



AGENDA
BASEHOR CITY COUNCIL
August 19, 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. July 15, City Council Minutes
 - b. Monthly Treasurer's Report
 - c. Resolution 2013-16 – Construction Inspection Agreement
 - d. Ordinance No. 631 – Standard Traffic Ordinance
 - e. Ordinance No. 632 – Uniform Public Offense Code
 - f. Resolution 2013-15 – Designation of City Depositories

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)
5. Ordinance No. 633 -Ordinance 585 Amendment – K.S.A 15-204
6. Board of Zoning Appeals Appointments
7. Wolf Creek Parkway Extension – Award of Construction Contract

New Business

8. **City Administrator's Report**
9. **Council Members Report**
10. **Mayor's Report**
11. **Executive Session** *(if needed)*
12. **Adjournment**



MINUTES
BASEHOR CITY COUNCIL
July 15, 2013 7:00 p.m.
Basehor City Hall

1. Roll Call by Mayor David K. Breuer and Pledge of Allegiance

Mayor David K. Breuer called the meeting to order at 7:00 p.m. and led the audience in the Pledge of Allegiance.

Council Members present: Mayor David K. Breuer, City Council President, Travis Miles, Vernon Fields, Ty Garver, Richard Drennon and Brian Healy

Staff Present: Interim City Administrator/Police Chief, Lloyd Martley; City Superintendent, Gene Myracle; City Engineer, Mitch Pleak; City Attorney, Shannon Marcano; City Clerk, Corey Swisher

2. Consent Agenda (

- a. June 17, City Council Minutes
- b. Treasurer's Report
- c. Debris dumping at City Park – Ordinance No. 629
- d. Indigent Defense Compensation Amendment – Ordinance No. 630

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

3. Call to Public

There was none.

4. Unfinished Business

There was none.

5. 2014 Draft Operating Budget Review

Healy moved to hold a Special Council Meeting August 5, 2013, to call a special meeting on August 5 for the purpose of holding a public hearing on the 2014 Budget. Garver seconded the motion. The motion passed unanimously, 5-0.

New Business

6. City Administrator's Report

There was none.

7. Mayor's Report

There was none.

8. Council Members Report

Healy reported he had recently met with Leavenworth County representatives to discuss Emergency Management in Basehor.

9. Executive Session

Healy moved to enter Executive Session for twenty (20) minutes. Drennon seconded the motion. The motion passed unanimously, 5-0.

Healy made a motion to close Executive Session at 8:05 p.m. with Miles seconding the motion. The motion passed unanimously, 5-0.

10. Adjournment

Councilman Healy moved to adjourn the meeting at 8:06 p.m. with Drennon seconding. The motion passed unanimously, 5-0.

David K. Breuer, Mayor

Attest:

Corey Swisher, City Clerk



The City of Basehor

Date: August 13, 2013

To: Basehor Mayor & City Council
Lloyd Martley, Interim City Administrator/Chief of Police

From: Corey Swisher, City Clerk/Finance Director

Re: August 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 July 31, 2013.

Attachments:

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

CITY OF BASEHOR

AUGUST 2013 FINANCIAL SNAPSHOT

Funds

Fund	Budget	Revenues	Expenditures	% Utilized
General	\$2,494,293	\$1,450,655	\$986,449	40%
Special Park	\$47,500	\$13,645	\$3,150	7%
Sewer	\$1,397,071	\$959,102	\$375,209	27%
Cedar Lake Maintenance	\$40,000	\$1	\$12,074	30%
Bond & Interest	\$1,528,997	\$707,212	\$201,704	13%
Solid Waste	\$292,258	\$163,857	\$101,192	35%
Special Highway	\$890,000	\$357,942	\$164,449	18%
Municipal Equipment Reserve	\$84,884	\$205	\$119,782	141%
Capital Improvement	\$20,000	\$45,313	\$0	0%
Employee Benefit	\$554,382	\$375,524	\$265,286	48%
LCSD#3	\$33,000	\$9	\$18,331	56%

Department

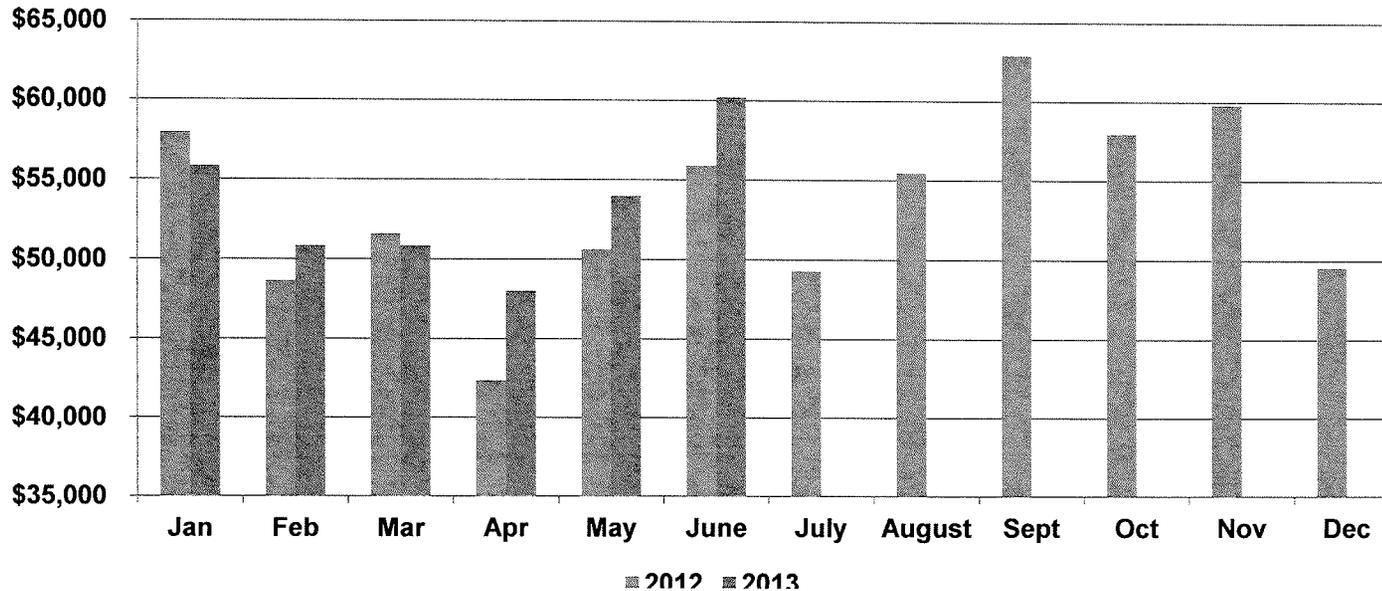
Department	Budget	Expenditures	Remaining Balance	% Utilized
General				
Clerk	\$325,115	\$212,742	\$112,373	65%
Street	\$207,515	\$121,377	\$86,138	58%
Governing Body	\$544,100	\$32,348	\$511,752	6%
Police	\$834,432	\$416,112	\$418,320	50%
Facilities	\$123,346	\$57,999	\$65,347	47%
Administrator	\$160,000	\$18,974	\$141,026	12%
Park & Recreation	\$30,225	\$32,172	-\$1,947	106%
Miscellaneous	\$91,783	\$19,323	\$72,460	21%
HR	\$25,150	\$14,297	\$10,853	57%
Planning	\$152,206	\$61,104	\$91,102	40%

MONTHLY SALES TAX COLLECTIONS 2009-2013

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>Monthly Diff.</u>	<u>%</u>	<u>2012 YTD</u>	<u>2013 YTD</u>	<u>Diff. '12 -'13</u>	<u>%</u>
						<u>'12 - '13</u>	<u>Difference</u>				<u>Difference</u>
Jan	43,726.32	44,933.16	43,677.78	57,962.61	55,854.63	-2,107.98	-3.8%	57,962.61	55,854.63	-2,107.98	-3.8%
Feb	49,937.92	59,338.25	48,453.55	48,668.43	50,846.50	2,178.07	4.3%	106,631.04	106,701.13	70.09	0.1%
Mar	59,417.29	44,064.14	48,692.52	51,596.39	50,846.50	-749.89	-1.5%	158,227.43	157,547.63	-679.80	-0.4%
Apr	41,900.26	46,686.51	42,633.11	42,372.82	48,009.19	5,636.37	11.7%	200,600.25	205,556.82	4,956.57	2.4%
May	41,070.02	47,865.00	48,186.99	50,639.59	53,986.75	3,347.16	6.2%	251,239.84	259,543.57	8,303.73	3.2%
June	43,320.60	48,059.05	47,682.94	55,921.34	60,215.87	4,294.53	7.1%	307,161.18	319,759.44	12,598.26	3.9%
July	46,612.85	43,151.43	44,834.43	49,304.00	56,140.33	6,836.33	12.2%	356,465.18	375,899.77	19,434.59	5.2%
Aug	50,284.61	52,935.19	49,903.11	55,484.63							
Sept	52,550.48	52,062.71	49,250.84	62,953.65							
Oct	52,382.92	47,483.47	51,883.08	57,986.12							
Nov	47,111.87	44,789.92	49,270.35	59,821.88							
Dec	56,073.14	46,693.70	51,874.96	49,586.00							
	584,388.28	578,062.53	576,343.66	642,297.46	375,899.77						

2013 TDD \$10,095.91

2012-13 Month to Month Comparison





SEWER FUND HIGHLIGHTS

For the Month of August 2013

	2012	2013	
	SWR	SWR	%
MONTH	COUNT	COUNT	DIFFERENCE
January	1789	1812	1.27%
February	1792	1807	0.83%
March	1797	1805	0.44%
April	1799	1809	0.55%
May	1801	1829	1.53%
June	1798	1832	1.86%
July	1799	1850	2.76%
August	1806		
September	1805		
October	1806		
November	1806		
December	1801		
AVERAGE	1800	1821	1.13%

