

RESOLUTION NO. 10-001

A RESOLUTION AUTHORIZING THE EXECUTION OF A COOPERATIVE AGREEMENT BETWEEN THE OLIVE/GRAESER TRANSPORTATION DEVELOPMENT DISTRICT AND THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION AND A LETTER AGREEMENT RELATING THERETO

WHEREAS, on December 8, 2009, the Circuit Court of the County of St. Louis, Missouri entered a Judgment and Order Organizing a Transportation Development District (the "**Order**") that established the Olive/Graeser Transportation Development District (the "**District**") as a political subdivision pursuant to and in accordance with the Missouri Transportation Development District Act, sections 238.200 to 238.280 of the Revised Statutes of Missouri, as amended (the "**TDD Act**"); and

WHEREAS, the Order established the District for the sole purpose of financing the Infrastructure Improvements (as defined in the Order), which are an authorized "project" within the meaning of Section 238.202.1(5) of the TDD Act, through the imposition of a transportation development district sales tax; and

WHEREAS, section 238.225 of the TDD Act and paragraph M of the Order provide that the Missouri Highways and Transportation Commission (the "**Commission**") may approve the Infrastructure Improvements subject to, among other things, the District and the Commission entering into a mutually satisfactory agreement regarding development and future maintenance of the Infrastructure Improvements; and

WHEREAS, pursuant to section 238.250(2) of the TDD Act, the District may contract with the Commission to transfer the Infrastructure Improvements to the Commission free of cost or encumbrance on such terms set forth by contract; and

WHEREAS, pursuant to Resolution No. 09-007, the District designated Pace-Creve Coeur Associates, L.L.C. (the "**Developer**") as the District's agent for the purpose of completing the Infrastructure Improvements; and

WHEREAS, the Board of Directors of the District (the "**Board of Directors**") hereby finds and determines that it is necessary and desirable that the District enter into a cooperative agreement with the Commission in substantially the form attached hereto as Exhibit "A" and incorporated herein by reference (the "**Cooperative Agreement**"), subject to the Developer signing and returning the letter agreement attached hereto as Exhibit "B" and incorporated herein by reference (the "**Letter Agreement**"), which Letter Agreement generally provides that the Developer will perform all of the District's obligations under the Cooperative Agreement and any other intergovernmental cooperation agreements entered into by the District.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE OLIVE/GRAESER TRANSPORTATION DEVELOPMENT DISTRICT, AS FOLLOWS:

Section 1. The Board of Directors hereby approves the Cooperative Agreement in substantially the form attached hereto as Exhibit "A" and incorporated herein by reference, and the Board of Directors hereby approves the Letter Agreement in substantially the form attached hereto as Exhibit "B" and incorporated herein by reference. Subject to the Developer first executing and returning the Letter Agreement, the District is hereby authorized to execute and deliver the Cooperative Agreement, with such changes as shall be approved by the officers of the District executing the Cooperative Agreement, such officers' signatures on the Cooperative Agreement being conclusive evidence of their approval and the District's approval of the Cooperative Agreement and any changes thereto. The District is hereby authorized to execute and deliver the Letter Agreement, with such changes as shall be approved by the officers of the District executing the Letter Agreement, such officers' signatures on the Letter Agreement being conclusive evidence of their approval and the District's approval of the Letter Agreement and any changes thereto. Subject to the foregoing requirements, the Chair of the Board of Directors is hereby authorized and directed to execute and deliver the Cooperative Agreement and the Letter Agreement for and on behalf of and as the act and deed of the District. The Secretary or Assistant Secretary of the District is hereby authorized and directed to attest to the Cooperative Agreement and the Letter Agreement.

Section 2. The Chair of the Board of Directors is hereby authorized and directed to execute this Resolution for and on behalf of and as the act and deed of the District. The Secretary or Assistant Secretary of the District is hereby authorized and directed to attest to this Resolution.

Section 3. The District shall, and the officers and agents of the District are hereby authorized and directed to, take such further action and execute such other documents, certificates, and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 4. This Resolution shall be in full force and effect from and after its passage and approval.

Adopted this 4th day of January, 2010.

[Remainder of page intentionally left blank.]

I, the undersigned, Chair of the Board of Directors of the Olive/Graeser Transportation Development District, hereby certify that the foregoing Resolution was duly adopted by the Board of Directors at a meeting held, after proper notice given, on January 4, 2010.

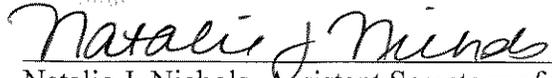


**OLIVE/GRAESER TRANSPORTATION
DEVELOPMENT DISTRICT**



Steven F. Heitz, Chair of the Board of Directors

ATTEST:



Natalie J. Nichols, Assistant Secretary of the
Olive/Graeser Transportation Development District

EXHIBIT A

CCO Form: RM06
Approved: 03/04 (BDG)
Revised: 01/09 (BDG)
Modified:

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION TRANSPORTATION DEVELOPMENT DISTRICT COOPERATIVE AGREEMENT

THIS AGREEMENT is entered into by and between the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the Olive/Graeser Transportation Development District (hereinafter, "District").

WITNESSETH:

RECITALS

WHEREAS, the District was formed in part for the purpose of constructing certain transportation improvements, including the Roadway Project (as defined below); and,

WHEREAS, the Commission is willing to cooperate with the District under the terms and conditions set out in this Agreement; and

WHEREAS, the Commission and the District desire to clarify their respective duties and responsibilities in the design, acquisition of right of way, construction, maintenance and operation of the Roadway Project.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

(1.1) DEFINITIONS OF WORDS AND TERMS:

(A) "Agreement" means this Agreement, as from time to time amended in accordance with the terms hereof.

(B) "Commission" means the Missouri Highways and Transportation Commission, which is duly organized and existing under Article IV, Section 29 of the Missouri Constitution and Sections 226.010 to 226.190 of the Revised Statutes of Missouri, as amended, and any designated representative thereof.

(C) "Commission Representative" means the Commission's District _____ District Engineer, for the purpose of administering the provisions of this Agreement.

(D) "District" means the Olive/Graeser Transportation Development District, a Transportation Development District organized under and governed by the TDD Act.

(E) "Roadway Project" means various improvements named in the District's

petition to form a TDD, namely the installation of traffic signals at the intersection of Olive Boulevard and the Dautel Lane/Graeser Road alignment, widening Olive Boulevard and installing the medians within Olive Boulevard from east of the Dautel Lane/Graeser Road alignment to Schulte Road (with one median break), all as required and approved by the Commission, including, without limitation, costs to demolish and clear the existing improvements (other than buildings), to relocate utilities, to grade the right of way, to install sidewalks, curb and gutter, to install pavement and to install the traffic signals. The improvements to be dedicated to the Commission are indicated by cross-hatched triangles on **Exhibit E** attached hereto and incorporated herein by reference.

(F) "State" means the State of Missouri.

(G) "TDD Act" means the Missouri Transportation Development District Act, Sections 238.200 through 238.280 of the Revised Statutes of Missouri, as amended.

(1.2) RULES OF INTERPRETATION: Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context indicates otherwise, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

ARTICLE II **REPRESENTATIONS**

(2.1) REPRESENTATIONS BY THE DISTRICT:

(A) The District is a political subdivision duly organized under and governed by the laws of the State, including particularly the TDD Act, and was organized by the Circuit Court of St. Louis County on December 8, 2009.

(B) The District has lawful power and authority under the TDD Act to enter into this Agreement and to carry out the transactions contemplated hereby and obligations hereunder. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Agreement acting by and through its duly authorized officers.

(C) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions or provisions of or constitute a default under any restriction, agreement or instrument to which the District is a party or by which it or any of its property is bound.

(D) To the best of the District's knowledge and belief, no official or employee of the District has any significant or conflicting interest, financial or otherwise, in the Roadway Project or in the transactions contemplated by this Agreement that is prohibited by Sections 105.450 to 105.496 of the Revised Statutes of Missouri, as amended.

(2.2) REPRESENTATIONS BY THE COMMISSION:

(A) The Commission is duly organized and existing under the laws of the State, including particularly Article IV, Section 29 of the Missouri Constitution and Sections 226.010 to 226.190 of the Revised Statutes of Missouri, as amended.

(B) The Commission has lawful power and authority to enter into this Agreement and to carry out its obligations hereunder, and by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(C) The execution and delivery of this Agreement by the Commission will not result in a breach of any of the terms of or constitute a default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Commission is a party or by which it or any of its property is bound or any of the constitutional or statutory rules or regulations applicable to the Commission or its property.

(D) To the best of the Commission's knowledge and belief, no member of the Commission has any conflicting interest, financial or otherwise, in the Roadway Project or in the transactions contemplated by this Agreement that is prohibited by Sections 105.450 to 105.496 of the Revised Statutes of Missouri, as amended.

(E) The Commission found by minute that the Roadway Project will improve or is a necessary or desirable extension of the state highways and transportation system and approved the Roadway Project subject to the District making any revisions in the plans and specifications required by the Commission and the District and Commission entering into a mutually satisfactory agreement regarding development and future maintenance of the Roadway Project.

ARTICLE III
CONSTRUCTION, MAINTENANCE AND USE OF THE MODOT PROJECT

(3.1) LOCATION: The Roadway Project is primarily located along or near the intersection of Missouri Route 340 (Olive Boulevard) and Graeser Road/Dautel Lane in Creve Coeur, Missouri.

(3.2) SCOPE OF SERVICES: The work covered by this Agreement shall include furnishing the professional, technical and other personnel, and the equipment, material and all other necessities for the preparation of design plans, construction specifications, right of way acquisition, construction and construction inspection. The specified services to be provided by the District are set forth on **Exhibit A**, attached hereto and incorporated herein by reference.

(3.3) DISTRICT RESPONSIBILITIES: The District shall provide or cause to be provided all funding, complete and accurate plans and specifications, surveying, and all necessary construction work, equipment and materials to complete the Roadway Project. The District will perform all work, functions, and responsibilities identified to be performed by the District or its contractor in **Exhibit A**, attached hereto and incorporated herein by reference. The District or its contractor shall:

(A) **PLANS & SPECIFICATIONS:**

(i) Comply with the most recent and applicable State and federal laws and regulations governing the Roadway Project. The District shall be responsible for preparing the detailed plans and specifications for the proposed Roadway Project as shown on **Exhibit B**, attached hereto and incorporated herein by reference, and in accordance with the Commission's standards and specifications. Said plans shall not be changed in concept or scope without prior approval of the Commission. The District shall provide the work in accordance with the current criteria and requirements established and adopted by the Commission and, if none are expressly established in this Agreement, then the District shall provide the work in accordance with current applicable manuals and policies of the Commission and the Federal Highway Administration (the "FHWA"), if applicable, which shall be furnished by the Commission upon request, and, absent the foregoing, with manuals and policies of the American Association of State Highway and Transportation Officials ("AASHTO").

(ii) Without limiting the foregoing, Roadway Project planning and design criteria will be in accordance with the information set forth in **Exhibit C** attached hereto and incorporated herein by reference.

