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REVISED:
ADDITION OF CONSENT ITEM II-10a

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. August 16, 2011

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

-- Call to Order

-- Invocation

-- Pledge of Allegiance

-- Approve the minutes of the regular meeting on August 9, 2011

AWARDS AND PROCLAMATIONS

-- Proclamations:

Dr. Schuyler Jones Day
Project Re-Directory Month
Neighborhood University Day

-- Service Awards:

Eddie Trueblood
Don Kirkland

-- Award:

National Purchasing Institute's 16th Annual Achievement of Excellence in Procurement Award for 2011

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

None

II. CONSENT AGENDAS (ITEMS 1 THROUGH 12)

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

*(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see **"ATTACHMENT 1 – CONSENT AGENDA ITEMS"** for a listing of all Consent Agenda Items.)*

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

1. Repair or Removal of Dangerous and Unsafe Structure 1648 North Piatt. (District I)

   RECOMMENDED ACTION: Take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) real estate taxes are paid as of August 16, 2011 or shortly thereafter; (2) (2) the $262.00 paid by the City for an asbestos survey are reimbursed to the City as of August 16, 2011 or shortly thereafter; (3) the structure is maintained secure as of August 16, 2011 and is kept secured during renovation; and (4) the premise is kept clean and free of debris as of August 16, 2011, and is so maintained during renovation.

2. Repair or Removal of Dangerous and Unsafe Structure 1731 North Volutsia. (District I)

   RECOMMENDED ACTION: Take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) real estate taxes are paid as of August 16, 2011 or shortly thereafter; (2) the structure is maintained secure as of August 16, 2011 and is kept secured during renovation; and (3) the premise is kept clean and free of debris as of August 16, 2011, and is so maintained during renovation.

3. Ordinance Amending Chapter 3.22 of the Code of the City of Wichita Pertaining to Licensing and Regulation of Haunted Houses and Haunted Walks/Fields.
   (Deferred August 2, 2011, Second Reading)

   RECOMMENDED ACTION: Approve second reading of the ordinance amending Chapter 3.22 of the Code of the City of Wichita pertaining to haunted houses and haunted walks/fields.

IV. NEW COUNCIL BUSINESS

1. Letter of Intent for Hospital Facilities Improvement and Refunding Revenue Bonds, Via Christi Health System, Inc. (Districts II, III and VI)

   RECOMMENDED ACTION: Approve the Letter of Intent for Hospital Facilities Refunding Revenue Bonds for Via Christi in the amount not to exceed $200,000,000, appoint the law firm of Triplett, Woolf and Garretson, LLC to serve as bond counsel and approve the necessary signatures.

2. Quarterly Financial Report for the Quarter Ending June 30, 2011.

   RECOMMENDED ACTION: Receive and file the Quarterly Financial Report for the quarter ended June 30, 2011.

(10:00 a.m. or soon thereafter)

3. General Obligation Refunding Bond and Temporary Note Sale.

   RECOMMENDED ACTION: Direct the opening and reading of the bids; award the sale of the Bonds and Temporary Notes subject to approval of the final sizing terms of the Bonds by the City Manager, his designee or the Director of Finance; adopt the Bond and Note Ordinances and Resolutions and authorize the publication of the Bond and Note Ordinances; and find and declare, upon the request of the Mayor, that a public emergency exists, requiring the final passage of the Bond and Note Ordinances on the date of their introduction.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. NON-CONSENT PLANNING AGENDA

1. CON2011-00015-City Conditional Use for Nightclub in the City; generally located on the east side of Rock Road, 1/8 mile north of Harry Street, 1208 South Rock Road. (District II)

   RECOMMENDED ACTION: 1) Adopt the recommendation of the MAPC and deny the request (simple majority required); 2) approve the Conditional Use subject to the conditions of the Conditional Use based on the findings in the staff report; and authorize the Mayor to sign the resolution (requires a two-third majority vote to override the Planning Commission's recommendation to the City Council on the first hearing) or 3) return the request to MAPC for reconsideration (simple majority vote required).

2. ZON2011-00001 – Zone change from SF-5 Single-Family Residential to LC Limited Commercial, generally located north of West Central Avenue, one-third mile east of Ridge Road. (District V)

   RECOMMENDED ACTION: 1. Adopt the findings of the MAPC and approve the zone change as recommended by the MAPC, subject to platting the approved portion within one year, withhold publication of the ordinance until the plat has been recorded and authorize the Mayor to sign the ordinance (simple majority vote required); 2. Approve the zone change for the entire application area (as requested by the applicant), subject to platting within one year, withhold publication of the ordinance until the plat has been recorded and authorize the Mayor to sign the ordinance (two-thirds majority vote required plus appropriate findings); 3. Deny the zone change request (two-thirds majority vote required plus appropriate findings) or 4. Return the application to MAPC for further consideration (two-thirds majority vote required).

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VII. NON-CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

1. Approval of travel for Mayor Carl Brewer to attend Sister Cities Business, Education and Cultural Exchange in Cancun and Tlalnepantla, Mexico, September 13-21, 2011.

   RECOMMENDED ACTION: Approve travel.

2. Approval of travel expenses for Dr. Jerry Smartt, Ramon Machain, and Lt. Kevin Vaughn to attend Sister Cities Business, Education and Cultural Exchange in Cancun and Tlalnepantla, Mexico, September 13-21, 2011.

   RECOMMENDED ACTION: Approve the travel and expenditures.

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

Adjournment

Workshop to follow in the first floor Council Chambers

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 12)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated August 15, 2011.

   RECOMMENDED ACTION: Receive and file report; approve Contracts; authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2011	(Consumption off Premises)
Patricia A Johnson	Target Store T-1944***	10800 East 21st Street North
Patricia A Johnson	Target Store T-1945***	2727 North Maize Road

   *** Retailer Grocery stores, convenience stores, etc.

   RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:
   a. Preliminary Estimates. (See Attached)

   RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:
   a. Petitions for Sanitary Sewer and Water Distribution System in East Highlands Addition, North of Central, east of Oliver. (District I)

   RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Deeds and Easements:
   a. Deeds and Easements.

   RECOMMENDED ACTION: Accept documents.

6. Design Services Agreements:
   a. Hold Harmless Agreement with Fifteen Twenty Five, LLC. (District I)
   b. Agreement for Design Services for Water systems, Sanitary Sewer, Storm Water and Paving Improvements in Berkeley Square 1st Addition, north of 13th Street North, west of Greenwich. (District V)
   c. Agreement for Design Services for Storm Water Drain No. 378 to serve Ridge Port 5th Addition, north of 29th Street North, east of Ridge. (District V)

   RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Property Acquisitions:
   a. Acquisition of 14528 West Kellogg for the West Kellogg Freeway Project. (Districts IV and V)
   b. Acquisition of 15100 West Kellogg for the West Kellogg Freeway Project. (Districts IV and V)
   c. Partial Acquisition of 11771 West Kellogg for the West Kellogg Freeway Project. (Districts IV and V)
   d. Partial Acquisition of 1537 South Auburn Hills Street for the West Kellogg Freeway Project. (Districts IV and V)
   e. Partial Acquisition of 1751 South 151st Street West for the West Kellogg Freeway Project. (Districts IV and V)
   f. Partial Acquisition of 1606 South Broadway for the Harry and Broadway Intersection Improvement Project. (Districts I and III)
   g. Partial Acquisition of 1607 South Broadway for the Harry and Broadway Intersection Improvement Project. (Districts I and III)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

8. Minutes of Advisory Boards/Commissions

Board of Code Standards and Appeals, July 11, 2011
Airport Advisory Board July 11, 2011
Board of Appeals of Plumbers and Gas Fitters, June 1, 2011
Board of Appeals of Plumbers and Gas Fitters, June 15, 2011
Board of Appeals of Plumbers and Gas Fitters, June 29, 2011
Board of Appeals of Plumbers and Gas Fitters, July 6, 2011
Board of Appeals of Plumbers and Gas Fitters, July 20, 2011

RECOMMENDED ACTION: Receive and file.

9. City of Wichita Employees' Deferred Compensation Trust Amendment to the Great-West Retirement Services Plan Document; Adoption of Roth 457 Provisions.

RECOMMENDED ACTION: Approve the Amendment and authorize the Mayor to sign.

10. Wichita Employees' Retirement and Police and Fire Retirement Systems' 2010 Comprehensive Annual Financial Report.

RECOMMENDED ACTION: Receive and file the report.

10a. ***Street Closures: Streets crossing the Union Pacific Railroad in northeast Wichita.*** ***(District I)***

RECOMMENDED ACTION: Approve the Street Closure.

11. Second Reading Ordinances: (First Read August 9, 2011)
   a. List of second Reading Ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

None

II. CONSENT HOUSING AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

None

II. CONSENT AIRPORT AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

12. *Partial Redemption of Airport Special Facilities Revenue Bonds, Series A, 2003 - FlightSafety International, Inc. - Wichita Mid-Continent Airport.

RECOMMENDED ACTION: Approve the request to call and redeem $200,000 principal amount of Bonds, on September 1, 2011, or the next available call date, and authorize the necessary signatures.

Agenda Item No. III-1

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Repair or Removal of Dangerous & Unsafe Structure
1648 North Piatt (District I)

INITIATED BY: Office of Central Inspection

AGENDA: Unfinished Business

Recommendations: Take appropriate action based on testimony received during the review hearing to consider condemnation and removal of the dangerous and unsafe structure at 1648 North Piatt.

Background: On June 16, 2009, a report was submitted with respect to the dangerous and unsafe conditions of the vacant four-unit residential building at 1648 North Piatt. The Council adopted a resolution providing for a public hearing to be held on the condemnation action at 9:30 a.m., or soon thereafter, on August 4, 2009.

On August 4, 2009, Andy Bias, representing Mennonite Housing Services, appeared on behalf of this property as a potential buyer. Mr. Bias indicated Mennonite Housing Services would be submitting a Housing Tax Credit project application to the State of Kansas to demolish the vacant, boarded building (along with the larger, vacant multi-story apartment building just north of 1648 North Piatt) and to subsequently construct new multi-family housing on the site. Mr. Bias said he anticipated a preliminary response from the State on the proposed Housing Tax Credit project by early to mid-October.

City Council Member Lavonta Williams made a motion to defer City Council action until mid-October. The motion was approved.

On October 20, 2009, this property was again presented to the City Council. The City Council was informed the Housing Tax Credit project application was still pending approval. City Council Member Williams requested that staff keep her informed of property conditions and project status, and that the case be brought back to the Council upon completion of the Spring 2010 Housing Tax Credit application process.

On June 28, 2010, staff was informed by Andy Bias, Executive Director of Mennonite Housing Services, that the Housing Tax Credit was not approved and could not be resubmitted until August 2010.

On June 29, 2010, staff was informed by property owner John Schupbach that he was in the process of working with the bank to sell the property through McCurdy Auction and that the deal with Mennonite Housing had fallen through.

On July 20, 2010, the City Council reviewed this case and adopted a resolution allowing 60 days for the owner to complete repairs to the property, and failing repair within 60 days, to proceed with demolition.

Staff inspected the property on September 20, 2010 and found that no repairs had been made. Notice was issued to the owner of the property, informing him that the City would proceed with demolition of the structure. An asbestos survey was done and staff subsequently awarded the demolition to a City contracted demolition company.

On December 17, 2010, at the request of the owner, Council Member Williams agreed to a final extension until March 15, 2011 for the exterior of the property to be repaired. When staff inspected the property on March 15, 2011, no work had been done and the structure was open. Staff sent a letter to the owner informing him that we were proceeding with the demolition.

On June 16, 2011, staff was instructed by the Law Department that a bankruptcy hearing was scheduled on this property and asked that the demolition action be halted, pending the outcome of the hearing.

The original owner has since relinquished ownership to Bank of Commerce & Trust Co., which is proceeding with foreclosure in order to get title to the property. The bank has agreed to maintain the property, keeping it clean and secure, and to repair the structure once title is obtained. Taxes will be paid during the foreclosure process.

Analysis: Staff inspected the property on August 3, 2011. No repairs had been made. The structure was secured. The premise was maintained.

As of August 2, 2011, the 2010 taxes were delinquent in the amount of $296.80, including interest. There are no special assessments. The City has paid $262 for an asbestos survey.

Financial Considerations: Structures condemned as dangerous buildings are demolished with funds from the Office of Central Inspection's Special Revenue Fund contractual services budget, as approved annually by the City Council. This budget is supplemented by an annual allocation of federal Community Development Block Grant funds for demolition of structures located within the designated Neighborhood Reinvestment Area. Expenditures for dangerous building condemnation and demolition activities are tracked to ensure that City Council Resolution No. R-95-560, which limits OCI expenditures for non-revenue producing condemnation and housing code enforcement activities to 20% of OCI's total annual budgeted Special Revenue Fund expenditures, is followed. Owners of condemned structures demolished by the City are billed for the contractual costs of demolition, plus an additional $500 administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property.

Goal Impact: This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods. Dangerous building condemnation actions, including demolitions, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: The owner and owner's representative has been informed of the date and time of the hearing.

Recommendations/Actions: It is recommended that the City Council take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) real estate taxes are paid as of August 16, 2011 or shortly thereafter; (2) (2) the $262.00 paid by the City for an asbestos survey are reimbursed to the City as of August 16, 2011 or shortly thereafter; (3) the structure is maintained secure as of August 16, 2011 and is kept secured during renovation; and (4) the premise is kept clean and free of debris as of August 16, 2011, and is so maintained during renovation.

If any of the above conditions are not met, the Office of Central Inspection will proceed with demolition action and also instruct the City Clerk to have the resolution published once in the official City paper and advise the owners of these findings.

Attachments: None

Agenda Item No. III-2

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Repair or Removal of Dangerous & Unsafe Structure
1731 North Volutsia (District I)

INITIATED BY: Office of Central Inspection

AGENDA: Unfinished Business

Recommendations: Take appropriate action based on information received during the review hearing to consider condemnation and removal of the dangerous and unsafe structure at 1731 North Volutsia.

Background: On June 7, 2011, the City Council conducted a hearing to review and consider condemnation, demolition and removal of the vacant single family house at 1731 North Volutsia.

At that hearing, Kurt Schroeder, Superintendent of Central Inspection, informed the City Council that the property was the subject of bankruptcy proceedings and requested that the item be deferred pending the outcome of the bankruptcy hearing.

The City Council voted to defer the item until further notice.

The original owner has since relinquished ownership to Bank of Commerce & Trust Co., which is proceeding with foreclosure in order to get title to the property. The bank has agreed to maintain the property, keeping it clean and secure, and intends to repair the property once title is obtained. Taxes will be paid during the foreclosure process.

Analysis: Staff inspected the property on August 3, 2011. No repairs had been made. The rear door of the structure was not secured. The premise had some tree waste on it.

As of August 2, 2011, the 2009 and 2010 taxes were delinquent in the amount of $321.45, including interest. There are no special assessments.

Financial Considerations: Structures condemned as dangerous buildings are demolished with funds from the Office of Central Inspection's Special Revenue Fund contractual services budget, as approved annually by the City Council. This budget is supplemented by an annual allocation of federal Community Development Block Grant funds for demolition of structures located within the designated Neighborhood Reinvestment Area. Expenditures for dangerous building condemnation and demolition activities are tracked to ensure that City Council Resolution No. R-95-560, which limits OCI expenditures for non-revenue producing condemnation and housing code enforcement activities to 20% of OCI's total annual budgeted Special Revenue Fund expenditures, is followed. Owners of condemned structures demolished by the City are billed for the contractual costs of demolition, plus an additional $500 administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property.

Goal Impact: This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods. Dangerous building condemnation actions, including demolitions, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: The owner and representative of the bank have been informed of the date and time of the hearing.

Recommendations/Actions: It is recommended that the City Council take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) real estate taxes are paid as of August 16, 2011 or shortly thereafter; (2) the structure is maintained secure as of August 16, 2011 and is kept secured during renovation; and (3) the premise is kept clean and free of debris as of August 16, 2011, and is so maintained during renovation.

If any of the above conditions are not met, the Office of Central Inspection will proceed with demolition action and also instruct the City Clerk to have the resolution published once in the official City paper and advise the owners of these findings.

Attachments: None

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council Members

SUBJECT: Ordinance Amending Chapter 3.22 of the Code of the City of Wichita Pertaining to Licensing and Regulation of Haunted Houses and Haunted Walks/Fields

INITIATED BY: Office of Central Inspection

AGENDA: Unfinished Business

Recommendation: Approve second reading of the ordinance amending Chapter 3.22 of the Code of the City of Wichita pertaining to licensing and regulation of haunted houses and outdoor haunted walks/fields.

Background: Chapter 3.22 of the Code of the City of Wichita sets forth minimum requirements for temporary haunted houses (indoor and outdoor) during the Halloween season. The first reading of an ordinance amending Chapter 3.22 was approved by the City Council on July 19, 2011, after significant discussion. On July 26, 2011, the second reading of the proposed ordinance was deferred until August 2, 2011 to allow for further public review and comment. At its August 2, 2011 meeting, the City Council received additional public input, provided additional feed back to staff and deferred second reading of the ordinance until August 16, 2011. On August 5, 2011, staff met with operators who attended the August 2, 2011 City Council meeting to review the ordinance and obtain additional input. Based on input provided by operators, the City Council and the City Manager since the July 26, 2011 first reading, several changes have been made to the proposed ordinance, including:

- clarification of when the $50 re-inspection fee would be assessed;
- reduction of the minimum age of a licensee from 21 to 18 years of age;
- inclusion of a definition of "Fire Watch" and addition of language authorizing the Fire Chief to approve a "Fire Watch" in lieu of , or in conjunction with, required automatic fire and/or smoke detection systems, sprinkler systems and/or other emergency notification systems when such fire watch would adequately protect the safety of public while on the licensee's premises;
- addition of language clarifying requirements for *primary* egress corridors/hallways and exit doors, and allowing narrower halls or walkways that are not part of the primary egress system;
- addition of language to allow open flames for outdoor venues, with prior Fire Dept. approval;
- extension of hours of operation for outdoor venues from midnight until 2:00 a.m. on Fridays and Saturdays and on October 31st, and from 11:00 p.m. until midnight on Sundays through Thursdays; and
- modification to the "right of access" by City officials language.

With regard to Council discussion about Americans with Disabilities Act requirements, the Law Department has determined that Americans with Disabilities Act requirements would be applicable to these types of structures and facilities. However, enforcement of these provisions would occur through the plan approval and permitting processes, so no additional changes are required to the license ordinance.

The current ordinance has not been substantially amended in over thirty years, and includes minimal license application requirements and building/life safety regulation. Concerns about the ordinance were expressed last year by a haunted house operator during a City Council Public Agenda. In early 2011, the City Manager directed the Law Department to develop proposed amendments to the ordinance.

In late March 2011, the Law Department completed an initial draft of proposed ordinance amendments, and circulated the draft ordinance for review by Fire Department, Office of Central Inspection, Police Department and Finance Department (Express Office) staff. In late April 2011, a revised draft ordinance was completed by Law, incorporating most suggested interdepartmental staff team recommendations. In

May 2011, at the direction of the City Manager, the proposed amendments were provided to known Wichita haunted house operators/representatives and the Park Department (Watson Park Haunted Island) to obtain their input. On June 14, 2011, staff met with haunted house operators/representatives to review the proposed ordinance in detail, and to obtain their feedback and suggestions. Many of the haunted house operator/representative suggestions were subsequently incorporated into the draft ordinance. A revised, proposed ordinance was re-issued to operators/representatives in late June for comment, and again on July 28, 2011 after additional modifications to the proposed ordinance were incorporated. As mentioned above, staff met with other operators on August 5, 2011 to obtain their input, much of which has been incorporated into the attached ordinance. The revised ordinance was distributed to operators and other known interested parties on August 9, 2011.

Analysis: The proposed amendments to Chapter 3.22 of the Code of the City of Wichita pertaining to haunted houses and outdoor haunted walks/fields are outlined below.

- Section 3.22.010. The definition of "Haunted House" is clarified and several new definitions are added. New definitions include: "Fire Watch", "Haunted House, Indoor"; "Haunted Walk/Field, Outdoor"; "Permanent Haunted House" (indoor only); and "Temporary Haunted House" (both indoor and outdoor).
- Sections 3.22.015. This new section is added to authorize enforcement action by Fire, Police, Central Inspection and Public Works & Utilities (Environmental Services Division).
- Section 3.22.020. The application fee for a temporary/seasonal haunted house (September 1st through November 2nd) is raised from $50.00 to $100.00 (cost recovery). The annual license application fee for newly allowed "permanent indoor" haunted houses is established at $250.00.
- Section 3.22.020 (a) and (b). A new re-inspection fee of $50.00 will be assessed for each re-inspection required at the time of licensing or renewal, and in the case of permanent indoor haunted houses, for any required inspections related to modifications made during the annual license period. No inspection fee is charged for the initial license inspection.
- Section 3.22.040. The liability insurance requirement is increased from a minimum of $25,000 to $500,000 per individual, and from a minimum of fifty thousand to one million dollars per occurrence.
- Section 3.22.035. This new section outlines minimum application and applicant/operator requirements. Felons and sex offenders are prohibited from obtaining a license.
- Section 3.22.060. New and modified operational standards, safety requirements, inspection and general regulations are added, and include the following:
    - additional and/or clarified fire and life safety standards;
    - clarified off-street parking and parking location requirements;
    - minimum restroom facility (permanent or temporary) requirements;
    - compliance with noise and zoning ordinances;
    - prohibition in residential zoning districts unless at a church, school or on public property;
    - temporary/seasonal indoor or outdoor haunted house operations are allowed from September 1st through November 2nd;
    - indoor haunted houses may only operate between the hours of nine a.m. and two a.m.; and
    - outdoor haunted walks/fields may only operate on a temporary/seasonal basis, and only operate between the hours of nine a.m. and midnight Sunday through Thursday (except for October 31st), and between the hours of nine a.m. and 2:00 a.m. on Friday and Saturday or on October 31st.
- Section 3.22.062. This new section allows and authorizes inspections of haunted houses, haunted walk/fields and/or premises by City Fire, Police Central Inspection and Public Works officials.
- Section 3.22.065. This new section requires that a maximum facility/premise occupant load capacity be determined and posted by the Fire Chief and Superintendent of Central Inspection.
- Section 3.22.070. The criminal penalty is increased from a fine not to exceed $100 to a fine not to exceed $500. This is consistent with other City license regulation penalties.
- Section 3.22.080. This new section established criterion for denial and/or suspension of a license.
- Section 3.22.090. This new section establishes procedures for appeal of the denial, suspension or revocation of a license.

Financial Considerations: There are no costs to the City associated with adoption of the ordinance. Adoption of the proposed license and inspection fee increases/additions will substantially recover City costs associated with haunted house and haunted walk/field license reviews and approvals.

Goal Impact: This item impacts the Provide and Safe and Secure Community goal indicator by providing appropriate licensing, insurance, building/life safety and inspection requirements for haunted houses and outdoor haunted walks/fields.

Legal Considerations: The Law Department prepared the ordinance and has approved it as to form.

Recommendation/Action: It is recommended that the City Council approve second reading of the ordinance amending Chapter 3.22 of the Code of the City of Wichita pertaining to haunted houses and haunted walks/fields.

Attachment: Delineated ordinance amending Chapter 3.22 of the Code of the City of Wichita.

First Published in The Wichita Eagle on August 19, 2011

08/10/2011

ORDINANCE NO. 49-042

AN ORDINANCE AMENDING SECTIONS 3.22.010, 3.22.020, 3.22.040, 3.22.060 AND 3.22.070, CREATING SECTIONS 3.22.015, 3.22.035, 3.22.062, 3.22.065, 3.22.067, 3.22.080 AND 3.22.090 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO HAUNTED HOUSES, HALLOWEEN HOUSES, MYSTERY MANSIONS AND GHOST WALKS AND REPEALING THE ORIGINALS OF SECTIONS 3.22.010, 3.22.020, 3.22.040, 3.22.050, 3.22.060 AND 3.22.070 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.22.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** **'**Chief of Police' means the Chief of the Wichita Police Department or his/her designee;

'Fire Chief' means the Director of the Fire Department of the City of Wichita, Kansas, or his/her designee;

'Fire Watch' means a temporary measure intended to ensure continuous and systematic surveillance of a building or portion thereof by one or more qualified individuals or standby personnel when required by the Fire Chief for the purpose of identifying and controlling fire hazards, detecting early signs of unwanted fire, raising an alarm of fire and notifying the Fire Department;

'Halloween Season' means the period of time from September 1st through November 2nd of any calendar year;

‘Haunted House, Indoor’ means any indoor permanent or temporary building, structure or facility, or portion thereof, which provides walkways or any other system that transports passengers through a facility or course so arranged that the means of egress are not readily apparent due to theatrical distractions or displays, are not plainly visible due to low illumination, or are not readily accessible or available due to the type of course, pathways or method of transportation through the building or structure, and where the public is invited to view, be entertained, scared or amused by simulated creations of sound, theatrical displays or distractions, or sight and feeling of a ghoulish, ghostly, spectral, imaginary and haunting nature in the spirit of and celebration of the holiday known as Halloween. Unless otherwise specified, such term shall include temporary and permanent haunted houses, indoor.

‘Haunted Walk/Field, Outdoor’ means an attraction similar to haunted houses, indoor, which occurs primarily outdoors but may include both outdoor or indoor areas where egress to a public way is not readily identifiable, where the public is invited to view, be entertained, scared or amused by simulated creations of sound, theatrical distractions, sight and feeling of a ghoulish, ghostly, spectral, imaginary and haunting nature in the spirit of and celebration of the holiday known as Halloween.

‘Permanent Haunted House’ means a ‘Haunted House, Indoor’ that meets the requirements of the Wichita-Sedgwick County Unified Zoning Code as related to “Recreation and Entertainment, Indoor” uses, as well as all City of Wichita

building, fire, electrical, elevator, mechanical, plumbing and sewer codes, which may operate year round.

'Person' means any individual, firm, association, company, partnership, or other legal entity.

'Superintendent of Central Inspection' means the superintendent or person in charge of the Office of Central Inspection of the City or his/her designee

'Temporary Haunted House, Indoor or Temporary Haunted Walk/Field, Outdoor' means a haunted house, indoor, or haunted walk/field, outdoor that is operated only during the Halloween Season."

SECTION 2. Section 3.22.015 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Enforcement of provisions of Code.** (a) The Office of Central Inspection of the City of Wichita, the Wichita Police Department, the Wichita Fire Department, the Wichita Department of Public Works & Utilities and the authorized representatives of such departments, shall be responsible for the enforcement of all provisions of this Code.

(b) The provisions of this Code are in addition to any other health, fire, zoning, building code or life safety requirements within the ordinances of the Code of the City of Wichita or laws of the State of Kansas."

SECTION 3. Section 3.22.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"License or permit required--Fee. (a) It is unlawful for any person to engage, conduct, pursue, operate, authorize or permit, within the corporate

limits of the city, a temporary haunted house, indoor or haunted walk/field, outdoor, whether or not an admittance fee is charged, without first obtaining a license from the City Treasurer and paying a license fee of one hundred dollars.

In addition to the application fee, an inspection fee not to exceed fifty dollars ($50.00) will be assessed for each subsequent inspection(s) of the property by the Office of Central Inspection or the Fire Department to determine compliance with the provisions of this Code at the time of licensing. No inspection fee shall be assessed for the initial inspection, or when the first re-inspection verifies that corrections required during initial inspection have been resolved. Further, the applicant or his/her contractors or other agents are responsible for obtaining any and all permits and inspections required pursuant to the building, fire, electrical, mechanical, plumbing and elevator codes of the City of Wichita.

(b) It is unlawful for any person to engage, conduct, pursue, operate, authorize or permit, within the corporate limits of the city, a permanent haunted house, indoor, whether or not an admittance fee is charged, without first obtaining a license from the City Treasurer and paying a license fee of two hundred fifty dollars;

In addition to the application fee, an inspection fee not to exceed fifty dollars ($50.00) will be assessed for each subsequent inspection(s) of the property by the Office of Central Inspection or the Fire Department to determine compliance with the provisions of this Code at the time of licensing or during the annual license period when modifications to egress paths or systems, theatrical

distraction or displays, or egress path illumination are made. Such modifications must be inspected and approved by the City of Wichita Fire Department and/or Office of Central Inspection. No inspection fee shall be assessed for the initial annual license inspection, or when the first re-inspection verifies that corrections required during initial inspection have been resolved. Further, the applicant or his/her contractors or other agents are responsible for obtaining any and all permits and inspections required pursuant to the building, fire, plumbing, sewer, mechanical, elevator and electrical codes of the City of Wichita.

(c) No license shall be issued for the operation of a haunted house, indoor or haunted walk/field, outdoor in any residential zoning district except those located in buildings of churches, schools or upon public property with the written approval of the municipality, department or agency authorized to issue such approval for use of the property.

(d) The license for temporary haunted houses, indoor or haunted walks/fields, outdoor shall be effective for one annual Halloween Season as defined by this chapter.

(e) The license for permanent haunted houses, indoor shall be effective for twelve months."

SECTION 4. Section 3.22.035 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Application.** (a) Before any license is granted or issued for a haunted house, indoor or haunted walk/field, outdoor, an application shall be filed with the City Treasurer, setting forth the following facts:

(1) The name, address, date of birth of the applicant and a telephone number where the applicant can be reached between the hours of eight a.m. and five p.m. and during the hours of operation of the haunted house, indoor or haunted walk/field, outdoor;

(2) Address of the haunted house, indoor or haunted walk/field, outdoor;

(3) Property owner's name, address and phone number;

(4) Dates for which the license is desired;

(5) Hours and days the haunted house, indoor or haunted walk/field, outdoor is to be open and closed;

(6) A statement that the applicant is familiar with the conditions imposed by the terms of this chapter;

(7) Written consent of the property owner;

(8) Site and/or floor plan of all proposed indoor or outdoor permanent or temporary buildings, structures, facilities or property;

(9) Plan for parking and restroom facilities;

(10) Maximum occupant load of the buildings, facilities or areas.

(b) In addition, the applicant must furnish:

(1) The name(s) and address(es) of the owner(s) of the premises where such haunted house, indoor or haunted walk/field, outdoor is located;

(2) The manager or operator and, if a corporation or partnership, all the names and addresses of the officers of such corporation or partnership and any individual who owns twenty-five (25) percent or more of the stock of such corporation. If the license is to be held by a corporation, the resident officer of the corporation. If the applicant is a partnership, all the names, addresses, social security numbers and dates of birth of all partners of the partnership;

(3) The name, address and date of birth of the applicant, owner, manager or other responsible person of the haunted house, indoor or haunted walk/field, outdoor;

(4) An emergency management plan, consisting of, but not limited to, fire and storm evacuation, patron crowd control and emergency access for police, fire and ambulance;

(5) Detailed plans and drawings of the haunted house, indoor or haunted walk/field, outdoor shall be submitted to the Office of Central Inspection and the Wichita Fire Department, indicating the waiting area for persons seeking admission, the parking areas, all restrooms, emergency exits and all other areas accessible by patrons;

(6) A statement as to whether the applicant has ever had any license denied, revoked or suspended by the City of Wichita or the State of Kansas or any other governmental entity, the reason therefor and the business activity or occupation of the individual subsequent to such suspension, revocation or denial;

(7) A statement as to whether the applicant has ever been convicted of a felony or other crime as set forth in this section which would make the applicant ineligible to be licensed pursuant to the terms of this Chapter;

(8) A statement that the applicant consents and agrees that any member of the Police Department, Fire Department, Office of Central Inspection and Department of Public Works & Utilities may, at any time, enter and inspect any part of such premises.

(c) A license shall be denied if one or more of the following conditions exist:

(1) Any applicant, owner, officer, manager or director of a corporate applicant, any person owning twenty-five percent (25%) or more of the stock of a corporate applicant, or any partner of a partnership applicant if the partner has, within the preceding ten years, been convicted of or placed on diversion for a:

a. Felony;

b. A crime for which the individual is required to register as a sex offender pursuant to K.S.A. 22-4901, et seq. or laws or statutes in other local, state or federal jurisdictions which require an offender to be registered as a sex offender;

c. For any conviction or diversion of a misdemeanor within the last three years involving:

i. Laws pertaining to any controlled substance(s) prohibited by the Uniform Controlled Substance Act, K.S.A. 65-4104, *et seq.* or other laws of the state of Kansas or the United States and amendments thereto;

ii. Prostitution;

iii. Public Indecency;

iv. A sex crime or other person crime as defined by Chapter 21 of the Kansas Statutes Annotated;

v. Any weapons charge.

(2) An applicant is less than eighteen (18) years of age;

(3) The premises do not comply with the health, building, fire, electrical, mechanical, plumbing, elevator and zoning codes of the City of Wichita, except as allowed by the provisions of Section 3.22.020(c) regarding the location of the temporary haunted house, indoor or haunted walk/field, outdoor;

(4) The applicant has knowingly made a false, misleading or fraudulent statement of fact to the City in the application process;

(5) The application is incomplete or if it contains any material misrepresentation.

(6) The applicant, in the last two years has violated the provisions of this Chapter or has had a previous haunted house, indoor or haunted walk/field, outdoor license revoked for failure to comply with the

term and conditions of the license or for violations of the ordinances of the City of Wichita.

(d) The application is filed with, and the license fee is paid to the City Treasurer. The license will not be issued until the application has been reviewed and approved by the Chief of Police, the Office of Central Inspection and the Fire Chief.

(e) No permanent haunted house, indoor license will be issued to any facility which is not property zoned for "Recreation and Entertainment, Indoor" pursuant to the Wichita-Sedgwick County Unified Zoning Code. All activities of a permanent haunted house, indoor must occur completely inside the structure or facility licensed as a permanent haunted house, indoor.

(f) Applications for a license or renewal will not be accepted by the City Treasurer less than thirty (30) days prior to the opening of the haunted house, indoor or haunted walk/field, outdoor, or expiration of a current license."

SECTION 5. Section 3.22.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Liability insurance.** (a) No person within the corporate limits of the city shall be licensed to engage in the operation of a haunted house, indoor or haunted field/walk, outdoor until he has deposited and filed with the City Treasurer, a public liability insurance policy with coverage of not less than five hundred thousand dollars for injury or death to any one person and one million dollars for injury or death to any number of persons in any one accident.

(b) It is unlawful for any person to operate a haunted house, indoor or haunted walk/field, outdoor without obtaining and maintaining in force, during the operation of the haunted house, indoor or haunted walk/field, outdoor, liability insurance in the amounts required by this Code.

(c) It is the responsibility of the licensee to notify the City Treasurer of any change, cancellation or termination of insurance coverage."

SECTION 6. Section 3.22.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Standards, rules and regulations.** Every person engaging in, conducting, pursuing or operating a haunted house, indoor or haunted walk/field, outdoor within the corporate limits of the city, shall comply with the following standards, rules and regulations covering the operation of the haunted house, indoor or haunted walk/field, outdoor:

(a) Before any license is issued, the building or structure shall be inspected and approved by representatives of the Office of Central Inspection and the Fire Department.

(b) The building or structure shall be of sound structural condition.

(c) Fire protection shall be provided as required by the currently adopted City of Wichita fire codes. This shall include, but not be limited to, fire extinguishers, an approved automatic fire detection system, sprinkler system and an emergency notification system with a prerecorded, approved message. The Fire Chief may approve a fire watch to be temporarily used in lieu of, or in conjunction with, automatic fire and/or smoke detection systems sprinkler

systems and/or other emergency notification systems when such fire watch would adequately protect the safety of public while on the licensee's premises. The Fire Chief shall determine the type and number of personnel required for the fire watch and the licensee shall be responsible for all personnel and other costs associated with the required fire watch.

(d) Each floor level shall be provided with at least two approved exits, and steps with three or more risers shall be equipped with handrails.

(e) Exit and emergency lighting shall be provided.

(f) All corridors, hallways or walkways that are part of a required primary path of emergency egress from the building or facility shall be a minimum of thirty-six inches wide, with minimum maneuvering clearances at required egress doors as required by the building code. Mazes and/or hallways that are not part of the primary path of emergency egress shall not be less than two feet, six inches wide.

(g) All mazes shall have exit facilities each twenty feet.

(h) All decorations and materials used shall be flame resistant or treated and maintained fire retardant.

(i) All employees must be trained in emergency procedures regarding evacuation of the facility.

(j) All emergency staff shall carry flashlights and know the location of all exits, fire extinguishers, light switches, electrical panels and emergency phones;

(k) Open flames or space heaters are prohibited indoors, and may only be allowed outdoors with prior Fire Department authorization and approval;

(l) Storage or use of flammable or combustible liquids, gasses and solids is prohibited.

(m) All buildings or structures and the surrounding grounds and premises shall be cleaned, inspected and secured after the operation is closed for the season.

(n) A telephone shall be available on the premises for emergency use at all times when the premises are open to the public.

(o) Off-street parking shall be located on the licensed premises or on an abutting lot immediately adjacent to the structure or facility.

(p) All electrical facilities, wiring, appliances, motors and devices of whatever nature shall be approved by the Office of Central Inspection.

(q) Structural materials, electrical facilities, mechanical devices, decorations, appliances, motors and other devices of whatever nature shall be constructed, used and maintained so that no hazard is created that is contrary to any code adopted by the City of Wichita.

(r) Suitable arrangements for restroom facilities and sanitary sewage disposal must be provided. A minimum of one toilet or portable toilet shall be provided for every two hundred people based on the approved maximum premises capacity (occupant load) of the facility. Each facility will have at least one toilet which is handicap accessible.

(s) The property and all structures shall be maintained in a clean and sanitary manner by the owner or operator.

(t) Noise may not exceed the maximum allowable noise levels established in Chapter 7.41 of the Code of the City of Wichita. Noise shall not be of such volume, intensity or duration as to disturb a person or reasonable sensibilities.

(u) Haunted houses, indoor shall not be opened to the public or operate earlier than nine a.m. nor remain open to the public or operate later that two a.m. Haunted walks/fields, outdoor shall not be opened to the public or operate earlier than nine a.m. nor remain open to the public or operate later than twelve midnight Sunday through Thursday, except on October 31st, or later than two a.m. on Friday and Saturday or on October 31st.

(v) Any modifications to plans submitted and approved, at the time of licensing or licensing renewal, must be inspected and approved by the Office of Central Inspection and the Fire Department."

SECTION 7. Section 3.22.062 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Right of Access. During any hours of operation and at times when the licensee, operator or their employees or agents are on the premises, all haunted houses, indoor and haunted walks/fields, outdoor shall be open for inspection(s) by the Wichita Fire Department, Office of Central Inspection officials, Department of Public Works & Utilities officials and Wichita Police Department or other law enforcement agencies."

SECTION 8. Section 3.22.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Premises capacity. It shall be the duty of the Fire Chief and the Superintendent of Central Inspection to determine the number of persons who can be safely accommodated at any one time in any building, premises or location where any haunted house, indoor or haunted walk/field, outdoor is located. The Fire Chief and the Superintendent of Central Inspection shall rate and limit the maximum occupant load of the building, premises or location and furnish a certificate thereof to the owner or operator of such haunted house, indoor or any building or structure which is part of a haunted walk/field, outdoor, which owner shall be required to post such certificate near the main entrance in the facility. Such owner, operator, licensee or responsible person is hereby required to limit the attendance at such haunted house, indoor or haunted walk/field, outdoor to such maximum occupant load capacity as has been determined by the Fire Chief and Superintendent of Central Inspection. It shall be unlawful to post a certificate of maximum occupant load showing a greater capacity than that shown by the Office of Central Inspection and Fire Chief."

SECTION 9. Section 3.22.067 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Inspection of Premises.** It shall be unlawful to conduct or operate any haunted house, indoor or haunted walk/field, outdoor which has not been inspected and approved by the Office of Central Inspection and the Fire Department."

SECTION 10. Section 3.22.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Penalty for violation of chapter. Any person who violates any provisions of this chapter, shall be guilty of a misdemeanor and shall be punished by a fine ~~of~~ not to exceed five hundred dollars. Each day's violation shall be a separate offense."

SECTION 11. Section 3.22.080 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Administrative procedures. (a) A haunted house, indoor or haunted walk/field, outdoor license may be suspended, or revoked if:

(1) Any information furnished on the application is incomplete, false or is not updated as required by this Chapter;

(2) Failure to comply with any condition of the haunted house, indoor or haunted walk/field, outdoor license;

(3) The licensee or a manager has become ineligible to hold a license;

(4) The owner, manager, partner, director or other person owning twenty-five percent or more of the stock of a corporate licensee or a partner of a partnership licensee is convicted of any violation or crime which would make them ineligible to obtain a haunted house, indoor or haunted walk/field, outdoor license;

(5) The premises are in violation of the health, building, fire, electrical, mechanical, plumbing, elevator or zoning codes, except as

allowed by Section 3.22.020(c) of the City of Wichita regarding the location of the haunted house, indoor or haunted walk/field, outdoor, or the laws of the State of Kansas;

(6) Evidence of a material variance in the actual plan and design of the premises from the plans submitted pursuant to this Chapter, or from the original design of the premises when initially licensed;

(7) Any law enforcement officer, Fire Department, Public Works & Utilities or Office of Central Inspection official, is refused access to inspect the premises during any hours of operation and at times when the licensee, operator or their employees or agents are on the premises;

(8) The premises are in violation of the maximum occupant load of such building, structure or facility;

(9) The licensee or any employee or agent of the licensee is found to be in violation of the provisions of this chapter or any other ordinance, rule or regulation of the City of Wichita.

For the purposes of this section, *'conviction'* or *'violation'* shall include being placed on diversion or being adjudged guilty upon entering a plea of no contest.

(b) The Superintendent of Central Inspection, Fire Chief or Chief of Police shall provide written notice of the intent to revoke or suspend a haunted house, indoor or haunted walk/field, outdoor license by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing

address of the licensee on file with the City Treasurer. The notice shall provide the effective date of the revocation or suspension of the license. Such notice shall detail the reasons or basis for the revocation or suspension of the license. No revocation or suspension shall be imposed on less than five days notice to the licensee, and shall specify the rights of the licensee to appeal any such revocation or suspension."

SECTION 12. Section 3.22.090 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Appeal Procedure. (a) Any applicant or licensee aggrieved by the denial, suspension or revocation of a haunted house, indoor or haunted walk/field, outdoor license may file with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the decision by the Superintendent of Central Inspection, Chief of Police or Fire Chief or their designees. The Notice of Appeal shall specify:

(1) the name and address of the appellant;

(2) the date of application;

(3) the date of the denial, suspension or revocation of the license or application;

(4) the factual basis for the appeal.

(b) Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than twenty days from the date of the filing of the Notice of Appeal with the City Clerk. Any

appeal shall stay the suspension or revocation of the license until the matter is heard by the City Council.

(c) The City Council may approve the denial, suspension or revocation, overrule the denial, suspension or revocation or modify the decision of the Superintendent of Central Inspection, Chief of Police or Fire Chief.

(d) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the license by the City Council."

SECTION 13. The originals of Sections 3.22.010, 3.22.020, 3.22.040, 3.22.050, 3.22.060 and 3.22.070 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 14. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 16th day of August, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED 08/10/2011

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 3.22.010, 3.22.020, 3.22.040, 3.22.060 AND 3.22.070, CREATING SECTIONS 3.22.015, 3.22.035, 3.22.062, 3.22.065, 3.22.067, 3.22.080 AND 3.22.090 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO HAUNTED HOUSES, HALLOWEEN HOUSES, MYSTERY MANSIONS AND GHOST WALKS AND REPEALING THE ORIGINALS OF SECTIONS 3.22.010, 3.22.020, 3.22.040, 3.22.050, 3.22.060 AND 3.22.070 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.22.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions. ‘**Chief of Police’ means the Chief of the Wichita Police Department or his/her designee;

‘Fire Chief’ means the Director of the Fire Department of the City of Wichita, Kansas, or his/her designee;

‘Fire Watch’ means a temporary measure intended to ensure continuous and systematic surveillance of a building or portion thereof by one or more qualified individuals or standby personnel when required by the Fire Chief for the purpose of identifying and controlling fire hazards, detecting early signs of unwanted fire, raising an alarm of fire and notifying the Fire Department;

‘Halloween Season’ means the period of time from September 1st through November 2nd of any calendar year;

~~A~~ ‘~~h~~Haunted ~~h~~House, Indoor’ ~~halloween house, mystery mansion,’ etc., for the purpose of this chapter, includes and~~ means ~~a~~ any indoor permanent or temporary building, ~~or any other~~ structure or ~~installation~~ facility, or portion thereof, which provides walkways or any other system that transports passengers through a facility or course so arranged that the means of egress are not readily apparent due to theatrical distractions or displays, are not plainly visible due to low illumination, or are not readily accessible or available due to the type of course, pathways or method of transportation through the building or structure, and where~~in~~ the public is invited to view, be entertained, scared or ~~and~~ amused by simulated creations of sound, theatrical displays or distractions, or sight and feeling of a ghoulish, ghostly, spectral, imaginary and haunting nature in the spirit of and celebration of the holiday known as Halloween. Unless otherwise specified, such term shall include temporary and permanent haunted houses, indoor.

‘Haunted Walk/Field, Outdoor’ means an attraction similar to haunted houses, indoor, which occurs primarily outdoors but may include both outdoor or indoor areas where egress to a public way is not readily identifiable, where the public is invited to view, be entertained, scared or amused by simulated creations of sound, theatrical distractions, sight and feeling of a ghoulish, ghostly, spectral, imaginary and haunting nature in the spirit of and celebration of the holiday known as Halloween.

'Permanent Haunted House' means a 'Haunted House, Indoor' that meets the requirements of the Wichita-Sedgwick County Unified Zoning Code as related to "Recreation and Entertainment, Indoor" uses, as well as all City of Wichita building, fire, electrical, elevator, mechanical, plumbing and sewer codes, which may operate year round.

'Person' means any individual, firm, association, company, partnership, or other legal entity.

'Superintendent of Central Inspection' means the superintendent or person in charge of the Office of Central Inspection of the City or his/her designee

'Temporary Haunted House, Indoor or Temporary Haunted Walk/Field, Outdoor' means a haunted house, indoor, or haunted walk/field, outdoor that is operated only during the Halloween Season."

SECTION 2. Section 3.22.015 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Enforcement of provisions of Code.** (a) The Office of Central Inspection of the City of Wichita, the Wichita Police Department, the Wichita Fire Department, the Wichita Department of Public Works & Utilities and the authorized representatives of such departments, shall be responsible for the enforcement of all provisions of this Code.

(b) The provisions of this Code are in addition to any other health, fire, zoning, building code or life safety requirements within the ordinances of the Code of the City of Wichita or laws of the State of Kansas."

SECTION 3. Section 3.22.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"License or permit required--Fee. (a) It is unlawful for any person to engage, conduct, pursue, ~~or~~ operate, authorize or permit, within the corporate limits of the city, a temporary haunted house, indoor or haunted walk/field, outdoor, ~~halloween house, mystery mansion, etc., as a commercial-for-profit enterprise or noncommercial nonprofit enterprise~~ whether or not an admittance fee is charged, without ~~having~~ first ~~obtained~~ obtaining a license ~~therefor~~ from the ~~c~~City ~~license collector~~ Treasurer and ~~paid~~ paying a ~~seasonal~~ license fee of ~~fifty~~ one hundred dollars~~;~~. ~~provided, however, that~~

In addition to the application fee, an inspection fee not to exceed fifty dollars ($50.00) will be assessed for each subsequent inspection(s) of the property by the Office of Central Inspection or the Fire Department to determine compliance with the provisions of this Code at the time of licensing. No inspection fee shall be assessed for the initial inspection, or when the first re-inspection verifies that corrections required during initial inspection have been resolved. Further, the applicant or his/her contractors or other agents are responsible for obtaining any and all permits and inspections required pursuant to the building, fire, electrical, mechanical, plumbing and elevator codes of the City of Wichita.

(b) It is unlawful for any person to engage, conduct, pursue, operate, authorize or permit, within the corporate limits of the city, a permanent haunted house, indoor, whether or not an admittance fee is charged, without first obtaining

a license from the City Treasurer and paying a license fee of two hundred fifty dollars;

In addition to the application fee, an inspection fee not to exceed fifty dollars ($50.00) will be assessed for each subsequent inspection(s) of the property by the Office of Central Inspection or the Fire Department to determine compliance with the provisions of this Code at the time of licensing or during the annual license period when modifications to egress paths or systems, theatrical distraction or displays, or egress path illumination are made. Such modifications must be inspected and approved by the City of Wichita Fire Department and/or Office of Central Inspection. No inspection fee shall be assessed for the initial annual license inspection, or when the first re-inspection verifies that corrections required during initial inspection have been resolved. Further, the applicant or his/her contractors or other agents are responsible for obtaining any and all permits and inspections required pursuant to the building, fire, plumbing, sewer, mechanical, elevator and electrical codes of the City of Wichita.

(c) ~~n~~No ~~such~~ license shall be issued for the operation of a haunted house, indoor or haunted walk/field, outdoor~~, halloween house, mystery mansion, etc.,~~ in any residential zoning district except those located in buildings of churches, schools or ~~other institutional uses until the application therefor is approved by the office of central inspection and the fire department~~ upon public property with the written approval of the municipality, department or agency authorized to issue such approval for use of the property.

(d) The license ~~and license fee~~ for temporary haunted houses, indoor or haunted walks/fields, outdoor shall ~~only~~ be ~~good~~ effective for one annual Halloween ~~holiday~~ ~~s~~Season~~, not to exceed thirty consecutive days before and thirty consecutive days after the Halloween holiday~~ as defined by this chapter.

~~(b) Any haunted house, halloween house, mystery mansion, etc., conducted by a school in a school building on school grounds or property shall be exempt from paying the seasonal license fee of fifty dollars, but shall be required to obtain a license or permit which shall not be subject to approval by the office of central inspection, and fire department; provided, however, the school authorities for the school shall, by written certification, certify that the operation of the haunted house, halloween house, or mystery mansion, etc., is in compliance with all other provisions and requirements of this Code; except for subsections (a), (c), (k) and (l) of Section 3.22.060 of this Code; provided, further, that all structural materials, electrical facilities, mechanical devices, decorations, appliances, motors and other devices of whatever natures shall be constructed, used and maintained so that no hazard is created, and further that all fire prevention precautions have been taken and maintained, and further that adequate parking is available. All other provisions of this Code shall apply~~.

(e) The license for permanent haunted houses, indoor shall be effective for twelve months."

SECTION 4. Section 3.22.035 of the Code of the City of Wichita is hereby created to read as follows:

"**Application.** (a) Before any license is granted or issued for a haunted house, indoor or haunted walk/field, outdoor, an application shall be filed with the City Treasurer, setting forth the following facts:

(1) The name, address, date of birth of the applicant and a telephone number where the applicant can be reached between the hours of eight a.m. and five p.m. and during the hours of operation of the haunted house, indoor or haunted walk/field, outdoor;

(2) Address of the haunted house, indoor or haunted walk/field, outdoor;

(3) Property owner's name, address and phone number;

(4) Dates for which the license is desired;

(5) Hours and days the haunted house, indoor or haunted walk/field, outdoor is to be open and closed;

(6) A statement that the applicant is familiar with the conditions imposed by the terms of this chapter;

(7) Written consent of the property owner;

(8) Site and/or floor plan of all proposed indoor or outdoor permanent or temporary buildings, structures, facilities or property;

(9) Plan for parking and restroom facilities;

(10) Maximum occupant load of the buildings, facilities or areas.

(b) In addition, the applicant must furnish:

(1) The name(s) and address(es) of the owner(s) of the premises where such haunted house, indoor or haunted walk/field, outdoor is located;

(2) The manager or operator and, if a corporation or partnership, all the names and addresses of the officers of such corporation or partnership and any individual who owns twenty-five (25) percent or more of the stock of such corporation. If the license is to be held by a corporation, the resident officer of the corporation. If the applicant is a partnership, all the names, addresses, social security numbers and dates of birth of all partners of the partnership;

(3) The name, address and date of birth of the applicant, owner, manager or other responsible person of the haunted house, indoor or haunted walk/field, outdoor;

(4) An emergency management plan, consisting of, but not limited to, fire and storm evacuation, patron crowd control and emergency access for police, fire and ambulance;

(5) Detailed plans and drawings of the haunted house, indoor or haunted walk/field, outdoor shall be submitted to the Office of Central Inspection and the Wichita Fire Department, indicating the waiting area for persons seeking admission, the parking areas, all restrooms, emergency exits and all other areas accessible by patrons;

(6) A statement as to whether the applicant has ever had any license denied, revoked or suspended by the City of Wichita or the State of

Kansas or any other governmental entity, the reason therefor and the business activity or occupation of the individual subsequent to such suspension, revocation or denial;

(7) A statement as to whether the applicant has ever been convicted of a felony or other crime as set forth in this section which would make the applicant ineligible to be licensed pursuant to the terms of this Chapter;

(8) A statement that the applicant consents and agrees that any member of the Police Department, Fire Department, Office of Central Inspection and Department of Public Works & Utilities may, at any time, enter and inspect any part of such premises.

(c) A license shall be denied if one or more of the following conditions exist:

(1) Any applicant, owner, officer, manager or director of a corporate applicant, any person owning twenty-five percent (25%) or more of the stock of a corporate applicant, or any partner of a partnership applicant if the partner has, within the preceding ten years, been convicted of or placed on diversion for a:

a. Felony;

b. A crime for which the individual is required to register as a sex offender pursuant to K.S.A. 22-4901, et seq. or laws or statutes in other local, state or federal jurisdictions which require an offender to be registered as a sex offender;

c. For any conviction or diversion of a misdemeanor within the last three years involving:

i. Laws pertaining to any controlled substance(s) prohibited by the Uniform Controlled Substance Act, K.S.A. 65-4104, *et seq.* or other laws of the state of Kansas or the United States and amendments thereto;

ii. Prostitution;

iii. Public Indecency;

iv. A sex crime or other person crime as defined by Chapter 21 of the Kansas Statutes Annotated;

v. Any weapons charge.

(2) An applicant is less than eighteen (18) years of age;

(3) The premises do not comply with the health, building, fire, electrical, mechanical, plumbing, elevator and zoning codes of the City of Wichita, except as allowed by the provisions of Section 3.22.020(c) regarding the location of the temporary haunted house, indoor or haunted walk/field, outdoor;

(4) The applicant has knowingly made a false, misleading or fraudulent statement of fact to the City in the application process;

(5) The application is incomplete or if it contains any material misrepresentation.

(6) The applicant, in the last two years has violated the provisions of this Chapter or has had a previous haunted house, indoor or haunted walk/field, outdoor license revoked for failure to comply with the term and conditions of the license or for violations of the ordinances of the City of Wichita.

(d) The application is filed with, and the license fee is paid to the City Treasurer. The license will not be issued until the application has been reviewed and approved by the Chief of Police, the Office of Central Inspection and the Fire Chief.

(e) No permanent haunted house, indoor license will be issued to any facility which is not property zoned for "Recreation and Entertainment, Indoor" pursuant to the Wichita-Sedgwick County Unified Zoning Code. All activities of a permanent haunted house, indoor must occur completely inside the structure or facility licensed as a permanent haunted house, indoor.

(f) Applications for a license or renewal will not be accepted by the City Treasurer less than thirty (30) days prior to the opening of the haunted house, indoor or haunted walk/field, outdoor, or expiration of a current license."

SECTION 5. Section 3.22.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Liability insurance.** (a) No person within the corporate limits of the city shall be licensed to engage in the operation of a haunted house, indoor or haunted field/walk, outdoor until he has deposited and filed with the ~~c~~City ~~clerk~~ Treasurer, ~~for the benefit of the city~~ a public liability insurance policy with

coverage of not less than ~~twenty-five~~ five hundred thousand dollars for injury or death to any one person and ~~fifty thousand~~ one million dollars for injury or death to any number of persons in any one accident.

(b) It is unlawful for any person to operate a haunted house, indoor or haunted walk/field, outdoor without obtaining and maintaining in force, during the operation of the haunted house, indoor or haunted walk/field, outdoor, liability insurance in the amounts required by this Code.

(c) It is the responsibility of the licensee to notify the City Treasurer of any change, cancellation or termination of insurance coverage."

SECTION 6. Section 3.22.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Standards, rules and regulations.** Every person engaging in, conducting, pursuing or operating ~~within the corporate limits of the city~~ a haunted house, indoor or haunted walk/field, outdoor~~, halloween house, mystery mansion, etc.,~~ within the corporate limits of the city, shall comply with the following standards, rules and regulations covering the operation of the haunted house, indoor or ~~, halloween house~~ or ~~mystery mansion, etc.~~ haunted walk/field, outdoor:

(a) Before any ~~application for a~~ license ~~permit or special permit~~ is issued, the building or structure shall be inspected and approved by representatives of the ~~o~~Office of ~~c~~Central i~~I~~nspection and the ~~f~~Fire ~~d~~Department.

(b) The building or structure shall be of sound structural condition.

(c) Fire protection shall be provided as required by the ~~fire department and~~ currently adopted City of Wichita fire ~~construction~~ codes. This shall include,

but not be limited to, fire extinguishers, an approved automatic fire detection system, sprinkler system and an emergency notification system with a prerecorded, approved message. The Fire Chief may approve a fire watch to be temporarily used in lieu of, or in conjunction with, automatic fire and/or smoke detection systems, sprinkler systems and/or other emergency notification systems when such fire watch would adequately protect the safety of public while on the licensee's premises. The Fire Chief shall determine the type and number of personnel required for the fire watch and the licensee shall be responsible for all personnel and other costs associated with the required fire watch.

(d) Each floor level shall be provided with at least two approved exits, and steps with three ~~four~~ or more risers shall be equipped with handrails.

(e) Exit and ~~E~~emergency lighting shall be provided.

(f) All ~~mazes and/or~~ corridors, hallways or walkways that are part of a required primary path of emergency egress from the building or facility shall ~~not~~ be a minimum of ~~less than two feet~~ ~~six~~ thirty-six inches wide, with minimum maneuvering clearances at required egress doors as required by the building code. Mazes and/or hallways that are not part of the primary path of emergency egress shall not be less than two feet, six inches wide.

(g) All mazes shall have exit facilities each twenty feet.

(h) All decorations and materials used shall be flame resistant or treated and maintained fire retardant.

(i) All employees must be trained in emergency procedures regarding evacuation of the facility.

(j) All emergency staff shall carry flashlights and know the location of all exits, fire extinguishers, light switches, electrical panels and emergency phones;

(k) Open flames or space heaters are prohibited indoors, and may only be allowed outdoors with prior Fire Department authorization and approval;

(l) Storage or use of flammable or combustible liquids, gasses and solids is prohibited.

