJECT
 158TH STREET PLAN



602 Sta. 61+10.75, 32.50' Lt.
Construct 6' x 4' Curb Inlet
Install 63.0 L.F. 15" RCP (E)
See Sh. No. 24, 47, 54 & 57

402 Sta. 62+35.00, 35.00' Lt.
Construct 4' x 4' Area Inlet
Opening (NW)(SW)
Install 79.5 L.F. 15" RCP (SE)
See Sh. No. 24, 51, 54 & 57

404 Sta. 63+86.70, 22.50' Lt.
Construct 6' x 4' Curb Inlet
Install 63.0 L.F. 15" RCP (E)
See Sh. No. 24, 47, 54 & 57

406 Sta. 65+00.00, 30.00' Lt.
Construct 3' x 3' Area Inlet
Opening (NW)(SW)
See Sh. No. 24, 47 & 57

SSMH 300
Sta. 62+38.79, 24.2' Rt.
Adjust Sanitary Sewer &
Construct Concrete Blockout
Manhole #300 to Grade
Exist. El.=976.26
Prop. El.=975.97
See Sh. 48 & 53

SSMH 301
Sta. 65+38.87, 22.7' Rt.
Adjust Sanitary Sewer &
Construct Concrete Blockout
Manhole #301 to Grade
Exist. El.=974.76
Prop. El.=974.57
See Sh. 48 & 53

ES3 Sta. 60+75.42, 46.82' Lt.
Install 24" End Section (RC)
Install 4.0 L.F. 24" RCP (E)
See Sh. No. 24, 55 & 57

400 Sta. 60+90.97, 89.35' Rt.
Install 15" End Section (RC)
Install 126.8 L.F. 15" RCP (NW)
See Sh. No. 24, 55 & 57

600 Sta. 60+83.57, 44.98' Rt.
Install 15" End Section (RC)
See Sh. No. 24 & 55

401 Sta. 62+10.00, 40.50' Rt.
Construct 4' x 4' Junction Box
Install 175.5 L.F. 15" RCP (N)
See Sh. No. 24, 49, 54 & 57

405 Sta. 64+73.49, 40.50' Rt.
Construct 6' x 4' Curb Inlet
Install 75.3 L.F. 15" RCP (NW)
See Sh. No. 24, 47, 54 & 57

601 Sta. 61+09.72, 30.50' Rt.
Construct 6' x 4' Curb Inlet
Install 29.9 L.F. 15" RCP (SE)
See Sh. No. 24, 47, 54 & 57

403 Sta. 63+85.66, 40.50' Rt.
Construct 4' x 4' Junction Box
Install 87.8 L.F. 15" RCP (N)
See Sh. No. 24, 49, 54 & 57

5' Transition Full Height
Curb to 0'

Sta. 60+54.65 155th Street
BEGIN Construction
I: 299877.452
E: 2180779.188

Sta. 60+00.00
I: 299822.826
E: 2180780.877

Transition Full Height
rb to 0'

SW TO THE NEAR
FACE OF A TRAFFIC
SIGNAL LIGHT

SE TO THE SW
CORNER OF A
CONC PILLAR

NE TO THE NW
CORNER OF A
CONCRETE PILLAR

CP#109: SET A 1/2" REBAR W/ CONTROL POINT
CAP ON THE NORTHEAST CORNER OF THE
INTERSECTION OF 155TH STREET AND STATE
AVENUE
N=299,933.491 E= 2,180,828.267, EL=975.02

Benchmark #5:
Found a 1-1/2" aluminum disc stamped 'HCP LV
31.3' on the Northeast corner of the intersection of
155th Street and State Avenue.
Elevation=972.23'

MATCH LINE 65+50

CITY OF BASEHOR, KANSAS
 US-24/40 CORRIDOR MANAGEMENT PROJECT
 155TH STREET PLAN
 PROJECT NO. 24-52 KA-2818-01

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 www.affinis.us

Drawn: Checked: Approved:
 10-21-11 Fred Chack
 10-21-11
 FINANCE: F:\11-07-01\LP\0601002.dwg
 Job: F11-0702-0
 Drawn:

23
 23 OF 145

MATCH LINE 65+50

MATCH LINE 71+00

A Known Irrigation System Exists on the Little Angels Daycare Tract. The Contractor shall Coordinate with the Property Owner and Utilize a Qualified Irrigation Contractor for Repair and Necessary Relocation. All Materials and Work Shall be Subsidiary to the Bid Item for Irrigation System Modification and Repair.