	2012	2013	
	SWR	SWR	%
MONTH	BILLED	BILLED	DIFFERENCE
January	\$89,188.63	\$92,268.23	3.45%
February	\$89,662.48	\$92,212.85	2.84%
March	\$88,970.52	\$91,555.12	2.91%
April	\$89,233.29	\$92,074.43	3.18%
May	\$91,548.66	\$92,301.51	0.82%
June	\$89,646.47	\$91,539.56	2.11%
July	\$90,508.05	\$92,674.56	2.39%
August	\$90,985.23		
September	\$92,083.69		
October	\$90,721.14		
November	\$90,453.78		
December	\$90,682.84		
TOTAL	\$1,083,684.78	\$644,626.26	

	2012	2013	
	AVERAGE	AVERAGE	%
MONTH	SWR BILL	SWR BILL	DIFFERENCE
January	\$49.85	\$50.92	2.15%
February	\$50.03	\$51.03	2.00%
March	\$49.51	\$50.72	2.44%
April	\$49.60	\$50.90	2.62%
May	\$50.83	\$50.47	-0.71%
June	\$49.86	\$49.97	0.22%
July	\$50.31	\$50.09	-0.44%
August	\$50.38		
September	\$51.02		
October	\$50.23		
November	\$50.09		
December	\$50.35		
AVERAGE	\$50.17	\$50.59	0.83%



SOLID WASTE FUND HIGHLIGHTS

For the Month of July 2013

MONTH	2012	2013	% DIFFERENCE
	SOLID WASTE COUNT	SOLID WASTE COUNT	
January	1,653	1,702	2.88%
February	1,655	1,703	2.82%
March	1,665	1,700	2.06%
April	1,672	1,706	1.99%
May	1,690	1,727	2.14%
June	1,688	1,732	2.54%
July	1,690	1,750	3.43%
August	1,701		
September	1,701		
October	1,697		
November	1696		
December	1697		
AVERAGE	1,684		

MONTH	2012	2013	% DIFFERENCE
	SOLID WASTE BILLED	SOLID WASTE BILLED	
January	\$23,276.77	\$23,938.92	2.77%
February	\$23,320.00	\$23,990.00	2.79%
March	\$23,379.98	\$23,957.46	2.41%
April	\$23,518.26	\$24,029.09	2.13%
May	\$23,794.81	\$24,307.75	2.11%
June	\$23,774.99	\$24,383.90	2.50%
July	\$23,719.21	\$24,471.61	3.07%
August	\$23,858.00		
September	\$23,922.17		
October	\$23,821.96		
November	\$23,784.36		
December	\$23,856.66		
TOTAL	\$284,027.17	\$169,078.73	

MONTH	2012	2013	% DIFFERENCE
	AVERAGE BILL	AVERAGE BILL	
January	\$14.08	\$14.07	-0.07%
February	\$14.09	\$14.09	0.00%
March	\$14.04	\$14.09	0.35%
April	\$14.07	\$14.09	0.14%
May	\$14.08	\$14.08	0.00%
June	\$14.07	\$14.08	0.07%
July	\$14.04	\$13.98	-0.43%
August	\$14.03		
September	\$14.06		
October	\$14.04		
November	\$14.02		
December	\$14.06		
AVERAGE	\$14.06	\$14.07	0.08%

Check Register Report

Date: 08/12/2013
 Time: 1:59 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							
20777	08/07/2013	Printed		PIERCE R A	ROBERT A PIERCE	REIMB TUITION/VOTECH-WELDING	990.00
20778	08/12/2013	Printed		ADVANCE IN	ADVANCE INSURANCE COMPANY	GROUP ADD/LIFE/STD/LTD	596.87
20779	08/12/2013	Printed		AFLAC	AFLAC	EMP CAFETERIA PLAN/JULY 2013	1,107.90
20780	08/12/2013	Printed		APACKANSA	APAC-KANSAS INC	CLEAN ROCK/SEWER MAIN PROJ REPAIRS	345.22
20781	08/12/2013	Printed		BASEHOR CH	BASEHOR CHAMBER OF COMMERCE	LUNCH MTGS/SWISHER, PLEAK	25.50
20782	08/12/2013	Printed		BIZZELL/JA	JAKE & JENNIFER BIZZELL	YOUTH SPORTS REBATE X2	80.00
20783	08/12/2013	Printed		BLUE CROSS	BLUE CROSS & BLUE SHIELD OF KS	GROUP MEDICAL INSURANCE	14,150.95
20784	08/12/2013	Printed		CARTER WAT	CARTER WATERS CORPORATION	2 TONS ASPHALT PATCH/8-01	191.34
20785	08/12/2013	Printed		COLEMAN	COLEMAN EQUIPMENT INC	CREDIT-RETURN/MASONRY SAW BLADES	81.12
20786	08/12/2013	Printed		CONS	CONS RURAL WATER DISTRICT #1	WATER USAGE/JULY	336.96
20787	08/12/2013	Printed		ETS	ETS	CITYWIDE/ONLINE CREDIT CARD FEES	276.23
20788	08/12/2013	Printed		GEN REV	GENERAL REVENUE CORP	PAYROLL DIRECTED DEDUCTION	181.10
20789	08/12/2013	Printed		HICKMAN	HICKMAN ENVIRONMENTAL SERVICES	REHAB LIFT STATION @ THENO	3,750.00
20790	08/12/2013	Printed		HR HAVEN	HR HAVEN INC	MONTHLY HR SERVICES/AUG	500.00
20791	08/12/2013	Printed		KACM	KACM	REG/DOCKERY,LANZA/FALL CONF	125.00
20792	08/12/2013	Printed		KS DEPT OF	KANSAS DEPT OF TRANSPORTATION	POLICE RADIO LEASE + INTEREST	7,768.02
20793	08/12/2013	Printed		KANSAS ONE	KANSAS ONE-CALL SYSTEMS, INC.	MONTHLY LOCATE SVC/JUL/85	102.00
20794	08/12/2013	Printed		KANSAS PAY	KANSAS PAYMENT CENTER	PAYROLL DIRECTED DEDUCTION	489.24
20795	08/12/2013	Printed		KS TREASUR	KANSAS STATE TREASURER	STATE MANDATED COURT FEES	875.50
20796	08/12/2013	Printed		KNAPHEIDE	KNAPHEIDE TRUCK EQUIPMENT KC	MISC/REPAIR 1999 DUMP TRUCK	190.07
20797	08/12/2013	Printed		KPF EFT	KPF EFT PROGRAM	POLICE RETIREMENT CONTRIB	4,979.91
20798	08/12/2013	Printed		LAWN TAMER	LAWN TAMERS	CONTRACT MOW/BTC	585.00
20799	08/12/2013	Printed		LAWRENCE	LAWRENCE HUMANE SOCIETY, INC.	ANIMAL CONTROL/JUNE & JULY	560.00
20800	08/12/2013	Printed		LEAGUE KM	LEAGUE OF KS MUNICIPALITIES	STO/UPOC CODE BOOKS/SHIPPING	445.80
20801	08/12/2013	Printed		LEAVEN ASP	LEAVENWORTH ASPHALT MATERIAL	HOT MIX SURFACE ASPHALT/REPAIR	96.43
20802	08/12/2013	Printed		MASS M	MASS MUTUAL FINANCIAL GROUP	401/457 RETIREMENT CONTRIB	2,796.43
20803	08/12/2013	Printed		MCBRATNEY	KIANN MCBRATNEY	CITY PROSECUTOR SERVICES	400.00
20804	08/12/2013	Printed		MIDWEST PU	MIDWEST PUBLIC RISK	GROUP DENTAL INS/AUGUST 2013	1,251.43
20805	08/12/2013	Printed		PITNEY RES	PITNEY BOWES RESERVE ACCT	REFILL CITY POSTAGE METER	125.00
20806	08/12/2013	Printed		PRAY	WILLIAM E. PRAY	MUNICIPAL JUDGE SERVICES	450.00
20807	08/12/2013	Printed		PROPAYROL	PROPAYROLL	TIME/ATTENDANCE CHGS-JULY	108.50
20808	08/12/2013	Printed		RM MEARS	RM MEARS LLC	REIMB OVERPAY/BUS LIC/CHGD 2X	50.00
20809	08/12/2013	Printed		SONNTAG	SONNTAG LAW OFFICE	COURT APPOINTED ATTORNEY SVCS	400.00
20810	08/12/2013	Printed		SPECTRA	SPECTRA	ODOR BAN FOR LIFTSTATIONS	597.28
20811	08/12/2013	Printed		SPELLMAN/J	JENNIFER SPELLMAN	YOUTH SPORTS REBATE X2	67.50
20812	08/12/2013	Printed		SPOTS OFF	SPOTS OFF LLC	CAR WASHES/POLICE/JULY	92.58
20813	08/12/2013	Printed		UV DOCTOR	UV DOCTOR LAMPS LLC	12UV AMALGAM LAMPSD	1,272.45
20814	08/12/2013	Printed		VISION SER	VISION SERVICES PLAN	GROUP VISION INSURANCE	360.67
20815	08/12/2013	Printed		WESTAR	WESTAR ENERGY	ELECTRIC USAGE	13,220.29
20816	08/12/2013	Printed		WHITE GOSS	WHITE GOSS BOWERS MARCH	CONTRACT LEGAL SVCS 6-17/ 7-15	3,000.00

Total Checks: 40

Checks Total (excluding void checks):