~~(i)~~ (m) ~~The~~ All buildings or structures and the surrounding grounds and premises shall be cleaned, inspected and secured after the operation is closed for the season.

~~(j)~~ (n) A telephone shall be available on the premises for emergency use at all times when the premises are open to the public.

~~(k)~~ (o) ~~In all locations wherever operated, o~~Off-street parking shall be located on the licensed premises or on an abutting lot immediately adjacent to the structure or ~~use except that accessory parking shall not be allowed across arterials or expressway locations~~ facility.

~~(l)~~ (p) All electrical facilities, wiring, appliances, motors and devices of whatever nature shall be approved by the ~~o~~Office of ~~c~~Central ~~i~~Inspection.

(q) Structural materials, electrical facilities, mechanical devices, decorations, appliances, motors and other devices of whatever nature shall be constructed, used and maintained so that no hazard is created that is contrary to any code adopted by the City of Wichita.

(r) Suitable arrangements for restroom facilities and sanitary sewage disposal must be provided. A minimum of one toilet or portable toilet shall be provided for every two hundred people based on the approved maximum premises capacity (occupant load) of the facility. Each facility will have at least one toilet which is handicap accessible.

(s) The property and all structures shall be maintained in a clean and sanitary manner by the owner or operator.

(t) Noise may not exceed the maximum allowable noise levels established in Chapter 7.41 of the Code of the City of Wichita. Noise shall not be of such volume, intensity or duration as to disturb a person or reasonable sensibilities.

(u) Haunted houses, indoor shall not be opened to the public or operate earlier than nine a.m. nor remain open to the public or operate later that two a.m. Haunted walks/fields, outdoor shall not be opened to the public or operate earlier than nine a.m. nor remain open to the public or operate later than twelve midnight Sunday through Thursday, except on October 31st, or later than two a.m. on Friday and Saturday or on October 31st.

(v) Any modifications to plans submitted and approved, at the time of licensing or licensing renewal, must be inspected and approved by the Office of Central Inspection and the Fire Department."

SECTION 7. Section 3.22.062 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Right of Access.** During any hours of operation and at times when the licensee, operator or their employees or agents are on the premises, all haunted houses, indoor and haunted walks/fields, outdoor shall be open for inspection(s) by the Wichita Fire Department, Office of Central Inspection officials, Department of Public Works & Utilities officials and Wichita Police Department or other law enforcement agencies."

SECTION 8. Section 3.22.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Premises capacity.** It shall be the duty of the Fire Chief and the Superintendent of Central Inspection to determine the number of persons who can be safely accommodated at any one time in any building, premises or location where any haunted house, indoor or haunted walk/field, outdoor is located. The Fire Chief and the Superintendent of Central Inspection shall rate and limit the maximum occupant load of the building, premises or location and furnish a certificate thereof to the owner or operator of such haunted house, indoor or any building or structure which is part of a haunted walk/field, outdoor, which owner shall be required to post such certificate near the main entrance in the facility. Such owner, operator, licensee or responsible person is hereby required to limit the attendance at such haunted house, indoor or haunted walk/field, outdoor to such maximum occupant load capacity as has been determined by the Fire Chief and Superintendent of Central Inspection. It shall be unlawful to post a certificate of maximum occupant load showing a greater capacity than that shown by the Office of Central Inspection and Fire Chief."

SECTION 9. Section 3.22.067 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Inspection of Premises.** It shall be unlawful to conduct or operate any haunted house, indoor or haunted walk/field, outdoor which has not been inspected and approved by the Office of Central Inspection and the Fire Department."

SECTION 10. Section 3.22.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Penalty for violation of chapter. Any person ~~whether as principal or agent,~~ who violates any provisions of this chapter, shall be guilty of a misdemeanor and shall be punished by a fine ~~of~~ not ~~less than twenty-five dollars nor more than one~~ to exceed five hundred dollars. Each day's violation shall be a separate offense."

SECTION 11. Section 3.22.080 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Administrative procedures.** (a) A haunted house, indoor or haunted walk/field, outdoor license may be suspended, or revoked if:

(1) Any information furnished on the application is incomplete, false or is not updated as required by this Chapter;

(2) Failure to comply with any condition of the haunted house, indoor or haunted walk/field, outdoor license;

(3) The licensee or a manager has become ineligible to hold a license;

(4) The owner, manager, partner, director or other person owning twenty-five percent or more of the stock of a corporate licensee or a partner of a partnership licensee is convicted of any violation or crime which would make them ineligible to obtain a haunted house, indoor or haunted walk/field, outdoor license;

(5) The premises are in violation of the health, building, fire, electrical, mechanical, plumbing, elevator or zoning codes, except as allowed by Section 3.22.020(c) of the City of Wichita regarding the location of the haunted house, indoor or haunted walk/field, outdoor, or the laws of the State of Kansas;

(6) Evidence of a material variance in the actual plan and design of the premises from the plans submitted pursuant to this Chapter, or from the original design of the premises when initially licensed;

(7) Any law enforcement officer, Fire Department, Public Works & Utilities or Office of Central Inspection official, is refused access to inspect the premises during any hours of operation and at times when the licensee, operator or their employees or agents are on the premises;

(8) The premises are in violation of the maximum occupant load of such building, structure or facility;

(9) The licensee or any employee or agent of the licensee is found to be in violation of the provisions of this chapter or any other ordinance, rule or regulation of the City of Wichita.

For the purposes of this section, '*conviction'* or *'violation'* shall include being placed on diversion or being adjudged guilty upon entering a plea of no contest.

(b) The Superintendent of Central Inspection, Fire Chief or Chief of Police shall provide written notice of the intent to revoke or suspend a haunted house, indoor or haunted walk/field, outdoor license by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the licensee on file with the City Treasurer. The notice shall provide the effective date of the revocation or suspension of the license. Such notice shall detail the reasons or basis for the revocation or suspension of the license. No revocation or suspension shall be imposed on less than five days notice to the licensee, and shall specify the rights of the licensee to appeal any such revocation or suspension."

SECTION 12. Section 3.22.090 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Appeal Procedure.** (a) Any applicant or licensee aggrieved by the denial, suspension or revocation of a haunted house, indoor or haunted walk/field, outdoor license may file with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the decision by the Superintendent of Central Inspection, Chief of Police or Fire Chief or their designees. The Notice of Appeal shall specify:

(1) the name and address of the appellant;

(2) the date of application;

(3) the date of the denial, suspension or revocation of the license or application;

(4) the factual basis for the appeal.

(b) Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than twenty days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension or revocation of the license until the matter is heard by the City Council.

(c) The City Council may approve the denial, suspension or revocation, overrule the denial, suspension or revocation or modify the decision of the Superintendent of Central Inspection, Chief of Police or Fire Chief.

(d) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the license by the City Council."

SECTION 13. The originals of Sections 3.22.010, 3.22.020, 3.22.040, 3.22.050, 3.22.060 and 3.22.070 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 14. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2011.

_____

Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Letter of Intent for Hospital Facilities Improvement and Refunding Revenue Bonds (Via Christi Health System, Inc.) (Districts II, III and VI)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Approve the letter of intent and engagement of bond counsel.

Background: Via Christi is requesting City Council approval of a Letter of Intent to issue its Hospitals Facilities Improvements and Refunding Revenue Bonds in an amount not-to-exceed $200 million. The proceeds of the proposed Bonds will be used to refinance the City's outstanding Hospital Facilities Improvements and Refunding Revenue Bonds, issued to refinance improvements to facilities located at 929 N. St. Francis and 3600 E. Harry, Wichita, Kansas, and 1 Mt. Carmel Way, Pittsburg, Kansas in 2001 and to finance additional improvements and equipment acquisition for all three facilities ("Project").

The 2001 Bonds may be called for redemption anytime after November 15, 2011 and Via Christi has requested a letter of intent to issue refunding revenue bonds in an amount not-to-exceed $200 million to refinance the 2001 Bonds at a lower interest rate. Concurrently, Via Christi wishes to utilize tax-exempt bonds to finance additional improvements at existing hospitals in Wichita and Pittsburg, Kansas.

Analysis: Via Christi Health System, Inc. was formed in 1995 through the consolidation of the St. Francis Ministry Corporation of the Sisters of Sorrowful Mothers and the CSJ Health System of Wichita of the Sisters of St. Joseph of Wichita. During that same period, St. Francis Regional Medical Center and St. Joseph Medical Center were consolidated to form Via Christi Regional Medical Center. Via Christi Health System headquarters is located in Wichita at 8200 East Thorn Drive. Via Christi Health System, Inc. operates and manages seven hospitals, a rehabilitation center, eleven senior care facilities and 18 physician practices in three states.

Bond proceeds will be used in part to refund all outstanding bonds issued by the City as its Series III A and B 2001 Hospital Facilities Improvement and Refunding Revenue Bonds. The 2001 Bonds are currently redeemable at a price equal to 101% of the principal amount of bonds being redeemed, plus accrued interest to the date of redemption. In addition, the bond proceeds will be used to finance construction of renovations and additions at Via Christi's St. Francis and St. Joseph campuses in Wichita and at its hospital in Pittsburg, Kansas. An analysis of the uses of project funds is:

USES OF FUNDS

Redemption of the 2001 Refunded Bonds	165,465,000
Construction of the Project	27,400,708
Furnishings, Machinery & Equipment	5,485,000
Cost of Issuance	1,649,292
Total Cost of Project:	$200,000,000

Financial Considerations: Via Christi agrees to pay all costs of issuing the bonds and agrees to pay the City's $2,500 annual IRB administrative fee for the term of the bonds. The investment firm of Morgan Stanley will serve as underwriter of the bonds.

Goal Impact: Economic Vitality and Affordable Living. Providing tax-exempt financing to not-for-profit health care providers ensures continued high-quality care for residents and visitors and provides opportunities for high-quality job creation.

Legal Considerations: Via Christi has requested that the law firm of Triplett, Woolf & Garretson, LLC serve as bond counsel in the transaction. This firm served as bond counsel in the issuance of City of Wichita Health Care Facilities Refunding and Improvement Revenue Bonds that financed Via Christi's new acute care hospital at 151st Street West and 21st Street North in September 2009. The City's contract bond counsel firm, Kutak Rock, L.P., will serve as underwriter's counsel in this transaction and therefore is precluded from serving as bond counsel. The City Attorney's Office will review and approve the form of bond documents prior to the issuance of any bonds. Via Christi agrees to comply with the Standard Conditions contained in the City's IRB Policy.

Recommendations/Actions: It is recommended that the City Council approve the Letter of Intent for Hospital Facilities Refunding Revenue Bonds for Via Christi in the amount not to exceed $200,000,000, appoint the law firm of Triplett, Woolf and Garretson, LLC to serve as bond counsel and approve the necessary signatures.

Attachments: Letter of Intent Application

Application and Request for Letter of Intent to the City of Wichita, Kansas

For the Issuance of Health Care Facilities Refunding and Improvement Revenue Bonds

for the benefit of

Via Christi Health, Inc.

Via Christi
HEALTH

...because your life matters

July 28, 2011

Hospitals and Outpatient Centers

Senior Villages

At Home

CITY OF WICHITA, KANSAS
Attn: Mayor and Members of the City Council
455 N. Main – City Hall
Wichita, Kansas 67202

Re: Proposed $200,000,000 City of Wichita, Kansas Health Care Facilities Refunding and Improvement Revenue Bonds, Series 2011 (Via Christi Health, Inc.) (the "Bonds")

Dear Mayor Brewer and Council Members:

This letter is to request approval by the governing body of the City of Wichita, Kansas (the "City") of a Letter of Intent to issue its Health Care Facilities Refunding and Improvement Revenue Bonds in one or more series in an amount not to exceed $200,000,000. The proceeds of the proposed Bonds will be used for the purpose of providing funds to (i) refund certain outstanding City of Wichita, Kansas, Hospital Facilities Revenue Bonds, Series III-A, 2001 (Via Christi Health System, Inc.) and Hospital Facilities Revenue Bonds, Series III-B, 2001 (Via Christi Health System, Inc.) (collectively, the "Refunded Bonds") previously issued by the City, which originally financed and refinanced hospital improvements to hospital facilities located at 929 N. St. Francis and 3600 E. Harry, Wichita, Kansas and 1 Mt. Carmel Way, Pittsburg, Kansas, and (ii) purchase, acquire, construct, furnish and equip additional hospital improvements to said hospital facilities located at 929 N. St. Francis and 3600 E. Harry, Wichita, Kansas and 1 Mt. Carmel Way, Pittsburg, Kansas (collectively the "Project") which are to be subleased to Via Christi Hospitals Wichita, Inc. and Via Christi Hospital Pittsburg, Inc.

1. Name and Address of Applicant.

Via Christi Health, Inc.
8200 E. Thorn Dr.
Wichita, Kansas 67226
Telephone: (316) 858-4933
Attention: David R. Hadley, Senior Vice President & Chief Financial Officer

2. A General Description of the Nature of the Business of the Proposed Beneficiaries.

The Applicant is the parent corporation of a network of regional providers of not-for-profit health care services, including acute care, senior care and rehabilitative services provided by subsidiaries and affiliates throughout Kansas, including, but not limited to, Via Christi Hospitals Wichita, Inc. (St. Francis and Harry Street Campuses), Wichita, Kansas, Via Christi Rehabilitation Hospital, Inc., Wichita, Kansas, Via Christi Hospital Pittsburg, Inc., Pittsburg, Kansas, and Via Christi Hospital Wichita St. Teresa, Inc., Wichita, Kansas. The Applicant, Via Christi Hospitals Wichita, Inc., Via Christi Rehabilitation Hospital, Inc., Via Christi Hospital Pittsburg, Inc., and Via Christi Hospital Wichita St. Teresa, Inc. (the "Obligated Group") will bear all obligations under the proposed Bonds. The Applicant is a not-for-profit corporation co-sponsored by Marian Health System and Ascension Health. It currently has subsidiary health care operations in Oklahoma and throughout Kansas. For more information about the current operations of Applicant, see its annual report for fiscal years ended September 30, 2009 and 2010 provided herewith as Exhibit "A."

3. Key Officers and Employees of Proposed Beneficiaries.

The Board of Trustees of the Applicant presently consists of twelve (12) voting members and one *ex officio* member. Their names, occupation, and expiration dates of their terms are as follows:

NAME	**OCCUPATION / ADDRESS**	**Term Expires (09/30)**
Gerald (Jerry) T. Aaron	Retired – Attorney Wichita, Kansas	2016
Randall Peterson	Interim President & CEO Via Christi Health, Inc. Wichita, Kansas	*Ex Officio*
Sister M. Therese Gottschalk, SSM	President, Marian Health System President/CEO, St. John Health System Tulsa, Oklahoma	2011
Rev. Msgr. Robert E. Hemberger	Vicar General Catholic Diocese of Wichita Wichita, Kansas	2012
Sister Sherri Marie Kuhn, SSM, Secretary	Senior Vice President, Mission Integration Via Christi Regional Medical Center Wichita, Kansas	2011
B. Anthony Issac	President, Lodgeworks L.P. Wichita, Kansas	2018

NAME	OCCUPATION / ADDRESS	Term Expires (09/30)
Sister Lois Ann O'Malley, CSJ	Spanish Teacher – KSU Sisters of St. Joseph of Wichita Manhattan, Kansas	2012
James C. Patton	Retired – Partner Ernst & Young Indianapolis, Indiana	2018
Jon D. Rahman, M.D.	System Vice President/Chief Medical Officer St. Vincent Health, Indianapolis, Indiana	2016
Sister M. Jeanine Retzer, SSM	Assistant Provincial, U.S./Caribbean Province Sisters of the Sorrowful Mother, Oshkosh, WI	2015
David L. Strohm, Chairman	President TrueNorth Inc., Wichita, Kansas	2012
Robert Henkel, FACHE	Chief Operating Officer Ascension Health, St Louis, Missouri	2019
Donald A. Wilson	Healthcare Consultant Topeka, Kansas 66610-1411	2016

Key officers and employees of the Applicant include the following:

VIA CHRISTI HEALTH, INC.

Randall L. Peterson, Interim President and Chief Executive Officer
David R. Hadley, Sr. Vice President and Chief Financial Officer

Key officers and employees of the Applicant's subsidiary/affiliate members of the Obligated Group include the following:

VIA CHRISTI HOSPITALS WICHITA, INC.

Randall L. Peterson, President and Chief Executive Officer

VIA CHRISTI HOSPITAL PITTSBURG, INC.

Jonathan S. Davis, President and Chief Executive Officer

VIA CHRISTI REHABILITATION HOSPITAL, INC.

Cindy LaFleur, Administrator

VIA CHRISTI HOSPITAL WICHITA ST. TERESA, INC.

Kevin Strecker, President and Chief Executive Officer

4. A General Description of the Proposed Project and its Specific Location.

Proceeds from the issuance of the proposed Bonds will be used to make various general improvements to Via Christi's hospital facilities in Wichita and Pittsburg and all necessary appurtenances thereto.

The Wichita project will include, but may not be limited to, a series of construction projects to (i) establish an all private room hospital, (ii) construct renovations to the hospital facilities designed to improve patient care from a clinical and patient experience perspective, and (iii) relocate outpatient operations at the Harry Street Campus to provide a better patient experience and an opportunity for more efficient operation. The Wichita project will be constructed entirely at Via Christi's hospitals located at 929 N. St. Francis and 3600 E. Harry, in the City.

The Pittsburg project will include, but may not be limited to, renovating surgical services area, including pre-op, recovery, interventional radiology, coronary and peripheral endovascular, endoscopy, sterile processing, family waiting and adjacent services in radiology and material management loading dock, and provide for adequately sized rooms designed to meet the needs of today's surgical services. The Pittsburg project will be constructed at Via Christi's hospital located at 1 Mt. Carmel Way, Pittsburg, Kansas.

5. The Dollar Amount of the Bonds Requested.

The total principal amount of the Bonds requested is $200,000,000.

6. A Detailed Breakdown of the Estimated Costs.

It is anticipated that the proceeds from the sale of the proposed Bonds will be applied substantially as follows:

Refunding of Refunded Bonds	$165,465,000*
Construction of the Project	$ 27,400,708**
Land Improvements	$ 0
Furnishings, Machinery & Equipment	$ 5,485,000
Costs of Issuance	$ 1,649,292
TOTAL	$200,000,000

*estimated amount subject to any and all original issue discount or premium
**includes estimated contingency

7. Name and Address of Proposed Counsel to be Utilized In Connection with the Issuance of the Bonds.

City's Bond Counsel
Triplett, Woolf & Garretson, LLC
Attention: J. T. Klaus
2959 North Rock Road, Suite 300
Wichita, Kansas 67226
Telephone: (316) 630-8100
Facsimile: (316) 630-8101
E-mail: jtklaus@twgfirm.com

Applicant's Counsel
Via Christi Health, Inc.
8200 E. Thorn Dr.
Wichita, Kansas 67226
Attn: Gary E. Knight, Vice President
Legal Affairs and General Counsel
Telephone: (316) 858-4923
Facsimile: (316) 858-4189
E-mail: gary_knight@via-christi.org

8. A Statement Relative to Ad Valorem Taxes.

The Applicant is not requesting any ad valorem property tax exemption in connection with the Bonds. Applicant acknowledges that the property purchased with the proceeds of the Bonds should be exempt from ad valorem property taxation by virtue of its regular and exclusive use for not-for-profit hospital purposes.

9. Administrative Service Fee Agreement.

The Applicant agrees to make a payment to the City to reimburse the City for administrative costs in the amount of $2,500 per year commencing one year after the delivery of the bonds. In addition, the Applicant will pay all costs of the City relative to the issuance of the Bonds.

10. Brief Statement With Respect to Benefits.

Via Christi, through its subsidiary/affiliates is committed to providing the best, most comprehensive, health care services in this region. The refunding of the Bonds and financing of new projects will help Via Christi's affiliate hospitals maintain and provide technologically advanced services for a healthier community and will continue to draw patients, visitors and residents to its facilities in Wichita from across Kansas and throughout the region. Furthermore, employees in the health care services field tend to be some of the most highly skilled and profession based employees in any field in the community or in this region.

11. Brief Statement Relative to the Effects of the Proposed Expansion on the Ambient Air Quality of the City of Wichita and Sedgwick County.

The proposed Project will have no effect on the ambient air quality of the City and Sedgwick County, nor are there any other anticipated adverse environmental effects. The Applicant will agree to comply with the City's policies and requirements relating to environmental matters.

12. A Brief Statement With Respect to Equal Employment Opportunity.

The Applicant will comply with all policies of the City with respect to equal employment opportunity.

13. Arrangements for Sale of the Bonds.

It is anticipated that the sale of the Bonds will be underwritten by Morgan Stanley, New York, New York. A statement of intent provided by Morgan Stanley is included as Exhibit "B."

14. Financial Information.

A copy of the Applicant's audited financial statements and accompanying report for fiscal years ended September 30, 2009 and 2010 has been provided as Exhibit "A."

15. Cost/Benefit Analysis.

Applicant has forwarded a completed Firm Data Sheet and a check for the appropriate fee to be submitted to the Wichita State University Center for Economic Development and Business Research for preparation of a cost/benefit analysis of the Project.

In order to permit Via Christi to provide for the refunding of the Refunded Bonds and to finalize the financing for Project, it is requested at this time that the City Council authorize the Mayor to execute a Letter of Intent for and on behalf of the City whereby the City indicates its intent to issue not to exceed $200,000,000 of its Hospital Facilities Refunding and Improvement Revenue Bonds for the purposes described herein. Applicant respectfully requests that such Letter of Intent be valid for a period of one year, so as to provide for the timely refunding of the Refunded Bonds and provide time for the appropriate structuring of the financing.

Applicant is aware that such a Letter of Intent is only an indication of the intent of the City to issue the proposed Bonds, to refund its previously issued bonds, and to assist in financing the expansion, and that such Letter of Intent is subject in all respects to the governing body's final approval of the terms and provisions of a Bond Ordinance, Indenture, Lease, Guaranty and other related documents. However, upon issuance of such Letter of Intent, Applicant is prepared to proceed in reliance thereon. Should there be any further questions or information which the City may require in evaluating this application, we will be most happy to discuss such matters.

Upon issuance of such Letter of Intent, Applicant is prepared to proceed in reliance thereon. Should there be any further questions or information which the City may require in evaluating this application, we will be most happy to discuss such matters.

Respectfully submitted,

VIA CHRISTI HEALTH, INC.

David R. Hadley, Senior Vice President
and Chief Financial Officer

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Quarterly Financial Report for the Quarter Ending June 30, 2011

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendation: Receive and file the quarterly financial report.

Background: The Finance Department prepares quarterly unaudited financial reports to monitor and review the financial activities of the operating and capital funds. The report is presented to provide the City Council and citizens with information that will assist in making informed decisions. The report is available on the City's web-site. Citizens may obtain a printed copy by contacting the Department of Finance at 268-4651.

Analysis: Comparisons of budgeted amounts to actual revenue and expenditures are provided for each operating fund. In addition, financial statements prepared on an accrual basis are presented for enterprise funds, consistent with requirements of revenue bond covenants. The quarterly financial report does not contain all the entries and adjustments that will be reflected in the Comprehensive Annual Financial Report for the fiscal year.

Financial highlights are summarized beginning on page iii, with financial statements beginning on page 1. Information supplementary to the financial statements begins on page 61, including information on the performance of invested funds, the City's bonded indebtedness relative to the legal debt limitations, capital projects currently underway, tax abatements, the status of the Debt Service fund relative to any debt service payments due from the tax increment financing districts, and a quarterly summary of disadvantaged and emerging business activity.

Financial Considerations: The Director of Finance will provide a financial overview at the City Council meeting.

Goal Impact: The Internal Perspective is advanced with the Quarterly Financial Report providing information on the financial condition of the City to the City Council, to the citizens of Wichita and to investors. In addition, the report demonstrates budgetary compliance with applicable laws and ordinances for the reporting year.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the City Council receive and file the Quarterly Financial Report for the quarter ended June 30, 2011.

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: General Obligation Refunding Bond and Temporary Note Sale

INITIATED BY: Finance Department

AGENDA: New Business

Recommendation: Approve the bids.

Background: The City is offering for sale two series of general obligation refunding bonds (Series 20011C and 2011D) in an amount not to exceed $71,000,000 and one series of general obligation temporary notes (Series 248) in an amount not to exceed $160,000,000 for the purpose of refunding previously issued and currently outstanding bonds and to provide interim financing for capital improvements related to Phase II of the Aquifer Storage Recovery (ASR) project for the Water Utility of the City. The sale of temporary notes allows short-term financing of improvements that shall be permanently financed through the issuance of bonds or from current revenues of the City available for such purpose. The refunding bonds are being used to refund previously issued special assessment, general obligation and tax increment financing bonds in order to provide savings on future debt service costs to the City.

Analysis: The proceeds from the sale of the Series 2011C Bonds in the principal amount of not to exceed $27 million will be used for the current refunding of the City's outstanding General Obligation Bonds, Series 776, 777, 778, 785 and 957, by providing the necessary funds to pay the principal and redemption premium, if any, on the redemption date of October 1, 2011.

The proceeds of the Series 20011D Bonds in the principal amount of not to exceed $44 million will be used for the advance refunding of the City's outstanding General Obligation Bonds, Series 780, 782, 784, 786 and 958 by providing the necessary funds to pay the principal and redemption premium, if any, on the redemption dates of September 1, 2012 and September 1, 2013.

The proceeds from the sale of the Series 248 General Obligation Renewal and Improvement Temporary Notes will be used to provide interim financing for Phase II of the ASR project based on the 30 MGD system.

Bids will be accepted electronically through ***PARITY*** Electronic Bid Submission System on August 16, 2011 until 10:00 a.m. CST in the Finance Conference Room, at which time the bids will be publicly opened. No bids will be accepted after the 10:00 a.m. deadline. The bids will be verified, tabulated and presented to the City Council at its earliest convenience following the tabulation of the bids. By law, the City must award the sale of the bonds and notes to the bidder whose proposed interest rates result in the lowest true interest rate.

The City has established a minimum 3% threshold as an appropriate level of savings in connection with a bond refunding. In the event the actual bids on the refunding bonds do not produce the minimum level of savings, the acceptance of bids on the refunding bonds will not be recommended.

Financial Considerations: The Series 2011C Refunding Bonds will mature in 2019 and the Series 2011D Refunding Bonds will mature in 2021, with principal maturities structured to produce level and positive savings in all future years. The Series 2011C Bonds are not callable prior to their maturity and the Series 2011D Bonds are callable on and after September 1, 2019.

The Series 248 Temporary Notes will mature August 15, 2013 and may be called for redemption and payment prior to maturity on and after August 15, 2012. The temporary notes will be retired using cash, the proceeds of permanent financing bonds, renewal notes and/or from current revenues of the City available for such purpose.

Goal Impact: This item impacts the Economic Vitality/Affordable Living and Internal Perspective Goals through the temporary and permanent financing of capital improvements and offering the City's debt obligations through competitive sale.

Legal Considerations: The authorizing Ordinances and Resolutions have been prepared by Bond Counsel and approved as to form by the Law Department, subject to tabulation and approval of bids and the insertion of final terms and sizing approved by the City Manager, his designee or the Director of Finance.

Recommendations/Actions: It is recommended that the City Council: (1) direct the opening and reading of the bids; (2) award the sale of the Bonds and Temporary Notes subject to approval of the final sizing terms of the Bonds by the City Manager, his designee or the Director of Finance; (3) adopt the Bond and Note Ordinances and Resolutions and authorize the publication of the Bond and Note Ordinances; and (4) find and declare, upon the request of the Mayor, that a public emergency exists, requiring the final passage of the Bond and Note Ordinances on the date of their introduction.

Attachments: For each bond and note series: Request for Declaration of Emergency
Resolution Authorizing Issuance of Bonds/Notes
Ordinance Authorizing Issuance of Bonds/Notes

REQUEST FOR DECLARATION OF EMERGENCY

REQUEST OF THE MAYOR OF THE CITY OF WICHITA, KANSAS, FOR THE DECLARATION BY THE CITY COUNCIL OF SAID CITY OF THE EXISTENCE OF A PUBLIC EMERGENCY REQUIRING THE FINAL ADOPTION OF AN ORDINANCE AS DESIGNATED BELOW.

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit,* August 16, 2011, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 248, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $160,000,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AMOUNT OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 248 Notes occur on the same day bids are received and to enable the City to deliver the Series 248 Notes authorized by said Ordinance on September 15, 2011.

It is, therefore, expedient at this time that the City Council find and declare that a public emergency exists by reason of the foregoing, and that the above entitled Ordinance be finally adopted on the date of its introduction.

EXECUTED at Wichita, Kansas, on August 16, 2011.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

REQUEST FOR DECLARATION OF EMERGENCY

REQUEST OF THE MAYOR OF THE CITY OF WICHITA, KANSAS, FOR THE DECLARATION BY THE CITY COUNCIL OF SAID CITY OF THE EXISTENCE OF A PUBLIC EMERGENCY REQUIRING THE FINAL ADOPTION OF AN ORDINANCE AS DESIGNATED BELOW.

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit,* August 16, 2011, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2011C, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $27,000,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AMOUNT OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 2011C Bonds occur on the same day bids are received and to enable the City to deliver the Series 2011C Bonds authorized by said Ordinance on September 15, 2011.

It is, therefore, expedient at this time that the City Council find and declare that a public emergency exists by reason of the foregoing, and that the above entitled Ordinance be finally adopted on the date of its introduction.

EXECUTED at Wichita, Kansas, on August 16, 2011.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

REQUEST FOR DECLARATION OF EMERGENCY

REQUEST OF THE MAYOR OF THE CITY OF WICHITA, KANSAS, FOR THE DECLARATION BY THE CITY COUNCIL OF SAID CITY OF THE EXISTENCE OF A PUBLIC EMERGENCY REQUIRING THE FINAL ADOPTION OF AN ORDINANCE AS DESIGNATED BELOW.

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit,* August 16, 2011, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2011D, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $44,000,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AMOUNT OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 2011D Bonds occur on the same day bids are received and to enable the City to deliver the Series 2011D Bonds authorized by said Ordinance on September 15, 2011.

It is, therefore, expedient at this time that the City Council find and declare that a public emergency exists by reason of the foregoing, and that the above entitled Ordinance be finally adopted on the date of its introduction.

EXECUTED at Wichita, Kansas, on August 16, 2011.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

ORDINANCE NO. 49-068

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2011C, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $27,000,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AMOUNT OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

WHEREAS, the City of Wichita, Kansas (the **"**City"), is a city of the first class duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the City has previously issued the following bonds (referred to collectively herein as the "Refunded Bonds"):

(a) $13,390,000 original principal amount General Obligation Bonds, Series 776, dated as of February 1, 2004, of which, as of September 15, 2011, $8,165,000 will remain outstanding and unpaid and becomes due on September 1 in the years 2012 though 2019 inclusive (the "Series 776 Bonds");

(b) $10,185,000 original principal amount General Obligation Bonds, Series 777, dated as of February 1, 2004, of which, as of September 15, 2011, $3,060,000 will remain outstanding and unpaid and becomes due on June 1 in the years 2012 though 2014 inclusive (the "Series 777 Bonds");

(c) $12,175,000 original principal amount General Obligation Bonds, Series 778, dated as of August 1, 2004, of which, as of September 15, 2011, $7,325,000 will remain outstanding and unpaid and becomes due on September 1 in the years 2012 though 2019 inclusive (the "Series 778 Bonds");

(d) $6,805,000 original principal amount General Obligation Bonds, Series 785, dated as of February 1, 2006, of which, as of September 15, 2011, $3,730,000 will remain outstanding and unpaid and becomes due on June 1 in the years 2012 through 2016 (the "Series 785 Bonds"); and

(e) $4,980,000 original principal amount General Obligation Bonds, Series 957, dated as of February 1, 2004, of which, as of September 15, 2011, $2,850,000 will remain outstanding and unpaid and becomes due on September 1 in the years 2012 though 2018 inclusive (the "Series 957 Bonds"); and

WHEREAS, in order to achieve interest cost savings through early redemption of the Refunded Bonds and to provide an orderly plan of finance for the City, it has become desirable

and in the best interest of the City and its inhabitants to refund the Refunded Bonds; and

WHEREAS, the City is authorized by K.S.A. 10-427 *et seq*., to issue general obligation refunding bonds of the City for the purpose of refunding the Refunded Bonds; and

WHEREAS, the Governing Body, pursuant to Resolution No. 11-183 duly adopted on July 26, 2011, advertised for bids at a public sale for an amount not to exceed $27,000,000 of the City's General Obligation Refunding Bonds, Series 2011C (the "Bonds"), for the aforesaid purpose; and such public sale has been duly held and the Governing Body has awarded the Bonds to the best bidder therefor; and

WHEREAS, the Governing Body, on November 16, 2010, adopted Ordinance No. 48-900 establishing a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation bonds in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance No. 48-900, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the General Obligation Refunding Bonds authorized hereby as though fully set forth herein; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Bonds, to prescribe the terms and details thereof, to provide for the levy and collection of an annual tax in order to provide for the payment of the principal of and interest on the Bonds, and to make certain other covenants and agreements with respect thereto;

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

Section 1. **Definitions.** All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Bond Resolution herein referenced.

Section 2. **Authorization of and Security for the Bonds.** It is hereby authorized, ordered and directed that in order to provide the necessary funds to refund and redeem the Refunded Bonds, there shall be issued the Bonds. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon, in part, from the collection of special assessment taxes which have been levied against benefited real properties in the City, and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City, with the balance payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City.

Section 3. **Terms, Details and Conditions of the Bonds.** The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set

forth in a resolution (the "Bond Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Bonds, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

Section 4. Levy and Collection of Annual Tax. The Governing Body hereby covenants that it shall annually make provision for the payment of the principal of, premium, if any, and interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the maturing principal and interest on the Bonds when due, then the Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amount of special assessment taxes collected.

Section 5. Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Bonds for so long as any of the Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Bonds and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Ordinance and the Bond Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 6. Designation of Paying Agent and Bond Registrar. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State of Kansas, Topeka, Kansas (the "State Treasurer"), is hereby designated as the initial Paying Agent and

Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days' written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

Section 7. **Further Authority.** The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Bonds and the Bonds in accordance with the provisions of the Bond Resolution. The Governing Body hereby further authorizes, orders and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, including notices of redemption of the Refunded Bonds, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Bonds and the Official Statement.

Section 8. **Effective Date.** This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on August 16, 2011.

(Seal) _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

4831-1266-7914.1

ORDINANCE NO. 49-069

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2011D, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $44,000,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AMOUNT OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

WHEREAS, the City of Wichita, Kansas (the **"**City"), is a city of the first class duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the City has previously issued the following:

(a) $19,020,000 original principal amount General Obligation Bonds, Series 780, dated as of February 1, 2005 (the "Series 780 Bonds");

(b) $13,810,000 original principal amount General Obligation Bonds, Series 782, dated as of August 1, 2005 (the "Series 782 Bonds");

(c) $19,300,000 original principal amount General Obligation Bonds, Series 784, dated as of February 1, 2006 (the "Series 784 Bonds");

(d) $10,575,000 original principal amount General Obligation Bonds, Series 786, dated as of August 1, 2006 (the "Series 786 Bonds"); and

(e) $4,140,000 original principal amount General Obligation Bonds, Series 958, dated as of February 1, 2005 (the "Series 958 Bonds"); and

WHEREAS, in order to achieve interest cost savings through early redemption of the Series 780 Bonds maturing in the years 2013 through 2020, the Series 782 Bonds maturing in the years 2013 through 2020, the Series 784 Bonds maturing in the years 2014 through 2021, the Series 780 Bonds maturing in the years 2014 through 2021 and the Series 958 Bonds maturing in the years 2013 through 2020 (collectively, the "Refunded Bonds"), and to provide an orderly plan of finance for the City, it has become desirable and in the best interest of the City and its inhabitants to refund the Refunded Bonds; and

WHEREAS, the City is authorized by K.S.A. 10-427 *et seq*., to issue general obligation refunding bonds of the City for the purpose of refunding the Refunded Bonds; and

WHEREAS, the Governing Body, pursuant to Resolution No. 11-183 duly adopted on July 26, 2011, advertised for bids at a public sale for an amount not to exceed $44,000,000 of the City's General Obligation Refunding Bonds, Series 2011D (the "Bonds"), for the aforesaid purpose; and such public sale has been duly held and the Governing Body has awarded the Bonds to the best bidder therefor; and

WHEREAS, the Governing Body, on November 16, 2010, adopted Ordinance No. 48-900 establishing a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation bonds in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance No. 48-900, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the General Obligation Refunding Bonds authorized hereby as though fully set forth herein; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Bonds, to prescribe the terms and details thereof, to provide for the levy and collection of an annual tax in order to provide for the payment of the principal of and interest on the Bonds, and to make certain other covenants and agreements with respect thereto;

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

Section 1. **Definitions.** All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Bond Resolution herein referenced.

Section 2. **Authorization of and Security for the Bonds.** It is hereby authorized, ordered and directed that in order to provide the necessary funds to refund and redeem the Refunded Bonds, there shall be issued the Bonds. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon, in part, from the collection of special assessment taxes which have been levied against benefited real properties in the City, and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City, with the balance payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City.

Section 3. **Terms, Details and Conditions of the Bonds.** The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Bond Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Bonds, the City will

comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

Section 4. **Levy and Collection of Annual Tax.** The Governing Body hereby covenants that it shall annually make provision for the payment of the principal of, premium, if any, and interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the maturing principal and interest on the Bonds when due, then the Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amount of special assessment taxes collected.

Section 5. **Tax Covenants.** The Governing Body hereby covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Bonds for so long as any of the Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Bonds and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Ordinance and the Bond Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 6. **Designation of Paying Agent and Bond Registrar.** Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State of Kansas, Topeka, Kansas (the "State Treasurer"), is hereby designated as the initial Paying Agent and

Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days' written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

Section 7. **Further Authority.** The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Bonds, an Escrow Agreement with a Kansas bank with trust powers to be selected by the City to provide for the escrow of the proceeds of the Bonds to be used to redeem the Refunded Bonds and pay interest on the Bonds through the date of redemption of the refunded Bonds (the "Escrow Agreement"). The Governing Body hereby further authorizes, orders and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement, the Escrow Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, including notices of redemption of the Refunded Bonds, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Bonds and the Official Statement.

Section 8. **Effective Date.** This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on August 16, 2011.

(Seal) _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

4833-6471-9370.1

ORDINANCE NO. 49-071

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 248, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $160,000,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AMOUNT OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

WHEREAS, the City of Wichita, Kansas (the "City"), is a city of the first class duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, K.S.A. 10-123, as amended and supplemented, provides that if a municipality has approved an improvement which is to be paid for in whole or in part by the issuance of general obligation bonds, the municipality may issue temporary notes for the purpose of financing the costs of the improvements until the issuance of such bonds; and provides further that any municipality may issue renewal temporary notes to pay the costs of redeeming any previously issued temporary notes as they mature when the improvement will not be completed at the maturity date of the notes or when the improvement has been completed but the issuance of such bonds is prevented, hindered or delayed; and

WHEREAS, pursuant to and under the authority of various laws of the State of Kansas, the Governing Body of the City has duly taken various actions, including the adoption, and publication where necessary, of resolutions, ordinances and other proceedings as required by said laws, and has authorized and caused to be commenced the construction of those certain capital improvements in the City (the "Improvements") and has provided that the costs thereof shall be paid, either in whole or in part, by the issuance of general obligation bonds of the City; and

WHEREAS, the Governing Body has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Improvement Temporary Notes, Series 240, dated September 16, 2010 (the "Original Notes"), the proceeds of which were expended for interim financing for costs of the Original Improvements; and

WHEREAS, the Original Improvements have not been completed and/or are completed but the issuance of bonds for the permanent financing thereof is prevented, hindered or delayed, and the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, renewal temporary notes should be issued for the purpose of renewing and paying the portion of the principal amount of the Original Notes which was issued for costs of the Original Improvements as aforesaid; and

WHEREAS, the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, temporary notes should be issued at this time for

the purpose of providing interim financing for the costs of making the Improvements which are or will be newly commenced or for which additional interim financing is now required; and

WHEREAS, pursuant to Resolution No. 11-183 duly adopted July 26, 2011, the Governing Body advertised for bids at a public sale approximately $160,000,000 principal amount of the City's General Obligation Renewal and Improvement Temporary Notes, Series 248, for the purpose of renewing interim financing for the Original Improvements and providing new interim financing for the Improvements and such public sale has been duly held and the Governing Body has awarded the Notes to the best bidder therefor; and

WHEREAS, the Governing Body, on November 16, 2010**,** adopted Ordinance No. 48-901 relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation temporary notes in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Notes authorized hereby as though fully set forth herein; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Notes, to prescribe the terms and details thereof, to provide for the payment of the principal of and interest on the Notes, and to make certain other covenants and agreements with respect thereto;

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

Section 1. Definitions. All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Note Resolution herein referenced.

Section 2. Authorization of and Security for the Notes. It is hereby authorized, ordered and directed that in order to provide the necessary funds to renew the Original Notes and for the interim financing of the Improvement Costs all as further described on Schedule I to the Note Resolution, there shall be issued general obligation renewal and improvement temporary notes of the City (the "Notes"). In all matters relating to the issuance, registration and delivery of the Notes, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by this Note Ordinance to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the proceeds of general obligation bonds which will subsequently be issued by the City for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose. It is further the intent of the City to pay the principal of and interest on the Notes from available revenues from the City's water and sewer system.

Section 3. Terms, Details and Conditions of the Notes. The Notes shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Note Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Notes, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

Section 4. Levy and Collection of Annual Tax. The Governing Body hereby covenants that it shall make provision for the payment of all or any portion of the principal of and/or interest on the Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes. In lieu of issuing renewal temporary notes or general obligation bonds of the City to fund costs of the Original Improvements or the Improvements, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

Section 5. Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Notes remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Notes under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Notes.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Notes for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Notes or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Notes to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Notes for so long as any of the Notes remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Notes from time to time. This covenant shall survive payment in full or the defeasance of the Notes and the Governing Body specifically hereby

covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Ordinance and the Note Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 6. Designation of Paying Agent and Note Registrar. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Notes. The Treasurer of the State of Kansas, Topeka, Kansas, is hereby designated as the initial Paying Agent and Note Registrar for the Notes; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Note Registrars with respect to the Notes upon fifteen (15) days' written notice to the then acting Paying Agent and Note Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Note Registrar and Paying Agent in connection with such designation.

Section 7. Further Authority. The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Notes and the Notes in accordance with the provisions of the Note Resolution. The Governing Body hereby further authorizes, orders and directs the City Clerk of the City to countersign the Notes and the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Notes and the Official Statement.

Section 8. **Effective Date.** This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

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PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on August 16, 2011.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

RESOLUTION NO. 11-200

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED AUGUST 16, 2011

AUTHORIZING THE ISSUANCE OF

NOT TO EXCEED $160,000,000

GENERAL OBLIGATION RENEWAL AND IMPROVEMENT
TEMPORARY NOTES
SERIES 248

DATED SEPTEMBER 15, 2011

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RESOLUTION NO. 11-200

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 248, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $160,000,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE NOTES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE NOTES, AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Note Ordinance (as herein defined), has authorized the issuance of the Notes in the aggregate principal amount of not to exceed $160,000,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Notes; and

WHEREAS, pursuant to and under the authority of various laws of the State of Kansas, the Governing Body of the City has duly taken various actions, including the adoption, and publication where necessary, of resolutions, ordinances and other proceedings as required by said laws, and has authorized and caused to be commenced the construction of those certain capital improvements in the City described in **Schedule I** which is attached to this Resolution and made a part hereof by reference as though fully set forth herein (which capital improvements identified as Original Improvements as listed on **Schedule I** are herein collectively referred to as the "Original Improvements" and which capital improvements identified as Improvements as listed on **Schedule I** are herein collectively referred to as the "Improvements") and has provided that the costs thereof shall be paid, either in whole or in part, by the issuance of general obligation bonds of the City; and

WHEREAS, the Governing Body has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Improvement Temporary Notes, Series 240, dated September 16, 2010 (the "Original Notes"), the proceeds of which were expended for interim financing for costs of the Original Improvements; and

WHEREAS, the Original Improvements have not been completed and/or are completed but the issuance of bonds for the permanent financing thereof is prevented, hindered or delayed, and the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, renewal temporary notes should be issued for the purpose of renewing and paying the principal amount of the Original Notes which was issued for costs of the Original Improvements as aforesaid; and

WHEREAS, the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, temporary notes should be issued at this time for the purpose of providing interim financing for the costs of making the Improvements which are or will be newly commenced or for which additional interim financing is now required; and

WHEREAS, in accordance with the provisions of the Note Ordinance, the Governing Body hereby finds and determines that it is necessary to prescribe the terms and details of the Notes pursuant to this Resolution, and to make certain other covenants and agreements with respect thereto;

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

ARTICLE I
DEFINITIONS

Section 1.01 Definitions of Words and Terms. In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" shall mean the Constitution of the State of Kansas (including particularly Article 12, Section 5 thereof), Charter Ordinance No. 156 of the City, K.S.A. 13-1024c, K.S.A. 10-101 *et seq.*, and K.S.A. 10-123, all as amended and supplemented, under the authority of which ordinance and statutes the Improvements were authorized and the Original Notes and the Notes are issued.

"Authorized Investments" shall mean those investments authorized by K.S.A. 10-131, as amended and supplemented, and by other provisions of State law applicable to the City.

"Bond Counsel" shall mean Kutak Rock LLP, Kansas City, Missouri, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

"Certificate as to Arbitrage and Related Tax Matters" shall mean the Certificate as to Arbitrage and Related Tax Matters, dated as of and delivered on the Date of Issuance, executed by the City, relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

"City" shall mean the City of Wichita, Kansas.

"City Clerk" shall mean the duly appointed and acting City Clerk of the City, or in the City Clerk's absence (or in the event of a vacancy in such office) any Deputy City Clerk or Acting City Clerk of the City.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or such other general Federal tax code as shall be adopted by the United States Congress in substitution therefor, together with regulations promulgated thereunder by the United States Department of the Treasury.

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Notes, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent,

fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the yield on the Notes or investment of the proceeds of the Notes, and in connection with receiving municipal bond insurance and/or ratings on the Notes. An amount for Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements and the Original Improvements.

"Date of Issuance" shall mean the date on which the Notes are delivered to the Original Purchaser and the City receives from the Original Purchaser the full purchase price therefor.

"Dated Date" shall mean the dated date of the Notes, which is September 15, 2011.

"Debt Service" shall mean the scheduled amount of interest and maturing principal payable on the Notes for a single Bond Year, as described in the Code.

"Direct Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the Director of Finance's absence, the duly appointed Assistant Director of Finance or Acting Director of Finance of the City.

"DTC" shall mean The Depository Trust Company and its successors or assigns.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article IV** hereof.

"Fiscal Agent" shall mean the Note Registrar and/or the Paying Agent.

"Fiscal Year" shall mean the fiscal year of the City, currently being the 12-months ending each December 31.

"Governing Body" shall mean the duly elected and/or appointed and acting persons comprising the City Council of the City.

"Government Obligations" means (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following phrase (ii)), or (ii) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

"Improvement Account" shall mean the Improvement Account for the Improvements created by **Article IV** hereof.

"Improvement Costs" shall mean the amount of capital expenditures for an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Notes, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such

Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds unless such amounts are entitled to be reimbursed under State and Federal law.

"Improvements" shall mean the newly commenced capital improvements constructed in the City as described on **Schedule I** hereto or any Substitute Improvements.

"Indirect Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Interest Payment Date" shall be February 15 and August 15 beginning August 15, 2012.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Notes.

"Maturity Date" means August 15, 2013.

"Mayor" shall mean the duly elected and acting Mayor of the City or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

"Municipal Bond Insurance Policy" shall mean, if applicable, the municipal bond insurance policy issued by Note Insurer insuring the payment when due of the principal of and interest on the Notes as described on **Exhibit A** to this Resolution.

"Note Insurer" shall mean any issuer of a Municipal Bond Insurance Policy described on **Exhibit A** to this Resolution.

"Note Ordinance" means the ordinance of the City authorizing the issuance of the Notes as further described on **Exhibit A** to this Resolution.

"Note Registrar" shall mean the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

"Noteowner(s)" shall mean the Owner(s) of the Notes.

"Notes" shall mean the General Obligation Renewal and Improvement Temporary Notes, Series 248, dated September 15, 2011, of the City of Wichita, Kansas, in the principal amount set forth on **Exhibit A** which are authorized by and will be issued pursuant to the authority of the Note Ordinance and this Resolution.

"Original Notes" means the notes previously issued by the City described in the preamble to this Resolution.

"Original Proceeds" shall mean all of the proceeds, including accrued interest, derived from the sale of the Notes to the Original Purchaser.

"Original Purchaser" means the original purchaser of the Notes described on **Exhibit A** to this Resolution.

"Outstanding," when used with reference to the Notes, shall mean, as of a particular date, all Notes theretofore authenticated and delivered under this Resolution, except (i) Notes theretofore canceled by the Fiscal Agent or delivered to the Fiscal Agent for cancellation, (ii) Notes for which moneys for payment or Government Obligations (the principal of and the interest on which Government Obligations, if any, when due, provide sufficient moneys to pay, with such other moneys so deposited with the Fiscal Agent, the principal of and interest on the Notes being paid), or both, in the necessary amount have theretofore been deposited with the Fiscal Agent, or other depository as provided in this Resolution, in trust for the Owners thereof (whether upon or prior to the Maturity Date of the Notes), and (iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Resolution.

"Owner(s)" or "Registered Owner(s)" shall mean, when used with respect to any Note, the person or entity in whose name the Note is registered as shown on the Registration Books maintained by the Fiscal Agent.

"Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Paying Agent" shall mean the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

"Principal and Interest Account" shall mean the Principal and Interest Account created within the City's Capital Project Fund pursuant to **Article IV** hereof, which is created and shall be held and administered solely for the purpose of receiving and disbursing funds for the payment of the Notes.

"Principal Payment Date" shall mean the Maturity Date.

"Purchase Price" means the original purchase price of the Notes described on **Exhibit A** to this Resolution.

"Record Date" shall mean fifteen days prior to the Maturity Date.

"Registration Books" shall mean the books maintained on behalf of the City by the Fiscal Agent for the registration and transfer from time to time of the ownership of the Notes.

"Resolution" or "Note Resolution" shall mean this Resolution adopted by the Governing Body of the City on August 16, 2011, prescribing the terms and details of the Notes.

"State" shall mean the State of Kansas.

"Substitute Improvements" means the substitute or additional improvements authorized pursuant to **Section 5.08** of this Resolution.

"Value" shall mean the value of the Authorized Investments (which Value shall be determined as of the end of each month) and shall be the amortized cost of an obligation or the market cost thereof, whichever is lower.

ARTICLE II
AUTHORIZATION, ISSUANCE AND DELIVERY OF NOTES

Section 2.01 Authorization of and Security for Notes. Pursuant to the Note Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to provide interim financing for the Original Improvements and the Improvements, there shall be issued the Notes. In all matters relating to the issuance, registration and delivery of the Notes, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by the Note Ordinance and this Note Resolution to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the proceeds of general obligation bonds which will subsequently be issued by the City for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose.

Section 2.02 Description and Details of Notes. The Notes shall be designated "City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 248." The Notes shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of the Notes. The Notes shall be dated the Dated Date, shall mature on the Maturity Date, and shall bear interest at the rate set forth on **Exhibit A** to this Resolution. The Notes shall bear interest from their Dated Date (computed on the basis of a 360-day year of 12 30-day months) and such interest shall become due and payable on the Interest Payment Date. The City Manager, the Finance Director, or the City Manager's designee is hereby authorized to approve the final principal amount and Purchase Price for the Bonds as to be set forth on **Exhibit A** to this Resolution provided the final principal amount shall not exceed $160,000,000, the principal shall mature on the date and at the interest rate shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

The Notes will initially be distributed in book-entry-only form through DTC, by depositing with DTC (or the Fiscal Agent as agent for DTC) one certificate, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Notes. The manner of payment of the principal of and the interest on the Notes to DTC, and other matters relating to the distribution of the Notes in book-entry-only form through DTC, shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

Subject to the operational arrangements of DTC, in the event (i) DTC determines not to continue to act as securities depository for the Notes, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Notes would adversely affect the interests of the beneficial owners of the Notes, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement Notes in the form of fully registered certificates to be authenticated and delivered to the beneficial owners (to the extent such

beneficial owners can be identified by the City). If issued in certificated form, the certificates representing the Notes shall be numbered in such manner as the Note Registrar shall determine.

Section 2.03 Designation of Paying Agent and Note Registrar. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body has elected to have the provisions of the Kansas Bond Registration Law apply to the Notes.

So long as the Notes remain in book-entry-only form, the Treasurer of the State of Kansas, Topeka, Kansas, has been designated as the initial Paying Agent and Note Registrar for the Notes; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Note Registrars with respect to the Notes upon fifteen (15) days' written notice to the then acting Paying Agent and Note Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Note Registrar and Paying Agent in connection with such designation.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the Notes and DTC will remit such principal and interest to its Direct Participants for distribution to the beneficial owners in the manner set forth in the following **Section 2.04(A)** and as governed by the terms of the Letter of Representation.

In the event that the Notes should be issued and delivered in certificated form at any time after the initial delivery of the Notes, the Fiscal Agent shall maintain Registration Books for the ownership of the Notes on behalf of the City and the Paying Agent will make payment for the Notes directly to the Owners as shown by said Registration Books in the manner set forth in the following **Section 2.04(B).**

Section 2.04 Method and Place of Payment of Principal and Interest on Notes.

(A) Notes Issued and Delivered in Book-Entry-Only Form. One certificate registered in the name of DTC's nominee, Cede & Co., for the total principal amount of the Notes will be issued to DTC in New York, New York (or to the Fiscal Agent as agent for DTC) and such certificate will be immobilized in its custody. Purchases of the Notes in denominations permitted by **Section 2.02** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Notes on DTC's records. The ownership interest of each actual purchaser of each Note (the "beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Transfers of ownership will be effected on the records of DTC and its Participants pursuant to the rules and procedures established by DTC and its Participants. Payment of principal and interest on the Notes will be made in same day funds directly to DTC. The transfer of principal and interest to Participants of DTC will be the responsibility of DTC; the transfer of principal and interest to beneficial owners by Participants of DTC will be the responsibility of such Participants. Neither the City nor the Paying Agent and Note Registrar will be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its Participants or persons acting through such Participants.

(B) In the Event Certificated Notes are Subsequently Issued. The principal of, premium, if any, and the interest on the Notes shall be payable in lawful money of the United States of America by check or draft of the Paying Agent. The principal of and premium, if any,

on the Notes shall be paid to the Owner of each Note upon presentation and surrender of the Note to the Paying Agent for payment and cancellation on the maturity date or redemption date, as the case may be, of the Note. The interest on the Notes shall be mailed by the Paying Agent to the Owner of each Note at the Owner's address as it appears on the Registration Books on the Record Dates, or at such other address as is provided in writing by such Owner to the Note Registrar.

Section 2.05 **Method of Execution and Authentication of Notes.** The Notes shall be executed for and on behalf of the City by the manual or facsimile signatures of its Mayor and City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The Notes shall be registered in the Office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk, on a Certificate of Registration printed on the Notes, with the City's official seal or a facsimile thereof, impressed or imprinted opposite said signature. The Notes shall be registered by the State Treasurer in the municipal bond register in the State Treasurer's office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State Treasurer on a Certificate of State Treasurer printed on the Notes, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature. Additionally, the Notes shall be countersigned by the manual or facsimile signature of the City Clerk, which countersignature shall be attested by the City's official seal affixed or imprinted opposite said countersignature.

In case any officer of the City or of the State whose manual or facsimile signature shall appear on the Notes shall cease to be such officer before the actual delivery of the Notes, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

No Note shall be valid or obligatory for any purpose unless and until the Certificate of Authentication thereon shall have been duly executed by the Fiscal Agent, and such duly executed Certificate of Authentication shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Certificate of Authentication shall be deemed to have been duly executed by the Fiscal Agent when manually signed by an authorized officer or signatory thereof, and it shall not be necessary that the same officer or signatory of the Fiscal Agent manually sign the Certificate of Authentication on all Notes issued under the Note Ordinance and this Resolution.

Section 2.06 **Payment of Costs of Notes.** The City shall pay all fees and expenses incurred in connection with the printing, issuance, transfer, exchange, registration and payment of the Notes, including the fees and expenses of the Fiscal Agent, except (i) reasonable fees and expenses in connection with the replacement of a Note or Notes mutilated, stolen, lost or destroyed, or (ii) any tax or other governmental charge imposed in relation to the transfer, exchange, registration or payment of the Notes, or (iii) any additional costs or fees that might be incurred in the secondary market.

Section 2.07 **Form of Notes.** The definitive typewritten or printed form of the certificates representing the Notes issued under this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of

the State of Kansas, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act and for the interim financing of portions of the Improvements and the Original Improvements. The Governing Body hereby approves the form and text of the certificates to be prepared for the Notes, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Notes and hereby further authorizes, orders and directs Bond Counsel, in the event the Notes in certificated form are issued at any time after the initial issuance and delivery of the Notes, to prepare the form of and cause such certificated Notes to be printed.

Section 2.08 Registration, Transfer and Exchange of Notes. In the event the Notes are subsequently issued in certificated form, the City shall cause books evidencing the registration and transfer of the ownership of the Notes as provided in this Resolution to be kept by the Note Registrar (the "Registration Books"), and the Notes may be transferred only upon the Registration Books and upon the surrender thereof to the Note Registrar duly endorsed for transfer or accompanied by an assignment duly executed by the Owner thereof, or his agent, in such form as shall be satisfactory to the Note Registrar. Upon the surrender for transfer of any certificated Note at its office, the Note Registrar shall authenticate and deliver in the name of the transferee or transferees a new certificated Note or Notes of authorized denominations in the aggregate principal amount of the surrendered certificated Note. The Note Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such transfer or exchange.

Upon the presentation of the necessary documents as hereinbefore described at the principal office of the Note Registrar, the Note Registrar shall transfer or exchange any Note(s) for new Note(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Note(s) presented for transfer or exchange. All Notes presented for transfer or exchange shall be surrendered to the Note Registrar for cancellation. Prior to delivery of any new Note(s) to the transferee, the Note Registrar shall register the same in the Registration Books and shall authenticate each such new Note.

The City and the Note Registrar shall not be required to issue, register, transfer or exchange any Notes during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date.

