

**AGENDA  
PUBLIC WORKS  
COMMITTEE**

**MONDAY, DECEMBER 20, 2010  
ROOM 200 COUNCIL CHAMBERS  
6:30 P.M.**

**G. John Ruffolo, Chairman  
Anthony Nudo, Vice Chairman  
Steve Bostrom**

**Patrick Juliana  
Jan Michalski  
Ray Misner**

**B. DEFERRED BY COMMITTEE**

- B-1 Approval of Offering Prices for Fee Acquisition and Easements for the West Frontage Road Project – Property at 7015 122<sup>nd</sup> Avenue. (CBOCS, Inc./Cracker Barrel) **(District 17)** (also referred to Finance Committee) (deferred from December 15, 2010 meeting)
- B-2 Acceptance of Paving and Drainage Improvements at Meadows at Hunters Ridge Subdivision. **(District 4)** (deferred from December 15, 2010 meeting)

**C. REFERRED TO COMMITTEE**

- C-1 Approval of Addendum to Agreement By and Between the City of Kenosha (A Municipal Corporation) and Waste Management of Wisconsin, Inc. (A Wisconsin Corporation). (also referred to Finance Committee)
- C-2 State/Municipal Project Agreement (WisDOT Project ID 1310-10-00/20/70/7x) 75<sup>th</sup> Street (STH 50) from I-94 to 43<sup>rd</sup> Avenue.
- C-3 Jurisdictional Transfer Agreements (WisDOT Project ID 1310-10-00) 75<sup>th</sup> Street (STH 50) from I-94 to 43<sup>rd</sup> Avenue.

CITIZENS COMMENTS RELATED ONLY TO JURISDICTION OF PUBLIC WORKS COMMITTEE

ALDERMAN COMMENTS

IF YOU ARE DISABLED AND IN NEED OF ASSISTANCE CALL 653-4050 BEFORE NOON ON THE DATE INDICATED FOR THIS MEETING.

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMEBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

<p><i>City Development 625 - 52<sup>nd</sup> Street Kenosha, WI 53140 262.653.4030</i></p>	<p><b><u>FACT SHEET</u></b>  <i>Public Works Committee Finance Committee Common Council</i></p>	<p><i>December 8, 2010</i></p>
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**Agreement for Purchase and Sale of Real Estate for Fee Acquisition and Easements for the West Frontage Road Project - Property at 7015 122nd Avenue, District #17. (CBOCS, Inc./Cracker Barrel)**

**LOCATION:**

7015 122nd Avenue

**NOTIFICATIONS:**

The alderman of the district, Alderman Bogdala, has been notified. This item will be reviewed by the Public Works Committee and Finance Committee with final approval by the Common Council.

**ANALYSIS:**

- Attached is the signed Agreement for Purchase and Sale for the Fee Acquisition and Easements from CBOCS, Inc. (Cracker Barrel) for the construction of the West Frontage Road.
- Acquisition for land in fee and Permanent and Temporary Easements is \$49,750.00.
- The Plat and legal description are also attached with the comparable sales used in the appraisal.

**RECOMMENDATION:**

A recommendation is made to approve the Agreement.

  
Sharon Krewson, Real Estate Broker

  
Jeffrey B. Labahn, Director of City Development

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

WHEREAS, CBOCS, Inc., formerly Cracker Barrel Old Country Store, Inc., ("Cracker Barrel") owns real property located in the City of Kenosha, Wisconsin, PIN 03-121-04-401-120, on which it operates a Cracker Barrel Old Country Store (hereinafter the "Property");

WHEREAS, the City of Kenosha (the "City") intends to improve, reconstruct and extend 122<sup>nd</sup> Avenue (hereinafter referred to as the "West Frontage Road Project");

WHEREAS, the City must acquire partial fee title and permanent and temporary easement rights in the Property for the West Frontage Road Project, as depicted in Exhibit A attached hereto (hereinafter the "Acquisition");

NOW, THEREFORE, Cracker Barrel and the City agree as follows:

1. Release and Discharge.

A. Subject to and in consideration of the terms set forth below, Cracker Barrel, its past, present and future officers, directors, employees, agents, assigns and other successors in interest, individually and in their representative capacities, do hereby release and forever discharge the City, its agents, employees, political subdivisions, agencies, assigns and other successors in interest, of any and all claims, demands, rights, liabilities and causes of action arising out of the Acquisition for the West Frontage Road Project.

B. Subject to and in consideration of the terms set forth below, the City, its agents, employees, political subdivisions, agencies, assigns and other successors in interest, do hereby release and forever discharge Cracker Barrel, its past, present and future officers, directors, employees, agents, assigns and other successors in interest, individually and in their representative capacities, of any and all claims, demands, rights, liabilities and causes of action arising out of the Acquisition for the West Frontage Road Project.

C. No other rights of Cracker Barrel or the City shall be modified or released by this Agreement and Cracker Barrel and the City expressly reserve to themselves any and all claims, rights, liabilities and causes of action other than those expressly identified herein as pertaining to the West Frontage Road Project.

2. Terms of the Settlement.

A. Cracker Barrel and the City shall execute and file with the Kenosha County Register of Deeds the Purchase Agreement attached hereto as Exhibit B.

B. The City shall pay Cracker Barrel \$49,750 for the Acquisition.

C. As part of the West Frontage Road Project, the City will relocate and reconstruct the access points to the Property, as depicted in Exhibit A. The access points will be constructed by the City in a manner and with materials sufficient to withstand Cracker Barrel's heavy truck traffic and high volume vehicular traffic. The consideration for the Acquisition, as set forth in ¶ 2.B., does not include compensation for the possible future closure of the

southernmost access point depicted in Exhibit A. It is acknowledged, agreed and understood by Cracker Barrel and the City that, after construction of the West Frontage Road Project, jurisdiction and ownership of 122<sup>nd</sup> Avenue will be transferred from the City to the State of Wisconsin Department of Transportation ("WDOT"). It is further acknowledged, agreed and understood by Cracker Barrel and the City that, in the event the WDOT, or any other subsequent owner of 122<sup>nd</sup> Avenue, determines the southernmost access point to the Property must be closed, which decision must be in accordance with the terms and conditions set forth in any Purchase Agreement pertaining to such closure, compensation, if any, due to Cracker Barrel for such closure must either be agreed to between Cracker Barrel and the WDOT or ascertained, determined and/or decided under Wisconsin law. It is acknowledged, agreed and understood by Cracker Barrel and the City that Cracker Barrel expressly reserves the right to seek, demand or otherwise claim compensation from the WDOT, or any other subsequent owner of 122<sup>nd</sup> Avenue, for any future closure of access points to the Property. It is also acknowledged, agreed and understood by Cracker Barrel and the City that the City has no authority to, and is not herein attempting to, bind the WDOT, or any other subsequent owner of 122<sup>nd</sup> Avenue, to compensate Cracker Barrel for any future closure of access points to the Property.

C. After construction of the West Frontage Road Project, and before the City transfers jurisdiction and ownership of 122<sup>nd</sup> Avenue to the WDOT, the City shall survey and convey in fee simple to Cracker Barrel the area indicated in yellow highlighting on Exhibit A. Consideration for the conveyance is set forth in this section and no additional consideration shall be given.

D. As part of the West Frontage Road Project, the northernmost access point to the Property will be a shared access point, as depicted in Exhibit A ("Shared Drive"). The Shared Drive will afford access to the Property, and the property directly adjacent and north of the Property, on which a hotel is located ("Hotel Property"). Cracker Barrel will enter into an access agreement with the Hotel Property owner, which agreement will define the rights and obligations of Cracker Barrel and the Hotel Property owner for maintenance and upkeep of the Shared Drive. The City will use best efforts to facilitate and assist the communications between Cracker Barrel and the Hotel Property owner and the negotiation and execution of the access agreement.

3. Denial of Liability.

It is understood and agreed by Cracker Barrel and the City that this Settlement Agreement and Mutual Release ("Agreement") constitutes the compromise of disputed claims. Nothing contained herein shall at any time be construed as an admission of any liability by Cracker Barrel or the City, each of which specifically deny liability and intend merely to avoid litigation and buy their peace.

4. Representation of Comprehension of Document.

Cracker Barrel and the City acknowledge that they have read and understand this Agreement; they have had the opportunity to seek the advice and counsel from attorneys of their own choosing; they are freely and voluntarily entering into this Agreement; and that the

individual signing on behalf of each has full right and authority to enter into and execute this Agreement on behalf of that party.

5. Construction.

Any dispute arising under this Agreement shall be resolved under Wisconsin law, and any lawsuit regarding this Agreement shall be exclusively venued in the State of Wisconsin, Kenosha County Circuit Court. The prevailing party in any action commenced to enforce the terms of this Agreement, or in defense of any such action, shall recover, in addition to any other damages, his/her/its actual attorneys' fees and court costs incurred in any such action.

6. Binding Effect and Integration.

This Agreement represents the entire agreement between the parties, is intended to integrate fully all terms of settlement between the parties and supersedes all prior negotiations, representations or agreements between the parties, either written or oral. This Agreement may be amended only by written instrument designated as an amendment hereto and executed by the signatories or their successors.

7. Execution of the Settlement Agreement.

This Agreement may be executed in separate counterparts each of which is deemed to be an original and all, when taken together, constitute one in the same Agreement. Facsimile signatures shall be effective to bind each of the parties. Each party, however, agrees to provide the other with original signatures on the Agreement at the earliest reasonable time after facsimile signatures have been transmitted.

8. Severability.

If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

Dated: 12-7-10

CBOCS, Inc.

By: [Signature]

Its: UP OF DEVELOPMENT

City of Kenosha

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

RE3012 LPA-8/97

THIS AGREEMENT, made and entered into by and between CBOCS, Inc. hereinafter called SELLER, and the City of Kenosha, a Municipal Corporation, hereinafter called Buyer. IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT CAREFULLY AND UNDERSTAND IT BEFORE SIGNING.

Seller and Buyer agree that Buyer is purchasing this property for transportation purposes within the meaning of s.32.05, Wis. Stats.

Seller warrants and represents to Buyer that Seller has no notice or knowledge of any: 1) Planned or commenced public improvements which may result in special assessments to otherwise materially affect the property other than the planned transportation facility for which the Buyer is purchasing this property; 2) Government agency or court order requiring repair, alteration, or correction of any existing condition; 3) Shoreland or special land use regulations affecting the property; 4) Underground storage tanks and the presence of any dangerous or toxic materials or conditions affecting the property.