63,022.29

[Signature] 8-13-13
 Lloyd Martley Date
 Interim City Administrator

[Signature] 08/12/12
 Corey Swisher Date
 City Clerk/Finance Director

[Signature] 8/12/13
 Kristi Olson Date
 Accounting Clerk

Check Register Report

Date: 07/26/2013
 Time: 10:15 AM
 Page: 1

City Of Basehor

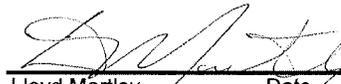
BANK: FIRST STATE BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
FIRST STATE BANK Checks							
20758	07/26/2013	Printed		AFFINIS	AFFINIS CORP	DESIGN SVCS/WC PWKY 155-158	2,880.00
20759	07/26/2013	Printed		ATMOS	ATMOS ENERGY CORPORATION	UTILITY RELOCATE/WC PKWY & KDOT	20,824.48
20760	07/26/2013	Printed		COMMERCE	COMMERCE PURCHASING CARD	CITYWIDE PCARD CHARGES	47,525.99
20761	07/26/2013	Printed		GUERRA	JOSE GUERRA	YOUTH SPORTS REBATE	45.00
20762	07/26/2013	Printed		HOHENSCH	HOHENSCHILD WELDERS SUPPLY CO	WELDING SUPPLYS/WWTF, PWD	283.05
20763	07/26/2013	Printed		JO CO GOVT	JOHNSON COUNTY GOVERNMENT	MONTHLY FLOW TESTING/JULY	281.00
20764	07/26/2013	Printed		KANSAS PAY	KANSAS PAYMENT CENTER	PAYROLL DIRECTED DEDUCTION	489.24
20765	07/26/2013	Printed		KPF EFT	KPF EFT PROGRAM	POLICE RETIREMENT CONTRIB	5,010.04
20766	07/26/2013	Printed		KS SECURE	KS SECURED TITLE-TONGANOXIE	TITLE REP/ROW-14817 PARALLEL	225.00
20767	07/26/2013	Printed		MASS M	MASS MUTUAL FINANCIAL GROUP	401/457 RETIREMENT CONTRIB	2,828.62
20768	07/26/2013	Printed		NATL FAST	NATIONAL FASTENER	MISC SAFETY ITEMS/WWTF & PWD	114.00
20769	07/26/2013	Printed		O'REILLY	O'REILLY AUTO PARTS	BRAKE CLEAN	7.98
20770	07/26/2013	Printed		PALENSKE	BRIAN PALENSKE	CONCRETE WORK @FOD MAINT	3,534.00
20771	07/26/2013	Printed		REGISTER	REGISTER OF DEEDS	RECORD/MTG REG FEE-LOT 52 PL	162.67
20772	07/26/2013	Printed		SPECTRA	SPECTRA	COPPER SULFATE/SEWER MAINT	784.74
20773	07/26/2013	Printed		SPOTS OFF	SPOTS OFF LLC	CAR WASHES/POLICE/JUNE	74.01
20774	07/26/2013	Printed		HEART BUIL	STEPHEN R MARSDEN	JANITORIAL SVCS/JULY 2013	387.00
20775	07/26/2013	Printed		WRIGHT EX	WRIGHT EXPRESS	CITYWIDE FLEET FUEL CHGS/JUNE	3,051.77
20776	07/26/2013	Printed		ZEE MED	ZEE MEDICAL SERVICE	REPLENISH CITYHALL/WWTF 1ST AID CAB	72.75

Total Checks: 19

Checks Total (excluding void checks):

88,581.34

 7-26-13
 Lloyd Martley Date
 Interim City Administrator

 07/26/13
 Corey Swisher Date
 City Clerk/Finance Director

 7/26/13
 Kristi Olson Date
 Accounting Clerk

Check Register Report

Date: 07/12/2013
 Time: 11:43 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							
20721	07/12/2013	Void	07/12/2013	ADVANCE IN	PRINTER JAMMED ON CHECKS		0.00
20722	07/12/2013	Void	07/12/2013	ATMOS ENER	PRINTER JAMMED ON CHECKS		0.00
20723	07/12/2013	Printed		BARNETT	JON & COY BARNETT	YOUTH SPORTS REBATE X2	77.50
20724	07/12/2013	Printed		BLUE CROSS	BLUE CROSS & BLUE SHIELD OF KS	GROUP MEDICAL INSURANCE	14,172.30
20725	07/12/2013	Printed		C & D HAY	C & D HAY & STRAW SALES	24 STRAW/20 HAY BALES	196.00
20726	07/12/2013	Printed		CLIFFORD	CLIFFORD POWER SYSTEMS INC	MAGNETIC PICKUPS/FL LIFT STATN	335.76
20727	07/12/2013	Printed		ETS	ETS	CITYWIDE CREDIT CARD FEES	186.91
20728	07/12/2013	Printed		HR HAVEN	HR HAVEN INC	MONTHLY HR SERVICES/JULY	500.00
20729	07/12/2013	Printed		IDEAL LAWN	IDEAL LAWN & LANDSCAPE	BASEHOR BLVD MOWING/JUNE	172.00
20730	07/12/2013	Printed		IIMC	INT INST OF MUN CLERKS ASSO	MBRSHPC SWISHER/1 YR	145.00
20731	07/12/2013	Printed		WATTS UP	JD VENTURES INC	(30) DAYLIGHT BULBS/CITY BUILD	89.70
20732	07/12/2013	Printed		KANSAS ONE	KANSAS ONE-CALL SYSTEMS, INC.	MONTHLY LOCATE SVC/JUNE-134	160.80
20733	07/12/2013	Printed		KANSAS PAY	KANSAS PAYMENT CENTER	PAYROLL DIRECTED DEDUCTION	687.25
20734	07/12/2013	Printed		KS TREASUR	KANSAS STATE TREASURER	STATE MANDATED COURT FEES	635.00
20735	07/12/2013	Printed		KPF EFT	KPF EFT PROGRAM	POLICE RETIREMENT CONTRIB	11,298.59
20736	07/12/2013	Printed		LAWN TAMER	LAWN TAMERS	CONTRACT MOW/B T C	195.00
20737	07/12/2013	Printed		LEAGUE KM	LEAGUE OF KS MUNICIPALITIES	REG/C LEGGETT/CLERK CLASS	75.00
20738	07/12/2013	Printed		LV SHERIFF	LEAVENWORTH COUNTY SHERIFF	JAIL BOARD FEES	105.00
20739	07/12/2013	Printed		LEE	MARK LEE	MILEAGE REIMB/TONGIE	180.80
20740	07/12/2013	Printed		MASS M	MASS MUTUAL FINANCIAL GROUP	401/457 RETIREMENT CONTRIB	2,827.74
20741	07/12/2013	Printed		MCBRATNEY	KIANN MCBRATNEY	CITY PROSECUTOR SERVICES	400.00
20742	07/12/2013	Printed		MYRACLE TR	MYRACLE TREE SERVICE LLC	RMVE&TRIM TREES/PINEHURST LIFT	700.00
20743	07/12/2013	Printed		PITNEY RES	PITNEY BOWES RESERVE ACCT	REFILL CITY HALL POSTAGE METER	125.00
20744	07/12/2013	Printed		PRAY	WILLIAM E. PRAY	MUNICIPAL JUDGE SERVICES	450.00
20745	07/12/2013	Printed		SCHMIDLING	SHERI SCHMIDLING	YOUTH SPORTS REBATE X2	77.50
20746	07/12/2013	Printed		SMITH/CHRI	CHRIS SMITH	YOUTH SPORTS REBATE X2	90.00
20747	07/12/2013	Printed		SONNTAG	SONNTAG LAW OFFICE	COURT APPOINTED ATTORNEY	400.00
20748	07/12/2013	Printed		SPECTRA	SPECTRA	TOTAL KILL PROMOTER 3.72%	2,103.25
20749	07/12/2013	Printed		SPRINGSTED	SPRINGSTED	BASIC SERVICES FEE	400.00
20750	07/12/2013	Printed		TYLER TECH	TYLER TECHNOLOGIES, INC.	ONLINE UB WEB PAY/MAINT FEE	732.00
20751	07/12/2013	Printed		US POSTAL	UNITED STATES POSTAL SERVICE	REPLENISH PERMIT #12/BILLING	2,000.00
20752	07/12/2013	Printed		VAN WALL	VAN WALL EQUIPMENT	REPAIR PART/WWTF EQUIPMENT	42.97
20753	07/12/2013	Printed		VISION SER	VISION SERVICES PLAN	GROUP VISION INSURANCE	348.18
20754	07/12/2013	Printed		WESTAR	WESTAR ENERGY	ELECTRIC USAGE	15,309.49
20755	07/12/2013	Printed		WILLIAMSAU	AUDREY WILLIAMS	YOUTH SPORTS REBATE	32.50
20756	07/12/2013	Printed		ADVANCE IN	ADVANCE INSURANCE COMPANY	GROUP LTD/STD/ADD/LIFE INS	574.03
20757	07/12/2013	Printed		ATMOS ENER	ATMOS ENERGY	GAS USAGE	103.34
Total Checks: 37						Checks Total (excluding void checks):	55,928.61


 Lloyd Martley Date 7-15-13
 Interim City Administrator


 Corey Swisher Date 07/12/13
 City Clerk/Finance Director


 Kristi Olson Date 7/12/13
 Accounting Clerk

City of Basehor
Agenda Item Cover Sheet

Consent Agenda Item C.

Topic:

Construction inspection services for US-24/40 Corridor Management Projects

Action Requested:

Approve contract with McAfee Henderson Solutions, Inc.

Narrative:

April 12, 2013, the City Council formed a selection committee for construction inspection services for the US-24/40 Corridor Projects based on Kansas Department of Transportation (KDOT) guidelines. Letter of interest were sent to KDOT prequalified consultants. From the respondents received, the committee selected the three top firms based on qualifications to begin negotiations.