Notes delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Notes surrendered, shall be secured by the Note Ordinance and this Resolution and shall be entitled to all of the security and benefits hereof and pledges made herein to the same extent as the Notes surrendered. The person(s) in whose name any Note is registered as shown on the Registration Books shall be deemed and regarded as the absolute Owner thereof for all purposes. Payment of, or on account of the principal of and the interest on any Note shall be made only to or upon the order of the Owner or his duly authorized agent; except that, so long as the Notes remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Notes, and such payments shall be made only to DTC in accordance with **Section 2.04(A)** of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such Note, including the interest thereon, to the extent of the sum or sums so paid.

Section 2.09 Mutilated, Lost, Stolen or Destroyed Notes. In the event any certificate representing a Note is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Note, such mutilated Note shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Note there shall first be furnished to the Fiscal Agent and the City, evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Note shall have matured, instead of issuing a duplicate note the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Note their reasonable fees and expenses in connection with the replacement of such Note or Notes.

Section 2.10 Surrender and Cancellation of Notes. Whenever any Outstanding Note shall be delivered to the Fiscal Agent after full payment thereof or for replacement pursuant to this Resolution, such Note shall be canceled and destroyed by the Fiscal Agent and counterparts of a Certificate of Destruction describing Notes so destroyed and evidencing such destruction shall be furnished by the Fiscal Agent to the City, or such Note shall be canceled and the canceled Note shall be returned to the City.

Section 2.11 Execution and Delivery of Notes. The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Notes without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement note certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution and when executed the Notes shall be registered in the Office of the City Clerk and in the Office of the State Treasurer, as required by law and as hereinbefore provided, and shall thereupon be deposited with the Fiscal Agent for authentication. When the Notes shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the Purchase Price therefor and the proceeds of the Notes shall immediately be applied by the City as hereinafter in this Resolution provided.

Section 2.12 Official Statement. The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared for use in the initial offering and sale of the Notes, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Notes. The lawful use of the final Official Statement in the reoffering of the Notes by the Original Purchaser is hereby approved and authorized.

ARTICLE III
REDEMPTION OF NOTES

Section 3.01 Optional Redemption. At the option of the City, the Notes may be called for redemption and payment prior to their stated maturity, in whole or in part, on and after August 15, 2012 (the date being so set for redemption and payment being referred to as the

"Redemption Date"). Notes called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount), of 100% of the principal amount, plus accrued interest to the Redemption Date.

Section 3.02 **Selection of Notes to be Redeemed**. The Notes shall be redeemed only in face amounts of $5,000 or integral multiples thereof and if the City elects to call for redemption less than all of the Notes at the time Outstanding, the Notes shall be redeemed in such equitable manner as the City shall determine, with Notes of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Notes by lot when Notes of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Note shall be treated as though it were a separate Note in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Note has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Note to the Fiscal Agent (i) for payment of the redemption price and accrued interest to the Redemption Date of the $5,000 unit or units of face value of the Note called for redemption, and (ii) for exchange, without charge to the Owner, for a new Note or Notes of the aggregate principal amount of the unredeemed portion of the principal amount of such Note. If the Owner of any Note of a denomination greater than $5,000 of which one or more, but not all, of the $5,000 units of face value thereof has been selected for redemption shall fail to present such Note as aforesaid, the $5,000 units of the face value of such Note which have been selected for redemption shall, nevertheless, become due and payable on the Redemption Date, and no further interest shall accrue on such redeemed but unpresented $5,000 units of face value from and after the Redemption Date.

Section 3.03 **Notice of Redemption**. The City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than sixty (60) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Notes so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

All notices of redemption given under the provisions of this Article shall state (i) the Redemption Date, (ii) the redemption price, (iii) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Notes to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Note or portion thereof which has been selected for redemption, and that the interest thereon shall cease to accrue from and after the Redemption Date, and (v) that the Notes so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

Section 3.04 **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient

funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Notes or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Notes selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000 units of face value represented by any Note is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Note or Notes in the amount of the unredeemed portion of such Note as provided by **Section 3.02** above. All Notes selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

Section 3.05 **Effect of Call for Redemption**. Whenever any Note, or one or more of the $5,000 units of face value represented by any Note, has been selected for redemption and payment as provided in this Article, all interest on such Note, or such one or more of the $5,000 units of face value represented by any such Note, shall cease from and after the Redemption Date, provided funds are then available for its payment at the price hereinbefore specified.

ARTICLE IV
FUNDS AND ACCOUNTS

Section 4.01 **Creation of Funds and Accounts.** Simultaneously with the issuance and delivery of the Notes, there shall be created within the Treasury of the City, the following designated funds and accounts:

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 248;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 248, to be created within the City's Capital Project Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 248.

Section 4.02 **Administration of Funds and Accounts.** The funds and accounts established and created by this Article shall be administered in accordance with the provisions of this Resolution for so long as any of the Notes remain Outstanding.

ARTICLE V
APPLICATION OF NOTE PROCEEDS; DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

Section 5.01 **Application of Note Proceeds.** Upon the issuance and delivery of the Notes, the proceeds thereof shall be deposited into the Treasury of the City and credited to the various funds and accounts created by **Article IV** of this Resolution, as follows:

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Notes and the purchase price premium, if

any, shown on **Exhibit A** to be deposited in the Principal and Interest Account; and

(B) The balance of the proceeds to the Improvement Account.

Section 5.02 Disposition of Principal and Interest Account. Moneys deposited in the Principal and Interest Account from the proceeds of the Notes as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Notes on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of and the interest on the Notes, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

Upon the issuance of the City's general obligation bonds and/or future renewal temporary notes, as the case may be, for the purpose of paying the Notes, or any portion thereof, the proceeds from such general obligation bonds and/or renewal temporary notes shall be deposited into the Principal and Interest Account. Any other sums of moneys which are designated for payment of the costs of the Notes, if any, shall likewise be deposited into the Principal and Interest Account.

Section 5.03 Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent. The Director of Finance is hereby authorized and directed to cause to be withdrawn from the Principal and Interest Account and forwarded to the Fiscal Agent, a sum sufficient in amount to pay the principal of and the interest on the Notes on the Maturity Date, together with such sum as may be required to pay the fees and charges of the Fiscal Agent, if any, for acting in such capacity, and the sum for charges of the Fiscal Agent shall be forwarded to the Fiscal Agent over and above the amount required to pay the Notes as aforesaid. If, through the lapse of time or otherwise, the Owner of any Note shall no longer be entitled to enforce payment of such Note, it shall be the duty of the Fiscal Agent to forthwith return such unexpended funds to the City. All moneys transferred to the Fiscal Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution, and shall be deemed to be deposited with the Fiscal Agent in trust for and on behalf of the Owners of the Notes.

Section 5.04 Surplus in Principal and Interest Account. Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all general obligation note issues of the City shall be transferred and paid into the General Fund of the City.

Section 5.05 Disposition of Improvement Account. Moneys in the Improvement Account shall be used solely for the purpose of paying the Improvement Costs including paying the cost of refunding the Original Notes issued for the Original Improvements. The City covenants that in the making of the Improvements, it will perform all duties and obligations relative to such Improvements as are now or may be hereafter imposed by the Act and the provisions of this Resolution.

Section 5.06 **Withdrawals from Improvement Account.** Withdrawals from the Improvement Account shall be made only for a purpose within the scope of the Improvements, and as payment for Improvement Costs and the amount of such payments shall represent only the contract price or reasonable value of the property, labor, materials, service or obligations being paid for, or if such payment is not being made pursuant to an express contract, such payments shall not be in excess of the reasonable value thereof.

Section 5.07 **Surplus in Improvement Account.** All moneys remaining in the Improvement Account after the completion of the Original Improvements and the Improvements and the payment of all Improvement Costs, including paying the cost of refunding the Original Notes, shall be immediately transferred to the Principal and Interest Account.

Section 5.08 **Substitution of Improvements.** The City may elect to substitute or add other improvements paid for with the proceeds of the Notes pursuant to this Section provided the following conditions are met: (a) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) a resolution or ordinance authorizing the use of the proceeds of the Notes to pay the Improvement Costs of the Substitute Improvement has been adopted by the Governing Body of the City, (c) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Bonds to include the Substitute Improvement and (d) the City has received an opinion of Bond Counsel to the effect that the Substitute Improvement will not adversely affect the tax-exempt status of the Notes under State or federal law and the Substitute Improvement has been authorized pursuant to this Section and the laws of the State.

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

Section 6.01 **Deposits.** Cash moneys in each of the funds and accounts created and established by this Resolution shall be deposited and secured in accordance with the laws of the State.

Section 6.02 **Investments.** Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established; and provided further, that such moneys shall not be invested in such manner as will violate the provisions of the Certificate as to Arbitrage and Related Tax Matters. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall (except the amounts which are required to be deposited into the Excess Earnings Account in accordance with the Certificate as to Arbitrage and Related Tax Matters) accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month. All investments made

pursuant hereto shall be made in accordance with the Certificate as to Arbitrage and Related Tax Matters.

Section 6.03 Deposits Into and Application of Moneys in Excess Earnings Account.

(A) The City shall deposit into the Excess Earnings Account such amounts as are required to be deposited therein pursuant to the Certificate as to Arbitrage and Related Tax Matters. All earnings on investments of moneys held in the Excess Earnings Account shall be retained in the Excess Earnings Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Excess Earnings Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Certificate as to Arbitrage and Related Tax Matters), for payment to the United States of America, and neither the City nor the Owner of any Note shall have any right in or claim to such money. All amounts held in the Excess Earnings Account shall be governed by this Section and by the Certificate as to Arbitrage and Related Tax Matters.

(B) The City shall remit part or all of the balances in the Excess Earnings Account to the United States of America in accordance with the Certificate as to Arbitrage and Related Tax Matters (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Excess Earnings Account after payment of all of the Notes and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Excess Earnings Account and shall be deposited into the City's General Fund.

(C) Notwithstanding any other provision of this Resolution, including in particular the provisions of this Section, the City's obligation to remit the Rebate Amount to the United States of America and to comply with all other requirements of this Section and the Certificate as to Arbitrage and Related Tax Matters shall survive the defeasance or payment in full of the Notes.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Certificate as to Arbitrage and Related Tax Matters for at least six (6) years after the date on which no Notes shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Excess Earnings Account and any Rebate Amount are set forth in a Certificate as to Arbitrage and Related Tax Matters dated as of the Date of Issuance. The form and text of the Certificate as to Arbitrage and Related Tax Matters is hereby approved and accepted by the Governing Body, and all of the covenants, duties and responsibilities therein contained which are to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and the City Clerk or Director of Finance, as appropriate, or such other officer as may be directed by the Mayor, shall be and are hereby authorized to execute and deliver the Certificate as to Arbitrage and Related Tax Matters for and on behalf of the City. The entire text of the Certificate as to Arbitrage and Related Tax Matters is by reference hereby incorporated in and made a part of this Resolution as though fully set forth at this place.

ARTICLE VII

PROVISION FOR PAYMENT OF NOTES

Section 7.01 Levy and Collection of Annual Taxes. Pursuant to the Note Ordinance, the Governing Body covenants that it shall make provision for the payment of the principal of and the interest on the Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes. In lieu of issuing renewal temporary notes or general obligation bonds of the City to fund costs of the Original Improvements and the Improvements, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

Section 7.02 Disposition of Taxes; Untimely Receipt. The proceeds derived from the various sources identified in the preceding Section shall be deposited into the Principal and Interest Account when received; and shall be used to pay the principal of and the interest on the Notes on the Maturity Date; provided, if on the Maturity Date the amount in the Principal and Interest Account shall be insufficient to make the payments of the principal of and the interest on the Notes because of an untimely collection and/or receipt of moneys from said sources, the Director of Finance is authorized to cause to be transferred to the Principal and Interest Account from the City's general funds, the amount required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said moneys.

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.01 Resolution Constitutes Contract; Remedies of Owners. The provisions of the Note Ordinance and this Resolution, and all of the covenants and agreements therein and herein contained, shall constitute a contract between the City and the Owners, and the Owner or Owners of any of the Notes at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

(A) By mandamus or other suit, action or proceedings at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all duties and obligations required by the provisions of the Note Ordinance and this Resolution or by the constitution and laws of the State;

(B) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

Section 8.02 Rights of Owners; Limitations. The covenants and agreements of the City contained herein, in the Note Ordinance and in the Notes shall be for the equal benefit, protection and security of the Owners of any or all of the Notes, all of which Notes shall be of equal rank and without preference or priority of any one Note over any other Note in the application of the moneys herein pledged to the payment of the principal of and the interest on the Notes, or otherwise, except as provided in this Resolution.

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Outstanding Notes. Nothing in this Resolution, in the Note Ordinance or in the Notes shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Notes to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Notes held by him, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Notes without reference to or consent of any other Owner.

Section 8.03 Remedies Cumulative; Delay or Omission Not Waiver. No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Note of any default or breach of duty or contract by the City shall extend to or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

ARTICLE IX
AMENDMENTS

Section 9.01 Amendments. The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect

the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to more precisely identify improvements, or (iv) to provide for the issuance of coupon Notes and the exchange of the fully registered Notes for coupon Notes upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (v) shall not become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon notes or the exchange of the fully registered Notes for such coupon notes, will not cause the interest on the Notes to be includable in the gross income of recipients thereof under the provisions of the applicable Federal law, or (vi) to conform this Resolution to the Code or any future applicable Federal law concerning tax-exempt obligations.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent of the Owners of not less than seventy-five percent (75%) in principal amount of the Notes then Outstanding, such consent to be evidenced by an instrument or instruments executed by the Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of one hundred percent (100%) of the Owners of the Notes then Outstanding:

(A) Extend the Maturity Date of any Note;

(B) Effect a reduction in the amount which the City is required to pay by way of the principal of or the interest on any Note;

(C) Permit a preference or priority of any Note or Notes over any other Note or Notes; or

(D) Reduce the percentage of the principal amount of the then Outstanding Notes for which the written consent of the Owners is required for any modification or alteration of the provisions of this Resolution.

Section 9.02 Written Evidence of Amendments. Any and all modifications or amendments to this Resolution or of the Notes shall be made in the manner hereinabove provided, and shall not become effective until there has been filed with the City Clerk a copy of the resolution of the City authorizing said modifications or amendments, as hereinabove provided for, duly certified, as well as proof of consent to such modifications or amendments by the Owners of not less than the percentage of the principal amount of Notes then Outstanding as hereinabove required. It shall not be necessary to note on any Outstanding Note any reference to such amendment or modification.

A certified copy of every such amendatory or supplemental ordinance or resolution, if any, and a certified copy of the Note Ordinance and this Resolution, shall always be kept on file in the Office of the City Clerk and shall be made available for inspection by the Owner of any Note or the prospective purchaser or owner of any Note, and upon payment of the reasonable cost of preparing same, a certified copy of any such amendatory or supplemental ordinance or

resolution of the Note Ordinance or this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

ARTICLE X
DEFEASANCE

Section 10.01 Defeasance. When all or any part of the principal of and the interest on the Notes shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Note Ordinance and this Resolution shall cease and determine with respect to that principal and interest so paid. The Notes shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State of Kansas and having full trust power; at or prior to the Maturity Date of the Notes, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Notes and the interest thereon to the Maturity Date; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Notes or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank in trust for the respective Owners of the Notes, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Notes remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Notes under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Notes.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Notes for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Notes or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Notes to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code

and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Notes for so long as any of the Notes remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Notes from time to time. This covenant shall survive payment in full or the defeasance of the Notes and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 11.02 Severability. In case any one or more of the provisions of the Note Ordinance, this Resolution or of the Notes issued thereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Note Ordinance, this Resolution or the Notes appertaining thereto, but the Note Ordinance, this Resolution and the Notes shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Notes or in the Note Ordinance or this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 11.03 Further Authority. The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Resolution. The Governing Body hereby further authorizes, orders and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby.

The execution and attestation of this Resolution and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Resolution, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Notes and the Official Statement.

Section 11.04 Governing Law. This Resolution, the Note Ordinance and the Notes shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

Section 11.05 Effective Date. This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

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ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on August 16, 2011.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

4849-5796-5066.1

EXHIBIT A

ADDITIONAL TERMS OF THE SERIES 248 NOTES

Definitions. The following terms defined in the Resolution shall have the meanings ascribed below:

"Note Ordinance" shall mean Ordinance No. _____ of the City, passed by the Governing Body on August 16, 2011, and authorizing and providing for the issuance of the Notes.

"Original Purchaser" means _____, _____, _____, the original purchaser of the Notes.

"Purchase Price" for the Notes shall be the par value of the Notes plus accrued interest to the date of delivery, plus a premium of $_____.

Interest Rate. The Notes shall bear interest at the rate of _____% per annum.

Amount of purchase price premium to be deposited in the Principal and Interest Account is $_____.

Approved by:

_____
Title: _____
City of Wichita, Kansas

SCHEDULE I

ORIGINAL IMPROVEMENTS AND THE IMPROVEMENTS

PPN	OCA	Project Description		Original Improvements	Improvements
498084	799163	Phase II - Aquifer Storage and Recovery		$ 140,000,000.00	$ 20,000,000.00
			TOTAL	**140,000,000.00**	**20,000,000.00**
		TOTAL TEMPORARY NOTES, SERIES 248		**$ 140,000,000.00**	**$ 20,000,000.00**

TOTAL ORIGINAL IMPROVEMENTS	**$ 140,000,000.00**
TOTAL IMPROVEMENTS	**20,000,000.00**
TOTAL TEMPORARY NOTES, SERIES 248	**$ 160,000,000.00**

RESOLUTION NO. 11-201

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED AUGUST 16, 2011

AUTHORIZING THE ISSUANCE OF

NOT TO EXCEED $27,000,000

GENERAL OBLIGATION REFUNDING BONDS
SERIES 2011C

DATED SEPTEMBER 15, 2011

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RESOLUTION NO. 11-201

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2011C, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $27,000,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE BONDS; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Bond Ordinance (as herein defined), has authorized the issuance of the Bonds in the aggregate principal amount of not to exceed $27,000,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Bonds; and

WHEREAS, in accordance with the provisions of the Bond Ordinance, the Governing Body hereby finds and determines that it is necessary to prescribe the terms and details of the Bonds pursuant to this Resolution, and to make certain other covenants and agreements with respect thereto;

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

ARTICLE I
DEFINITIONS

Section 1.01 Definitions of Words and Terms. In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" shall mean K.S.A. 10-101 *et seq.*, and K.S.A. 10-427 *et seq.*, as amended and supplemented, under the authority of which statutes the Bonds are issued.

"Authentication Date" shall mean the date on which a Bond is registered and authenticated by the Fiscal Agent as shown on a Certificate of Authentication printed on the Bond.

"Authorized Investments" shall mean investments authorized by K.S.A. 10-131, as amended and supplemented, and by other provisions of State law applicable to the City.

"Bond Counsel" shall mean Kutak Rock LLP, Kansas City, Missouri, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

"Bond Insurer" shall mean any issuer of a Municipal Bond Insurance Policy, if applicable, described on **Exhibit A** to this Resolution.

"Bond Ordinance" means the ordinance authorizing the issuance of the Bonds as further described on **Exhibit A** to this Resolution.

"Bond Registrar" shall mean the State Treasurer and its successors and assigns.

"Bondowner(s)" shall mean the Owner(s) of the Bonds.

"Bonds" shall mean the General Obligation Refunding Bonds, Series 2011C, dated September 15, 2011, of the City of Wichita, Kansas, authorized by and issued pursuant to the authority of the Bond Ordinance and this Resolution and in the original principal amount set forth on **Exhibit B** to this Resolution, which amount shall not exceed $27,000,000.

"Certificate as to Arbitrage and Related Tax Matters" shall mean the Certificate as to Arbitrage and Related Tax Matters, dated as of and delivered on the Date of Issuance, executed by the City, relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

"City" shall mean the City of Wichita, Kansas.

"City Clerk" shall mean the duly appointed and acting City Clerk of the City, or in the City Clerk's absence (or in the event of a vacancy in such office) any Deputy City Clerk or Acting City Clerk of the City.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or such other general Federal tax code as shall be adopted by the United States Congress in substitution therefor, together with regulations promulgated thereunder by the United States Department of the Treasury.

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the Yield on the Bonds or investment of the proceeds of the Bonds, and in connection with receiving municipal bond insurance and/or ratings on the Bonds.

"Costs of Issuance Account" shall mean the Costs of Issuance Account for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2011C created pursuant to **Article IV** hereof.

"Costs of Issuance Deposit" shall mean the amount of proceeds of the Bonds to be deposited in the Costs of Issuance Account described on **Exhibit B** to this Resolution.

"Date of Issuance" shall mean the date on which the Bonds are delivered to the Original Purchaser and the City receives from the Original Purchaser the full purchase price therefor.

"Dated Date" shall mean the dated date of the Bonds which is September 15, 2011.

"Debt Service" shall mean the scheduled amount of interest and maturing principal payable on the Bonds for a single Bond Year, as described in the Code.

"Debt Service Fund" shall mean the Debt Service Fund of the City created, held and administered solely for the purpose of receiving and disbursing funds for the payment of the City's general obligation indebtedness.

"Direct Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the Director of Finance's absence, the duly appointed Assistant Director of Finance or Acting Director of Finance of the City.

"DTC" shall mean The Depository Trust Company and its successors or assigns.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article IV** hereof.

"Fiscal Agent" shall mean the Bond Registrar and/or the Paying Agent.

"Fiscal Year" shall mean the fiscal year of the City, currently being the 12-months ending each December 31.

"Governing Body" shall mean the duly elected and/or appointed and acting persons comprising the City Council of the City.

"Government Obligations" means (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following phrase (ii)), or (ii) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

"Indirect Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Interest Payment Dates" shall be March 1 and September 1 of each year commencing March 1, 2012, and ending September 1, 2019, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Bonds.

"Mayor" shall mean the duly elected and acting Mayor of the City or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

"Municipal Bond Insurance Policy" shall mean, if applicable, the municipal bond insurance policy issued by Bond Insurer insuring the payment when due of the principal of and interest on the Bonds as described on **Exhibit A** to this Resolution.

"Original Proceeds" shall mean all of the proceeds, including accrued interest, derived from the sale of the Bonds to the Original Purchaser.

"Original Purchaser" means the original purchaser of the Bonds described on **Exhibit A** to this Resolution.

"Outstanding," when used with reference to the Bonds, shall mean, as of a particular date, all Bonds theretofore authenticated and delivered under this Resolution, except (i) Bonds theretofore canceled by the Fiscal Agent or delivered to the Fiscal Agent for cancellation, (ii) Bonds for which payment or redemption moneys or Government Obligations (the principal of and the interest on which Government Obligations, if any, when due, provide sufficient moneys to pay, with such other moneys so deposited with the Fiscal Agent, the principal, redemption premium, if any, and interest on the Bonds being paid or redeemed), or both, in the necessary amount have theretofore been deposited with the Fiscal Agent, or other depository as provided in this Resolution, in trust for the Owners thereof (whether upon or prior to maturity or the Redemption Date of the Bonds), and (iii) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Resolution.

"Owner(s)" or "Registered Owner(s)" shall mean, when used with respect to any Bond, the person or entity in whose name the Bond is registered as shown on the Registration Books maintained by the Fiscal Agent.

"Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Paying Agent" shall mean the State Treasurer and its successors and assigns.

"Principal and Interest Account" shall mean the Principal and Interest Account created within the City's Debt Service Fund pursuant to **Article IV** hereof, which is created and shall be held and administered solely for the purpose of receiving and disbursing funds for the payment of the Bonds.

"Principal Payment Date" shall mean September 1 of each year, commencing September 1, 2012, and ending September 1, 2019, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Purchase Price" means the original purchase price of the Bonds described on **Exhibit B** to this Resolution.

"Record Date" shall mean the 15th day of a month next preceding an Interest Payment Date.

"Redemption Date" when used with respect to any Bond to be redeemed means the date fixed for such redemption pursuant to the terms of this Resolution.

"Refunded Bonds" shall mean the Refunded Bonds as described in the recitals to the Bond Ordinance.

"Refunded Bonds Redemption Date" shall mean the date of redemption of the Refunded Bonds on October 1, 2011.

"Registration Books" shall mean the books maintained on behalf of the City by the Fiscal Agent for the registration and transfer from time to time of the ownership of the Bonds.

"Resolution" or "Bond Resolution" shall mean this Resolution, adopted by the Governing Body of the City on August 16, 2011, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

"State Treasurer" means the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

"Term Bonds" means the Term Bonds, if any, described on **Exhibits A and B** to this Resolution.

"Value" shall mean the value of the Authorized Investments (which Value shall be determined as of the end of each month) and shall be the amortized cost of an obligation or the market cost thereof, whichever is lower.

ARTICLE II
AUTHORIZATION, ISSUANCE AND DELIVERY OF BONDS

Section 2.01 Authorization of and Security for Bonds. Pursuant to the Bond Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to pay the refunding and redemption of the Refunded Bonds, there shall be issued the Bonds. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon, in part, from the collection of special assessment taxes which have been levied against benefited real properties in the City, and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City, with the balance payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City.

Section 2.02 Description and Details of Bonds. The Bonds shall be designated "City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2011C," shall be dated the Dated Date and shall become due on the dates set forth on **Exhibit A** to this Resolution (the "Principal Payment Dates"). The Bonds shall bear interest at the rates described on **Exhibit A** to this Resolution (computed on the basis of a 360-day year of 12 30-day months) and shall be

payable on the Interest Payment Dates. The City Manager, the Finance Director or the City Manager's designee is hereby authorized to approve the final principal amount, maturity schedule, Costs of Issuance Deposit and Purchase Price for the Bonds as to be set forth on **Exhibit B** to this Resolution; provided the final principal amount shall not exceed $27,000,000, the principal shall mature or be subject to mandatory redemption on the dates and at the interest rates shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

The Bonds shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of Bonds maturing on the respective Principal Payment Dates, and shall be numbered in such manner as the Fiscal Agent shall determine. The Bonds shall bear interest from the Interest Payment Date immediately preceding their effective Date of Authentication, unless such effective Date of Authentication shall be prior to the first Interest Payment Date in which case the Bonds shall bear interest from the Dated Date.

The Bonds will be issued and distributed in book-entry-only form through DTC, by depositing with DTC (or the Fiscal Agent as agent for DTC) one certificate for each maturity in fully registered form, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Bonds maturing on the respective Principal Payment Dates as authorized herein. The manner of payment of the principal of and the interest on the Bonds to DTC, and other matters relating to the distribution of the Bonds in book-entry-only form through DTC, shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

Subject to the operational arrangements of DTC, in the event (i) DTC determines not to continue to act as securities depository for the Bonds, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Bonds would adversely affect the interests of the beneficial owners of the Bonds, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement Bonds in the form of fully registered certificates in denominations of $5,000, or integral multiples thereof not exceeding the principal amount thereof maturing on any Principal Payment Date, to be authenticated and delivered to the beneficial owners (to the extent such beneficial owners can be identified by the City). If issued in certificated form, the certificates representing the Bonds shall be numbered in such manner as the Bond Registrar shall determine.

Section 2.03 **Designation of Paying Agent and Bond Registrar**. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body has elected to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The State Treasurer has been designated as the initial Paying Agent and Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days' written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the Bonds and DTC will remit such principal and interest to its Direct Participants for distribution to the beneficial owners in the manner set forth in the following **Section 2.04(A)** and as governed by the terms of the Letter of Representation.

In the event that the Bonds should be issued and delivered in certificated form at any time after the initial delivery of the Bonds, the Fiscal Agent shall maintain Registration Books for the ownership of the Bonds on behalf of the City and the Paying Agent will make payment for the Bonds directly to the Owners as shown by said Registration Books in the manner set forth in the following **Section 2.04(B)**.

Section 2.04 Method and Place of Payment of Principal and Interest on Bonds.

(A) Bonds Issued and Delivered in Book-Entry-Only Form. One certificate per maturity registered in the name of DTC's nominee, Cede & Co., for the total principal amount of the Bonds maturing on the respective Principal Payment Dates will be issued to DTC in New York, New York (or to the Fiscal Agent as agent for DTC) and such certificates will be immobilized in its custody. Purchases of the Bonds in denominations permitted by **Section 2.02** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (the "beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Transfers of ownership will be effected on the records of DTC and its Participants pursuant to the rules and procedures established by DTC and its Participants. Payment of principal and interest on the Bonds will be made in same day funds directly to DTC. The transfer of principal and interest to Participants of DTC will be the responsibility of DTC; the transfer of principal and interest to beneficial owners by Participants of DTC will be the responsibility of such Participants. Neither the City nor the Paying Agent and Bond Registrar will be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its Participants or persons acting through such Participants.

(B) In the Event Certificated Bonds are Subsequently Issued. The principal of, premium, if any, and the interest on the Bonds shall be payable in lawful money of the United States of America by check or draft of the Paying Agent. The principal of and premium, if any, on the Bonds shall be paid to the Owner of each Bond upon presentation and surrender of the Bond to the Paying Agent for payment and cancellation on the maturity date or Redemption Date, as the case may be, of the Bond. The interest on the Bonds shall be mailed by the Paying Agent to the Owner of each Bond at the Owner's address as it appears on the Registration Books on the Record Dates, or at such other address as is provided in writing by such Owner to the Bond Registrar.

Section 2.05 Method of Execution and Authentication of Bonds. The Bonds shall be executed for and on behalf of the City by the manual or facsimile signatures of its Mayor and City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The Bonds shall be registered in the Office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk, on a Certificate of Registration printed on the Bonds, with the City's official seal or a facsimile thereof, impressed or imprinted opposite said signature. The Bonds shall be registered

by the State Treasurer in the municipal bond register in the State Treasurer's office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State Treasurer on a Certificate of State Treasurer printed on the Bonds, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature.

In case any officer of the City or of the State whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the actual delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

No Bond shall be valid or obligatory for any purpose unless and until the Certificate of Authentication thereon shall have been duly executed by the Fiscal Agent, and such duly executed Certificate of Authentication shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Certificate of Authentication shall be deemed to have been duly executed by the Fiscal Agent when manually signed by an authorized officer or signatory thereof, and it shall not be necessary that the same officer or signatory of the Fiscal Agent manually sign the Certificate of Authentication on all Bonds issued under the Bond Ordinance and this Resolution.

Section 2.06 **Payment of Costs of Bonds**. The City shall pay all fees and expenses incurred in connection with the printing, issuance, transfer, exchange, registration, redemption and payment of the Bonds, including the fees and expenses of the Fiscal Agent, except (i) reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed, or (ii) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds, or (iii) any additional costs or fees that might be incurred in the secondary market.

Section 2.07 **Form of Bonds**. The definitive typewritten or printed form of the certificates representing the Bonds issued under this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State of Kansas, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act. The Governing Body hereby approves the form and text of the certificates to be prepared for the Bonds, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Bonds and hereby further authorizes, orders and directs Bond Counsel, in the event the Bonds in certificated form are issued at any time after the initial issuance and delivery of the Bonds, to prepare the form of and cause such certificated Bonds to be printed.

Section 2.08 **Registration, Transfer and Exchange of Bonds**. In the event the Bonds are subsequently issued in certificated form, the City shall cause books evidencing the registration and transfer of the ownership of the Bonds as provided in this Resolution to be kept by the Bond Registrar (the "Registration Books"), and the Bonds may be transferred only upon the Registration Books and upon the surrender thereof to the Bond Registrar duly endorsed for transfer or accompanied by an assignment duly executed by the Owner thereof, or his agent, in such form as shall be satisfactory to the Bond Registrar. Upon the surrender for transfer of any certificated Bond at its office, the Bond Registrar shall authenticate and deliver in the name of

the transferee or transferees a new certificated Bond or Bonds of authorized denominations in the aggregate principal amount of the surrendered certificated Bond. The Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such transfer or exchange.

Upon the presentation of the necessary documents as hereinbefore described at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange any Bond(s) for new Bond(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Bond(s) presented for transfer or exchange. All Bonds presented for transfer or exchange shall be surrendered to the Bond Registrar for cancellation. Prior to delivery of any new Bond(s) to the transferee, the Bond Registrar shall register the same in the Registration Books and shall authenticate each such new Bond.

The City and the Bond Registrar shall not be required to issue, register, transfer or exchange any Bonds during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date.

Bonds delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Bonds surrendered, shall be secured by the Bond Ordinance and this Resolution and shall be entitled to all of the security and benefits hereof and pledges made herein to the same extent as the Bonds surrendered. The person(s) in whose name any Bond is registered as shown on the Registration Books shall be deemed and regarded as the absolute Owner thereof for all purposes. Payment of, or on account of the principal of and the interest on any Bond shall be made only to or upon the order of the Owner or his duly authorized agent; except that, so long as the Bonds remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Bonds, and such payments shall be made only to DTC in accordance with **Section 2.04(A)** of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 2.09 Mutilated, Lost, Stolen or Destroyed Bonds. In the event any certificate representing a Bond is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Bond there shall first be furnished to the Fiscal Agent and the City, evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Bond shall have matured or been called for redemption, instead of issuing a duplicate bond the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Bond their reasonable fees and expenses in connection with the replacement of such Bond or Bonds.

Section 2.10 Surrender and Cancellation of Bonds. Whenever any Outstanding Bond shall be delivered to the Fiscal Agent after full payment thereof or for replacement pursuant to this Resolution, such Bond shall be canceled and destroyed by the Fiscal Agent and counterparts of a Certificate of Destruction describing Bonds so destroyed and evidencing such

destruction shall be furnished by the Fiscal Agent to the City, or such Bond shall be canceled and the canceled Bond shall be returned to the City.

Section 2.11 **Execution and Delivery of Bonds**. The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Bonds without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement bond certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution and when executed the Bonds shall be registered in the Office of the City Clerk and in the Office of the State Treasurer, as required by law and as hereinbefore provided, and shall thereupon be deposited with the Fiscal Agent for authentication. When the Bonds shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the Purchase Price therefor and the proceeds of the Bonds shall immediately be applied by the City as hereinafter in this Resolution provided.

Section 2.12 **Official Statement**. The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared for use in the initial offering and sale of the Bonds, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Bonds. The lawful use of the final Official Statement in the reoffering of the Bonds by the Original Purchaser is hereby approved and authorized.

ARTICLE III
REDEMPTION OF BONDS

Section 3.01 **No Optional Redemption**. The Bonds are not subject to optional redemption prior to maturity.

Section 3.02 **Sinking Fund Redemption**. Any Term Bonds shall also be subject to mandatory redemption and payment as described on **Exhibit B** to this Resolution.

Section 3.03 **Selection of Bonds to be Redeemed**. The Bonds shall be redeemed only in face amounts of $5,000 or integral multiples thereof and if the City elects to call for redemption less than all of the Bonds at the time Outstanding, the Bonds shall be redeemed in such equitable manner as the City shall determine, with Bonds of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Bond shall be treated as though it were a separate Bond in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Bond has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Bond to the Fiscal Agent (i) for payment of the redemption price and accrued interest to the Redemption Date of the

$5,000 unit or units of face value of the Bond called for redemption, and (ii) for exchange, without charge to the Owner, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any Bond of a denomination greater than $5,000 of which one or more, but not all, of the $5,000 units of face value thereof has been selected for redemption shall fail to present such Bond as aforesaid, the $5,000 units of the face value of such Bond which have been selected for redemption shall, nevertheless, become due and payable on the Redemption Date, and no further interest shall accrue on such redeemed but unpresented $5,000 units of face value from and after the Redemption Date.

Section 3.04 **Notice of Redemption**. The City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than sixty (60) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Bonds so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

All notices of redemption given under the provisions of this Article shall state (i) the Redemption Date, (ii) the redemption price, (iii) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Bond or portion thereof which has been selected for redemption, and that the interest thereon shall cease to accrue from and after the Redemption Date, and (v) that the Bonds so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

ARTICLE IV
FUNDS AND ACCOUNTS

Section 4.01 **Creation of Funds and Accounts**. Simultaneously with the issuance and delivery of the Bonds, there shall be created within the Treasury of the City, the following designated funds and accounts:

(A) Costs of Issuance Account for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2011C;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2011C, to be created within the City's Debt Service Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2011C.

Section 4.02 **Administration of Funds and Accounts**. The funds and accounts established and created by this Article shall be administered in accordance with the provisions of this Resolution for so long as any of the Bonds remain Outstanding.

ARTICLE V
APPLICATION OF BOND PROCEEDS; DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

Section 5.01 Application of Bond Proceeds. Upon the issuance and delivery of the Bonds, the proceeds thereof shall be deposited and credited to the various funds and accounts created by **Article IV** of this Resolution, as follows:

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Bonds;

(B) To the Costs of Issuance Account, the Costs of Issuance Deposit; and

(C) The balance of the proceeds shall be transferred to the State Treasurer as the paying agent and registrar for the Refunded Bonds for payment of such Refunded Bonds on the Refunded Bonds Redemption Date.

Section 5.02 Disposition of Principal and Interest Account. Moneys deposited in the Principal and Interest Account from the proceeds of the Bonds as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Bonds on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of, premium, if any, and the interest on the Bonds, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

Section 5.03 Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent. The Director of Finance is hereby authorized and directed to cause to be withdrawn from the Principal and Interest Account and forwarded to the Fiscal Agent, a sum sufficient to pay the principal of, premium, if any, and the interest on the Bonds as and when the same become due and payable, together with such sum as may be required to pay the fees and charges of the Fiscal Agent, if any, for acting in such capacity, and the sum for charges of the Fiscal Agent shall be forwarded to the Fiscal Agent over and above the amount required to pay the Bonds as aforesaid. If, through the lapse of time or otherwise, the Owner of any Bond shall no longer be entitled to enforce payment of such Bond, it shall be the duty of the Fiscal Agent to forthwith return such unexpended funds to the City. All moneys transferred to the Fiscal Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution, and shall be deemed to be deposited with the Fiscal Agent in trust for and on behalf of the Owners of the Bonds.

Section 5.04 Surplus in Principal and Interest Account. Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all general obligation bond issues of the City shall be transferred and paid into the General Fund of the City.

Section 5.05 Costs of Issuance Account. Moneys in the Costs of Issuance shall be used solely for the purpose of paying the Costs of Issuance. All moneys remaining in the Costs of Issuance Account after the earlier of payment of all Costs of Issuance or December 15, 2011, shall be transferred to the Principal and Interest Account.

Section 5.06 **Refunding**. The Refunded Bonds are hereby authorized to be redeemed on the Refunded Bonds Redemption Date, in accordance with the ordinances and resolutions of the City that authorized the issuance and prescribed the terms of the Refunded Bonds.

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

Section 6.01 **Deposits**. Cash moneys in each of the funds and accounts created and established by this Resolution shall be deposited and secured in accordance with the laws of the State.

Section 6.02 **Investments**. Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established; and provided further, that such moneys shall not be invested in such manner as will violate the provisions of the Certificate as to Arbitrage and Related Tax Matters. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall (except the amounts which are required to be deposited into the Excess Earnings Account in accordance with the Certificate as to Arbitrage and Related Tax Matters) accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month. All investments made pursuant hereto shall be made in accordance with the Certificate as to Arbitrage and Related Tax Matters.

Section 6.03 **Deposits into and Application of Moneys in Excess Earnings Account**.

(A) The City shall deposit into the Excess Earnings Account such amounts as are required to be deposited therein pursuant to the Certificate as to Arbitrage and Related Tax Matters. All earnings on investments of moneys held in the Excess Earnings Account shall be retained in the Excess Earnings Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Excess Earnings Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Certificate as to Arbitrage and Related Tax Matters), for payment to the United States of America, and neither the City nor the Owner of any Bond shall have any right in or claim to such money. All amounts held in the Excess Earnings Account shall be governed by this Section and by the Certificate as to Arbitrage and Related Tax Matters.

(B) The City shall remit part or all of the balances in the Excess Earnings Account to the United States of America in accordance with the Certificate as to Arbitrage and Related Tax Matters (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Excess Earnings Account after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn

and released from the Excess Earnings Account and shall be deposited into the City's General Fund.

(C) Notwithstanding any other provision of this Resolution, including in particular the provisions of this Section, the City's obligation to remit the Rebate Amount to the United States of America and to comply with all other requirements of this Section and the Certificate as to Arbitrage and Related Tax Matters shall survive the defeasance or payment in full of the Bonds.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Certificate as to Arbitrage and Related Tax Matters for at least six (6) years after the date on which no Bonds shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Excess Earnings Account and any Rebate Amount are set forth in a Certificate as to Arbitrage and Related Tax Matters dated as of the Date of Issuance. The form and text of the Certificate as to Arbitrage and Related Tax Matters is hereby approved and accepted by the Governing Body, and all of the covenants, duties and responsibilities therein contained which are to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and the City Clerk or Director of Finance, as appropriate, or such other officer as may be directed by the Mayor, shall be and are hereby authorized to execute and deliver the Certificate as to Arbitrage and Related Tax Matters for and on behalf of the City. The entire text of the Certificate as to Arbitrage and Related Tax Matters is by reference hereby incorporated in and made a part of this Resolution as though fully set forth at this place.

ARTICLE VII
PROVISION FOR PAYMENT OF BONDS

Section 7.01 Levy and Collection of Annual Taxes. Pursuant to the Bond Ordinance, the Governing Body covenants that it shall annually make provision for the payment of the principal of, premium, if any, and the interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the maturing principal and interest on the Bonds when due, then the Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amount of special assessment taxes collected.

Section 7.02 Disposition of Taxes; Untimely Receipt. The proceeds derived from the aforesaid annual taxes shall be deposited into the Principal and Interest Account when received; provided, if at any time the amount in the Principal and Interest Account shall be insufficient to make the payments of the principal of and the interest on the Bonds when required because of an untimely collection and/or receipt of said taxes, the Director of Finance is authorized to cause to be transferred to the Principal and Interest Account from the City's general funds, the amount required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said taxes.

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.01 Resolution Constitutes Contract; Remedies of Owners. The provisions of the Bond Ordinance and this Resolution, and all of the covenants and agreements therein and herein contained, shall constitute a contract between the City and the Owners, and the Owner or Owners of any of the Bonds at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

(A) By mandamus or other suit, action or proceedings at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all duties and obligations required by the provisions of the Bond Ordinance and this Resolution or by the constitution and laws of the State;

(B) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

Section 8.02 Rights of Owners; Limitations. The covenants and agreements of the City contained herein, in the Bond Ordinance and in the Bonds shall be for the equal benefit, protection and security of the Owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of any one Bond over any other Bond in the application of the moneys herein pledged to the payment of the principal of, premium, if any, and the interest on the Bonds, or otherwise, except as to the rate of interest, Principal Payment Date and right of prior redemption as provided in this Resolution.

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Outstanding Bonds. Nothing in this Resolution, in the Bond Ordinance or in the Bonds shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Bonds to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Bonds held by such Owner, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Bonds without reference to or consent of any other Owner.

Section 8.03 Remedies Cumulative; Delay or Omission Not Waiver. No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Bond of any default or breach of duty or contract by the City shall extend to

or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

ARTICLE IX
AMENDMENTS

Section 9.01 **Amendments**. The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to provide for the issuance of coupon bonds and the exchange of the fully registered Bonds for coupon bonds upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (iii) shall not become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon bonds or the exchange of the fully registered Bonds for such coupon bonds, will not cause the interest on the Bonds to be includable in the gross income of recipients thereof under the provisions of the applicable Federal law, or (iv) to conform this Resolution to the Code or any future applicable Federal law concerning tax-exempt obligations.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent of the Owners of not less than seventy-five percent (75%) in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by the Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of one hundred percent (100%) of the Owners of the Bonds then Outstanding:

(A) Extend the maturity of any payment of principal or interest due upon any Bond;

(B) Effect a reduction in the amount which the City is required to pay by way of the principal of or the interest on any Bond;

(C) Permit a preference or priority of any Bond or Bonds over any other Bond or Bonds; or

(D) Reduce the percentage of the principal amount of the then Outstanding Bonds for which the written consent of the Owners is required for any modification or alteration of the provisions of this Resolution.

Section 9.02 Written Evidence of Amendments. Any and all modifications or amendments to this Resolution or of the Bonds shall be made in the manner hereinabove provided, and shall not become effective until there has been filed with the City Clerk a copy of the resolution of the City authorizing said modifications or amendments, as hereinabove provided for, duly certified, as well as proof of consent to such modifications or amendments by the Owners of not less than the percentage of the principal amount of Bonds then Outstanding as hereinabove required. It shall not be necessary to note on any Outstanding Bond any reference to such amendment or modification.

A certified copy of every such amendatory or supplemental ordinance or resolution, if any, and a certified copy of the Bond Ordinance and this Resolution, shall always be kept on file in the Office of the City Clerk and shall be made available for inspection by the Owner of any Bond or the prospective purchaser or owner of any Bond, and upon payment of the reasonable cost of preparing same, a certified copy of any such amendatory or supplemental ordinance or resolution of the Bond Ordinance or this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

ARTICLE X
DEFEASANCE

Section 10.01 Defeasance. When all or any part of the principal of, premium, if any, and the interest on the Bonds shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Bond Ordinance and this Resolution shall cease and determine with respect to that principal, premium and interest so paid. The Bonds shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State of Kansas and having full trust power; at or prior to the maturity or Redemption Date of the Bonds, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Bonds, the premium, if any, and the interest thereon to the date of maturity or the Redemption Date, as the case may be; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments, provided always that if any Bonds shall be redeemed prior to the maturity thereof, the City shall have elected to redeem such Bonds and notice of such redemption shall have been given as provided by the terms of this Resolution. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank in trust

for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Bonds for so long as any of the Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Bonds and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 11.02 Severability. In case any one or more of the provisions of the Bond Ordinance, this Resolution or of the Bonds issued thereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Bond Ordinance, this Resolution or the Bonds appertaining thereto, but the Bond Ordinance, this Resolution and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Bonds or in the Bond Ordinance or this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 11.03 **Further Authority**. The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Resolution. The Governing Body hereby further authorizes, orders and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby.

The execution and attestation of this Resolution and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Resolution, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Bonds and the Official Statement.

Section 11.04 **Governing Law**. This Resolution, the Bond Ordinance and the Bonds shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

Section 11.05 **Effective Date**. This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

(The Remainder of This Page Was Intentionally Left Blank)

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on August 16, 2011.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

EXHIBIT A
ADDITIONAL TERMS OF THE SERIES 2011C BONDS

Definitions. The following terms defined in the Resolution shall have the meanings ascribed below:

"Bond Ordinance" means Ordinance No. _____ of the City, passed by the Governing Body on August 16, 2011, and authorizing and providing for the issuance of the Bonds.

"Original Purchaser" means _____, _____, _____, the original purchaser of the Bonds.

Maturity Schedule. All of the Bonds shall be become due or be subject to mandatory redemption on the dates and shall bear interest as the rates per annum as follows:

Maturity or Mandatory Redemption Date	**Interest Rate**
September 1, 2012	%
September 1, 2013	
September 1, 2014	
September 1, 2015	
September 1, 2016	
September 1, 2017	
September 1, 2018	
September 1, 2019	

EXHIBIT B
FINAL SIZING TERMS OF THE SERIES 2011C BONDS

Definitions. The following terms defined in the Resolution shall have the meanings ascribed below:

"Costs of Issuance Deposit" means $_____.

"Purchase Price" for the Bonds shall be the par value of the Bonds, *i.e.*, $_____, plus a premium of $_____, plus accrued interest to the date of delivery.

["Term Bonds" shall mean the Bonds maturing in the year _____.[shall mean the _____ Term Bonds and the ____ Term Bonds].

"____ Term Bonds" shall mean the Bonds maturing in the year ____.

"____ Term Bonds" shall mean the Bonds maturing in the year ____.]

Maturity Schedule. All of the Bonds shall be become due on the dates and shall bear interest as the rates per annum as follows:

SERIAL BONDS

Maturity Date	**Maturing Principal**
September 1, 2012	
September 1, 2013	
September 1, 2014	
September 1, 2015	
September 1, 2016	
September 1, 2017	
September 1, 2018	
September 1, 2019	

[TERM BONDS

Maturity September 1	**Principal Amount**	**Interest Rate**	**Maturity September 1**	**Principal Amount**	**Interest Rate**
20__	$	%	20__	$	%

Mandatory Redemption. Each of the _____ Term Bonds shall also be subject to mandatory redemption and payment on September 1, _____, or on any September 1 thereafter, pursuant to the redemption schedule set out below, at the principal amount, plus accrued interest

to date fixed for redemption and payment, without premium. The City agrees to redeem the following principal amounts of the _____ Term Bonds in each of the following years:

Principal Amount	**Year**
*	

*Final maturity.]

Approved by:

_____
Title:_____
City of Wichita, Kansas

RESOLUTION NO. 11-202

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED AUGUST 16, 2011

AUTHORIZING THE ISSUANCE OF

NOT TO EXCEED $44,000,000

GENERAL OBLIGATION REFUNDING BONDS
SERIES 2011D

DATED SEPTEMBER 15, 2011

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RESOLUTION NO. 11-202

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2011D, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $44,000,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE BONDS; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Bond Ordinance (as herein defined), has authorized the issuance of the Bonds in the aggregate principal amount of not to exceed $44,000,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Bonds; and

WHEREAS, in accordance with the provisions of the Bond Ordinance, the Governing Body hereby finds and determines that it is necessary to prescribe the terms and details of the Bonds pursuant to this Resolution, and to make certain other covenants and agreements with respect thereto;

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

ARTICLE I
DEFINITIONS

Section 1.01 Definitions of Words and Terms. In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" shall mean K.S.A. 10-101 *et seq.*, and K.S.A. 10-427 *et seq.*, as amended and supplemented, under the authority of which statutes the Bonds are issued.

"Authentication Date" shall mean the date on which a Bond is registered and authenticated by the Fiscal Agent as shown on a Certificate of Authentication printed on the Bond.

"Authorized Investments" shall mean investments authorized by K.S.A. 10-131, as amended and supplemented, and by other provisions of State law applicable to the City.

"Bond Counsel" shall mean Kutak Rock LLP, Kansas City, Missouri, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

"Bond Insurer" shall mean any issuer of a Municipal Bond Insurance Policy, if applicable, described on **Exhibit A** to this Resolution.

"Bond Ordinance" means the ordinance authorizing the issuance of the Bonds as further described on **Exhibit A** to this Resolution.

"Bond Registrar" shall mean the State Treasurer and its successors and assigns.

"Bondowner(s)" shall mean the Owner(s) of the Bonds.

"Bonds" shall mean the General Obligation Refunding Bonds, Series 2011D, dated September 15, 2011, of the City of Wichita, Kansas, authorized by and issued pursuant to the authority of the Bond Ordinance and this Resolution and in the original principal amount set forth on **Exhibit B** to this Resolution, which amount shall not exceed $44,000,000.

"Certificate as to Arbitrage and Related Tax Matters" shall mean the Certificate as to Arbitrage and Related Tax Matters, dated as of and delivered on the Date of Issuance, executed by the City, relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

"City" shall mean the City of Wichita, Kansas.

"City Clerk" shall mean the duly appointed and acting City Clerk of the City, or in the City Clerk's absence (or in the event of a vacancy in such office) any Deputy City Clerk or Acting City Clerk of the City.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or such other general Federal tax code as shall be adopted by the United States Congress in substitution therefor, together with regulations promulgated thereunder by the United States Department of the Treasury.

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the Yield on the Bonds or investment of the proceeds of the Bonds, and in connection with receiving municipal bond insurance and/or ratings on the Bonds.

"Costs of Issuance Account" shall mean the Costs of Issuance Account for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2011D created pursuant to **Article IV** hereof.

"Costs of Issuance Deposit" shall mean the amount of proceeds of the Bonds to be deposited in the Costs of Issuance Account described on **Exhibit B** to this Resolution.

"Date of Issuance" shall mean the date on which the Bonds are delivered to the Original Purchaser and the City receives from the Original Purchaser the full purchase price therefor.

"Dated Date" shall mean the dated date of the Bonds which is September 15, 2011.

"Debt Service" shall mean the scheduled amount of interest and maturing principal payable on the Bonds for a single Bond Year, as described in the Code.

"Debt Service Fund" shall mean the Debt Service Fund of the City created, held and administered solely for the purpose of receiving and disbursing funds for the payment of the City's general obligation indebtedness.

"Direct Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the Director of Finance's absence, the duly appointed Assistant Director of Finance or Acting Director of Finance of the City.

"DTC" shall mean The Depository Trust Company and its successors or assigns.

"Escrow Fund" shall mean the Escrow Fund created under the Escrow Agreement and held by the Escrow Trustee.

"Escrow Agreement" means the Escrow Agreement dated as of September 15, 2011, between the City and the Escrow Trustee.

"Escrow Trustee" means a Kansas bank with trust powers to be selected by the City.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article IV** hereof.

"Fiscal Agent" shall mean the Bond Registrar and/or the Paying Agent.

"Fiscal Year" shall mean the fiscal year of the City, currently being the 12-months ending each December 31.

"Governing Body" shall mean the duly elected and/or appointed and acting persons comprising the City Council of the City.

"Government Obligations" means (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following phrase (ii)), or (ii) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

"Indirect Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Interest Payment Dates" shall be March 1 and September 1 of each year commencing March 1, 2012, and ending September 1, 2021, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Bonds.

"Mayor" shall mean the duly elected and acting Mayor of the City or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

"Municipal Bond Insurance Policy" shall mean, if applicable, the municipal bond insurance policy issued by Bond Insurer insuring the payment when due of the principal of and interest on the Bonds as described on **Exhibit A** to this Resolution.

"Original Proceeds" shall mean all of the proceeds, including accrued interest, derived from the sale of the Bonds to the Original Purchaser.

"Original Purchaser" means the original purchaser of the Bonds described on **Exhibit A** to this Resolution.

"Outstanding," when used with reference to the Bonds, shall mean, as of a particular date, all Bonds theretofore authenticated and delivered under this Resolution, except (i) Bonds theretofore canceled by the Fiscal Agent or delivered to the Fiscal Agent for cancellation, (ii) Bonds for which payment or redemption moneys or Government Obligations (the principal of and the interest on which Government Obligations, if any, when due, provide sufficient moneys to pay, with such other moneys so deposited with the Fiscal Agent, the principal, redemption premium, if any, and interest on the Bonds being paid or redeemed), or both, in the necessary amount have theretofore been deposited with the Fiscal Agent, or other depository as provided in this Resolution, in trust for the Owners thereof (whether upon or prior to maturity or the Redemption Date of the Bonds), and (iii) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Resolution.

"Owner(s)" or "Registered Owner(s)" shall mean, when used with respect to any Bond, the person or entity in whose name the Bond is registered as shown on the Registration Books maintained by the Fiscal Agent.

"Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Paying Agent" shall mean the State Treasurer and its successors and assigns.

"Principal and Interest Account" shall mean the Principal and Interest Account created within the City's Debt Service Fund pursuant to **Article IV** hereof, which is created and shall be held and administered solely for the purpose of receiving and disbursing funds for the payment of the Bonds.

"Principal Payment Date" shall mean September 1 of each year, commencing September 1, 2013, and ending September 1, 2021, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Purchase Price" means the original purchase price of the Bonds described on **Exhibit B** to this Resolution.

"Record Date" shall mean the 15th day of a month next preceding an Interest Payment Date.

"Redemption Date" when used with respect to any Bond to be redeemed means the date fixed for such redemption pursuant to the terms of this Resolution.

"Refunded Bonds" shall mean the Refunded Bonds as described in the recitals to the Bond Ordinance.

"Refunded Bonds Redemption Dates" shall mean the following redemption dates for each series of Refunded Bonds:

Series	**Redemption Dates**
780	9/1/12
782	9/1/12
784	9/1/13
780	9/1/13
958	9/1/12

"Registration Books" shall mean the books maintained on behalf of the City by the Fiscal Agent for the registration and transfer from time to time of the ownership of the Bonds.

"Resolution" or "Bond Resolution" shall mean this Resolution, adopted by the Governing Body of the City on August 16, 2011, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

"State Treasurer" means the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

"Term Bonds" means the Term Bonds, if any, described on **Exhibits A and B** to this Resolution.

"Value" shall mean the value of the Authorized Investments (which Value shall be determined as of the end of each month) and shall be the amortized cost of an obligation or the market cost thereof, whichever is lower.

ARTICLE II
AUTHORIZATION, ISSUANCE AND DELIVERY OF BONDS

Section 2.01 **Authorization of and Security for Bonds**. Pursuant to the Bond Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to pay the cost of refunding the principal amount of and redemption premium, if any, on the Refunded Bonds, there shall be issued the Bonds. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon, in part, from the collection of special assessment taxes which have been levied against benefited real properties in the City, and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City, with the balance payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City.

Section 2.02 **Description and Details of Bonds**. The Bonds shall be designated "City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2011D," shall be dated the Dated Date and shall become due on the dates set forth on **Exhibit A** to this Resolution (the "Principal Payment Dates"). The Bonds shall bear interest at the rates described on **Exhibit A** to this Resolution (computed on the basis of a 360-day year of 12 30-day months) and shall be payable on the Interest Payment Dates. The City Manager, the Finance Director or the City Manager's designee is hereby authorized to approve the final principal amount, maturity schedule, Costs of Issuance Deposit and Purchase Price for the Bonds as to be set forth on **Exhibit B** to this Resolution; provided the final principal amount shall not exceed $44,000,000, the principal shall mature or be subject to mandatory redemption on the dates and at the interest rates shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

The Bonds shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of Bonds maturing on the respective Principal Payment Dates, and shall be numbered in such manner as the Fiscal Agent shall determine. The Bonds shall bear interest from the Interest Payment Date immediately preceding their effective Date of Authentication, unless such effective Date of Authentication shall be prior to the first Interest Payment Date in which case the Bonds shall bear interest from the Dated Date.

The Bonds will be issued and distributed in book-entry-only form through DTC, by depositing with DTC (or the Fiscal Agent as agent for DTC) one certificate for each maturity in fully registered form, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Bonds maturing on the respective Principal Payment Dates as authorized herein. The manner of payment of the principal of and the interest on the Bonds to DTC, and other matters relating to the distribution of the Bonds in book-entry-only form through DTC, shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

Subject to the operational arrangements of DTC, in the event (i) DTC determines not to continue to act as securities depository for the Bonds, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Bonds

would adversely affect the interests of the beneficial owners of the Bonds, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement Bonds in the form of fully registered certificates in denominations of $5,000, or integral multiples thereof not exceeding the principal amount thereof maturing on any Principal Payment Date, to be authenticated and delivered to the beneficial owners (to the extent such beneficial owners can be identified by the City). If issued in certificated form, the certificates representing the Bonds shall be numbered in such manner as the Bond Registrar shall determine.