501 Sta. 66+12.43, 31.50' Lt. Construct 6' x 4' Curb Inlet with Cantilever Lid Install 64.5 L.F. 24" RCP (NE) See Sh. No. 26, 47, 48, 54 & 57

503 Sta. 68+57.05, 31.50' Lt. Construct 6' x 4' Curb Inlet See Sh. No. 26, 47 & 54

5' Transition Full Height Curb to 0'. Maintain 0' Thru Ramps Both Sides to Tie In Point

5' Transition Full Height Curb to 0'

1216 N. 155th Street Raphael Breuer and Ann E. Breuer, Trustees

Proposed 40' R/W

P.I. Sta. 65+90.49 N: 300413.0390 E: 2180762.6294

Remove & Relocate Double Swing Gate to Wolf Creek Parkway Access Location

Remove Driveway Access & 15" CMP

Protect Fence & Gate A/C PARKING

1206 N. 155th Street Little Angels Learning Center, Inc. Lot 1

Basement Connected to River Water District No. 4, by Document recorded Book 508, Page 332

ASPHUMATE LOCATION OF PLUGGED 24" CMP

Sta. 65+55.55 155th St. = Sta. 30+38.58 Wolf Creek Pkwy. N: 300378.108 E: 2180763.709

Sta. 67+00, Connect Existing 6" CPP to Storm Sewer. (Paid as Drain Tile Connection) Construct Concrete Pipe Collar Around Pipe Penetration

112 Sta. 65+75.84, 42.91' Rt. Construct 4' x 4' Junction Box Install 51.8 L.F. 24" RCP (NW) See Sh. No. 26, 49, 54 & 57

500 Sta. 66+26.38, 31.50' Rt. Construct 6' x 4' Curb Inlet Install 230.7 L.F. 18" RCP (N) See Sh. No. 26, 47, 54 & 57

502 Sta. 68+57.05, 31.50' Rt. Construct 6' x 4' Curb Inlet Install 63.0 L.F. 18" RCP (W) See Sh. No. 26, 47, 54 & 57

Sta. 66+75, Lt. Contractor shall remove and reset Little Angel's Daycare sign behind Right-of-Way including any required electrical re-wiring or other materials. This work shall be No Direct Pay.

No Site Address - N. 155th Street Midamerican Investments, LLC Lot 1

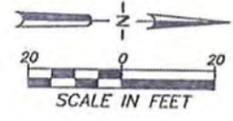
Sta. 68+25, Rt. Grade Swale to Daylight

SSMH 302 Sta. 70+84.02, 24.9' Rt. Manhole #302 Exst. El.=978.96

Benchmark #4: Found a 100D Spike in the West face of a television-power pole on the West side of intersection 155th Street and Wolf Creek Parkway. Elevation=976.05'

Benchmark #6: Set a Railroad Spike in the South face of a television-power pole on the North side of the driveway to 1216 155th Street. Elevation=981.23'

No Site Address - N. 155th Street Ivan Tokic and Draga Tokic



Drawn: Checked: Approved: 10-27-11 Field Check: RZ

7401 West 128th Street, Suite 110 Overland Park, Kansas 66213 Phone: 913-239-1100 Toll Free: 877-527-5466 Fax: 913-239-1111 www.affinis.us Building long-lasting relationships

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CITY OF BASEHOR, KANSAS US-24/40 CORRIDOR MANAGEMENT PROJECT 155TH STREET PLAN PROJECT NO. 24-52 KA-2818-01



January 9, 2013

Exhibit "B"