DESCRIPTION: The Seller agrees to sell and the Buyer agrees to buy, upon the terms and conditions hereinafter named, the following described real estate situated in Kenosha County, Wisconsin:

See attached legal descriptions

The purchase price of said real estate shall be the sum of Forty Nine Thousand Seven Hundred Fifty and 00/100 Dollars (\$49,750.00) Dollars payable for: Parcel 1 - Land In Fee, Permanent Limited Easement and a Temporary Limited Easement.

Any delinquent general taxes shall be paid in full at the time of closing based on the current tax year and any previous years. Release of Mortgage from any lender(s) of record for the Land described is required prior to closing transaction.

Seller shall, upon payment of purchase price, convey the property by Warranty Deed and Permanent Limited Easement and a Temporary Limited Easement free and clear of all liens and encumbrances, including special assessments, except recorded public utility easements and recorded restrictions on use running with the land or created by lawfully enacted zoning ordinances, and None

Legal possession of premises shall be delivered to Buyer on date of closing.

SPECIAL CONDITIONS: Upon acceptance of this agreement Seller agrees to waive his right to the provisions of Sections 32.05(9)(a) and 32.05 (11), Wisconsin Statutes to appeal for greater compensation as described in Section 32.05(7), Wisconsin Statutes.

This is further contingent upon approval by the City of Kenosha Common Council on or before November 15, 2010

This agreement is binding upon acceptance by Seller as evidenced by the signature of an authorized representative of Seller. If this agreement is not accepted by Buyer within 30 days after seller's signature, this agreement shall be null and void.

Seller and Buyer agree to act in good faith and use diligence in completing the terms of this agreement. This agreement binds and inures to the benefit of the parties to this agreement and their successors in interest, personal representatives, heirs, executors, trustees and administrators.

THE WARRANTIES AND REPRESENTATIONS MADE HEREIN SURVIVE THE CLOSING OF THIS TRANSACTION. SELLER AGREES TO SELL AND CONVEY THE ABOVE-MENTIONED PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT.

*[Handwritten Signature]*

(Witness)

12-7-10

(Date)

*[Handwritten Signature]*  
S. James Torcivia, Vice President of Development of CBOCS, Inc. (Seller)

(Seller)

The above agreement is accepted.

(Date)

(Signature)

(Print Name)

(Title)

Note: Must be signed by an authorized representative.

Project 09-1024

Parcel 1

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**EXHIBIT A**





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**EXHIBIT B**

## LEGAL DESCRIPTION

Fee Title in and to the following tracts of land in Kenosha County, State of Wisconsin, described as follows:

That part of Parcel 9 of Certified Survey Map No. 1501, being in the Northeast 1/4 of the Southeast 1/4 of Section 1, Township 1 North, Range 21 East, in the City of Kenosha, described as follows: Commencing at the Northeast corner of the Southeast 1/4 of said section; thence along the North line of said 1/4 Section North 89°34'56" West 644.07 feet; thence Southwesterly 153.34 feet along an arc of a curve whose center lies to the West, whose radius is 2544.00 feet and whose chord bears South 03°40'59" West 153.32 feet; thence South 05°24'35" West 467.94 feet to a point of curve; thence Southeasterly 279.11 feet along an arc of a curve whose center lies to the East, whose radius is 406.00 feet and whose chord bears South 14°17'05" East 273.65; thence Southeasterly 141.60 feet along an arc of a curve whose center lies to the West, whose radius is 386.00 feet and whose chord bears South 23°28'12" East 140.81 feet to the Easterly line of 122nd Avenue and the point of beginning; said point also being a point of curve; thence continuing Southeasterly 54.80 feet along an arc of a curve whose center lies to the West, whose radius is 386.00 feet and whose chord bears South 08°53'36" East 54.76 feet; thence South 04°49'33" East 42.53 feet; thence South 00°27'53" East 52.95 feet to the North right-of-way line of 71th Street; Thence along said North line North 89°37'51" West 10.32 feet to the East line of 122nd Avenue; thence along said east line North 00°49'33" West 149.38 feet to the point of beginning.

This parcel contains 0.03 acres, more or less.  
As shown on 09-1024-4.01

Also, all existing future, or potential common law or statutory easements or **right of vehicular access** between the West right-of-way of the highway, currently designated as 120th Avenue, Existing West Frontage Road, and all of the abutting remaining real property of the owner, whether acquired by separate conveyance or otherwise, where the following described real estate abuts on said highway: Parcel 9 of Certified Survey Map No. 1501 in the Southeast 1/4 of the Southeast 1/4 of Section 1, in Township 1 North, Range 21 East, in the City of Kenosha.

As shown on 09-1024-4.01

Also, all existing future, or potential common law or statutory easements or **right of vehicular access** between the North right-of-way of the highway, currently designated as 71<sup>st</sup> Street and all of the abutting remaining real property of the owner, whether acquired by separate conveyance or otherwise, where the following described real estate abuts on said highway: Parcel 9 of Certified Survey Map No. 1501, as recorded in the Kenosha County Registry in Volume 1462 on Page 814 of Document No. 875548, being part of the Northeast 1/4 of the Southeast 1/4 of Section 1, in Township 1 North, Range 21 East, in the City of Kenosha.

As shown on 09-1024-4.01

Also, except as set forth in the paragraph that follows, all existing future, or potential common law or statutory easements or **right of vehicular access** between the East right-of-way of the highway, currently designated as Future 122<sup>nd</sup> Avenue, Future West Frontage Road, and the northerly extension of that line as shown on TPP 09-1024-4.01, and all of the abutting remaining real property of the owner, whether acquired by separate conveyance or otherwise, where the following described real estate abuts on said highway: from the north right-of-way line of 71st Street northerly 403 feet to station 4302+85.

Except for one right turn in only access point to said highway currently designated as Future 122<sup>nd</sup> Avenue, Future West Frontage Road from said abutting lands at station 4300+66.

As shown on TPP 09-1024-4.01.

The City of Kenosha and State of Wisconsin will allow a right turn in only access to the Cracker Barrel from 122nd Avenue/West Frontage Road, as long as safety and operational issues do not occur. In the event closure of the access point is proposed, the State will coordinate and discuss with the City of Kenosha and the property owner to determine if there are any other alternatives to address the safety and/or operational issues that result from the presence of this access point.

1. A safety issue is defined as crashes or incidents that may be in whole or in part attributable to the presence of the right turn in only access.

2. An operational issue is defined as the following:

a. Northbound queues or weaving maneuvers (either at the 71st Street intersection or where the access itself may be a factor) affecting the operation of 122nd Avenue/West Frontage Road.

b. Use of the access for movements other than right turn in on a regular basis.

Also, a **Permanent Limited Easement** for the right to construct and maintain an drainage facility, including for such purpose the right to operate the necessary equipment thereon and the right of ingress and egress as long as required for such public purpose, including the right to preserve, protect, remove or plant there on any vegetation that the highway authorities may deem necessary or desirable, but without prejudice to the owner's right to make or construct improvements on said lands or to flatten the slopes, providing said activities will not impair or otherwise adversely affect the highway facilities within the right of way, in and to the following tract of land in Kenosha County, State of Wisconsin, described as:

That part of Parcel 9 of Certified Survey Map No. 1501, being in the Northeast 1/4 of the Southeast 1/4 of Section 1, Township 1 North, Range 21 East, in the City of Kenosha, described as follows: Commencing at the Northeast corner of the Southeast 1/4 of said section; thence along the North line of said 1/4 Section North 89°34'56" West 644.07 feet; thence Southwesterly 153.34 feet along an arc of a curve whose center lies to the West, whose radius is 2544.00 feet and whose chord bears South 03°40'59" West 153.32 feet; thence South 05°24'35" West 467.94 feet; thence Southeasterly 279.11 feet along an arc of a curve whose center lies to the East, whose radius is 406.00 feet and whose chord bears South 14°17'05" East 273.65 to a point of reverse curve; thence Southeasterly 196.41 feet along an arc of a curve whose center lies to the West, whose radius is 386.00 feet and whose chord bears South 19°24'10" East 194.29 feet; thence South 04°49'33" East 42.53 feet; thence South 00°27'53" East 22.95 feet to the point of beginning; thence South 89°37'51" East 20.00 feet; thence South 00°27'53" East 30.00 feet to the North right-of-way line of 71st Street; thence along said right-of-way line North 89°37'51" West 20.00 feet; thence North 00°27'53" West 30.00 feet to the point of beginning;

This parcel contains 0.01 acres, more or less.  
As shown on 09-1024-4.01

Also, **Temporary Limited Easements** for the right to construct, cut and/or fill slopes, including for such purpose the right to operate the necessary equipment thereon and the right of ingress and egress as long as required for such public purpose, including the right to preserve, protect, remove, or plant thereon any vegetation that the highway authorities may deem necessary or desirable, in and to the following tract of land in Kenosha County, State of Wisconsin, described as:

That part of Parcel 9 of Certified Survey Map No. 1501, being in the Northeast 1/4 of the Southeast 1/4 of Section 1, Township 1 North, Range 21 East, in the City of Kenosha, described as follows: Commencing at the Northeast corner of the Southeast 1/4 of said section; thence along the North line of said 1/4 Section North 89°34'56" West 616.27 feet; thence South 20°39'03" East 33.90 feet; thence South 03°46'21" west 351.21 feet; thence South 26°17'39" West 46.72 feet; thence South

23°44'06" West 30.34 feet; thence South 00°59'43" West 210.10 feet; thence South 58°01'05" East 146.91 feet to the North line Parcel 9 of Certified Survey Map No. 1501 and the point of beginning; thence South 00°49'33" East 164.21 feet; thence South 89°10'27" West 27.00 feet; thence South 00°49'33" East 78.87 feet; thence North 89°10'27" East 45.72 feet; thence South 00°49'33" East 97.04 feet; thence South 85°10'35" West 38.06 feet; thence South 04°30'48" East 26.74 feet; thence South 40°33'02" East 39.12 feet; thence South 00°49'33" East 23.62 feet to the North right-of-way line of 71st Street; thence along said North right-of-way line North 89°37'51" West 16.16 feet; thence North 00°27'53" West 30.00 feet; thence North 89°37'51" West 20.00 feet; thence North 00°27'53" West 22.95 feet; thence North 04°49'33" West 42.53 feet to a point of curve; thence Northeasterly 54.80 feet along an arc of a curve whose center lies to the West, whose radius is 386.00 feet and whose chord bears North 08°53'36" West 54.76 feet; thence North 00°49'33" West 273.13 feet to the North line of said Parcel 9; thence along said North line of Parcel 9 North 89°38'03" East 39.00 feet to the point of beginning.