Section 2.03 Designation of Paying Agent and Bond Registrar. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body has elected to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The State Treasurer has been designated as the initial Paying Agent and Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days' written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the Bonds and DTC will remit such principal and interest to its Direct Participants for distribution to the beneficial owners in the manner set forth in the following **Section 2.04(A)** and as governed by the terms of the Letter of Representation.

In the event that the Bonds should be issued and delivered in certificated form at any time after the initial delivery of the Bonds, the Fiscal Agent shall maintain Registration Books for the ownership of the Bonds on behalf of the City and the Paying Agent will make payment for the Bonds directly to the Owners as shown by said Registration Books in the manner set forth in the following **Section 2.04(B)**.

Section 2.04 Method and Place of Payment of Principal and Interest on Bonds.

(A) Bonds Issued and Delivered in Book-Entry-Only Form. One certificate per maturity registered in the name of DTC's nominee, Cede & Co., for the total principal amount of the Bonds maturing on the respective Principal Payment Dates will be issued to DTC in New York, New York (or to the Fiscal Agent as agent for DTC) and such certificates will be immobilized in its custody. Purchases of the Bonds in denominations permitted by **Section 2.02** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (the "beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Transfers of ownership will be effected on the records of DTC and its Participants pursuant to the rules and procedures established by DTC and its Participants. Payment of principal and interest on the Bonds will be made in same day funds directly to DTC. The transfer of principal and interest to Participants of DTC will be the responsibility of DTC; the transfer of principal and interest to beneficial owners by Participants of DTC will be the responsibility of such Participants. Neither the City nor the Paying Agent and Bond Registrar will be responsible or

liable for maintaining, supervising or reviewing the records maintained by DTC, its Participants or persons acting through such Participants.

(B) In the Event Certificated Bonds are Subsequently Issued. The principal of, premium, if any, and the interest on the Bonds shall be payable in lawful money of the United States of America by check or draft of the Paying Agent. The principal of and premium, if any, on the Bonds shall be paid to the Owner of each Bond upon presentation and surrender of the Bond to the Paying Agent for payment and cancellation on the maturity date or Redemption Date, as the case may be, of the Bond. The interest on the Bonds shall be mailed by the Paying Agent to the Owner of each Bond at the Owner's address as it appears on the Registration Books on the Record Dates, or at such other address as is provided in writing by such Owner to the Bond Registrar.

Section 2.05 Method of Execution and Authentication of Bonds. The Bonds shall be executed for and on behalf of the City by the manual or facsimile signatures of its Mayor and City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The Bonds shall be registered in the Office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk, on a Certificate of Registration printed on the Bonds, with the City's official seal or a facsimile thereof, impressed or imprinted opposite said signature. The Bonds shall be registered by the State Treasurer in the municipal bond register in the State Treasurer's office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State Treasurer on a Certificate of State Treasurer printed on the Bonds, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature.

In case any officer of the City or of the State whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the actual delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

No Bond shall be valid or obligatory for any purpose unless and until the Certificate of Authentication thereon shall have been duly executed by the Fiscal Agent, and such duly executed Certificate of Authentication shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Certificate of Authentication shall be deemed to have been duly executed by the Fiscal Agent when manually signed by an authorized officer or signatory thereof, and it shall not be necessary that the same officer or signatory of the Fiscal Agent manually sign the Certificate of Authentication on all Bonds issued under the Bond Ordinance and this Resolution.

Section 2.06 Payment of Costs of Bonds. The City shall pay all fees and expenses incurred in connection with the printing, issuance, transfer, exchange, registration, redemption and payment of the Bonds, including the fees and expenses of the Fiscal Agent, except (i) reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed, or (ii) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds, or (iii) any additional costs or fees that might be incurred in the secondary market.

Section 2.07 **Form of Bonds**. The definitive typewritten or printed form of the certificates representing the Bonds issued under this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State of Kansas, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act. The Governing Body hereby approves the form and text of the certificates to be prepared for the Bonds, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Bonds and hereby further authorizes, orders and directs Bond Counsel, in the event the Bonds in certificated form are issued at any time after the initial issuance and delivery of the Bonds, to prepare the form of and cause such certificated Bonds to be printed.

Section 2.08 **Registration, Transfer and Exchange of Bonds**. In the event the Bonds are subsequently issued in certificated form, the City shall cause books evidencing the registration and transfer of the ownership of the Bonds as provided in this Resolution to be kept by the Bond Registrar (the "Registration Books"), and the Bonds may be transferred only upon the Registration Books and upon the surrender thereof to the Bond Registrar duly endorsed for transfer or accompanied by an assignment duly executed by the Owner thereof, or his agent, in such form as shall be satisfactory to the Bond Registrar. Upon the surrender for transfer of any certificated Bond at its office, the Bond Registrar shall authenticate and deliver in the name of the transferee or transferees a new certificated Bond or Bonds of authorized denominations in the aggregate principal amount of the surrendered certificated Bond. The Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such transfer or exchange.

Upon the presentation of the necessary documents as hereinbefore described at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange any Bond(s) for new Bond(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Bond(s) presented for transfer or exchange. All Bonds presented for transfer or exchange shall be surrendered to the Bond Registrar for cancellation. Prior to delivery of any new Bond(s) to the transferee, the Bond Registrar shall register the same in the Registration Books and shall authenticate each such new Bond.

The City and the Bond Registrar shall not be required to issue, register, transfer or exchange any Bonds during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date.

Bonds delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Bonds surrendered, shall be secured by the Bond Ordinance and this Resolution and shall be entitled to all of the security and benefits hereof and pledges made herein to the same extent as the Bonds surrendered. The person(s) in whose name any Bond is registered as shown on the Registration Books shall be deemed and regarded as the absolute Owner thereof for all purposes. Payment of, or on account of the principal of and the interest on any Bond shall be made only to or upon the order of the Owner or his duly authorized agent; except that, so long as the Bonds remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Bonds, and such payments shall be made only to DTC in accordance with **Section 2.04(A)** of this Resolution. All such payments shall be valid and

effectual to satisfy and discharge the City's liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 2.09 Mutilated, Lost, Stolen or Destroyed Bonds. In the event any certificate representing a Bond is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Bond there shall first be furnished to the Fiscal Agent and the City, evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Bond shall have matured or been called for redemption, instead of issuing a duplicate bond the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Bond their reasonable fees and expenses in connection with the replacement of such Bond or Bonds.

Section 2.10 Surrender and Cancellation of Bonds. Whenever any Outstanding Bond shall be delivered to the Fiscal Agent after full payment thereof or for replacement pursuant to this Resolution, such Bond shall be canceled and destroyed by the Fiscal Agent and counterparts of a Certificate of Destruction describing Bonds so destroyed and evidencing such destruction shall be furnished by the Fiscal Agent to the City, or such Bond shall be canceled and the canceled Bond shall be returned to the City.

Section 2.11 Execution and Delivery of Bonds. The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Bonds without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement bond certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution and when executed the Bonds shall be registered in the Office of the City Clerk and in the Office of the State Treasurer, as required by law and as hereinbefore provided, and shall thereupon be deposited with the Fiscal Agent for authentication. When the Bonds shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the Purchase Price therefor and the proceeds of the Bonds shall immediately be applied by the City as hereinafter in this Resolution provided.

Section 2.12 Official Statement. The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared for use in the initial offering and sale of the Bonds, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Bonds. The lawful use of the final Official Statement in the reoffering of the Bonds by the Original Purchaser is hereby approved and authorized.

ARTICLE III
REDEMPTION OF BONDS

Section 3.01 **Optional Redemption**. The Bonds maturing in the years 2013 through 2019, inclusive, shall become due on their stated maturity dates without the option of prior payment. At the option of the City, the Bonds maturing September 1, 2020, and thereafter, may be called for redemption and payment prior to their respective maturities on and after September 1, 2019, in whole or in part at any time. The Bonds called for redemption and payment shall be redeemed at a price of 100% of the principal amount (expressed as a percentage of the principal amount), plus accrued interest to the date established for redemption and payment.

Section 3.02 **Sinking Fund Redemption**. Any Term Bonds shall also be subject to mandatory redemption and payment as described on **Exhibit B** to this Resolution.

Section 3.03 **Selection of Bonds to be Redeemed**. The Bonds shall be redeemed only in face amounts of $5,000 or integral multiples thereof and if the City elects to call for redemption less than all of the Bonds at the time Outstanding, the Bonds shall be redeemed in such equitable manner as the City shall determine, with Bonds of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Bond shall be treated as though it were a separate Bond in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Bond has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Bond to the Fiscal Agent (i) for payment of the redemption price and accrued interest to the Redemption Date of the $5,000 unit or units of face value of the Bond called for redemption, and (ii) for exchange, without charge to the Owner, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any Bond of a denomination greater than $5,000 of which one or more, but not all, of the $5,000 units of face value thereof has been selected for redemption shall fail to present such Bond as aforesaid, the $5,000 units of the face value of such Bond which have been selected for redemption shall, nevertheless, become due and payable on the Redemption Date, and no further interest shall accrue on such redeemed but unpresented $5,000 units of face value from and after the Redemption Date.

Section 3.04 **Notice of Redemption**. The City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than sixty (60) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Bonds so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

All notices of redemption given under the provisions of this Article shall state (i) the Redemption Date, (ii) the redemption price, (iii) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed, (iv) that on the Redemption Date the principal amount,

and premium, if any, will become due and payable upon each such Bond or portion thereof which has been selected for redemption, and that the interest thereon shall cease to accrue from and after the Redemption Date, and (v) that the Bonds so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

ARTICLE IV
FUNDS AND ACCOUNTS

Section 4.01 **Creation of Funds and Accounts**. Simultaneously with the issuance and delivery of the Bonds, there shall be created within the Treasury of the City, the following designated funds and accounts:

(A) Costs of Issuance Account for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2011D;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2011D, to be created within the City's Debt Service Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2011D.

Section 4.02 **Administration of Funds and Accounts**. The funds and accounts established and created by this Article shall be administered in accordance with the provisions of this Resolution for so long as any of the Bonds remain Outstanding.

ARTICLE V
APPLICATION OF BOND PROCEEDS; DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

Section 5.01 **Application of Bond Proceeds**. Upon the issuance and delivery of the Bonds, the proceeds thereof shall be deposited and credited to the various funds and accounts created by **Article IV** of this Resolution, as follows:

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Bonds;

(B) To the Costs of Issuance Account, the Costs of Issuance Deposit; and

(C) The balance of the proceeds to the Escrow Fund held by the Escrow Trustee in accordance with the Escrow Agreement.

Section 5.02 **Disposition of Principal and Interest Account**. Moneys deposited in the Principal and Interest Account from the proceeds of the Bonds as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Bonds on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used

exclusively for the payment of the principal of, premium, if any, and the interest on the Bonds, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

Section 5.03 Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent. The Director of Finance is hereby authorized and directed to cause to be withdrawn from the Principal and Interest Account and forwarded to the Fiscal Agent, a sum sufficient to pay the principal of, premium, if any, and the interest on the Bonds as and when the same become due and payable, together with such sum as may be required to pay the fees and charges of the Fiscal Agent, if any, for acting in such capacity, and the sum for charges of the Fiscal Agent shall be forwarded to the Fiscal Agent over and above the amount required to pay the Bonds as aforesaid. If, through the lapse of time or otherwise, the Owner of any Bond shall no longer be entitled to enforce payment of such Bond, it shall be the duty of the Fiscal Agent to forthwith return such unexpended funds to the City. All moneys transferred to the Fiscal Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution, and shall be deemed to be deposited with the Fiscal Agent in trust for and on behalf of the Owners of the Bonds.

Section 5.04 Surplus in Principal and Interest Account. Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all general obligation bond issues of the City shall be transferred and paid into the General Fund of the City.

Section 5.05 Costs of Issuance Account. Moneys in the Costs of Issuance shall be used solely for the purpose of paying the Costs of Issuance. All moneys remaining in the Costs of Issuance Account after the earlier of payment of all Costs of Issuance or December 15, 2011, shall be transferred to the Principal and Interest Account.

Section 5.06 Escrow Fund; Refunding. The Refunded Bonds are hereby authorized to be redeemed on the Refunded Bonds Redemption Dates and the Escrow Trustee is hereby authorized to provide notice of such redemption in accordance with the ordinances and resolutions of the City that authorized the issuance and prescribed the terms of the Refunded Bonds. An Escrow Fund shall be established with the Escrow Trustee under the terms of the Escrow Agreement and shall be used solely to pay the principal of and premium, if any, on the Refunded Bonds on the Refunded Bonds Redemption Dates and to pay interest on the Bonds through the Refunded Bonds Redemption Dates. Any moneys remaining in the Escrow Fund after the Refunded Bonds have been redeemed shall be transferred to the City and deposited into the Principal and Interest Account for the Bonds.

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

Section 6.01 Deposits. Cash moneys in each of the funds and accounts created and established by this Resolution shall be deposited and secured in accordance with the laws of the State.

Section 6.02 Investments. Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other

investments allowed by the laws of the State, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established; and provided further, that such moneys shall not be invested in such manner as will violate the provisions of the Certificate as to Arbitrage and Related Tax Matters. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall (except the amounts which are required to be deposited into the Excess Earnings Account in accordance with the Certificate as to Arbitrage and Related Tax Matters) accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month. All investments made pursuant hereto shall be made in accordance with the Certificate as to Arbitrage and Related Tax Matters.

Section 6.03 Deposits into and Application of Moneys in Excess Earnings Account.

(A) The City shall deposit into the Excess Earnings Account such amounts as are required to be deposited therein pursuant to the Certificate as to Arbitrage and Related Tax Matters. All earnings on investments of moneys held in the Excess Earnings Account shall be retained in the Excess Earnings Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Excess Earnings Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Certificate as to Arbitrage and Related Tax Matters), for payment to the United States of America, and neither the City nor the Owner of any Bond shall have any right in or claim to such money. All amounts held in the Excess Earnings Account shall be governed by this Section and by the Certificate as to Arbitrage and Related Tax Matters.

(B) The City shall remit part or all of the balances in the Excess Earnings Account to the United States of America in accordance with the Certificate as to Arbitrage and Related Tax Matters (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Excess Earnings Account after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Excess Earnings Account and shall be deposited into the City's General Fund.

(C) Notwithstanding any other provision of this Resolution, including in particular the provisions of this Section, the City's obligation to remit the Rebate Amount to the United States of America and to comply with all other requirements of this Section and the Certificate as to Arbitrage and Related Tax Matters shall survive the defeasance or payment in full of the Bonds.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Certificate as to Arbitrage and Related Tax Matters for at least six (6) years after the date on which no Bonds shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Excess Earnings Account and any Rebate Amount are set forth in a Certificate as

to Arbitrage and Related Tax Matters dated as of the Date of Issuance. The form and text of the Certificate as to Arbitrage and Related Tax Matters is hereby approved and accepted by the Governing Body, and all of the covenants, duties and responsibilities therein contained which are to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and the City Clerk or Director of Finance, as appropriate, or such other officer as may be directed by the Mayor, shall be and are hereby authorized to execute and deliver the Certificate as to Arbitrage and Related Tax Matters for and on behalf of the City. The entire text of the Certificate as to Arbitrage and Related Tax Matters is by reference hereby incorporated in and made a part of this Resolution as though fully set forth at this place.

ARTICLE VII
PROVISION FOR PAYMENT OF BONDS

Section 7.01 Levy and Collection of Annual Taxes. Pursuant to the Bond Ordinance, the Governing Body covenants that it shall annually make provision for the payment of the principal of, premium, if any, and the interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the maturing principal and interest on the Bonds when due, then the Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amount of special assessment taxes collected.

Section 7.02 Disposition of Taxes; Untimely Receipt. The proceeds derived from the aforesaid annual taxes shall be deposited into the Principal and Interest Account when received; provided, if at any time the amount in the Principal and Interest Account shall be insufficient to make the payments of the principal of and the interest on the Bonds when required because of an untimely collection and/or receipt of said taxes, the Director of Finance is authorized to cause to be transferred to the Principal and Interest Account from the City's general funds, the amount required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said taxes.

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.01 Resolution Constitutes Contract; Remedies of Owners. The provisions of the Bond Ordinance and this Resolution, and all of the covenants and agreements therein and herein contained, shall constitute a contract between the City and the Owners, and the Owner or Owners of any of the Bonds at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

(A) By mandamus or other suit, action or proceedings at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all

duties and obligations required by the provisions of the Bond Ordinance and this Resolution or by the constitution and laws of the State;

(B) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

Section 8.02 Rights of Owners; Limitations. The covenants and agreements of the City contained herein, in the Bond Ordinance and in the Bonds shall be for the equal benefit, protection and security of the Owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of any one Bond over any other Bond in the application of the moneys herein pledged to the payment of the principal of, premium, if any, and the interest on the Bonds, or otherwise, except as to the rate of interest, Principal Payment Date and right of prior redemption as provided in this Resolution.

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Outstanding Bonds. Nothing in this Resolution, in the Bond Ordinance or in the Bonds shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Bonds to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Bonds held by such Owner, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Bonds without reference to or consent of any other Owner.

Section 8.03 Remedies Cumulative; Delay or Omission Not Waiver. No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Bond of any default or breach of duty or contract by the City shall extend to or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

ARTICLE IX
AMENDMENTS

Section 9.01 Amendments. The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to provide for the issuance of coupon bonds and the exchange of the fully registered Bonds for coupon bonds upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (iii) shall not become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon bonds or the exchange of the fully registered Bonds for such coupon bonds, will not cause the interest on the Bonds to be includable in the gross income of recipients thereof under the provisions of the applicable Federal law, or (iv) to conform this Resolution to the Code or any future applicable Federal law concerning tax-exempt obligations.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent of the Owners of not less than seventy-five percent (75%) in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by the Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of one hundred percent (100%) of the Owners of the Bonds then Outstanding:

(A) Extend the maturity of any payment of principal or interest due upon any Bond;

(B) Effect a reduction in the amount which the City is required to pay by way of the principal of or the interest on any Bond;

(C) Permit a preference or priority of any Bond or Bonds over any other Bond or Bonds; or

(D) Reduce the percentage of the principal amount of the then Outstanding Bonds for which the written consent of the Owners is required for any modification or alteration of the provisions of this Resolution.

Section 9.02 Written Evidence of Amendments. Any and all modifications or amendments to this Resolution or of the Bonds shall be made in the manner hereinabove provided, and shall not become effective until there has been filed with the City Clerk a copy of the resolution of the City authorizing said modifications or amendments, as hereinabove provided for, duly certified, as well as proof of consent to such modifications or amendments by the Owners of not less than the percentage of the principal amount of Bonds then Outstanding as

hereinabove required. It shall not be necessary to note on any Outstanding Bond any reference to such amendment or modification.

A certified copy of every such amendatory or supplemental ordinance or resolution, if any, and a certified copy of the Bond Ordinance and this Resolution, shall always be kept on file in the Office of the City Clerk and shall be made available for inspection by the Owner of any Bond or the prospective purchaser or owner of any Bond, and upon payment of the reasonable cost of preparing same, a certified copy of any such amendatory or supplemental ordinance or resolution of the Bond Ordinance or this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

ARTICLE X
DEFEASANCE

Section 10.01 Defeasance. When all or any part of the principal of, premium, if any, and the interest on the Bonds shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Bond Ordinance and this Resolution shall cease and determine with respect to that principal, premium and interest so paid. The Bonds shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State of Kansas and having full trust power; at or prior to the maturity or Redemption Date of the Bonds, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Bonds, the premium, if any, and the interest thereon to the date of maturity or the Redemption Date, as the case may be; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments, provided always that if any Bonds shall be redeemed prior to the maturity thereof, the City shall have elected to redeem such Bonds and notice of such redemption shall have been given as provided by the terms of this Resolution. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank in trust for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Bonds under Section 103 of the Code, and further covenants to comply with all

other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Bonds for so long as any of the Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Bonds and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 11.02 **Severability**. In case any one or more of the provisions of the Bond Ordinance, this Resolution or of the Bonds issued thereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Bond Ordinance, this Resolution or the Bonds appertaining thereto, but the Bond Ordinance, this Resolution and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Bonds or in the Bond Ordinance or this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 11.03 **Further Authority**. The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Resolution. The Governing Body hereby further authorizes, orders and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the

Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby.

The execution and attestation of this Resolution and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Resolution, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Bonds and the Official Statement.

Section 11.04 **Governing Law**. This Resolution, the Bond Ordinance and the Bonds shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

Section 11.05 **Effective Date**. This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

(The Remainder of This Page Was Intentionally Left Blank)

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on August 16, 2011.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

EXHIBIT A
ADDITIONAL TERMS OF THE SERIES 2011D BONDS

Definitions. The following terms defined in the Resolution shall have the meanings ascribed below:

"Bond Ordinance" means Ordinance No. _____ of the City, passed by the Governing Body on August 16, 2011, and authorizing and providing for the issuance of the Bonds.

"Original Purchaser" means _____, _____, _____, the original purchaser of the Bonds.

Maturity Schedule. All of the Bonds shall be become due or be subject to mandatory redemption on the dates and shall bear interest as the rates per annum as follows:

Maturity or Mandatory Redemption Date	**Interest Rate**
September 1, 2013	%
September 1, 2014	
September 1, 2015	
September 1, 2016	
September 1, 2017	
September 1, 2018	
September 1, 2019	
September 1, 2020	
September 1, 2021	

EXHIBIT B
FINAL SIZING TERMS OF THE SERIES 2011D BONDS

Definitions. The following terms defined in the Resolution shall have the meanings ascribed below:

"Costs of Issuance Deposit" means $_____.

"Purchase Price" for the Bonds shall be the par value of the Bonds, *i.e.*, $_____, plus a premium of $_____, plus accrued interest to the date of delivery.

["Term Bonds" shall mean the Bonds maturing in the year _____.[shall mean the _____ Term Bonds and the ____ Term Bonds].

"____ Term Bonds" shall mean the Bonds maturing in the year ____.

"____ Term Bonds" shall mean the Bonds maturing in the year ____.]

Maturity Schedule. All of the Bonds shall be become due on the dates and shall bear interest as the rates per annum as follows:

SERIAL BONDS

Maturity Date	**Maturing Principal**
September 1, 2013	
September 1, 2014	
September 1, 2015	
September 1, 2016	
September 1, 2017	
September 1, 2018	
September 1, 2019	
September 1, 2020	
September 1, 2021	

[TERM BONDS

Maturity September 1	**Principal Amount**	**Interest Rate**	**Maturity September 1**	**Principal Amount**	**Interest Rate**
20__	$	%	20__	$	%

Mandatory Redemption. Each of the _____ Term Bonds shall also be subject to mandatory redemption and payment on September 1, _____, or on any September 1 thereafter, pursuant to the redemption schedule set out below, at the principal amount, plus accrued interest

to date fixed for redemption and payment, without premium. The City agrees to redeem the following principal amounts of the _____ Term Bonds in each of the following years:

Principal Amount	**Year**
*	

*Final maturity.]

Approved by:

_____
Title: _____
City of Wichita, Kansas

Agenda Item No. V-1

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: CON2011-00015 – City Conditional Use for Nightclub in the City; generally located on the east side of Rock Road, 1/8 mile north of Harry Street (1208 South Rock Road) (District II)

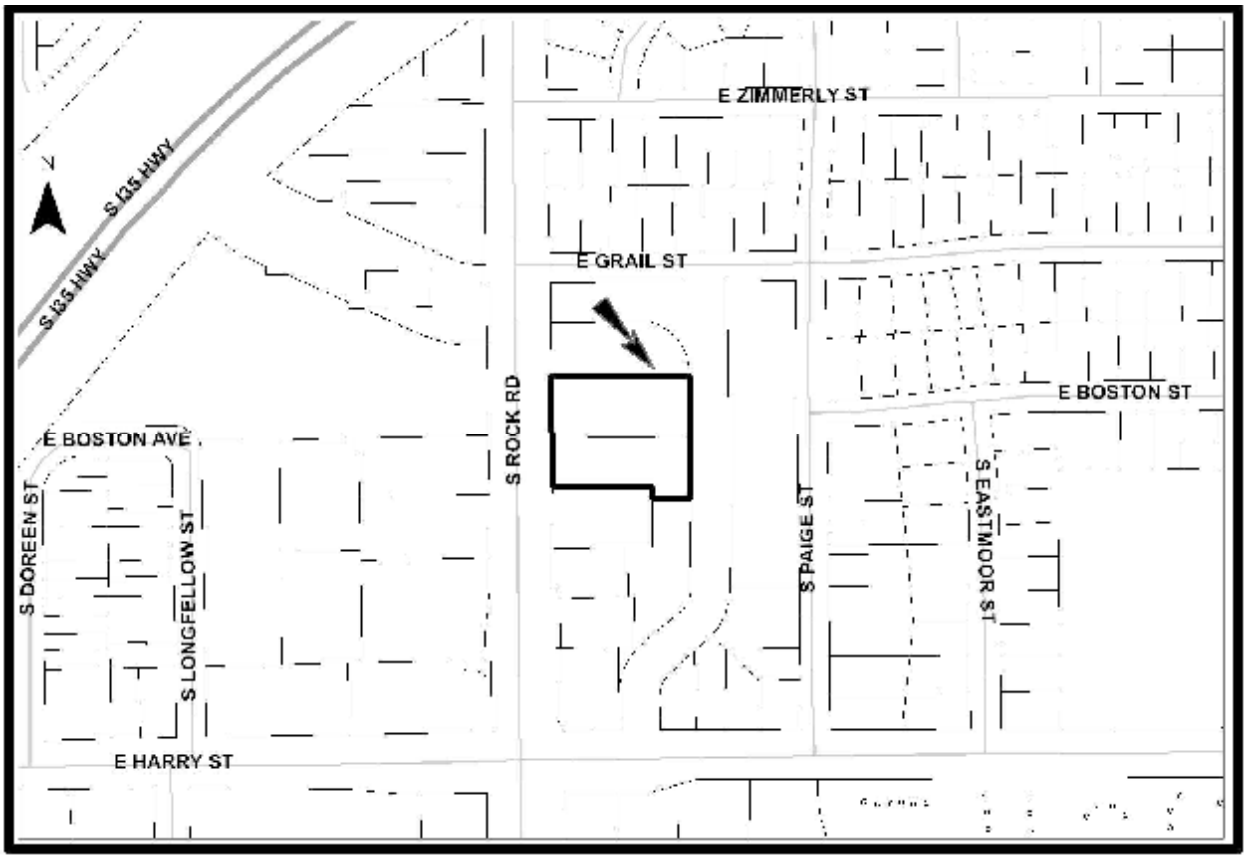
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendation: The MAPC recommendation comes as a recommendation to deny the request due to a tie vote that constitutes a failure to recommend approval (5-5).

DAB II Recommendation: The District II Advisory Board recommended to accept the Planning Staff's recommendation contingent on compliance in reference to RESOLUTION No. 11-161 (6-3).

MAPD Staff Recommendation: The MAPD staff recommended approval, subject to conditions of the Conditional Use.



Background: The applicant is seeking a Conditional Use to permit a Nightclub in the City on property zoned LC Limited Commercial ("LC"), generally located on the east side of Rock Road, 1/8 mile north of Harry Street (1208 South Rock Road). The proposed lease is located in a one-story strip center except for the center portion (1206 and 1208 South Rock Road) where the applicant proposes to operate a nightclub on the top floor. The bottom story is vacant and is not included in the proposed Conditional Use. Other businesses located in the north and south wings of the strip center include three personal care service businesses (cleaners, alterations, tanning salon) and two restaurants.

The applicant's statement (attached) states that he intends to operate a club (Seven Night Club) that would provide alcoholic drinks (drinking establishment), recorded music and recorded video entertainment for patrons 25 years of age and up. Other activities could include live entertainment by comedians, poetry readings and open mike. According to the applicant's statement, the business cannot qualify as a drinking establishment/restaurant (50 percent food sales) due to the lack of kitchen facilities. Regardless, the provision of the music and entertainment would trigger the designation of nightclub because it is within 300 feet of property zoned residentially. The site abuts a drainage ditch zoned B Multi-Family ("B"), which is located next to an apartment development also zoned B.

Nightclubs have been licensed and operated from the bottom floor, addressed as 1206 South Rock Road, at least since the mid-1990s. Most of the time, the top floor was licensed and used as part of the 1206 operation. Past records show a variety of clubs have been licensed to 1206 South Rock Road. The names of the previous clubs were (listed from most recent to earlier): The Groove, Club LaFaye, Kat Eyes Inc., Cocktails, Club Groove, Max S, Jammers (top floor) and Jo-Jo's Down Under (bottom floor). None of the licenses were issued to the 1208 address. The last nightclub (The Groove) has been closed for over a year, but less than two years. The occupancy associated with all these clubs has remained the same: 210 person occupancy on the top floor and 115 person occupancy on the bottom floor.

Access to the top floor appears to be by way of an exterior iron stairway. No Americans with Disabilities Act accessibility is provided at the main entrance, but a ramp is attached to the rear of the building.

The Unified Zoning Code requires that any nightclub located within 300 feet of residential zoning be subject to Conditional Use review to determine if the particular site is suitable for the operation of a nightclub. As previously mentioned, the upper floor has been part of a two-story nightclub operation in the past, although the operation is now closed and the applicant is seeking to establish his club only on the top floor which has not been licensed independently. Other restaurant and personal care services are located in the same strip center and share the parking lot. The property does not have any buffering or screening of its own along the abutting drainage ditch. The apartment development has its own fence and landscaping to screen the apartments from the commercial use and view.

Most properties located nearby on both sides of Rock Road are zoned LC. Two fast-food restaurants (one vacant), a vacant retail use and a convenience store are located to the south. Another restaurant is located to the north. More fast-food restaurants and a tire store are located to the west, across Rock Road. A mini-storage warehouse, zoned GC General Commercial (GC), is located west of Rock Road. Residential uses are located directly east across the previously mentioned drainage ditch, in the apartment development zoned B fronting onto Paige Street. Single-family residential houses, zoned SF-5 Single-Family Residential, are located on the east side of Paige Street and to the north of the drainage ditch.

Analysis: At the MAPC meeting held May 26, 2011, the MAPC voted (5-5) to approve the request; the tie vote represents a failure to approve the request. No alternate motion was made. Therefore, the case comes to the Wichita City Council with a recommendation of denial due to failure to recommend approval by the Planning Commission. At the Metropolitan Area Planning Commission (MAPC) meeting held May 23, the owners of the apartment complex to the southeast, the manager of the apartment complex to the east and home owners in the vicinity objected to approval of a Conditional Use

for a nightclub. Those speaking brought up issues with past operation of nightclubs based on the license issued to the lower level of this structure, 1206 South Rock Road (the applicant submitted the request for operating a Nightclub in the City apart from a restaurant and only for the upper story or 1208 South Rock Road, which previously had no license for a nightclub operation solely on the upper premises). The neighbors commented on problems with people congregating in the parking lot associated with past club operations, especially after closing at 2:00 a.m., that the noise from the people in the parking lots disrupted those living in the nearby apartments and residences, fights and other violence in the parking lot, traffic (including people on foot) from the nightclub traveling through the neighborhood late at night, trash and litter found in the parking lot of businesses across Rock Road. One citizen presented a report of past police calls to the location associated with previous clubs.

Roosevelt Hunt, the applicant seeking to operate the nightclub, addressed these comments and reiterated that he intended to make his operation different and avoid neighborhood impacts. He said he was in agreement with the recommendations contained in the Metropolitan Area Planning Department staff report designed to mitigate the neighborhood impacts addressed by the citizens at the public hearing. In addition to testimony given by citizens at the meeting, a number of written and verbal correspondences have been received concerning the case and are attached to this referral. No formal protests were filed by the neighbors after the MAPC vote for failure to approve constituting a recommendation of denial. The applicant has filed an appeal of the MAPC action to the Wichita City Council.

At the Wichita City Council hearing held July 12, 2011, the Wichita City Council voted to defer action and send the request for consideration to the District II Advisory Board (DAB).

The DAB heard this case on August 1, 2011. Discussion at the DAB meeting included how this nightclub would differ from previous cases and how the manager would implement a 25-year old age limit and whether there is evidence that the older age limit will deter crime. Other items discussed were the need for parking lot security, the opposition of neighborhood residents and businesses, and the importance of enforcement by City agencies (police/OCI) if the conditions of approval were not followed. The DAB recommendation was to accept the Planning Staff's recommendation contingent on compliance in reference to RESOLUTION No. 11-161 (6-3), which contains the following conditions:

1. The site shall be developed in general conformance with the approved site plan and in compliance with all City ordinances, including but not limited to: zoning, landscaping, sign code, building, fire, health codes or licensing requirements.
2. A revised site plan shall be provided within 60 days of approval of the Conditional Use by the governing body to indicate the location and method of screening of the trash receptacles, location of lighting, parking spaces, location and method of screening, landscaping, and other site requirements per the Unified Zoning Code and Landscape Ordinance.
3. Construction of improvements shall be completed within one year of approval of the Conditional Use by the governing body.
4. The parking lot shall be kept free of all trash and debris.
5. No loitering, congregating or excessive noise shall be permitted in the parking lot.
6. No outside loudspeakers or entertainment, including dancing, shall be permitted.
7. Operation of the Nightclub in the City shall be limited to:

   Wednesday 8:00 p.m. – midnight
   Thursday 8:00 p.m. – midnight
   Friday 8:00 p.m. - Saturday 2:00 a.m.
   Saturday 8:00 p.m. - Sunday 2:00 a.m.
8. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

Financial Considerations: The City will not incur any additional financial considerations in regards to the Conditional Use request.

Goal Impact: The recommendation of the MAPC is designed to promote Economic Vitality.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: 1) Adopt the recommendation of the MAPC and deny the request (simple majority required); 2) approve the Conditional Use subject to the conditions of the Conditional Use based on the findings in the staff report; and authorize the Mayor to sign the resolution (requires a two-third majority vote to override the Planning Commission's recommendation to the City Council on the first hearing) or 3) return the request to MAPC for reconsideration (simple majority vote required).

Attachments:

- Resolution based on MAPD staff report
- Site plan
- MAPC Minutes
- DAB Memo
- Appeal from applicant dated May 31. 2011
- Applicant's original statement of intent for operation filed with the Conditional Use Request
- Correspondence from Angelita Rivera dated May 26, 2011
- Copy of police responses to 1206 S. Rock Road, submitted by Justin Demal on May 25, 2011
- Correspondence from Dixie Swanson dated May 24, 2011
- Correspondence from Todd Hying dated May 24, 2011
- Correspondence from Kayla Garrett dated May 24, 2011
- Correspondence from Diane Marshall dated May 24, 2011
- Comment from Donald E. and Evelyn G. Page

RESOLUTION No. 11-203

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO PERMIT A NIGHTCLUB IN THE CITY, ON APPROXIMATELY 1.48 ACRES ZONED LC LIMITED COMMERCIAL ("LC"), GENERALLY LOCATED ON THE EAST SIDE OF ROCK ROAD 1/8 MILE NORTH OF HARRY STREET (1208 SOUTH ROCK ROAD), WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 48-451, AS AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, a Conditional Use to allow a Nightclub in the City, on approximately 1.48 acres zoned LC Limited Commercial, subject to the conditions listed below:

Case No. CON2011-00015

A Conditional Use to permit a Nightclub in the City on approximately 1.48 acres zoned LC Limited Commercial.

Lot 2 and Lot 3, except the South 25 feet of the West 200 feet, in Triple J Addition, Wichita, Sedgwick County, Kansas, Wichita, Sedgwick County, Kansas, generally located on the east side of Rock Road 1/8 mile north of Harry Street (1208 South Rock Road).

SUBJECT TO THE FOLLOWING CONDITIONS:
APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan and in compliance with all city ordinances, including but not limited to: zoning, landscaping, sign code, building, fire, health codes or licensing requirements.
2. A revised site plan shall be provided within 60 days of approval of the Conditional Use by the governing body to indicate the location and method of screening of the trash receptacles, location of lighting, parking spaces, location and method of screening, landscaping, and other site requirements per the Unified Zoning Code and Landscape Ordinance.
3. Construction of improvements shall be completed within one year of approval of the Conditional Use by the governing body.
4. The parking lot shall be kept free of all trash and debris.
5. No loitering, congregating or excessive noise shall be permitted in the parking lot.
6. No outside loudspeakers or entertainment, including dancing, shall be permitted.
7. Operation of the Nightclub in the City shall be limited to:
   Wednesday 8:00 p.m. – midnight
   Thursday 8:00 p.m. – midnight
   Friday 8:00 p.m. - Saturday 2:00 a.m.
   Saturday 8:00 p.m. - Sunday 2:00 a.m.
8. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

SECTION 2. That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION 3. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date August 16, 2011.

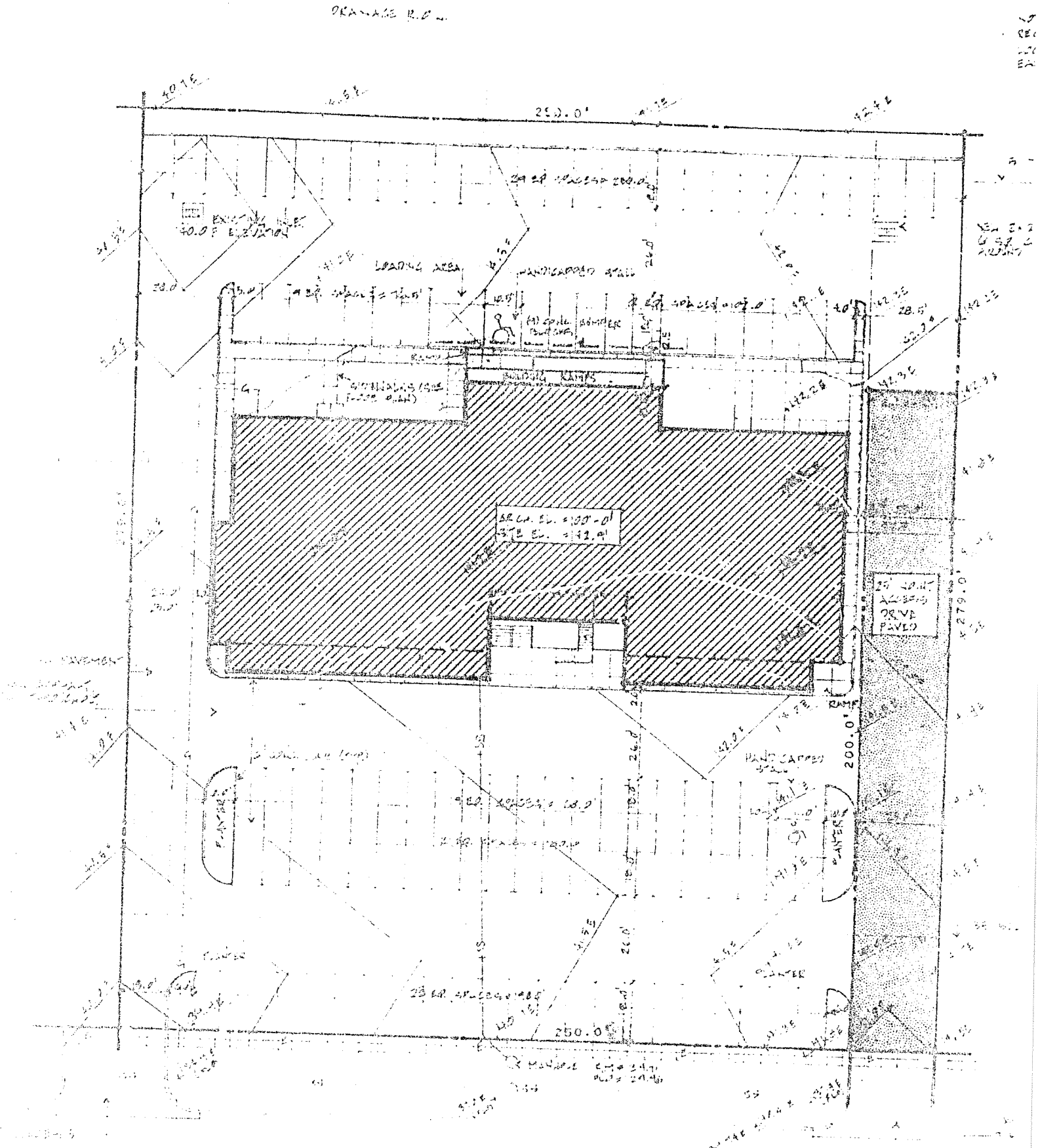
_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney



SITE PLAN
CON2011-00015

EXCERPT MINUTES OF THE MAY 26, 2011 PLANNING COMMISSION HEARING

Case No.: CON2011-15 - TDFW LLC (owner) c/o Steven R. Barrett and Brad Mitchell, Roosevelt Hunt (applicant) request a City Conditional Use to permit a Night Club in the City on property zoned LC Limited Commercial on property described as:

Lot 3, except the South 25 feet of the West 200 feet, in Triple J Addition, Wichita, Sedgwick County, Kansas

BACKGROUND: The applicant is seeking a Conditional Use to permit a Nightclub in the City on property zoned LC Limited Commercial ("LC"), generally located on the east side of Rock Road 1/8 mile north of Harry Street (1208 South Rock Road). The proposed lease is located in a one-story strip center except for the center portion (1206 and 1208 South Rock Road) where the applicant proposes to operate a nightclub on the top floor. The bottom story is vacant and is not included in the proposed Conditional Use. Other businesses located in the north and south wings of the strip center include three personal care service businesses (cleaners, alterations, tanning salon) and two restaurants.

The applicant's statement (attached) states that he intends to operate a club (Seven Night Club) that would provide alcoholic drinks (drinking establishment), recorded music and recorded video entertainment for patrons 25 years of age and up. Other activities could include live entertainment by comedians, poetry readings and open mike. According to the applicant's statement, the business cannot qualify as a drinking establishment/restaurant (50 percent food sales) due to the lack of kitchen facilities. Regardless, the provision of the music and entertainment would trigger the designation of nightclub because it is within 300 feet of property zoned residentially. The site abuts a drainage ditch zoned B Multi-Family ("B"), which is located next to an apartment development also zoned B.

Nightclubs have been licensed and operated from the bottom floor, addressed as 1206 South Rock Road at least since the mid-1990s. Most of the time, the top floor was licensed and used as part of the 1206 operation. Past records show a variety of clubs have been licensed to 1206 South Rock Road. The names of the previous clubs were (listed from most recent to earlier): The Groove, Club LaFaye, Kat Eyes Inc., Cocktails, Club Groove, Max S, Jammers (top floor) and Jo-Jo's Down Under (bottom floor). None of the licenses were issued to the 1208 address. The last nightclub (The Groove) has been closed for over a year, but less than two years. The occupancy associated with all these clubs has remained the same: 210 person occupancy on the top floor and 115 person occupancy on the bottom floor.

Access to the top floor appears to be by way of an exterior iron stairway. No ADA accessibility is provided at the main entrance, but a ramp is attached to the rear of the building.

The Unified Zoning Code requires that any nightclub located within 300 feet of residential zoning be subject to Conditional Use review to determine if the particular site is suitable for the operation of a nightclub. As previously mentioned, the upper floor has been part of a two-story nightclub operation previously, although the operation is now closed and the applicant is seeking to establish his club only on the top floor which has not been licensed independently. Other restaurant and personal care services are located in the same strip center and share the parking lot. The property does not have any buffering or screening of its own along the abutting drainage ditch. The apartment development has its own fence and landscaping to screen the apartments from the commercial use and view.

Most properties located nearby on both sides of Rock Road are zoned LC. Two fast-food restaurants (one vacant), a vacant retail use and a convenience store are located to the south. Another restaurant is located to the north. More fast-food restaurants and a tire store are located to the west, across Rock Road. A mini-storage warehouse, zoned GC General Commercial ("GC"), is located west of Rock Road.

Residential uses are located directly east in the apartment development zoned B fronting onto Paige Street. Single-family residential houses, zoned SF-5 Single-Family Residential, are located on the east side of Paige Street and to the north of the drainage ditch.

CASE HISTORY: The property is platted as Triple J Addition, recorded November 1, 1973.

ADJACENT ZONING AND LAND USE:

NORTH:	LC, SF-5	Personal care, restaurants, drainage ditch, single-family residential
SOUTH:	LC	Personal care, restaurants, retail, convenience store
EAST:	B, SF-5	Drainage ditch, garden apartments, single-family residential
WEST:	LC, GC	Restaurants, tire store, mini-storage warehouse

PUBLIC SERVICES: The site has direct access onto Rock Road, a major arterial street with four lanes and center turn lanes. 2006 annual average daily traffic counts were 27,663 on northbound Rock Road and 25,500 on southbound Rock Road. All normal public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this site as "Local Commercial." The zoning is in conformance with this designation. The property is not part of a CUP, and does not have any special site development regulations for use restrictions, buffering, screening, and other site regulations except shared signage and shared parking to conform with **Commercial Goal/Objective B** of "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses. It does not have its own screening or buffering along the drainage ditch and relies on that provided by the less intensive, adjacent residential use. It has no landscaping along the arterial street, reflecting its development prior to the Landscape Ordinance and not being a part of a CUP.

RECOMMENDATION: The property has been part of the nightclub operated out of the lower level of the building for many years until being closed over a year ago. Now, the applicant is seeking to operate the upper floor as a Nightclub in the City separate from the lower level. An 80-foot wide drainage ditch separates the use from the nearest residential zoning and use. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan and in compliance with all city ordinances, including but not limited to: zoning, landscaping, sign code, building, fire, health codes or licensing requirements.
2. A revised site plan shall be provided within 60 days of approval of the Conditional Use by the governing body to indicate the location and method of screening of the trash receptacles, location of lighting, parking spaces, location and method of screening, landscaping, and other site requirements per the Unified Zoning Code and Landscape Ordinance.
3. Construction of improvements shall be completed within one year of approval of the Conditional Use by the governing body.
4. The parking lot shall be kept free of all trash and debris.
5. No loitering, congregating or excessive noise shall be permitted in the parking lot.
6. No outside loudspeakers or entertainment, including dancing, shall be permitted.
7. Operation of the Nightclub in the City shall be limited to:

   Wednesday 8:00 p.m. – midnight
   Thursday 8:00 p.m. – midnight

Friday 8:00 p.m. - Saturday 2:00 a.m.
Saturday 8:00 p.m. - Sunday 2:00 a.m.

8. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The proposed leasehold has been part of a two-story nightclub operation previously, although the operation is now closed and the applicant is seeking to establish his club only on the top floor which has not been licensed independently. Other restaurant and personal care services are located in the same strip center and share the parking lot. The property does not have any buffering or screening of its own along the abutting drainage ditch. The apartment development has its own fence and landscaping to screen the apartments from the commercial use and view. Most properties located nearby on both sides of Rock Road are zoned LC. Two fast-food restaurants (one vacant), a vacant retail use and a convenience store are located to the south. Another restaurant is located to the north. More fast-food restaurants and a tire store are located to the west, across Rock Road. A mini-storage warehouse, zoned GC is located west of Rock Road. Residential uses are located directly east in the apartment development zoned B fronting onto Paige Street. Single-family residential houses, zoned SF-5 Single-Family Residential, are located on the east side of Paige Street and to the north of the drainage ditch.

2. The suitability of the subject property for the uses to which it has been restricted: The building could be remodeled to be used for a wide variety of LC uses allowed by the current zoning.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Nightclubs have been licensed and operated from the bottom floor, addressed as 1206 South Rock Road at least since the mid-1990s. Most of the time, the top floor was licensed and used as part of the 1206 operation. The proposed conditions spell out that outside noise, loudspeakers, congregating, trash and debris are prohibited and better parking lot screening and landscaping near the residential area is requested. If enforced, these requirements should help mitigate the past conflicts from the nightclub patrons' activities spilling over into the parking lots and surrounding neighborhoods.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this site as "Local Commercial." The zoning is in conformance with this designation. The property is not part of a CUP, and does not have any special site development regulations for use restrictions, buffering, screening, and other site regulations except shared signage and shared parking to conform with **Commercial Goal/Objective B** of "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses. It does not have its own screening or buffering along the drainage ditch and relies on that provided by the less intensive, adjacent residential use. It has no landscaping along the arterial street, reflecting its development prior to the Landscape Ordinance and not being a part of a CUP.

5. Impact of the proposed development on community facilities: The project should have no significant impact on streets and utility services. Like all liquor-related uses, it will increase the need for oversight from the police to ensure compliance with licensing requirements and other conditions of approval.

DONNA GOLTRY, Planning Staff presented the Staff Report. She referred Commissioners to handouts regarding the case. She reported that she has heard from neighbors, the apartment manager to the east, and the business owner across the street regarding issues with past practices at the site. She mentioned noise and incidents in the parking lot after 2:00 a.m. after the club closed. She reminded the Commission that this is a land issue decision as to whether the proposed application was appropriate land use, not how the land is managed per se.

MARNELL asked who came up with the hours of operation.

GOLTRY replied the applicant; however, she extended them.

SHERMAN asked the applicant why he was leasing 1208 S. Rock Road (the second story of the ion of the building) instead of leasing 1206 S. Rock Road (the first floor of the building).

ROOSEVELT HUNT, 1208 SOUTH ROCK ROAD, APPLICANT said he understands there have been problems at the location in past; however, he added that he felt it had a lot to do with club ownership and other things. He commented that he is from the small town of Liberal, Kansas where he graduated from Fort Hays State College and received his Masters Degree from Baker University. He said he has a wife and 3 children to go home to and that he would not open an operation that would put him in jeopardy. He said the previous owners left him a road map of what not to do. He mentioned the environment in the parking lot of the last club and that patrons could get in at 18 years of age, but had to be 21years of age to drink. He said he is not talking about that type of establishment. He said he wants to run a bar for patrons between the ages of 26 to mid 40's to go and relax and have a cocktail. He said there will be no hip-hop, baggy clothes or boom music. He asked Commissioners to consider his proposal and what he says he will do and make a decision based on that, not on what has happened at the property in the past.

HILLMAN said he appreciates Mr. Hunt's social awareness and that he can market to the right group. He said he is more interested in physical access to the parking lot and control of activities in the lot.

HUNT said controlling the parking lot is his biggest issue and commented that once last call is called they will not allow people to loiter in the parking lot. He said he will have security with cones to keep people moving and that there will be a 5 minute cut off. He said while the club is open people will be asked to come into the club or leave the property. He mentioned that he has on option on 1206 S. Rock Road also and is thinking about the possibility of opening a restaurant at that location.

SHERMAN asked why Mr. Hunt is going to the second story of the building when the lower floor has a kitchen.

HUNT replied that initially the main focus was to do a bar/nightclub which does not have the 50 % income from food sales requirement.

SHERMAN asked why he chose this location with its history.

HUNT said he reviewed 8-9 different properties around town. He said he likes the demographics which include older people, people in the military and professionals from Boeing, Cessna, and Raytheon. He

said he is looking for people with mortgages around his age that would like to have a few cocktails and unwind.

JUSTIN DEMEL, 8413 OXFORD CIRCLE WITH FIDELITY MANAGEMENT, DANISH VILLAGE APTS, 1109-1217 S. PAIGE STREET said Danish Village is an apartment community located directly east of the subject location. He said they oppose approval of the conditional use permit and are in opposition to having a club at this location due to the noise and crime problems it brings to the area. He said there were clubs of various kinds with various operators at this location over the past years. He said the clubs came and went and the last club closed in October 2009, which was a real blessing. He said club patrons caused noise disturbances in the parking areas in the late evening and early morning hours after the clubs closed. He referred Commissioners to a listing of police responses to the clubs from 2007-2009 for various disturbances and unlawful activity. He said these only reflect the times the police were called, not other noise disturbances. He noted that there were a number of firearms violations including a police involved shooting. He said not long after the police involved shooting there was another "shots fired" police call to the location and the club was finally shut down. He said any problems that brought police to the location brought safety concerns to the residents of the apartment community and the shooting incidents were extremely disturbing. He said there were occurrences when patrons of the club would end up in the apartment parking areas creating disturbances, affecting residents and their feeling of safety. He said a club establishment at this location has proven to bring safety concerns to residents of the apartment complex and therefore; a negative impact on their business. He asked the Commission to consider whether they would want this establishment adjacent to their back yard.

FARNEY asked if Mr. Demel ever had communications with the building owner or land owner.

DEMEL said he contacted the building owner by phone within the last week.

HILLMAN said he is familiar with the apartment complex and mentioned the drainage ditch which was a huge moat and difficult to cross, including a fence. He asked how patrons are getting from the club parking lot over to the apartments.

DEMEL acknowledged that it was not easy to walk over there, but said people do it.

SHERMAN asked if Mr. Demel's feelings would change if the tenant was on the first floor with 50% of the income from food sales.

DEMEL said club operators have come and gone and that they all have the greatest of intentions but the same thing occurs every time. He said he is opposed to a drinking establishment period.

SHERMAN commented that lawfully the club can be there.

DEMEL said then lawfully there is nothing he can do about it. He added that he did not think Commissioner Sherman would want this in his backyard. He said this is a bad thing for the neighborhood and added that a drinking establishment leads to other problems.

SHERMAN clarified that Mr. Demel doesn't want anyone drinking at this location.

CLAY BASTIAN, 100 EAST ENGLISH, OWNER, DANISH VILLAGE APARTMENTS mentioned the e-mails from residents and said he has the same concerns. He said it is tough enough to attract and retain residents at the complex because of the noise, crime and drunken people spilling into the neighborhood. He said he doesn't care what type of bar or whether it is upstairs or downstairs. He said any establishment open until 2:00 a.m. on the weekend is a magnet for these types of activities.

HILLMAN said he is still confused as to how people from the bar end up in the apartment area.

SHERMAN reiterated that the business can lawfully be there. He asked Mr. Bastian if it would make the situation any better for them if it was a restaurant/bar as opposed to a bar/nightclub or is it that they just don't want any kind of drinking establishment at that location.

BASTIAN responded that most restaurants close long before 2:00 a.m. and staff is on their way home by 10:00-11:00 p.m. He said he doesn't think that will make any difference in activities.

HUNT said he understands their concerns; however, he asked the Commission not to focus on what has happened at the location in the past. He said he will hire off duty security and even went to the Patrol East Wichita Police Department Substation to find out about the possibility of hiring off-duty Wichita Police Department Officers. He said he was contemplating offering security for the whole strip mall and the club would just be a part of it. He said he wants to have a police presence in the area. He said he wants to be safe so he can go home to his wife and children too. He said he does not want to have his name on something where someone gets shot or killed.

HILLMAN asked Mr. Hunt if he spoke with the police about a plan to correct the problem in the parking lot.

HUNT said when people come to the parking lot after the club has closed, he really doesn't know what they are doing. He speculated that they may be interacting with people who have come out of the club. He added that some people don't want to spend money in a bar or it could be drug deals. He said people seemed to be focused on everything that has happened at this location before, but he said that is not the type of operation he will be running. He said he believes he will not have the problems because of who is there, his target audience. He said if the Commission wanted to make it a requirement that he use off-duty police as security as part of the conditions, he would be willing to do that.

SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY clarified that off-duty police officers are not allowed to work at drinking establishments. She said the City has established some additional requirements for clubs including a security plan and a plan covering where patrons wait to get into a club. She said some of the issues being discussed may be addressed by existing ordinances.

HILLMAN asked if Mr. Hunt would be willing to reduce the hours and close at midnight.

HUNT said yes he would be willing to do that temporarily and show he could operate and not have noise for a period of time and show that it wouldn't be a problem, and then perhaps hours could be extended.

SHERMAN asked the applicant if he has ever owned a club before.

HUNT replied that he has not been an actual operator, but he does have some experience with clubs. He said he has been to other locations where police are present all the time, which gives the impression that they are working for that bar owner. He reiterated that he would be willing to provide security for the entire strip mall and not necessarily just the club.

SHERMAN said he applauded what Mr. Hunt was trying to do but added that this location has a history of violent crime. He also mentioned that if Mr. Hunt agrees to close at midnight the club will probably tank within 6 months so he might want to put some thought into what he is willing to do to appease concerns. He mentioned that he has owned a club himself. He asked if Mr. Hunt he had a Plan B or

another location. He concluded by saying that if Mr. Hunt were to use the first floor (1206 South Rock Road) he would not have to go through the conditional use permit procedure.

HUNT said he had a Plan B but he would not like to have to exercise it.

SHERMAN clarified that the Commission was only deciding whether the applicant can put a nightclub upstairs at the location.

DIRECTOR SCHLEGEL replied yes.

> **MOTION:** To approve subject to staff recommendation.
>
> **MARNELL** moved, **DENNIS** seconded the motion, and it failed (5-5). **FOSTER, HILLMAN, JOHNSON, MITCHELL, SHERMAN** - No.

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: MAPC Members

FROM: Antione Sherfield, Neighborhood Assistant, District II

SUBJECT: **CON2011-00015**

DATE: August 3, 2011

On Monday, August 1, 2011, the District II Advisory Board considered the City Conditional Use for Nightclub in the City; generally located on the east side of Rock Road, 1/8 mile north of Harry Street (1208 South Rock Road) (District II).

The applicant is seeking a Conditional Use to permit a Nightclub in the City on property zoned LC Limited Commercial ("LC"), generally located on the east side of Rock Road, 1/8 mile north of Harry Street (1208 South Rock Road). The proposed lease is located in a one-story strip center except for the center portion (1206 and 1208 South Rock Road) where the applicant proposes to operate a nightclub on the top floor. The bottom story is vacant and is not included in the proposed Conditional Use. Other businesses located in the north and south wings of the strip center include three personal care service businesses (cleaners, alterations, tanning salon) and two restaurants.

The applicant's statement (attached) states that he intends to operate a club (Seven Night Club) that would provide alcoholic drinks (drinking establishment), recorded music and recorded video entertainment for patrons 25 years of age and up. Other activities could include live entertainment by comedians, poetry readings and open mike. According to the applicant's statement, the business cannot qualify as a drinking establishment/restaurant (50 percent food sales) due to the lack of kitchen facilities. Regardless, the provision of the music and entertainment would trigger the designation of nightclub because it is within 300 feet of property zoned residentially. The site abuts a drainage ditch zoned B Multi-Family ("B"), which is located next to an apartment development also zoned B.

Nightclubs have been licensed and operated from the bottom floor, addressed as 1206 South Rock Road, at least since the mid-1990s. Most of the time, the top floor was licensed and used as part of the 1206 operation. Past records show a variety of clubs have been licensed to 1206 South Rock Road. The names of the previous clubs were (listed from most recent to earlier): The Groove, Club LaFaye, Kat Eyes Inc., Cocktails, Club Groove, Max S, Jammers (top floor) and Jo-Jo's Down Under (bottom floor). None of the licenses were issued to the 1208 address. The last nightclub (The Groove) has been closed for over a year, but less than two years. The occupancy associated with all these clubs has remained the same: 210 person occupancy on the top floor and 115 person occupancy on the bottom floor.