The committee is recommending McAfee Henderson Solutions, Inc for construction inspection services in the US-24/40 Corridor Management Projects.

The contract will be based on an hourly fee. The consultant will only be paid for hours worked. The total contract estimate is \$172,013.42.

Presented by: Mitch Pleak, City Engineer and Gene Myracle, City Superintendent

Administration Recommendation:

Enter into a contract with McAfee Henderson Solutions, Inc.

Committee Recommendation:

Attachments:

Resolution 2013-16 (63 pages)

Projector needed for this item? No

RESOLUTION NO. 2013-16

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN CONSTRUCTION INSPECTION SERVICES AGREEMENT BY AND BETWEEN THE CITY OF BASEHOR, KANSAS AND MCAFEE HENDERSON SOLUTIONS, INC., REGARDING CONSTRUCTION INSPECTION SERVICES RELATED TO IMPROVEMENTS TO WOLF CREEK PARKWAY IN BASEHOR, KANSAS.

WHEREAS, the City of Basehor, Kansas wishes to enter into that certain Construction Inspection Services Agreement with McAfee Henderson Solutions, Inc., 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 Construction Inspection Services Agreement, attached as Exhibit A.

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

PASSED by the Governing Body this ___ day of August, 2013.

APPROVED by the Mayor this ___ day of August, 2013.

[SEAL]

David K. Breuer, Mayor

ATTEST:

Corey Swisher, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

Exhibit A
First Amendment to Engineering/Architectural Services Agreement

To be attached.

EXHIBIT A

ENGINEERING/ARCHITECTURAL SERVICES AGREEMENT

THIS AGREEMENT is made in Leavenworth County, Kansas, by and between the City of Basehor, Kansas, hereinafter "City," and **McAfee Henderson Solutions, Inc.**, hereinafter "Consulting Engineer/Architect." City intends to use the services of Consulting Engineer/Architect for the improvement of 158th Street from US-24/40 to Wolf Creek Parkway, Wolf Creek Parkway from 155th St. to 158th St., and 155th Street from US-24/40 to Wolf Creek Parkway (hereinafter the "Project") in Basehor, Kansas, as follows:

Construction Inspection Services to Ensure Conformance to Approved Plans (KDOT Projects 24-52 KA-2819-01, 24-52 KA-2277-01, and 24-52 KA-2818-01) (hereinafter the "Services")

City hereby contracts with Consulting Engineer/Architect for the furnishing of the Services in connection with the Project. The Services are more particularly described in Exhibit A, attached hereto and incorporated by reference herein. By executing this Agreement, the Consulting Engineer/Architect represents to City that Consulting Engineer/Architect is professionally qualified to provide these Services for this Project and is licensed to practice engineering/architecture by all public entities having jurisdiction over Consulting Engineer/Architect and the Project.

SECTION I - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by the Agreement, and other forms of any defined words shall have a meaning parallel thereto.

"City" means the City of Basehor, Kansas.

"Consulting Engineer/Architect" means the company or individual identified above. Consulting Engineer/Architect shall employ for the services rendered, engineers, architects, landscape architects, and surveyors licensed by the Kansas State Board of Technical Professions.

"Contract Documents" means those documents so identified in the Agreement for construction for this Project, including all Engineering/Architectural Documents. All terms defined in the General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

"Engineering/Architectural Documents" means all documents required or reasonably implied by the nature of the Project, including, but not limited to, plans, specifications, drawings, tracings, designs, calculations, sketches, models and reports.

"Engineering/Architectural Services" means the professional services, labor, materials,

supplies, testing, surveying, title work, inspection, if applicable, and all other acts, duties, and services required of Consulting Engineer/Architect under this Agreement together with such other services as City may require pursuant to the terms of this Agreement.

"KDOT" means Kansas Department of Transportation

"Project" is as above described.

"Project Manager" means the person employed by City and designated to act as the City's representative for the Project.

SECTION II - COMPENSATION

- A. Total Fee: City agrees to pay Consulting Engineer/Architect an amount not to exceed **One hundred seventy two thousand thirteen dollars and 42/100 (\$172,013.42)**, including reimbursables. The fee is based on the performance of the Services outlined in this Agreement, and shall be billed using hourly rates as set forth in Exhibit A attached hereto and incorporated by reference herein. The Services shall be performed on an ongoing basis during the Term as determined and directed by the City.
- B. Additional Services: Consulting Engineer/Architect shall provide, with City's concurrence, services in addition to those listed herein when such services are requested or authorized in writing by City. Prior to commencing any additional services, Consulting Engineer/Architect must submit a proposal outlining the additional services to be provided, estimation of total hours, completion date, and a maximum fee based upon the hourly rate schedule attached hereto as Exhibit A. Such services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by this Agreement, providing services necessitated in the event the Engineering/Architectural Services shall be suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by the Consulting Engineer/Architect, and providing any other special services not otherwise covered by this Agreement which may be requested by City. Payment to Consulting Engineer/Architect, as compensation for these services, shall be in accordance with the hourly rate schedule attached as Exhibit A. Reimbursable expenses incurred in conjunction with additional services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and expenses pertaining to additional services shall be made available to City, if so requested.
- C. Special Services: Consulting Engineer/Architect may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. Consulting Engineer/Architect shall not be paid extra by City if its appearance is to

defend its professional Engineering/Architectural Services. If Consulting Engineer/Architect is requested, in writing, by City, to appear as a general witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as Exhibit A.

- D. Billing: Consulting Engineer/Architect shall bill City monthly for all completed Services. The bill submitted by Consulting Engineer/Architect shall itemize the Services for which payment is requested. City agrees to pay Consulting Engineer/Architect within thirty (30) days of approval by the City of the undisputed invoice.
- E. City's Right to Withhold Payment: In the event City becomes credibly informed that any representations of Consulting Engineer/Architect provided in its monthly billing, are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consulting Engineer/Architect until the inaccuracy and the cause thereof, is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact shall be made known to Consulting Engineer/Architect immediately. Consulting Engineer/Architect will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City shall be paid to Consulting Engineer/Architect in accordance with the contract payment procedures.
- F. Progress Reports: A progress report must be submitted with each monthly pay request indicating the percentage of tasks completed to date. This report will serve as support for payment to Consulting Engineer/Architect.
- G. Change in Scope: For substantial modifications in authorized Project scope, and/or substantial modifications of drawings and/or specifications previously accepted by City, when requested by City and through no fault of Consulting Engineer/Architect, the Consulting Engineer/Architect shall be compensated for time and expense required to incorporate such modifications at Consulting Engineer/Architect's standard hourly rates per Exhibit A; provided, however, that any increase in contract price or contract time must be approved through a written Change Order. Consulting Engineer/Architect shall correct or revise any errors or deficiencies without additional compensation when due to Consulting Engineer/Architect's negligence or other actionable fault.
- H. Change Orders: This Agreement may be amended to provide for additions, deletions and revisions in the Engineering/Architectural Services or to modify the terms and conditions thereof by either written amendment or by Change Order. The contract price and contract time may only be changed by a written Change Order approved by City, unless it is the result of an emergency situation in which case the Project Manager may give written approval to be followed by a written and approved Change Order. If notice of any change

affecting the general scope of the Engineering/Architectural Services or provisions of this Agreement, including but not limited to, contract price or contract time, is a requirement of any insurance policy held by Consulting Engineer/Architect as a requirement of this Agreement, the giving of such notice shall be the Consulting Engineer/Architect's responsibility.

SECTION III - RESPONSIBILITIES OF CONSULTING ENGINEER/ARCHITECT

Consulting Engineer/Architect shall furnish and perform the various Services in all phases of the Project to which this Agreement applies as herein provided and which are required for the construction of the Project which Services shall include:

A. CONSTRUCTION PHASE

Services: The services provided during this phase are set out in Exhibit A attached hereto and incorporated herein. Services shall be provided in accordance with the final design plans, KDOT's 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.

B. GENERAL DUTIES AND RESPONSIBILITIES

1. Acknowledgement of the General Conditions of the Contract for Construction: In addition to the responsibilities herein set forth, Consulting Engineer/Architect specifically acknowledges receipt of a copy of the General Conditions and agrees to provide the Services in conformance with the same.
2. Personnel: Consulting Engineer/Architect shall assign only qualified personnel to perform any Service concerning the Project. Consulting Engineer/Architect 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, will provide personnel who are fully qualified to perform the services in a competent and professional manner, and will provide City and KDOT a list of assigned inspectors and their certifications. All personnel shall comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4,

Section 8 Fluorescent Vests. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project: **Joseph L. McAfee, P.E.** As principal on this Project, this person shall be the primary contact with the City's Project Manager and shall have authority to bind Consulting Engineer/Architect. So long as the individual named above remains actively employed or retained by Consulting Engineer/Architect, he/she shall perform the function of principal on this Project.

3. Service By and Payment to Others: Any work authorized in writing by City and performed by anyone other than Consulting Engineer/Architect or its subcontractors in connection with the proposed Project shall be contracted for and paid for by City directly to the third party or parties. In addition to payments for professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other work required or requested by City or Consulting Engineer/Architect which is not defined within the scope of services of Consulting Engineer/Architect. Fees for such extra work shall be subject to negotiation between City and the third party. Fees shall be approved prior to the execution of any extra work. Although Consulting Engineer/Architect may assist City in procuring such services of third parties, Consulting Engineer/Architect shall in no way be liable to either City or such third parties in any manner whatsoever for such services or for payment thereof.
4. Subcontracting of Service: Consulting Engineer/Architect shall not subcontract or assign any of the Engineering/Architectural Services to be performed under this Agreement without first obtaining the written approval of City regarding the Engineering/Architectural Services to be subcontracted or assigned and the consulting firm or person proposed to accomplish the subcontracted/assigned portion of the Project. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Any person or firm proposed for subcontracting Engineering/Architectural Services under this Agreement shall maintain throughout the duration of the Agreement, insurance as provided in Section V.C. (8) herein, and shall additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 and provide the City with certification thereof.
5. Inspection of Documents: Consulting Engineer/Architect shall maintain all books and Project records for inspection by City and/or KDOT during the contract period

and for five (5) years from the date of final payment.