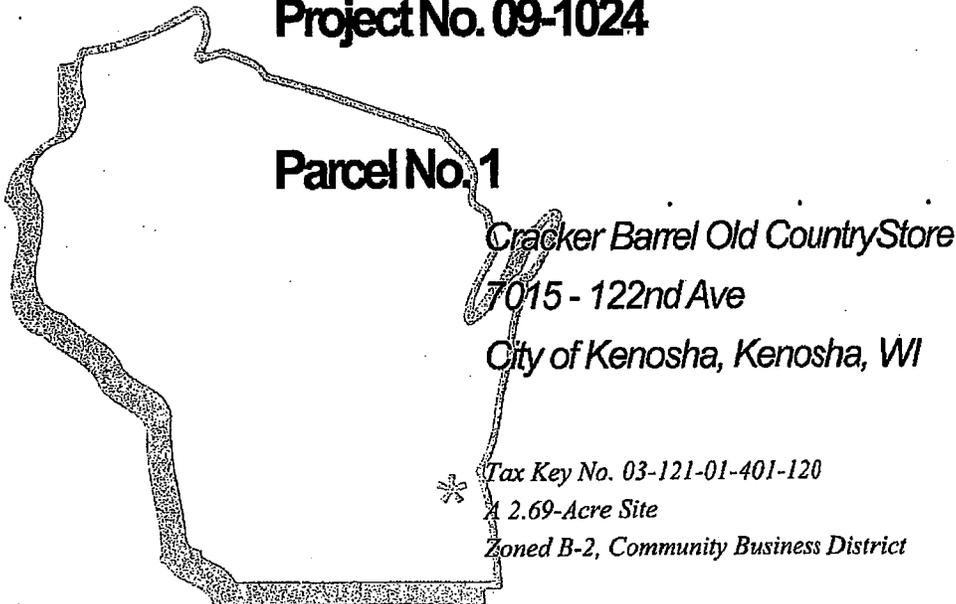
This parcel contains 0.32 acres, more or less.  
As shown on 09-1024-4.01

**The above easements are to terminate upon the completion of this project or on the day the highway is open to the traveling public, whichever is later.**

Southern Wisconsin Appraisal  
a/k/a GA Bock & Associates, Inc.  
1055 Prairie Drive Ste C  
Racine, WI 53406-3971  
Phone: 262.886.2450  
Fax: 262.886.6145

# Southern Wisconsin Appraisal

## I-94 West Frontage Road Kenosha County, Wisconsin Project No. 09-1024



As of March 15, 2010

Prepared for  
City of Kenosha  
625 52nd St  
Kenosha, WI 53140

*Providing Wisconsin with over  
30 Years of Professional Service*

Southern Wisconsin Appraisal  
a/k/a GA Bock & Associates, Inc.  
1055 Prairie Drive Ste C  
Racine WI 53406-3971  
Phone: 262.886.2450  
Fax: 262.886.6145

# Southern Wisconsin Appraisal

April 28, 2010

Sharon Krewson  
City of Kenosha  
625 52nd St  
Kenosha, WI 53140

Re: Parcel No. 1, (Cracker Barrel Old Country Store, Owner)  
Project I. D. 09-1024 (I-94 West Frontage Road Reconstruction)

Dear Ms. Krewson:

In accordance with your request, this firm appraised the real estate in the City of Kenosha, Kenosha County, Wisconsin, identified above. The appraisal is intended to assist you in the negotiations regarding the acquisition of a portion of the property in conjunction with a planned highway improvement project. In keeping with your instructions, the appraisal was made in compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970 and follows the guidelines set by Uniform Appraisal Standards for Federal Land Acquisitions.

A careful inspection of the subject property was made on several occasions during the past several weeks. The final viewing was made on March 15, 2010 with Mr. David Stedman, the owner's representative. Due consideration was given to all factors which influence value and compensation. The attached report contains the appraiser's estimate of compensation due and a synopsis of the factors considered when developing this estimate. Please note the limiting conditions under which this value estimate is made. They are found within the report.

Based on my analysis, it is my professional opinion that the amount of compensation due the owner of the subject property as of March 15, 2010 is:

**Forty Five Thousand Dollars**  
**\$45,000**

Should you require additional information or have any questions, please call.

Sincerely,



Gene A. Bock, SRA, ASA, CRP, CRA  
Wisconsin Certified Appraiser No. 311-010  
Senior Appraiser, Southern Wisconsin Appraisal

Enc

*Providing Wisconsin with over  
30 Years of Professional Service*

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**Market Analysis - Direct Sales Analysis**  
Land Sales - Summary

Item	SUBJECT	LAND SALE NO. 1 COM 26-67	LAND SALE NO. 2 COM 29-25	LAND SALE NO. 3 COM 28-19	LAND SALE NO. 4 COM 210-03	LAND LIST NO. 5 COM 210-06	LAND LIST NO. 6 COM 210-07						
Sale I.D.		2584	2584	2583	2582	2586	2587						
Street		75th St (Hwy 50)	120th Ave	77th St	75th ST (Hwy 50)	71st St at 125th Ave	122nd Ave						
City		Kenosha	Kenosha	Kenosha	Kenosha	Kenosha	Kenosha						
County		Kenosha	Kenosha	Kenosha	Kenosha	Kenosha	Kenosha						
Seller		I-94 Partners	KT Day LLC	Hwy 50 Building Co	Water St Land LLC	Crisson	Brat Stop Inc.						
Sales Price		\$692,600	\$2,200,000	\$2,352,500	\$1,100,000	\$1,299,000	\$555,390						
Price/Acre		\$451,794	\$456,432	\$390,133	\$495,942	\$465,591	\$653,400						
Price/Sq Ft		\$10.37	\$10.48	\$8.96	\$11.39	\$10.69	\$15.00						
Price/FF		\$3,463	\$6,667	\$5,228	\$4,000	\$3,056	\$3,703						
Sale Date	Mar-10	Mar-06	Jul-06	Jan-09	Mar-10	Mar-10	Mar-10						
Time Adj. (Rnd)	1%	4% \$27,761	4% \$81,551	1% \$28,230	0% \$422	0% \$0	0% \$0						
Motivation		Arms Length	Arms Length	Arms Length	Arms Length	OFFERING	OFFERING						
Financing		Conv Mtg	Conv Mtg	Conv Mtg	Conv Mtg	Conv Mtg	Conv Mtg						
Market Adj.		0% \$0	0% \$0	0% \$0	0% \$0	-6% (\$77,940)	-6% (\$33,323)						
Adjusted Price		\$720,361	\$2,281,551	\$2,380,730	\$1,100,422	\$1,221,060	\$522,067						
Adj. \$ / Acre		\$469,903	\$473,351	\$394,814	\$496,133	\$437,656	\$614,196						
Adj. \$ / Sq Ft		\$10.79	\$10.87	\$9.06	\$11.39	\$10.05	\$14.10						
Adj. \$ / FF		\$3,602	\$6,914	\$5,291	\$4,002	\$2,873	\$3,480						
Features	Subject	Desc.	%	Desc.	%	Desc.	%	Desc.	%				
Size (Acre)	2.690	1.533		4.820	10%	6.030	15%	2.218		2.790		0.850	-15%
Size (Sq Ft)	117,176	66,777		209,959		262,667		96,616		121,532		37,026	
Size (Front Ft)	1,123	200		330		450		275		425		150	
Shape	Rectangular	Rectangular		Irreg		Rectangular		Rectangular		Rectangular		Rectangular	
Topography	Level	Level		Level		Sloped	10%	Level		Level		Level	
Location	Hwy 50 Retail	Hwy 50 Retail		Hwy 50 Retail		Hwy 50 Retail		Hwy 50 Retail		Hwy 50 Retail		Hwy 50 Retail	
Zoning	B-2, Business	B-2, Business		B-2, Business		B-2, Business		B-2, Business		B-2, Business		B-2, Business	
H & B Use	Business	Business		Business		Business		Business		Business		Business	
Interior/Corner	Dbl Corner	Interior	10%	Corner	5%	Corner	5%	Interior	10%	Interior	10%	Interior	10%
Sewer/Septic	Sewer	Sewer		Sewer		Sewer		Sewer		Sewer		Sewer	
View/Exposure	I-94 Exposure	Hwy 50	10%	I-94 Exposure		I-94 Exposure		Hwy 50	10%	Hwy 50	10%	I-94 Exposure	
Wetlands	None	None		None		None		None		None		None	
Improvements	As Vacant	Vacant		Vacant		Vacant		Vacant		Vacant		Vacant	
Net Adj. (%)			20%		15%		30%		20%		20%		-5%
Net Adj. (\$)			\$93,981		\$71,003		\$118,444		\$99,227		\$87,531		-\$30,710
Indicated \$/Acre			\$563,883		\$544,353		\$513,259		\$595,359		\$525,187		\$583,486
Indicated \$/Sq Ft			\$12.94		\$12.50		\$11.78		\$13.67		\$12.06		\$13.40

**Note: All calculations within this analysis were completed to 16-digits for accuracy. The displayed numerals are truncated values that represent the product of the original 16-digit calculation.**

**Brief Outline of Appraiser's Reasoning:** The appraiser found that the unit of comparison most recognized by the market is the price per acre. The appraiser's analyses are based on this standard. The appraiser's analyses are based on this standard. Following is a summary of the major differences and adjustments found between the subject and sales.