(iii) Be responsible for the professional quality, technical accuracy, and coordination of designs, drawings, specifications, and construction furnished under this Agreement. The District and its consultants shall, without compensation from the Commission, correct or revise any errors or deficiencies in its designs, drawings, specifications, or such other services provided.

(iv) Provide that all plans, specifications and other documents submitted by the District and its consultants are signed and sealed by a professional engineer registered in the State.

(B) RIGHT OF WAY:

(i) Secure all right of way for the Roadway Project by purchase, donation or any other legal transfer of title, and convey the limited access right of way for the consideration of One Dollar and no/100 (\$1.00) to the State by general warranty deed or other instrument of conveyance in a form acceptable to the Commission. The parties acknowledge and agree that the Roadway Project will first be dedicated to the City of Creve Coeur, which will then convey the Roadway Project to the Commission. Pursuant to 238.247 RSMo, any use of the power of eminent domain by the District must be specifically authorized by the Commission. The District shall forward all requests for the authorization for the use of eminent domain to the Commission's representative, who will then review the matter and present the issue to the Commission at one of its regularly scheduled meetings for consideration. Approval or denial of the request for condemnation authority shall be within the sole discretion of the Commission. The District shall be responsible for all costs associated with the right of way acquisition. All rights of way conveyed to the Commission by the District shall be free from contamination by hazardous materials or substances. The District shall be responsible for all costs to remove and clean up hazardous material or substance contamination, if discovered.

(ii) Be responsible for the acquisition and costs necessary to acquire right of way in relation to the Roadway Project. The acquisition of right of way shall be pursuant to the TDD Act. The District is hereby authorized to sell and convey any excess right of way acquired in connection with the Roadway Project but not conveyed to the Commission, to any person or entity for fair market value without further approval of the Commission.

(iii) All right of way to be conveyed to the Commission by the District shall be exempt from any and all funding mechanisms available to the District, including, but not limited to, property taxes, special assessments, and sales taxes

(iv) District agrees that all acquisition of right of way to be conveyed to the Commission shall be acquired in conformity with the Federal Relocation Assistance Act and with Chapter 523 of the Revised Statutes of Missouri and the District shall maintain and provide to Commission upon conveyance, copies of documentation evidencing same, including but not limited to, title information, appraisals, letter of offers to purchase, settlement documents, legal pleadings, judgments, deeds, and easements deeds.

(v) All properties conveyed to the Commission shall be conveyed in fee simple, except, for drainage, slope, site distance easements, obtained in conformance with plans approved by the Commission.

(vi) The District shall obtain title insurance to all parcels acquired, with Commission, included as the named insured.

(vii) The District will provide subordination deeds from any utilities located within the right of way to be conveyed by the District to the Commission pursuant to this Agreement in which the utility shall subordinate its easement to the Commission's use.

(C) **PRE-CONSTRUCTION CONFERENCE:** Prior to beginning construction of the Roadway Project, the District or its contractor shall hold a pre-construction conference and shall invite the Commission Representative and representatives of the City of Creve Coeur and the County of St. Louis, the District's consultants, utility companies and the local emergency services to attend. The pre-construction conference shall include discussion on the utility relocations, Roadway Project schedule, special provisions, construction and materials inspections, as well as other topics as deemed necessary.

(D) **CONSTRUCTION:**

(i) Solicit competitive bids and award the contracts for construction to a responsible contractor, subject to the concurrence of the Commission Representative.

(ii) Construct the Roadway Project in accordance with the final approved construction plans.

(iii) Administer the construction contracts including all surveying, construction and materials inspection services. Unless the Commission elects to undertake the inspection in accordance with Section 3.4(D), the District shall engage a company to undertake an independent construction inspection on all work and materials that will be accepted into the State roadway system as further defined in **Section 3.3(F)** of this Agreement.

(E) **UTILITY RELOCATION:** Coordinate all utility relocations and be responsible for all costs associated with required utility relocations either within or outside of Commission right of way unless otherwise required by the Commission Representative.

(F) **BONDING:** Prior to commencement of construction, secure and cause to be delivered sufficient payment or performance bonds in a form and amount reasonably acceptable to the Commission Representative, of a commercial surety qualified and authorized

to do business in the State, including a performance bond in the full amount of each contract awarded by the District for the construction of the Roadway Project.

(G) LIABILITY: Be and remain liable to the Commission in accordance with applicable State and federal law for the damages to the Commission caused by the District and its consultants' acts, errors, omissions and/or negligent performance of any of the services furnished under this Agreement. Neither the Commission's review, approval or acceptance of, nor payment for any service required under this Agreement will be construed to operate as a waiver of any right herein or any cause of action arising out of the performance of this Agreement.

(H) COOPERATION AND AGREEMENTS: Cooperate fully with the Commission and its engineers, consultants and contractors on adjacent projects, and with municipalities and local government officials, public utility companies and others as may be necessary. This shall include attendance at meetings, discussions and hearings as requested by the Commission.

(I) MAINTENANCE:

(i) Provide maintenance responsibility for that portion of the Roadway Project, if any, that is not within Commission right of way.

(ii) [To be deleted once City of Creve Coeur agrees to maintain] Provide maintenance responsibility for any and all aesthetic interchange treatments or improvements, if any, approved by the Commission, including decorative or ornamental lighting. Costs for electric power for any extraordinary decorative or ornamental lighting shall be the responsibility of the District.

(J) PERMITS: Secure all required federal, state and local permits as required for design and construction of the Roadway Project and, prior to entering onto the Commission right of way to perform any obligation under this Agreement, obtain any applicable permit from the Commission, unless the performance of such obligations under this Agreement would not ordinarily require a permit from the Commission.

(K) FINAL DESIGN:

(i) At the District's cost, proceed with the final design and detail plans in accordance with the data approved or furnished by the Commission which will meet with the general standards adopted by AASHTO and approved by the Missouri Department of Transportation as provided by Title 23, United States Code, Section 109(b).

(ii) Prior to final acceptance of the Roadway Project improvements, supply the Commission with as-built plans signed and sealed by a professional engineer in Missouri certifying that the Roadway Project was constructed in compliance with the plans and specifications.

(L) INSURANCE:

(i) Maintain or cause to be maintained commercial general liability, automobile liability, worker's compensation and employer's liability insurance and professional liability insurance against negligent acts, errors or omissions of the District or its consultants and

those for whom they are legally responsible. Any insurance policy required as specified in this Section shall be written by a company that is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State.

(ii) Maintain or cause to be maintained insurance coverage for not less than the following limits of liability: (1) Commercial General Liability: \$500,000 per claim up to \$3,000,000 per occurrence; (2) Automobile Liability: \$500,000 per claim up to \$3,000,000 per occurrence; (3) Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000; and (4) Professional ("Errors and Omissions") Liability: \$1,000,000, each claim and in the annual aggregate.

(iii) Upon reasonable request, provide the Commission with certificates of insurance evidencing the required coverage and that such insurance is in effect.

(M) CLOSURES: Obtain specific approval from the Commission for any lane closure during construction of the Roadway Project, the request for which shall be submitted at least 10 working days prior to such closure.

(N) OPERATION: Be responsible for the operation and cost of operation of the Roadway Project until the Commission accepts the Roadway Project pursuant to Article V hereof.

(3.4) COMMISSION RESPONSIBILITIES: The Commission shall:

(A) PLANS AND SPECIFICATIONS:

(i) Review the applicable plans and specifications prepared by the District or its contractor and, if acceptable, approve said plans and specifications as further defined in this Agreement.

(ii) Review and study all applicable plans, specifications and shop drawings for compliance with this Agreement and provide personnel to supervise and oversee the independent inspection of the Roadway Project, including fabrication, construction, and materials related thereto.

(B) UTILITY RELOCATION: Review and approve all applicable utility relocations.

(C) MAINTENANCE: Accept applicable portions of the improvements for maintenance into the State system after final acceptance.

(D) CONSTRUCTION INSPECTION: If the Commission so elects, it will provide, at the Commission's sole cost and expense, personnel to inspect all materials and construction work that will be accepted into the State roadway system, including fabrication, and to insure that construction is proceeding in accordance with the approved plans and specifications. If the Commission elects not to conduct the inspection, the District will provide it in accordance with Section 3.3(D).

(3.5) PROJECT SCHEDULE:

(A) The work shall be completed in accordance with the schedule contained in **Exhibit D**, attached hereto and incorporated herein by reference. This schedule shall be adjusted as may be mutually agreed upon by the Commission and the District.

(B) The Commission will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the District. Requests for extensions of time shall be made in writing by the District before that phase of the work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

(C) The District and the Commission agree that time is of the essence. The District and the Commission are required to meet the schedule provided in **Exhibit D**, attached hereto and incorporated herein by reference. In the event of delays due to unforeseeable circumstances caused beyond the control of and without fault or negligence of the District, no claim for damages shall be made by either party. An extension of time shall be the sole allowable compensation for any such delays.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes only the following:

- (i) War or acts of war, declared or undeclared, or acts of terror;
- (ii) Flooding, earthquake, or other major natural disaster;
- (iii) Discovery on the Roadway Project site of differing site conditions, hazardous substances, or other condition which in the sole judgment of the engineer, justifies a suspension of the work or necessitates modifications of the Roadway Project design or plans;
- (iv) Court proceedings;
- (v) Material changes in work or extra work;
- (vi) Strikes, lock-outs, labor troubles, or inability to procure materials;
- (vii) Lack of issuance of any permits or legal authorization by any applicable local transportation authority, provided that any "delay due to unforeseeable causes" due to lack of issuance or legal authorization shall not cause an extension of time greater than six (6) months.

(3.6) **INDEMNIFICATION**: The District shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the District's performance of its obligations under this Agreement.

(3.7) **PLAN REVIEW AND APPROVAL**: The District or its contractor shall submit final design/construction plans, specifications and special provisions to the Commission Representative for approval. Upon receipts of such plans and special provisions by the Commission Representative, the Commission Representative shall determine if the plans are in compliance with applicable standards and specifications and contain all provisions required by this Agreement. Once such plans meet the requirements herein, they may be approved by the Commission Representative and the Commission Representative will notify same to the District

in writing. After the Commission Representative has completed his review and approval of all of the final design/construction plans, specifications and special provisions for the Roadway Project, the District shall be authorized to construction the Roadway Project pursuant to a construction contract entered into pursuant to the TDD Act and the final design/construction plans, specifications and special provisions as approved. Unless otherwise provided by agreement of the parties, no construction activities will be allowed within Commission right of way until the District obtains final plan and specification approval from the Commission. Final approval of plans and specifications will not be considered until the District or its contractor certifies in writing that its pre-construction responsibilities outlined in **Sections 3.3(A) and 3.3(C)** of this Agreement have been completed.

ARTICLE IV CONTRACT REQUIREMENTS

(4.1) CONSTRUCTION CONTRACT: After the Commission has completed its review and approval of all of the plans, specifications, and special provisions for the Roadway Project, the District shall enter into a construction contract with a contractor pursuant to the TDD Act to construct said improvements in accordance with such approved plans and specifications, subject to the following conditions:

(A) Appropriate provisions shall be included in the terms of the construction contract:

(i) Authorizing employees of the Commission to inspect the work and to approve or disapprove such work in the same manner as if the construction contract had been entered into between the contractor and the State acting by and through the Commission. The Commission agrees that all such inspections and approvals shall be conducted in a timely and reasonable manner.