SECTION IV - CITY OF BASEHOR'S RESPONSIBILITIES

- A. Communication: City shall provide to Consulting Engineer/Architect information and criteria regarding City's requirements for the Project; examine and timely respond to Consulting Engineer/Architect's submissions; and give written notice to Consulting Engineer/Architect, who shall respond promptly, whenever City observes or otherwise becomes aware of any defect in the Engineering/Architectural Services.
- B. Access: City will provide access for Consulting Engineer/Architect to enter public and private property as necessary to provide the Services.
- C. Project Representative: City shall designate a Project Manager to represent City in coordinating this Project with Consulting Engineer/Architect, with authority to transmit instructions and define policies and decisions of City.

SECTION V - GENERAL PROVISIONS

A. TERMINATION

- 1. Notice: City reserves the right to terminate this Agreement in whole or in part either for cause or for its convenience and without cause or default on the part of Consulting Engineer/Architect, by providing ten (10) days' written notice of such termination to Consulting Engineer/Architect. Upon receipt of such notice from City, Consulting Engineer/Architect shall, at City's option as contained in the notice: (a) immediately cease all Engineering/Architectural Services; or (b) meet with City and, subject to City's approval, determine what Engineering/Architectural Services shall be required of Consulting Engineer/Architect in order to bring the Project to a reasonable termination in accordance with the request of City. Consulting Engineer/Architect shall also provide to City copies of all drawings and documents completed or partially completed at the date of termination.
If City defaults on its obligation under this Agreement, Consulting Engineer/Architect is entitled to terminate this Agreement by providing ten (10) days' written notice.
- 2. Termination for Cause: If this Agreement is terminated for cause, after notice to Consulting Engineer/Architect, City may take over the Engineering/Architectural Services and prosecute same to completion, by contract or otherwise, for the amount and at the expense of the Consulting Engineer/Architect, and the Consulting Engineer/Architect shall be liable to the City for any and all excess cost sustained by the City by reason of such prosecution and completion. When Consulting Engineer/Architect's services have been so terminated, such termination shall not

affect any rights or remedies of the City against Consulting Engineer/Architect then existing or which may later accrue. Similarly, any retention or payment of monies due Consulting Engineer/Architect shall not release Consulting Engineer/Architect from liability.

3. Compensation for Convenience Termination: If City shall terminate for its convenience as herein provided, City shall compensate Consulting Engineer/Architect for all Engineering/Architectural Services satisfactorily completed to date of its receipt of the termination notice and any additional Engineering/Architectural Services requested by City to bring the Project to reasonable termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
4. Compensation for Cause Termination: If City shall terminate for cause or default on the part of Consulting Engineer/Architect, City shall compensate Consulting Engineer/Architect for the reasonable cost of Engineering/Architectural Services completed to the City's satisfaction up to the date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. City also retains all its rights and remedies against Consulting Engineer/Architect including but not limited to its rights to sue for damages, interest and attorney fees.
5. Incomplete Documents: Neither Consulting Engineer/Architect, nor its sub-contractors shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this Section; Consulting Engineer/Architect having been deprived of the opportunity to complete such documents and certify them as ready for construction.

B. DISPUTE RESOLUTION

City and Consulting Engineer/Architect agree that disputes relative to this Agreement should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Consulting Engineer/Architect shall proceed with the Engineering/Architectural Services as per this Agreement as if no dispute existed, and the City shall continue to make payment for Consulting Engineer's/Architect's completed Services; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

C. INSURANCE

1. General

The Consulting Engineer/Architect shall maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Professional Liability may be written on a "claims made" basis. Consulting Engineer/Architect shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Consulting Engineer/Architect at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

2. Notice of Claim Reduction of Policy Limits

The Consulting Engineer/Architect, upon receipt of notice of any claim in connection with the Contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Consulting Engineer/Architect shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) if the Consulting Engineer/Architect's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Consulting Engineer/Architect shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

3. General Liability

Limits -

General Aggregate:	\$ 500,000
Products / Completed Operations:	\$ 500,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

Policy MUST include the following conditions:

- a. Commercial General Form
- b. Explosion, Collapse & Underground
- c. Broad Form Contractual / Contractually Assumed Liability
- d. Independent Contractors
- e. Broad Form Property Damage
- f. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- g. **Name City of Basehor as "Additional Insured"**

4. Automobile Liability

Policy shall protect the Consulting Engineer/Architect against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle.

Limits -

Each Accident, Combined Single Limits, Bodily Injury and Property Damage:

Same as General Liability

Policy MUST include the following condition:

Name City of Basehor as "Additional Insured"

5. Workers' Compensation

This insurance shall protect the Consulting Engineer/Architect against all claims under applicable state workers' compensation laws. The Consulting Engineer/Architect shall also be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employers Liability -	
Bodily Injury by Accident:	\$ 100,000 Each Accident
Bodily Injury by Disease:	\$ 500,000 Policy Limit
Bodily Injury by Disease:	\$ 100,000 Each Employee

6. Professional Liability

The Consulting Engineer/Architect shall maintain throughout the duration of this Contract, Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00).

7. Industry Ratings

The City will only accept coverage from an insurance carrier who offers proof that it:

- a. Is licensed to do business in the State of Kansas;
- b. Carries a Best's policyholder rating of A- or better; and
- c. Carries at least a Class VIII financial rating.

OR

Is a company mutually agreed upon by the City and Consulting Engineer/Architect.

8. Subcontractors' Insurance

If a part of the Agreement is to be sublet, the Consulting Engineer/Architect shall either:

- a. Cover all subcontractors in its insurance policies, or

- b. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Consulting Engineer/Architect shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

D. INDEMNITY

1. Definition: For purposes of indemnification requirements, the term "Loss" shall have the meaning set forth as follows:

"Loss" means any and all Loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or Loss of, or Loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the Engineering/Architectural Services required hereunder.

2. Indemnity: For purposes of this Agreement, Consulting Engineer/Architect hereby agrees to indemnify, defend and hold harmless the City, its employees and agents from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Consulting Engineer/Architect, its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Consulting Engineer/Architect's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Consulting Engineer/Architect is not responsible.

In the case of any claims against the City, its employees or agents

indemnified under this Agreement, by an employee of the Consulting Engineer/Architect, its affiliates, subsidiaries, or subcontractor/assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Consulting Engineer/Architect, its affiliates, subsidiaries, or subcontractor/assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

E. AFFIRMATIVE ACTION/OTHER LAWS

1. During the performance of this Agreement, the Consulting Engineer/Architect agrees that:
 - a. Consulting Engineer/Architect shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
 - b. in all solicitations or advertisements for employees, the Consulting Engineer/Architect shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
 - c. if the Consulting Engineer/Architect fails to comply with the manner in which the Consulting Engineer/Architect reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consulting Engineer/Architect shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City;
 - d. if the Consulting Engineer/Architect is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Consulting Engineer/Architect shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City; and
 - e. the Consulting Engineer/Architect shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered

into by a Consulting Engineer/Architect:

- who employs fewer than four employees during the term of such contract; or
- whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

2. The Consulting Engineer/Architect further agrees that the Consulting Engineer/Architect shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

F. ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement. The following documents have been attached: KDOT Agreement No. 92-11 (Exhibit B); KDOT Agreement No. 113-12 (Exhibit C); KDOT Agreement No. 112-12 (Exhibit D).

G. APPLICABLE LAW

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

H. ASSIGNMENT OF AGREEMENT

This Agreement shall not be assigned or transferred by Consulting Engineer/Architect without the written consent of the City.

I. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

J. INDEPENDENT CONTRACTOR

The Consulting Engineer/Architect is an independent contractor and as such is not an agent or employee of the City.

K. FEDERAL LOBBYING ACTIVITIES

(Only applies to projects receiving federal funds via the City)

31 USCA Section 1352 requires all subgrantees, contractors, subcontractors and consultants who receive federal funds via City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements. In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the City's Project Manager and should be returned to City with other final Contract Documents. It is the responsibility of Consulting Engineer/Architect to obtain executed forms from any of its subcontractors who fall within the provision of the Code and to provide City with the same.

L. COVENANT AGAINST CONTINGENT FEES

Consulting Engineer/Architect warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Consulting Engineer/Architect, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

M. COMPLIANCE WITH LAWS

Consulting Engineer/Architect shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Engineering/Architectural Services or the Project at the time Services are rendered. Consulting Engineer/Architect shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this Agreement.

N. TITLES, SUBHEADS AND CAPITALIZATION

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

O. SEVERABILITY CLAUSE

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

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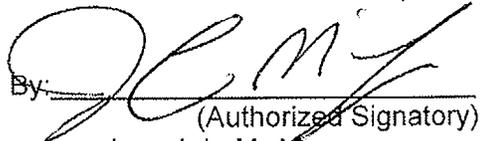
P. EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed in triplicate this _____ day of _____, 2013.

CITY OF BASEHOR, KANSAS

MCAFFEE HENDERSON SOLUTIONS, INC.