CITY PROJECT

US-24/40 Corridor Management Project

KDOT Project Nos. 24-52 KA-2819-01,

24-52 KA-2277-01 and 24-52 KA-2818-01

City of Basehor Leavenworth County, Kansas

Direct Company Labor	= \$ 20,960.00
Material	= \$ 3,658.00
Indirect Company Labor & Overheads	= \$ 45,315.56
Total Estimated Cost of Project	= \$ 69,933.56

Total Pipe in R.O.W 375'

Total Pipe in Easement 275'

Total Pipe to be relocated 650'

Estimated Cost to Atmos Energy 57.7% (\$ 40,351.66)

Estimated Reimbursement Cost From City 42.3% (\$29,581.90)

Total Estimated Cost of Project \$ 69,933.56

RECEIVED
JUL 05 2011
TRANSPORTATION PLANNING
DEPT. OF TRANSPORTATION

ORIGINAL

Agreement No. 92-11

PROJECT NO. 24-52 KA-2277-01
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

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

Collectively referred to as the "Parties."

PURPOSE: The Secretary has authorized a Non-National Highway System city street construction project, hereinafter referred to as the "Project." The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets. The City desires to construct Wolf Creek parkway between 158th St and 155th St Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways. However, to be eligible for above mentioned financing, such work is required to be done in accordance with the laws of Kansas.

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

Construction of a collector street North of US-24/40 between 158th St and 155th St in Basehor.

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 the 20th day of June, 2011.

ARTICLE I

THE SECRETARY AGREES:

1. To reimburse the City for one-hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items), but not to exceed a maximum reimbursement of \$1,000,000. The Secretary shall not be responsible for any construction (which includes the costs of all construction contingency items) costs that exceed \$1,000,000. The Secretary agrees to make partial payments to the 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 the City that the Project is

being constructed within substantial compliance of the plans and specifications. The Secretary shall not be responsible for the total actual costs of preliminary engineering, right of way acquisition, utility adjustments, and construction engineering for the Project.

ARTICLE II

THE CITY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, to let the contract, to construct the Project in accordance with the design plans, specifications, and the City's approved KDOT Project Procedures Manual, supervise the construction and administer the payments due the contractor, including the portion of cost borne by the Secretary. The City agrees to furnish the Secretary one (1) set of plans for his or her records. The 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, the City's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

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

- a. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the consultant's control.

- b. Language requiring the consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- c. Language making the Secretary of Transportation of the State of Kansas a third party beneficiary in the agreement between the City and the consultant. Such language shall read:

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

4. The City and any consultant retained by the 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 the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the 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, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the City.

5. A duly appointed representative of the City is authorized to sign for the City any or all routine reports as may be required or requested by the 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. The City agrees the necessary rights of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the Bureau of Local Projects, such right of way, easements and access rights have been acquired. The 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 the Secretary if there will be any displaced persons on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive and Kansas Administrative Regulations 36-16-1 *et seq.*

8. To provide all legal descriptions required for right of way acquisition work. The 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. The 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 the 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 the 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 the 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. The 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. The City further agrees to certify to the Secretary on forms supplied by the Secretary all utilities are required to be moved prior to construction have either been moved or a date provided by the City as to when, prior to construction, they will be moved. The 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. The City will indemnify, hold harmless, and save the Secretary and the construction contractor for damages incurred by the Secretary and construction contractor because identified utilities have not been moved or adjusted timely or accurately.

12. To certify to the 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 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 the 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 the Secretary. The 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, the City's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable, and administer the payments due the contractor, including the portion of the cost borne by the Secretary and the City.

15. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the 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 the City, the City's employees, agents, or subcontractors. The City shall not be required to defend, indemnify, hold

harmless, and save the Secretary for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

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

17. To provide (or have provided by a consultant who is certified in construction inspection areas applicable to this Project) 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, the City's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

The project plans, specifications, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for construction engineering services (if applicable) and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

If the City does not have sufficient qualified engineering employees to accomplish the construction engineering inspection services on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary construction engineering inspection services. However, any consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the Federal Highway Administration and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications. The City may provide personnel who are fully qualified to perform the services in a competent and professional manner, but must provide the Secretary with a list of assigned inspectors and their certifications.