**Market Conditions (Time):** Due to speculation and changing market economy interest rates, indicators of market appreciation varied. It was determined that the market had appreciated steadily during 2004, 2005 and into early 2006. Market activity shows the market had a noticeable slow-down that began in early 2006. This slowdown with soft market conditions continue today. After reviewing the market, it is the professional opinion of the appraiser that the market appreciated steadily at the rate of 6% to 8% per year prior to 2006. Beginning early 2006, appreciation slowed greatly for commercial real estate located in the subject neighborhood. There were minor noticeable changes and minor appreciation since that time. It is the opinion of the appraiser that the market for commercial real estate increased in the subject

### Allocation of Damages:

The following chart summarizes the items acquired and the items that will influence or change the subject's market value. It also summarizes the compensation due the owner as a result of the proposed acquisition:

Item Acquired	Area Size	Unit Price	Damage
Land (Fee)	0.03-acre	\$555,390 per acre	\$16,662
Land (PLE)	0.01-acre	Portion of Fee	\$3,332
Land (TLE)	0.22-acre	Portion of Fee	\$9,775
Landscaping	Mixture of Shrubs, Trees, & Mulch		\$9,000
Improvements	Lawn Sprinklers		\$3,224
	Two Light Posts		\$3,000
Signs	None		\$0
Other	Enforce Access Control		\$0
Total Compensation			\$44,993
<b>TOTAL COMPENSATION (Rounded)</b>			<b>\$45,000</b>

The damages are totaled and then rounded to avoid the appearance of over precision. Based on this analysis, the loss in value to the subject property, excluding any TLE, was determined to be \$35,200 (rounded). Again, the TLE area is not a loss in real estate value but a loss to the property owner. Based on this summary, the estimated amount of compensation due the owner is also \$45,000.

**Conclusion of Market Value - After the Acquisition:** The appraiser has considered the value of the part taken as well as the before value to calculate the subject's value in its after condition (After Value). The market in the after condition indicates no further adjustments or consideration are required. Therefore, the value of the subject, after the acquisition has been completed, is represented by deducting the estimated loss from the subject's value before the acquisition began. The following table summarizes the appraiser's calculation of the subject after value.

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**METROPOLITAN  
APPRAISAL**

*Appraisers and Consultants*



**APPRAISAL**

**CITY OF KENOSHA PROJECT I.D. 09-1024  
122<sup>nd</sup> AVENUE (WEST FRONTAGE ROAD)**

**City of Kenosha – Parcel No. 1**

**7015 122<sup>nd</sup> Avenue  
City of Kenosha, WI  
Property Owner: Cracker Barrel Old Country Store, Inc.  
Tax Parcel Number: 03-121-01-401-120**

**Prepared For:**

Cracker Barrel Old Country Store, Inc.  
c/o Whyte Hirschboeck Dudek  
One East Main Street, Suite 300  
Madison, WI 53703-3300

**Prepared By:**

**METROPOLITAN APPRAISAL, LLC  
11402 N. Port Washington Road, Suite 201  
Mequon, Wisconsin 53092**

**Effective Date:**

March 15, 2010

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# METROPOLITAN APPRAISAL

*Appraisers and Consultants*



June 15, 2010

Cracker Barrel Old Country Store, Inc.  
c/o Whyte Hirschboeck Dudek  
One East Main Street, Suite 300  
Madison, WI 53703-3300  
Attention: Cynthia Buchko

RE: Property Owner: CBOCS, Inc.  
Parcel No. 1  
7015 122<sup>nd</sup> Avenue  
City of Kenosha, Kenosha County, WI

Dear Ms. Buchko:

Pursuant to your request, Metropolitan Appraisal, LLC has prepared an appraisal report of the above referenced property ("subject"). The subject is a 2.690-acre site improved with a "Cracker Barrel" restaurant and store located in the northwest quadrant of the Interstate 94 (I-94) and State Trunk Highway ("STH") 50 interchange in the City of Kenosha, Kenosha County, Wisconsin.

The appraisal is to be used by CBOCS, Inc. in connection with the acquisition by the City of Kenosha of a 0.030-acre "Fee Taking", a 0.220-acre "Temporary Limited Easement" (TLE), and a 0.010-acre "Permanent Limited Easement" (PLE) as listed on Transportation Project Plat No: 09-1024. The Fee Taking, TLE, and PLE are necessary for improvements to the existing road network in the northwest quadrant of the interchange (City Project).

The City Project is being co-coordinated with a State of Wisconsin Department of Transportation project (State Project) planned for a later time period. Although this appraisal independently calculates total damages for the City Project, specific consideration is given to the State Project regarding parking in the form of an extraordinary assumption. Between the City Project and State Project, there is a net loss of (2) parking spaces. It is an extraordinary assumption of the appraisal that no special benefit is recognized for the new parking spaces provided by the City Project, and no severance damage is recognized for the lost parking spaces in the State Project as the net difference has no material impact on market value.

The subject after the acquisition is referred to as the "Remainder". The subject values before the acquisition and after the acquisition are referred to as the "Before Value" and "After Value", respectively. The physical condition of the subject before the acquisition and after the acquisition are referred to as the "Before Condition" and "After Condition", respectively. The effective date of value for the Before Value and the After Value is March 15, 2010, the date of inspection.

The real estate appraisal is prepared in conformity with and is subject to the requirements of the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation as well as Section 32.09 of the Wisconsin Statutes. The depth of discussion contained in the report is specific to the needs of the client and for the intended use stated. The appraiser is not responsible for unauthorized use of this report.

As required by Section 32.09(6), the appraiser is to consider the property taken as a separate unit. Because the property taken cannot be used as a separate unit, the difference between the Before Value and After Value is higher and the correct measure of total damages.

Based on the inspection, analysis of pertinent market data and the attached assumptions and limiting conditions of the report, the market value conclusions as of March 15, 2010, are:

**BEFORE VALUE**  
**\$2,520,800**

**AFTER VALUE**  
**\$2,434,400**

**DIRECT DAMAGES**  
**\$86,400**

**TLE LOSS**  
**\$3,900**

**TOTAL COST-TO-CURE**  
**\$101,200**

**TOTAL DAMAGES**  
**\$191,500**

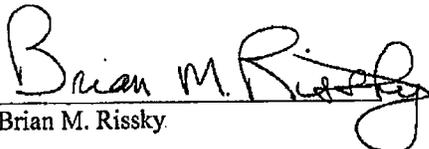
If questions arise concerning this appraisal, please do not hesitate to call. Thank you for using the services of our firm.

Respectfully submitted,  
**METROPOLITAN APPRAISAL, LLC**



Kevin L. Zarem, MAI, WCGA # 598  
Expires: 12-14-11

Signed: June 15, 2010



Brian M. Risky

Signed: June 15, 2010

**BEFORE VALUE**

The Before Value of the subject's land is determined via the sales comparison approach. The sales comparison approach simulates the thinking of a typical buyer and seller. The subject's land is appraised based on its highest and best use which is for intensive retail/commercial use. Land of this type is most commonly valued based on the price per square foot. The values indicated by the comparable land sales activity in the market are adjusted to reflect the comparable properties inferiority or superiority to the subject. Following the adjustments made in the analysis, the adjusted sale prices indicate the probable value of the land.

A summary table of the comparable sales used to value the subject's land is included below. A sales map and sales data sheets for each comparable are included on the following pages. A summary of current land listings and a listings map are also included. An adjustment grid highlighting the necessary adjustments for each sales comparable follows the listing data.

Commercial Land Sales Summary							
<u>Sale</u>	<u>Location</u>	<u>Size (Acres)</u>	<u>Zoning</u>	<u>Sale Price</u>	<u>Sale Date</u>	<u>Price/SF</u>	<u>Planned/Actual Use</u>
Sub	7015 122 <sup>nd</sup> Avenue City of Kenosha	2.690	B-2, Community Business	N/A	N/A	N/A	Cracker Barrel
1	7027 120 <sup>th</sup> Avenue City of Kenosha	5.2509	B-2, Community Business	\$2,400,000 <sup>(1)</sup>	Jul-2006 & Jul-2007	\$10.49	Best Buy
2	12100 77th Street Town of Bristol	6.020	B-3H Highway Business	\$2,352,500 <sup>(2)</sup>	Sep-2008 Jan-2009	\$39.37	Honda Dealership
3	12185 77th Street Town of Bristol	5.000	B-4, Planned Business	\$2,275,000	Dec-2005	\$10.45	Ashley Furniture
4	10110 77 <sup>th</sup> Street Village of Pleasant Prairie	2.220	B-2, Community Business & PUD, Planned Development	\$1,100,000	Mar-2010	\$11.39	Olive Garden

- (1) Sale price includes the acquisition of an access road to the adjacent Gander Mountain property which bisected the parcel. The acquisition of the access road occurred subsequent to the initial land purchase for the Best Buy development.
- (2) Sale price includes a reported \$50,000 of razing costs prior to developing the site.

**Land Sales Adjustment Grid**

COMPARABLE	Subject	1	2	3	4	Adj.	Adj.
TRANSACTION DATA	N/A	Jul-06 & Jul-07	Sept, Dec-08 & Jan-09	Dec-05	Mar-10		
DATE OF SALE	7016 122nd Avenue	12185 77th Street	12185 77th Street	10110 77th Street			
LOCATION	City of Kansasha	Town of Bristol	Town of Bristol	Village of Pleasant Prairie			
CITY	B-2, Community Business	B-2, Community Business	B-4, Planned Business	B-2, Community Bus. & PUD			
ZONING	N/A	Best Buy	Ashley Furniture Store	Olive Garden			
PLANNED USE AT TIME OF SALE	2,690	5,000	5,000	2,220			
LAND AREA - ACRES	117,176	282,231	217,800	95,703			
LAND AREA - SQ. FT.	N/A	\$2,200,000	\$2,275,000	\$1,100,000			
SALE PRICE	N/A	\$2,400,000	\$2,352,500	\$1,100,000			
LAND EXPENDITURES AFTER SALE	N/A	\$10,438	\$9,977	\$10,645	\$17,833		
ADJUSTED SALE PRICE							
PRICE PER SQ. FT.							
ELEMENTS OF COMPARISON	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple		
PROPERTY RIGHTS	Conventional	None	None	Conventional	Conventional		
FINANCING	Arm's Length	Arm's Length	Arm's Length	Arm's Length	Arm's Length		
CONDITIONS OF SALE	N/A	5%	5%	8%	8%		
MARKET CONDITIONS							
ADJUSTED PRICE PER SQ. FT.		\$1101	\$897	\$1107	\$1438		
LOCATION/FRONTAGE	Good/Interstate Frontage	Similar	Similar	Similar	Inferior		10%
ACCESS	Average	Inferior	Similar	Similar	Similar		
SIZE	2,690	5,251	8,020	5,000	2,220		
UTILITIES	Municipal	Similar	Inferior	Similar	Similar		
ZONING	B-2, Community Business	B-2, Community Business	B-3, Highway Business	B-4, Planned Business	B-2, Community Bus. & PUD		
PHYSICAL CHARACTERISTICS	Average	Similar	(See remarks)	Similar	Similar		
TOTAL ADJUSTMENT		10%	30%	10%	10%		
ADJUSTED VALUE PER SQ. FT.		\$12.11	\$11.65	\$12.13	\$12.51		