Access to the top floor appears to be by way of an exterior iron stairway. No ADA accessibility is provided at the main entrance, but a ramp is attached to the rear of the building.

The Unified Zoning Code requires that any nightclub located within 300 feet of residential zoning be subject to Conditional Use review to determine if the particular site is suitable for the operation of a nightclub. As previously mentioned, the upper floor has been part of a two-story nightclub operation in the past, although the operation is now closed and the applicant is seeking to establish his club only on the top floor which has not been licensed independently. Other restaurant and personal care services are located in the same strip center and share the parking

lot. The property does not have any buffering or screening of its own along the abutting drainage ditch. The apartment development has its own fence and landscaping to screen the apartments from the commercial use and view.

Most properties located nearby on both sides of Rock Road are zoned LC. Two fast-food restaurants (one vacant), a vacant retail use and a convenience store are located to the south. Another restaurant is located to the north. More fast-food restaurants and a tire store are located to the west, across Rock Road. A mini-storage warehouse, zoned GC General Commercial ("GC"), is located west of Rock Road. Residential uses are located directly east across the previously mentioned drainage ditch, in the apartment development zoned B fronting onto Paige Street. Single-family residential houses, zoned SF-5 Single-Family Residential, are located on the east side of Paige Street and to the north of the drainage ditch.

Analysis: At the MAPC meeting held May 26, 2011, the MAPC voted (5-5) to approve the request; the tie vote represents a failure to approve the request. No alternate motion was made. Therefore, the case comes to the Wichita City Council with a recommendation of denial due to failure to recommend approval by the Planning Commission. At the MAPC meeting held May 23, the owners of the apartment complex to the southeast, the manager of the apartment complex to the east and home owners in the vicinity objected to approval of a Conditional Use for a nightclub. Those speaking brought up issues with past operation of nightclubs based on the license issued to the lower level of this structure, 1206 South Rock Road (the applicant submitted the request for operating a Nightclub in the City apart from a restaurant and only for the upper story or 1208 South Rock Road, which previously had no license for a nightclub operation solely on the upper premises). The neighbors commented on problems with people congregating in the parking lot associated with past club operations, especially after closing at 2:00 a.m., that the noise from the people in the parking lots disrupted those living in the nearby apartments and residences, fights and other violence in the parking lot, traffic (including people on foot) from the nightclub traveling through the neighborhood late at night, trash and litter found in the parking lot of businesses across Rock Road. One citizen presented a report of past police calls to the location associated with previous clubs.

Roosevelt Hunt, the applicant seeking to operate the nightclub, addressed these comments and reiterated that he intended to make his operation different and avoid neighborhood impacts. He said he was in agreement with the recommendations contained in the MAPD staff report designed to mitigate the neighborhood impacts addressed by the citizens at the public hearing. In addition to testimony given by citizens at the meeting, a number of written and verbal correspondences have been received concerning the case and are attached to this referral. No formal protests were filed by the neighbors after the MAPC vote for failure to approve constituting a recommendation of denial. The applicant has filed an appeal of the MAPC action to the Wichita City Council.

DAB Questions/Concerns:

- What is the current zoning?
- How will nightclub differ from previous clubs at location?
- How will owner manager twenty five year (25) old age limit?
- Are there any other local clubs that operate under the twenty five (25) year old age limit?
- Is there any evidence that supports the presumed age limit will detour crime?
- Can you WPD provide security for establishment?
- Do patrons access parking lot to the East of the establishment?
- Does the owner of the building object to request?
- Is there an existing lease of the building?

Recommended Action: The **DAB** voted **(6-3)** to accept the Planning Staff's recommendation contingent on compliance in reference to RESOLUTION No. 11-161.

Antione Sherfield
Neighborhood Assistant – District II

RECEIVED
JUN - 6 2011
METROPOLITAN PLANNING
ROUTE ☐ _____
☐ _____

RECEIVED
JUN 06 '11
CITY CLERK OFFICE

Metropolitan Area Planning Department
City Hall 10th Floor
455 North Main
Wichita, Kansas 67202
316-268-4421
Date 5/31/11

1208 South Rock Road
Wichita, Kansas 67207
T 316-847-2851
C 316-573-2722
Roosevelt-huntjr@Cox.net

Dear Planning Department,

I would like to appeal the May 26th, 2011 decision on Con2011-00015 City Conditional use for Nightclub in the City on property zoned LC Limited Commercial, generally located on the east side of Rock Road 1/8 mile north of Harry Street (1208 S Rock Road). I would like to move this forward for a final decision by the governing body.

At it's regular meeting the MAPC considered the request and their action was Failure To Approve. I think their decision was the wrong decision and the way they arrived at that decision was also incorrect. Most of the discussion about the location focused on past use of the parking lot, which has a very negative past to say the least. They mentioned fights in the parking lot, and other problems including an officer shooting a patron in that same lot. What happened in the past at the location has nothing to do with me as an owner and how I would operate my business now. To address the issue of the parking lot I offered to have security in the lot, also mentioned using off duty Wichita PD, which should have been enough given I have no past history of operating a bar in a negative way. Thank you.

Sincerely,

Roosevelt Hunt

Owner/Manager Seven NightClub

T (316) 847-2851

ROOSEVELT HUNT LLC

EMAIL: ROOSEVELT-HUNTJR@COX.NET

Applicant Roosevelt Hunt LLC, doing business as Seven Night Club, seeking a conditional use of property listed in application, for use as a Night Club/Drinking Establishment in the city of Wichita, Kansas. The proposed location at 1208 S. Rock Road Wichita, Kansas would be used to provide alcoholic drinks, recorded music, and recorded video entertainment to adults 25 years of age and up. The property is currently zoned to include 50 % food sales requirement, which would be impossible to reasonably meet, as the location (1208) has no kitchen, just a bar, sinks, and restrooms. The location is approximately 70 feet from a residential area to the direct east.

5-26-11 MAPC HANDOUT ITEM # 11

Crockett, Maryann

From: wtraverzo@sbcglobal.net
Sent: Thursday, May 26, 2011 10:09 AM
To: Crockett, Maryann
Subject: CON2011-00015 Nighclub 1206 S Rock Road

METROPOLITAN PLANNING COMMITTEE MEMBERS:

We are long time residents and homeowner residing in the neighborhood in the area of the possible re-creation of a nightclub.

We strongly oppose the Permit for a nightclub in this neighborhood for many reasons.

The police records/reports speak for themselves. There have been numerous incidents of criminal activity during the timeframe of previous nightclub operation, of which some of these include criminal activity using firearms, and aggravated assault-battery in late hours of the night. (2007-2009) This is extremely frightening for the entire area.

We wish to avoid future turbulence in this peaceful and quiet neighborhood so we ask that no Permit be granted. Please consider the safety of the ciitizens who drive and do business and live in this part of town.

Thank you for considering our opinions and concerns.

Angelita Rivera 8010 E Grail, Wichita KS 67207
Wanda Traverzo

Crockett, Maryann

From: Justin Demel [jdemel@fidelitybank.com]
Sent: Wednesday, May 25, 2011 10:15 AM
To: Schiffelbein, Jim
Cc: Crockett, Maryann
Subject: MAPC Case #: CON2011-00015
Attachments: DOC_2011-05-25_09.54.19.pdf

Attached is a copy of written material I wish to present at the above referenced case. Will you provide copies for the Commission members or do I need to bring copies for distribution?

Thanks

Justin Demel
Fidelity Management Corporation
316-291-5953
jdemel@fidelitybank.com

5-26-11 MAPC HANDOUT ITEM #11

POLICE RESPONSE TO - 1206 S. Rock Road
2007 - 2009

04/14/2007 # 1 - 0405 **AGGRAVATED BATTERY - FIREARMS - - ORIGINAL REPORT**
04/15/2007 # 1 - 0410 AGGRAVATED BATTERY OTHER - - ORIGINAL REPORT
04/28/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT Outside Assist case,
usually an arrest with a warrant from a different jursidiction
05/06/2007 # 1 - 6100 MISC REPORT - - ORIGINAL REPORT
05/14/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT
05/18/2007 # 1 - 1715 PURCHASE OR CONSUMPTION BY A MINOR - - ORIGINAL REPORT
05/19/2007 # 1 - 0410 AGGRAVATED BATTERY OTHER - - ORIGINAL REPORT
05/19/2007 # 1 - 0410 AGGRAVATED BATTERY OTHER - - ORIGINAL REPORT
05/20/2007 # 1 - 0810 BATTERY - - ORIGINAL REPORT
06/02/2007 # 1 - 2673 DESTRUCT TO AUTO - - ORIGINAL REPORT
06/10/2007 # 1 - 0811 BATTERY / DV - - ORIGINAL REPORT
06/24/2007 # 1 - 1920 DIST PEACE FIGHTING - - ORIGINAL REPORT
06/24/2007 # 1 - 1790 OTHER LIQUOR VIOL - - ORIGINAL REPORT
06/24/2007 # 1 - 2210 DRIVE UNDER INFLUENCE - BAC .114 @ 0318 HRS - ORIGINAL REPORT
07/01/2007 # 1 - 6410 SUSP CHAR OTHER - - ORIGINAL REPORT
07/05/2007 # 1 - 1720 POSSESS/CONSUMPTION BY MINOR PROHIBITED - - ORIGINAL REPORT
07/07/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT
07/07/2007 # 1 - 2210 DRIVE UNDER INFLUENCE - BAC REFUSED @ 0151 HRS - ORIGINAL REPORT
07/22/2007 # 1 - 1790 OTHER LIQUOR VIOL - - ORIGINAL REPORT
07/28/2007 # 1 - 6308 LARC B FROM AUTO - - ORIGINAL REPORT
07/29/2007 # 1 - 1920 DIST PEACE FIGHTING - - ORIGINAL REPORT
07/29/2007 # 1 - 2420 RESTRIC ZONE/NO PARK ZONE - - ORIGINAL REPORT
07/29/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT
07/29/2007 # 1 - 0426 **AGGRAVATED ASSAULT/DRIVE BY FIREARMS - - ORIGINAL REPORT**
07/29/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT
07/29/2007 # 1 - 2420 RESTRIC ZONE/NO PARK ZONE - - ORIGINAL REPORT
08/12/2007 # 1 - 1790 OTHER LIQUOR VIOL - - ORIGINAL REPORT
08/12/2007 # 1 - 1790 OTHER LIQUOR VIOL - - ORIGINAL REPORT
08/12/2007 # 1 - 1614 POSSESSION OF PARAPHERNALIA - - ORIGINAL REPORT
08/12/2007 # 1 - 2699 OTHER MISC OFFENSES - - ORIGINAL REPORT
08/12/2007 # 1 - 2590 OTHER TRAFFIC VIOL - - ORIGINAL REPORT
08/12/2007 # 1 - 0410 AGGRAVATED BATTERY OTHER - - ORIGINAL REPORT
08/13/2007 # 1 - 2390 VRDL-OTHER VIOL - - ORIGINAL REPORT
09/16/2007 # 1 - 1225 **CRIMINAL DISCHARGE OF FIREARM - - ORIGINAL REPORT**
09/16/2007 # 1 - 0410 AGGRAVATED BATTERY OTHER - - ORIGINAL REPORT
10/05/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT
10/19/2007 # 1 - 2699 OTHER MISC OFFENSES - - ORIGINAL REPORT

02/24/2008 # 1 - 6100 MISC REPORT - - ORIGINAL REPORT
03/09/2008 # 1 - 0845 SIMPLE ASSAULT - - ORIGINAL REPORT
03/08/2008 # 1 - 0810 BATTERY - - ORIGINAL REPORT
03/30/2008 # 1 - 0850 INTIMIDATION - - ORIGINAL REPORT

04/06/2008 # 1 - 0430 **AGG ASSAULT FIREARMS - SHOTS FIRED - - OR**
04/19/2008 # 1 - 6100 MISC REPORT - - ORIGINAL REPORT
04/20/2008 # 1 - 1203 **POSS OF FIREARM BY A FELON - - ORIGINAL RE**
04/20/2008 # 1 - 0845 SIMPLE ASSAULT - - ORIGINAL REPORT
04/20/2008 # 1 - 2697 TRESPASS - - ORIGINAL REPORT
08/03/2008 # 1 - 0810 BATTERY - - ORIGINAL REPORT
08/09/2008 # 1 - 0850 INTIMIDATION - - ORIGINAL REPORT
09/07/2008 # 1 - 1920 DIST PEACE FIGHTING - - ORIGINAL REPORT
10/09/2008 # 1 - 6105 PRVT PROP NON-INJURY ACCIDENT - - ORIGINA
11/02/2008 # 1 - 630B LARC B FROM AUTO - - ORIGINAL REPORT

07/11/2009 # 1 - 0405 **AGGRAVATED BATTERY - FIREARMS - - ORIGIN**
07/11/2009 # 1 - 2610 RESIST/OBSTRUCT ARREST - - ORIGINAL REPOR
07/12/2009 # 1 - 630B LARC B FROM AUTO - - ORIGINAL REPORT
07/17/2009 # 1 - 2698 CITY CODE NUISANCE VIOL - - ORIGINAL REPOR
07/17/2009 # 1 - 2565 AUTO LIC VIOL - - ORIGINAL REPORT
07/19/2009 # 1 - 2697 TRESPASS - - ORIGINAL REPORT
08/09/2009 # 1 - 6400 SUSP CHAR SEX SUSPECTED - - ORIGINAL REPO
08/11/2009 # 1 - 2697 TRESPASS - - ORIGINAL REPORT
08/16/2009 # 1 - 2630 VIOLATION OF DISTRICT COURT ORDER - - ORIG
09/06/2009 # 1 - 1790 OTHER LIQUOR VIOL - - ORIGINAL REPORT
09/06/2009 # 1 - 0810 BATTERY - - ORIGINAL REPORT
09/19/2009 # 1 - 2673 DESTRUCT TO AUTO - - ORIGINAL REPORT
09/19/2009 # 1 - 1225 **CRIMINAL DISCHARGE OF FIREARM - - ORIGIN**
09/19/2009 # 1 - 2630 VIOLATION OF DISTRICT COURT ORDER - - ORIG
11/06/2009 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT

-26-11 MAPC HANDOUT ITEM # 11

Crockett, Maryann

From: Dixie Swanson [dswan7091@cox.net]
Sent: Tuesday, May 24, 2011 1:47 PM
To: Crockett, Maryann
Subject: Case # CON2011-00015

As property owners of 8022 E. Grail, we wish to state our opposition to granting conditional use for a night club at 1208 S. Rock Road.

We have lived at this address when previous clubs were at that location. Disturbances often spilled onto our residential street in the middle of the night, especially when police arrived to stop drunken fights and assaults in the parking lot or to investigate shootings. The homes in the 8000 block of Grail are close enough to be affected by any criminal activity that might develop if another night club is allowed at this location. We'd like to preserve our neighborhood status as much as possible.

For these reasons, we hope the MAPC will deny the request for the zoning change.

Manning L. Swanson, Jr. and Dixie S. Swanson
8022 E. Grail Street

5-26-11 MAPC HAND OUT ITEM # 11

Crockett, Maryann

From: Jim's Tire and Auto [jimstire@sbcglobal.net]
Sent: Tuesday, May 24, 2011 1:39 PM
To: Crockett, Maryann
Subject: Potential nightclub at 1208 S. Rock Rd.

Hello-

I am the General Manager at Jim's Tire & Auto Service at 1205 S. Rock Rd. I wanted to voice my concern of potentially yet another nightclub going in across the street from us. In the past this has caused nothing but violence, littering, loitering, and wasting more and more time of the Wichita Police Dept. Even though we had the necessary signs in our lot stating that it was not legal to park in our lot it still happened. Each morning after the club was opened we would find broken bottles, empty cans, misc. trash, cigarette butts, vomit, and other disgusting things I don't care to mention in our parking lot and in our front yard. Needless to say this caused us much grief and more and more wasted unpaid hours of cleaning up. I'm all for small businesses and the free enterprise system, however when they start effecting my business in a negative way, not by being competition, but by costing us uneccessary labor cost etc then I take great issue with it. This part of town has declined substantially in the quality of people it attracts, and bringing in another nightclub is not going to benefit the quality at all. It has been proven in the past with all the other nightclubs that have went in there, so this time isn't going to be any different.
So for the record Jim's Tire & Auto is completely AGAINST this nightclub being approved.
Lets learn from our past mistakes and not repeat history.

Thank you-

Todd Hying
Jim's Tire & Auto
1205 S. Rock Rd.
Wichita, KS 67207
316-683-5684

5-26-11 MAPC HANDOUT ITEM # 11

05/24/2011

To Whom it May Concern:

This is concerning the application for a "Conditional Use Permit" to open a club at 1208 S. Rock Road.

I live and work at a business across the street at 1175 S. Rock Road. It has been very quite the last several months with the club closed. No loud bass at 2:00 in the morning, no gun shots in the middle of the night and the police waking us up to check for damage to the buildings and our vehicles.

I think it would really be much safer to all business and properties in this area if the application were to be turned down. We can really do without the noise, fighting, and criminal activity that a club at this location seems to bring.

Thank you,

Kayla Garrett

Kayla Garrett

5-26-11 MAPC HAND OUT ITEM # 11

Crockett, Maryann

From: Diane Marshall [d.e.marshall28@gmail.com]
Sent: Tuesday, May 24, 2011 2:46 PM
To: Crockett, Maryann
Subject: Personal Statement Against Permit for Night Club at 1208 S. Rock Road
Attachments: Personal Statement to MAPC.doc

Dear Metropolitan Area Planning Commission,

I have prepared a personal statement against the permit request for a night club to be opened at 1208 S. Rock Road in southeast Wichita, KS. I have attached the statement as a Microsoft Word document to this e-mail.

Thank you,

Concerned Homeowner

May 24, 2011

Notice of Public Hearing, Metropolitan Area Planning Commission
Wichita City Hall, 10th Floor
455 N. Main St.
Wichita, Kansas 67202-1688

Dear Metropolitan Area Planning Commission,

For the past 19 years, I have been a homeowner on the neighborhood street just north of the property at 1208 S. Rock Road. In the 2 year span between 2007 and 2009, frequent criminal activities were reported at the night clubs that occupied this property. From my residence, I have heard gun shots and observed wreckless driving, public intoxication and fighting. Not only do these infractions occur in front of the club, but have spread into the adjacent neighborhood. Some of these club-goers park their vehicles on our residential street and private driveways, where their late night yelling and fighting disturb the peace of our neighborhood. On numerous occasions, several Wichita Police officers have been called out to disperse large, unruly crowds of club-goers during the late night hours. In addition, my family and I have observed police cruisers patrolling our street and a helicopter flying over our home on the nights in which a disturbance occurred at the club. However, during the times that the clubs were closed, the peace of our neighborhood was restored and my family felt safer.

Please let me know if you have any questions.

Sincerely,

Concerned Homeowner

Comment from Citizen:

Donald E. and Evelyn G. Paige, 1105 Paige Street, asked staff to convey their comments because they did not feel able to attend the MAPC meeting.

The citizens expressed opposition to the proposed Conditional Use. One of their main concerns with the previous club was that after 2:00 a.m. they could hear noise from the parking lot and felt like people leaving the club were breaking the law (referring to fights in parking lot) were moving through the neighborhood.

RECEIVED
AUG 10 '11
CITY CLERK OFFICE

August 9, 2011

Wichita City Council
455 N. Main
Wichita, KS 67202

RE: CON2011-00015

Dear Council Member;

As the property manager of Danish Village Apartments, 1109-1217 S. Paige, Wichita, KS, located east of the subject property, I wish to voice my opposition to approval to the above referenced Conditional Use of a Night Club request at 1208 S. Rock Road, Wichita, KS.

This club location has had a long history of crime problems under various owners and operators. Although most of the police calls were the result of fights and disturbances, there were a number of firearm violations, including a police involved shooting and another incident including shots being fired, prior to its closing in 2009.

The MAPC did not approve this request at their May 26, 2011 meeting. Although the District II DAB approved the request, they gave a great deal of credence to the statement of the applicant, who will own and operate the club that he will limit the age of customers to 25 years and over. However, this restriction is not a part of the Conditions requested by the MAPD in their recommendation. Therefore, it would seem the operator could choose to drop this self imposed limitation in the future.

The operator stated at the MAPC hearing that he has never "been an actual operator" of a club. After numerous other owner/operators have attempted and failed to maintain a club without on-going disturbances and illegal behavior , I find it unlikely a novice operator will have a different result with a location well known for its problem history.

For these reasons, I ask you not to approve the Conditional Use request.

Sincerely,

Justin Demel
PRESIDENT

JD/eh

B - K Apartments, LLC

RECEIVED
AUG 10 '11
CITY CLERK OFFICE

August 10, 2011

Wichita City Council
455 N. Main
Wichita, Kansas 67202

re: CON2011-00015

Dear Council Member,

I represent the owners and residents of Danish Village Apartments, a 78-unit multifamily property located at 1109-1217 S. Paige, which is approximately 150 feet east of a nightclub proposed in the above referenced Conditional Use permit.

I am opposed to this permit being approved because of the noise, crime, and violence that has been part of the history of this site when used as a drinking establishment. If you have any doubts about the past history of this venue, I urge you to review the letters submitted by residents and nearby businesses in the July 12, 2011 Agenda Item No. V-2. The letter writers cited personal experiences with late night disturbances, crime, public intoxication, fights, or other violations of the law. There were no letters of support for this proposal.

You should also be aware that the now vacant lower level of the proposed nightclub site is already conforming to support a drinking establishment. Approving this application could lead to the many of the same situations that area residents have had to endure since the mid-1990's.

Thank you for your consideration.

Clay Bastian
Manager

100 E. English · Wichita, Kansas 67202
(316) 268-7218 · fax (316) 268-7424

Agenda Item No. V-2

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: ZON2011-00001 – Zone change from SF-5 Single-Family Residential to LC Limited Commercial, generally located north of West Central Avenue, one-third mile east of Ridge Road. (District V)

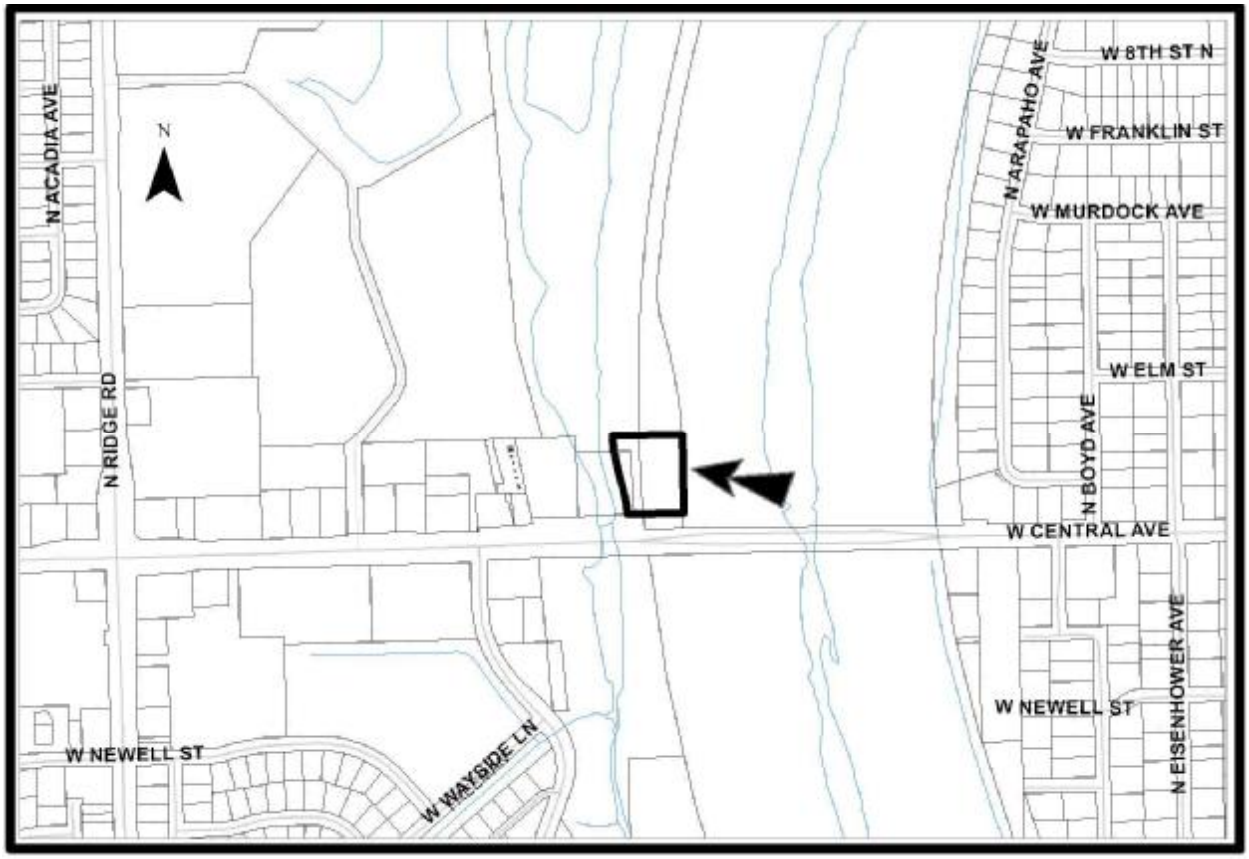
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendation: Approve LC zoning for only the approximate western 69 feet of the subject site, subject to platting within one year, and denial of LC zoning for the approximate eastern 169 feet of the subject site (8-3).

MAPD Staff Recommendation: Approve LC zoning for only the approximate western 69 feet of the subject site, subject to platting within one year, and denial of LC zoning for the approximate eastern 169 feet of the subject site.

DAB V Recommendation: Approve LC zoning for only the approximate western 69 feet of the subject site, subject to platting within one year, and denial of LC zoning for the approximate eastern 169 feet of the subject site (7-0).



Background: The applicant is seeking LC Limited Commercial ("LC") zoning on 1.95 unplatted acres located on the north side of West Central Avenue, approximately one-third mile east of Ridge Road (west of the Wichita-Valley Center Floodway, east of Marco's Cantina). The approximate western 69 feet of the application area is zoned SF-5 Single-family Residential ("SF-5") but a majority of the site, approximately the eastern 169 feet, is unzoned. All of the unzoned property has been determined to be part of a floodway easement obtained in 1955 by Sedgwick County (District Court Case No. A-31849, Book 259, Pages 175 and 180) for construction of the Wichita-Valley Center Flood Control Project, hereafter called the Wichita-Valley Center Floodway. The attached aerial depicts the area covered by the floodway easement with green diagonal, southeast to northwest, lines. The County's agenda report dealing with the condemnation action makes it clear when it states that the authority and value paid for the land provides the Commission control of "rights-of-way, easements and exclusive occupancy and possession forever of, through, over and upon" the described tracts of land.

The property is a somewhat isolated tract that is located between the Wichita-Valley Center Floodway (unzoned), east of the subject site, and the Big Slough (SF-5), located west of the site. Access to the site is currently limited to Central Avenue although the applicant owns the undeveloped SF-5 and unzoned land located to the north that ultimately abuts the Spinnaker Cove neighborhood and North Shore Boulevard that provides a potential connection to 13th Street. The Wichita-Valley Center Floodway is approximately 1,049 feet wide at this location with some LC zoned property contiguous to Central located east of the floodway. Immediately west of the application area is SF-5 zoned land owned by the applicant that contains the Big Slough. West of the Big Slough are a number of LC zoned lots that are developed with various commercial uses. South of Central Avenue is Wichita-Valley Center Floodway land that is subject to the same County easement discussed above, and is also unzoned. West of the floodway is some TF-3 Two-family Residential ("TF-3") zoned property, subject to restrictions contained in Parcel 9 of CUP-59. Parcel 9 permits parking and floodway reserve.

Retail sales uses are permitted in the LC district, and can generate approximately 42 average daily vehicle trips per 1,000 square feet of retail space. At 30 percent gross floor area coverage, the subject site could accommodate a building with 25,482 square feet. At 42 daily trips per 1,000 square feet a retail use, 25,482 square feet of gross floor area could generate 1,070 average daily trips. If developed with office uses, also permitted in the LC district, the number of average daily trips could be 11 average daily trips per 1,000 square feet or 280 average daily trips for the same size of building noted previously.

The property is designated as flood zone X, which is flood prone property protected by a levee. If the request is approved as requested, it should be approved subject to platting within one year in order to address drainage and access for maintenance of the levee and protection of the levee's toe drain system.

This case has been deferred at previous Metropolitan Area Planning Commission (MAPC) meetings to provide time for staff to address questions raised during the hearings by interested parties, staff or the applicant. For the first MAPC meeting on February 24, 2011, Metropolitan Area Planning Department (MAPD) staff had prepared a staff report that recommended approval of the request. At the first MAPC meeting one of the Planning Commissioners, M. S. Mitchell, (who recused himself at that meeting and spoke as a private citizen), questioned the appropriateness of the application. Mr. Mitchell questioned if the applicant was qualified to file a zone change application for property that was condemned by Sedgwick County to establish an easement for flood control purposes. As noted above, staff ultimately learned that the easement gives the County control of any potential usage of the property subject to that easement. In this instance the eastern approximate 169 feet of the site is subject to that easement. It was Mr. Mitchell's concern that if the application were to be approved, it could open the door for the flood control easement to be removed through the platting process, per K.S.A. 12-512b discussed below, and it could allow for uses that might be detrimental to the functioning and maintenance of the floodway. The MAPC voted (12-0-1) to defer action until the March 24, 2011, meeting.

Following the February MAPC meeting, Law Department staff ordered a title review, and began to review the applicant's authority to file a zone change and the various encumbrances upon the property. By the March 24, 2011 MAPC meeting, the review of the title and various easements and condemnation cases had not been completed and a motion was approved (12-0) to defer action until April 21, 2011, to allow staff to complete their research. At the April 21, 2011 MAPC meeting, staff asked for, and was granted (13-0), a third deferral to May 26, 2011. By the May 26, 2011 MAPC meeting, staff had, based upon the findings of the title and easement research, amended the recommendation to approval for only a portion of the application area; the property located outside of the floodway easement. At the May 26, 2011 MAPC meeting, the applicant asked for, and was granted (7-3), a deferral to June 23, 2011. The applicant wanted to further review the basis for staff's amended recommendation. The applicant, his agent and attorney, the contract purchaser, his agent and attorney, and planning, public works (both City and County) and legal staff (both City and County) met to review the facts as they are known. The net result of staff's research is the following:

1. The approximate eastern 169 feet of the subject tract is subject to an easement for flood control purposes that was acquired through condemnation on February 19, 1950. This easement provided Sedgwick County with the authority to control use and improvement to those properties subject to the easement. The condemnation case says the commissioners are appraising the value of the following rights being obtained: "rights-of-way, easements and exclusive occupancy and possession forever of, through, over and upon" the described tracts of land.

2. On April 4, 2006, the Wichita City Council accepted an offer from the applicant to purchase approximately 5.63 acres of land located lying north of Central Avenue between the W-VCFCP and the Big Slough. A significant portion of the subject tract's 1.95 acres is located within the 5.63 acres that was transferred to the applicant. The contract for sale and the City Council Agenda report indicated the transfer of title was to be by a quit claim deed. However, the title company prepared a title insurance commitment assigning fee simple interest to the City of Wichita and prepared a warranty deed that was signed by the then Mayor of Wichita. It is staff's position that the City Council's approval of the contract for sale and authorization for the Mayor to sign was for a quit claim deed, not a warranty deed, making the warranty deed void. Staff is of the opinion the applicant has a right to a quit claim deed for the 5.63 acres authorized by the City Council to be sold on April 4, 2006. On that basis, staff believes the applicant meets the ownership requirement necessary to file this zoning application.

3. On August 7, 2008, the applicant granted to the City of Wichita a blanket access easement, exercisable at any time for public purposes including operating, maintaining and repairing adjacent flood control structures and improvement. The access easement could be reduced at some future time if the property was platted.

4. On March 14, 2011, Security 1st Title prepared an extensive certificate of title examination that indicated the flood control easement had never been vacated, leaving the approximate eastern 169 feet of the application area subject to that easement. Flood Control staff has indicated it is extremely important to maintain the existing flood control easement unencumbered from improvements.

After deliberations with City and County legal, City and County engineering, City Property Management and MAPC staff, it was determined the appropriate action was to modify planning staff's original recommendation of approval for the entire site, and limit approval of LC zoning to only that portion of the application lying west of the land condemned for flood control purposes (the approximate western 69 feet abutting Central Avenue widening to the approximate western 110 feet on the north line of the subject site), and recommend denial for that part of the application covered by the flood control easement (the approximate eastern 169 feet of the subject property). Representatives from both City and County engineering departments stressed to planning staff the importance of maintaining the existing easement in order to provide access for the maintenance of the levee and toe drains; to maintain unencumbered opportunity to meet changing Corps of Engineer maintenance requirements that enable the community to be eligible for federal flood assistance and to provide options should the Central Avenue bridge over the

flood control structure need to be improved. It was also noted that in addition to the initial investment in the floodway, the City and County have recently spent $3.5 million to maintain Corps of Engineers certification, and another $10 million worth of maintenance is scheduled.

The recommendation of partial denial also emanates from the recognition that K.S.A. 12-512b sets up the possibility that through the platting process the County's flood control easement could be reduced or eliminated, as described below.

> K.S.A. 12-512b. Vacation of plats and other public reservations; recording plat or replat; reversion. In any area where there is a planning commission which has adopted subdivision regulations governing the platting or replatting of land, and the regulations provide for the giving of appropriate notice to all persons having property rights or interests affected by the platting or replatting, any plat or part thereof or street, alley or other public reservation, including, without limitation, easements, dedicated building setback lines, and access control, whether established by instrument, condemnation or earlier plats, shall be vacated both as to use and as to title without any further proceedings upon the filing and recording in accordance with the provisions of K.S.A. 12-403, and amendments thereto, of any plat or replat duly executed in accordance with law and embracing the same lands as those theretofore embraced by the earlier plat, or part thereof or street, alley or other public reservation. Streets, alleys or other public reservations which may be vacated shall revert, as provided in K.S.A. 12-506, and amendments thereto.

At the June 23, 2011, MAPC meeting, the application was approved (8-3), as recommended by staff; approval of LC zoning for the portion of the application area located outside of the floodway easement, and denial of LC zoning for that portion of the application encumbered by the floodway easement, subject to platting within one year.

District Advisory Board V heard the request on July 11, 2001, and recommended approval (7-0) as recommended by the staff report. The applicant was not present nor was anyone from the public present to speak to the request.

Analysis: As noted above, the Metropolitan Area Planning Commission (MAPC) reviewed the application five different times during the months February through June, 2011, and deferred action until the meeting of June 23, 2011. At the MAPC meeting of June 23, 2011, the MAPC voted 8-3 to approve LC zoning for only the approximate western 69 feet of the subject site, subject to platting within one year, and denial of LC zoning for the approximate eastern 169 feet of the subject site, the property subject to the floodway easement.

Financial Considerations: The MAPCs recommendation does not commit the City of Wichita to any atypical financial obligations.

Goal Impact: The MAPCs recommendation supports the City's goal of promoting Economic Vitality and of providing Efficient Infrastructure.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: 1. Adopt the findings of the MAPC and approve the zone change as recommended by the MAPC, subject to platting the approved portion within one year, withhold publication of the ordinance until the plat has been recorded and authorize the Mayor to sign the ordinance (simple majority vote required); 2. Approve the zone change for the entire application area (as requested by the applicant), subject to platting within one year, withhold publication of the ordinance until the plat has been recorded and authorize the Mayor to sign the ordinance (two-thirds majority vote required plus appropriate findings); 3. Deny the zone change request (two-thirds majority vote required

plus appropriate findings) or 4. Return the application to MAPC for further consideration (two-thirds majority vote required).

Attachments:

- Ordinance
- MAPC Minutes of: February 24, 2011, March 24, 2011, April 21, 2011, May 26, 2011 and June 23, 2011
- June 20, 2011, Poe & Associates, Inc. memo
- DAB V memo
- Aerial with overlays

OCA150004

ORDINANCE NO. 49-070

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2010-00001

Zone change request from SF-5 Single-Family Residential ("SF-5") to LC Limited Commercial ("LC"), on properties described as:

That part of the SW1/4 of Sec. 15, T27S, R1W of the 6th P.M., Sedgwick County, Kansas described as commencing at the S.E. corner of said SW1/4; thence S89°29'01"W, along the south line of said SW1/4, 569.00 feet; thence N00°30'59"W, perpendicular to said south line, 115.00 feet to the north right of way line of Central Avenue for a place of beginning; thence continuing N00°30'59"W, 34.30 feet; thence N12°08'30"W, 70.72 feet; thence N18°11'05"W, 64.92 feet; thence N12°36'45"W, 96.68 feet; thence N00°30'55"W, 65.00 feet; thence N89°29'01"E, parallel with said south line, 282.59 feet to the west line of the Big Slough-Cowskin Creek Floodway as described in Condemnation Case No. A-31849, being a curve to the right having a radius of 2000.00 feet, an arc length of 120.07 feet, chord bearing S02°13'05"E, 120.05 feet; thence along said curve, 120.07 feet to a point of tangency; thence S00°32'55"E along said west line, 204.96 feet to said north right of way line; thence S89°29'01"W along said north right of way line, 232.06 feet to the place of beginning, except that portion encumbered by Condemnation Case No. A-31849.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 23rd day of August, 2011.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

Scale: 1" = 150'
Blue – Zone change legal (application area ZON2011-00001)
Green – Condemnation A–31849 (Wichita/Valley Center Flood Control)
Orange – Parcel 1 Doc #29041315 (deed: City of Wichita to Hoskinson)
Red – Parcel 2 Doc #29041315 also Cond C–30343 (deed: City of Wichita to Hoskinson)

EXCERPT MINUTES OF THE FEBRUARY 24, 2011 METROPOLITAN AREA PLANNING COMMISSION MEETING

Case No.: ZON2011-01 - Richard D. Hoskinson / Brent Thomas or Chris Bohm requests City Zone change from SF-5 Single-Family Residential and unzoned to LC Limited Commercial on property described as:

That part of the SW1/4 of Sec. 15, T27S, R1W of the 6th P.M., Sedgwick County, Kansas described as commencing at the S.E. corner of said SW1/4; thence S89degrees29'01"W, along the south line of said SW1/4, 569.00 feet; thence N00degrees30'59"W, perpendicular to said south line, 115.00 feet to the north right of way line of Central Avenue for a place of beginning; thence continuing N00degrees30'59"W, 34.30 feet; thence N12degrees08'30"W, 70.72 feet; thence N18degrees11'05"W, 64.92 feet; thence N12degrees36'45"W, 96.68 feet; thence N00degrees30'55"W, 65.00 feet; thence N89degrees29'01"E, parallel with said south line, 282.59 feet to the west line of the Big Slough-Cowskin Creek Floodway as described in Condemnation Case No. A-31849, being a curve to the right having a radius of 2000.00 feet, an arc length of 120.07 feet, chord bearing S02degrees13'05"E, 120.05 feet; thence along said curve, 120.07 feet to a point of tangency; thence S00degrees32'55"E along said west line, 204.96 feet to said north right of way line; thence S89degrees29'01"W along said north right of way line, 232.06 feet to the place of beginning.

BACKGROUND: The applicant is seeking LC Limited Commercial ("LC") zoning on 1.95 unplatted acres located on the north side of West Central Avenue, approximately one-third mile east of Ridge Road (west of the Wichita-Valley Center Floodway, east of Marco's Cantina). The application area is partially zoned SF-5 Single-family Residential ("SF-5") but a majority of the site is unzoned. The unzoned portion of the property was previously part of an easement for the Wichita-Valley Center Floodway that the applicant acquired with a warranty deed through the City.

The property is a somewhat isolated tract with very limited access that is located between the Wichita-Valley Center Floodway (unzoned), located east of the subject site, and the Big Slough (SF-5), located to the west. Access to the site is currently limited to Central Avenue although the applicant owns the undeveloped SF-5 and partially unzoned land located to the north that ultimately abuts the Spinnaker Cove neighborhood and North Shore Boulevard that connects to 13th Street. The Wichita-Valley Center Floodway is approximately 1,049 feet wide at this location with some LC zoned property contiguous to Central located east of the floodway. Immediately west of the application area is SF-5 zoned land owned by the applicant that contains the Big Slough. West of the Big Slough are a number of LC zoned lots that are zoned LC, and developed with various commercial uses. South of Central Avenue is the Wichita-Valley Center Floodway that is unzoned, and west of the floodway is some TF-3 Two-family Residential ("TF-3") zoned property, subject to restrictions contained in Parcel 9 of CUP-59. Parcel 9 permits parking and floodway reserve.

Retail sales can generate approximately 42 average daily vehicle trips per 1,000 square feet of retail space. At 30 percent gross floor area coverage, the site could accommodate a building with 25,482 square feet. At 42 daily trips per 1,000 square feet a retail use with 25,482 square feet of gross floor area could generate 1,070 average daily trips. If developed with office uses, the number of average daily trips could be 11 average daily trips per 1,000 square feet or 280 average daily trips for the same size of building noted previously.

The property is designated as flood zone X, which is property protected by a levee. Since the property is unplatted, a drainage plan will be required at the time of platting. Among the issues that will need to be

addressed at the time of platting include access adjacent to the levee to allow for maintenance, and easements for the existing flood control toe drain system that are located west of the existing levee.

CASE HISTORY: In 2008, the current application area was part of a larger tract (40.6-acre unplatted tract) that received approval for MF-29 Multi-family Residential ("MF-29") zoning, subject to platting within one year (ZON2008-33). ZON2008-33 was voided due to failure to plat. In 1976, the SF-5 zoned portion of the application area was included in BZA 10-76 that granted approval for extraction for mining and quarrying.

ADJACENT ZONING AND LAND USE:

NORTH:	Unzoned/SF-5; vacant
SOUTH:	TF-3 Two-family Residential subject to CUP DP-59/unzoned; vacant, Wichita-Valley Center Floodway
EAST:	Unzoned; Wichita-Valley Center Floodway
WEST:	SF-5/LC; Big Slough, restaurant

PUBLIC SERVICES: Central Avenue is an arterial with four through-lanes and center left turn bays located at sporadic locations. Central Avenue has an existing drive approach located on the southeast corner of the site with an east bound left turn lane. If the drive needs to be re-located that issue can be addressed at the time of platting. In 2006, west bound Central Avenue at Ridge Road carried approximately 31,000 average daily trips. The location of the drive is an important safety issue given the site's location between two bridges, one to the east of the site and one to the west, that are separated by only 394 feet. Sanitary sewer abuts or is located on the northwest corner of the site. Water lines are located along Central Avenue.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for "local commercial" uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant market draw. The range of uses includes primarily includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding property is a mix of zoning (unzoned, SF-5, TF-3 subject to DP-59 restrictions and LC) and land uses (vacant, floodway, waterway and restaurant and retail). The property is a somewhat isolated tract located between two waterways, the Wichita-Valley Center and the Big Slough. At this time, the site's only access is Central Avenue.

2. The suitability of the subject property for the uses to which it has been restricted: The site is partially zoned SF-5 and largely unzoned. The SF-5 district is the most restrictive City zoning district in the "Unified Zoning Code." Presumably, the unzoned portion of the application area would not allow any uses until zoned. Given the existing solid pattern of LC zoning already present along the length of Central Avenue, east and west of the application area between Ridge and Hoover, it seems that the existing zoning on this property is not suitable. The requested LC zoning is consistent with existing zoning located east and west of the application area.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The zoning requested is the same as the zoning that already exists on the north side of Central Avenue further east and west of the application area. The zoning code has provisions requiring screening, buffering and landscaping that mitigate potential detrimental impacts; therefore, approval of this request should not create land use impacts that are detrimental to nearby properties.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request would provide additional LC zoned property in the real estate market. Denial would presumable be an economic loss to the applicant.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for "local commercial" uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant market draw. The range of uses includes primarily includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

6. Impact of the proposed development on community facilities: Facilities are either in place or can be guaranteed to be extended to the site as a result of the platting requirement.

COMMISSIONER MITCHELL recused himself from this item and left the bench.

DALE MILLER, Planning Staff presented the Staff Report.

FOSTER asked if approval of this request would impact residential access on a previous case in this area.

MILLER said he believes the applicant owns the land to the north and if they need access preserved for them that can be addressed when the plat goes through.

BRENT THOMAS, RUGGLES & BOHM, AGENT FOR THE APPLICANT said the request was for LC Limited Commercial zoning. He said when the case was heard in 2008 the applicant was asking for a change to MF-29 Multi-Family Residential, which was approved by both the Planning Commission and City Council. He said that project was shelved and that is why the applicant is back today to request the LC zoning. He said the owner has a purchaser with a use for this property. He said the owner also owns the land to the north of the proposed site so they will be preserving access to those parcels. He concluded by saying that they agreed with staff's recommendation to approve the requested LC zoning.

M.S. MITCHELL, 1215 FORREST said the previous zoning case was opposed by some of the Planning Commissioners because it was part of the land that was condemned for the Wichita-Valley Center Flood Control Project (WVCFCP) by the County. He said no one has proven to him that the City has the right to deed land condemned by the County to a private property owner even though that person owns the underlying rights to that property and the easement prevails as far as usage. He said some of the property is located within the right-of-way, some of it is not. He said he has spoken with the engineering firm regarding the toe of the levee and compliance with Federal Emergency Disaster Agency (FEMA) regulations. He asked the Commission to defer action on the zoning case until the matter of ownership is worked out. He said he has been advised to wait until platting to make his request; however, he said he did not want to hear the argument that the applicant has spent a lot of money to file the plat and now all the land within the boundary of the flood control right-of-way must be dedicated back to the County.

JOHNSON said he assumes the same argument was made when there was a request to rezone the area in 2008. He asked what legal action was taken at that time to determine ownership.

SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY said in 2006 when the property was deeded to the applicant there was a warranty deed and title opinion done at the time. She said that title opinion was that the City was fee owner of the property subject to a number of easements that existed on the parcel. She said when the issue resurfaced in 2008, although she was not legal counsel, she understands that Mr. Lang and Mr. Parnacott decided that ownership was a separate issue from the zoning request.

SCOTT LINDEBAK, CITY STORM WATER ENGINEER said he was also responsible for operation and maintenance of the Wichita-Valley Center Flood Control Project (WVCFCP). He said he was in agreement with Mr. Mitchell's comments in that he considers this property part of the WVCFCP. He said they use the area for gaining access from Central and also for the storage of materials. He said any changes to the area will limit staff's ability to maintain this valuable project.

HILLMAN asked so if the City needs to have access to the area, why don't they own it.

LINDEBAK replied that those decisions were made prior to his involvement.

HILLMAN asked what Mr. Lindebak's recommendation was on the issue.

LINDEBAK said he recommended retaining the land for the public good and for storm water and flood control. He said staff is also in the process of revising County Flood Control maps and mentioned that the Big Slew to the west is likely to change as well.

MARNELL asked for clarification that staff indicated they currently use the area for storage and access into the area.

LINDEBAK said that is correct through a "flood control access" gate that was installed during project construction.

MARNELL asked if it was common practice for the City to story materials on someone's private property or access that property without the owner's permission.

LINDEBAK replied that was not a common practice.

MARNELL commented but the City is still using it after 2008 when it was deeded to a private individual.

LINDEBAK said that is the City's gated access for access to maintain levee C and they still use it.

MARNELL said so the real dispute is does the underlying easement allow the City access to the area or are they trespassing. He said this item was squirrely the first time it came to the Commission.

LINDEBAK said he would recommend deferral of the item for further investigation. He said if this is deferred until the item goes to platting dedicating access may become an issue.

MARNELL asked if the applicant approached City Storm Water with their plans for development of the area to see if an easement will be needed.

LINDEBAK said the applicant has not provided any information or site plan to Storm Water Management. He added that there was discussion regarding the toe of the levee which was 15 feet from the property line. He said his survey records show the levee right along the right-of-way line so it does not appear that there is any buffer at all. He said current regulations require at least a 20-foot buffer between the levee and adjacent private property.

KLAUSMEYER asked for clarification that there was no easement on the property.

LINDEBAK said that was correct. He said there was an underlying flood control easement at one time.

MCKAY said he thought when the property was sold it was subject to the easements of record.

DICKGRAFE said the easements were for right-of-way from KG&E and one for flood control.

FOSTER mentioned that there were 3 other potential points of access to the floodway and asked if any of them were feasible.

LINDEBAK said the most important issue is when the flood control project is diverting water over a period of weeks or months after a flood, staff needs to have dry access to the floodway.

MARNELL asked staff (Dale Miller) if anything that has transpired during the testimony on this issue has changed his mind on recommending approval of the zone change.

MILLER said the significance of this occurred to staff yesterday and then staff met today to see if they could sort some of this out. He said staff would support a deferral.

MARNELL said he knows some legal matters take years and suggested that maybe the parties could come together and come up with a solution that will accomplish everyone's goals.

HENTZEN said he would like to hear from the owner.

TIM AUSTIN, POE & ASSOCIATES said Jay Maxwell asked him to represent his interest as the contract purchaser of the property

DIRECTOR SCHLEGEL said Brent Thomas was representing the owner.

AUSTIN said he was present to answer any questions.

HENTZEN mentioned discussion as to who actually owns the property.

THOMAS said they believe Mr. Hoskinson owns the property.

HENTZEN asked if the City has approached the owner about buying the property.

THOMAS said no, since the previous zoning was approved in 2008. He provided brief background on the 2008 case which included all property up to the flood control levee. He said site plans were provided at the time which showed a series of duplexes.

AUSTIN said this property was rezoned for multi-family; however, because of the economic down turn those plans were tabled. He said the property has a survey with title insurance that shows that the

applicant Mr. Hoskinson is the property owner. He said there are easements that give Flood Control staff access to the floodway. He said there is no reason to defer the application, that it is time sensitive and added that the City has had 3 years to resolve the access issue or purchase the property.

JOHNSON asked if the easement was defined or was it the whole property and was it a recorded easement.

THOMAS said the copy of the survey they have speaks to a 50-foot easement for ingress and egress. He indicated on the map how far the easement went from the curb cut along Central, then northwest. He added that the easement is recorded.

FOSTER clarified that the easement is 50-foot wide and cuts through the property.

THOMAS said that was correct.

MARNELL asked isn't the Commission listening to double representation from the applicant.

CHAIR MILLER STEVENS said it was her understanding that Mr. Austin was representing a contract purchaser.

MARNELL said a contract purchaser that was on the application.

MILLER clarified that the contract purchaser was not on the application for rezoning.

VAN FLEET asked if there was a tax number on the parcel and have taxes been paid on it.

THOMAS responded yes.

VAN FLEET asked if the taxes were current.

THOMAS said he doesn't have that information but can provide it at a later date. He said in the previous 3 years that the rezoning of the property was approved by the Planning Commission and City Council there have been no attempts to resolve this issue by the City. He said he would like to reaffirm that their client Mr. Hoskinson owns title to the property. He concluded by asking that the Commission approve the rezoning per staff recommendation and added that they would be willing to work out any issues at the time of platting and provide access to the floodway to Flood Control personnel as a practical measure.

MARNELL asked if they would you be willing to grant a wider easement. He said he understood the access point was not the only issue and mentioned the toe drain and not building on that.

THOMAS said it is their contention that those types of issues are generally worked out during the platting process. He said they would entertain maintaining the access staff needs.

MCKAY asked about the 2008 approval and asked if it was just this parcel or the entire parcel to the north.

THOMAS clarified that it was the entire 40-acre parcel, all the way north to the half-mile line.

JOHNSON asked staff if they were still willing to recommend approval.

MILLER said he would recommend that the item be deferred to give staff time to sort the issues out.

MOTION: To defer for 4 weeks to the March 24, 2011 meeting.

JOHNSON moved, **KLAUSEMEYER** seconded the motion, and it carried (12-0-1).
MITCHELL – Abstained.

EXCERPT MINUTES OF THE MARCH 24, 2011 PLANNING COMMISSION MEETING

Case No.: ZON2011-01 - Richard D. Hoskinson / Brent Thomas or Chris Bohm request a City Zone change from SF-5 Single-Family Residential and unzoned to LC Limited Commercial on property described as:

That part of the SW1/4 of Sec. 15, T27S, R1W of the 6th P.M., Sedgwick County, Kansas described as commencing at the S.E. corner of said SW1/4; thence S89°29'01"W, along the south line of said SW1/4, 569.00 feet; thence N00°30'59"W, perpendicular to said south line, 115.00 feet to the north right of way line of Central Avenue for a place of beginning; thence continuing N00°30'59"W, 34.30 feet; thence N12°08'30"W, 70.72 feet; thence N18°11'05"W, 64.92 feet; thence N12°36'45"W, 96.68 feet; thence N00°30'55"W, 65.00 feet; thence N89°29'01"E, parallel with said south line, 282.59 feet to the west line of the Big Slough-Cowskin Creek Floodway as described in Condemnation Case No. A-31849, being a curve to the right having a radius of 2000.00 feet, an arc length of 120.07 feet, chord bearing S02°13'05"E, 120.05 feet; thence along said curve, 120.07 feet to a point of tangency; thence S00°32'55"E along said west line, 204.96 feet to said north right of way line; thence S89°29'01"W along said north right of way line, 232.06 feet to the place of beginning.

BACKGROUND: The applicant is seeking LC Limited Commercial ("LC") zoning on 1.95 unplatted acres located on the north side of West Central Avenue, approximately one-third mile east of Ridge Road (west of the Wichita-Valley Center Floodway, east of Marco's Cantina). The application area is partially zoned SF-5 Single-family Residential ("SF-5") but a majority of the site is unzoned. The unzoned portion of the property was previously part of an easement for the Wichita-Valley Center Floodway that the applicant acquired with a warranty deed through the City.

The property is a somewhat isolated tract with very limited access that is located between the Wichita-Valley Center Floodway (unzoned), located east of the subject site, and the Big Slough (SF-5), located to the west. Access to the site is currently limited to Central Avenue although the applicant owns the undeveloped SF-5 and partially unzoned land located to the north that ultimately abuts the Spinnaker Cove neighborhood and North Shore Boulevard that connects to 13th Street. The Wichita-Valley Center Floodway is approximately 1,049 feet wide at this location with some LC zoned property contiguous to Central located east of the floodway. Immediately west of the application area is SF-5 zoned land owned by the applicant that contains the Big Slough. West of the Big Slough are a number of LC zoned lots that are zoned LC, and developed with various commercial uses. South of Central Avenue is the Wichita-Valley Center Floodway that is unzoned, and west of the floodway is some TF-3 Two-family Residential ("TF-3") zoned property, subject to restrictions contained in Parcel 9 of CUP-59. Parcel 9 permits parking and floodway reserve.

Retail sales can generate approximately 42 average daily vehicle trips per 1,000 square feet of retail space. At 30 percent gross floor area coverage, the site could accommodate a building with 25,482 square feet. At 42 daily trips per 1,000 square feet a retail use with 25,482 square feet of gross floor area could generate 1,070 average daily trips. If developed with office uses, the

number of average daily trips could be 11 average daily trips per 1,000 square feet or 280 average daily trips for the same size of building noted previously.

The property is designated as flood zone X, which is property protected by a levee. Since the property is unplatted, a drainage plan will be required at the time of platting. Among the issues that will need to be addressed at the time of platting include access adjacent to the levee to allow for maintenance, and easements for the existing flood control toe drain system that are located west of the existing levee.

CASE HISTORY: In 2008, the current application area was part of a larger tract (40.6-acre unplatted tract) that received approval for MF-29 Multi-family Residential ("MF-29") zoning, subject to platting within one year (ZON2008-33). ZON2008-33 was voided due to failure to plat. In 1976, the SF-5 zoned portion of the application area was included in BZA 10-76 that granted approval for extraction for mining and quarrying.

ADJACENT ZONING AND LAND USE:

NORTH:	Unzoned/SF-5; vacant
SOUTH:	TF-3 Two-family Residential subject to CUP DP-59/unzoned; vacant, Wichita-Valley Center Floodway
EAST:	Unzoned; Wichita-Valley Center Floodway
WEST:	SF-5/LC; Big Slough, restaurant

PUBLIC SERVICES: Central Avenue is an arterial with four through-lanes and center left turn bays located at sporadic locations. Central Avenue has an existing drive approach located on the southeast corner of the site with an east bound left turn lane. If the drive needs to be re-located that issue can be addressed at the time of platting. In 2006, west bound Central Avenue at Ridge Road carried approximately 31,000 average daily trips. The location of the drive is an important safety issue given the site's location between two bridges, one to the east of the site and one to the west, that are separated by only 394 feet. Sanitary sewer abuts or is located on the northwest corner of the site. Water lines are located along Central Avenue.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for "local commercial" uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant market draw. The range of uses includes primarily includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding property is a mix of zoning (unzoned, SF-5, TF-3 subject to DP-59 restrictions and LC) and land uses (vacant, floodway, waterway and restaurant and retail). The property is a somewhat isolated tract

located between two waterways, the Wichita-Valley Center and the Big Slough. At this time, the site's only access is Central Avenue.

2. The suitability of the subject property for the uses to which it has been restricted: The site is partially zoned SF-5 and largely unzoned. The SF-5 district is the most restrictive City zoning district in the "Unified Zoning Code." Presumably, the unzoned portion of the application area would not allow any uses until zoned. Given the existing solid pattern of LC zoning already present along the length of Central Avenue, east and west of the application area between Ridge and Hoover, it seems that the existing zoning on this property is not suitable. The requested LC zoning is consistent with existing zoning located east and west of the application area.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The zoning requested is the same as the zoning that already exists on the north side of Central Avenue further east and west of the application area. The zoning code has provisions requiring screening, buffering and landscaping that mitigate potential detrimental impacts; therefore, approval of this request should not create land use impacts that are detrimental to nearby properties.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request would provide additional LC zoned property in the real estate market. Denial would presumable be an economic loss to the applicant.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for "local commercial" uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant market draw. The range of uses includes primarily includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

1. Impact of the proposed development on community facilities: Facilities are either in place or can be guaranteed to be extended to the site as a result of the platting requirement.

DALE MILLER, Planning Staff presented the staff report.

MITCHELL suggested this item be deferred indefinitely.

MOTION: To defer indefinitely.

MITCHELL moved, **VAN FLEET** seconded the motion.