(ii) Acknowledging that the contractor and subcontractors are looking solely to the District for payments pursuant to the construction contract, including without limitation payments for base contract work and change order work, and for claims pursuant to the contract or for breach thereof, and confirming that the contractor and subcontractors shall have no claim rights against the Commission.

(iii) Requiring that construction of the Roadway Project shall be in accordance with current standard construction practices of the Missouri Department of Transportation, which require compliance with the Missouri Standard Specifications for Highway Construction including General Provisions, and Missouri Standard Plans for Highway Construction.

(iv) Requiring its contractor, through contract documents, to assume all responsibility for directing traffic during construction, including without limitation lighting, signing, and striping.

(B) The District shall have dedicated to the Commission, free and clear of liens and encumbrances, free of contamination from hazardous materials or substance, the right of way of the roadway, all as depicted on **Exhibit B**, attached hereto and incorporated herein by reference.

(C) The construction contract shall contain provisions authorizing assignment to the Commission of the rights of the District upon material default of the contractor, which assignment shall be at the option of the Commission. In any event, the District shall remain obligated to complete the performance under the construction contract upon material default of the contractor.

(4.2) CONSTRUCTION INSPECTION: The Commission shall, at its sole cost and expense, provide personnel to inspect all materials and construction work that will be accepted into the state roadway system, including fabrication, and to insure that construction is proceeding in accordance with the approved plans and specifications. The Commission shall have access to the Roadway Project at all times and shall have the authority to perform additional construction inspections as desired. The Commission's personnel will coordinate their functions with the District and its consultants as necessary to resolve questions that arise during the progress of the Roadway Project. Pursuant to the TDD Act, after the Commission approves the final construction plans and specifications, the District shall obtain prior approval of the Commission of any modification of such plans or specifications. All final decisions as to compliance with such plans and specifications shall lie with the Commission. The Roadway Project shall not be deemed complete until after final acceptance of the Roadway Project by the Commission.

ARTICLE V FINAL ACCEPTANCE OF THE MODOT PROJECT

(5.1) COMMISSION ACCEPTANCE OF THE MODOT PROJECT: After completion of construction of the Roadway Project, the District shall provide a written request to the Commission for final inspection and acceptance along with a certificate of completion by its consultant providing design services. The Commission Representative shall thereafter inspect the improvements in a reasonable and timely manner. If the Commission Representative finds said Project improvements have been completed in compliance with all applicable policies, specifications, regulations, and plans, then the Commission Representative shall give written notice to the District of final acceptance of the Roadway Project. The Commission Representative shall accept the Roadway Project improvements for maintenance upon the date of such notice of final acceptance. The parties acknowledge and agree that the Roadway Project will first be dedicated to the City of Creve Coeur, which will then convey the Roadway Project to the Commission. It is understood that, if the Commission Representative inspects the Roadway Project improvements and finds that such Project improvements have not been completed in compliance with all applicable policies, specifications, regulations, and plans, then the Commission Representative shall notify the District in writing specifying what portion of the Roadway Project improvements fails to meet the applicable policies, specifications, regulations and plans by delivery of a notice of non-acceptance to the District. The District shall, upon receipt of said notice of non-acceptance, modify the Roadway Project improvements so that they are in compliance with all applicable policies, specifications, regulations, and plans. The Commission Representative shall then accept the Roadway Project improvements and give written notice of same to the District in a reasonable and timely manner after the District's submission of a notice requesting re-inspection of the Roadway Project improvements.

(5.2) OPENING OF PROJECT TO TRAFFIC: **It is expressly understood by the parties that the Roadway Project contemplated by this Agreement shall not be opened to traffic until after acceptance thereof by the Commission Representative.** This Section supercedes all other provisions in this Agreement to the extent of any inconsistency.

(5.3) OWNERSHIP OF IMPROVEMENTS: It is understood by the District and the Commission that any of the Roadway Project improvements placed on the Commission's right of way becomes the property of the Commission. Effective upon final acceptance of the construction of the Roadway Project, the Commission shall keep control and maintain as part of the state highway system that portion of the Roadway Project lying within state-owned limited access right of way limit, and the District shall have no further rights, obligations or responsibility with respect to said Roadway Project improvements other than those mentioned in **Section 3.3(I)** of this Agreement.

ARTICLE VI MISCELLANEOUS PROVISIONS

(6.1) FHWA APPROVAL: This Agreement is entered into subject to recommendations made by the Federal Highway Administration.

(6.2) AMENDMENTS: Any change in this Agreement, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the District and the Commission.

(6.3) ASSIGNMENT: The District shall not assign or delegate any interest in this Agreement and shall not transfer any interest in this Agreement, whether by assignment or notation, without the prior written consent of the Commission.

(6.4) BANKRUPTCY: Upon filing for any bankruptcy or insolvency proceeding by or against the District, whether voluntarily or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the District responsible for damages.

(6.5) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The District shall comply with all federal, state and local laws related to the performance of its obligations under this Agreement

(6.6) CANCELLATION: The Commission shall give the District written notice of any material breach by the District of the District's obligation under this Agreement. Such notice of breach shall contain a reasonable time for the District to correct or cure such breach. In the event the District fails to correct or cure such breach, the Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the District with a written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the District. Further, the Commission may cancel this Agreement if the Commission does not approve the final construction plan and specifications pursuant to Section 238.225 of the TDD Act.

(6.7) NONSOLICITATION: The District warrants that it has not employed or retained any company or person, other than a bona fide employee or agent working for the District, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee or agent, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the agreement price or

consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

(6.8) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement or respecting its alleged breach shall be instituted only in the Circuit Court of Cole County, Missouri.

(6.9) NONDISCRIMINATION CLAUSE: The District shall comply with all state and federal statutes applicable to the District relating to nondiscrimination, including but not limited to Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000d and 2000e, et seq.); and with any provisions of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, et seq.) applicable to the District.

(6.10) IMMUNITY OF OFFICERS, EMPLOYEES AND MEMBERS OF THE COMMISSION AND THE DISTRICT: No recourse shall be had for the payment of the principal of or premium or interest on any bonds, notes or other obligations, or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement contained against any past, present or future officer, member, employee, director or agent of the Commission, or the District, respectively, or of any successor public or private corporation thereto, as such, either directly or through the Commission or the District, respectively, or any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment, penalty, or otherwise, and all such liability of any such officers, members, employers, directors, or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

(6.11) SEVERABILITY: In the event that any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision herein.

(6.12) NOTICES: All notices or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid and addressed as follows:

(A) To the District:
Mr. Steven F. Heitz
Executive Director of the District
c/o Pace Properties Incorporated
1401 S. Brentwood Blvd., Suite 900
St. Louis, MO 63144

With a copy to:
Stephen L. Kling, Jr., Esq.
Jenkins & Kling, P.C.
10 S. Brentwood Blvd., Suite 200
St. Louis, Missouri 63105

(B) To the Commission:

Missouri Highways and Transportation Commission
105 West Capitol Avenue
P.O. Box 270
Jefferson City, Missouri 65102
Attention: Commission Secretary

(6.13) TERM OF AGREEMENT: The term of this Agreement shall commence upon the execution hereof and continue until title to the Roadway Project is transferred to the Commission under the provisions of **Section 5.1** of this Agreement, unless sooner terminated as specified herein.

(6.14) DISPUTES: The Commission Representative shall make the final decision on any disputes between the Commission and the District provided, however, that nothing contained in this Section shall be construed to preclude any action or proceeding in law or equity before any court, governmental body or administrative agency or instrumentality thereof.

(6.15) AUDIT OF RECORDS: The District shall maintain all records relating to this Agreement, including but not limited to invoices, payrolls, records of revenues received and costs incurred, and other such records. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during this Agreement period and any extension thereof. Pursuant to Section 238.272 of the TDD Act, the District shall obtain an audit by the state auditor not less than once every three years or more frequently if the state auditor deems appropriate and shall provide a copy of each audit to the Commission. In addition, if the District obtains an independent audit of its financial records, it shall forward a copy of the audit to the Commission. The District will provide this copy of the audit free of charge and at no cost to the Commission.

(6.16) INSURANCE: The District or its contractor shall procure and maintain during the agreement period insurance to cover any tort liability arising from the Roadway Project. The amount of insurance shall be not less than the amounts established by Section 537.610.2 of the Revised Statutes of Missouri, as amended. In the event the amounts specified in Section 537.610.2 of the Revised Statutes of Missouri, as amended, are changed, the District or its contractor must procure and maintain insurance in an amount necessary to satisfy such legislative or administrative change. Any insurance procured by the District or its contractor for such tort liability shall be subject to review and approval by Commission.

(6.17) STATE WAGE LAWS: The District and its general contractors and subcontractors shall pay the prevailing hourly rate of wages for each craft or type of worker required to complete the Roadway Project as determined by the Department of Labor and Industrial Relations of Missouri, and it shall further comply in every respect with the minimum wage laws of the State.

(6.18) COMPLETION OF PROJECT: It is the intent of the parties that the Commission is to assume no liability for completion of the Roadway Project and, if the Commission should expend any funds in connection therewith, the District will reimburse the Commission for those funds, other than for the Commission responsibilities assumed in **Section 3.4** of this Agreement.

(6.19) INDEPENDENT PARTIES: The parties to this Agreement are independent entities. No employee, agent, or representative of the District, its contractor, or subcontractors

shall ever be considered or deemed to be an employee, agent, or representative of the Commission.

(6.20) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the District.

(6.21) EXEMPTION OF COMMISSION PROPERTY: The District shall not assess a sales tax, property tax assessment or special assessment or impose any other funding mechanism authorized by Chapter 238 RSMo on any property or property interests presently owned or hereinafter acquired by the Commission within the boundary of the District as it exists now or may hereinafter be extended.

(6.22) NO INTEREST: By constructing the Roadway Project on Commission right of way, the District gains no interest in the improvements on Commission right of way whatsoever. The Commission shall not be obligated to keep the constructed Project improvements in place if the Commission, in its sole discretion, determines removal or modification of improvements is in the best interest of the State highway system. In the event the Commission decides to remove or otherwise reduce the Roadway Project improvements, the District shall not be entitled to a refund of the funds expended by the District pursuant to this Agreement.

(6.23) NO ADVERSE INFERENCE: This Agreement shall not be construed more strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

(6.24) VOLUNTARY NATURE OF AGREEMENT: Each party to this Agreement warrants and certifies that it enters into this transaction and executes this Agreement freely and voluntarily and without being in a state of duress or under threats or coercion.

(6.25) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(6.25) POLICE POWERS: The Commission shall retain its police powers with respect to the regulation of traffic upon the improvement contemplated.