MOST RELIANCE	Equal
AVERAGE PRICE PER SQ. FT.	\$12.12
LAND VALUE PER SQ. FT.	\$12.10
LAND VALUE, ROUNDED	\$1,417,800



ENGINEERING DIVISION  
MICHAEL M. LEMENS, P.E.  
DIRECTOR/CITY ENGINEER

STREET DIVISION  
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PARK DIVISION  
JEFF WARNOCK  
SUPERINTENDENT

ADMINISTRATION SUPERVISOR  
JANICE D. SCHROEDER

**DEPARTMENT OF PUBLIC WORKS**  
RONALD L. BURSEK, P.E., DIRECTOR

MUNICIPAL BUILDING • 625 - 52ND ST. • RM. 305 • KENOSHA, WI 53140  
TELEPHONE (262) 653-4050 • FAX (262) 653-4056

December 14 2010

To: G. John Ruffolo, Chairman  
Public Works Committee

Anthony Nudo, Chairman  
Storm Water Utility Committee

From: Michael M. Lemens, P.E.  
Director of Engineering/City Engineer

*[Handwritten signature]*  
*12-14-10*

Subject: *Acceptance of Paving and Drainage Improvements  
Meadows at Hunters Ridge Subdivision*

**BACKGROUND/ANALYSIS**

This original developer for this project went bankrupt, and the City began procedures to finish the work under the developer's agreement by going after the letter of credit. The bank informed that City that they had found a buyer for the property, and the new buyer replaced the existing letter of credit with a new one under their own name. The buyer did complete the improvements in the *Meadows at Hunter's Ridge Subdivision* as shown on the attached exhibit map, and is now requesting that all drainage and paving improvements be formally accepted by the City.

The street paving and drainage improvements for this subdivision has been inspected and approved for acceptance by the Department of Public Works - Engineering Division personnel. The developer has met all requirements for acceptance by the Committee and Common Council.

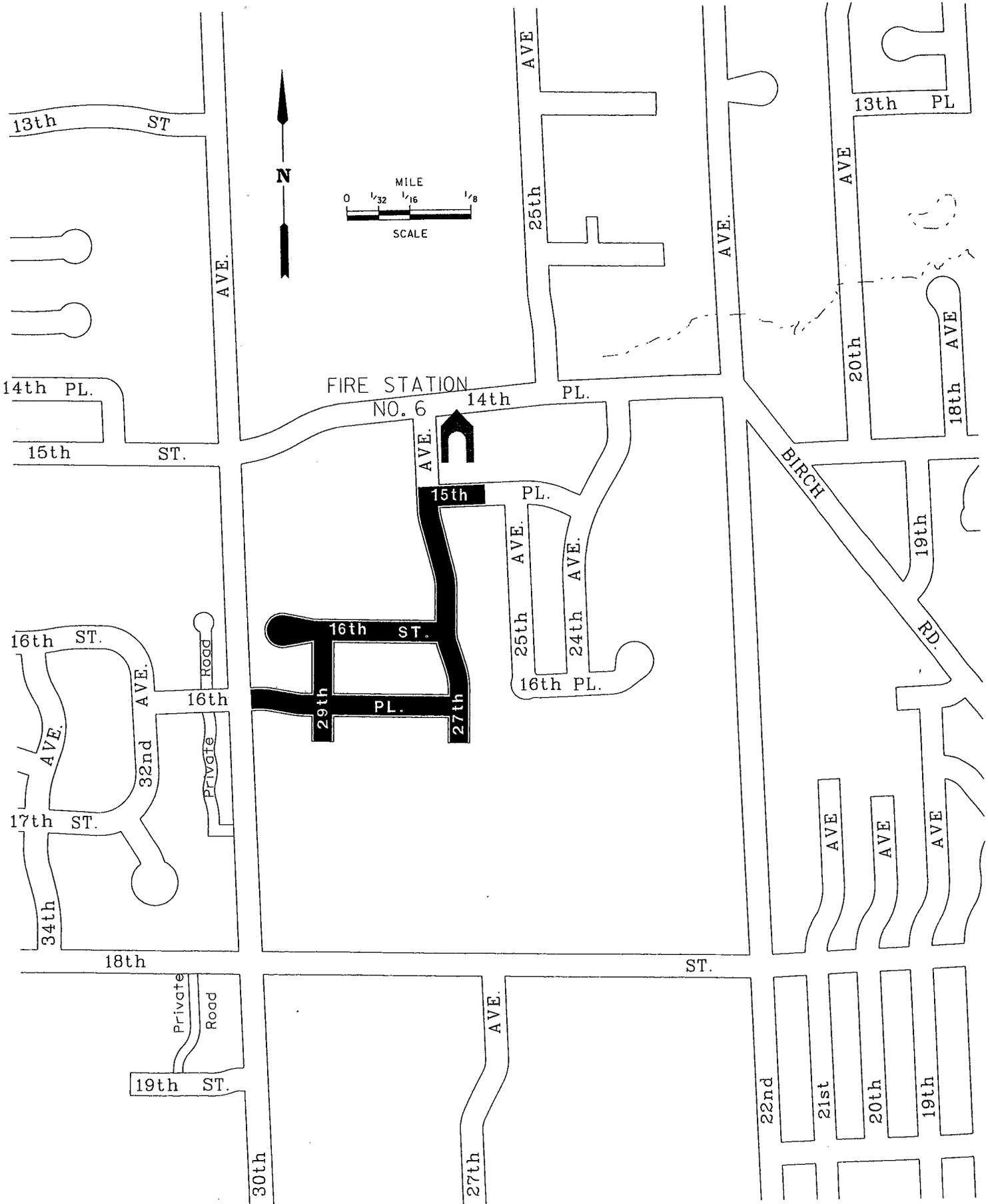
Upon acceptance by the City, the City will be responsible for the operation and maintenance of the street paving and other improvements.

**RECOMMENDATION**

Approve the street paving and drainage improvements for acceptance.

Attachment: Map  
CC: Ald. Ruffolo  
MML

# 2010 Accepted Streets of Meadows At Hunter's Rigde





ENGINEERING DIVISION  
MICHAEL M. LEMENS, P.E.  
DIRECTOR/CITY ENGINEER

STREET DIVISION  
JOHN H. PRIJIC  
SUPERINTENDENT

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December 16, 2010

To: G. John Ruffolo, Chairman  
Public Works Committee

David F. Bogdala, Chairman  
Finance Committee

From: Ronald L. Bursek, P.E.   
Director of Public Works

Subject: ***Waste Management Agreement Addendum***

**BACKGROUND INFORMATION**

The existing agreement between the City of Kenosha and Pheasant Run Recycling and Disposal Facility, which is a division of Waste Management of Wisconsin, Inc. will terminate on December 31, 2010. The City of Kenosha's Purchasing Manager sought alternative rates from local competitors for comparison of disposal fees. The competitors that provided the City with rates were Republic, Inc. (Kestrel Hawk) and Veolia Environmental Services (Zion, Illinois). In consideration of the rates attained, staff is confident that Waste Management still provides the most cost-advantageous option and recommends that the City continue with Waste Management through the attached addendum.

The following are the rates for disposal that are subject to additional taxes and fees:

Base Disposal Rates

- Existing 2010 rate: \$19.81 per ton
- Proposed 2011 rate: \$22.00 per ton

Pull Charges for Bulk Waste Collection

- Existing 2010 rate: \$154.50 per pull
- Proposed 2011 rate: \$158.00 per ton.

Environmental Surcharge (most loads are more than 2 tons)

- Existing 2010 rate: \$4.00 per load
- Proposed 2011 rate: \$6.00 per load

Fuel Surcharge

- Existing 2010 rate: Fluctuates and are subject to Contractor's weekly fluctuating fuel charge (Ave 2010 rate was \$216 per month total for all accounts)
- Proposed 2011 rate: Fluctuates and are subject to Contractor's weekly fluctuating fuel charge

Leasing of Two Cubic Yard Compactors for Drop-off Site

- Existing 2010 rate: \$633.71 per month
- Proposed 2011 rate: \$653.00 per month

Wisconsin Solid Waste Taxes and Fees

- Existing 2010 rate: \$13.00 per ton
- Proposed 2011 rate: \$13.00 per ton

Included in this addendum is a clause, that if the Pheasant Run facility closes, the City has the option to discontinue the agreement with Waste Management and go elsewhere or transport solid waste material for disposal to Waste Management's Metro landfill at the prices stated within the addendum.

**RECOMMENDATION**

Approve the addendum to the agreement between the City of Kenosha and Waste Management of Wisconsin, Inc.

**Addendum to Agreement  
By and Between  
THE CITY OF KENOSHA, WISCONSIN  
A Municipal Corporation,  
And  
WASTE MANAGEMENT OF WISCONSIN, INC.  
A Wisconsin Corporation**

ADDENDUM TO AGREEMENT, effective the first day of January 2011, by and between the City of Kenosha (hereafter called the "Customer") and Pheasant Run Recycling and Disposal Facility, a Division of Waste Management of Wisconsin, Inc. (hereafter called the "Contractor").

The parties agree to extend through December 31, 2013, the existing Agreement between the City of Kenosha and Waste Management of Wisconsin, Inc. dated January, 2003 as amended by the Addendum effective January 1, 2008 subject to the following amendments:

1. Rates

Solid Waste Disposal/Roll-Off Waste Disposal/Sludge/Grit Disposal

Pheasant Run Landfill ("Primary Site")	\$22.00 per ton
Metro Landfill ("Secondary Site")	\$22.00 per ton

Disposal subject to current hours of operation.