BRENT THOMAS, RUGGLES & BOHM, AGENT FOR APPLICANT said they have been in contact with City Legal, Planning and Storm Water staff concerning this application. He said they feel this application is about zoning and land use and the issues being raised by Storm

Water staff can be worked through during the platting process. He asked the Planning Commission to consider Planning staff's recommendation and approve the requested zone change.

DIRECTOR SCHLEGEL clarified that the City Law Department had requested that the case be deferred to give them time to research land ownership and the chain of property title before any action is taken on the request.

There was brief discussion concerning the motion to defer the matter indefinitely.

The motion maker and second amended the motion to defer for 30 days.

HILLMAN said he would like to hear from the audience if someone was present to give testimony on the case.

THOMAS reported that the agent for the contract buyer was present to speak.

HENTZEN said he would agree to deferral but asked can't the Commission hear anyone who wants to speak.

> **SUBSTITUTE MOTION:** To hear the case today starting with the staff report under the normal procedure.
>
> **DOWNING** moved, **JOHNSON** seconded the motion.

There was brief discussion concerning whether deferring the case would close the public hearing.

CHAIR MILLER STEVENS explained that the Commission could defer the case, but not close the public hearing. She added that the Commission could also approve or disapprove the case.

The question was called and the **SUBSTITUTE MOTION** passed (9-3). **KLAUSMEYER, MITCHELL, VAN FLEET** – No

DALE MILLER, Planning Staff presented the staff report.

BRENT THOMAS, RUGGLES & BOHM, AGENT FOR THE APPLICANT reiterated that they felt this was a land use and zoning issue; that they can work through issues with City staff; and asked that the Planning Commission approve the request today.

KLAUSMEYER asked if title work has been done on the property.

THOMAS said yes as part of the sale and added that his client has title insurance on the property.

VAN FLEET asked what the intended utilization of the property was and why they are requesting that the zoning be changed from SF-5 Single-Family Residential to LC Limited Commercial.

THOMAS said he would defer that question to the contract buyer's agent, but added that LC would match the existing zoning along that corridor of Central Avenue.

TIM AUSTIN, POE & ASSOCIATES, AGENT FOR CONTRACT BUYER SOUTHFORK INVESTEMNT, LLC said the owner does have title insurance and a legal description of the property. He said this was rezoned in 2008 and there has been plenty of opportunity to question and/or research the title. He commented that City staff does not have a clear understanding and added that they have an ownership list that is certified by a title company that shows without question who owns the property. He said this is a "red herring" to further delay the real estate transaction. He mentioned the appropriateness as to why this is being zoned LC and said they have 2 users who are interested in this being a commercially zoned property. He said he agrees with the applicant's agent that this request does not need to be deferred. He said there has been discussion that the City wasn't sure they could legally transfer ownership of the property to Mr. Hoskinson. He said the City can withhold the building permit if ownership of the property were to become an issue.

MITCHELL commented that it was not his role to explain that just because someone has title insurance on a property that does not convey title of the property to them.

KLAUSMEYER asked legal staff if the title research could be accomplished within 30 days.

KELLY RUNDELL, DEPUTY CITY ATTORNEY said she believed so yes.

> **MOTION:** To defer the item for 30 days and maintain the open public hearing.
>
> **DOWNING** moved, **JOHNSON** seconded the motion.

DENNIS asked what legal would find within the next 30 days that they didn't find within the last 3 years.

RUNDELL said staff has been working on the issue within the last 30 days, not the last 3 years.

DENNIS said he was on the Planning Commission 3 years ago when this was rezoned to SF-5 Single-Family Residential. He asked why the question on ownership was not brought up at that time.

RUNDELL said she did not know why the question did not come up previously.

MILLER said once the staff report was finished, he received information regarding the sale and encumbrances on the property that may have impacted how the staff report was written.

JOHNSON said if this is not resolved within 30 days he said he would go ahead and support the request for rezoning at that time.

The question was called and the **MOTION** passed (12-0).

EXCERPT OF THE APRIL 21, 2011 METROPOLITAN AREA PLANNING COMMISSION MEETING

Case No.: ZON2011-01 (deferred from 3-24-2011) - Richard D. Hoskinson (applicant)/ Brent Thomas or Chris Bohm (agents) request a City Zone change from SF-5 Single-Family Residential and unzoned to LC Limited Commercial on property described as:

That part of the SW1/4 of Sec. 15, T27S, R1W of the 6th P.M., Sedgwick County, Kansas described as commencing at the S.E. corner of said SW1/4; thence S89°29'01"W, along the south line of said SW1/4, 569.00 feet; thence N00°30'59"W, perpendicular to said south line, 115.00 feet to the north right of way line of Central Avenue for a place of beginning; thence continuing N00°30'59"W, 34.30 feet; thence N12°08'30"W, 70.72 feet; thence N18°11'05"W, 64.92 feet; thence N12°36'45"W, 96.68 feet; thence N00°30'55"W, 65.00 feet; thence N89°29'01"E, parallel with said south line, 282.59 feet to the west line of the Big Slough-Cowskin Creek Floodway as described in Condemnation Case No. A-31849, being a curve to the right having a radius of 2000.00 feet, an arc length of 120.07 feet, chord bearing S02°13'05"E, 120.05 feet; thence along said curve, 120.07 feet to a point of tangency; thence S00°32'55"E along said west line, 204.96 feet to said north right of way line; thence S89°29'01"W along said north right of way line, 232.06 feet to the place of beginning.

COMMISSIONER MITCHELL recused himself from the item and left the bench.

DALE MILLER, Planning Staff requested a 30 day deferral.

BRENT THOMAS, RUGGLES AND BOHM, AGENT FOR THE APPLICANT (OWNER) said his client has expressed frustration as to the amount of time this application is taking. He mentioned the rezoning approved in 2008 by the Planning Commission and City Council contingent upon the parcel being platted. He said that project did not proceed due to economic issues. He said they feel this is a land use issue and question, and other issues that arise may be worked out during platting.

TIM AUSTIN, POE AND ASSOCIATES, AGENT FOR CONTRACT PURCHASER (SOUTHFORK INVESTMENT) said he would like to go on record with the contract buyer's objection to another deferral of the application. He said whatever issues including the underlying easement rights and questions as to whether the City had the legal right to sell the property can be resolved during the platting stage. In conclusion, he asked why Commissioner Mitchell recused himself from hearing the application since he has voted on the matter twice previously. He asked why this is different than the other times.

DENNIS asked why the City can't figure out who owns property and why this item keeps being deferred.

MILLER said staff has identified other ownership interests who need to be included in the discussion and errors in some of the transactions regarding the parcel.

DENNIS asked how long it takes City staff to figure this out.

MILLER mentioned time to obtain the abstract and get the facts in place.

DENNIS said he will support the motion to defer but this is the last time.

JOHNSON asked if 30 days was reasonable.

SHERMAN asked about the previous transactions involving this piece of property being null and void and asked if this will be a litigious situation from now on.

JAY HINKEL, DEPUTY CITY ATTORNEY said the best answer to that question is the reason for the request for deferral is an opportunity exists to eliminate the problem of previous transactions.

SHERMAN asked if 30 days will not be enough time.

HINKEL said he can't speak for other parties, but 30 days is enough time to place the issue before all persons who have an interest and know what their response is going to be.

SHERMAN commented that other parties may have other issues that are out of the City's control.

HINKEL said that might be the case. He said they should know if there will be litigation or some other type of resolution within a 30 day period.

> **MOTION:** To defer the application until the May 26, 2011 Planning Commission Hearing, with the understanding that there will be no more deferrals on the case.
>
> **HENTZEN** moved, **HILLMAN** seconded the motion, and it carried (12-0-1). **MITCHELL** – abstained.

COMMISSIONER MITCHELL back on the bench.

EXCERPT MINUTES OF THE MAY 26, 2011 PLANNING COMMISSION HEARING

Case No.: ZON2011-01 - Richard D. Hoskinson (owner) and Brent Thomas or Chris Bohm (agents) request a City Zone change from SF-5 Single-Family Residential and unzoned to LC Limited Commercial on property described as:

That part of the SW1/4 of Sec. 15, T27S, R1W of the 6th P.M., Sedgwick County, Kansas described as commencing at the S.E. corner of said SW1/4; thence S89°29'01"W, along the south line of said SW1/4, 569.00 feet; thence N00°30'59"W, perpendicular to said south line, 115.00 feet to the north right of way line of Central Avenue for a place of beginning; thence continuing N00°30'59"W, 34.30 feet; thence N12°08'30"W, 70.72 feet; thence N18°11'05"W, 64.92 feet; thence N12°36'45"W, 96.68 feet; thence N00°30'55"W, 65.00 feet; thence N89°29'01"E, parallel with said south line, 282.59 feet to the west line of the Big Slough-Cowskin Creek Floodway as described in Condemnation Case No. A-31849, being a curve to the right having a radius of 2000.00 feet, an arc length of 120.07 feet, chord bearing S02°13'05"E, 120.05 feet; thence along said curve, 120.07 feet to a point of tangency; thence S00°32'55"E along said west line, 204.96 feet to said north right of way line; thence S89°29'01"W along said north right of way line, 232.06 feet to the place of beginning.

BACKGROUND: The applicant is seeking LC Limited Commercial ("LC") zoning on 1.95 unplatted acres located on the north side of West Central Avenue, approximately one-third mile east of Ridge Road (west of the Wichita-Valley Center Floodway, east of Marco's Cantina). The approximate western 69 feet of the application area is zoned SF-5 Single-family Residential ("SF-5") but a majority of the site, approximately the eastern 169 feet, is unzoned. All of the unzoned property has been determined to be part of a floodway easement obtained by Sedgwick County (District Court Case No. A-31849, Book 259, Pages 175 and 180) for construction of the Wichita-Valley Center Flood Control Project (W-VCFCP). With respect to the County's authority and value paid for the land covered by the easement, the commissioners obtained the "rights-of-way, easements and exclusive occupancy and possession forever of, through, over and upon" the described tracts of land.

The property is a somewhat isolated tract that is located between the W-VCFCP (unzoned), east of the subject site, and the Big Slough (SF-5), located to the west. Access to the site is currently limited to Central Avenue although the applicant owns the undeveloped SF-5 and unzoned land located to the north that ultimately abuts the Spinnaker Cove neighborhood and North Shore Boulevard that provides a potential connection to 13th Street. The Wichita-Valley Center Floodway is approximately 1,049 feet wide at this location with some LC zoned property contiguous to Central located east of the floodway. Immediately west of the application area is SF-5 zoned land owned by the applicant that contains the Big Slough. West of the Big Slough are a number of LC zoned lots that are developed with various commercial uses. South of Central Avenue is W-VCFCP land that subject to the same County easement discussed above and is unzoned. West of the floodway is some TF-3 Two-family Residential ("TF-3") zoned property, subject to restrictions contained in Parcel 9 of CUP-59. Parcel 9 permits parking and floodway reserve.

Retail sales uses are permitted in the LC district, and they can generate approximately 42 average daily vehicle trips per 1,000 square feet of retail space. At 30 percent gross floor area coverage, the subject site could accommodate a building with 25,482 square feet. At 42 daily trips per 1,000 square feet a retail use, 25,482 square feet of gross floor area could generate 1,070 average daily trips. If developed with office uses, also permitted in the LC district, the number of average daily trips could be 11 average daily trips per 1,000 square feet or 280 average daily trips for the same size of building noted previously.

The property is designated as flood zone X, which is flood prone property protected by a levee. If the request is approved as requested, it should be approved subject to platting within one year in order to address drainage and access for maintenance of the levee and protection of the levee's toe drain system.

This case has been deferred at three previous Metropolitan Area Planning Commission (MAPC) meetings. Planning staff had prepared for the first MAPC meeting a staff report that recommended approval of the request. At the February 24, 2011, MAPC meeting one of the Planning Commissioners, M. S. Mitchell, (who recused himself and spoke as a private citizen), questioned the appropriateness of the application. Mr. Mitchell questioned if the applicant was qualified to file a zone change application for property that was condemned by Sedgwick County to establish an easement for flood control purposes and that easement controls potential usage of the property subject to that easement. In this instance the eastern approximate 169 feet of the site is subject to that easement. It was Mr. Mitchell's concern that if the application were to be approved, it opened the door for the flood control easement to be removed through the platting process, per K.S.A. 12-512b discussed below. The MAPC voted to defer action until the March 24, 2011, meeting. Following the February MAPC meeting, Law Department staff ordered a title review, and began to review the various encumbrances upon the property. By the March 24, 2011, MAPC meeting, the review of the title and various easements and condemnation cases had not been completed. At the March 24, 2011, MAPC meeting a motion was approved to defer action until April 21, 2011, to allow for staff to complete their research. At the April 21, 2011, MAPC meeting, staff asked for and was granted a third deferral to May 26, 2011.

The net result of staff's research is the following:

1. The approximate eastern 169 feet of the subject tract is subject to an easement for flood control purposes that was acquired through condemnation on February 19, 1950. This easement provided Sedgwick County with the authority to control use and improvement to those properties subject to the easement. The condemnation case says the commissioners are appraising the value of the following rights being obtained: "rights-of-way, easements and exclusive occupancy and possession forever of, through, over and upon" the described tracts of land.

2. On April 4, 2006, the Wichita City Council accepted an offer from the applicant to purchase approximately 5.63 acres of land located lying north of Central Avenue between the W-VCFCP and the Big Slough. A significant portion of the subject tract's 1.95 acres is located within the 5.63 acres that was transferred to the applicant. The contract for sale and the City Council Agenda report indicated the transfer of title was to be by a quit claim deed. However, the title company prepared a title insurance commitment assigning fee simple interest to the City of Wichita and prepared a warranty deed that was signed by the then Mayor of Wichita. It is staff's position that the City Council's approval of the contract for sale and authorization for the Mayor to sign was for a quit claim deed, not a warranty deed, making the warranty deed void. Staff is of the opinion the applicant has a right to a quit claim deed for the 5.63 acres authorized by City Council to be sold on April 4, 2006. On that basis, staff believes the applicant meets the ownership requirement necessary to file this zoning application.

3. On August 7, 2008, the applicants granted to the City of Wichita a blanket access easement, exercisable at any time for public purposes including operating, maintaining and repairing adjacent flood control structures and improvement. The access easement could be reduced at some future time if the property was platted.

4. On March 14, 2011, Security 1st Title prepared an extensive certificate of title examination that indicated the flood control easement had never been vacated, leaving the approximate eastern 169 feet. Flood Control staff has indicated it is extremely important to maintain the existing flood control easement.

After deliberations with both City and County legal, engineering and planning staff, and City Property Management, it was determined the appropriate action was to modify planning staff's original recommendation to limit approval of LC zoning to only that portion of the application lying west of the land condemned for flood control purposes (the approximate western 69 feet abutting Central Avenue widening to approximate western 110 feet on the north line of the subject site), and recommend denial for that part of the application covered by the flood control easement (the approximate eastern 169 feet of the subject property).

The recommendation of denial partially emanates from the recognition that K.S.A. 12-512b sets up the possibility that through the platting process the County's flood control easement could be reduced or eliminated.

> K.S.A. 12-512b. Vacation of plats and other public reservations; recording plat or replat; reversion. In any area where there is a planning commission which has adopted subdivision regulations governing the platting or replatting of land, and the regulations provide for the giving of appropriate notice to all persons having property rights or interests affected by the platting or replatting, any plat or part thereof or street, alley or other public reservation, including, without limitation, easements, dedicated building setback lines, and access control, whether established by instrument, condemnation or earlier plats, shall be vacated both as to use and as to title without any further proceedings upon the filing and recording in accordance with the provisions of K.S.A. 12-403, and amendments thereto, of any plat or replat duly executed in accordance with law and embracing the same lands as those theretofore embraced by the earlier plat, or part thereof or street, alley or other public reservation. Streets, alleys or other public reservations which may be vacated shall revert, as provided in K.S.A. 12-506, and amendments thereto.

Representatives from both engineering departments stressed to planning staff the importance of maintaining the existing easement: to provide access for the maintenance of the levee and toe drains; to maintain unencumbered opportunity to meet changing Corp of Engineer maintenance requirements that enable the community to be eligible for federal flood assistance and to provide options should the Central Avenue bridge over the flood control structure need to be improved.
It was also noted that in addition to the initial investment in the floodway, the City and County have recently spent $3.5 million to maintain Corp of Engineers certification and another $10 million worth of maintenance is scheduled.

CASE HISTORY: In 2008, the current application area was part of a larger tract (40.6-acre unplatted tract) that received approval for MF-29 Multi-family Residential ("MF-29") zoning, subject to platting within one year (ZON2008-33). ZON2008-33 was voided due to failure to plat. In 1976, the SF-5 zoned portion of the application area was included in BZA 10-76 that granted approval for extraction for mining and quarrying. As noted above, the application has been on four previous MAPC agendas, and has received deferrals at each of those four meetings. At the last MAPC meeting, the applicant indicated he would like to have a meeting with staff, the applicant, his agent and legal counsel, the contract purchaser, his agent and legal counsel. The meeting was held on June 13, 2011. At the end of the meeting each side had a better understanding of the facts involving this application.

ADJACENT ZONING AND LAND USE:

NORTH: Unzoned/SF-5; vacant

SOUTH: TF-3 Two-family Residential subject to CUP DP-59/unzoned; vacant, Wichita-Valley Center Floodway
EAST: Unzoned; Wichita-Valley Center Floodway
WEST: SF-5/LC; Big Slough, restaurant

PUBLIC SERVICES: Central Avenue is an arterial with four through-lanes and center left turn bays located at sporadic locations. Central Avenue has an existing drive approach located on the southeast corner of the site with an east bound left turn lane. If the drive needs to be re-located that issue can be addressed at the time of platting. In 2006, west bound Central Avenue at Ridge Road carried approximately 31,000 average daily trips. The location of the drive is an important safety issue given the site's location between two bridges, one to the east of the site and one to the west, that are separated by only 394 feet. Sanitary sewer abuts or is located on the northwest corner of the site. Water lines are located along Central Avenue.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for "local commercial" uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant market draw. The range of uses includes primarily includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. Goal X of the Wichita-Sedgwick County Comprehensive Plan states: Protect and preserve the man-made and natural elements which support human habitation, add to the community's quality of life and create a unique living environment. The Wichita-Valley Center Floodway is a man-made element that prevents flooding for a significant portion of central and west Wichita, and protects hundreds of millions of dollars worth of investment.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request for LC zoning be APPROVED, subject to platting within one-year for only the approximate western 69 feet, and DENIAL for the approximate eastern 169 feet of the subject site.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding property is a mix of zoning (unzoned, SF-5, TF-3 subject to DP-59 restrictions and LC) and land uses (vacant, floodway, waterway and restaurant and retail). The property is a somewhat isolated tract located between two water courses, the Wichita-Valley Center Floodway and the Big Slough. At this time, the site's only access is Central Avenue. The site is a flood prone area that is protected by the Wichita-Valley Center Floodway levee.

2. The suitability of the subject property for the uses to which it has been restricted: The site is partially zoned SF-5 (approximate western 69 feet) and unzoned (approximate eastern 169 feet). The SF-5 district is the most restrictive City zoning district in the "Unified Zoning Code," permitting by-right single-family residential and some very low intensity nonresidential uses such as churches, public schools and parks. The unzoned portion of the application area would not allow any uses until zoned. Given the existing solid pattern of LC zoning already present along the length of Central Avenue, east and west of the application area between Ridge and Hoover, it seems that the existing SF-5 zoning on a portion of this property is not appropriate. The requested LC zoning for the SF-5 zoned portion is consistent with existing zoning located east and west of the application area. The unzoned portion of the subject site is appropriately zoned given the presence of the floodway easement (Case No. A-31849) that gave the County exclusive occupancy and possession forever of, through, over and upon the tract. The current land use restrictions are appropriate given the need to maintain an open and unencumbered area to support

ingress and egress, store and marshal equipment and material needed to inspect and maintain the floodway and its associated improvements.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of LC zoning for the SF-5 zoned portion of the site should not detrimentally impact nearby property owners. The LC zoning requested is the same as the zoning that already exists on the north side of Central Avenue further east and west of the application area. The zoning code has provisions requiring screening, buffering and landscaping that mitigate potential detrimental impacts. Limited Commercial zoning permits a wide range of uses and development intensities that would be unsuitable for an area set aside for floodway easement purposes. Support for LC zoning on the portion of the subject site encumbered by the floodway easement would be disingenuous given the severe use limitations necessary to maintain the property's intended functionality.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request as recommended by staff would provide additional LC zoned property in the real estate market. Denial would presumably be an economic loss to the applicant. In 1950 the community felt it important enough to expend the resources necessary to obtain floodway easements in general and the one that is the subject of this application upon which to build the Wichita-Valley Center Flood Control Project, which had provided physical flood protection for extensive portions of central and west Wichita, as well as participation in the federal flood insurance program. It would not be in the public's health, safety or welfare to approve a zone change and its associated platting requirement that has the potential through K.S.A. 12-512b to compromise the integrity of the existing floodway easement.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for "local commercial" uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant market draw. The range of uses includes primarily includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. Goal X of the Wichita-Sedgwick County Comprehensive Plan states: protect and preserve the man-made and natural elements which support human habitation, add to the community's quality of life and create a unique living environment. The Wichita-Valley Center Floodway is a man-made element that prevents flooding for a significant portion of central and west Wichita, and protects hundreds of millions of dollars worth of investment. It is staff's opinion that approval LC zoning of the western approximate 69 feet may be appropriate since it lies outside of the County's floodway easement. Drainage concerns related to the abutting Big Slough may complicate development on this portion of the application area. Due to the importance of the Wichita-Valley Center Flood Control Project, and the County's floodway easement it would not be consistent with the City's and County's obligation to protect the public's safety as expressed in Goal X of the Comprehensive Plan.

6. Impact of the proposed development on community facilities: Sewer and water facilities as well as roads are either in place or can be guaranteed to be extended to the site as a result of the platting requirement. However, it is staff's position that approval of the entire site could jeopardize the current and future effective and efficient maintenance of the flood control facility. Over time standards of maintenance have changed and it does not make sense to restrict the City or County's ability to maintain the facility or to be eligible for federal assistance in maintaining or improving the facility.

DALE MILLER, Planning staff presented the Staff Report. He referred to the handout, which was correspondence from the agent dated May 26, 2011, wherein they requested that the zoning application be approved as requested. He briefly reviewed the five points the agent mentioned. He said there was no question that the easement exists and that the County will use it for maintenance purposes regardless of zoning; however, staff is recommending denial because the easement limits uses. He said this particular easement is different than most public utility or access easements because it is complete control on, over and through the property. He said when the property was sold by the City of Wichita, it was noted that the buyer was subject to any encumbrances and easements on the property. He said staff does not agree that the easement should be dealt with during platting and in fact believes the reverse of that because the zoning controls land use, and staff does not believe it would be prudent to grant zoning that would conflict with the existing easement.

FOSTER referred to item #2 and clarified that the date should be April 4, 2006. He also asked about the 69-foot width for the western SF-5 zoning.

MILLLER said staff came up with 69 feet via the aerials in Geozone.

FOSTER clarified that the access easement is a separate easement from the County's flood control easement.

MILLER said that was correct.

MARNELL asked if the property had been zoned LC Limited Commercial all along would that change the nature of the easements that are already there. He asked would the uses be allowed with respect to the easement. He clarified if the property was already zoned LC, would that restrict or alter the easement.

MILLER said the easement has precedence.

MARNELL said he was confused as to why staff was taking a split position on the zoning request if the easement takes precedence.

MILLER said some of the property in question is unzoned. He said from a staff perspective it seemed disingenuous to recommend LC zoning knowing that many of the uses are not allowed because of the easement.

MARNELL asked what rights the property owner would have if this was not rezoned.

MILLER said the main distinction is if the Planning Commission approved the rezoning, it gives the applicant an impression or expectation that they have the right to certain uses that they don't have because of the easement.

MARNELL commented that it sounds like the easement is fundamental ownership.

MILLER replied that it gives the easement owner authority but not fee title

BRENT THOMAS, RUGGLES & BOHM, AGENT FOR THE PROPERTY OWNER RICHARD HOSKINSON said he would like to reiterate their previous request and ask that the entire parcel be rezoned LC Limited Commercial. He said they believe they can work through the easement issues with the City and County and come up with some potential land uses. He commented that the contract purchaser on the property is Southfork Investments and their agent Tim Austin has facilitated some

discussions with the County which indicate they might be willing to discuss land use. He said they strongly urge that the entire parcel be rezoned and that land uses be dealt with at platting.

MARNELL asked what the applicant thought they were giving up by not having the other side of the property zoned LC.

THOMAS said usability of the parcel. He said the recommended zoning would only leave them with 69-70 feet of frontage along Central which will hamper access onto the property. He said with the restrictions in place, the parcel will be difficult to do anything with.

MARNELL commented that regardless of the zoning, the restrictions will still be there.

THOMAS replied yes, as they understand it. He said it was Mr. Hoskinson's intent to sell this property to an interested buyer who has a particular use in mind.

DENNIS said he was confused and can't figure out what difference it makes if the property is LC or not. He asked what kinds of uses are possible with those restrictions in place.

THOMAS said he would allow Mr. Austin to address the question as to what the buyer has in store for the property. He said he thought the contract purchase wanted all uses allowed by right in LC zoning.

DENNIS remarked that many of the by right uses are not allowed because of the easement.

THOMAS said it was his understanding through Mr. Austin's discussion with the County that there is some interest in looking at what might be allowed if this property were rezoned.

BOB PARNACOTT, COUNTY COUNSELOR said he was at the meeting at the County that Mr. Austin attended and that he hoped they didn't have different recollections. He said he does not necessarily think the County is interested in looking at what might be allowed. He said the discussion at the meeting was that the County was the owner of the easement and is in a position to either sell or convey some or part of the easement or allow other uses of the easement as it determines is necessary. He said the County made it clear in the meeting that any decision would be based on discussions with engineers and recommendations from the City in terms of the flood control project. He said to say the County has an interest in looking at what might be allowed is an overstatement. He said the County acknowledges as the easement holder that they can always convey some part of the easement interests to other parties for various uses and still be consistent with their existing easement rights, but that was the extent of the discussion.

TIM AUSTIN, POE & ASSOCIATES, AGENT FOR THE CONTRACT BUYER SOUTHFORK INVESTMENTS referred to his correspondence which he said they believe is self-explanatory. He said the property south of Central Avenue is platted floodway reserve and owned by Steve Kelly. He said Southfork has an option on that property as well. He said the property owned by Mr. Hoskinson is zoned SF-5 Single-Family Residential by default and was previously rezoned by this Planning Commission to MF-29 Multi-Family Residential. He said they feel the easement can be dealt with at the platting stage. He said there is no problem zoning a property with a gas line easement and mentioned the other Southfork property that was previously rezoned by the Planning Commission. He said they didn't ask the gas company for permission to rezone that piece of property. He said as long as easement rights are not in conflict with the land use there should be any problem. He said he believed Mr. Parnacott's recollection of the meeting with County representatives including Commissioner Peterjohn is right. He said he specifically asked the County if they would be open to considering uses not in conflict with easement rights. He said the County said they would be willing to discuss it, so he believes there is an opportunity

for further discussion. He commented that this easement was not an issue until this second zoning application; that it never came up when the property was rezoned to MF-29. He said they have sought outside opinion on this issue and Mr. Dave Rapp with Hinkle and Elkourie, LLC was not sure the easement right exists. He said unfortunately with most issues that are legal in nature, it takes some adjudication and the issue needs to go to court and no one wants to do that. He said in answer to Commissioner Marnell's question, when Mr. Hoskinson acquired the property, he thought he had full beneficial use of the land. He said the City sold him the land and charged him $10,000 for the left turn lane and driveway to be installed. He said Mr. Hoskinson was not aware that there was an easement right until about 90 days ago. He said they feel this is a "red herring" and would like to just deal with the zoning issues. He asked if they would have to starting asking every utility company and easement holder for their permission before easements are rezoned. He said he feels this is a bad precedent. He said the restrictions to the extent they exist will guide how that property is developed. He concluded by stating that when the property was acquired those restrictions did not appear to exist and they were not conveyed to Mr. Hoskinson.

CHAIR MILLER STEVENS asked Mr. Austin to clarify his statement that the zoning was zoned SF-5 Single-Family Residential "by default."

AUSTIN said any private property that is brought into the City is automatically zoned SF-5.

DENNIS commented that the Commission has looked at this several times. He asked Mr. Austin to explain what they can use the eastern portion of the area for if it is zoned LC.

AUSTIN said they will have discussions with the County regarding uses. He said the area may be used for parking or some other use that is not in conflict with the County's easement rights.

DENNIS asked couldn't the area be used for a driveway or parking even if it was not zoned LC.

AUSTIN said the minimal zoning for parking is GO General Office. He said in his opinion, as long as it is zoned LC, they can use the area for parking and not be in conflict with the easements purpose for flood control. He mentioned the City selling off excess pieces of land after highway projects were completed as an example. He said if the land is not needed for flood control purposes, they are willing to have that discussion with the County, independent of the zoning, which he reiterated wasn't brought up until 90 days ago.

DENNIS commented that although he was not an expert on the big ditch and levee, he said the toe of the levee is critical to the security of the entire levee and that is what the County is trying to protect with the easement.

AUSTIN commented that the levee has a certain height to it. He referred to an aerial of the location and levee toes which were at two different elevations. He mentioned that Mr. Hoskinson filled part of the levee and that is why one of the toes is higher than the other. He said Mr. Hoskinson made substantial improvements to the property so he could utilize it. He said the backfill on the west side of the levee has enhanced and improved the levee. He said they would like to talk to County and City engineering staff about possible uses of the property. He said Planning staff's recommendation was based on the idea that the County has exclusive rights to the easement and that there can be no other uses. He said they feel the easement rights are better dealt with at the plating stage. He suggested the Commission get the zoning in place and then they can deal with the restrictions at platting.

HILLMAN asked if a parking lot is installed will the surface be permeable or asphalt.

AUSTIN said the surface will probably be impervious.

HILLMAN mentioned that this would be a watershed into a slew and that the City probably has some guidelines regarding permeable and non-permeable surfaces so as not to generate more runoff.

AUSTIN said it would be appropriate to have that discussion with City staff.

MITCHELL commented that the record will show that 3 years ago he recused himself from the Commission and raised the issue of the permanent flood control easement on the previous zoning case on this property, so the issue has come up before.

AUSTIN acknowledged that Commissioner Mitchell raised the issue 3 years ago; however at that time it did not preclude the property from being rezoned.

MCKAY asked for clarification as to what they can and cannot do with the property.

AUSTIN commented that the access drive easement was granted to Mr. Hoskinson so he could have access to his property so they will probably get rid of the drive easement when the property is platted. He added that there is also a sanitary sewer easement on the property that will affect their ability to develop the northwest section of the property. He reiterated that they feel easements are better dealt with at the platting stage.

MCKAY said he disagreed and added if the land can be used if it is zoned a certain way why not come up with a diagram or Community Unit Plan (CUP) and bring it back to staff and the Commission for review. He said they are requesting rezoning and then negotiations. He suggested they negotiate and then request zoning.

AUSTIN mentioned the gas line easement further south and said they did not seek their permission to rezone that property. He said it will be their responsibility to meet with County Commissioners and see what uses may be allowed.

JAY HINKEL, DEPUTY CITY ATTORNEY said he had a couple of points for the Commission's consideration. He said Mr. Hoskinson acquired the property from the City through a quitclaim deed and the contract clearly states that the City made no representations as to the character of the ownership or how the property could be used. He said state law is very clear that a person who acquires property through quitclaim does so at the risk of any interest or equity for use of that property to which it might be subject that the property owner could discern by examination of the record. He added that the title opinion that was obtained has indicated that is the case. He said whether Mr. Hoskinson knew the easement existed is immaterial; he had the opportunity to find out because it is a matter of public record. He said zoning maps indicate the property is unzoned and added that rights-of-way are unzoned, not SF-5 by default. He concluded by suggesting that the Commission consider as a policy matter whether an easement that is for the public benefit should be treated differently compared to an easement held by a private corporation for transmission lines.

JOHNSON commented that it seemed to him that Mr. Austin was acting as the agent and making some representations of the property owner. He said he would like to know if Mr. Thomas agreed with the representations Mr. Austin has made.

JIM WEBER, DEPUTY DIRECTOR OF SEDGWICK COUNTY PUBLIC WORKS commented that north of Central Avenue the levee comes in like an hour glass in this right-of-way. He said when the bridge gets replaced there is the possibility because the Federal Emergency Management Administration

(FEMA) standards have changed that the bridge may need to be lengthened and widened. He said placement of any permanent improvements in this area would be in the way. He said they are not suggesting that every easement holder be consulted every time there is a zoning change, but he said in this case the County is the easement holder and they object to the request to rezone.

DENNIS asked Mr. Weber to explain why the County objects to the application for rezoning.

WEBER said they object because they feel it will potentially interfere with future improvements to the flood control system. He said this zoning would open a door for someone to think that they had something going on there that they don't. He referenced Commissioner McKay's comment and said the applicant needs to get a plan reviewed and approved and then address zoning. He said he does not believe there is an argument, the applicant simply has not told them what they want to do with the property. He said as engineering staff, there is nothing that they can think of that they want the applicant to do on the property.

DENNIS asked if a future decision to do something with the bridge should impact the property owner's right to the best and highest use of their property. He added should what the City and/or County might do in the future trump the owner's right to the highest and best use of their property.

WEBER commented that the property owner's usages are limited by the easement. He said if the zoning is approved, then the conversation will continue. He said the County would be willing to meet and review any plan for use of the area and then the zoning can be addressed.

DENNIS commented that this property was rezoned several years ago and the Commission didn't hear about any of this at the time.

WEBER replied that staff works with what they know at the time.

SCOTT LINDEBAK, CITY STORM WATER ENGINEER commented that he had a couple of clarifications to make on the issue. He said there had been a claim made that the landowner had constructed the drive approach onto the property when in fact, the drive had been constructed with the bridge in 1977. He said there had also been a claim made that the landowner had placed fill on this flood control easement; however, that did not happen because the City just removed some large trees in the area and it would have been noticeable if fill had been placed on there. He said the entire flood control easement and right-of-way is being used for flood control purposes only. He said any plans for changes or encroachments have to be submitted to the Tulsa Army Corp of Engineers since the Corp designed and constructed the flood control project and they must provide written prior authorization before any development can occur. He said he does not think the Corp will accept any encroachment such as parking or any other uses on the easement for purposes of development.

THOMAS said it was his understanding that a joint meeting has been requested between the City and County to get the issues on this resolved. He reiterated that rezoning occurred several years ago on the property. He requested a 30-day deferral so they can meet with City and County staff to work out issues.

MARNELL asked so as future zoning cases come forward are easements going to be excluded from the zoning case and parcels divided.

DIRECTOR SCHLEGEL said he thinks the distinction staff is trying to make is that this floodway easement is of a different nature than other easements.

MARNELL said so in the future floodway easements of any type will be excluded from zoning cases.

DIRECTOR SCHLEGEL replied that staff will be watchful of that depending on the circumstances and may make the same type of recommendation.

MARNELL said he agreed with Mr. Austin that this would set a bad precedent. He likened the issue to requests from the public to enforce covenants, which is not under the Planning Commission's purview. He said because this involved the City's "buddies" across the street, they are going to do what the County wants them to do. He said splitting the parcel seems like the wrong thing to do as a Planning Commission.

CHAIR MILLER STEVENS said she is also conflicted as to who made the worse decision - the seller or the buyer in this situation. She said she is looking at both sides of the issue because this particular easement affects the entire City and County; however, at the same time the property owner does have property rights. She said she believes it is the duty of the Planning Commission to determine the balance and make the decision or defer the request. She said they are faced with a difficult decision.

> **MOTION:** To approve subject to staff recommendation.
>
> **MITCHELL** moved, **MCKAY** seconded the motion.

MARNELL said he was going to oppose the motion. He mentioned that it was not the Planning Commissions place to decide who has rights it is a court of law. He said he has no sympathy for the landowner if he bought this and hadn't researched it properly and ends up with easements that make it unusable. He reminded the Commission that this is a land use issue.

> **SUBSTITUTE MOTION:** To defer the application for 30 days.
>
> **MARNELL** moved, **JOHNSON** seconded the motion, and it carried (7-3). **MCKAY, MITCHELL** and **SHERMAN** – No.

FOSTER said he was trying to sort out how the seller let this go with or without knowledge as to the extent of the easement on the property. He said he will support the substitute motion to give the applicant time to make their case and see if zoning is appropriate. He added that at face value he supported the original motion.

EXCERPT MINUTES FROM THE JUNE 23, 2011 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING

Case No.: ZON2011-01 - Richard D. Hoskinson (owner)/ Brent Thomas or Chris Bohm (agent) request City Zone change from SF-5 Single-Family Residential and unzoned to LC Limited Commercial on property described as:

That part of the SW1/4 of Sec. 15, T27S, R1W of the 6th P.M., Sedgwick County, Kansas described as commencing at the S.E. corner of said SW1/4; thence S89°29'01"W, along the south line of said SW1/4, 569.00 feet; thence N00°30'59"W, perpendicular to said south line, 115.00 feet to the north right of way line of Central Avenue for a place of beginning; thence continuing N00°30'59"W, 34.30 feet; thence N12°08'30"W, 70.72 feet; thence N18°11'05"W, 64.92 feet; thence N12°36'45"W, 96.68 feet; thence N00°30'55"W, 65.00 feet; thence N89°29'01"E, parallel with said south line, 282.59 feet to the west line of the Big Slough-Cowskin Creek Floodway as described in Condemnation Case No. A-31849, being a curve to the right having a radius of 2000.00 feet, an arc length of 120.07 feet, chord bearing S02°13'05"E, 120.05 feet; thence along said curve, 120.07 feet to a point of tangency; thence S00°32'55"E along said west line, 204.96 feet to said north right of way line; thence S89°29'01"W along said north right of way line, 232.06 feet to the place of beginning.

BACKGROUND: The applicant is seeking LC Limited Commercial ("LC") zoning on 1.95 unplatted acres located on the north side of West Central Avenue, approximately one-third mile east of Ridge Road (west of the Wichita-Valley Center Floodway, east of Marco's Cantina). The approximate western 69 feet of the application area is zoned SF-5 Single-family Residential ("SF-5") but a majority of the site, approximately the eastern 169 feet, is unzoned. All of the unzoned property has been determined to be part of a floodway easement obtained by Sedgwick County (District Court Case No. A-31849, Book 259, Pages 175 and 180) for construction of the Wichita-Valley Center Flood Control Project (W-VCFCP). With respect to the County's authority and value paid for the land covered by the easement, the commissioners obtained the "rights-of-way, easements and exclusive occupancy and possession forever of, through, over and upon" the described tracts of land.

The property is a somewhat isolated tract that is located between the W-VCFCP (unzoned), east of the subject site, and the Big Slough (SF-5), located to the west. Access to the site is currently limited to Central Avenue although the applicant owns the undeveloped SF-5 and unzoned land located to the north that ultimately abuts the Spinnaker Cove neighborhood and North Shore Boulevard that provides a potential connection to 13th Street. The Wichita-Valley Center Floodway is approximately 1,049 feet wide at this location with some LC zoned property contiguous to Central located east of the floodway. Immediately west of the application area is SF-5 zoned land owned by the applicant that contains the Big Slough. West of the Big Slough are a number of LC zoned lots that are developed with various commercial uses. South of Central Avenue is W-VCFCP land that subject to the same County easement discussed above and is unzoned. West of the floodway is some TF-3 Two-family Residential ("TF-3") zoned property, subject to restrictions contained in Parcel 9 of CUP-59. Parcel 9 permits parking and floodway reserve.

Retail sales uses are permitted in the LC district, and they can generate approximately 42 average daily vehicle trips per 1,000 square feet of retail space. At 30 percent gross floor area coverage, the subject site could accommodate a building with 25,482 square feet. At 42 daily trips per 1,000 square feet a retail use, 25,482 square feet of gross floor area could generate 1,070 average daily trips. If developed with office uses, also permitted in the LC district, the number of average daily trips could be 11 average daily trips per 1,000 square feet or 280 average daily trips for the same size of building noted previously.

The property is designated as flood zone X, which is flood prone property protected by a levee. If the request is approved as requested, it should be approved subject to platting within one year in order to address drainage and access for maintenance of the levee and protection of the levee's toe drain system.

This case has been deferred at three previous Metropolitan Area Planning Commission (MAPC) meetings. Planning staff had prepared for the first MAPC meeting a staff report that recommended approval of the request. At the February 24, 2011, MAPC meeting one of the Planning Commissioners, M. S. Mitchell, (who recused himself and spoke as a private citizen), questioned the appropriateness of the application. Mr. Mitchell questioned if the applicant was qualified to file a zone change application for property that was condemned by Sedgwick County to establish an easement for flood control purposes and that easement controls potential usage of the property subject to that easement. In this instance the eastern approximate 169 feet of the site is subject to that easement. It was Mr. Mitchell's concern that if the application were to be approved, it opened the door for the flood control easement to be removed through the platting process, per K.S.A. 12-512b discussed below. The MAPC voted to defer action until the March 24, 2011, meeting. Following the February MAPC meeting, Law Department staff ordered a title review, and began to review the various encumbrances upon the property. By the March 24, 2011, MAPC meeting, the review of the title and various easements and condemnation cases had not been completed. At the March 24, 2011, MAPC meeting a motion was approved to defer action until April 21, 2011, to allow for staff to complete their research. At the April 21, 2011, MAPC meeting, staff asked for and was granted a third deferral to May 26, 2011.

The net result of staff's research is the following:

1. The approximate eastern 169 feet of the subject tract is subject to an easement for flood control purposes that was acquired through condemnation on February 19, 1950. This easement provided Sedgwick County with the authority to control use and improvement to those properties subject to the easement. The condemnation case says the commissioners are appraising the value of the following rights being obtained: "rights-of-way, easements and exclusive occupancy and possession forever of, through, over and upon" the described tracts of land.

2. On April 4, 2006, the Wichita City Council accepted an offer from the applicant to purchase approximately 5.63 acres of land located lying north of Central Avenue between the W-VCFCP and the Big Slough. A significant portion of the subject tract's 1.95 acres is located within the 5.63 acres that was transferred to the applicant. The contract for sale and the City

Council Agenda report indicated the transfer of title was to be by a quit claim deed. However, the title company prepared a title insurance commitment assigning fee simple interest to the City of Wichita and prepared a warranty deed that was signed by the then Mayor of Wichita. It is staff's position that the City Council's approval of the contract for sale and authorization for the Mayor to sign was for a quit claim deed, not a warranty deed, making the warranty deed void. Staff is of the opinion the applicant has a right to a quit claim deed for the 5.63 acres authorized by City Council to be sold on April 4, 2006. On that basis, staff believes the applicant meets the ownership requirement necessary to file this zoning application.

3. On August 7, 2008, the applicants granted to the City of Wichita a blanket access easement, exercisable at any time for public purposes including operating, maintaining and repairing adjacent flood control structures and improvement. The access easement could be reduced at some future time if the property was platted.

4. On March 14, 2011, Security 1st Title prepared an extensive certificate of title examination that indicated the flood control easement had never been vacated, leaving the approximate eastern 169 feet. Flood Control staff has indicated it is extremely important to maintain the existing flood control easement.

After deliberations with both City and County legal, engineering and planning staff, and City Property Management, it was determined the appropriate action was to modify planning staff's original recommendation to limit approval of LC zoning to only that portion of the application lying west of the land condemned for flood control purposes (the approximate western 69 feet abutting Central Avenue widening to approximate western 110 feet on the north line of the subject site), and recommend denial for that part of the application covered by the flood control easement (the approximate eastern 169 feet of the subject property).

The recommendation of denial partially emanates from the recognition that K.S.A. 12-512b sets up the possibility that through the platting process the County's flood control easement could be reduced or eliminated.

> K.S.A. 12-512b. Vacation of plats and other public reservations; recording plat or replat; reversion. In any area where there is a planning commission which has adopted subdivision regulations governing the platting or replatting of land, and the regulations provide for the giving of appropriate notice to all persons having property rights or interests affected by the platting or replatting, any plat or part thereof or street, alley or other public reservation, including, without limitation, easements, dedicated building setback lines, and access control, whether established by instrument, condemnation or earlier plats, shall be vacated both as to use and as to title without any further proceedings upon the filing and recording in accordance with the provisions of K.S.A. 12-403, and amendments thereto, of any plat or replat duly executed in accordance with law and embracing the same lands as those theretofore embraced by the earlier plat, or part thereof or street, alley or other public reservation. Streets, alleys or other public reservations which

may be vacated shall revert, as provided in K.S.A. 12-506, and amendments thereto.

Representatives from both engineering departments stressed to planning staff the importance of maintaining the existing easement: to provide access for the maintenance of the levee and toe drains; to maintain unencumbered opportunity to meet changing Corp of Engineer maintenance requirements that enable the community to be eligible for federal flood assistance and to provide options should the Central Avenue bridge over the flood control structure need to be improved. It was also noted that in addition to the initial investment in the floodway, the City and County have recently spent $3.5 million to maintain Corp of Engineers certification and another $10 million worth of maintenance is scheduled.

CASE HISTORY: In 2008, the current application area was part of a larger tract (40.6-acre unplatted tract) that received approval for MF-29 Multi-family Residential ("MF-29") zoning, subject to platting within one year (ZON2008-33). ZON2008-33 was voided due to failure to plat. In 1976, the SF-5 zoned portion of the application area was included in BZA 10-76 that granted approval for extraction for mining and quarrying. As noted above, the application has been on four previous MAPC agendas, and has received deferrals at each of those four meetings. At the last MAPC meeting, the applicant indicated he would like to have a meeting with staff, the applicant, his agent and legal counsel, the contract purchaser, his agent and legal counsel. The meeting was held on June 13, 2011. At the end of the meeting each side had a better understanding of the facts involving this application.

ADJACENT ZONING AND LAND USE:

NORTH:	Unzoned/SF-5; vacant
SOUTH:	TF-3 Two-family Residential subject to CUP DP-59/unzoned; vacant, Wichita-Valley Center Floodway
EAST:	Unzoned; Wichita-Valley Center Floodway
WEST:	SF-5/LC; Big Slough, restaurant

PUBLIC SERVICES: Central Avenue is an arterial with four through-lanes and center left turn bays located at sporadic locations. Central Avenue has an existing drive approach located on the southeast corner of the site with an east bound left turn lane. If the drive needs to be re-located that issue can be addressed at the time of platting. In 2006, west bound Central Avenue at Ridge Road carried approximately 31,000 average daily trips. The location of the drive is an important safety issue given the site's location between two bridges, one to the east of the site and one to the west, that are separated by only 394 feet. Sanitary sewer abuts or is located on the northwest corner of the site. Water lines are located along Central Avenue.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for "local commercial" uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant market draw. The range of uses includes primarily includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. Goal X of the Wichita-Sedgwick County

Comprehensive Plan states: Protect and preserve the man-made and natural elements which support human habitation, add to the community's quality of life and create a unique living environment. The Wichita-Valley Center Floodway is a man-made element that prevents flooding for a significant portion of central and west Wichita, and protects hundreds of millions of dollars worth of investment.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request for LC zoning be APPROVED, subject to platting within one-year for only the approximate western 69 feet, and DENIAL for the approximate eastern 169 feet of the subject site.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding property is a mix of zoning (unzoned, SF-5, TF-3 subject to DP-59 restrictions and LC) and land uses (vacant, floodway, waterway and restaurant and retail). The property is a somewhat isolated tract located between two water courses, the Wichita-Valley Center Floodway and the Big Slough. At this time, the site's only access is Central Avenue. The site is a flood prone area that is protected by the Wichita-Valley Center Floodway levee.

2. The suitability of the subject property for the uses to which it has been restricted: The site is partially zoned SF-5 (approximate western 69 feet) and unzoned (approximate eastern 169 feet). The SF-5 district is the most restrictive City zoning district in the "Unified Zoning Code," permitting by-right single-family residential and some very low intensity nonresidential uses such as churches, public schools and parks. The unzoned portion of the application area would not allow any uses until zoned. Given the existing solid pattern of LC zoning already present along the length of Central Avenue, east and west of the application area between Ridge and Hoover, it seems that the existing SF-5 zoning on a portion of this property is not appropriate. The requested LC zoning for the SF-5 zoned portion is consistent with existing zoning located east and west of the application area. The unzoned portion of the subject site is appropriately zoned given the presence of the floodway easement (Case No. A-31849) that gave the County exclusive occupancy and possession forever of, through, over and upon the tract. The current land use restrictions are appropriate given the need to maintain an open and unencumbered area to support ingress and egress, store and marshal equipment and material needed to inspect and maintain the floodway and its associated improvements.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of LC zoning for the SF-5 zoned portion of the site should not detrimentally impact nearby property owners. The LC zoning requested is the same as the zoning that already exists on the north side of Central Avenue further east and west of the application area. The zoning code has provisions requiring screening, buffering and landscaping that mitigate potential detrimental impacts. Limited Commercial zoning permits a wide range of uses and development intensities that would be unsuitable for an area set aside for floodway easement purposes. Support for LC zoning on the portion of the subject site encumbered by the

floodway easement would be disingenuous given the severe use limitations necessary to maintain the property's intended functionality.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request as recommended by staff would provide additional LC zoned property in the real estate market. Denial would presumably be an economic loss to the applicant. In 1950 the community felt it important enough to expend the resources necessary to obtain floodway easements in general and the one that is the subject of this application upon which to build the Wichita-Valley Center Flood Control Project, which had provided physical flood protection for extensive portions of central and west Wichita, as well as participation in the federal flood insurance program. It would not be in the public's health, safety or welfare to approve a zone change and its associated platting requirement that has the potential through K.S.A. 12-512b to compromise the integrity of the existing floodway easement.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts this site as appropriate for "local commercial" uses. The local commercial category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant market draw. The range of uses includes primarily includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. Goal X of the Wichita-Sedgwick County Comprehensive Plan states: protect and preserve the man-made and natural elements which support human habitation, add to the community's quality of life and create a unique living environment. The Wichita-Valley Center Floodway is a man-made element that prevents flooding for a significant portion of central and west Wichita, and protects hundreds of millions of dollars worth of investment. It is staff's opinion that approval LC zoning of the western approximate 69 feet may be appropriate since it lies outside of the County's floodway easement. Drainage concerns related to the abutting Big Slough may complicate development on this portion of the application area. Due to the importance of the Wichita-Valley Center Flood Control Project, and the County's floodway easement it would not be consistent with the City's and County's obligation to protect the public's safety as expressed in Goal X of the Comprehensive Plan.

6. Impact of the proposed development on community facilities: Sewer and water facilities as well as roads are either in place or can be guaranteed to be extended to the site as a result of the platting requirement. However, it is staff's position that approval of the entire site could jeopardize the current and future effective and efficient maintenance of the flood control facility. Over time standards of maintenance have changed and it does not make sense to restrict the City or County's ability to maintain the facility or to be eligible for federal assistance in maintaining or improving the facility.

DONNA GOLTRY, Planning Staff presented the Staff Report.

CHRIS BOHM, RUGGLES AND BOHM, AGENT FOR THE APPLICANT indicated that Jeff Carmichael from Morris Laing was also present to speak on behalf of the applicant. He

restated their position by saying that they would like to see the zoning application approved as originally submitted. He said while they realize there are other issues on the property dealing with an easement; they feel that is a function of platting and not zoning. He invited Mr. Carmichael to speak on behalf of Mr. Hoskinson.

JEFF CARMICHAEL, MORRIS, LAING, EVANS, BROCK AND KENNEDY CHARTERED said they have represented Mr. Hoskinson for a number of years. He said Mr. Hoskinson has owned the property for an extended period of time and has expended a great deal of money to get it ready to develop including putting fill in the area to level it up so he could get some benefit from the investment he has made in the property. He mentioned that the owner has paid taxes for the property for a number of years under the designation light commercial. He also mentioned that his client put in a deceleration lane on Central in anticipation of developing the property. He said his client has spent a significant amount of money to get the property in a position to be developed and now to be told at this late time no you can't develop the property is an unfair and unfortunate situation. He said Mr. Hoskinson would like to proceed with the original application to have the property zoned Limited Commercial.

MCKAY commented that he thought staff had come up with a pretty good idea for rezoning a portion of the property.

> **MOTION:** To approve subject to staff recommendation.
>
> **MCKAY** moved, **VAN FLEET** seconded the motion.
>
> **SUBSTITUTE MOTION:** To approve as originally requested by the applicant.
>
> **HENTZEN** moved, **JOHNSON** seconded the motion, and it failed (4-7). **DOWNING, FARNEY, FOSTER, HILLMAN, MCKAY, MITCHELL** and **VAN FLEET** – No.

HENTZEN asked who owned the property and did they have the right to rezone it.

DIRECTOR SCHLEGEL stated that Mr. Hoskinson owns the property and he has the right to request zoning.

HILLMAN commented that when Mr. Hoskinson took the deed to the property it came with a lot of conditions particularly on the area located in the floodplain. He asked isn't that also correct.

DIRECTOR SCHLEGEL said the area contains an easement that was purchased back in 1950s for floodway purposes. He said staff was recommending that portion not be rezoned.

HILLMAN said he supported development of property outside of the floodplain.

FOSTER commented that at the last Planning Commission meeting it was recommended that the parties get together to see if they could come up with some direction in terms of development on the parcel. He asked if that meeting had happened.

GOLTLRY said she understood that there was a meeting; however, she deferred to the people at the meeting to answer the question.

DIRECTOR SCHLEGEL said nothing new came out of the meeting. He said they discussed various options and he said moving forward the applicant would like to have the Planning Commission take some sort of action.

JOHNSON asked staff to address the letter from the contract purchaser's agent Poe & Associates dated June 20, 2011.

DIRECTOR SCHELGEL said the easement on this property is a different type of easement and much more restrictive than a normal easement for other types of utilities. He said this easement has the same level of restrictions as a right-of-way. He said other easements are negotiable.

The question was called and the **ORIGINAL MOTION** passed (8-3). **DENNIS, HENTZEN** and **KLAUSMEYER** – No.

POE & ASSOCIATES, INC. CONSULTING ENGINEERS
5940 E. Central, Suite 200 (316) 685-4114
Wichita, Kansas 67208 FAX: (316) 685-4444

June 20, 2011

VIA EMAIL

MEMO TO: Metropolitan Area Planning Commission

FROM: Tim Austin, PE, Agent for
Southfork Investment, LLC

RE: **ZON2011-01**

As agent for the contract purchaser of the subject tract, we encourage the MAPC to approve the zoning as requested without further delay.

We can appreciate staff's recommendation; however, we do not agree with the recommendation. The question and resulting discussions about the use of the land and the restrictions that may be imposed by easements is best left between the property owner and the easement holder without the planning staff and MAPC intervening.

Supporting staff's position will open the door to future possibilities about zoning easements, both public and private. While staff may argue that this is a special situation, all future times will be "special situations" too. It is a slippery slope upon which the MAPC and the development community do not need to embark. Will the Water Utilities start making requests through zoning to limit land use over their water and sanitary sewer easements? Will Public Works start making requests through zoning limiting land use over drainage easements? Will ATT, Kansas Gas Service, Black Hills, etc., start making similar requests?

Staff may say that such questions are not reasonable or possible, but the questions are no less possible or unreasonable than the very fact it's being asked of you with this application. Be assured, if this door is opened, there will be future requests of similar nature. Accordingly, we implore you to keep the door closed on staff's request and let the question of the land use within the easement be addressed at the time of platting between the property owner and the easement holder.

On a side note, it was stated during the last discussion that somehow the easement right may be vacated as part of the platting process. Does anyone really thing that would happen since the issue has been raised since you review and approve the plats?

Thank you for your considerations and deliberations.

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: Metropolitan Area Planning Commission Members

Mayor and Wichita City Council Members

FROM: Megan Buckmaster, Neighborhood Assistant District V

SUBJECT: **ZON2011-00001**

DATE: July 28, 2011

On Monday, July 11, 2011, the District Advisory Board (DAB) for Council District V considered a zone change request from SF-5 and un- zoned to LC on the North side of west Central, 1/3 mile east of Ridge Rd.

Several concerns were brought up:

1. The history of the land ownership;
2. Exclusive rights;
3. And Zoning vs. easement restrictions

A motion was made to approve the staff recommendation and move the case forward to City Council.

Action: Motion passed 6-0

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL AUGUST 16, 2011

a. Tyler Road, 21st Street North to 29th Street North (Tyler Road from 21st St North to 29th St North) (472-84921/707028/636251/210493/771638) see special provisions. (District V) - $3,661,804.00

b. Water Distribution System to serve Fox Ridge Addition (north of 29th Street North, west of Tyler) (448-89839/735468/470141) Traffic to be maintained using flagpersons & barricades. (District V) - $94,000.00

c. Lateral 9 Northwest Interceptor Sewer to serve Fox Ridge Addition (north of 29th Street North, west of Tyler) (468-83647/744329/480021) Traffic to be maintained using flagpersons & barricades. (District V) - $145,000.00

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Petitions for Sanitary Sewer and Water Distribution System in East Highlands Addition (North of Central, east of Oliver) (District I)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the petitions.

Background: The signature on the petitions represents 100% of the improvement districts.

Analysis: The projects will provide sanitary sewer and water distribution systems for a new commercial development located north of Central, east of Oliver.

Financial Considerations: The petitions total $41,500. The funding source is special assessments.

Goal Impact: The projects address the Efficient Infrastructure goal by providing sanitary sewer and water improvements required for new commercial development.

Legal Considerations: The petitions and resolutions have been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the petitions, adopt the resolutions and authorize the necessary signatures.

Attachments: Map, CIP sheets, petitions and resolutions.

