RESOLUTION NO. 2015-18

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN LAND ACQUISITION SERVICES AGREEMENT BY AND BETWEEN THE CITY OF BASEHOR, KANSAS AND LAND COMPANY REAL ESTATE SERVICES, INC., REGARDING THE CHESTNUT SANITARY SEWER IMPROVEMENTS PROJECT IN BASEHOR, KANSAS

WHEREAS, the City of Basehor, Kansas wishes to enter into that certain Land Acquisition Services Agreement with Land Company Real Estate Services, Inc., regarding the Chestnut sanitary sewer improvements from 155th Street to Parallel Street, 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 Land Acquisition Services Agreement with Land Company Real Estate Services, Inc., attached as **Exhibit A**.

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

PASSED by the Governing Body this 19th day of October, 2015.

APPROVED by the Mayor this 19th day of October, 2015.

[SEAL]

SEAL OF THE CITY OF BASEHOR, KANSAS
CORPORATE
SEAL

David K. Breuer, Mayor

ATTEST:

Katherine M. Renn, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

{32233 / 65827; 664610. }

<u>Exhibit A</u>
Land Acquisition Services Agreement

To be attached.

Land Company Real Estate Services, Inc.

14799 Woodend Road
Bonner Springs, Kansas 66012

Office Phone - 913 441 8441
Email - TheLandCo@aol.com

August 31, 2015

Letter Agreement
For
Land Acquisition Services

Mr. Mitch Pleak, P. E.
City Engineer
City of Basehor
2620 North 155th Street
Basehor, Kansas 66007

Re: Real Estate Acquisition Services for the Chestnut Sanitary Sewer Improvement Project. (From 155th Street to Parallel Street.)

Dear Mr. Mitch Pleak:

Pursuant to your request please consider this our formal proposal to provide real estate acquisition related services for the Chestnut Sanitary Sewer Improvement Project. (From 155th Street to Parallel Street.

In accordance with the information supplied to our firm, we have prepared a detailed proposal. The fee structure for this project is as follows.

Real Estate Appraisal and Acquisition Services	20 Tracts
Donation Negotiation and Acquisition	$395.00
Estimate of Just Compensation Valuation	$395.00
Total	$790.00

20 Tracts X $790.00 = $15,800.00

Total $15,800.00

Estimates of Compensation valuations will be used to determine the offers of compensation for the properties that do not donate the necessary easements for the project. The number of tracts involved in this project was determined from the overall project plans. This project contains no state or federal funds. All work product will be billed at the same unit price as shown above and upon completion of the work product and in accordance with Exhibit "A". All work will commence upon a written notice to proceed from the City of Basehor.

It appears that the Chestnut Sanitary Sewer Improvement Project from 155th Street to Parallel Street has 20 tracts and all require land acquisition. Valuations can be produced within three to four weeks and offers can be made within the following week or so. This information is provided to assist with the project time line and project expectations.

We estimate that we can have all property owners contacted within the first ten days of the acquisition process. Subsequent visits are consequently not expedient because property owners are usually gathering information or conversing with others regarding the offer and or specific cost to cure concerns. Our firm estimates that the negotiation and acquisition phase will take approximately 45 - 60 days.

We estimate that the valuation and acquisition phases will be completed within approximately 100 days, assuming that all necessary information and documents, including legal descriptions and easement documents have been obtained or prepared the consultant and or City of Basehor.

Our firm feels that a turnkey project cost is $15,800.00 and can be completed within 119 days from initiation to completion.

If this proposal is acceptable to you, please sign this Letter Agreement in the space provided.

Respectfully Submitted,

City of Basehor, Kansas

By: David K. Breuer

Name David K. Breuer

Title: Mayor

Land Company Real Estate Services, Inc.

By: John T. Amrein

John T. Amrein

President

{32233 / 65827; 663910. }

Exhibit "A"

Fees For Services

The Land Company will offer each property owner the opportunity for compensation or donation for any right of way and/or easements. If the property owner chooses compensation, the Land Company will provide an estimate of just compensation valuation. If the property owner chooses donation, estimated compensation will not be needed.