Transportation of Roll-off Containers for Bulk Waste Collection

\$158.00 per haul

Leasing of Two Cubic Yard Compactors:

\$653.00 monthly

2. Other Charges

a. Minimum Disposal Tonnage. All deliveries shall be subject to a three (3) ton minimum charge.

b. State of Wisconsin Solid Waste Taxes and Fees. Currently \$13.00 per ton will be charged for the State of Wisconsin solid waste taxes and fees. This rate will be adjusted to reflect any changes to the taxes and fees.

c. Fuel and Environmental Surcharge. The rates are subject to the Contractor's weekly fluctuating fuel surcharge (refer to [www.wm.com](http://www.wm.com)) and an environmental surcharge. The environmental surcharge is fixed and applied on a per load basis. The charge for loads under two tons is \$4.00 per load and the charge for loads greater than or equal to two

tons is \$6.00 per load.

d. Host Fee Increases. The above rates shall be increased in the event host fees paid to the community where the applicable disposal facility is located increase.

e. Consumer Price Index Increase. The prices shall be subject to change on each anniversary of the date of this Agreement by an amount equal to the percentage change in the Consumer Price Index - Urban Wage Earner for the previous twelve (12) month period with a minimum increase of 3% and a maximum of 5%.

f. Dig Out Charges. Customer will be responsible for the Contractor's standard charge of \$50.00 for assisting in offloading all Solid Waste delivered for disposal. The Contractor shall not be responsible for any damage to Customer's vehicles or equipment resulting from the Contractor providing such services.

g. Landfill Site Warranty By Contractor. Contractor warrants to Customer that both the Primary and Secondary Sites have in full force and effect, all required governmental licenses, permits and approvals to operate in substantial compliance with the terms and conditions contained in said licenses, permits and approvals, in respect to Contractor's obligations hereunder and have the capacity to meet Contractor's obligations for the duration of this term of the contract.

h. Alternative Landfill Site. The parties acknowledge that part of the consideration of the Agreement and of this Addendum for Customer is the close proximity of the Pheasant Run Landfill to the Customer, resulting in minimized costs of transportation for Customer to haul waste and sludge to the landfill. The parties further acknowledge that Pheasant Run Landfill could close operations during the course of the term of this Addendum. Contractor agrees that while Pheasant Run Landfill remains open, Customer may continue to utilize Pheasant Run Landfill. In the event that Pheasant Run Landfill ceases to accept solid waste or sludge or ceases to be able to accommodate the equipment of Customer, Customer shall not be subject to the City Guarantee provision embodied in Section 6 of the January 2003 Agreement and that Customer shall have the right at its sole option: (1) to terminate the January 2003 Agreement and this Addendum, (2) to take either Customer's solid waste or sludge, or both to Metro Landfill at the prices stated herein, or (3) to take either Customer's solid waste or sludge, or both to an alternative licensed and permitted site, that is not necessarily owned or operated by the Contractor. If the Customer opts to take either its solid waste or sludge, or both to an alternative site operated by an entity other than Contractor, Customer shall have no further obligation to Contractor under the January 2003 Agreement or this Addendum with regard to such solid waste and/or sludge.

The term of this Addendum can be extended for an additional period upon the mutual written agreement of the parties. All other terms of the original agreement remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have hereunto executed this Addendum

on the dates below given.

**CITY OF KENOSHA, WISCONSIN,**  
A Municipal Corporation

BY: \_\_\_\_\_  
KEITH G. BOSMAN, Mayor  
Date: \_\_\_\_\_

BY: \_\_\_\_\_  
MICHAEL K. HIGGINS,  
City Clerk/Treasurer  
Date: \_\_\_\_\_

**STATE OF WISCONSIN )**  
**: SS.**  
**COUNTY OF KENOSHA )**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, **KEITH G. BOSMAN, Mayor**, and **MICHAEL K. HIGGINS, City Clerk/Treasurer**, of the **CITY OF KENOSHA, WISCONSIN**, a municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said City, by its authority.

\_\_\_\_\_  
Notary Public, Kenosha County, WI.  
My Commission expires/is: \_\_\_\_\_





ENGINEERING DIVISION  
MICHAEL M. LEMENS, P.E.  
DIRECTOR/CITY ENGINEER

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ADMINISTRATION SUPERVISOR  
JANICE D. SCHROEDER

## DEPARTMENT OF PUBLIC WORKS

RONALD L. BURSEK, P.E., DIRECTOR

MUNICIPAL BUILDING • 625 - 52ND ST. • RM. 305 • KENOSHA, WI 53140  
TELEPHONE (262) 653-4050 • FAX (262) 653-4056

December 16, 2010

To: G. John Ruffolo, Chairman  
Public Works Committee

Dave Bogdala, Chairman  
Finance Committee

From: Ronald L. Bursek, P.E.   
Director of Public Works

Subject: *State/Municipal Project Agreement*  
*WisDOT Project I.D. 1310-10-00/20/70/7x*  
*75<sup>th</sup> Street (STH 50) from I-94 to 43<sup>rd</sup> Avenue*  
*Local Cost Shares and Non-Participating Local Project Costs*

### BACKGROUND/ANALYSIS

Highway 50 (75<sup>th</sup> Street) from 43<sup>rd</sup> Avenue to I-94 will require reconstruction with additional through lanes in the future. The existing roadway will require minor resurfacing in the more immediate future, but the existing facility is approaching its expected design life. This segment of roadway is classified as "State Trunk Highway", and the cost of the work is eligible for state funding. With major WisDOT projects in progress on I-94, and expected high demand for future highway construction funding, the timing of the project agreement is critical. Staff has negotiated an exceptionally attractive agreement for the reconstruction of this project (expected to occur in 2018) estimated to cost around \$88,000,000 with a local cost share of \$3,840,200 to be split by the City of Kenosha and Village of Pleasant Prairie. Approval of the State/Municipal Agreement for Highway Improvement Project now means the City can get this project formally included in future State programs.

The project agreement commits the city to fund the elements of the design and construction that are required to handle the local-only traffic and certain items that may not be covered by state funding (non-participating costs) as would normally be expected. It also requires that the City perform R/W acquisition for certain access roads. The City's share of these costs will be included in future CIP's.

While a project of this size and scope might be expected to have a local cost share of \$16,000,000 or more, a reduced local share of the cost for lane expansion was negotiated by having the City accept

a transfer of STH 50 between STH 31 (Green Bay Road) and STH 32 (Sheridan Road) from state trunk highway and connecting highway status to local road status. This will have some effect on the funding and cost sharing for any future road construction.

Formal approval of the State/Municipal Project Agreement is required for authorization, and it is recommended that a timely approval of the agreement would be appropriate.

**RECOMMENDATION**

Approve the State/Municipal Project Agreement and authorize the Mayor to execute the necessary document on behalf of the City.

STATE/MUNICIPAL AGREEMENT  
FOR A  
HIGHWAY IMPROVEMENT PROJECT

DATE: December 15, 2010  
PROJECT DESIGN ID: 1310-10-00  
PROJECT CONSTRUCTION ID: 1310-10-20/70/7x  
HIGHWAY: 75<sup>th</sup> Street (STH 50) LENGTH: 4.7 miles  
LIMITS: IH 94 to 43<sup>rd</sup> Avenue  
COUNTY: Kenosha

The signatory city, village, town or county, hereinafter called the Municipality, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the highway or street improvement hereinafter described.

The authority for the Municipality to enter into this agreement with the State is provided by Section 86.25(1), (2), and (3) of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

**Existing Facility - Describe and give reason for request:** Roadway Improvement

**Proposed Improvement - Nature of work:** Reconstruction with additional through traffic lanes

**Describe non-participating work included in the project and other work necessary to finish the project completely which will be undertaken independently by the municipality:** A nominal amount is included to cover items in paragraph 4 (to be adjusted in the final plan).

PHASE	ESTIMATED COST (see note 6)					
	Total Est. Cost	Federal/ State Funds		Municipal % Funds		%
Preliminary Engineering:						
Plan Development (note 1)	\$ 6,983,800	\$ 6,983,800	100%	\$ -		0%
Real Estate Acquisition:						
Acquisition - STH 50 Roadway (note 1)	\$ 7,300,000	\$ 7,300,000	100%	\$ -		0%
Acquisition - Access Roads (note 2)	\$ 650,000	\$ -	0%	\$ 650,000		100%
Compensable Utilities (note 1)	\$ 100,000	\$ 100,000	100%	\$ -		0%
Construction:						
Participating (note 3)	\$ 62,538,000	\$ 61,538,000	BAL	\$ 1,000,000		MAX
Access Roads (note 4)	\$ 3,200,000	\$ 3,200,000	MAX	\$ -		BAL
CSS (note 5)	\$ 2,096,000	\$ 2,096,000	MAX	\$ -		BAL
New Sidewalk	\$ 841,000	\$ 672,800	80%	\$ 168,200		20%
New Lighting	\$ 3,874,000	\$ 1,937,000	50%	\$ 1,937,000		50%
Landscaping	\$ 300,000	\$ 240,000	80%	\$ 60,000		20%
Non-Participating	\$ 25,000	\$ -	0%	\$ 25,000		100%
<b>Total Cost Distribution</b>	<b>\$ 87,907,800</b>	<b>\$ 84,067,600</b>		<b>\$ 3,840,200</b>		

Notes

- 1 - see item 10 for Municipal cost share
- 2 - The Municipality is encouraged to get dedications
- 3 - 75% State and 25% Municipality, with a Municipal maximum amount of \$1,000,000. See item 10 for details.
- 4 - Access Roads 100% State, with a State maximum amount of \$3,200,000. See item 10 for details.
- 5 - Community Sensitive Solutions (CSS) - with a State maximum amount of \$2,100,000. See item 10 for details.
- 6 - Although dollar amounts are estimates, percentages are actual.

This request is subject to the terms and conditions that follow (pages 2 and 3) and is made by the undersigned under proper authority to make such request for the designated Municipality and upon acceptance by the State shall constitute agreement between the Municipality and the State.