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE

To Initiate Project	X
To Revise Project	

1. Prepare in triplicate
2. Send original & 2 copies to budget
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department
6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location
Public Works & Utilities	Eng & Arch	7/27/2011	Water Distribution System in East Highlands Addition

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
NI-200424		2011	

9. Estimated Start Date	10. Estimated Completion Date	11. Project Revised
As Required	As Required	

12. Project Cost Estimate

ITEM	GO	SA	OTHER*	TOTAL
Right of Way & Design				
Bridge & Culvert				
Paving, grading, & const.				
Drainage				
Sanitary Sewer				
Sidewalk				
Water		$6,400		$6,400
Multi-Use Path				
Totals		$6,500		$6,500
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition	X	
Ordered by WCC		

Remarks:

100% Petition

*Water Utility

448-90534

13. Recommendation: Approve the Petition and adopt the Resolution

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE

To Initiate Project	X
To Revise Project	

1. Prepare in triplicate
2. Send original & 2 copies to budget
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1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location
Public Works & Utilities	Eng & Arch	7/27/2011	Sanitary Sewer in East Highlands Addition

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
NI-200424		2011	

9. Estimated Start Date	10. Estimated Completion Date	11. Project Revised
As Required	As Required	

12. Project Cost Estimate

ITEM	GO	SA	OTHER*	TOTAL
Right of Way & Design				
Bridge & Culvert				
Paving, grading, & const.				
Drainage				
Sanitary Sewer		$12,000		$30,000
Sidewalk				
Water				
Multi-Use Path				
Totals		$12,000		$30,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition	X	
Ordered by WCC		

Remarks:

100% Petition

*Sanitary Sewer Utility

Extend 100, Dist 6, SS #12

168 81780

13. Recommendation: Approve the Petition and adopt the Resolution

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

132019

First Published in the Wichita Eagle on August 19, 2011

RESOLUTION NO. 11-196

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING THE IMPROVEMENT OF WATER DISTRIBUTION SYSTEM NUMBER 448-90534 (NORTH OF CENTRAL, EAST OF OLIVER) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING WATER DISTRIBUTION SYSTEM NUMBER 448-90534 (NORTH OF CENTRAL, EAST OF OLIVER) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve Water Distribution System Number 448-90534 (north of Central, east of Oliver).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Six Thousand Five Hundred Dollars ($6,500) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after November 1, 2011, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

EXHIBIT "A"

Lots 28-35(inclusive), Block 4, East Highlands, Sedgwick County, Kansas; EXCEPT the west 15 feet of Lots 29-35(inclusive) in said Block 4, deeded to city for road right of way; AND EXCEPT the north 11' of Lot 28 and Lot 35 in said Block 4; ALONG WITH Lots 26-33(inclusive), Block 14 in said Addition; EXCEPT the south 5 feet of Lots 27-33(inclusive) in said Block 14, deeded to city for road right of way.

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis:

Lot 28, Block 4, EAST HIGHLANDS, Sedgwick County, Kansas EXCEPT the north 11 feet of said Lot 28 shall pay 10/100 of said costs of the improvement

Lots 29-35, Block 4, EAST HIGHLANDS, Sedgwick County, Kansas EXCEPT the west 15 feet for street AND EXCEPT the north 11 feet of said Lot 35 shall pay 35/100 of said costs of the improvement

Lot 26, Block 14, EAST HIGHLANDS, Sedgwick County, Kansas shall pay 14/100 of said costs of the improvement

Lot 27, Block 14, EAST HIGHLANDS, Sedgwick County, Kansas EXCEPT the south 5 feet for street dedication and ½ vacation of Elm Street on the northwest shall pay 11/100 of said costs of the improvement

Lots 28-29, Block 14, EAST HIGHLANDS, Sedgwick County, Kansas EXCEPT the south 5 feet for street dedication and ½ vacation of Elm Street on the northwest shall pay 10/100 of said costs of the improvement

Lots 30-33, Block 14, EAST HIGHLANDS, Sedgwick County, Kansas shall pay 20/100 of said costs of the improvement

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 16th day of August, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF,
DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on August 19, 2011

RESOLUTION NO. 11-197

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 100, DISTRICT 6, SANITARY SEWER NO. 12 (NORTH OF CENTRAL, EAST OF OLIVER) 468-84780 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF LATERAL 100, DISTRICT 6, SANITARY SEWER NO. 12 (NORTH OF CENTRAL, EAST OF OLIVER) 468-84780 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Lateral 100, District 6, Sanitary Sewer No. 12 (north of Central, east of Oliver) 468-84780.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Thirty-Five Thousand Dollars ($35,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after November 1, 2011, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

EXHIBIT "A"

Lots 28-35(inclusive), Block 4, East Highlands, Sedgwick County, Kansas; EXCEPT the west 15 feet of Lots 29-35(inclusive) in said Block 4, deeded to city for road right of way; AND EXCEPT the north 11' of Lot 28 and Lot 35 in said Block 4; ALONG WITH Lots 26-33(inclusive), Block 14 in said Addition; EXCEPT the south 5 feet of Lots 27-33(inclusive) in said Block 14, deeded to city for road right of way.

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis:

Lot 28, Block 4, EAST HIGHLANDS, Sedgwick County, Kansas EXCEPT the north 11 feet of said Lot 28 shall pay 10/100 of said costs of the improvement

Lots 29-35, Block 4, EAST HIGHLANDS, Sedgwick County, Kansas EXCEPT the west 15 feet for street AND EXCEPT the north 11 feet of said Lot 35 shall pay 35/100 of said costs of the improvement

Lot 26, Block 14, EAST HIGHLANDS, Sedgwick County, Kansas shall pay 14/100 of said costs of the improvement

Lot 27, Block 14, EAST HIGHLANDS, Sedgwick County, Kansas EXCEPT the south 5 feet for street dedication and ½ vacation of Elm Street on the northwest shall pay 11/100 of said costs of the improvement

Lots 28-29, Block 14, EAST HIGHLANDS, Sedgwick County, Kansas EXCEPT the south 5 feet for street dedication and ½ vacation of Elm Street on the northwest shall pay 10/100 of said costs of the improvement

Lots 30-33, Block 14, EAST HIGHLANDS, Sedgwick County, Kansas shall pay 20/100 of said costs of the improvement

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 16th day of August, 2011.

_____
CARL BREWER, MAYOR

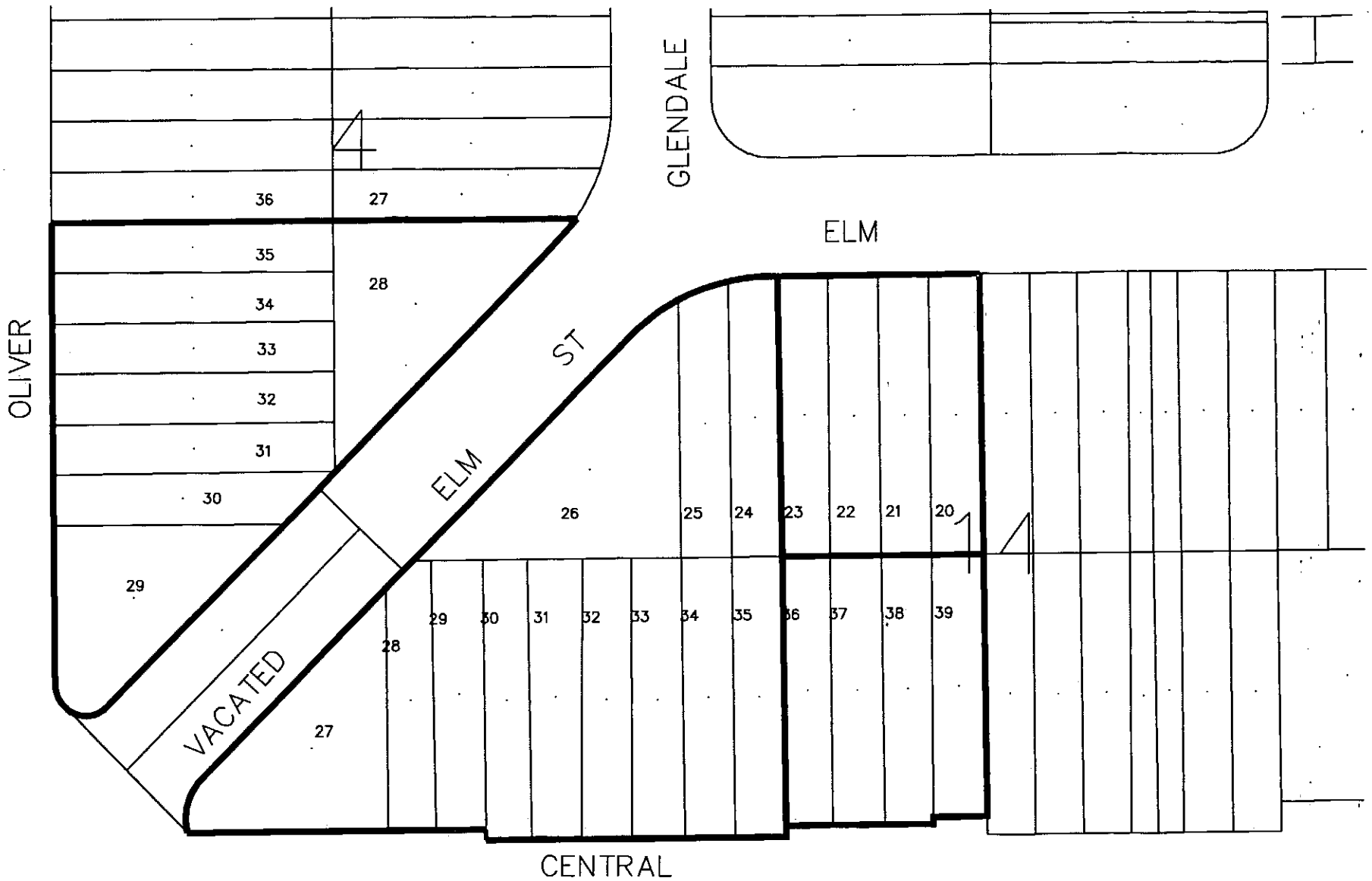
ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW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RECEIVED
JUL 27 '11
CITY CLERK OFFICE

SANITARY SEWER PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

468-84780 See Exhibit "A" Lateral 100, District 6, SS#12

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq. as amended:

(a) That there be constructed a lateral sanitary sewer to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.

(North of Central, East of Oliver)

(b) That the estimated and probable cost of the foregoing improvements being **THIRTY FIVE THOUSAND DOLLARS ($35,000)**, with 100% percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and at the pro rata rate of 1 percent per month from and after **November 1, 2011.**

(c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

(d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis:

Lot 28, Block 4, East Highlands, Sedgwick County, Kansas

EXCEPT the north 11 feet of said Lot 28 shall pay 10/100 of said costs of the improvement

Lot 29-35, Block 4, East Highlands, Sedgwick County, Kansas EXCEPT the west 15 feet for street AND EXCEPT the north 11 feet of said Lot 35 shall pay 35/100 of said costs of the improvement

Lot 26, Block 14, East Highlands, Sedgwick County, Kansas shall pay 14/100 of said costs of the improvement

Lot 27, Block 14, East Highlands, Sedgwick County, Kansas EXCEPT the south 5 feet for street dedication and ½ vacation of Elm Street on the northwest shall pay 11/100 of said costs of the improvement

Lot 28-29, Block 14, East Highlands, Sedgwick County, Kansas EXCEPT the south 5 feet for street dedication and ½ vacation of Elm Street on the northwest shall pay 10/100 of said costs of the improvement

Lot 30-33, Block 14, East Highlands, Sedgwick County, Kansas shall pay 20/100 of said costs of the improvement

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. (a) It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04.

   (b) Signatures on this petition are made with full knowledge and understanding that said signatures constitute a waiver of the limitations contained in K.S.A. 13-1013, which appear to limit the assessment for a lateral sewer to not more than one lateral sewer.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use if and when such improvements are necessary to serve any building which may be constructed on the real property after the date on this petition.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
See Exhibit "A"	Central & Oliver Holdings, LLC By: _____	

EXHIBIT "A"

Lots 28-35(inclusive), Block 4, East Highlands,. Sedgwick County, Kansas; EXCEPT the west 15 feet of Lots 29-35(inclusive) in said Block 4, deeded to city for road right of way; AND EXCEPT the north 11' of Lot 28 and Lot 35 in said Block 4; ALONG WITH Lots 26-33(inclusive), Block 14 in said Addition; EXCEPT the south 5 feet of Lots 27-33(inclusive) in said Block 14, deeded to city for road right of way.

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief.

Bill Morris

Name Bill Morris

PW - Admin

Address

4548

Telephone Number

Sworn to and subscribed before me this 27th day of July, 2011.

Deborah Padlock

Deputy City Clerk

THE CITY OF WICHITA SEDGWICK COUNTY, KANSAS

RECEIVED
JUL 27 '11
CITY CLERK OFFICE

WATER DISTRIBUTION SYSTEM PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

448-90534 See Exhibit "A"

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended:

(a) That there be constructed a water distribution system, including necessary water mains, pipes, valves, hydrants, and appurtenances to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.

(b) That the estimated and probable cost of the foregoing improvements being **SIX THOUSAND FIVE HUNDRED DOLLARS ($6,500)** exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after **November 1, 2011**.

(c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

(d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a **FRACTIONAL** basis:

Lot 28, Block 4, East Highlands, Sedgwick County, Kansas EXCEPT the north 11 feet of said Lot 28 shall pay 10/100 of said costs of the improvement

Lot 29-35, Block 4, East Highlands, Sedgwick County, Kansas EXCEPT the west 15 feet for street AND EXCEPT the north 11 feet of said Lot 35 shall pay 35/100 of said costs of the improvement

Lot 26, Block 14, East Highlands, Sedgwick County, Kansas shall pay 14/100 of said costs of the improvement

Lot 27, Block 14, East Highlands, Sedgwick County, Kansas EXCEPT the south 5 feet for street dedication and ½ vacation of Elm Street on the northwest shall pay 11/100 of said costs of the improvement

Lot 28-29, Block 14, East Highlands, Sedgwick County, Kansas EXCEPT the south 5 feet for street dedication and ½ vacation of Elm Street on the northwest shall pay 10/100 of said costs of the improvement

Lot 30-33, Block 14, East Highlands, Sedgwick County, Kansas shall pay 20/100 of said costs of the improvement

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature in order to form one public improvement project.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
See Exhibit "A"	Central & Oliver Holdings, LLC By:	

EXHIBIT "A"

Lots 28-35(inclusive), Block 4, East Highlands, Sedgwick County, Kansas; EXCEPT the west 15 feet of Lots 29-35(inclusive) in said Block 4, deeded to city for road right of way; AND EXCEPT the north 11' of Lot 28 and Lot 35 in said Block 4; ALONG WITH Lots 26-33(inclusive), Block 14 in said Addition; EXCEPT the south 5 feet of Lots 27-33(inclusive) in said Block 14, deeded to city for road right of way.

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief.

Name Bill Morris

PW - Admin
Address

4548
Telephone Number

Sworn to and subscribed before me this 27th day of July, 2011.

Deborah A Jadlock
Deputy City Clerk

THE CITY OF WICHITA SEDGWICK COUNTY, KANSAS

DEEDS AND EASEMENTS – AUGUST 16, 2011

a. Storm Water Drainage and Detention Basin Improvements Easement dated July 25th, 2011 from Greenwich 13, LLC for a pond lying within Reserves A and C, Berkeley Square First Addition, an addition to Wichita, Sedgwick County, Kansas, (OCA #751502) No cost to City.SR

b. Sanitary Sewer Easement from Newmarket Office, LLC, a Kansas limited liability company dated May 10, 2011 for a tract of land lying in Lot 2, Block 1, Newmarket Office 2nd, an addition to Wichita, Sedgwick County, Kansas (OCA 744321) No Cost to City LH

c. Public Utility Easement from Paul R. Craw dated April 12, 2011 for a tract of land lying in Lot 2, Block B, McEvoy Addition, Sedgwick County, Kansas (OCA 735456) No Cost to City LH

d. Public Utility Easement from David B. Clarey & Jean M. Wayne dated June 28, 2011 for a tract of land lying in Lot 17, Block C, McEvoy Addition, Sedgwick County, Kansas (OCA 735456) No Cost to City LH

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Hold Harmless Agreement with Fifteen Twenty Five, LLC (District I)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the hold harmless agreement.

Background: Fifteen Twenty Five LLC, the owner of 1525 East Douglas, desires to construct improvements on, over, or across a 16.5 foot sanitary sewer easement, being the vacated alley along the south side of the building. The encroachments are necessary to the operation of the building because the existing building is located at the property lines and has no other available land for the items listed on the agreement. The building is currently being remodeled.

Analysis: The agreement allows the City to be held harmless from any and all claims resulting from leaking, cave-in or failure of the public sewer line within the easement, and from claims resulting from replacement or upgrade of lines, manholes, and/or other City property in the easement. Fifteen Twenty Five LLC waives all rights of action in law arising out of the encroachments into the easement.

Financial Considerations: There are no financial considerations.

Goal Impact: The hold harmless agreement addresses the Ensure Efficient Infrastructure goal by maintaining and protecting the sanitary sewer system.

Legal Considerations: The Law Department has approved the agreement as to form.

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Hold harmless agreement.

HOLD HARMLESS AGREEMENT

THIS AGREEMENT made this 18th day of July, 2011, BY AND BETWEEN THE CITY OF WICHITA, KANSAS, hereinafter called "CITY" AND FIFTEEN TWENTY FIVE, LLC," hereinafter called "OWNER"

WITNESSETH:

Whereas, the public has been granted a utility easement 16.5 feet in width, being 16.5 feet south of Lot 209 except the W. 2.27 feet and all Lots 211, 213, 215, 217 on Douglas Avenue and north of Lot 1, except the W. 17.37 feet of said lot on Fannie Avenue (now Greenwood), easement being the vacated alley between said lot, as platted in Knights Addition.

and

Whereas, Party of the Second Part desires to occupy and construct improvements over the following described section of said easement, to wit; Beginning at the southeast corner of Lot 217, thence west 1.66' there will be an overflow drain; thence west 2.34' will be a security camera 19'-6" above grade; thence west 9.44' will be a downspout and a 5" underground rain leader that crosses the utility easement; thence west 17.01' will be an exterior light 23'-6" above grade; thence west 28.46' will be an underground sanitary sewer connection; thence west 1.94' will be an exterior light 23'-6" above grade; thence west 0.53' will be a downspout and a 5" underground rain leader that crosses the utility easement; thence west 0.61' will be the east edge of the entry canopy at 11'-4" above grade; thence west 3.55' is a surface-mounted bollard with ADA push button and security camera; thence west 0.59' is an exterior light at 8'-6" above grade; thence west 7.94' is an exterior light at 8'-6" above grade; thence west 4.1' is the west edge of the entry canopy at 11'-4" above grade; thence west 0.74' will be an exterior light 23'-6" above grade; thence west 16.45' will be a downspout and a 5" underground rain leader that crosses the utility easement; thence west 4.97' will be an underground water line that crosses the utility easement; thence west 5.35' will be a downspout and a 5" underground rain leader that crosses the utility easement; thence west 1.56' will be a surface-mounted bollard protecting a gas meter; thence west 0.58' will be an exterior light 23'-6" above grade; thence west 7.09' will be an underground electric service line that crosses the easement; thence west 1.0' will be an underground conduit for security equipment that crosses the utility easement; thence west 2.02' will a surface-mounted bollard protecting a condensing unit; thence west 0.3' will an underground water line for fire protection; thence west 1.69' will be an underground cold water return crossing the utility easement; thence west 0.62' will be a security camera 19'-6" above grade; thence west 0.14' will be a fire department connection on the building approximately 2'-6" above grade; thence west 0.24' will be an underground cold water supply rossing the utility easement; all shown on the attached **Exhibit "A,"** hereinafter referred to as **Tract "A"** (see attached Exhibit showing proposed encroachment and location).

NOW THEREFORE, in consideration of the premises and the several mutual and reciprocal promises of the parties, it is agreed as follows:

(1) The City hereby agrees to permit the Owner to occupy and construct improvements on, over and across the aforesaid utility easement, and specifically waives any and all rights of action in law or equity against Owner, arising out of the Owner's occupancy and encroachment on and over said easement.

(2) The Owner agrees that it will not begin construction of improvements, on, over and across the said easement without first obtaining the City's approval of any and all plans and specifications for such improvements.

(3) In the event that a sanitary sewer line, storm sewer line or other structure within the above described utility easement is planned or requires repair and/or maintenance and the same construction or repair is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A," the Owner shall be obligated to either (a) pay the costs to replace that portion of the structure within such encroachment; (b) remove the said encroachment and clear the said easement; or (c) pay the costs of tunneling under the encroachment to permit repair and/or maintenance of the structure.

(4) The Owner agrees to protect and indemnify the City and adjacent property owners against any increased cost that may accrue to them due to the necessity of construction of greater distance to avoid connecting beneath any improvements that may be built on, over and across said easement. In the event the Owner fails to provide such indemnification, the Owner agrees that the City may assess any cost incurred by it against the property of the Owner. Such assessment shall be in the manner described in K.S.A. 12-6a 17, as amended from time to time.

(5) The Owner agrees to indemnify and hold harmless the City from any and all claims for personal injury and/or property damage resulting from the leaking, cave-in or failure of that portion of said structure within Tract "A" and which injury and/or damage is caused by the presence of the encroachment into Tract "A". The Owner hereby releases the City from any and all claims that it might have for property damage caused by work performed by the City, or its employees, agents and contractors, in connection with the inspection, repair and/or maintenance of the structure within the above described easement.

(6) This agreement may be terminated by the City upon failure of the Owner to comply with all of the terms of this agreement.

(7) The provisions contained herein are to be construed as covenants running with the land and may be enforced against any titleholder of the within described premises, so long as the structure contemplated by this agreement is in existence.

(8) This document creates a temporary, non-exclusive interest in real property and is not a construction contract governed by K.S.A. 16-121 as amended.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names the day and year first above written.

William B. Livingston, member

Fifteen Twenty Five, LLC

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this 18th day of July, 2011, before me, a Notary Public, in and fore said county and state, came William B. Livingston, to me personally known to be the same person(s) who executed the within and foregoing instrument and duly acknowledged the execution of the same as the authorized act and deed of the Corporation.

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

Carol E. Wooten
Notary Public
My Commission Expires: March 4, 2015

CAROL E. WOOTEN
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 3-4-15

CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor
City

ATTEST:

_____
City Clerk

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this_____day of _____, 2011, before me, a Notary Public, in and fore said county and state, came, Carl Brewer, Mayor of the City of Wichita, Kansas, to me personally known to be the same person who executed the within and foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said City.

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

_____
Notary Public
My Commission Expires: _____

Approved as to Form

Director of Law

1525 E. Douglas

(Located on a portion of Lot 209, and Lots 211, 213, 215 & 217 on Douglas Avenue, Knights Addition)

BUILDING

S89°55'40"E 125.18'

Existing 21" Sanitary Sewer Line

(vacated alley R/W)

3" PE Kansas Gas Service Gas Line

S89°55'40"E 127.46'

(a portion of Lot 1 on Fannie Avenue (now Greenwood), Knights Addition)

Greenwood (was Fannie)

Kansas Gas Service Line

GU

OWNER SUPPLIED BOLLARDS

34"DIA. X1/2" STL. BASE W/ (4) 3/8"ø ADHESIVE ANCHORS 6" INTO SLAB

4.5" NONSHRINK GROUT SPACE

EXIST. CONC. APRON SLAB

SURFACE MOUNTED BOLLARD USED IN UTILITY EASEMENT

1 3/4"=1'-0"

A **EXHIBIT A**

GLMV Architecture

429 E. Emporia, Wichita, KS 67202
Tel: (316) 262-9367

125 E. Waco/Douglas, Wichita, KS 67202
Tel: (316) 262-9451

www.glmv.com

© 2011 GLMV Architecture, Inc.

5214

GLMV Architecture

1525 E. Douglas
Wichita, Kansas

Mark	Date	Description

EXHIBIT A

Job No. 100998.000	EA101
Date 07/15/11	
Drawn LEC	
Checked	Sheet 1 of 1

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Agreement for Design Services for Water systems, Sanitary Sewer, Storm Water and Paving Improvements in Berkeley Square 1st Addition (north of 13th Street North, west of Greenwich) (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreement.

Background: On March 8, 2011, the City Council approved petitions for water system, sanitary sewer, storm water and paving improvements in Berkley Square 1st Addition.

Analysis: The proposed agreement between the City and MKEC Engineering Consultants, Inc. (MKEC) provides for the design of the improvements. In accordance with Administrative Regulation 1.10, staff recommends that MKEC be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to MKEC will be on a lump sum basis of $91,000 and will be paid by special assessments.

Goal Impact: This agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of public improvements in a new subdivision.

Legal Considerations: The agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MKEC ENGINEERING CONSULTANTS, INC.

for

BERKELEY SQUARE 1ST ADDITION

THIS AGREEMENT, made this _____ day of _____, 2011, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and MKEC ENGINEERING CONSULTANTS, INC., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90513 serving Lots 1 through 4, Block 1, Berkeley Square 1st Addition & Unplatted Tracts. Lot 2, Block 1 of Home Bank & Trust Addition, (north of 13th, west of Greenwich) (Project No. 448 90513).

LATERAL 168, WAR INDUSTRIES SEWER serving Lots 1 through 4, Block 1, Berkeley Square 1st Addition & Unplatted Tracts. Lot 2, Block 1 of Home Bank & Trust Addition, (north of 13th, west of Greenwich) (Project No. 468 84731).

STORM WATER SEWER NO. 660 serving Lots 1 through 4, Block 1, Berkeley Square 1st Addition & Unplatted Tracts. Lot 2, Block 1 of Home Bank & Trust Addition, (north of 13th, west of Greenwich) (Project No. 468 84732).

BERKELEY SQUARE PARKWAY, from east edge of Chesterfield to the west edge of Greenwich Road, Berkeley Square 1st Addition (north of 13th, west of Greenwich) (Project No. 472 84975).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Hampton Square 2nd Addition and perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project

Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 90513	$ 8,500.00
Project No. 468 84731	$ 7,800.00
Project No. 468 84732	$ 42,600.00
Project No. 472 84975	$ 32,100.00
TOTAL	**$91,000.00**

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
   1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
   2. Additional design services not covered by the scope of this agreement.
   3. Construction staking, material testing, inspection and administration related to the PROJECT.
   4. A major change in the scope of services for the PROJECT.

   If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____

Carl Brewer, Mayor

SEAL:

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANT, INC.

_____

(Name & Title)

ATTEST:

_____

EXHIBIT "A"

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
    a. Plan Development for the water improvements by 120 days from notice to proceed. (Project No. 448 90513).
    b. Plan Development for the sewer improvements by 120 days from notice to proceed. (Project No. 468 84731).
    c. Plan Development for the storm water improvements by 120 days from notice to proceed. (Project No. 468 84732).
    d. Plan Development for the paving improvements by 120 days from notice to proceed. (Project No. 472 84975).

Attachment No. 1 to Exhibit "A" – Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Environmental Services
1900 E. 9th St. North
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Agreement for Design Services for Storm Water Drain No. 378 to serve Ridge Port 5th Addition (north of 29th Street North, east of Ridge) (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreement.

Background: On June 7, 2011, the City Council approved a petition for storm water drain improvements in Ridge Port 5th Addition.

Analysis: The proposed agreement between the City and Baughman Company, P.A. (Baughman) provides for the design of the improvements. In accordance with Administrative Regulation 1.10, staff recommends that Baughman be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of $16,800 and will be paid by special assessments.

Goal Impact: This agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of public improvements in a new subdivision.

Legal Considerations: The agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

STORM WATER DRAIN NO. 378

THIS AGREEMENT, made this _____ day of _____, 2011, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

STORM WATER DRAIN NO. 378 serving Lots 1 through 55, Block 4; Lots 9 through 25, Block 5; Lots 1 through 26, Block 6; Lots 29 through 31, Block 6; Lots 33 through 51, Block 6 and various Parcels of Ridge Port Addition; Lots 1 through 3, Block A; Lots 1 through 23, Block B; and various Parcels of Ridge Port 3rd & 4th Additions; Lots 3 through 5, Block A; Lots 10 through 13, Block A; and various Parcels of Ridge Port 5th Addition. (north of 29th St North, east of Ridge) (Project No. 468-84769).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Hampton Square 2nd Addition and perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. <u>PAYMENT PROVISIONS</u>

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 468 84769	$16,800.00
TOTAL	$16,800.00

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
   1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
   2. Additional design services not covered by the scope of this agreement.
   3. Construction staking, material testing, inspection and administration related to the PROJECT.
   4. A major change in the scope of services for the PROJECT.

   If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____

Carl Brewer, Mayor

SEAL:

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

_____
(Name & Title)

ATTEST:

_____

EXHIBIT "A"

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
    a. Plan Development for the storm water improvements by <u>September 5, 2011.</u> (Project No. 468 84769).

Attachment No. 1 to Exhibit "A" – Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Environmental Services
1900 E. 9th St. North
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

CITY OF WICHITA
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of 14528 West Kellogg for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. The properties consist of single-family residences, commercial properties, vacant land, and billboards. The improvements located at 14528 West Kellogg are removed from the proposed acquisition area however; there is mature landscaping and a fence within the 78 foot strip of land. The total area being acquired is 6,401 square feet. Though improved with a residence, the property is zoned commercial.

Analysis: The owner rejected the appraised amount of $11,200 ($8,575 or $1.40 per square foot for the land plus $2,625 trees and fencing in the acquisition area); and countered at $22,400 or $3.50 per square foot, which approximates the value of undeveloped commercially zoned land. After negotiation, the owner agreed to accept $18,000. This represents $15,375 or $2.40 per square foot for the land (approximately the average of the value of commercially zoned land and the value of residential land) plus the $2,625 for damages.

Financial Considerations: A budget of $18,500 is requested. This includes $18,000 for the acquisition and $500 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, real estate purchase agreement and tract map.

PROJECT: West Kellogg **DATE:** February 7, 2011

COUNTY: Sedgwick **TRACT NO.:** 0018

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 23rd day of June, 2011, by and between

Doris M. Rishel and Howard A. Rishel, Trustees of the Doris M. Rishel Trust under date of Sept. 14, 2000

14528 W Kellogg, Wichita, KS 67235
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
6,401 (Sq. Ft.) $ 15,375.00
Temporary Easement for construction:
N/A (Sq. Ft.) $N/A

Improvement & Buildings acquired with right of way:
Trees, landscaping, fence $ 2,625.00

TOTAL: $ 18,0000

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: Doris M. Rishel
Doris M. Rishel, Trustee

By: Howard A. Rishel
Howard A. Rishel, Trustee

THE CITY OF WICHITA

By: _____
Carl Brewer, Mayor

ATTEST:

By: _____
Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:
Doris M. Rishel and Howard A. Rishel, Trustees of the Doris M. Rishel Trust under date of Sept. 14, 2000

If mortgage or other liens, show names of holder:
Mortgage dated February 14, 1989 Filed February 23, 1989nas Film 1027 Page 984
Mortgage dated August 23, 1994 Filed September 15, 1994, as Film 1475 Page 1084

REMARKS:

PIN/APN **147260340000100**
Security Title File Number **2002230**

APPROVED TO FORM:

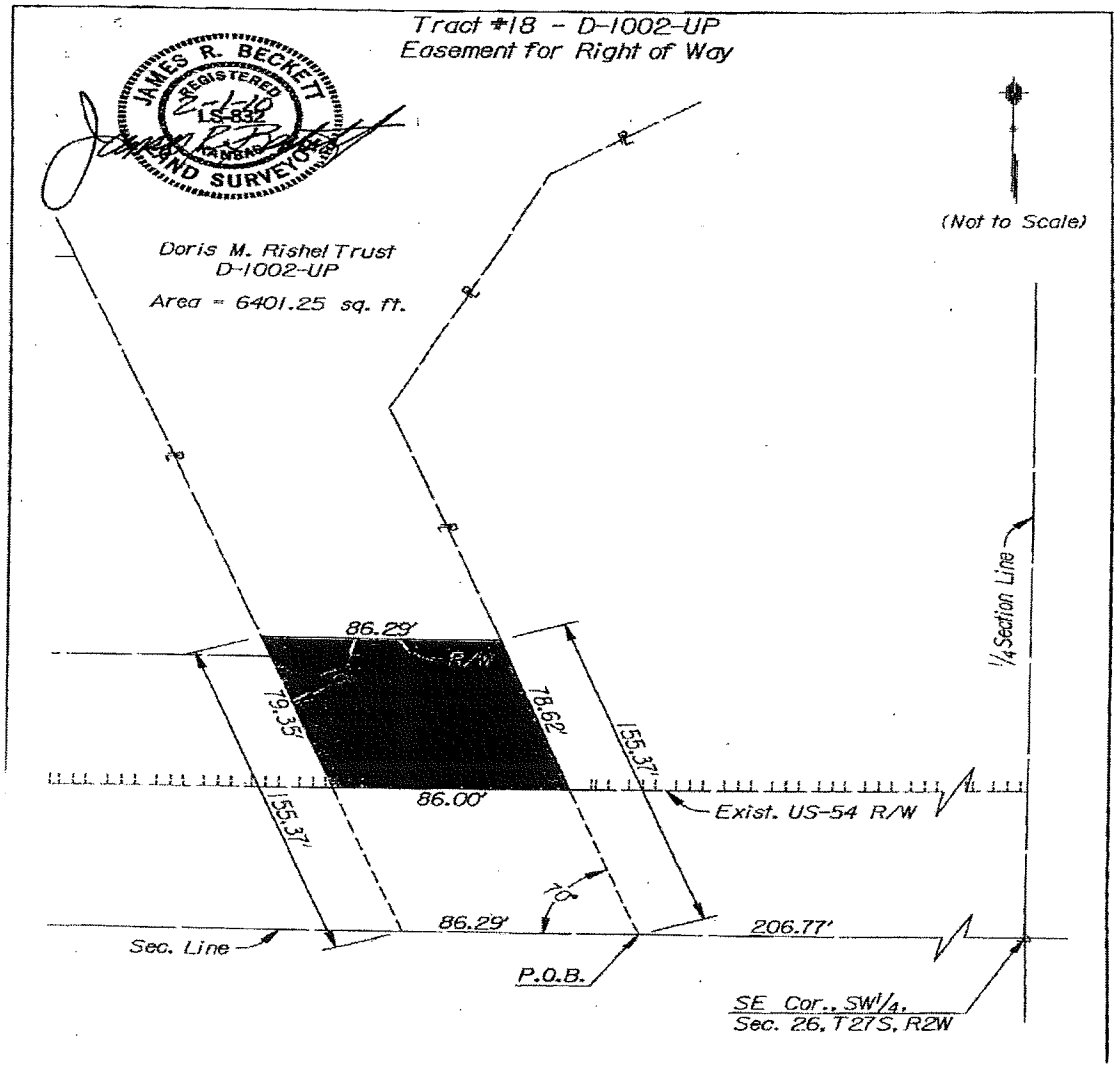
_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Joe Vorstenbosch, Project Manager

Tract #18 – D-1002-UP
Doris M. Rishel Trust
Easement for Right-of-Way

Beginning on the South line of the Southwest Quarter of Section 26, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas and 206.77 feet West of the Southeast Corner of said Southwest Quarter; thence Northwesterly at an angle of 70 degrees to the right from said South line a distance of 155.37 feet; thence West, parallel with said South line, a distance of 86.29 feet; thence Southeasterly at an interior angle of 70 degrees a distance of 155.37 feet to a point on said South line; thence East 86.29 feet to the point of beginning, containing 6401.25 square feet more or less, exclusive of existing right-of-way.



14528 W Kellogg

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of 15100 West Kellogg for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. The properties consist of single-family residences, commercial properties, vacant land, and billboards. The improvements located at 15100 West Kellogg consist of a 1,500 square foot single-family residence on a half acre lot. The residence itself is in the proposed road right-of-way thereby making it necessary to acquire the property in its entirety.

Analysis: The owner agreed to accept the appraised offer of $120,000. The purchase price of $151,800 includes $31,800 the owner is eligible for as relocation and reestablishment benefits. The relocation and reestablishment figure is based on $20,000 as the replacement housing supplement, $6,000 for moving, and $5,800 as the estimated interest rate differential.

Financial Considerations: A budget of $161,300 is requested. This includes $151,800 for the acquisition, $8,000 for demolition, and $1,500 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, road right-of-way easement and tract map.

PROJECT: West Kellogg **DATE:** _____

COUNTY: Sedgwick **TRACT NO.:** 12

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 15 day of July, 2011, by and between

Michael A. Pistora, a single person

15100 W. US Highway 54, Wichita, KS 67230
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
18,731 (Sq. Ft.) $ 151,800.00
Temporary Easement for construction:
N/A (Sq. Ft.) $ N/A

Improvement & Buildings acquired with right of way:
Single Family Residence.

TOTAL: $ 151,800.00

It is agreed to by the parties hereto that the consideration stated herein includes all relocation benefits the seller is entitled to under K.S.A. 26-518, including the replacement housing payment and moving expenses.

The landowner(s) agree to vacate and surrender possession of the property within 30 days from the date of closing.

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out. It is understood and agreed that the above stated consideration for said real estate is contingent upon approval by the Wichita City Council.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: _____
Michael A. Pistora

THE CITY OF WICHITA

By: _____
Mayor

ATTEST:

By: _____
City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

Michael A. Pistora

If mortgage or other liens, show names of holders:
Wells Fargo Bank, N.A.

REMARKS:

PIN/APN 147260330000500
Security Title File Number 2002208

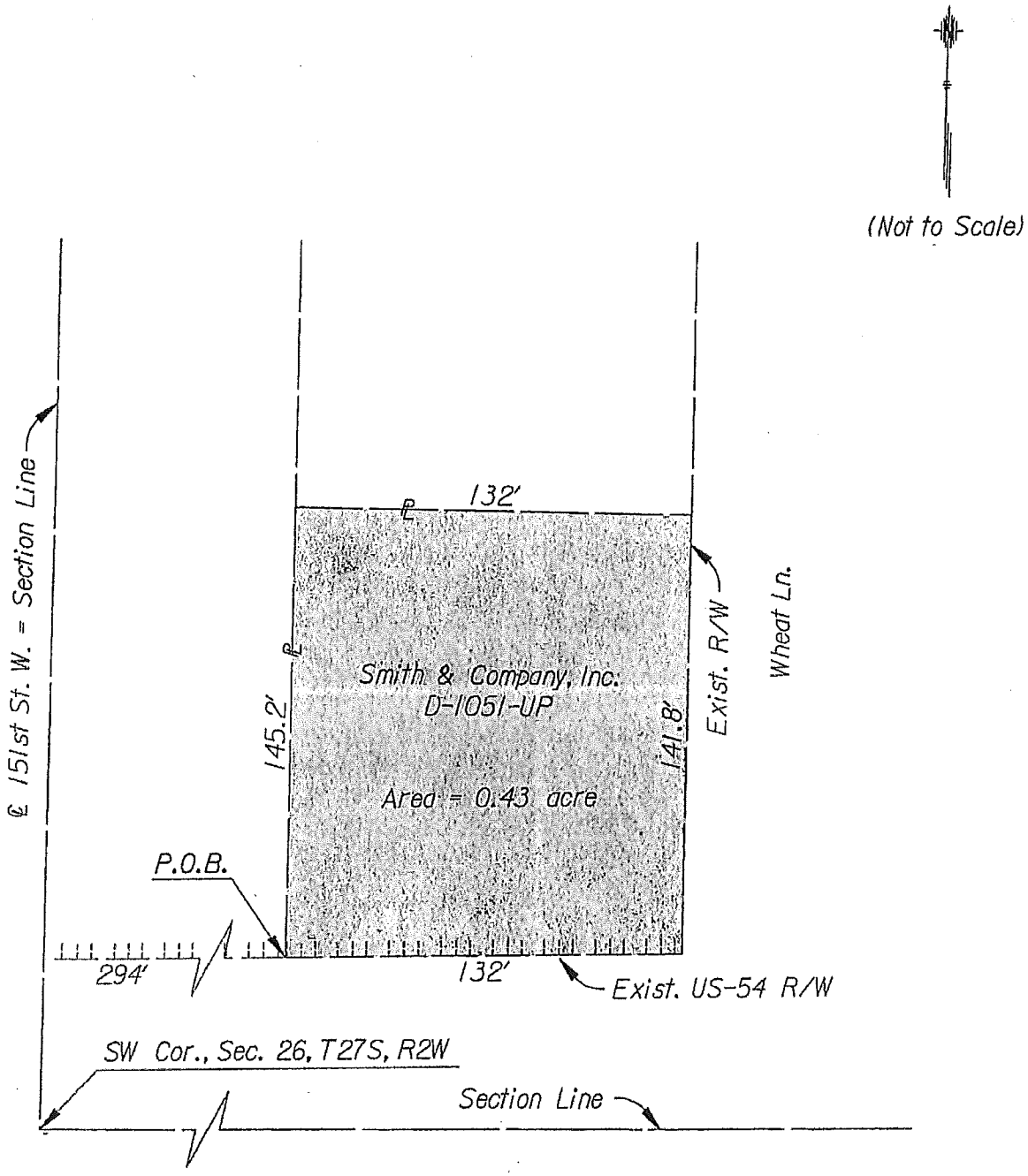
APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Joe Vorstenbosch, Project Manager

Tract #12A - D-1051-UP



JAMES R. BECKETT
REGISTERED
LS-832
KANSAS
LAND SURVEYOR

Tract #12A – D-1051-UP
Smith & Company, Inc.

That part of the Southwest Quarter of Section 26, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at a point 294 feet East of the West line of said Southwest Quarter, at a point on the North line of U.S. Highway 54; thence East along said North highway right-of-way line a distance of 132 feet; thence North, parallel with said West line, a distance of 141.8 feet; thence Westerly for a distance of 132 feet more or less; thence South, parallel with said West line, a distance of 145.2 feet, to the point of beginning, containing 0.43 acres more or less.

JAMES R. BECKETT
REGISTERED
LS-832
KANSAS
LAND SURVEYOR

15100 S Wheat Ln (2)

D-1051-UP

Identified Features
Selected Features
Property Parcels
Roads
State Highway
US Federal Highway
Interstate
KTA
Arterial
Collector
Minor
Ramp
Railroads

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 11771 West Kellogg for the West Kellogg for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. The properties consist of single-family residences, commercial properties, vacant land, and billboards. There are two parcels at 11771 West Kellogg which are impacted by the proposed project. This property is commonly known as the Mel Hambelton auto dealership. A fifteen foot wide strip of land is required for road right-of-way, with complete access control. The acquisition area consists of 2,680 square feet. A temporary construction easement is also required at the southwestern portion of the property during construction. There are two earthen mounds for displaying vehicles within the acquisition area. These mounds will have to be relocated.

Analysis: The owner rejected the appraised value of $24,200 consisting $22,780 ($8.50 per square foot) for the land, $1,320 ($2.20 per square foot) for the temporary easement, and $100 for access control. No estimate to remove the mounds was included in the offer. Through negotiation, the owner agreed to accept $40,000 which consists of $29,480 ($11.00 per square feet) for the land, $2,376 ($4.00 per square foot) for the temporary easement, $100 for the access control, and $8,044 to remove the mounds. Based on estimates, the cost to move the mounds appears, and this would relieve the City of any risk associated with removing and replacing them.

Financial Considerations: A budget of $41,000 is requested. This includes $40,000 for the acquisition and $1,000 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

Legal Considerations: The Law Department has approved the real estate purchase agreement as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Real estate purchase agreement and tract maps.

PROJECT: West Kellogg **DATE:** January 20, 2011

COUNTY: Sedgwick **TRACT NO.:** 0042 & 0043

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED WITH ACCESS CONTROL AND TEMPORARY EASEMENT

THIS AGREEMENT Made and entered into this 1 day of July, 2011, by and between

Mel Hambelton Real Estate, L.L.C.

11771 W. Kellogg, Wichita, KS 67209
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed with Access Control and Temporary Easement to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "Tract # 42A" "Tract # 42B" "Tract # 42 C" "Tract # 43" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

In addition to the above Mel Hambelton Real Estate, LLC agrees to remove the Two Earthen Mounds used to show Vehicles, located within the Right of Way being acquired Exhibit "Tract # 42A" , 30 days from date of Closing.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
2,680 with access control (Acres) $$29,480.00
Temporary Easement for construction:
600 (Sq. Ft.) $2,376.00

Improvement & Buildings acquired with right of way:
2 earthen Mounds, to shoe Vehicles $8,144.00

TOTAL: $ **40,000.00**

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

Mel Hambelton Real Estate, L.L.C.

By: POA Mel Hambelton

By:

THE CITY OF WICHITA

By:
Carl Brewer, Mayor

ATTEST:

By:
Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:
Mel Hambelton Real Estate, L.L.C.

If mortgage or other liens, show names of holders: **Central Bank & Trust**

REMARKS:

PIN/APN 139310220100400

Security Title File Number: 2002309

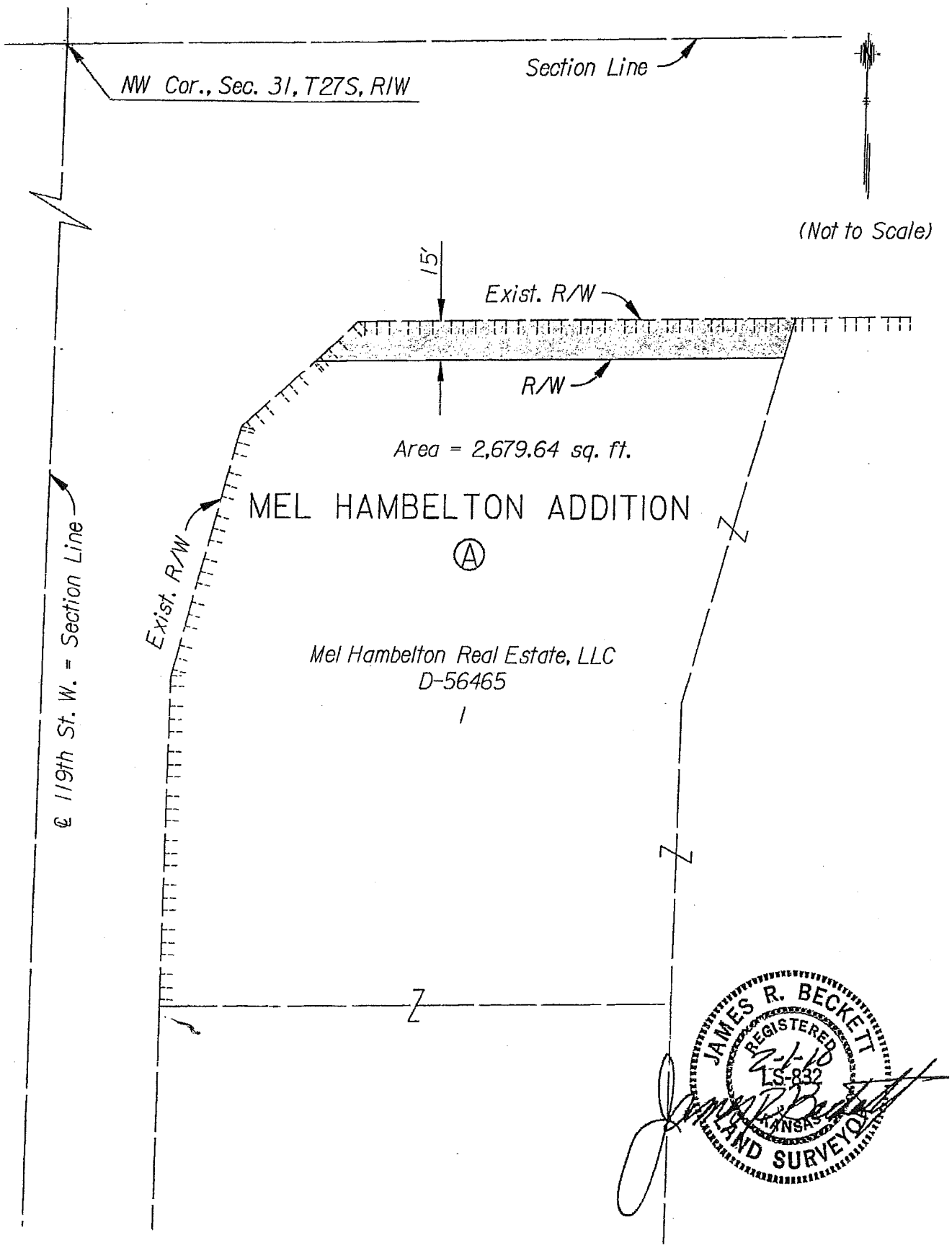
APPROVED TO FORM:

Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

Joseph J. Vorstenbosch, Project Manager

Tract #42A - D-56465
Easement for Right of Way

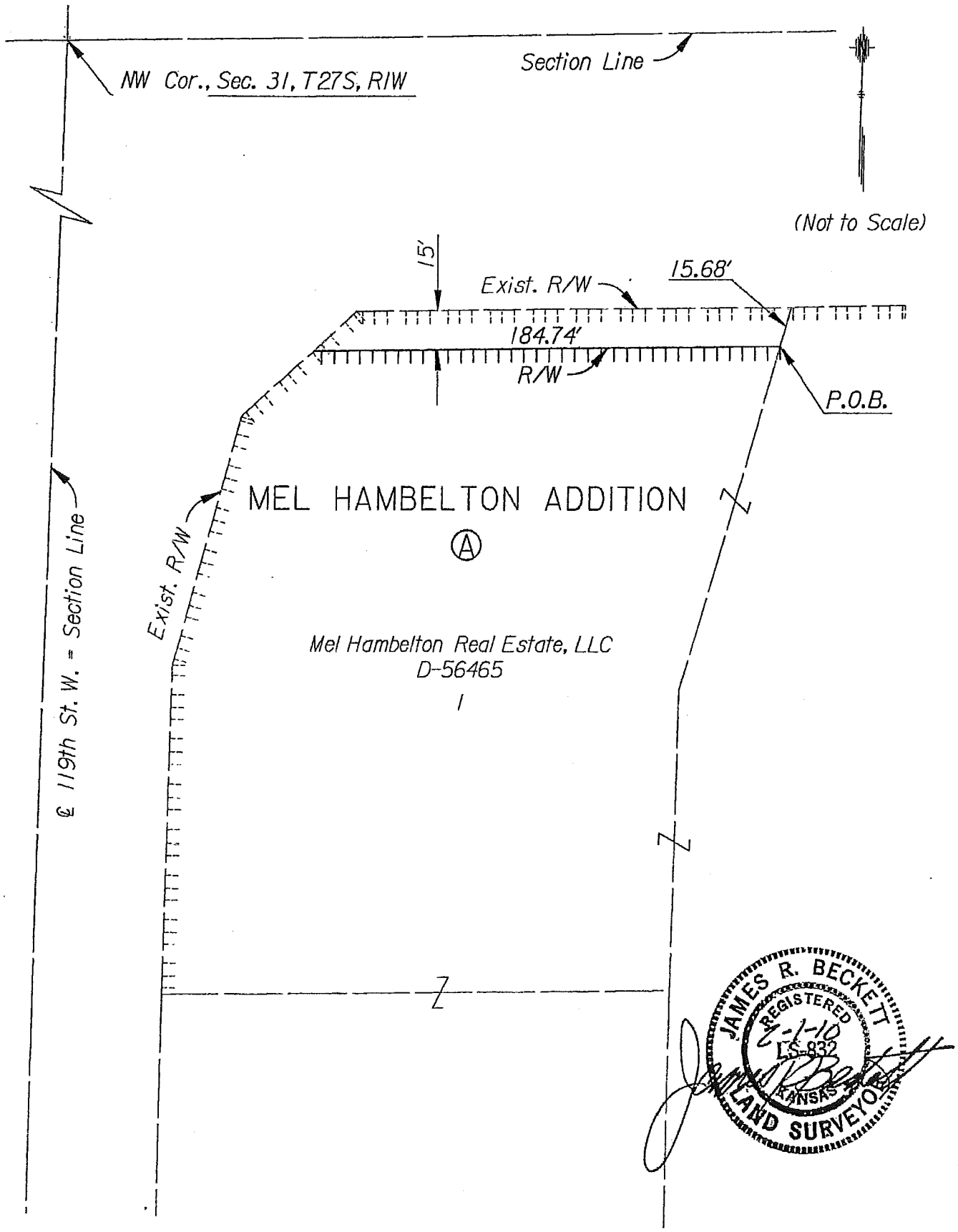


Tract #42A – D-56465
Mel Hambelton Real Estate, LLC
Easement for Right-of-way

The North 15 feet of Lot 1, Block A, Mel Hambelton Addition to Sedgwick County, Kansas, containing 2,679.64 square feet more or less.

JAMES R. BECKETT
REGISTERED
2-1-10
LS-832
KANSAS
LAND SURVEYOR

Tract #42B - D-56465
All Right of Access

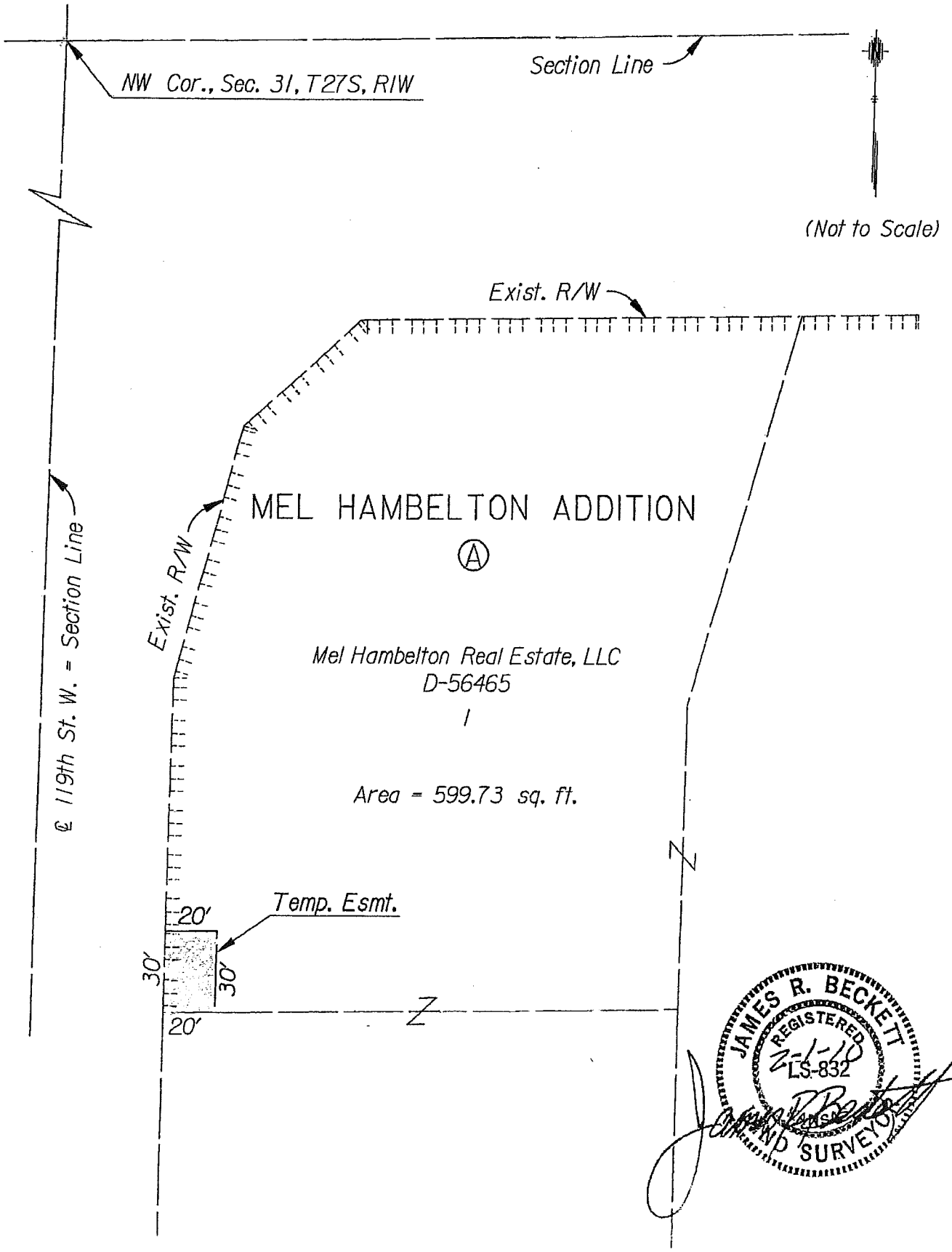


Tract #42B – D-56465
Mel Hambelton Real Estate, LLC
All Right of Access

All right of access to and from the abutting public roadway over and across a line in Lot 1, Block A, Mel Hambelton Addition to Sedgwick County, Kansas, described as follows: Commencing from the Northeast Corner of said Lot 1; thence Southwesterly along the East line of said Lot 1 a distance of 15.68' to a point 15' South of the North line of said Lot 1 to the point of beginning; FIRST COURSE, thence West, parallel with said North line a distance of 184.74 feet to a point on the West line of said Lot 1.

JAMES R. BECKETT
REGISTERED
2-1-18
LS-832
KANSAS
LAND SURVEYOR

Tract #42C - D-56465
Temporary Construction Easement

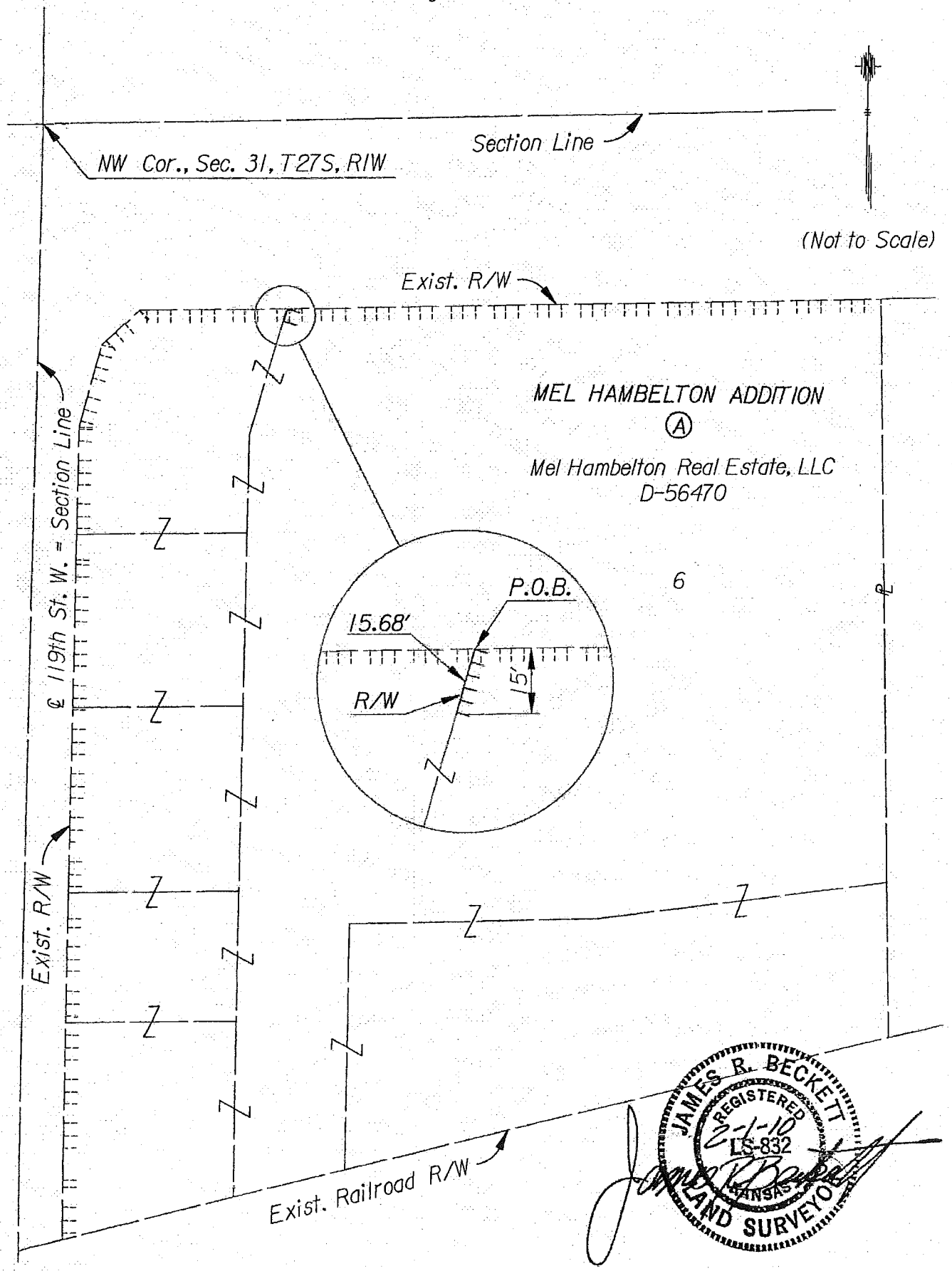


Tract #42C – D-56465
Mel Hambelton Real Estate, LLC
Temporary Construction Easement

Beginning at the Southwest Corner of Lot 1, Block A, Mel Hambelton Addition to Sedgwick County, Kansas; thence East along the South line of said Lot 1 a distance of 20 feet; thence North, parallel with the West line of said Lot 1, a distance of 30 feet; thence West, parallel with said South line, a distance of 20 feet to a point on said West line; thence South along said West line a distance of 30 feet to the point of beginning, containing 599.73 square feet more or less.