(6.27) REIMBURSEMENT OF PLAN REVIEW: The parties recognize that the Commission may not have sufficient resources to immediately review the plans for the Roadway Project. The parties agree that the Commission, in its sole discretion, may elect to retain a consultant to review the plans for the Roadway Project. In the event the Commission retains a consultant to review the Roadway Project plans, the District shall reimburse the Commission for the funds expended by the Commission. The Commission will forward an invoice to the District for the reimbursement for the consultant services and the District shall pay the invoice within 30 days of receipt of the invoice.

(6.28) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(6.29) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding the Roadway Project and supersedes all prior written or oral communications between the parties regarding this subject.

(The remainder of this page is intentionally left blank; signatures and execution appear on following page.)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers.

Executed by the District this ____ day of _____, 20____.

Executed by the Commission this ____ day of _____, 20____.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

OLIVE/GRAESER TRANSPORTATION
DEVELOPMENT DISTRICT

By _____

By _____

Chair

Title: _____

Attest:

Attest:

By _____
Secretary to the Commission

By _____
Secretary/Assistant Secretary

Approved as to Form:

Approved as to Form:

By _____
Counsel for the Commission

By _____
Counsel for the District

EXHIBIT A

SCOPE OF SERVICES

The District shall perform or has performed the following services and work in accordance with the standard practice of the Commission.

(A) Design and furnish to the Commission fully checked design plans together with a suitable copy of the final design computations, coordinate geometry data and quantity computations for the Roadway Project.

(B) The design plans shall be complete and shall cover all parts of the Roadway Project they represent. The degree of detail shall be comparable to that furnished on typical plans prepared by the Commission.

(C) The design computations and plans shall be acceptable to the Commission and, to the extent required by **Section 3.3(K)(ii)** of this Agreement, the FHWA.

(D) The design computations and plans will become the property of the Commission.

(E) CADD drawings, size 22 inch by 34 inch, on 20# bond paper, from which good legible prints and satisfactory reproducible copies can be obtained will be acceptable. The District shall also furnish ten sets of 11 inch by 17 inch paper prints and ten sets of the Roadway Project specifications.

(F) Prepare special provisions as necessary to supplement the latest edition of the *Missouri Standard Specifications for Highway Construction*.

(G) Provide all materials, equipment and labor for the construction of the Roadway Project in accordance with standards, criteria and specifications of the Missouri Department of Transportation and, to the extent required by **Section 3.3(K)(ii)** of this Agreement, the FHWA.

(H) Administer the construction contract and provide all surveying and construction inspection services.

(I) Secure and dedicate right of way and easement deeds to the Commission.

(J) Secure the relocation of all utility adjustments and incur all associated costs.

(K) Secure all local, state and federal permits as required.

EXHIBIT B

PLANS FOR PROJECT

(Attached hereto or on file with the Commission's District Engineer.)

EXHIBIT C

SERVICES TO BE PROVIDED BY THE COMMISSION

The Commission shall furnish to the District without charge the following information.

- (A) Current base documents for Job Special Provisions and General Special Provisions.
- (B) General design criteria.
- (C) Available standard detail sheets.

EXHIBIT D

CONSTRUCTION SCHEDULE

(Attached hereto or on file with the Commission's District Engineer.)

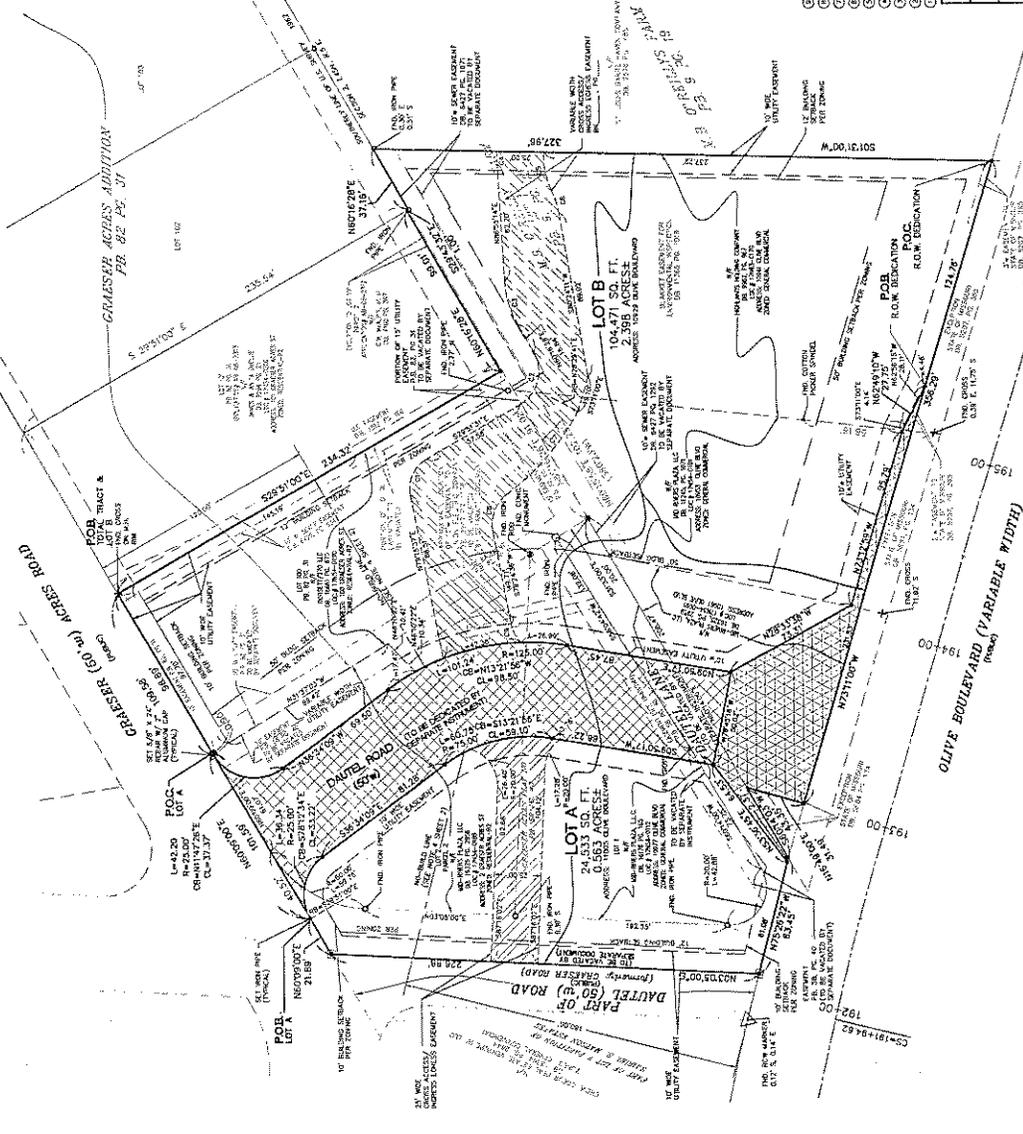
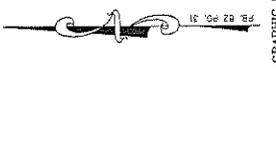
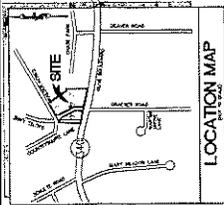
EXHIBIT E

DEPICTION OF IMPROVEMENTS TO BE DEDICATED TO THE COMMISSION

(Attached hereto and indicated by cross-hatched triangles)

THE CROSSING AT GRAESER

A TRACT OF LAND BEING LOT 101 OF GRAESER ACRES ADDITION AS RECORDED IN PLAT BOOK 82 PAGE 31, LOTS 1 AND 2 OF GRAESER ACRES PLAT NO. 1 AS RECORDED IN PLAT BOOK 58 PAGE 40, PART OF LOT 1 OF THE SUBDIVISION OF THE M.B. O'REILLY FARM AS RECORDED IN PLAT BOOK 9 PAGE 19, LOCATED IN U.S. SURVEY 7862 AND IN THE NORTHWEST 1/4 OF SECTION 2, TOWNSHIP 45 NORTH, RANGE 5 EAST OF THE 5TH PRINCIPAL MERIDIAN CITY OF CREVE COEUR, ST. LOUIS COUNTY, MISSOURI
THIS PLAT CONTAINS 2.961 AC.



ACCESS-EASEMENT CURVE TABLE

CURVE	LENGTH	RADIUS	BEARING	CHORD	CHORD LENGTH
C1	22.27	18.00	S65°17'57.1"	20.97	20.97
C2	37.76	17.50	S71°52'45.1"	34.94	34.94
C3	4.60	48.00	N83°17'49.2"	4.65	4.65
C4	20.30	13.00	S78°29'26.7"	22.77	22.77
C5	12.71	44.00	S72°57'53.7"	15.10	15.10
C6	22.44	20.00	N62°27'48.7"	21.31	21.31
C7	11.47	20.00	S62°10'47.7"	11.32	11.32

- ① 8/26/09 REVISED PER CLIENT COMMENTS
- ② 8/27/09 REVISED PER CLIENT COMMENTS
- ③ 8/27/09 REVISED PER CLIENT COMMENTS
- ④ 8/27/09 REVISED ACCESS EASEMENT - LOT 8
- ⑤ 10/14/08 REVISED LOTS A & B PER CLIENTS COMMENTS
- ⑥ 3/25/08 REVISED ACCESS EASEMENT LOT 8
- ⑦ 3/26/08 REVISED ACCESS EASEMENT LOT 8
- ⑧ 1/10/08 REVISED PROPERTY LINE AROUND EXISTING PROPERTY
- ⑨ 3/10/07 REVISED LOCATION OF COMPANUTE LANE LINE

ST. LOUIS COUNTY BENCHMARK
13-78 BLM BENCH MARK ON SOUTHWEST CORNER OF LOT 101 OF THE SUBDIVISION OF THE M.B. O'REILLY FARM AND 1/2 MILE SOUTH OF THE INTERSECTION OF GRAESER (60 FT) ACCESS ROAD AND OLIVE STREET ROAD.

PREPARED FOR:
PACE PROPERTIES
10000 WOODBURN BLVD., STE. 800
ST. LOUIS, MISSOURI 63144
PHONE: (314) 968-0220
FAX: (314) 968-0550

STOCK & ASSOCIATES
Consulting Engineers, Inc.
257 Charleston Business Parkway
St. Louis, MO 63103
TEL: (314) 968-3300
FAX: (314) 968-3300
e-mail: gen@stockandassociates.com
Web: www.stockandassociates.com

DATE: 8/10/07 D.M.E. 1/25/07 206-3800 1 of 2
R.S.B.

EXHIBIT B

OLIVE/GRAESER TRANSPORTATION DEVELOPMENT DISTRICT
C/O JENKINS & KLING, P.C., GENERAL COUNSEL
10 S. BRENTWOOD BLVD., SUITE 200
SAINT LOUIS, MISSOURI 63105

January 4, 2010

Pace-Creve Coeur Associates, L.L.C.
c/o Mr. Mark A. Sedgwick
1401 S. Brentwood Blvd., Suite 900
St. Louis, MO 63144

RE: *Intergovernmental Cooperation Agreements between the Olive/Graeser Transportation Development District (the “District”) and the Missouri Highways and Transportation Commission (the “Commission”) and/or the City of Creve Coeur, Missouri (the “City”), and/or St. Louis County, Missouri (the “County”)*

Dear Mr. Sedgwick:

This letter agreement, upon execution of the parties, shall constitute an agreement with respect to the matters described herein.