Signed for and in behalf of the City of Kenosha.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

TERMS AND CONDITIONS:

1. The initiation and accomplishment of the improvement will be subject to the applicable Federal and State regulations.
2. The Municipality shall pay to the State all costs incurred by the State in connection with the improvement which exceed Federal/State financing commitments or are ineligible for Federal/State financing as per the terms and conditions of this agreement.
3. Funding of each project phase (preliminary engineering, real estate, construction, and other) is subject to inclusion in an approved program. Federal aid and/or State transportation fund financing will be limited to participation in the costs of the following items as specified in the estimate summary:
  - (a) The grading, base, pavement, and curb and gutter.
  - (b) Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
  - (c) Construction engineering incident to inspection and supervision of actual construction work.
  - (d) Signing and pavement marking, including detour routes.
  - (e) Storm sewer mains necessary for the surface water drainage.
  - (f) Construction of new sidewalks and driveways, replacement of sidewalks and private driveways resulting from roadway construction.
  - (g) New installations or alteration resulting from roadway construction of standard State street lighting and traffic signals or devices.
  - (h) Real Estate for the improvement, excluding real estate for the access roads identified in the State's STH 50 Corridor Study.
  - (i) Real Estate for the improvement.
  - (j) Preliminary engineering and state review services.
4. Work necessary to complete the improvement to be financed entirely by the Municipality includes the following items:
  - (a) New installations of or alteration of sanitary sewers and connections, water, fire or police alarm facilities, parking meters, and similar utilities.
  - (b) Real Estate for the access roads identified in the State's STH 50 Corridor Study.
5. As the work progresses, the Municipality will be billed for work completed which is not chargeable to Federal/State funds. Upon completion of the project, a final audit will be made to determine the final division of costs.
6. If the Municipality should withdraw the project, it shall reimburse the State for any costs incurred by the State in behalf of the project. Reimbursement costs shall include costs incurred to date of the State receiving written notification from the Municipality and could include costs to terminate contracts with consultants and contractors.
7. The work will be administered by the State and may include items not eligible for Federal/State participation.
8. The City of Kenosha is designated as the lead agency. All billing will be through the City of Kenosha.
9. The Municipality shall at its own cost and expense:
  - (a) Maintain all portions of the project that lie within its jurisdiction for such maintenance through statutory requirements, in a manner satisfactory to the State and shall make ample provision for such maintenance each year.
  - (b) Maintenance of sidewalks and landscaping features along the project.
  - (c) Maintenance of lighting systems, to include energy.

- (d) Maintenance of all features outside the travel lanes when additional pavement width is added at the request of the Municipality, with the exception of turn lanes.

10. Basis for local participation:

Due to significant local traffic along STH 50 and the requirement to add additional lanes, funding for the project is based upon 75% State and 25% Municipal, with the following conditions.

- The Municipal Cost share for roadway expansion has been reduced in exchange for the transfer of STH 50 to a local road between STH 31 and STH 32 (Jurisdictional Transfer to City of Kenosha and Village of Pleasant Prairie from STH 31 to 43<sup>rd</sup> Avenue and Connecting Highway Change to City of Kenosha from 43<sup>rd</sup> Avenue to STH 32). Because of this exchange, the Municipality shall be responsible for a maximum cost of \$1,000,000 for STH 50 Design, STH 50 Real Estate, STH 50 Roadway Construction and costs above the maximum State share of the Access Road Construction. Costs above the Municipal maximum amount are 100% State.
- Municipal costs shall have maximum costs of \$1,000,000, for Design, Real Estate and STH 50 Roadway Construction. Costs above this maximum amount are 100% State.
- State costs will have maximum costs of \$3,200,000 for Real Estate and Construction of the Access Roads identified in the State's STH 50 Corridor Study. Design costs for the Access Roads are included with STH 50 Design. Real Estate and Construction costs above this maximum amount are 100% Municipal.
- Acquisition of Real Estate for Access Roads identified in the State's STH 50 Corridor Study – purchased by the Municipality and subject to the State's maximum costs for Access Roads.
- Acquisition shall be completed prior to STH 50 Construction.
- Access Roads design and construction shall be completed within five years of the completion of the STH 50 roadway construction.
- Any changes to the Access Roads plans shall require mutual agreement by the Municipality and the State.
- Construction is to be scheduled for 2018
- The State will set up the construction as a warrantee project.

Funding for CSS (Community Sensitive Solutions) – 100% State, with a maximum amount of \$2,100,000. Costs above this maximum are 100% Municipal. The funding is to be used for enhancement features along the project limits. CSS funds have been inflated to 2019 dollars.

Funding for real estate required for standard STH 50 roadway construction, 100% State. The Municipal share is in exchange for transfer of STH 50 to a local road.

Funding for compensable utilities required for standard roadway construction, 100% State. The Municipal share is in exchange for transfer of STH 50 to a local road.

Funding for new DOT standard sidewalk, 80% State and 20% Municipal. Costs do not have a maximum amount.

Funding for new DOT standard lighting, 50% State and 50% Municipal. Costs do not have a maximum amount.

Funding for landscaping, 80% State and 20% Municipal. Costs do not have a maximum amount.



1-3

**ENGINEERING DIVISION**  
MICHAEL M. LEMENS, P.E.  
DIRECTOR/CITY ENGINEER

**STREET DIVISION**  
JOHN H. PRIJIC  
SUPERINTENDENT

**FLEET MAINTENANCE**  
MAURO LENCI  
SUPERINTENDENT

**WASTE DIVISION**  
ROCKY BEDNAR  
SUPERINTENDENT

**PARK DIVISION**  
JEFF WARNOCK  
SUPERINTENDENT

**ADMINISTRATION SUPERVISOR**  
JANICE D. SCHROEDER

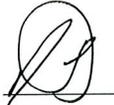
**DEPARTMENT OF PUBLIC WORKS**  
**RONALD L. BURSEK, P.E., DIRECTOR**

MUNICIPAL BUILDING • 625 - 52ND ST. • RM. 305 • KENOSHA, WI 53140  
TELEPHONE (262) 653-4050 • FAX (262) 653-4056

December 16, 2010

To: G. John Ruffolo, Chairman  
Public Works Committee

Dave Bogdala, Chairman  
Finance Committee

From: Ronald L. Bursek, P.E.   
Director of Public Works

Subject: *Jurisdictional Transfer Agreements*  
*WisDOT Project I.D. 1310-10-00*  
*75<sup>th</sup> Street (STH 50) from I-94 to 43<sup>rd</sup> Avenue*

**BACKGROUND/ANALYSIS**

Highway 50 (75<sup>th</sup> Street) from 43<sup>rd</sup> Avenue to I-94 will require reconstruction with additional through lanes in the future. This segment of roadway is classified as "State Trunk Highway", and the cost of the work is eligible for state funding, with local cost sharing for the added through lanes and usual non-participating items. Staff has negotiated an exceptionally attractive agreement for the reconstruction of this project (expected to occur in 2018) estimated to cost around \$88,000,000, with a local cost share of \$3,840,200 of local costs to be split by the City and Village of Pleasant Prairie.

In exchange for the reduced local share of the cost for lane expansion (from around \$16,000,000 to \$3,840,000), the City (and Village) will have to accept a jurisdictional transfer of STH 50 between STH 31 (Green Bay Road) and 43<sup>rd</sup> Avenue from state trunk highway status to local road status. Also, the portion of STH 50 between 43<sup>rd</sup> Avenue and STH 32 (Sheridan Road) will be jurisdictionally transferred from connecting highway status to local road status. This will have some effect funding and cost sharing for any future road construction, as well as general transportation aids.

Although formal transfer of the jurisdictions will not take place until the future reconstruction is completed, agreement to the jurisdictional transfers is a condition of the approval of the State/Municipal Project Agreement for the reconstruction project. It is recommended that a timely approval of the agreement would be appropriate.

**RECOMMENDATION**

Approve the Jurisdictional Transfer Agreements and authorize the Mayor to execute the necessary documents on behalf of the City.

**CONNECTING HIGHWAY CHANGE AGREEMENT #**  
**PERTAINING TO STH 50**  
**STH 50 ON 75<sup>th</sup> STREET FROM 43<sup>rd</sup> AVENUE TO ROOSEVELT ROAD**  
**STH 50 ON ROOSEVELT ROAD FROM 75<sup>TH</sup> STREET TO 63<sup>RD</sup> STREET**  
**STH 50 ON 63<sup>RD</sup> STREET FROM ROOSEVELT ROAD TO STH 32**  
**CITY OF KENOSHA, KENOSHA COUNTY**

Wisconsin State Statute 86.32(1), enables the State to designate certain marked routes of the state highway system over the streets or highways in any municipality for which the municipality will be responsible for maintenance and traffic control, the Wisconsin Department of Transportation (DEPARTMENT) and the City of Kenosha, Kenosha County, Wisconsin (CITY) hereby agree to the following terms for the rescindment of connecting highway of this agreement.

As the character of travel service provided by this route, uniformity of maintenance, the effect on the maintaining agency and the municipality's maintenance capability are considerations predicated this designation, and whereas, reimbursement for maintenance of the connecting highway shall be determined using the rates per line mile provided for under Section 86.32, Wisconsin Statutes, and whereas, the parties hereto do mutually agree to the change in connecting highway status described below under the conditions as specified below.

**SECTION I**  
**FACILITY TO BE RESCINDED TO THE CITY**

The following connecting highway facility segment will be rescinded as part of, and subject to the conditions in this agreement.

**Roadway Facilities**

STH 50-75th Street From 43<sup>rd</sup> Avenue To Roosevelt Road  
75<sup>th</sup> Street beginning at the eastern turning radius of its intersection with 43<sup>rd</sup> Avenue, then proceeding generally easterly along the route marked STH 50, to its eastern turning radius with Roosevelt Road, a distance of approximately 0.25 miles located in Township 1 North, Range 22 East, Sections 2 and 11 City of Kenosha, Kenosha County. This is referenced as Segment 1 on Attachment 1.

**Structure Facilities**

All structures located within the segment as identified as Segment 1 as shown in Attachment 1.

**Rights-of-Way and Access Control**

All highway access control rights and easements pertaining to said right-of-way within Segment 1 as shown in Attachment 1.

STH 50-Roosevelt Road From 75<sup>th</sup> Street To 63<sup>rd</sup> Street

Roosevelt Road beginning at the eastern turning radius of its intersection with 75<sup>th</sup> Street, then proceeding generally north easterly along the route marked STH 50, to its eastern turning radius with 63<sup>rd</sup> Street, a distance of approximately 1.31 miles located in Township 1 North, Range 22 East, Sections 1, 2 and 11; and Township 1 North, Range 23 East, Section 6 City of Kenosha, Kenosha County. This is referenced as Segment 2 on Attachment 1.

**Structure Facilities**

All structures located within the segment as identified as Segment 2 as shown in Attachment 1.

**Rights-of-Way and Access Control**

All highway access control rights and easements pertaining to said right-of-way within Segment 2 as shown in Attachment 1.

STH 50-63<sup>rd</sup> Street From Roosevelt Road TO STH 32

63 rd Street beginning at the eastern turning radius of its intersection with Roosevelt Road then proceeding generally easterly along the route marked STH 50, to its western turning radius with STH 32, a distance of approximately 0.66 miles located Township 1 North, Range 23 East, Section 6 City of Kenosha, Kenosha County. This is referenced as Segment 3 on Attachment 1.

**Structure Facilities**

All structures located within the segment as identified as Segment 3 as shown in Attachment 1.