If funding is available and the City elects to use the funds for construction engineering inspection services on this Project, another agreement shall be specifically written for the construction engineering inspection services on this Project.

The City will require at a minimum all personnel, whether City or consultant to

comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

18. To be responsible for one hundred percent (100%) of the construction (which includes the costs of all construction contingency items) costs exceeding \$1,000,000. The City further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, right of way acquisition, utility adjustments, and construction engineering for the Project.

19. To be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the 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 the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the 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, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The 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 discovered on right of way, easements and access rights acquired by the City. The City shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims and costs incurred by the Secretary from any hazardous waste site discovered on right of way, easements and access rights acquired by the City prior to commencement of construction of the Project. The City shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. The 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, the City shall hold harmless, defend and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources.

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.

The City, by signing this Agreement with the 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 the City. The 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 the 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 the 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 the 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 the 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 the Secretary.

26. To control the construction or use of any entrances along the Project within the 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 the Secretary.

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

29. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of the KDOT and all costs incurred by the 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 the 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, the 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 the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE III

THE PARTIES MUTUTALLY AGREE:

1. Plans for handling traffic during construction must be included in the design plans provided by the City and must be in conformity with the latest version, as adopted by the

Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be noted on the design plans.

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

3. If any items are found to be non-participating by the Secretary, 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 the City.

4. Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the 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 the Secretary to make final payments to the City in a timely manner. The Single Audit Standards set forth in federal O.M.B. Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" require the City to comply in accordance with those standards.

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

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

7. 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.

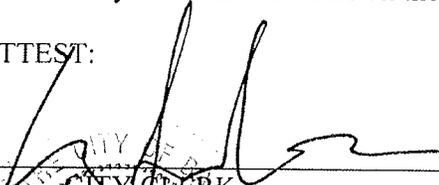
8. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the City, and their successors in office.

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

10. 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.

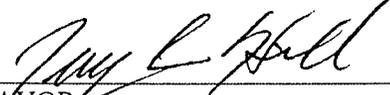
IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:



CITY CLERK
CORPORATE
SEAL
SEAL
CITY OF BASEHOR, KANSAS

THE CITY OF BASEHOR, KANSAS

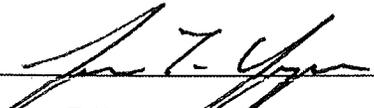


MAYOR

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



BY:



Jerome T. Younger, P.E.
Deputy Secretary and
State Transportation Engineer

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

NOTIFICATION

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

CLARIFICATION

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

Nondiscrimination Clauses

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

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

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

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 04-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

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

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

PROJECT NO. 24-52 KA-2818-01
CONSTRUCTION
CITY OF BASEHOR, KANSAS

A G R E E M E N T

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

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

Collectively referred to as the "Parties."

PURPOSE: The Secretary has authorized a Non-National Highway System city street construction project, hereinafter referred to as the "Project." The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets. The City desires to construct a median on 155th Street at US-24 and widen 155th Street from US-24 to Wolf Creek Parkway. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways. However, to be eligible for above mentioned financing, such work is required to be done in accordance with the laws of Kansas.

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

Intersection improvements at US-24/40 & 155th Street to construct a 36-foot roadway section 800 feet in length including pavement markings, asphalt pavement, curb & gutter, sidewalks, enclosed drainage system, pedestrian infrastructure and median.

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 the 30th day of July, 2012

ARTICLE I

THE SECRETARY AGREES:

1. To reimburse the City for one-hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items), up to \$620,000. The Secretary shall not be responsible for any construction (which includes the costs of all construction contingency items) costs that exceed \$620,000. The Secretary agrees to make partial payments to the 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 professional engineer licensed in the State of Kansas and employed by the City that the Project is being constructed within substantial compliance of the plans and specifications. The Secretary shall not be responsible for the total actual costs of preliminary engineering, right of way acquisition, utility adjustments and construction engineering for the Project.