Recitals

On December 8, 2009, the Circuit Court of the County of St. Louis, Missouri entered a Judgment and Order Organizing a Transportation Development District (the “**Order**”) that established the District as a political subdivision pursuant to and in accordance with the Missouri Transportation Development District Act, sections 238.200 to 238.280 of the Revised Statutes of Missouri, as amended (the “**TDD Act**”). Pursuant to the District’s Resolution No. 09-005, Pace-Creve Coeur Associates, L.L.C. (the “**Developer**”) was designated as the District’s agent for the purpose of completing the Infrastructure Improvements (as defined in the Order), as required by that certain District Development Agreement dated August 31, 2009, as amended (the “**Development Agreement**”).

Section 238.225 of the TDD Act and paragraph M of the Order provide that, before construction or funding of the State Infrastructure Improvements (as defined in the Order), the District must submit the State Infrastructure Improvements, together with the proposed plans and specifications, to the Commission for its prior approval, and if the Commission by minute finds that the State Infrastructure Improvements will improve or are a necessary or desirable extension of the state highways and transportation system, the Commission may approve the State Infrastructure Improvements subject to, among other things, the District and the Commission entering into a mutually satisfactory agreement regarding development and future maintenance of the State Infrastructure Improvements. Pursuant to the District’s Resolution No. 10-001, the

District will execute a cooperative agreement with the Commission in substantially the form attached hereto as Exhibit "1" and incorporated herein by reference (the "Cooperative Agreement").

Section 238.225 of the TDD Act and paragraph N of the Order provide that, before construction or funding of the Local Infrastructure Improvements (as defined in the Order), the District must submit the Local Infrastructure Improvements, together with the proposed plans and specifications, to the City and/or the County, as applicable, for prior approval, and approval of the Local Infrastructure Improvements shall vest exclusively with the City and/or the County, subject to, among other things, the District and the City and/or the County entering into a mutually satisfactory agreement regarding development and future maintenance of the Local Infrastructure Improvements. The District may enter into one or more cooperative agreements with the City and/or the County.

Because Developer will not be a party to the Cooperative Agreement but will cause the Infrastructure Improvements to be constructed, the Developer and the District wish to confirm that Developer will perform the District's obligations under the Cooperative Agreement and indemnify the District as set forth in this letter agreement. The District's Board of Directors authorized the execution of this letter agreement pursuant to Resolution No. 10-001, approved on January 4, 2010.

Agreements

1. Recitals. The foregoing recitals are true and correct in all material respects.
2. Obligations of Cooperative Agreement. The District authorizes the Developer to, and the Developer agrees that it will, perform all of the District's obligations under the Cooperative Agreement promptly, in a good and workmanlike manner, and according to all terms, conditions, requirements, and other provisions of the Cooperative Agreement. The Developer shall complete the Infrastructure Improvements and shall perform all obligations under the Cooperative Agreement at such time and in the manner provided in the Cooperative Agreement, without request or demand by the District. If Developer defaults under the Cooperative Agreement the District shall have the right to terminate the provisions of this Section if Developer fails to cure such default within fifteen (15) days' after written notice to Developer of non-performance under this Section or within such longer period of time agreed upon by the parties to the extent such cure will reasonably take longer than fifteen days.
3. Indemnification. To the fullest extent permitted by law, Developer hereby agrees to protect, indemnify, defend (by counsel reasonably acceptable to the District) and save harmless, the District and its respective directors, officers, agents, and employees from and against any and all liability, claim, cause of action, judgment, damage, settlement, principal, interest, fine and expense (including, without limitation, attorneys' fees, court costs and all litigation expenses) in excess of any such items as may be covered and paid by insurance available pursuant to the provisions of this letter agreement, resulting from or arising out of (i) any default by Developer under this letter agreement or (ii) any misrepresentation or breach of warranty made by Developer under this letter agreement, including but not limited to loss or

damage to property or any injury or death of any person, or liability for hazardous materials or environmental contamination. Nothing contained in this letter agreement shall limit a direct cause of action by the District against the Developer or limit the obligations of Developer or Pace Creve Coeur Corporation under the Development Agreement.

4. Insurance. Developer will add the District as an additional insured on all insurance policies required by the Cooperative Agreement and by all construction contracts entered into by Developer relating to the Infrastructure Improvements (the "**Construction Contracts**").

5. Developer's Construction Contracts. Developer will cause all of the Construction Contracts (a) to incorporate by reference the Cooperative Agreement and the Development Agreement, and (b) to provide that the contractor is bound by Section 2 of this letter agreement. In the event of a default by Developer under this letter agreement, the District will have the right to enforce the Construction Contracts, including without limitation the right to compel the contractor to complete the Infrastructure Improvements in accordance with the Construction Contracts.

6. Termination; Amendment. Unless earlier terminated by a written instrument signed by both parties or pursuant to Section 2 hereof, this letter agreement shall remain in full force and effect until the Infrastructure Improvements are accepted by the Commission and title to the Roadway Project (as defined in the Cooperative Agreement) is transferred to the Commission pursuant to the Cooperative Agreement, and upon such acceptance and transfer, this letter agreement shall terminate. This letter agreement cannot be changed, modified, or amended in any respect except by a written instrument signed by both parties.

7. Miscellaneous. This letter agreement shall be governed by the laws of the State of Missouri. This letter agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. The failure on the part of any party hereto to insist upon strict compliance by the other party with any of the terms, covenants, or conditions hereof, shall not be deemed a waiver of such term, covenant, or condition. In the event of any action or proceeding brought by either party against the other, under or pursuant to or in the enforcement of the terms and provisions of this letter agreement, the substantially prevailing party shall be entitled to recover (and the non-prevailing party shall be obligated to pay) all costs and expenses incurred by the substantially prevailing party in connection therewith, including reasonable attorneys' fees (as determined by court action) and court costs.

[Remainder of page intentionally left blank.]

Letter agreement re: Cooperative Agreement
January 4, 2010
Page 4

Please indicate your agreement with the foregoing by signing this letter where indicated below.

Sincerely,

THE OLIVE/GRAESER TRANSPORTATION
DEVELOPMENT DISTRICT

By: _____
Steven F. Heitz, Chair of the Board of Directors

Accepted and agreed to
as of the ____ day of January, 2010.

PACE-CREVE COEUR ASSOCIATES, L.L.C.

By: Pace-Graeser Associates, L.L.C., its Manager

By: Pace Realty Fund, L.L.C., its Manager

By: Pace Realty Investors, L.L.C., its Manager

By: _____
Mark A. Sedgwick, Manager

CCO Form: RM06
Approved: 03/04 (BDG)
Revised: 01/09 (BDG)
Modified:

EXHIBIT 1

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION TRANSPORTATION DEVELOPMENT DISTRICT COOPERATIVE AGREEMENT

THIS AGREEMENT is entered into by and between the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the Olive/Graeser Transportation Development District (hereinafter, "District").

WITNESSETH:

RECITALS

WHEREAS, the District was formed in part for the purpose of constructing certain transportation improvements, including the Roadway Project (as defined below); and,

WHEREAS, the Commission is willing to cooperate with the District under the terms and conditions set out in this Agreement; and

WHEREAS, the Commission and the District desire to clarify their respective duties and responsibilities in the design, acquisition of right of way, construction, maintenance and operation of the Roadway Project.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

(1.1) DEFINITIONS OF WORDS AND TERMS:

(A) "Agreement" means this Agreement, as from time to time amended in accordance with the terms hereof.

(B) "Commission" means the Missouri Highways and Transportation Commission, which is duly organized and existing under Article IV, Section 29 of the Missouri Constitution and Sections 226.010 to 226.190 of the Revised Statutes of Missouri, as amended, and any designated representative thereof.

(C) "Commission Representative" means the Commission's District _____ District Engineer, for the purpose of administering the provisions of this Agreement.

(D) "District" means the Olive/Graeser Transportation Development District, a Transportation Development District organized under and governed by the TDD Act.

(E) "Roadway Project" means various improvements named in the District's

petition to form a TDD, namely the installation of traffic signals at the intersection of Olive Boulevard and the Dautel Lane/Graeser Road alignment, widening Olive Boulevard and installing the medians within Olive Boulevard from east of the Dautel Lane/Graeser Road alignment to Schulte Road (with one median break), all as required and approved by the Commission, including, without limitation, costs to demolish and clear the existing improvements (other than buildings), to relocate utilities, to grade the right of way, to install sidewalks, curb and gutter, to install pavement and to install the traffic signals. The improvements to be dedicated to the Commission are indicated by cross-hatched triangles on **Exhibit E** attached hereto and incorporated herein by reference.

(F) "State" means the State of Missouri.

(G) "TDD Act" means the Missouri Transportation Development District Act, Sections 238.200 through 238.280 of the Revised Statutes of Missouri, as amended.

(1.2) RULES OF INTERPRETATION: Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context indicates otherwise, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

ARTICLE II **REPRESENTATIONS**

(2.1) REPRESENTATIONS BY THE DISTRICT:

(A) The District is a political subdivision duly organized under and governed by the laws of the State, including particularly the TDD Act, and was organized by the Circuit Court of St. Louis County on December 8, 2009.

(B) The District has lawful power and authority under the TDD Act to enter into this Agreement and to carry out the transactions contemplated hereby and obligations hereunder. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Agreement acting by and through its duly authorized officers.

(C) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions or provisions of or constitute a default under any restriction, agreement or instrument to which the District is a party or by which it or any of its property is bound.

(D) To the best of the District's knowledge and belief, no official or employee of the District has any significant or conflicting interest, financial or otherwise, in the Roadway Project or in the transactions contemplated by this Agreement that is prohibited by Sections 105.450 to 105.496 of the Revised Statutes of Missouri, as amended.

(2.2) REPRESENTATIONS BY THE COMMISSION:

(A) The Commission is duly organized and existing under the laws of the State, including particularly Article IV, Section 29 of the Missouri Constitution and Sections 226.010 to 226.190 of the Revised Statutes of Missouri, as amended.

(B) The Commission has lawful power and authority to enter into this Agreement and to carry out its obligations hereunder, and by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(C) The execution and delivery of this Agreement by the Commission will not result in a breach of any of the terms of or constitute a default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Commission is a party or by which it or any of its property is bound or any of the constitutional or statutory rules or regulations applicable to the Commission or its property.

(D) To the best of the Commission's knowledge and belief, no member of the Commission has any conflicting interest, financial or otherwise, in the Roadway Project or in the transactions contemplated by this Agreement that is prohibited by Sections 105.450 to 105.496 of the Revised Statutes of Missouri, as amended.

(E) The Commission found by minute that the Roadway Project will improve or is a necessary or desirable extension of the state highways and transportation system and approved the Roadway Project subject to the District making any revisions in the plans and specifications required by the Commission and the District and Commission entering into a mutually satisfactory agreement regarding development and future maintenance of the Roadway Project.