**Rights-of-Way and Access Control**

All highway access control rights and easements pertaining to said right-of-way within Segment 3 as shown in Attachment 1.

**SECTION II**

**WINTER MAINTENANCE, SNOW AND ICE REMOVAL**

The CITY will be responsible for snow and ice removal on STH 50 (75th Street) from 43<sup>rd</sup> Avenue to Roosevelt Road after the actual transfer of jurisdiction. This is referenced as Segment 1 on Attachment 1.

The CITY will be responsible for snow and ice removal on STH 50 (Roosevelt Road) from 75<sup>th</sup> Street to 63<sup>rd</sup> Street after the actual transfer of jurisdiction. This is referenced as Segment 2 on Attachment 1.

The CITY will be responsible for snow and ice removal on STH 50 (63<sup>rd</sup> Street) from Roosevelt Road to STH 32 after the actual transfer of jurisdiction. This is referenced as Segment 3 on Attachment 1.

**SECTION III**  
**WHEN CONNECTING HIGHWAY CHANGE IS TO OCCUR**

By signing this agreement, the CITY has agreed to accept the rescindment of Segments 1, 2, and 3 in Section I. However, actual rescindment cannot occur until the first November 15 after THE DEPARTMENT completes the reconstruction of STH 50 from STH 31 to 43<sup>rd</sup> Avenue. The reconstruction project of STH 50 from I-94 to 43<sup>rd</sup> Avenue estimated start date is 2018.

THE DEPARTMENT WILL NOT be participating in any construction projects in regards to Segments 1, 2 and 3 in Section I following the actual date of rescindment. The CITY will be accepting Segments 1, 2 and 3 in Section I on an as-is basis as of the actual date of rescindment.

The DEPARTMENT will notify the CITY in writing when actual jurisdictional transfer of ownership will occur at least 30 days prior to that date.

**SECTION IV**  
**SIGNATURES AND INDICATION OF FINAL ACCEPTANCE AND**  
**AGREEMENT TO ALL TERMS**

Signatures in the places noted below, hereby constitute final agreement to, and acceptance of, all items contained in this document by the CITY and DEPARTMENT. This document supersedes any other previous documents and resolutions in this matter.

For the DEPARTMENT

\_\_\_\_\_  
Rory Rhinesmith, Administrator  
Division of Transportation Infrastructure Development,  
Wisconsin Department of Transportation

\_\_\_\_\_  
Date

For the CITY:

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_  
Date



# **JURISDICTIONAL TRANSFER AGREEMENT**

## **PERTAINING TO STH 50 STH 50 (75<sup>th</sup> STREET) FROM STH 31 TO 43<sup>rd</sup> AVENUE CITY OF KENOSHA, KENOSHA COUNTY**

The Wisconsin Department of Transportation has established a reconstruction project on STH 50 from I-94 to 43<sup>rd</sup> Avenue within the City of Kenosha.

Thus in accordance with the Wisconsin State Statute 84.02(3), Statute 84.02(8), Statute 84.295(7), the Wisconsin Department of Transportation (DEPARTMENT) and the City of Kenosha, Kenosha County, Wisconsin (CITY) hereby agree to the following terms for the transfer of jurisdictional ownership of this agreement.

### **SECTION I** **FACILITY TO BE JURISDICTIONALLY TRANSFERRED TO THE CITY OF** **KENOSHA**

The following facility will be jurisdictionally transferred to the CITY from the DEPARTMENT as part of, and subject to the conditions in this agreement.

#### **Roadway Facility**

STH 50 (75<sup>th</sup> Street) from STH 31 TO 43<sup>rd</sup> Avenue

All those segments from the eastern turning radius of its intersection with STH 31 to the eastern turning radius of its intersection with 43<sup>rd</sup> Avenue a distance of approximately 1.39 miles located in Township 1 North, Range 22 East, Sections 2, 3, 10 and 11 which are located ~~in~~ within the corporate boundaries of the City of Kenosha, County of Kenosha identified as Segment 1 as shown in Attachment 1.

#### **Structure Facilities**

All structures located within the segment as identified as Segment 1 as shown in Attachment 1.

#### **Rights-of-Way and Access Control**

All highway access control rights and easements pertaining to said right-of-way within Segment 1 as shown in Attachment 1.

**SECTION II**  
**REHABILITATION/RECONSTRUCTION/CONSTRUCTION TREATMENTS**

SEGMENT 1- STH 50 (75<sup>th</sup> Street) from I-94 TO 43<sup>rd</sup> Avenue

**Roadway Rehabilitation**

THE DEPARTMENT will perform the reconstruction of STH 50 from I-94 to 43<sup>rd</sup> Avenue as identified as Segment 1 as shown in Attachment 1. The reconstruction project of STH 50 from I-94 to 43<sup>rd</sup> Avenue estimated start date is 2018.

**Responsible Party for Design and Construction Management**

The DEPARTMENT will be responsible for the design, letting, and construction management of the work as identified as Segment 1 as shown in Attachment 1. The DEPARTMENT will also be responsible for any warranty provided for in the reconstruction project of STH 50 from I-94 to 43<sup>rd</sup> Avenue following the jurisdictional transfer of Segment 1 as shown in Attachment 1.

**SECTION III**  
**WINTER MAINTENANCE, SNOW AND ICE REMOVAL**

The CITY will be responsible for snow and ice removal on STH 50 from STH 31 to 43<sup>rd</sup> Avenue after the actual transfer of jurisdiction. This is referenced as Segment 1 on Attachment 1.

**SECTION IV**  
**WHEN JURISDICTIONAL TRANSFER IS TO OCCUR**

By signing this agreement, the CITY has agreed to accept Segment 1 in Section I. However, actual transfer cannot occur until the first November 15 after THE DEPARTMENT completes the reconstruction of STH 50 from I-94 to 43<sup>rd</sup> Avenue. The reconstruction project of STH 50 from I-94 to 43<sup>rd</sup> Avenue estimated start date is 2018.

**SECTION V**  
**SIGNATURES AND INDICATION OF FINAL ACCEPTANCE AND**  
**AGREEMENT TO ALL TERMS**

Signatures in the places noted below, hereby constitute final agreement to, and acceptance of, all items contained in this document by the CITY and DEPARTMENT. This document supersedes any other previous documents and resolutions in this matter.

For the DEPARTMENT

\_\_\_\_\_  
Rory Rhinesmith, Administrator

\_\_\_\_\_  
Date

Division of Transportation Infrastructure Development,  
Wisconsin Department of Transportation

For the CITY:

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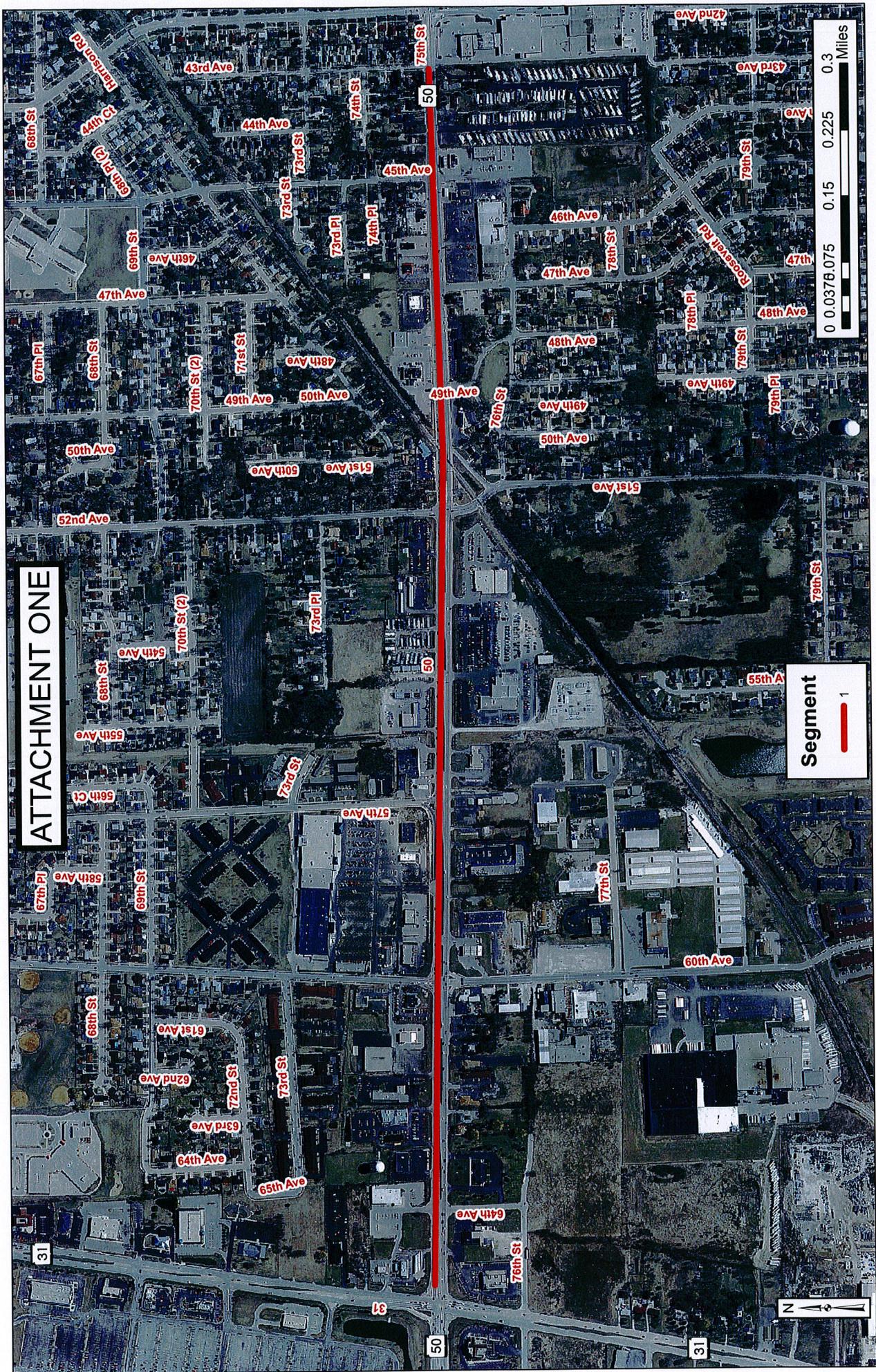
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Date

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Date



ATTACHMENT ONE

Segment 1