David K. Breuer
Mayor

By: 
(Authorized Signatory)
Joseph L. McAfee

ATTEST:

President

Corey Swisher
City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano
City Attorney

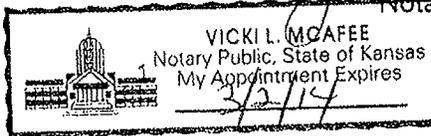
ACKNOWLEDGEMENT

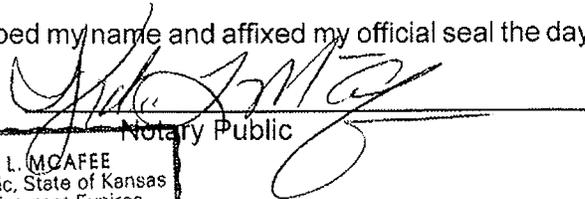
STATE OF KANSAS)
) ss.
COUNTY OF LEAVENWORTH)

BE IT REMEMBERED, That on this 30 day of July, 2013 before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Joseph L. McAfee, a representative of **McAfee Henderson Solutions, Inc.**, who is personally known to me to be the such member and who is personally known to me to be the same person who executed as such member the foregoing instrument on behalf of said company, and such person duly acknowledged the execution of same to be the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Commission Expires:
3/2/14




Notary Public

**EXHIBIT A
Services**

**ATTACHMENT A
SUPPORTING DATA SHEETS**

**For
NOT TO EXCEED CONSTRUCTION ENGINEERING FEE**

Project No. KDOT 24-52-KA-2277, 2818, 2819 -01
City of Basehor, Kansas US-24/40 Corridor Management Project

- Given:**
- (a) 158th Street (2819) Commencement Date – September 1, 2013
 - (b) 158th Street (2819) Completion Date - December 1, 2013
 - (c) Wolf Creek Parkway & 155th Street (2277, 2818) Commencement Date – April 1, 2014
 - (d) WCP & 155th Street (2277 & 2818) Final Completion Date - October 31, 2014
 - (e) All work periods equal 214 potential weekday workdays excluding Holidays.
 - (f) The available workdays are further reduced by 2 days per month for rain events.
 - (g) The base contract fee is based on 194 workdays requiring a Chief Inspector.

Personnel: Project Manager: Joseph McAfee, KDOT CIT No. 1033
Chief Inspector: Michael Stephan, KDOT CIT No. 2863
Secondary Inspector (Field): Joseph McAfee, KDOT CIT No. 1033

A. PRE-CONSTRUCTION PHASE

CONSULTANT STAFF	TITLE	HOURS
Joseph McAfee	Project Manager	20
Michael Stephan	Lead Inspector	45

B. CONSTRUCTION PHASE

Project Manager – Joseph McAfee, Professional Labor Hours (2 hrs per week)					
Month	Work Weeks (Mon-Fri)	Hours per Week	Saturdays Worked	Regular Hours	Overtime Hours
September, 2013	4	2	0	8	0
October	4.6	2	0	9.2	0
November	4	2	0	8	0
April, 2014	4.4	2	0	8.8	0
May	4.2	2	0	8.4	0
June	4.2	2	0	8.4	0
July	4.4	2	0	8.8	0
August	4.2	2	0	8.4	0
September	4.2	2	0	8.4	0
October	4.6	2	0	9.2	0
Phase Totals	42.8	N/A	0	85.6	0

**EXHIBIT A
Services**

Chief Inspector – Michael Stephan, Professional Labor Hours					
Month	Working Days (Mon-Fri)	Hours per Day	Saturdays Worked	Regular Hours	Overtime Hours
September, 2013	18	10	0	180	0
October	21	10	0	210	0
November	18	9	0	162	0
April, 2014	20	10	0	200	0
May	19	10	0	190	0
June	19	11	0	209	0
July	20	11	0	220	0
August	19	11	0	209	0
September	19	10	0	190	0
October	21	10	0	210	0
Phase Totals	194	N/A	0	1,980.0	0

Secondary Field Inspector (Project Testing with exception of Laboratory & Nuclear Testing, and assistance during Major Construction Events) – Joseph McAfee, Professional Labor Hours					
Month	Working Days (Mon – Fri)	Hours per Day	Saturdays Worked	Regular Hours	Overtime Hours
September, 2013	2	10	0	20	0
October	4	10	0	40	0
November	5	10	0	50	0
April, 2014	2	10	0	20	0
May	4	10	0	40	0
June	3	10	0	30	0
July	7	11	0	77	0
August	7	11	0	77	0
September	5	10	0	50	0
October	0	0	0	0	0
Phase Totals	39	N/A	0	404.0	0

**EXHIBIT A
Services**

C. POST CONSTRUCTION-FINAL DOCUMENTATION PHASE

CONSULTANT STAFF	TITLE	HOURS
Joseph McAfee	Project Manager	8
Michael Stephan	Assistant Inspector	24

D. REIMBURSABLE PROJECT DIRECT EXPENSES

DESCRIPTION	UNIT	QUANTITY	UNIT COST	UNIT
Chief Inspector Daily On-Site Project Mileage (207 days @ 4 miles per day)	Daily On-Site Project Mileage	828	\$0.57	471.96
Chief Inspector Off-Site Project Mileage for City Staff Communications, Quarry Sample Procurement, Batch Plant, & Sample Delivery to Testing Sub-Consultant	Project Off-Site Mileage	1,022	\$0.57	582.54
Secondary Field Inspector Mileage incurred for field testing, concrete pours and asphalt operations. (39 days @ 4 miles per day)	Daily On-Site Project Mileage	156	\$0.57	88.92
Material Testing Sub Consultant Professional Fees. (See Unit Cost Breakdown attached.)	Terracon, Inc.	1	\$12,330.00	12,330.00
Direct Project Expense Total				\$13,473.42

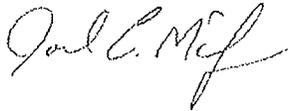
**EXHIBIT A
Services**

E. TOTAL CONSTRUCTION ENGINEERING ESTIMATE

Contract Phase	Project Duty	Employee	Hours	Professional Labor Rate	Extension
Pre Construction	Project Manager	Joseph McAfee	20	\$ 100.00	2,000.00
	Chief Inspector	Michael Stephan	45	\$ 60.00	2,700.00
Construction	Project Manager	Joseph McAfee	85.6	\$ 100.00	8,560.00
	Chief Inspector	Michael Stephan	1,980	\$ 60.00	118,800.00
	Secondary Field Inspector	Joseph McAfee	404	\$ 60.00	24,240.00
Post Construction	Project Manager	Joseph McAfee	8	\$ 100.00	800.00
	Chief Inspector	Michael Stephan	24	\$ 60.00	1,440.00
Professional Labor Hours Fee					158,540.00
Direct Expenses					13,473.42
Total Construction Engineering Fee					\$172,013.42

This completes our project summary of professional hours and direct expenses. If you have any questions regarding the listed hours please do not hesitate to contact me. We look forward to assisting you with the successful completion of this City of Basehor - KDOT Corridor Management Project.

Respectfully Submitted,



Joseph L. McAfee, President
McAfee Henderson Solutions, Inc.

EXHIBIT B
KDOT Agreement No. 92-11

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

EXHIBIT B
KDOT Agreement No. 92-11

Agreement No. 92-11

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-NHIS 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.

EXHIBIT B
KDOT Agreement No. 92-11

Agreement No. 92-11

- 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.

EXHIBIT B
KDOT Agreement No. 92-11

Agreement No. 92-11

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.

EXHIBIT B
KDOT Agreement No. 92-11

Agreement No. 92-11

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

EXHIBIT B
KDOT Agreement No. 92-11

Agreement No. 92-11

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

EXHIBIT B
KDOT Agreement No. 92-11

Agreement No. 92-11

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

EXHIBIT B
KDOT Agreement No. 92-11

Agreement No. 92-11

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.

EXHIBIT B
KDOT Agreement No. 92-11

Agreement No. 92-11

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 MUTUALLY 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

EXHIBIT B
KDOT Agreement No. 92-11

Agreement No. 92-11

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.

EXHIBIT B
KDOT Agreement No. 92-11

Agreement No. 92-11

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.

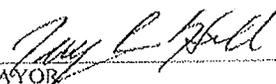
IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:



CITY CLERK
CORPORATE
SEAL
(SEAL)

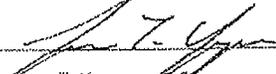
THE CITY OF BASEHOR, KANSAS



MAYOR

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

FORM
APPROVED
BY
DB 7-20-11
Legal Dept.
KDOT

BY: 

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

EXHIBIT B
KDOT Agreement No. 92-11

Special Attachment No. 1
Page 1 of 2

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.

(Revised 7/29/99)

EXHIBIT B
KDOT Agreement No. 92-11

Special Attachment No. 1
Page 2 of 2

- 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.

(Revised 7/29/99)

EXHIBIT B
KDOT Agreement No. 92-11

State of Kansas
Department of Administration
DA-146A (Rev. 04-11)

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. 76-6101 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. 44-1110; (d) to include these 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 canceled, 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 canceled, 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 of 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. 76-6101 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. 45-1101 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."

**Exhibit C
KDOT Agreement 113-12**

Agreement No. 113-12

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 1

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

Exhibit C
KDOT Agreement 113-12

Agreement No. 113-12

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.

Exhibit C
KDOT Agreement 113-12

Agreement No. 113-12

- 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.

Exhibit C
KDOT Agreement 113-12

Agreement No. 113-12

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.

Exhibit C
KDOT Agreement 113-12

Agreement No. 113-12

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.

Exhibit C
KDOT Agreement 113-12

Agreement No. 113-12

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.

Exhibit C
KDOT Agreement 113-12

Agreement No. 113-12

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

Exhibit C
KDOT Agreement 113-12

Agreement No. 113-12

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

Exhibit C
KDOT Agreement 113-12

Agreement No. 113-12

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 MUTUALLY 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.