ARTICLE III
CONSTRUCTION, MAINTENANCE AND USE OF THE MODOT PROJECT

(3.1) LOCATION: The Roadway Project is primarily located along or near the intersection of Missouri Route 340 (Olive Boulevard) and Graeser Road/Dautel Lane in Creve Coeur, Missouri.

(3.2) SCOPE OF SERVICES: The work covered by this Agreement shall include furnishing the professional, technical and other personnel, and the equipment, material and all other necessities for the preparation of design plans, construction specifications, right of way acquisition, construction and construction inspection. The specified services to be provided by the District are set forth on **Exhibit A**, attached hereto and incorporated herein by reference.

(3.3) DISTRICT RESPONSIBILITIES: The District shall provide or cause to be provided all funding, complete and accurate plans and specifications, surveying, and all necessary construction work, equipment and materials to complete the Roadway Project. The District will perform all work, functions, and responsibilities identified to be performed by the District or its contractor in **Exhibit A**, attached hereto and incorporated herein by reference. The District or its contractor shall:

(A) **PLANS & SPECIFICATIONS:**

(i) Comply with the most recent and applicable State and federal laws and regulations governing the Roadway Project. The District shall be responsible for preparing the detailed plans and specifications for the proposed Roadway Project as shown on **Exhibit B**, attached hereto and incorporated herein by reference, and in accordance with the Commission's standards and specifications. Said plans shall not be changed in concept or scope without prior approval of the Commission. The District shall provide the work in accordance with the current criteria and requirements established and adopted by the Commission and, if none are expressly established in this Agreement, then the District shall provide the work in accordance with current applicable manuals and policies of the Commission and the Federal Highway Administration (the "FHWA"), if applicable, which shall be furnished by the Commission upon request, and, absent the foregoing, with manuals and policies of the American Association of State Highway and Transportation Officials ("AASHTO").

(ii) Without limiting the foregoing, Roadway Project planning and design criteria will be in accordance with the information set forth in **Exhibit C** attached hereto and incorporated herein by reference.

(iii) Be responsible for the professional quality, technical accuracy, and coordination of designs, drawings, specifications, and construction furnished under this Agreement. The District and its consultants shall, without compensation from the Commission, correct or revise any errors or deficiencies in its designs, drawings, specifications, or such other services provided.

(iv) Provide that all plans, specifications and other documents submitted by the District and its consultants are signed and sealed by a professional engineer registered in the State.

(B) RIGHT OF WAY:

(i) Secure all right of way for the Roadway Project by purchase, donation or any other legal transfer of title, and convey the limited access right of way for the consideration of One Dollar and no/100 (\$1.00) to the State by general warranty deed or other instrument of conveyance in a form acceptable to the Commission. The parties acknowledge and agree that the Roadway Project will first be dedicated to the City of Creve Coeur, which will then convey the Roadway Project to the Commission. Pursuant to 238.247 RSMo, any use of the power of eminent domain by the District must be specifically authorized by the Commission. The District shall forward all requests for the authorization for the use of eminent domain to the Commission's representative, who will then review the matter and present the issue to the Commission at one of its regularly scheduled meetings for consideration. Approval or denial of the request for condemnation authority shall be within the sole discretion of the Commission. The District shall be responsible for all costs associated with the right of way acquisition. All rights of way conveyed to the Commission by the District shall be free from contamination by hazardous materials or substances. The District shall be responsible for all costs to remove and clean up hazardous material or substance contamination, if discovered.

(ii) Be responsible for the acquisition and costs necessary to acquire right of way in relation to the Roadway Project. The acquisition of right of way shall be pursuant to the TDD Act. The District is hereby authorized to sell and convey any excess right of way acquired in connection with the Roadway Project but not conveyed to the Commission, to any person or entity for fair market value without further approval of the Commission.

(iii) All right of way to be conveyed to the Commission by the District shall be exempt from any and all funding mechanisms available to the District, including, but not limited to, property taxes, special assessments, and sales taxes

(iv) District agrees that all acquisition of right of way to be conveyed to the Commission shall be acquired in conformity with the Federal Relocation Assistance Act and with Chapter 523 of the Revised Statutes of Missouri and the District shall maintain and provide to Commission upon conveyance, copies of documentation evidencing same, including but not limited to, title information, appraisals, letter of offers to purchase, settlement documents, legal pleadings, judgments, deeds, and easements deeds.

(v) All properties conveyed to the Commission shall be conveyed in fee simple, except, for drainage, slope, site distance easements, obtained in conformance with plans approved by the Commission.

(vi) The District shall obtain title insurance to all parcels acquired, with Commission, included as the named insured.

(vii) The District will provide subordination deeds from any utilities located within the right of way to be conveyed by the District to the Commission pursuant to this Agreement in which the utility shall subordinate its easement to the Commission's use.

(C) **PRE-CONSTRUCTION CONFERENCE:** Prior to beginning construction of the Roadway Project, the District or its contractor shall hold a pre-construction conference and shall invite the Commission Representative and representatives of the City of Creve Coeur and the County of St. Louis, the District's consultants, utility companies and the local emergency services to attend. The pre-construction conference shall include discussion on the utility relocations, Roadway Project schedule, special provisions, construction and materials inspections, as well as other topics as deemed necessary.

(D) **CONSTRUCTION:**

(i) Solicit competitive bids and award the contracts for construction to a responsible contractor, subject to the concurrence of the Commission Representative.

(ii) Construct the Roadway Project in accordance with the final approved construction plans.

(iii) Administer the construction contracts including all surveying, construction and materials inspection services. Unless the Commission elects to undertake the inspection in accordance with Section 3.4(D), the District shall engage a company to undertake an independent construction inspection on all work and materials that will be accepted into the State roadway system as further defined in **Section 3.3(F)** of this Agreement.

(E) **UTILITY RELOCATION:** Coordinate all utility relocations and be responsible for all costs associated with required utility relocations either within or outside of Commission right of way unless otherwise required by the Commission Representative.

(F) **BONDING:** Prior to commencement of construction, secure and cause to be delivered sufficient payment or performance bonds in a form and amount reasonably acceptable to the Commission Representative, of a commercial surety qualified and authorized

to do business in the State, including a performance bond in the full amount of each contract awarded by the District for the construction of the Roadway Project.

(G) LIABILITY: Be and remain liable to the Commission in accordance with applicable State and federal law for the damages to the Commission caused by the District and its consultants' acts, errors, omissions and/or negligent performance of any of the services furnished under this Agreement. Neither the Commission's review, approval or acceptance of, nor payment for any service required under this Agreement will be construed to operate as a waiver of any right herein or any cause of action arising out of the performance of this Agreement.

(H) COOPERATION AND AGREEMENTS: Cooperate fully with the Commission and its engineers, consultants and contractors on adjacent projects, and with municipalities and local government officials, public utility companies and others as may be necessary. This shall include attendance at meetings, discussions and hearings as requested by the Commission.

(I) MAINTENANCE:

(i) Provide maintenance responsibility for that portion of the Roadway Project, if any, that is not within Commission right of way.

(ii) [To be deleted once City of Creve Coeur agrees to maintain] Provide maintenance responsibility for any and all aesthetic interchange treatments or improvements, if any, approved by the Commission, including decorative or ornamental lighting. Costs for electric power for any extraordinary decorative or ornamental lighting shall be the responsibility of the District.

(J) PERMITS: Secure all required federal, state and local permits as required for design and construction of the Roadway Project and, prior to entering onto the Commission right of way to perform any obligation under this Agreement, obtain any applicable permit from the Commission, unless the performance of such obligations under this Agreement would not ordinarily require a permit from the Commission.

(K) FINAL DESIGN:

(i) At the District's cost, proceed with the final design and detail plans in accordance with the data approved or furnished by the Commission which will meet with the general standards adopted by AASHTO and approved by the Missouri Department of Transportation as provided by Title 23, United States Code, Section 109(b).

(ii) Prior to final acceptance of the Roadway Project improvements, supply the Commission with as-built plans signed and sealed by a professional engineer in Missouri certifying that the Roadway Project was constructed in compliance with the plans and specifications.

(L) INSURANCE:

(i) Maintain or cause to be maintained commercial general liability, automobile liability, worker's compensation and employer's liability insurance and professional liability insurance against negligent acts, errors or omissions of the District or its consultants and

those for whom they are legally responsible. Any insurance policy required as specified in this Section shall be written by a company that is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State.

(ii) Maintain or cause to be maintained insurance coverage for not less than the following limits of liability: (1) Commercial General Liability: \$500,000 per claim up to \$3,000,000 per occurrence; (2) Automobile Liability: \$500,000 per claim up to \$3,000,000 per occurrence; (3) Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000; and (4) Professional ("Errors and Omissions") Liability: \$1,000,000, each claim and in the annual aggregate.

(iii) Upon reasonable request, provide the Commission with certificates of insurance evidencing the required coverage and that such insurance is in effect.

(M) CLOSURES: Obtain specific approval from the Commission for any lane closure during construction of the Roadway Project, the request for which shall be submitted at least 10 working days prior to such closure.

(N) OPERATION: Be responsible for the operation and cost of operation of the Roadway Project until the Commission accepts the Roadway Project pursuant to Article V hereof.

(3.4) COMMISSION RESPONSIBILITIES: The Commission shall:

(A) PLANS AND SPECIFICATIONS:

(i) Review the applicable plans and specifications prepared by the District or its contractor and, if acceptable, approve said plans and specifications as further defined in this Agreement.

(ii) Review and study all applicable plans, specifications and shop drawings for compliance with this Agreement and provide personnel to supervise and oversee the independent inspection of the Roadway Project, including fabrication, construction, and materials related thereto.

(B) UTILITY RELOCATION: Review and approve all applicable utility relocations.

(C) MAINTENANCE: Accept applicable portions of the improvements for maintenance into the State system after final acceptance.

(D) CONSTRUCTION INSPECTION: If the Commission so elects, it will provide, at the Commission's sole cost and expense, personnel to inspect all materials and construction work that will be accepted into the State roadway system, including fabrication, and to insure that construction is proceeding in accordance with the approved plans and specifications. If the Commission elects not to conduct the inspection, the District will provide it in accordance with Section 3.3(D).

(3.5) PROJECT SCHEDULE:

(A) The work shall be completed in accordance with the schedule contained in **Exhibit D**, attached hereto and incorporated herein by reference. This schedule shall be adjusted as may be mutually agreed upon by the Commission and the District.