The City reserves the right to deny acceptance of any work contemplated hereunder where the Land Company has failed to comply in any manner with any material requirement set out herein. If for any reason, due to changes in plans or otherwise, there shall be a major change in the scope or character of the work to be performed by the Land Company necessitating an equitable change in the amount of compensation, the City and the Land Company shall agree upon such changes in writing, the same to form a supplement to this Contract. In the event of any dispute concerning a question of fact in connection with the work to be performed by the Land Company, the City Administrator (or equivalent) shall make a determination of such fact and his/her decision shall be final. The total compensation amount is categorized as follows and any additional work will be billed at equivalent amounts per parcel and be considered additional work.

Payment Schedule

City agrees to pay the Land Company for services rendered upon completion and acceptance of all work for each property to be acquired. This project is considered to include the following steps:

1. Valuation Process, including Estimates of Compensation.
2. Acquisition Process, including offers of compensation and negotiations for each tract.
3. Miscellaneous Expenses.

The City and the Land Company agree that there will be an invoice for all of the work performed on each step of the process throughout. The Acquisition process which may have as many as seven separate invoices. Invoices will be submitted when the work pertaining to each process has been successfully completed.

Administrative Settlements

Administrative Settlements occur when the settlement price for the property to be acquired may exceed the amount offered as just compensation when reasonable efforts to negotiate on that amount have failed and an authorized agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. This process may be preferable to condemnation in certain situations. The agent must give full consideration to all pertinent information and prepare a written justification which indicates that available information (e.g., valuations, [including the owner's appraisal, if one is available] recent court awards, estimated trial costs, and valuation problems) supports the Administrative Settlement. The Administrative

Settlement should be consistent with the situation, circumstances, and amount of money involved. Negotiating an Administrative Settlement may include new revised offer letters, new acquisition documents and deeds which may be additional work which include new document creation and justification of increased payments, and the City may agree to pay the Land Company if such work is clearly shown to be additional work.

Project Changes

The Land Company has based their proposed fees on the number of the parcels that have been supplied by the City and that the actual number of parcels required is not subject to change. The actual contract maximum shall be based upon the actual number of parcels multiplied by the appropriate unit rate as shown above. In the event that design plans change during the course of this assignment (i.e. land areas, changes in damages to specific properties, etc.), resulting in needed changes to specific appraisals or specific negotiation services (i.e. additional document preparation, etc.), the required changes will be considered extra work and will be billed as "extra work" on the basis of a negotiated per hour rate with the City. Any "extra work" billing will be specifically addressed with an approved by City staff in advance and prior to any invoice submission.

Expert Witness Testimony

All appraisal hearings, pretrial meetings, expert witness testimony, including court preparation time, may be necessary when requested by the City. All eminent domain driven meetings will be billed at $125.00 per hour. These are services beyond our scope of services and require additional time.

Extra Work

Extra work involving services beyond our scope of services outlined in this proposal will be calculated at $55.00 per hour. This identifies extra work that is not associated with eminent domain proceedings but may include work associated with Administrative Settlements and project changes.

Termination

This agreement may be terminated by either party upon sixty (60) days prior written notice to the other party for nonperformance as agreed to herein. In the event of termination as described, the Land Company shall be paid compensation in full for services performed as of the date of termination, such amount being calculated in accord with this agreement. Such amount shall be paid by City upon the Land Company delivering or otherwise making available to the City all data, drawings, reports and other information and material as may have been accumulated by the Land Company in specific performance of the services included in this agreement, whether completed or in progress.

Donations

The property owners whose real property is to be acquired for this project may make a gift of the property, or any part of it, or any of the compensation paid for it, to the City.

The property owners must be fully informed of the right to receive just compensation if they so desire. One method of informing property owners of this right is to provide them with a written document such as a brochure, which explains the land acquisition process under Kansas state law, and the owner's rights, privileges, and obligations. The information provided in the written document should be presented in nontechnical terms to the extent practicable.

The property owners must also be fully informed that they are entitled to have an appraisal made of the property, along with an offer of just compensation. In cases involving properties with a low fair market value estimate, the acquiring agency may waive the appraisal in accordance with their approved procedures.

If the property owner wants the appraisal for tax purposes and the estimated value would exceed $5,000, the Internal Revenue Service (IRS) requires that the appraisal be prepared by a disinterested, unbiased third party. While the City is not obligated to use the appraisers of The Land Company, it would be prudent to advise the property owner to select a fee appraiser, and for the City to pay the fee. .

Donations In Exchange For Construction Features

The City may accept a property owner's offer to donate property, or a portion thereof, in exchange for services rendered that will benefit the property owner.

For instance, the City may require a narrow strip of land for a street widening project. The property owner may request, and the City may agree to provide, an additional driveway or entrance in exchange for the necessary right-of-way without any cash compensation.