ARTICLE II

THE CITY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, to let the contract, to construct the Project in accordance with the design plans, specifications, and the City's approved KDOT Project Procedures Manual, supervise the construction and administer the payments due the contractor, including the portion of cost borne by the Secretary. The City agrees to furnish the Secretary one (1) set of plans for his or her records. The 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 Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

3. Upon completion thereof, the design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to the Secretary by a professional engineer licensed in the State of Kansas attesting to the conformity of the design plans with the items in paragraph 2 above. Contracts between the 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. In addition, any contract between the City and any consultant retained by them to do the design for the Project covered by this Agreement shall also contain the following:

- a. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the consultant's control.
- b. Language requiring the consultant to submit to the City (and to the

Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

- c. Language making the Secretary of Transportation of the State of Kansas a third party beneficiary in the agreement between the City and the consultant. Such language shall read:

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

4. The City and any consultant retained by the 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 the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the 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, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the City.

5. A duly appointed representative of the City is authorized to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project undertaken under this Agreement. The design plans must be signed and sealed by the professional engineer licensed in the State of Kansas who is 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. The City agrees the necessary rights of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the Bureau of Local Projects, such right of way, easements and access rights have been acquired. The 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 the Secretary if there will be any displaced persons on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive and Kansas Administrative Regulations 36-16-1 *et seq.*

8. To provide all legal descriptions required for right of way acquisition work. The 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. The 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 the 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 the 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 the 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. The 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. The City further agrees to certify to the Secretary on forms supplied by the Secretary all utilities are required to be moved prior to construction have either been moved or a date provided by the City as to when, prior to construction, they will be moved. The 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. The City will indemnify, hold harmless, and save the Secretary and the construction contractor for damages incurred by the Secretary and construction contractor because identified utilities have not been moved or adjusted timely or accurately.

12. To certify to the 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 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 the 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 the Secretary. The City further agrees to administer the construction of the Project in accordance with the final design plans, the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable, and administer the payments due the contractor, including the portion of the cost borne by the Secretary and the City.

15. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the 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 the City, the City's employees, agents, or subcontractors. The City shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

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

17. To provide (or have provided by a consultant who is certified in construction inspection areas applicable to this Project) the construction inspection in accordance the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

The project plans, specifications, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for construction engineering services (if applicable) and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

If the City does not have sufficient qualified engineering employees to accomplish the construction engineering inspection services on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary construction engineering inspection services. However, any consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the Federal Highway Administration and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications. The City may provide personnel who are fully qualified to perform the services in a competent and professional manner, but must provide the Secretary with a list of assigned inspectors and their certifications.

If funding is available and the City elects to use the funds for construction engineering inspection services on this Project, another agreement shall be specifically written for the construction engineering inspection services on this Project.

The City will require at a minimum all personnel, whether City or consultant to comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

18. To be responsible for one hundred percent (100%) of the construction (which includes the costs of all construction contingency items) costs exceeding \$ 620,000. The City further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, right of way acquisition, utility adjustments, and construction engineering for the Project.

19. To be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the 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 the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the 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, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The 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 discovered on right of way, easements and access rights acquired by the City. The City shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims and costs incurred by the Secretary from any hazardous waste site discovered on right of way, easements and access rights acquired by the City prior to commencement of construction of the Project. The City shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. The 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, the City shall hold harmless, defend and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any

finances 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.

The City, by signing this Agreement with the 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 the City. The 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 the 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 the 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 the 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 the 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 the Secretary.

26. To control the construction or use of any entrances along the Project within the 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 the Secretary.