(B) The Commission will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the District. Requests for extensions of time shall be made in writing by the District before that phase of the work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

(C) The District and the Commission agree that time is of the essence. The District and the Commission are required to meet the schedule provided in **Exhibit D**, attached hereto and incorporated herein by reference. In the event of delays due to unforeseeable circumstances caused beyond the control of and without fault or negligence of the District, no claim for damages shall be made by either party. An extension of time shall be the sole allowable compensation for any such delays.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes only the following:

- (i) War or acts of war, declared or undeclared, or acts of terror;
- (ii) Flooding, earthquake, or other major natural disaster;
- (iii) Discovery on the Roadway Project site of differing site conditions, hazardous substances, or other condition which in the sole judgment of the engineer, justifies a suspension of the work or necessitates modifications of the Roadway Project design or plans;
- (iv) Court proceedings;
- (v) Material changes in work or extra work;
- (vi) Strikes, lock-outs, labor troubles, or inability to procure materials;
- (vii) Lack of issuance of any permits or legal authorization by any applicable local transportation authority, provided that any "delay due to unforeseeable causes" due to lack of issuance or legal authorization shall not cause an extension of time greater than six (6) months.

(3.6) **INDEMNIFICATION**: The District shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the District's performance of its obligations under this Agreement.

(3.7) **PLAN REVIEW AND APPROVAL**: The District or its contractor shall submit final design/construction plans, specifications and special provisions to the Commission Representative for approval. Upon receipts of such plans and special provisions by the Commission Representative, the Commission Representative shall determine if the plans are in compliance with applicable standards and specifications and contain all provisions required by this Agreement. Once such plans meet the requirements herein, they may be approved by the Commission Representative and the Commission Representative will notify same to the District

in writing. After the Commission Representative has completed his review and approval of all of the final design/construction plans, specifications and special provisions for the Roadway Project, the District shall be authorized to construction the Roadway Project pursuant to a construction contract entered into pursuant to the TDD Act and the final design/construction plans, specifications and special provisions as approved. Unless otherwise provided by agreement of the parties, no construction activities will be allowed within Commission right of way until the District obtains final plan and specification approval from the Commission. Final approval of plans and specifications will not be considered until the District or its contractor certifies in writing that its pre-construction responsibilities outlined in **Sections 3.3(A) and 3.3(C)** of this Agreement have been completed.

ARTICLE IV
CONTRACT REQUIREMENTS

(4.1) CONSTRUCTION CONTRACT: After the Commission has completed its review and approval of all of the plans, specifications, and special provisions for the Roadway Project, the District shall enter into a construction contract with a contractor pursuant to the TDD Act to construct said improvements in accordance with such approved plans and specifications, subject to the following conditions:

(A) Appropriate provisions shall be included in the terms of the construction contract:

(i) Authorizing employees of the Commission to inspect the work and to approve or disapprove such work in the same manner as if the construction contract had been entered into between the contractor and the State acting by and through the Commission. The Commission agrees that all such inspections and approvals shall be conducted in a timely and reasonable manner.

(ii) Acknowledging that the contractor and subcontractors are looking solely to the District for payments pursuant to the construction contract, including without limitation payments for base contract work and change order work, and for claims pursuant to the contract or for breach thereof, and confirming that the contractor and subcontractors shall have no claim rights against the Commission.

(iii) Requiring that construction of the Roadway Project shall be in accordance with current standard construction practices of the Missouri Department of Transportation, which require compliance with the Missouri Standard Specifications for Highway Construction including General Provisions, and Missouri Standard Plans for Highway Construction.

(iv) Requiring its contractor, through contract documents, to assume all responsibility for directing traffic during construction, including without limitation lighting, signing, and striping.

(B) The District shall have dedicated to the Commission, free and clear of liens and encumbrances, free of contamination from hazardous materials or substance, the right of way of the roadway, all as depicted on **Exhibit B**, attached hereto and incorporated herein by reference.

(C) The construction contract shall contain provisions authorizing assignment to the Commission of the rights of the District upon material default of the contractor, which assignment shall be at the option of the Commission. In any event, the District shall remain obligated to complete the performance under the construction contract upon material default of the contractor.

(4.2) CONSTRUCTION INSPECTION: The Commission shall, at its sole cost and expense, provide personnel to inspect all materials and construction work that will be accepted into the state roadway system, including fabrication, and to insure that construction is proceeding in accordance with the approved plans and specifications. The Commission shall have access to the Roadway Project at all times and shall have the authority to perform additional construction inspections as desired. The Commission's personnel will coordinate their functions with the District and its consultants as necessary to resolve questions that arise during the progress of the Roadway Project. Pursuant to the TDD Act, after the Commission approves the final construction plans and specifications, the District shall obtain prior approval of the Commission of any modification of such plans or specifications. All final decisions as to compliance with such plans and specifications shall lie with the Commission. The Roadway Project shall not be deemed complete until after final acceptance of the Roadway Project by the Commission.

ARTICLE V FINAL ACCEPTANCE OF THE MODOT PROJECT

(5.1) COMMISSION ACCEPTANCE OF THE MODOT PROJECT: After completion of construction of the Roadway Project, the District shall provide a written request to the Commission for final inspection and acceptance along with a certificate of completion by its consultant providing design services. The Commission Representative shall thereafter inspect the improvements in a reasonable and timely manner. If the Commission Representative finds said Project improvements have been completed in compliance with all applicable policies, specifications, regulations, and plans, then the Commission Representative shall give written notice to the District of final acceptance of the Roadway Project. The Commission Representative shall accept the Roadway Project improvements for maintenance upon the date of such notice of final acceptance. The parties acknowledge and agree that the Roadway Project will first be dedicated to the City of Creve Coeur, which will then convey the Roadway Project to the Commission. It is understood that, if the Commission Representative inspects the Roadway Project improvements and finds that such Project improvements have not been completed in compliance with all applicable policies, specifications, regulations, and plans, then the Commission Representative shall notify the District in writing specifying what portion of the Roadway Project improvements fails to meet the applicable policies, specifications, regulations and plans by delivery of a notice of non-acceptance to the District. The District shall, upon receipt of said notice of non-acceptance, modify the Roadway Project improvements so that they are in compliance with all applicable policies, specifications, regulations, and plans. The Commission Representative shall then accept the Roadway Project improvements and give written notice of same to the District in a reasonable and timely manner after the District's submission of a notice requesting re-inspection of the Roadway Project improvements.

(5.2) OPENING OF PROJECT TO TRAFFIC: **It is expressly understood by the parties that the Roadway Project contemplated by this Agreement shall not be opened to traffic until after acceptance thereof by the Commission Representative.** This Section supercedes all other provisions in this Agreement to the extent of any inconsistency.

(5.3) OWNERSHIP OF IMPROVEMENTS: It is understood by the District and the Commission that any of the Roadway Project improvements placed on the Commission's right of way becomes the property of the Commission. Effective upon final acceptance of the construction of the Roadway Project, the Commission shall keep control and maintain as part of the state highway system that portion of the Roadway Project lying within state-owned limited access right of way limit, and the District shall have no further rights, obligations or responsibility with respect to said Roadway Project improvements other than those mentioned in **Section 3.3(I)** of this Agreement.

ARTICLE VI MISCELLANEOUS PROVISIONS

(6.1) FHWA APPROVAL: This Agreement is entered into subject to recommendations made by the Federal Highway Administration.

(6.2) AMENDMENTS: Any change in this Agreement, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the District and the Commission.

(6.3) ASSIGNMENT: The District shall not assign or delegate any interest in this Agreement and shall not transfer any interest in this Agreement, whether by assignment or notation, without the prior written consent of the Commission.

(6.4) BANKRUPTCY: Upon filing for any bankruptcy or insolvency proceeding by or against the District, whether voluntarily or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the District responsible for damages.

(6.5) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The District shall comply with all federal, state and local laws related to the performance of its obligations under this Agreement

(6.6) CANCELLATION: The Commission shall give the District written notice of any material breach by the District of the District's obligation under this Agreement. Such notice of breach shall contain a reasonable time for the District to correct or cure such breach. In the event the District fails to correct or cure such breach, the Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the District with a written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the District. Further, the Commission may cancel this Agreement if the Commission does not approve the final construction plan and specifications pursuant to Section 238.225 of the TDD Act.

(6.7) NONSOLICITATION: The District warrants that it has not employed or retained any company or person, other than a bona fide employee or agent working for the District, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee or agent, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the agreement price or

consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

(6.8) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement or respecting its alleged breach shall be instituted only in the Circuit Court of Cole County, Missouri.

(6.9) NONDISCRIMINATION CLAUSE: The District shall comply with all state and federal statutes applicable to the District relating to nondiscrimination, including but not limited to Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000d and 2000e, et seq.); and with any provisions of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, et seq.) applicable to the District.

(6.10) IMMUNITY OF OFFICERS, EMPLOYEES AND MEMBERS OF THE COMMISSION AND THE DISTRICT: No recourse shall be had for the payment of the principal of or premium or interest on any bonds, notes or other obligations, or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement contained against any past, present or future officer, member, employee, director or agent of the Commission, or the District, respectively, or of any successor public or private corporation thereto, as such, either directly or through the Commission or the District, respectively, or any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment, penalty, or otherwise, and all such liability of any such officers, members, employers, directors, or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

(6.11) SEVERABILITY: In the event that any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision herein.

(6.12) NOTICES: All notices or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid and addressed as follows:

(A) To the District:
Mr. Steven F. Heitz
Executive Director of the District
c/o Pace Properties Incorporated
1401 S. Brentwood Blvd., Suite 900
St. Louis, MO 63144

With a copy to:
Stephen L. Kling, Jr., Esq.
Jenkins & Kling, P.C.
10 S. Brentwood Blvd., Suite 200
St. Louis, Missouri 63105

(B) To the Commission:

Missouri Highways and Transportation Commission
105 West Capitol Avenue
P.O. Box 270
Jefferson City, Missouri 65102
Attention: Commission Secretary

(6.13) TERM OF AGREEMENT: The term of this Agreement shall commence upon the execution hereof and continue until title to the Roadway Project is transferred to the Commission under the provisions of **Section 5.1** of this Agreement, unless sooner terminated as specified herein.

(6.14) DISPUTES: The Commission Representative shall make the final decision on any disputes between the Commission and the District provided, however, that nothing contained in this Section shall be construed to preclude any action or proceeding in law or equity before any court, governmental body or administrative agency or instrumentality thereof.

(6.15) AUDIT OF RECORDS: The District shall maintain all records relating to this Agreement, including but not limited to invoices, payrolls, records of revenues received and costs incurred, and other such records. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during this Agreement period and any extension thereof. Pursuant to Section 238.272 of the TDD Act, the District shall obtain an audit by the state auditor not less than once every three years or more frequently if the state auditor deems appropriate and shall provide a copy of each audit to the Commission. In addition, if the District obtains an independent audit of its financial records, it shall forward a copy of the audit to the Commission. The District will provide this copy of the audit free of charge and at no cost to the Commission.

(6.16) INSURANCE: The District or its contractor shall procure and maintain during the agreement period insurance to cover any tort liability arising from the Roadway Project. The amount of insurance shall be not less than the amounts established by Section 537.610.2 of the Revised Statutes of Missouri, as amended. In the event the amounts specified in Section 537.610.2 of the Revised Statutes of Missouri, as amended, are changed, the District or its contractor must procure and maintain insurance in an amount necessary to satisfy such legislative or administrative change. Any insurance procured by the District or its contractor for such tort liability shall be subject to review and approval by Commission.