Exhibit C
KDOT Agreement 113-12

Agreement No. 113-12

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.

Exhibit C
KDOT Agreement 113-12

Agreement No. 113-12

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

Exhibit C
KDOT Agreement 113-12

State of Kansas
Department of Administration
DA-146a (Rev. 10-11)

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.

Exhibit C
KDOT Agreement 113-12

Special Attachment No. 1
Page 1 of 2

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.

(Revised 9/29/11)

Exhibit C
KDOT Agreement 113-12

Special Attachment No. 1
Page 2 of 2

- 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.

(Revised 9/29/11)

**Exhibit D
KDOT Agreement 112-12**

Agreement No. 112-12

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 300 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 30 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

Exhibit D
KDOT Agreement 112-12

Agreement No. 112-12

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

Exhibit D
KDOT Agreement 112-12

Agreement No. 112-12

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.

Exhibit D
KDOT Agreement 112-12

Agreement No. 112-12

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.

Exhibit D
KDOT Agreement 112-12

Agreement No. 112-12

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.

Exhibit D
KDOT Agreement 112-12

Agreement No. 112-12

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.

Exhibit D
KDOT Agreement 112-12

Agreement No. 112-12

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

Exhibit D
KDOT Agreement 112-12

Agreement No. 112-12

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

Exhibit D
KDOT Agreement 112-12

Agreement No. 112-12

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 MUTUALLY 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.

Exhibit D
KDOT Agreement 112-12

Agreement No. 112-12

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.

Exhibit D
KDOT Agreement 112-12

Agreement No. 112-12

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:

THE CITY OF BASEHOR, KANSAS

CITY CLERK

MAYOR

(SEAL)



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

BY:

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

Exhibit D
KDOT Agreement 112-12

State of Kansas
Department of Administration
DA-146a (Rev. 10-11)

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. 44-1031 *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 act 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.

Exhibit D
KDOT Agreement 112-12

Special Attachment No. 1
Page 1 of 2

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.

(Revised 9/29/11)

Exhibit D
KDOT Agreement 112-12

Special Attachment No. 1
Page 2 of 2

- 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.

(Revised 9/29/11)

City of Basehor
Agenda Item Cover Sheet

Consent Agenda Item No. D

Topic: Standard Traffic Ordinance of greater Kansas City for 2013

Action Requested: Adopt Ordinance #631 amending Chapter XIV, Traffic, Article 14-101 of the code of the City of Basehor, Kansas.

Narrative: In July of each year new laws for the State of Kansas that were adopted through legislation become effective. As a City we have to adopt a new ordinance each year to allow us to enforce the new laws.

Presented by: Chief Lloyd Martley

Administration Recommendation: Adopt ordinance #631 amending current STO.

Committee Recommendation:

Attachments: Ordinance #631, changes to the STO for the 2013, copy of the STO available for review if needed.

Projector needed for this item?

No

(Published in the Basehor Sentinel _____)

ORDINANCE NO. 631

AN ORDINANCE AMENDING ARTICLE 1 OF CHAPTER XIV OF THE CODE OF THE CITY OF BASEHOR KANSAS BY AMENDING SECTION 14-101 AND 14-102, AND ADDING NEW SECTIONS 14-103 AND 14-104, PERTAINING TO REGULATING TRAFFIC WITHIN THE CORPORATE LIMITS OF THE CITY OF BASEHOR, KANSAS; INCORPORATING BY REFERENCE THE ‘STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, 2013 EDITION,’ WITH CERTAIN AMENDMENTS AND OMISSIONS, SUCH INCORPORATION BEING AUTHORIZED BY K.S.A. § 12-3009 THROUGH 12-3012 AND K.S.A. § 12-3301 AND 12-3302; REPEALING EXISTING SECTION 14-101, AND OTHER SECTIONS IN CONFLICT HEREWITH

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

Section 1: Section 14-101 of the Code of the City of Basehor, Kansas is hereby amended to read as follows:

ARTICLE 1. STANDARD TRAFFIC ORDINANCE
14-101 INCORPORATING STANDARD TRAFFIC ORDINANCE. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Basehor, Kansas, that certain standard traffic ordinance known as the “Standard Traffic Ordinance for Kansas Cities”, edition of 2013, prepared and published in book form by the League of Kansas Municipalities, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, such incorporation being authorized by K.S.A. 12-3009 through 12-3012, inclusive, as amended. No fewer than three copies of said Standard Traffic Ordinance shall be marked or stamped “Official Copy as incorporated by Ordinance No. 631,” with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge, and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at the cost of the city, such number of official copies of such Standard Traffic Ordinance similarly marked, as may be deemed expedient.

Section 2: Section 14-102 of the Code of the City of Basehor, Kansas is hereby amended to read as follows:

14-102

SAME; TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.

- (a) An ordinance traffic infraction is a violation of any section of this ordinance that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118.
- (b) All traffic infractions which are included within this ordinance, and which are not ordinance traffic infractions, as defined in subsection (a) of this section, shall be considered traffic offenses.

Section 3: A new Section 14-103 of the Code of the City of Basehor, Kansas is hereby adopted to read as follows:

14-103

Sec. 194. Driving While License Canceled, Suspended or Revoked; Penalty.

- (a)
 - (1) Any person who drives a motor vehicle on any street or highway at a time when such person's privilege to do so is canceled, suspended or revoked or while such person's privilege to obtain a driver's license is suspended or revoked, shall upon a first conviction be punished by imprisonment for not more than six months or fined not to exceed \$1,000, or both such fine and imprisonment. On a second conviction of a violation of this section such person shall be punished by imprisonment for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.
 - (2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257 and amendments thereto, to the return of such person's driver's license.
 - (3) Except as otherwise provided by subsection (a)(4), every person convicted under this section shall be sentenced to at least five day' imprisonment and fined at least \$100.00 and upon a second conviction shall not be eligible for parole until completion of five days' imprisonment.
 - (4) If a person: (A) is convicted of a violation of this section, committed while the person's privilege to drive or privilege to obtain a driver's license was suspended or revoked for a violation of K.S.A. 8-1567, and amendments thereto, or any ordinance of any city or resolution of any county or a law of another state, which ordinance or law prohibits the acts prohibited by that statute; and (B) is or has been also convicted of a violation of K.S.A. 8-1567, and amendments thereto, or of a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by that statute, committed while the person's privilege to drive or privilege to obtain a driver's license was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90

days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.

- (b) For the purposes of determining whether a conviction is a first or second conviction in sentencing under this section, conviction includes a conviction of a violation of any ordinance of any city or resolution of any county or a law of any state which is in substantial conformity with this section.

Section 4. A new Section 14-104 of the Code of the City of Basehor, Kansas is hereby adopted to read as follows:

14-104. The following section of the Uniform Traffic Ordinance incorporated in Section 14-101 above is hereby omitted and deleted:

Section 195.1 pertaining to Operation of a Motor Vehicle When a Habitual Violator

Section 5. This ordinance shall be construed as follows:

- A. Liberal Construction. The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare and convenience.
- B. Savings Clause. The repeal of Ordinance sections, as provided herein below, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred there under or actions involving any of the provisions of said Ordinances or parts thereof. Said Ordinance repealed is hereby continued in force and effect after the passage, approval and publications of this Ordinance for the purposes of such rights, fines, penalties, forfeitures, liabilities and actions therefore.
- C. Invalidity. If for any reason any chapter, article, section, subsection, sentence, portion or part of this proposed Ordinance set out herein, or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Code or other Ordinances.

Section 6. That existing Sections 14-101 and 14-102 of the Code of the City of Basehor are hereby repealed.

Section 7. This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

PASSED by the Governing Body this _____ day of August, 2013.

APPROVED by the Mayor this _____ day of August, 2013.

[SEAL]

David K. Breuer, Mayor

ATTEST:

Corey Swisher, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

City of Basehor
Agenda Item Cover Sheet

Consent Agenda Item No. E

Topic: Uniform Public Offense Code of greater Kansas City for 2013

Action Requested: Adopt Ordinance #632 amending Chapter XI, Public Offenses, Article 11-101 of the code of the City of Basehor, Kansas.

Narrative: In July of each year new laws for the State of Kansas that were adopted through legislation become effective. As a City we have to adopt a new ordinance each year to allow us to enforce the new laws.

Presented by: Chief Lloyd Martley

Administration Recommendation: Adopt ordinance #632 amending current UPOC.

Committee Recommendation:

Attachments: Ordinance #632, changes to the UPOC for the 2013 editions, copy of the UPOC available for review if needed.

Projector needed for this item?

No

(Published in the Basehor Sentinel _____)

ORDINANCE NO. 632

AN ORDINANCE AMENDING ARTICLE 1 OF CHAPTER XI OF THE CODE OF THE CITY OF BASEHOR KANSAS BY AMENDING SECTION 11-101, PERTAINING TO REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF BASEHOR, KANSAS; INCORPORATING BY REFERENCE THE ‘UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES, 2013 EDITION,’ WITH CERTAIN AMENDMENTS, SUCH INCORPORATION BEING AUTHORIZED BY K.S.A. § 12-3009 THROUGH 12-3012 AND K.S.A. § 12-3301 AND 12-3302; REPEALING EXISTING SECTION 11-101

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

Section 1: Section 11-101 of the Code of the City of Basehor, Kansas is hereby amended to read as follows:

ARTICLE 1. UNIFORM OFFENSE CODE

11-101 INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Basehor, Kansas, the “Uniform Public Offense Code for Kansas Cities”, edition of 2013, prepared and published in book form by the League of Kansas Municipalities, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, such incorporation being authorized by K.S.A. 12-3009 through 12-3012, inclusive, as amended. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped “Official Copy as incorporated by Ordinance No. 632,” with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

Section 2. This ordinance shall be construed as follows:

- A. Liberal Construction. The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare and convenience.
- B. Savings Clause. The repeal of Ordinance sections, as provided herein below, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities

incurred there under or actions involving any of the provisions of said Ordinances or parts thereof. Said Ordinance repealed is hereby continued in force and effect after the passage, approval and publications of this Ordinance for the purposes of such rights, fines, penalties, forfeitures, liabilities and actions therefore.