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

29. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of the KDOT and all costs incurred by the 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 the 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, the 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 the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE III

THE PARTIES MUTUTALLY AGREE:

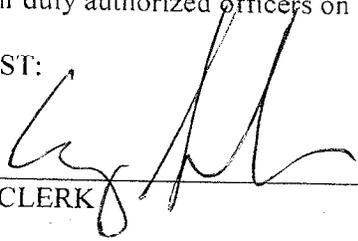
1. Plans for handling traffic during construction must be included in the design plans provided by the City and must be in conformity with the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be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

2. The final design plans for the Project are by reference made a part of this Agreement.
3. If any items are found to be non-participating by the Secretary, 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 the City.
4. Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the 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. To participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after the date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the City for items considered non-participating, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.
6. The City agrees to comply with all appropriate state and federal laws and regulations for this Project.
7. 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.
8. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the City, and their successors in office.
9. No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a Party to this Agreement to maintain a suit for damages pursuant to the terms of provisions of this Agreement.
10. 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.

The signature page immediately follows this paragraph.

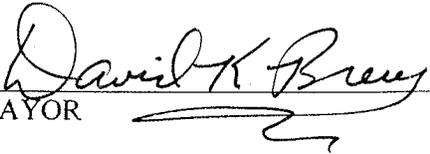
IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:



CITY CLERK

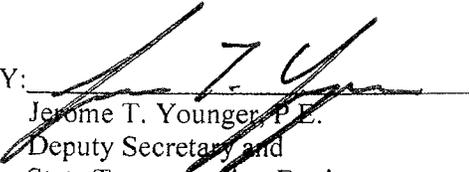
THE CITY OF BASEHOR, KANSAS



MAYOR



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

BY: 

Jerome T. Younger, P.E.
Deputy Secretary and
State Transportation Engineer

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 10-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

NOTIFICATION

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

CLARIFICATION

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

Nondiscrimination Clauses

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

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

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

PROJECT NO. 24-52 KA-2819-01
CONSTRUCTION
CITY OF BASEHOR, KANSAS

A G R E E M E N T

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

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

Collectively referred to as the "Parties."

PURPOSE: The Secretary has authorized a Non-National Highway System city street construction project, hereinafter referred to as the "Project." The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets. The City desires to widen 158th Street from US-24 to Wolf Creek Parkway. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways. However, to be eligible for above mentioned financing, such work is required to be done in accordance with the laws of Kansas.

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

Intersection improvements at US-24/40 & 158th Street to construct a 36-foot roadway section 750 feet in length including pavement markings, asphalt pavement, curb & gutter, sidewalks, enclosed drainage system and pedestrian infrastructure.

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 the 30th day of July, 2012

ARTICLE I

THE SECRETARY AGREES:

1. To reimburse the City for one-hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items), up to \$458,000. The Secretary shall not be responsible for any construction (which includes the costs of all construction contingency items) costs that exceed \$458,000. The Secretary agrees to make partial payments to the 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 professional engineer licensed in the State of Kansas and employed by the City that the Project is being constructed within substantial compliance of the plans and specifications. The Secretary shall not be responsible for the total actual costs of preliminary engineering, right of way acquisition, utility adjustments and construction engineering for the Project.

ARTICLE II

THE CITY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, to let the contract, to construct the Project in accordance with the design plans, specifications, and the City's approved KDOT Project Procedures Manual, supervise the construction and administer the payments due the contractor, including the portion of cost borne by the Secretary. The City agrees to furnish the Secretary one (1) set of plans for his or her records. The 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 Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

3. Upon completion thereof, the design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to the Secretary by a professional engineer licensed in the State of Kansas attesting to the conformity of the design plans with the items in paragraph 2 above. Contracts between the 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. In addition, any contract between the City and any consultant retained by them to do the design for the Project covered by this Agreement shall also contain the following:

- a. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the consultant's control.

- b. Language requiring the consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- c. Language making the Secretary of Transportation of the State of Kansas a third party beneficiary in the agreement between the City and the consultant. Such language shall read:

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

4. The City and any consultant retained by the 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 the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the 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, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the City.