A comparison of the estimated value of the right-of-way against the cost of the construction features should be made for the economic justification for payment of the right-of-way by the service provided.

The offset of the cost of construction features against right-of-way costs differs from mitigation of damages. Under the mitigation of damages process, the cost of construction feature is offset against damages to the remaining property. The property owner is compensated generally in cash for the cost to construct or replace a physical feature, or for the estimated severance damage, whichever is less.

** Donations will significantly reduce the bid price on a per parcel basis. The appraisal process may or may not be utilized on each parcel if donations are favorable.

Supportive Information

The City will provide the Land Company with a legal description of each tract of land to be acquired. Each legal description will be placed on a 81/2 X 11 sheet of paper and will be supplied on a CD disk or jump drive with Microsoft Word compatible software. Microsoft Word is the preferred software. A plat map exhibit will be provided as well as construction drawings showing each property and the proposed taking will also be provided. This plat map and or construction drawing is needed to describe to the property owner the area needed for the acquisition. All title work, easement documents, right of way plans and construction drawings will also be provided by the City. Plans will be provided in 20 scale and half size sets.

Legal Information

The City will, at the request of the Land Company, if there be any doubt as to whether certain portions of the property involved are real estate or personal property, designate an attorney to make a finding as to the status of such improvements, and furnish upon request of the Land Company a statement of items generally noncompensable and furnish legal advice relative to consideration of benefits chargeable to the property involved by reason of the aforesaid proposed public improvement. Other legal opinions pertaining to this project will be furnished by the City legal counsel at no expense to the Land Company.

Independent Work Product

The Land Company agrees that all work will be prepared independent of any other contractor employed by the City for the same work and that the Land Company will not furnish to any other person or persons a copy of work completed for the City. All work prepared for the City is agreed to be confidential between the parties hereto and any breach of any confidence shall be considered a material breach of this contract, except for that information that is made available upon mutual consent of both parties.

Work Schedule

The Land Company has estimated the time schedule needed to accomplish the land acquisition services for this project. Several of the services can overlap and the time schedule forecasted may be completed in advance.

The commencement date of this agreement is to occur upon the Land Company's receipt of the executed agreement signed by the authorized person(s) representing the City and legal descriptions and plans in their entirety. Any prolonging of the time line due to changes in the design plans, legal descriptions changes, additional drawings and further engineering delays in access to information, etc., will automatically extend the parameters of the deadlines set out in any of the agreements.

Insurance

1. General

The Land Company 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. The Land Company 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 Land Company 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 Land Company, 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 Land Company 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 Land Company limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Land Company 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 Land Company 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 Land Company against all claims under applicable state workers' compensation laws. The Land Company shall also be protected against claims for injury, disease or death of its 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 Land Company shall maintain throughout the duration of this Contract and for a three (3) year period thereafter, Professional Liability Insurance in an amount not less than One Million Dollars ($1,000,000.00) per claim and annual aggregate.

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 the Land Company.

8. Subconsultants' Insurance

If a part of the Agreement is to be sublet, the Land Company shall either:

a. Cover all subconsultant in its insurance policies, or

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

Whichever option is chosen, the Land Company shall indemnify and hold harmless the City as to damages, liabilities or costs, including reasonable attorney's fees, to the extent arising out of the acts or omissions of its subconsultants.

Indemnity

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

"Loss" means damage, liability or costs, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense), for injury, including death, to person or persons or damages to or Loss of, property of person, firm or corporation, including the parties hereto, which to the extent arise out of or are connected with, negligent acts, errors or omissions of the Land Company whether arising before or after the completion of the Services required hereunder.

2. Indemnity: For purposes of this Agreement, the Land Company hereby agrees to indemnify, defend and hold harmless the City and its employees and agents from damages or alleged damages caused or incurred as a result of the negligence or other fault of the Land Company, its affiliates, subsidiaries, employees, agents and subconsultants 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 Land Company's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Land Company 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 Land Company, 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 Land Company, its affiliates, subsidiaries, or subcontractor/assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Affirmative Action/Other Laws

1. During the performance of this Agreement, the Land Company agrees that:

a. the Land Company 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 Land Company shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

c. if the Land Company fails to comply with the manner in which the the Land Company 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 Land Company 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 Land Company 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 Land Company 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 consultant:

- 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 Land Company further agrees that the Land Company 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.