(6.17) STATE WAGE LAWS: The District and its general contractors and subcontractors shall pay the prevailing hourly rate of wages for each craft or type of worker required to complete the Roadway Project as determined by the Department of Labor and Industrial Relations of Missouri, and it shall further comply in every respect with the minimum wage laws of the State.

(6.18) COMPLETION OF PROJECT: It is the intent of the parties that the Commission is to assume no liability for completion of the Roadway Project and, if the Commission should expend any funds in connection therewith, the District will reimburse the Commission for those funds, other than for the Commission responsibilities assumed in **Section 3.4** of this Agreement.

(6.19) INDEPENDENT PARTIES: The parties to this Agreement are independent entities. No employee, agent, or representative of the District, its contractor, or subcontractors

shall ever be considered or deemed to be an employee, agent, or representative of the Commission.

(6.20) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the District.

(6.21) EXEMPTION OF COMMISSION PROPERTY: The District shall not assess a sales tax, property tax assessment or special assessment or impose any other funding mechanism authorized by Chapter 238 RSMo on any property or property interests presently owned or hereinafter acquired by the Commission within the boundary of the District as it exists now or may hereinafter be extended.

(6.22) NO INTEREST: By constructing the Roadway Project on Commission right of way, the District gains no interest in the improvements on Commission right of way whatsoever. The Commission shall not be obligated to keep the constructed Project improvements in place if the Commission, in its sole discretion, determines removal or modification of improvements is in the best interest of the State highway system. In the event the Commission decides to remove or otherwise reduce the Roadway Project improvements, the District shall not be entitled to a refund of the funds expended by the District pursuant to this Agreement.

(6.23) NO ADVERSE INFERENCE: This Agreement shall not be construed more strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

(6.24) VOLUNTARY NATURE OF AGREEMENT: Each party to this Agreement warrants and certifies that it enters into this transaction and executes this Agreement freely and voluntarily and without being in a state of duress or under threats or coercion.

(6.25) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(6.25) POLICE POWERS: The Commission shall retain its police powers with respect to the regulation of traffic upon the improvement contemplated.

(6.27) REIMBURSEMENT OF PLAN REVIEW: The parties recognize that the Commission may not have sufficient resources to immediately review the plans for the Roadway Project. The parties agree that the Commission, in its sole discretion, may elect to retain a consultant to review the plans for the Roadway Project. In the event the Commission retains a consultant to review the Roadway Project plans, the District shall reimburse the Commission for the funds expended by the Commission. The Commission will forward an invoice to the District for the reimbursement for the consultant services and the District shall pay the invoice within 30 days of receipt of the invoice.

(6.28) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(6.29) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding the Roadway Project and supersedes all prior written or oral communications between the parties regarding this subject.

(The remainder of this page is intentionally left blank; signatures and execution appear on following page.)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers.

Executed by the District this ____ day of _____, 20____.

Executed by the Commission this ____ day of _____, 20____.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

OLIVE/GRAESER TRANSPORTATION
DEVELOPMENT DISTRICT

By _____

By _____

Chair

Title: _____

Attest:

Attest:

By _____

By _____

Secretary to the Commission

Secretary/Assistant Secretary

Approved as to Form:

Approved as to Form:

By _____

By _____

Counsel for the Commission

Counsel for the District

EXHIBIT A

SCOPE OF SERVICES

The District shall perform or has performed the following services and work in accordance with the standard practice of the Commission.

(A) Design and furnish to the Commission fully checked design plans together with a suitable copy of the final design computations, coordinate geometry data and quantity computations for the Roadway Project.

(B) The design plans shall be complete and shall cover all parts of the Roadway Project they represent. The degree of detail shall be comparable to that furnished on typical plans prepared by the Commission.

(C) The design computations and plans shall be acceptable to the Commission and, to the extent required by **Section 3.3(K)(ii)** of this Agreement, the FHWA.

(D) The design computations and plans will become the property of the Commission.

(E) CADD drawings, size 22 inch by 34 inch, on 20# bond paper, from which good legible prints and satisfactory reproducible copies can be obtained will be acceptable. The District shall also furnish ten sets of 11 inch by 17 inch paper prints and ten sets of the Roadway Project specifications.

(F) Prepare special provisions as necessary to supplement the latest edition of the *Missouri Standard Specifications for Highway Construction*.

(G) Provide all materials, equipment and labor for the construction of the Roadway Project in accordance with standards, criteria and specifications of the Missouri Department of Transportation and, to the extent required by **Section 3.3(K)(ii)** of this Agreement, the FHWA.

(H) Administer the construction contract and provide all surveying and construction inspection services.

(I) Secure and dedicate right of way and easement deeds to the Commission.

(J) Secure the relocation of all utility adjustments and incur all associated costs.

(K) Secure all local, state and federal permits as required.

EXHIBIT B

PLANS FOR PROJECT

(Attached hereto or on file with the Commission's District Engineer.)

EXHIBIT C

SERVICES TO BE PROVIDED BY THE COMMISSION

The Commission shall furnish to the District without charge the following information.

- (A) Current base documents for Job Special Provisions and General Special Provisions.
- (B) General design criteria.
- (C) Available standard detail sheets.

EXHIBIT D

CONSTRUCTION SCHEDULE

(Attached hereto or on file with the Commission's District Engineer.)

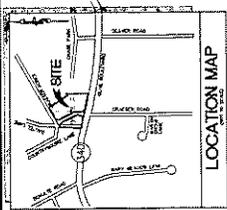
EXHIBIT E

DEPICTION OF IMPROVEMENTS TO BE DEDICATED TO THE COMMISSION

(Attached hereto and indicated by cross-hatched triangles)

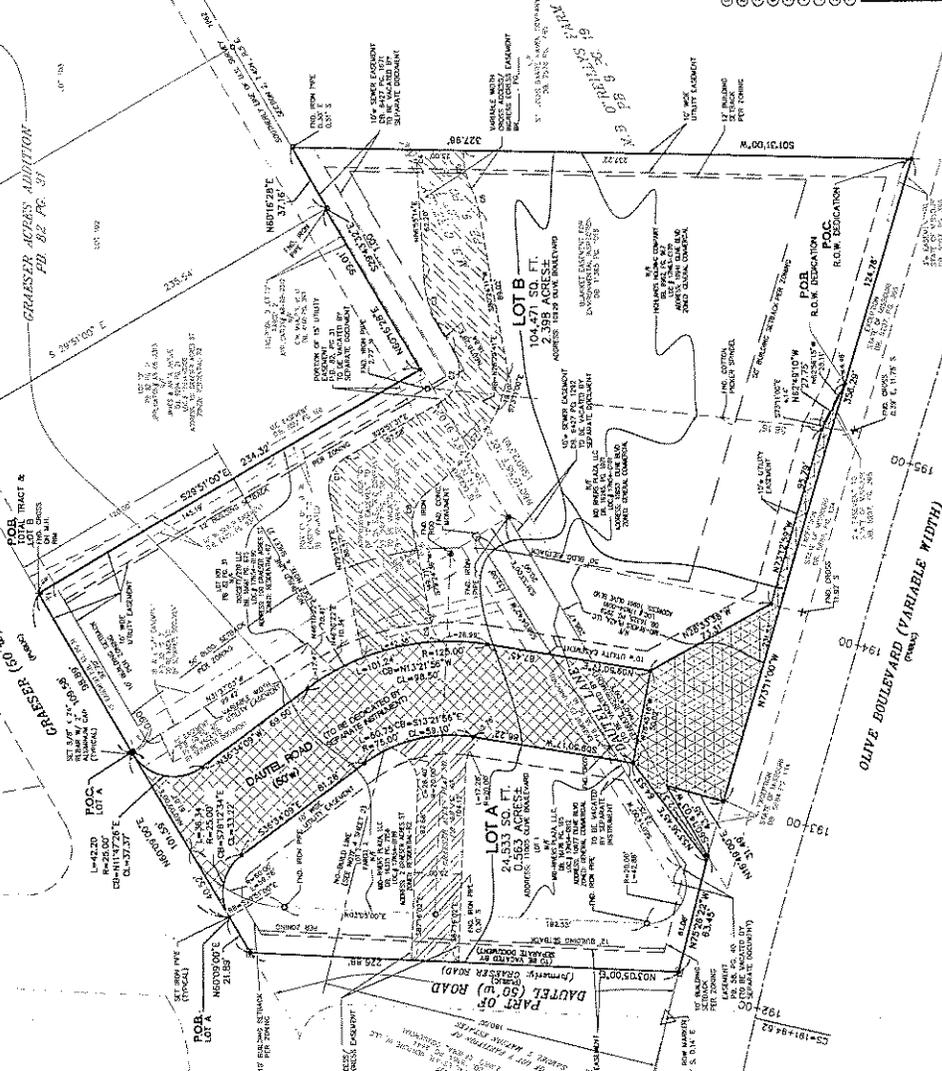
THE CROSSING AT GRAESER

A TRACT OF LAND BEING LOT 60 AND PART OF LOT 301 OF GRAESER ACRES ADDITION AS RECORDED IN PLAT BOOK 82 PAGE 31
 LOTS 1 AND 2 OF GRAESER ACRES PLAT NO. 1 AS RECORDED IN PLAT BOOK 58 PAGE 40, PART OF LOT 1 OF THE SUBDIVISION OF THE M.B. O'REILLY FARM AS RECORDED IN PLAT BOOK 9 PAGE 19,
 LOCATED IN U.S. SURVEY 1962 AND IN THE NORTHWEST 1/4 OF SECTION 2, TOWNSHIP 45 NORTH, RANGE 5 EAST OF THE 5TH PRINCIPAL MERIDIAN
 CITY OF CREVE COEUR, ST. LOUIS COUNTY, MISSOURI
 THIS PLAT CONTAINS 2,961 AC.



ACCESS-EASEMENT CURVE TABLE

CURVE	LENGTH	RADIUS	CHORD BEARING	CHORD LENGTH
C1	27.27	18.00	S89°17'31" E	29.27
C2	37.50	23.00	S73°52'46" E	39.31
C3	6.88	68.00	N89°14'47" E	6.88
C4	20.36	13.00	S72°29'35" W	22.77
C5	19.15	44.00	S72°29'35" W	19.15
C6	29.44	20.00	N62°21'55" W	32.31
C7	31.41	20.00	S63°04'57" W	34.31



- ① 1/24/79 REVISED FOR EIGHT COMMENTS
- ② 6/27/00 REVISED FOR SEVEN COMMENTS
- ③ 4/27/00 REVISED FOR TWO & SEVEN COMMENTS
- ④ 4/27/00 REVISED ACCESS EASEMENT - LOT 9
- ⑤ 10/24/08 REVISED LOTS A & B PER CLIENT'S COMMENTS
- ⑥ 2/25/08 REVISED CROSS ACCESS EASEMENT LOT 8
- ⑦ 2/26/08 REVISED ACCESS EASEMENT LOT 9
- ⑧ 1/20/08 REVISED PROPERTY LINE APPROX. ADJACENT PROPERTY
- ⑨ 3/19/07 REVISED LOCATION OF CORNER LINE

THE CROSSING AT GRAESER
 RECORD PLAT

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