5. A duly appointed representative of the City is authorized to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project undertaken under this Agreement. The design plans must be signed and sealed by the professional engineer licensed in the State of Kansas who is 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. The City agrees the necessary rights of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the Bureau of Local Projects, such right of way, easements and access rights have been acquired. The 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 the Secretary if there will be any displaced persons on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive and Kansas Administrative Regulations 36-16-1 *et seq.*

8. To provide all legal descriptions required for right of way acquisition work. The 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. The 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 the 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 the 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 the 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. The 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. The City further agrees to certify to the Secretary on forms supplied by the Secretary all utilities are required to be moved prior to construction have either been moved or a date provided by the City as to when, prior to construction, they will be moved. The 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. The City will indemnify, hold harmless, and save the Secretary and the construction contractor for damages incurred by the Secretary and construction contractor because identified utilities have not been moved or adjusted timely or accurately.

12. To certify to the 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 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 the 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 the Secretary. The City further agrees to administer the construction of the Project in accordance with the final design plans, the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable, and administer the payments due the contractor, including the portion of the cost borne by the Secretary and the City.

15. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the 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 the City, the City's employees, agents, or subcontractors. The City shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

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

17. To provide (or have provided by a consultant who is certified in construction inspection areas applicable to this Project) the construction inspection in accordance the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

The project plans, specifications, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for construction engineering services (if applicable) and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

If the City does not have sufficient qualified engineering employees to accomplish the construction engineering inspection services on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary construction engineering inspection services. However, any consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the Federal Highway Administration and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications. The City may provide personnel who are fully qualified to perform the services in a competent and professional manner, but must provide the Secretary with a list of assigned inspectors and their certifications.

If funding is available and the City elects to use the funds for construction engineering inspection services on this Project, another agreement shall be specifically written for the construction engineering inspection services on this Project.

The City will require at a minimum all personnel, whether City or consultant to comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

18. To be responsible for one hundred percent (100%) of the construction (which includes the costs of all construction contingency items) costs exceeding \$ 458,000. The City further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, right of way acquisition, utility adjustments, and construction engineering for the Project.

19. To be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the 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 the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the 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, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The 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 discovered on right of way, easements and access rights acquired by the City. The City shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims and costs incurred by the Secretary from any hazardous waste site discovered on right of way, easements and access rights acquired by the City prior to commencement of construction of the Project. The City shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. The 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, the City shall hold harmless, defend and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any

finances 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.

The City, by signing this Agreement with the 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 the City. The 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 the 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 the 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 the 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 the 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 the Secretary.

26. To control the construction or use of any entrances along the Project within the 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 the Secretary.

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

29. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of the KDOT and all costs incurred by the 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 the 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, the 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 the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE III

THE PARTIES MUTUTALLY AGREE:

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

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

3. If any items are found to be non-participating by the Secretary, 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 the City.

4. Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the 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. To participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after the date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the City for items considered non-participating, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

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

7. 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.

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

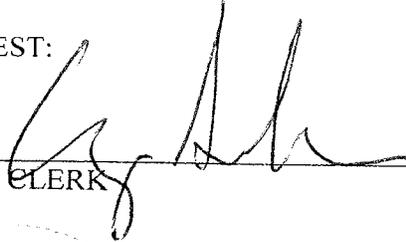
9. No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a Party to this Agreement to maintain a suit for damages pursuant to the terms of provisions of this Agreement.

10. 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.

The signature page immediately follows this paragraph.

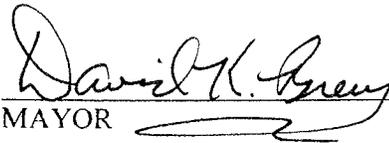
IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:

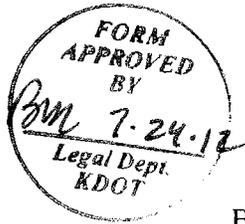


CITY CLERK

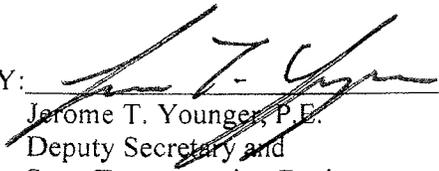
THE CITY OF BASEHOR, KANSAS



MAYOR



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

BY: 

Jerome T. Younger, P.E.
Deputy Secretary and
State Transportation Engineer

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 10-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

NOTIFICATION

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

CLARIFICATION

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

Nondiscrimination Clauses

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

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

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