- C. Invalidity. If for any reason any chapter, article, section, subsection, sentence, portion or part of this proposed Ordinance set out herein, or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Code or other Ordinances.

Section 3. That existing Section 11-101 of the Code of the City of Basehor is hereby repealed.

Section 4. This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

PASSED by the Governing Body this _____ day of August, 2013.

APPROVED by the Mayor this _____ day of August, 2013.

[SEAL]

David K. Breuer, Mayor

ATTEST:

Corey Swisher, City Clerk

APPROVED AS TO FORM:

Shannon M. Marciano, City Attorney

City of Basehor
Agenda Item Cover Sheet

Consent Agenda Item F

Topic:

RESOLUTION 2013-15: A RESOLUTION DESIGNATING COMMERCE BANK, COUNTRY CLUB BANK, FIRST STATE BANK & TRUST, CITIZENS SAVINGS AND LOAN ASSOC. FSB AND COMMUNITY NATIONAL BANK DEPOSITORIES FOR THE CITY OF BASEHOR, KANSAS RESCINDING ANY AND ALL RESOLUTIONS IN CONFLICT HEREWITH.

Action Requested:

Approve Resolution 2013-15

Narrative:

Pursuant to K.S.A. 9-1401, the Governing Body shall designate banks, savings and loan associations and savings banks which shall serve as depositories of its funds and whereas the Basehor City Council has, at the time of adoption of this resolution had, full power and lawful authority to adopt the foregoing instrument and to confer the powers granted to the persons named who have full power and lawful authority to exercise the same.

Administration Recommendation:

Approve Resolution 2013-15

Attachments:

Resolution 2013-15

RESOLUTION 2013-15

A RESOLUTION DESIGNATING COMMERCE BANK, COUNTRY CLUB BANK, FIRST STATE BANK & TRUST, CITIZENS SAVINGS AND LOAN ASSOC. FSB AND COMMUNITY NATIONAL BANK DEPOSITORIES FOR THE CITY OF BASEHOR, KANSAS RESCINDING ANY AND ALL RESOLUTIONS IN CONFLICT HEREWITH.

WHEREAS, pursuant to K.S.A. 9-1401, the Governing Body shall designate banks, savings and loan associations and savings banks which shall serve as depositories of its funds and whereas the Basehor City Council has, at the time of adoption of this resolution had, full power and lawful authority to adopt the foregoing instrument and to confer the powers granted to the persons named who have full power and lawful authority to exercise the same.

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

SECTION ONE: Commerce Bank, Country Club Bank, First State Bank & Trust, Citizens Savings & Loan Assoc. FSB and Community National Bank are designated as depositories for the funds of this municipal corporation.

SECTION TWO: This resolution shall continue to have effect until express written notice of its rescission or modification has been received and recorded by these Financial Institutions.

SECTION THREE: All transactions, if any, with respect to any deposits, withdrawals, rediscounts and borrowings by or on behalf of this municipal corporation with these Financial Institutions prior to the adoption of this resolution are hereby ratified, approved and confirmed.

SECTION FOUR: Any of the persons named below, so long as they act in a representative capacity as agents of this municipal corporation, are authorized to make any and all other contracts, agreements, stipulations and orders which they may deem advisable for the effective exercise of the powers indicated below, from time to time with these Financial Institutions, concerning funds deposited in these Financial Institutions, moneys borrowed from this Financial Institution or any other business transacted by and between this municipal corporation and these Financial Institutions subject to any restrictions stated below.

SECTION FIVE: Any and all prior resolutions adopted by the City Council of this municipal corporation and certified to these Financial Institutions as governing the operation of this municipal corporation's account(s) are hereby rescinded.

SECTION SIX: This municipal corporation agrees to the terms and conditions of any account agreement, properly opened by any authorized representative(s) if this

municipal corporation, and authorizes the Financial Institutions named above, at any time, to charge this municipal corporation for all checks, drafts, or other orders, for the payment of money, that are drawn on these Financial Institutions, regardless of by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimens in section 7 (or the facsimile signature specimens that this municipal corporation files with these Financial Institutions from time to time) and contain the required number of signatures for this purpose.

SECTION SEVEN: Authorized Representatives:

Name and Title	Signature	Facsimile Signature
A)Corey Swisher, Finance Director/ City Clerk	_____	_____
B)Kathy Renn, Asst. City Clerk	_____	_____
C)Lloyd Martley, Interim City Administrator/Police Chief	_____	_____

A, B, and C are authorized to endorse checks and orders for the payment of money and withdraw funds on deposit with these Financial Institutions. Further, A, B and C are authorized to open any deposit or checking account(s) in the name of this municipality.

ADOPTED by the City Council this 19th day of August, 2013.

APPROVED by the Mayor this 19th day of August, 2013.

David K. Breuer, Mayor

Attest:

City Clerk

City of Basehor
Agenda Item Cover Sheet

Agenda Item No. 5

Topic: Ordinance 585 amendment

Action Requested: Amend Ordinance 585

Narrative: Chapter 15: Cities Of The Third Class

Statute 15-204: Appointment of city officers; duties and compensation; removal. Subject to the provisions of K.S.A. 2009 Supp. 12-16,128, and amendments thereto, the mayor, with the consent of the council, may appoint, at the first regular meeting of the governing body in May of each year, the following city officers: A municipal judge of the municipal court, a clerk, a treasurer, a marshal-chief of police, law enforcement officers and such other officers as deemed necessary. Such officers shall hold an initial term of office of not to exceed one year and until their successors have been appointed and qualified. Any officers who are reappointed shall hold their offices for a term of one year and until their successors are appointed and qualified. The duties and pay of the various officers shall be regulated by ordinance. Any officer may be removed by a majority vote of the total membership elected or appointed to the council and may be suspended at any time by the mayor.

Presented by: Lloyd Martley, Chief of Police/Interim City Admin

Administration Recommendation: Approve amended ordinance

Committee Recommendation: N/A

Attachments: Ordinance #633

Projector needed for this item?

No

(Published in the Basehor Sentinel _____)

ORDINANCE NO. 633

AN ORDINANCE TO PROVIDE FOR THE SALARIES AND COMPENSATION FOR OFFICERS OF THE CITY OF BASEHOR, KANSAS AND REPEALING ANY CONFLICTING ORDINANCES.

WHEREAS, K.S.A. 15-204 requires all third class cities to prescribe by ordinance the salaries and compensation of its officers.

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

SECTION 1: Compensation for officers and other professionals. In accordance with K.S.A. 15-204, the Governing Body does hereby establish, approve and ratify the following compensation for officers and professionals:

Mayor:	\$600/pay period
City Council Members:	\$300/pay period
Municipal Court Judge:	\$450/month
Prosecutor:	\$400/month flat fee plus \$85/hour over 5 hours
City Attorney:	\$3,000/month flat fee plus \$175/hour over 25 hours

SECTION 2: Compensation for Full-Time Salaried Officers. In accordance with K.S.A. 15-204, the Governing Body does hereby establish, approve, and ratify the following compensation per pay period for full-time salaried Officers:

<u>Position</u>	<u>Low</u>	<u>High</u>
City Administrator	As established by contract	
City Clerk/Treasurer	\$2,284.00	\$3,354.40
Chief of Police	\$2,524.80	\$3,708.80

SECTION 3: Repealer. Any ordinances or code provisions setting forth compensation for the above officers are hereby repealed.

SECTION 4: Conflict. That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 5: Effective Date. That this ordinance shall take effect and be in force from and after its publication in the official newspaper of the City of Basehor, Kansas as provided by law.

PASSED by the City Council this _____ day of August, 2013.

APPROVED by the Mayor this _____ day of August, 2013.

SEAL

David K. Breuer, Mayor

ATTEST:

Corey Swisher, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

City of Basehor
Agenda Item Cover Sheet

Agenda Item No. 6

Topic: Board of Zoning Appeals Appointments.

Action Requested:

Reappoint Bill Robinson. Bill Robinson has served on the Board of Zoning Appeals since 2003.

Reappoint Jeff Scherer. Jeff Scherer has served on the Board of Zoning Appeals since 2003.

Reappoint Ken Massingill. Ken Massingill has served on the Board of Zoning Appeals since 2007.

Appoint Kevin Jones. Kevin Jones was a member of the Planning Commission from 2008 to the end of his term in 2010.

Reappoint John Dockendorff. John is a current member of the Board of Zoning Appeals.

The appointments are a three (3) term.

Narrative:

Presented by:

Administration Recommendation:

Committee Recommendation:

Attachments:

Projector needed for this item?

No

City of Basehor
Agenda Item Cover Sheet

Agenda Item No. 7

Topic: Wolf Creek Parkway Extension – Award of Construction Contract

Action Requested: Approve the award contract bid for the Wolf Creek Parkway Extension.

Narrative: On August 15, 2013 at 1400 hours the city officially opened the bids for the Wolf Creek Parkway Extension Contract. Six construction companies bid the project and the lowest bid was received from Miles Excavating, Inc. Affinis (city's project engineering contractor) is currently reviewing the bid for accuracy and completeness.

Presented by: Gene Myracle, City Superintendent
Mitch Pleak, City Engineer

Administration Recommendation: Approve award contract bid

Committee Recommendation:

Attachments: None

Projector needed for this item?

No