JAMES R. BECKETT
REGISTERED
2-1-10
LS-832
KANSAS
LAND SURVEYOR

Tract #43 - D-56470
All Right of Access



Tract #43 – D-56470
Mel Hambelton Real Estate, LLC
All Right of Access

All right of access to and from the abutting public roadway over and across a line in Lot 6, Block A, Mel Hambelton Addition to Sedgwick County, Kansas, described as follows: FIRST COURSE, Beginning at the Northwest Corner of said Lot 6; thence Southwesterly along the West line of said Lot 6 a distance of 15.68' to a point 15' South of the North line of said Lot 6.

JAMES R. BECKETT
REGISTERED
2-1-10
LS-832
KANSAS
LAND SURVEYOR

CITY OF WICHITA
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 1537 South Auburn Hills Street for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. The properties consist of single-family residences, commercial properties, vacant land, and billboards. The property located at 1537 South Auburn Hills Street is a long, narrow strip of land that runs north, northwesterly from Kellogg and adjacent to Auburn Hills Street. The strip of land is approximately ten feet wide and consists of 6,573 square feet strip. The City requires the south 65 feet of the strip, or 650 square feet.

Analysis: The owner agreed to accept the appraised, established minimum offer of $500. The proposed acquisition area does not impact the remainder of the site.

Financial Considerations: A budget of $670 is requested. This includes $500 for the acquisition and $170 for the title work and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the budget; 2) Approve the real estate purchase agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, real estate agreement, and tract map.

PROJECT: West Kellogg **DATE:** February 1, 2011

COUNTY: Sedgwick **TRACT NO.:** 0023

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 16 day of MAR, 2011, by and between

Auburn Hills 13th Homeowners' Association

PO Box 72337, Wichita, KS 67275
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
650 (Sq. Ft.) $ 500.00
Temporary Easement for construction:
N/A (Sq. Ft.) $N/A

Improvement & Buildings acquired with right of way:
None

TOTAL: $ 500.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: _____
RYAN NALL, PRESIDENT

By: _____
DAVID MONTAGUE, SECRETARY

THE CITY OF WICHITA

By: _____
Carl Brewer, Mayor

ATTEST:

By: _____
Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

_____

If mortgage or other liens, show names of holders:

_____

REMARKS:

PIN/APN
Security Title File Number

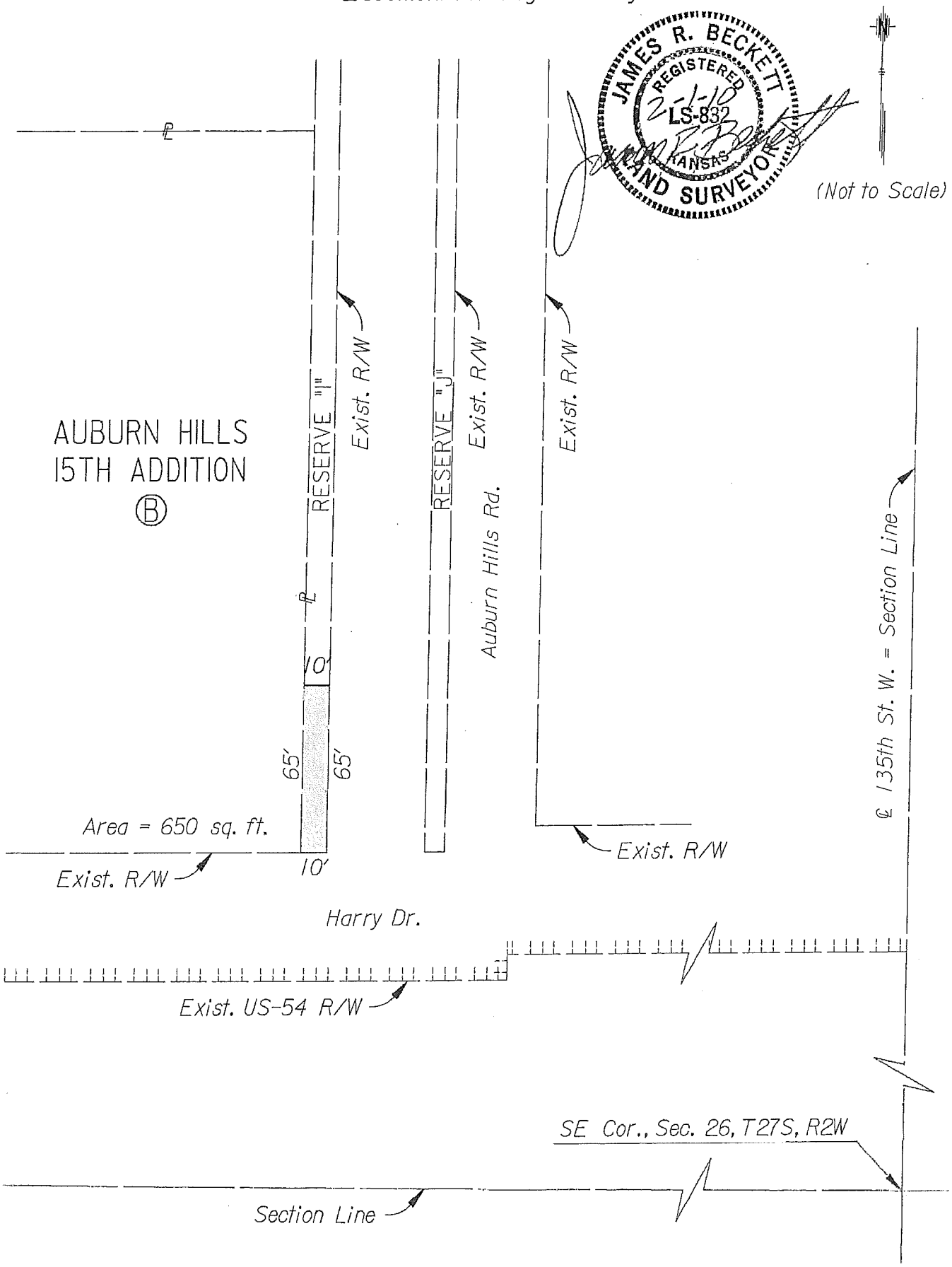
APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Joe Vorstenbosch, Project Manager

Tract #23 - D-59346
Easement for Right of Way



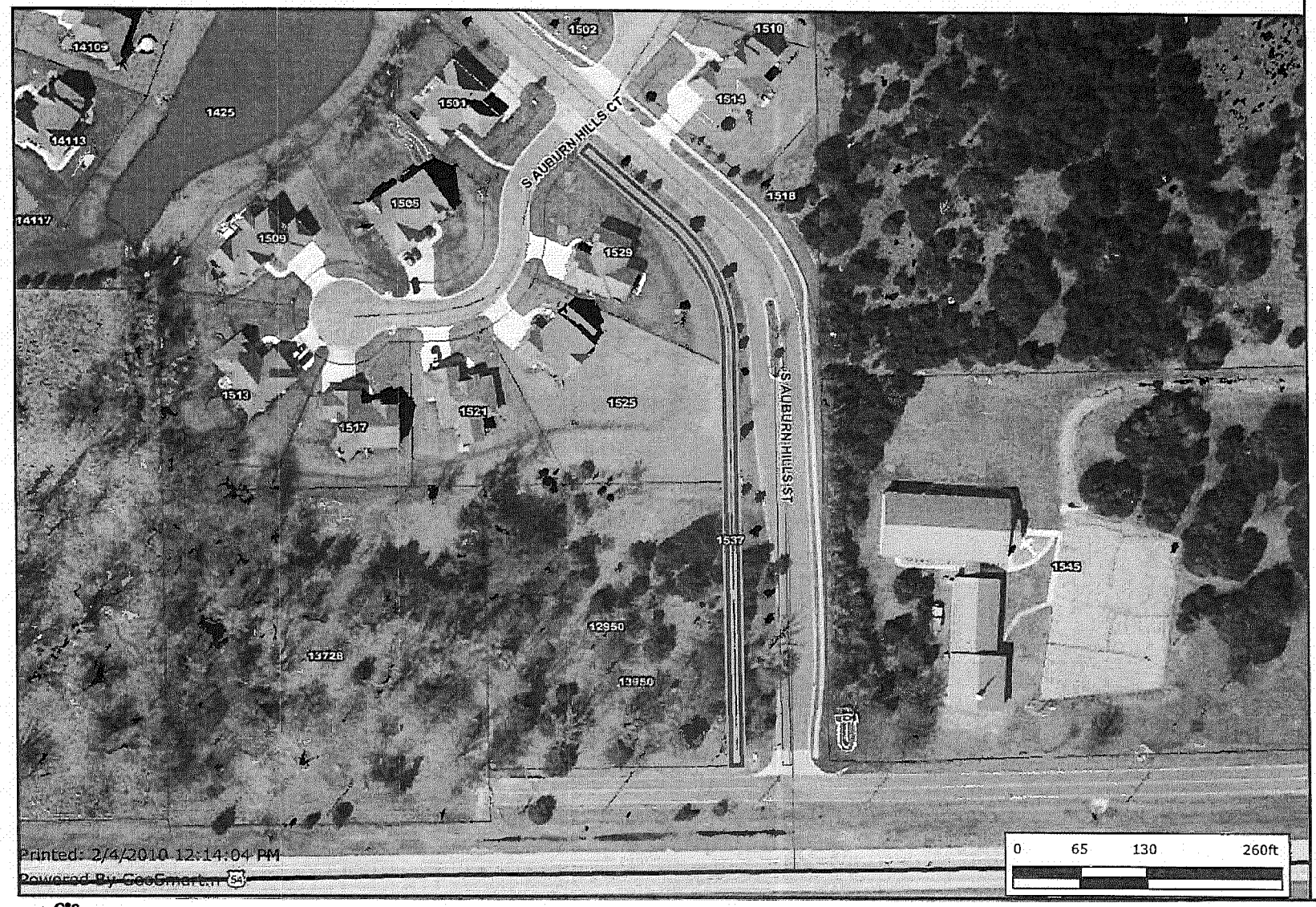
Tract #23 – D-59346
Auburn Hills 13th Homeowners' Association
Easement for Right-of-Way

The South 65 feet of Reserve "I", Auburn Hills 15th Addition to Sedgwick County, Kansas, containing 650 square feet more or less.

JAMES R. BECKETT
REGISTERED
LS-832
KANSAS
LAND SURVEYOR

Auburn Hills 13th HOA

D-59346



- Identified Features
- Selected Features
- Property Parcels

Roads

- State Highway
- US Federal Highway
- Interstate
- KTA
- Arterial
- Collector
- Minor
- Ramp

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CITY OF WICHITA
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 1751 South 151st Street West for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. The properties consist of single-family residences, commercial properties, vacant land, and billboards. A partial acquisition for road right-of-way is required from 1751 South 151st Street West. The 0.91-acre site is zoned single-family and improved with a 1040 a square foot residence built in 1964. The east 50 feet of the subject property is required for road right-of-way. This area consists of 5,400 square feet. The improvements are removed from the acquisition area however; mature landscaping will be impacted.

Analysis: The owner rejected the appraised offer of $8,400; an amount comprised of $4,000 for the land ($0.75 per square foot) and $4,400 for the loss of the mature landscaping. The owner countered at $12,000 citing additional compensation for the landscaping. Through negotiation, the owner agreed to accept $11,000, or $0.75 per square foot for the land and $7,000 for the landscaping. The mature landscaping that will be lost as a result of the project cannot be replaced however; the additional compensation will allow the owner to add more landscaping and create a buffer between the improvements and the roadway.

Financial Considerations: A budget of $12,500 is requested. This includes $11,000 for the acquisition and $1,500 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, road right-of-way easement and tract map.

PROJECT: West Kellogg **DATE:** January 20, 2011

COUNTY: Sedgwick **TRACT NO.:** 0034

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this _____ day of _____, 2011, by and between

Cynthia Bachtenkircher, Trustee of the Cynthia Bachtenkircher Living Trust, under Living Trust Agreement dated November 12,2009

1751 S 151st St. W, Goddard, KS 67052
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
5,400 (Sq. Ft.) $ 4,400.00
Temporary Easement for construction:
N/A (Sq. Ft.) $ N/A

Improvement & Buildings acquired with right of way:
Trees $ 6,600.00

TOTAL: $ 11,000.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: Cynthia Bachtenkircher
Cynthia Bachtenkircher, Trustee of the Cynthia Bachtenkircher Living Trust, under living Trust Agreement dated November 12, 2009

THE CITY OF WICHITA

By: _____
Carl Brewer, Mayor

ATTEST:

By: _____
Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:
Cynthia Bachtenkircher, Trustee of the Cynthia Bachtenkircher Living Trust, under living Trust Agreement dated November 12, 2009

If mortgage or other liens, show names of holders:
None

REMARKS:

PIN/APN 148340110000400
Security Title File Number 20002286

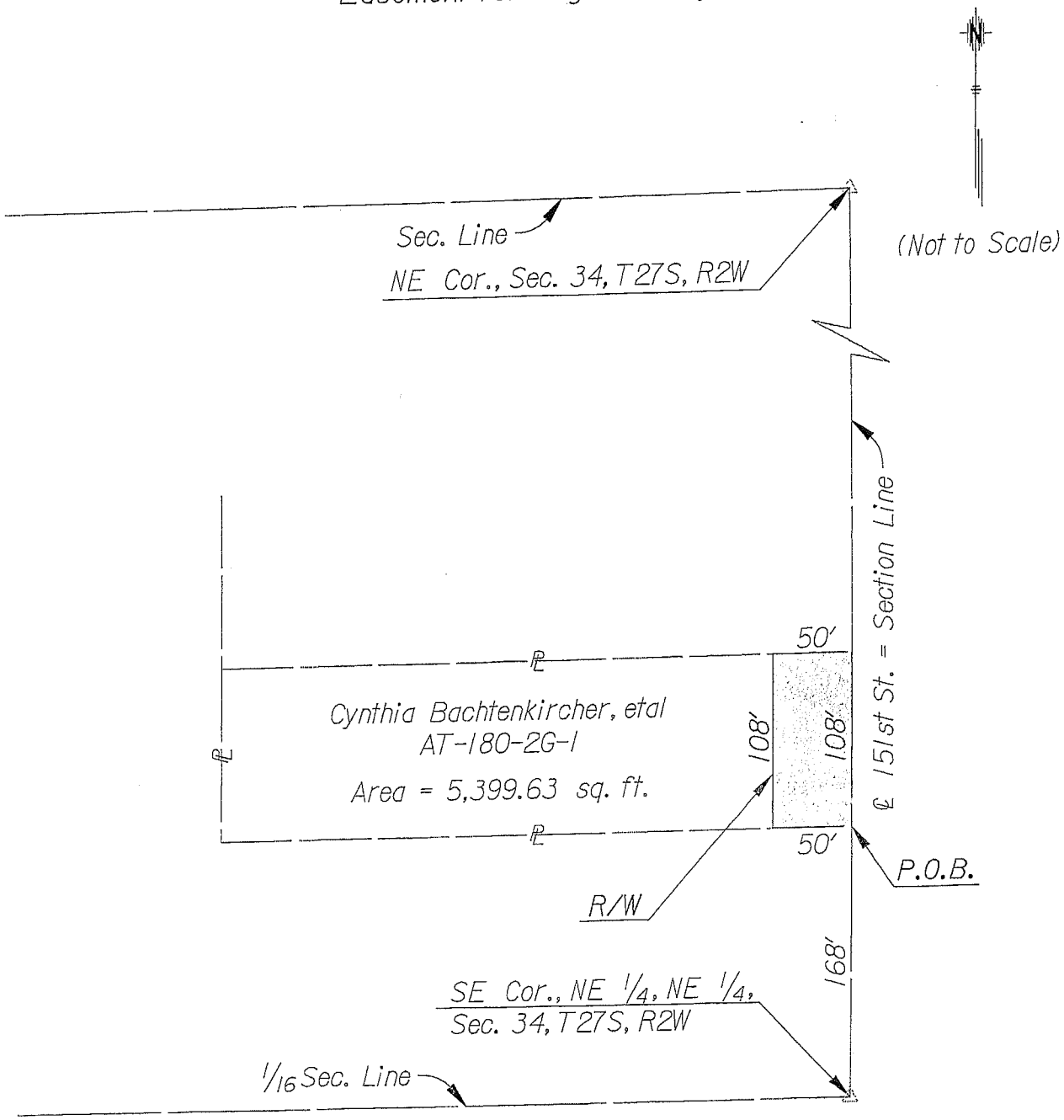
APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Joe Vorstenbosch, Project Manager

Tract #34 - AT-180-2G-1
Easement for Right of Way



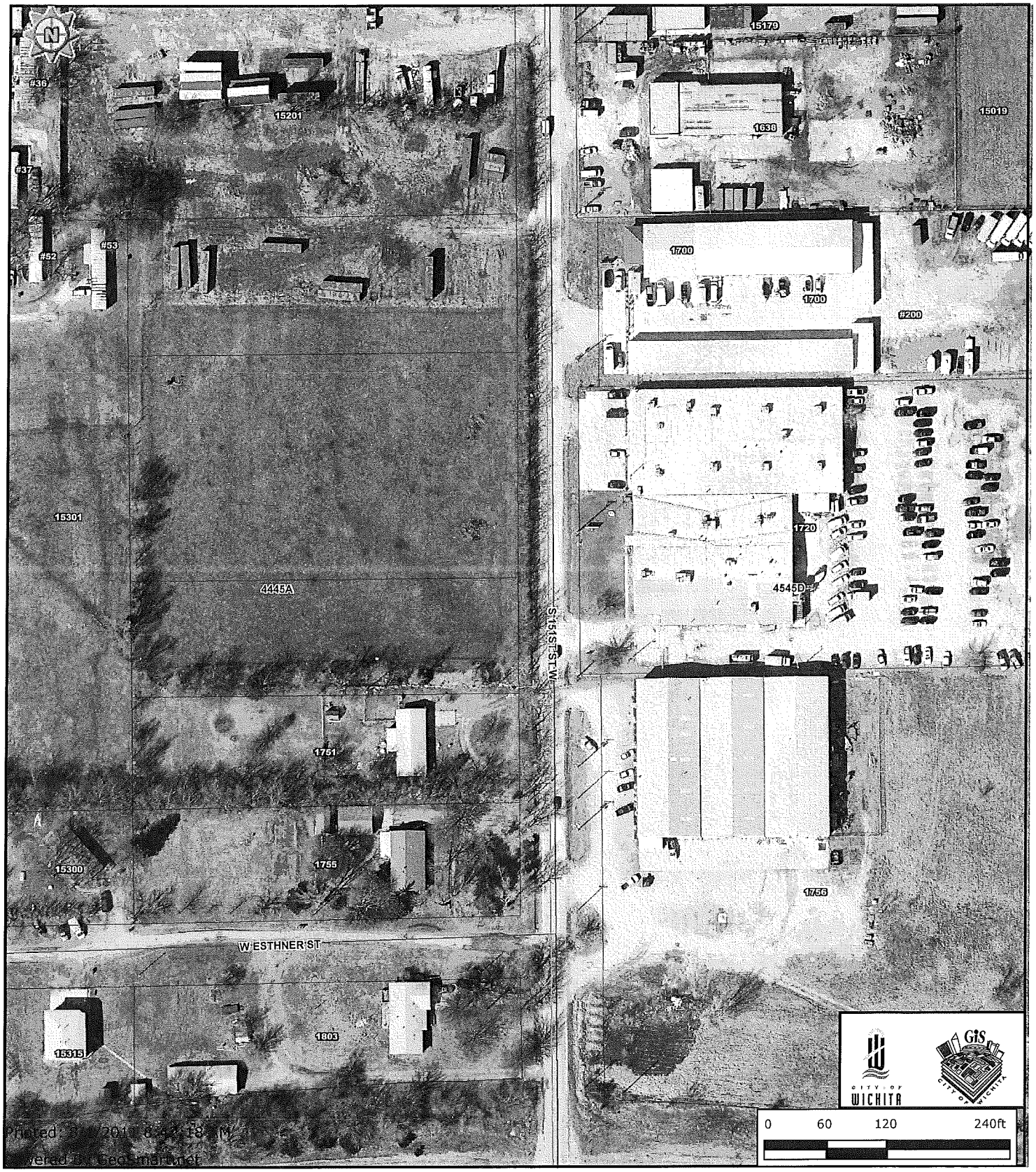
JAMES R. BECKETT
REGISTERED
LS-832
KANSAS
LAND SURVEYOR

Tract #34 – AT-180-2G-1
Cynthia Bachtenkircher, Etal.
Easement for Right-of-Way

A tract beginning 168 feet North of the Southeast Corner of the Northeast Quarter of the Northeast Quarter of Section 34, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas; thence West, parallel with the North line of said Northeast Quarter, a distance of 50 feet thence North, parallel with the East line of said Northeast Quarter, a distance of 108 feet; thence East, parallel with said North line, a distance of 50 feet to a point on said East line; thence South along said East line a distance of 108 feet to the point of beginning, containing 5,399.63 square feet more or less.

JAMES R. BECKETT
REGISTERED
2-5-10
LS-832
KANSAS
LAND SURVEYOR

1751 S 151st St W



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Agenda Item No. II-7f

CITY OF WICHITA
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 1606 South Broadway for the Harry and Broadway Intersection Improvement Project (Districts I and III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: The City Council has approved the design concept and proposed project to improve the intersection of Harry and Broadway. The project will require the acquisition of all or portions of eleven tracts. The improvements include adding left turn lanes, improving the sidewalks, improving the storm sewer system and landscaping. The property at 1606 South Broadway is improved with a retail building. A proposed acquisition of 978 square feet as road right-of-way is required in addition to 1,371 square feet for a temporary construction easement. The improvements will not be impacted by the project however; it will be necessary to reconfigure the parking lot and reset the advertising sign.

Analysis: The owner agreed to accept the estimated value of $9,840, plus an additional $2,080 to restripe the parking lot. The advertising sign will have to be relocated from the proposed right-of-way. Bids were received and the cost to reset the sign is $8,360.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $21,280 is requested. This amount is comprised of $11,920 for the acquisition, $8,360 to reset the sign, and $1,000 for the title work and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

Legal Considerations: The Law Department has approved the real estate purchase agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) Approve the budget and 2) Authorize the necessary signatures.

Attachments: Aerial map, tract maps and, real estate purchase agreement.

PROJECT: Broadway and Harry

DATE: June 28, 2011

COUNTY: Sedgwick

TRACT NO.: 4

CITY OF WICHITA, KANSAS
A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT made and entered into this 28th day of June , 2011 by and between:

Ultimate Properties, LLC, and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

B 05840 Right of Way

That part of Lots 2, 4 and 6, Strong & Roger's Addition to the City of Wichita, Sedgwick County, Kansas, described as beginning at the northwest corner of said Lot 2; thence East along the north line of said Lot 2, 32.50 feet; thence southwesterly, 35.50 feet to a point 25.00 feet south and 7.50 feet east of the northwest corner of said Lot 2; thence South, parallel with the west line of said Lots 2, 4 and 6, 65.00 feet to the south line of said Lot 6; thence West along the south line of said Lot 6, 7.50 feet to the southwest corner of said Lot 6; thence North along the west line of said Lots 2, 4 and 6, 90.00 feet to the place of beginning.

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property.

The City agrees to purchase the above described real estate, and to pay therefore, the following amount within 60 days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 978 sq. ft. for right-of-way	$ 7,700.00
1,371 sq. ft. for Temporary Easement	$ 2,140.00
Cost to Cure:	$ 2,080.00
Damages including but not limited to:	
TOTAL	**$ 11,920.00**

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

William B. Mitchell, Operating Manager, Ultimate Properties, LLC

City of Wichita
County of Sedgwick
State of Kansas

BUYER:
City of Wichita, KS, a municipal corporation

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, Director of Law

Rev. 9-94
Form No. 1716

D. O. T.

MEMORANDA

Exact and full name of owner, as it appears of record:

Ultimate Properties, LLC

If mortgage or other liens, show names of holders:

Commerce Bank

REMARKS:

RECOMMENDED BY: Dennis Keegan

Dennis Keegan, Acquisition Agent

Rev. 9-94
Form No. 1716

D. O. T.

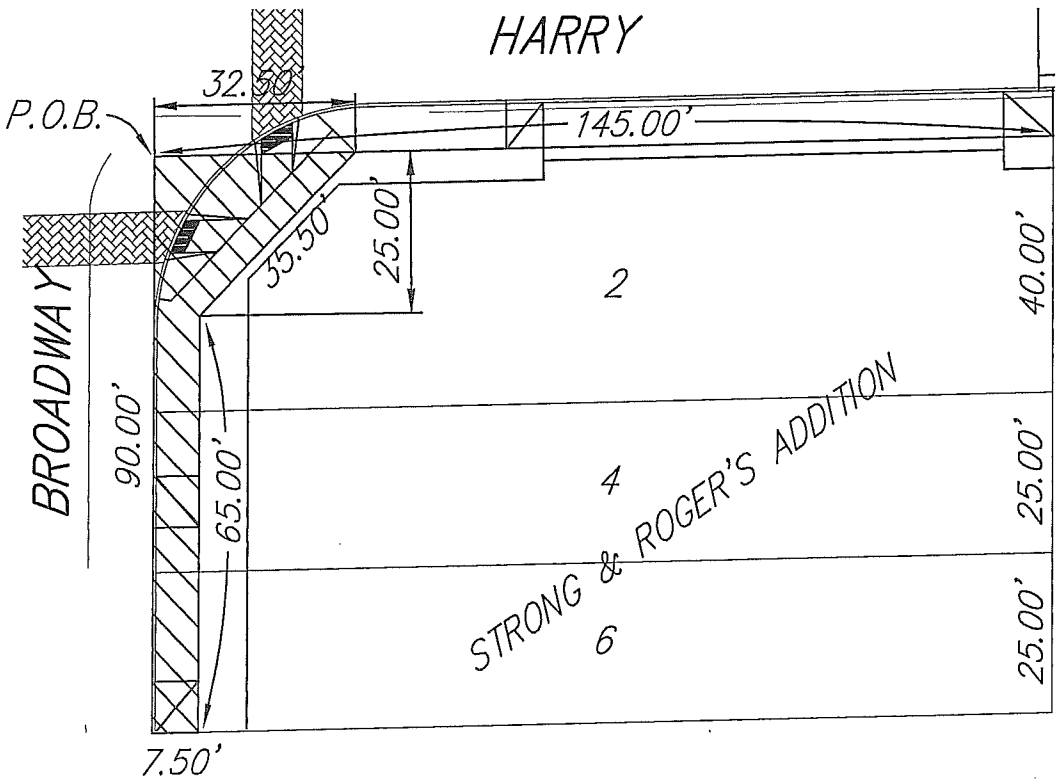
RIGHT OF WAY EXHIBIT #4

ULTIMATE PROPERTIES, LLC
PO BOX 909
WICHITA, KS 67201

B 05840

Right Of Way Area: 987 Sq. Ft.±
0.02 Acres

30 0 30'



Ruggles & Bohm, P.A.
Engineering, Surveying, Land Planning
924 North Main
Wichita, Kansas 67203
www.rbkansas.com
(316) 264-8008
(316) 264-4621 fax
E-mail: info@rbkansas.com

4

3576T

B 05840 Right of Way

That part of Lots 2, 4 and 6, Strong & Roger's Addition to the City of Wichita, Sedgwick County, Kansas, described as beginning at the northwest corner of said Lot 2; thence East along the north line of said Lot 2, 32.50 feet; thence southwesterly, 35.50 feet to a point 25.00 feet south and 7.50 feet east of the northwest corner of said Lot 2; thence South, parallel with the west line of said Lots 2, 4 and 6, 65.00 feet to the south line of said Lot 6; thence West along the south line of said Lot 6, 7.50 feet to the southwest corner of said Lot 6; thence North along the west line of said Lots 2, 4 and 6, 90.00 feet to the place of beginning.

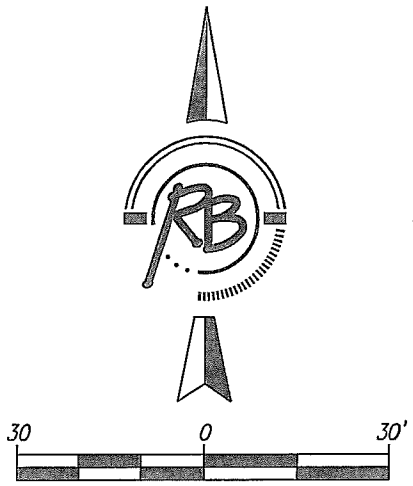
WILLIAM K. CLEVENGER
LICENSED
LS-1437
9/28/10
KANSAS
LAND SURVEYOR

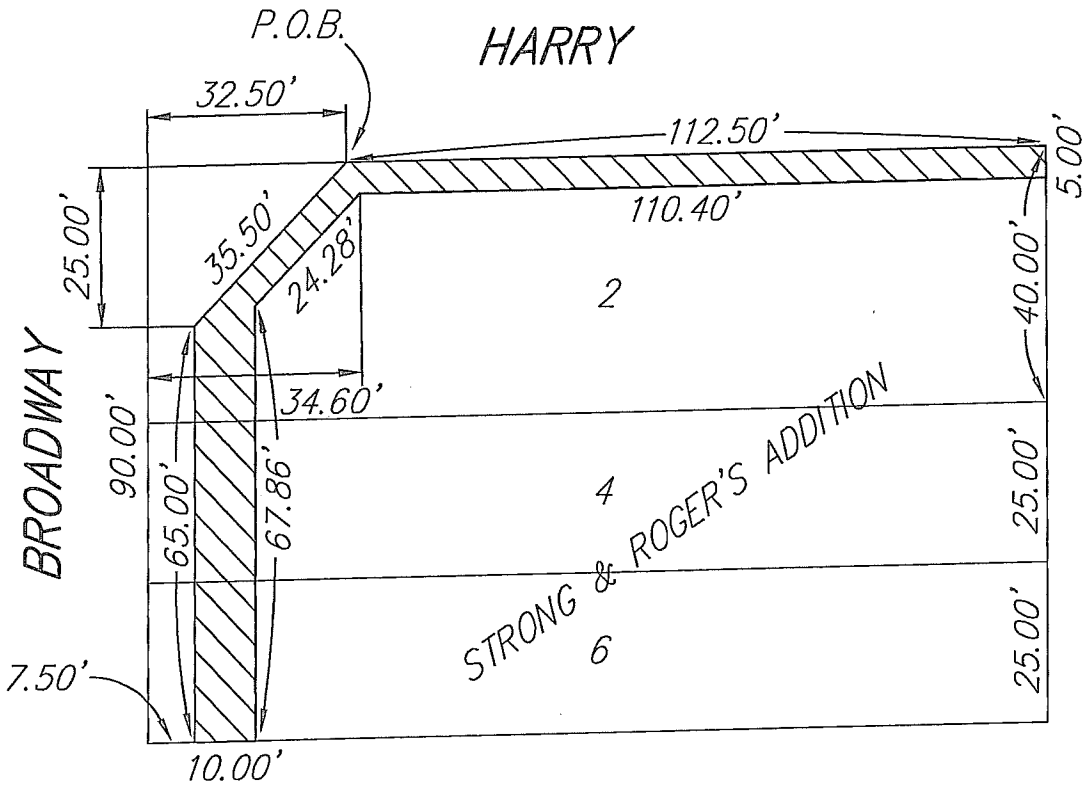
TEMPORARY CONSTRUCTION EASEMENT EXHIBIT #11

ULTIMATE PROPERTIES, LLC
PO BOX 909
WICHITA, KS 67201

B 05840

Right Of Way Area: 1,371 Sq. Ft.±
0.03 Acres





Ruggles & Bohm, P.A.
Engineering, Surveying, Land Planning
924 North Main
Wichita, Kansas 67203
www.rbkansas.com
(316) 264-8008
(316) 264-4621 fax
E-mail: info@rbkansas.com

4

576T

B 05840 – Temporary Construction Easement

That part of Lots 2, 4 and 6, Strong & Roger's Addition to the City of Wichita, Sedgwick County, Kansas, described as commencing at the northwest corner of said Lot 2; thence East along the north line of said Lot 2, 32.50 feet for a place of beginning; thence southwesterly, 35.50 feet to a point 25.00 feet south and 7.50 feet east of the northwest corner of said Lot 2; thence South, parallel with the west line of said Lots 2, 4 and 6, 65.00 feet to the south line of said Lot 6; thence East along said south line, 10.00 feet; thence North, parallel with said west line, 67.86 feet; thence northeasterly, 24.28 feet to a point 34.60 feet east and 5.00 feet south of the northwest corner of said Lot 2; thence East, parallel with the north line of said Lot 2, 110.40 feet to the east line of said Lot 2; thence North along said east line, 5.00 feet to the northeast corner of said Lot 2; thence West along said north line, 112.50 feet to the place of beginning.

WILLIAM K. CLEVENGER
LICENSED
LS-1437
9/28/10
KANSAS
LAND SURVEYOR

1606 S. Broadway - Ultimate Properties

Printed: 3/27/2011 3:32:45 PM
Powered By GeoSmart

- Identified Features
- Delano Overlay District
  - NO
  - YES
- Property Parcels
- Roads
  - State Highway
  - US Federal Highway
  - Interstate
  - KTA
  - Arterial
  - Collector
  - Minor
  - Ramp
- Railroads
- Quarter Section
- Waterways
- Streams
- Parks
- Airports
- SDERASTER.SDEDATA.ORTHO1FT
- SDERASTER.SDEDATA.ORTHO
- City Limits
  - Andale
  - Bel Aire
  - Bentley
  - Cheney
  - Clearwater
  - Colwich
  - Derby
  - Eastborough
  - Garden Plain

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CITY OF WICHITA
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 1607 South Broadway for the Harry and Broadway Intersection Improvement Project (Districts I and III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: The City Council has approved the design concept and proposed project to improve the intersection of Harry and Broadway. The project will require the acquisition of all or portions of eleven tracts. The improvements include adding left turn lanes, improving the sidewalks, improving the storm sewer system and landscaping. The property at 1607 South Broadway is improved with a retail building. The building is located within approximately eight feet of the right of way line. During construction, a seven foot wide strip of land is required for use as a temporary easement. The temporary easement area is currently paved and utilized as a walkway. The area consists of 350 square feet.

Analysis: The tenant of 1607 South Broadway has a contract to purchase the property from the owner. Both parties agreed to accept the estimated value of $570, plus an additional $230 for signage and $400 as damages to the remainder. As a result of the proximity of the project, signs will be utilized to redirect people to enter through the rear of the store during construction and some modifications will have to be made to the property to accommodate such.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $1,450 is requested. This amount is comprised of $570 for the acquisition, $230 for signage, $400 for damages, and $250 for the title work and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

Legal Considerations: The Law Department has approved the temporary construction easement as to form.

Recommendation/Action: It is recommended that the City Council 1) Approve the budget and 2) Accept the temporary construction easements.

Attachments: Aerial map, tract map and temporary construction easements.

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made this 7th day of June, 2011, by and between Gary Gehrer Revocable Trust, dated October 9, 1997 and Janeth Herrera and Raymundo Herrera, wife and husband, Grantor and the City of Wichita, Kansas, a municipal corporation, Grantee.

WITNESSETH: That the said Grantor, in consideration of the sum of Eight Hundred and no/100 Dollars ($800.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the Grantee a temporary right-of-way for the purpose of constructing, maintaining, and repairing road right-of-way, over, along and under the following described real estate situated in Wichita, Sedgwick County, Kansas, to wit:

A 06848 – Temporary Construction Easement
The east 7.00 feet of Lots 6 and 8, Englishe's 6th Addition to Wichita, Sedgwick County, Kansas.

And said Grantee, successors and assigns, is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such roadway and utility improvements beginning the date this easement is executed.

This temporary easement shall expire automatically at the end of construction or at two years from execution of said document, whichever comes first.

All owners request the entire payment to be paid to the Gary Gehrer Revocable Trust.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first written.

_____
Janeth Herrera

_____
Raymundo Herrera

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

This instrument was acknowledged before me on the _____ day of ~~June~~ JULY, 2011 by

Janeth Herrera and Raymundo Herrera, wife and husband of Sedgwick County, Kansas.

DENNIS M. KEEGAN
Notary Public - State of Kansas
My Appt. Expires 10/31/2012

_____
Dennis M Keegan, Notary Public
My Commission Expires: October 31, 2012

****

_____
Gary Gehrer Revocable Trustee,
Gary Gehrer Revocable Trust, dated October 9, 1997

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

This instrument was acknowledged before me on the 8TH day of June, 2011 by

Gary Gehrer Revocable Trustee, Gary Gehrer Revocable Trust, dated October 9, 1997 of

Sedgwick County, Kansas.

DENNIS M. KEEGAN
Notary Public - State of Kansas
My Appt. Expires 10/31/2012

_____
Dennis M Keegan, Notary Public

My Commission Expires: October 31, 2012

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made this 18th day of July, 2011, by and between Janeth Herrera and Raymundo Herrera, wife and husband, Grantor and the City of Wichita, Kansas, a municipal corporation, Grantee.

WITNESSETH: That the said Grantor, in consideration of the sum of Four Hundred and no/100 Dollars ($400.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the Grantee a temporary right-of-way for the purpose of constructing, maintaining, and repairing road right-of-way, over, along and under the following described real estate situated in Wichita, Sedgwick County, Kansas, to wit:

A 06848 – Temporary Construction Easement
The east 7.00 feet of Lots 6 and 8, Englishe's 6th Addition to Wichita, Sedgwick County, Kansas.

And said Grantee, successors and assigns, is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such roadway and utility improvements beginning the date this easement is executed.

This temporary easement shall expire automatically at the end of construction or at two years from execution of said document, whichever comes first.

Entire payment to be paid to the Janeth Herrera.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first written.

x Janeth Herrera
Janeth Herrera

x Raymundo Herrera
Raymundo Herrera

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

This instrument was acknowledged before me on the 20TH day of July, 2011 by Janeth Herrera and Raymundo Herrera, wife and husband of Sedgwick County, Kansas.

DENNIS M. KEEGAN
Notary Public - State of Kansas
My Appt. Expires 10-31-2012

Dennis M Keegan, Notary Public
My Commission Expires: October 31, 2012

1607 S. Broadway - Gerher

Identified Features

Delano Overlay District

NO

YES

Property Parcels

Roads

State Highway

US Federal Highway

Interstate

KTA

Arterial

Collector

Minor

Ramp

Railroads

Quarter Section

Waterways

Streams

Parks

Airports

SDERASTER.S-DEDATA.ORTH-O1FT

SDERASTER.S-DEDATA.ORTH-O

City Limits

Andale

Bel Aire

Bentley

Cheney

Clearwater

Colwich

Derby

Eastborough

Garden Plain

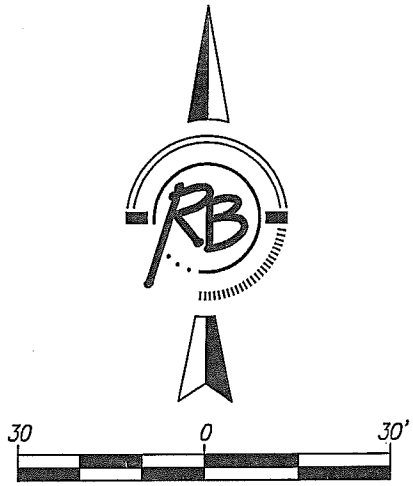
Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

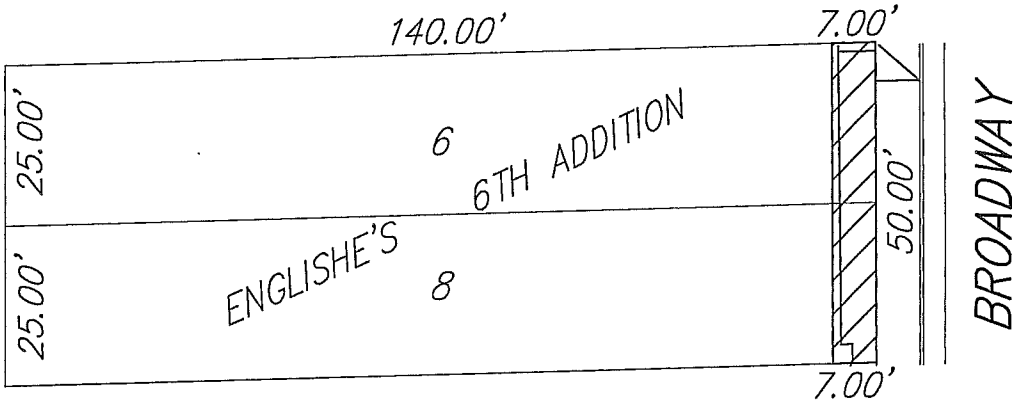
TEMPORARY CONSTRUCTION EASEMENT EXHIBIT #15

GARY GEHRER REVOCABLE TRUST
2020 E. DOUGLAS
WICHITA, KS 67214

A 06848

Right Of Way Area: 350 Sq. Ft.±
0.01 Acres





Ruggles & Bohm, P.A.
Engineering, Surveying, Land Planning
924 North Main
Wichita, Kansas 67203
www.rbkansas.com
(316) 264-8008
(316) 264-4621 fax
E-mail: info@rbkansas.com

9

3576T

A 06848 – Temporary Construction Easement

The east 7.00 feet of Lots 6 and 8, Englishe's 6th Addition to Wichita, Sedgwick County, Kansas.

WILLIAM K. CLEVENGER
LICENSED
LS-1437
9/28/10
KANSAS
LAND SURVEYOR

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: City of Wichita Employees' Deferred Compensation Trust Amendment to the Great-West Retirement Services Plan Document; Adoption of Roth 457 Provisions

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendations: Approve the Amendment.

Background: On September 27, 2010, President Obama signed the Small Business Jobs Act 2010 ("Act"). The Act contains legislation that allows governmental 457(b) plans, beginning January 1, 2011, to offer a designated Roth Account and allow in-plan rollovers of distributions eligible for rollovers to a Roth account. Both of these are optional features for a governmental 457(b) plan.

Analysis: The Deferred Compensation Board unanimously approved the adoption of both Roth features at a special meeting held July 12, 2011. The addition of these Roth features will allow increased flexibility in the plan as employees will have the ability to contribute to the plan on an after-tax basis as well as on a pre-tax basis.

Financial Considerations: All costs associated with the administration of the program are borne by the participants of the program.

Goal Impact: The City of Wichita, by offering this supplemental retirement savings program, impacts the Internal Perspective goal by increasing employee motivation and satisfaction.

Legal Considerations: The Law Department has approved the Amendment as to form.

Recommendations/Actions: It is recommended that the City Council approve the Amendment and authorize the Mayor to sign.

Attachment: Great-West Amendment to the City of Wichita Employees' Deferred Compensation Plan.

AMENDMENT TO

GREAT-WEST MODEL 457(b) PLAN DOCUMENT FOR GOVERNMENTAL EMPLOYERS

Pursuant to Section 11.02 of the Great-West Retirement Services® Section 457(b) Eligible Deferred Compensation 2009 Plan Document for Governmental Employers adopted by City of Wichita effective May 24, 2011 the following amendments are made to the Plan and as effective (No earlier than January 1, 2011) _____.

1. Section H. of the Adoption Agreement is hereby amended to add the following:

   4. [✓] If Box 1 of Section M is checked, eligible rollovers contributions of designated Roth contributions made from an applicable retirement plan described in §402A(e)(1) SHALL BE allowed.

2. The Adoption Agreement is hereby amended to add the following:

   M. ROTH CONTRIBUTIONS. *(Check Box 1 OR Box 2.)*

   1. [✓] Participant Roth Contributions SHALL BE allowed after _____. (Enter either January 1, 2011, or a date later than January 1, 2011.)

   2. [ ] Participant Roth Contributions SHALL NOT BE allowed.

3. The Adoption Agreement is hereby amended to add the following:

   N. IN-PLAN ROTH ROLLOVERS. *(Check Box 1 OR Box 2.)*

   1. [✓] If box 1 of Section M is checked, In-Plan Roth Rollovers SHALL BE allowed in accordance with Section 6.01(f) after _____. (Enter either January 1, 2011, or a date later than January 1, 2011.)

   2. [ ] In-Plan Roth Rollover SHALL NOT BE allowed.

4. Section 1.01 of the Plan Document is hereby amended to read as follows:

1.01 "Account Balance." The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals, the Participant's Designated Roth Contributions if allowed by the plan, the earnings or loss of the Fund (net of Fund expenses) allocable to the Participant, any transfers for the Participant's benefit and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then each Beneficiary's share of the Account Balance shall be treated as a separate account for each Beneficiary. The Account Balance includes any account established under Article VI for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an Alternate Payee (as defined in Code § 414(p)(8)).

5. Section 1.05 of the Plan Document is hereby amended to read as follows:

1.05 "Annual Deferral." The amount of Compensation deferred in any taxable year as a pre-tax deferral, Roth contribution, or both, if allowed by the Plan.

6. Section 2.12 is hereby added to the Plan Document an

2.12 Designated Roth Contributions.

(a) Designated Roth Contributions. If authorized by the Employer in the Adoption Agreement, each Participant may make designated Roth Contributions; provided, however, that a Participant shall not make a Roth Contribution to the Plan for any Plan Year to the extent such Roth Contribution would exceed the limitations of Article III.

(1) General Application. This Subsection will apply to designated Roth Contributions beginning with the effective date specified in the Adoption Agreement but in no event before the first day of the first taxable year beginning on or after January 1, 2011.

(i) As of the effective date under (1), the Plan will accept elective deferrals designated as Roth Contributions made on behalf of Participants. A Participant's designated Roth Contributions will be allocated to a separate account maintained for such deferrals as described in (2).

(ii) Unless specifically stated otherwise, designated Roth Contributions will be treated as Elective Deferrals for all purposes under the Plan.

(2) Separate Accounting. Contributions and withdrawals of designated Roth Contributions will be credited and debited to the Roth Contribution Account maintained for each Participant.

(i) The Plan will maintain a record of the amount of designated Roth Contributions in each Participant's Roth Contribution Account.

(ii) Gains, losses and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Contribution Account and the Participant's other accounts under the Plan.

(iii) No contributions other than designated Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Contribution Account.

(3) Designated Roth Contributions Defined. A Designated Roth Contribution is an elective deferral that is:

(i) Designated irrevocably by the Participant at the time of the deferral election as a Roth Contribution that is being made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make under the Plan; and

(ii) Treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a deferral election

7. Section 5.10 (a) of the Plan document is hereby amended to read as follows:

(a) General. Notwithstanding any provision of the Plan to the contrary that would otherwise limit an election under this Section, a Participant, the

surviving spouse of a Participant (or a Participant's former spouse who is the Alternate Payee under a qualified domestic relations order as defined in Code § 414(p)) (herein collectively called "distributee") may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover or an in-plan Roth direct rollover. A non-spousal Beneficiary may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid in a direct rollover to an inherited IRA referred to in Code § 402(c)(11).

8. Section 6.01 of the Plan document is hereby amended to read as follows:

6.01 Eligible Rollover Contributions to the Plan.

(a) If so specified in the Adoption Agreement, and only to the extent so specified, a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code § 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code § 402(c)(8)(B).

(b) In-Plan Roth Rollover. If so specified in the Adoption Agreement, and only to the extent so specified, a Participant, the surviving spouse of a Participant (or a Participant's former spouse who is the Alternate Payee under a qualified domestic relations order as defined in Code § 414(p)) (herein collectively called "distributee") may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid to the Plan in an in-plan Roth rollover to the distributee's Designated Roth Contribution Account. A loan transferred in an in-plan Roth direct rollover without changing the repayment schedule is not treated as a new loan for purposes of Code § 72(p). The amount rolled over in an in-plan Roth direct rollover continues to be taken into consideration for mandatory distributions.

(c) For purposes of Subsections (a) and (b) of Sections 6.01, an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, as defined in

Section 5.10(b)(2), except that an eligible rollover distribution does not include:

(1) any installment payment for a period of 10 years or more,

(2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee,

(3) any deemed distribution under the provisions of Code § 72(p),

(4) the portion of any distribution that is not includable in gross income,

(5) any distribution of excess deferrals or

(6) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code § 401(a)(9).

(d) Notwithstanding any other provisions of Section 6.01 of the Plan, and solely for purposes of applying the rollover provisions of the Plan, 2009 RMDs and Extended 2009 RMDs, will be treated as eligible rollover distributions.

(e) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under Code § 457(b). The Plan shall establish and maintain a separate account for any Roth Contributions paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under Code §457(b) . In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution including amounts paid to the Plan from any eligible governmental plan under Code § 457(b). The Plan shall establish and maintain a separate account for any Roth Contributions paid to the Plan from any eligible retirement plan that is an eligible governmental plan under Code §457(b). The Plan shall establish and maintain for the Participant a separate account for any in-plan Roth rollover made within the Plan.

(f) Notwithstanding the above, unless otherwise provided by the Employer in the Adoption Agreement, the Plan will accept a rollover contribution from another Roth Contribution Account under an applicable retirement plan described in § 402A(e)(1), only to the extent the rollover is permitted under the rules of § 402(c) and § 1.402A-2 of the Treasury regulations.

The Plan Administrator or other responsible party must provide the Plan with a statement indicating the first year of the five-taxable-year period and the portion of the rollover distribution that is attributable to investment in the contract under Code § 72 or a statement that the distribution is a qualified distribution.

9. Article XII. of the Plan Document is hereby amended to read as follows:

XII. TAX TREATMENT OF AMOUNTS CONTRIBUTED

It is intended that pursuant to Code § 457, the amount deferred shall not be considered current compensation for purposes of federal income taxation except to the extent that the amount deferred is Designated Roth Contributions. This rule shall also apply to state income taxation unless applicable state laws provide otherwise. Such amounts shall, however, be included as compensation to the extent required under the Federal Insurance Contributions Act (FICA). Payments under this Plan shall supplement retirement and death benefits payable under the Employer's group insurance and retirement plans, if any.

Executed this _____ day of _____, 2011.

EMPLOYER'S AUTHORIZED SIGNOR:

By: _____

Title: _____

The above instrument approved as to form
this 2nd day of August, 2011
Gary E. Rebenstorf, Atty
File Officer

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Wichita Employees' Retirement and Police and Fire Retirement Systems' 2010 Comprehensive Annual Financial Report

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Receive and file the report.

Background: Since 1998, Pension Management has prepared the Comprehensive Annual Financial Report (CAFR) of the Wichita Employees' Retirement and Police and Fire Retirement Systems. The CAFR is designed to provide information to interested parties regarding the financial position, results of operations, investments and actuarial positions of the Retirement Systems.

Analysis: The financial statements presented in the CAFR for the year ended December 31, 2010 have been audited by the independent certified public accounting firm of Allen, Gibbs & Houlik, L.C. and an unqualified opinion has been issued stating that the financial statements present fairly, in all material respects, the plan net assets and the changes in plan net assets in conformity with generally accepted accounting principles.

The Government Finance Officers Association (GFOA) of the United States and Canada awarded a Certificate of Achievement for Excellence in Financial Reporting to the Wichita Retirement Systems for the year ended December 31, 2009. In order to be awarded a Certificate of Achievement, a government unit must publish an easily readable and efficiently organized CAFR, with content that conforms to program standards. The 2009 award represents the eleventh consecutive year in which the Wichita Retirement Systems have earned this award. Staff believes that the 2010 CAFR continues to meet GFOA standards for certification and the City applied for this recognition on June 17, 2011.

Financial Considerations: None

Goal Impact: The Internal Perspective is impacted through the fair presentation of the financial condition of the City's pension systems to the City Council, the citizens of Wichita, plan participants and other interested parties.

Legal Considerations: None

Recommendations/Actions: It is recommended that the City Council receive and file the Wichita Retirement Systems' Comprehensive Annual Financial Report for the fiscal year ended December 31, 2010.

Attachments: Wichita Retirement Systems, *Comprehensive Annual Financial Report* for the year ended December 31, 2010.

Pension Trust Funds of the City of Wichita, Kansas

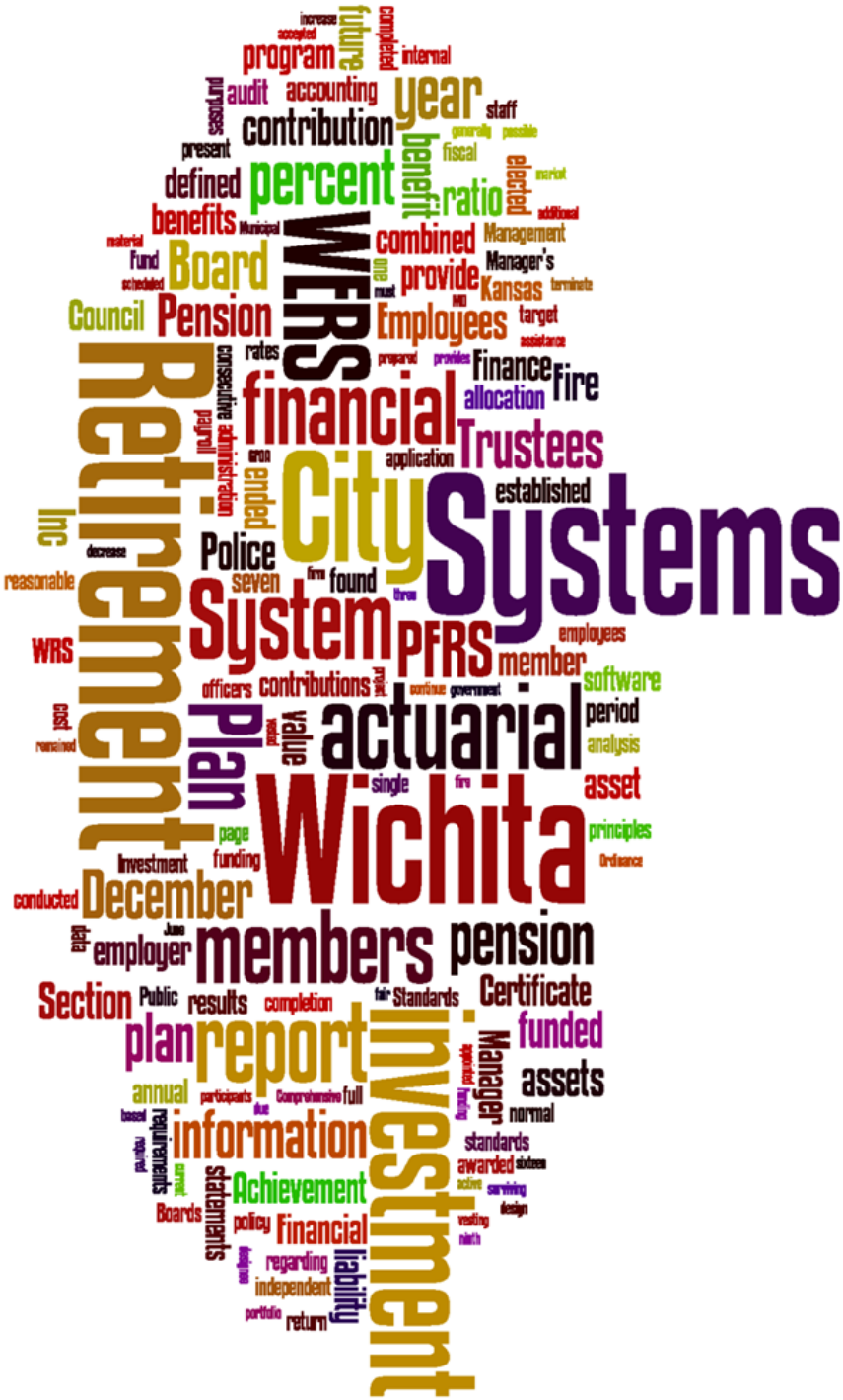
Comprehensive Annual Financial Report

for the fiscal year ended December 31, 2010

Wichita Retirement Systems

- Police and Fire Retirement System of Wichita, Kansas
- Wichita Employees' Retirement System
- Wichita Employees' Retirement System Plan 3

CITY OF WICHITA
www.wichita.gov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Comprehensive Annual Financial Report

for the fiscal year ended December 31, 2010

Pension Trust Funds of The City of Wichita, Kansas

Wichita Retirement Systems

Police and Fire Retirement System of Wichita, Kansas	Wichita Employees' Retirement System	Wichita Employees' Retirement System Plan 3

Prepared by:

City of Wichita
Pension Management Office
455 N. Main Street, 12th Floor
Wichita, KS 67202
316-268-4544
www.wichita.gov/CityOffices/Finance/Treasury/Pension

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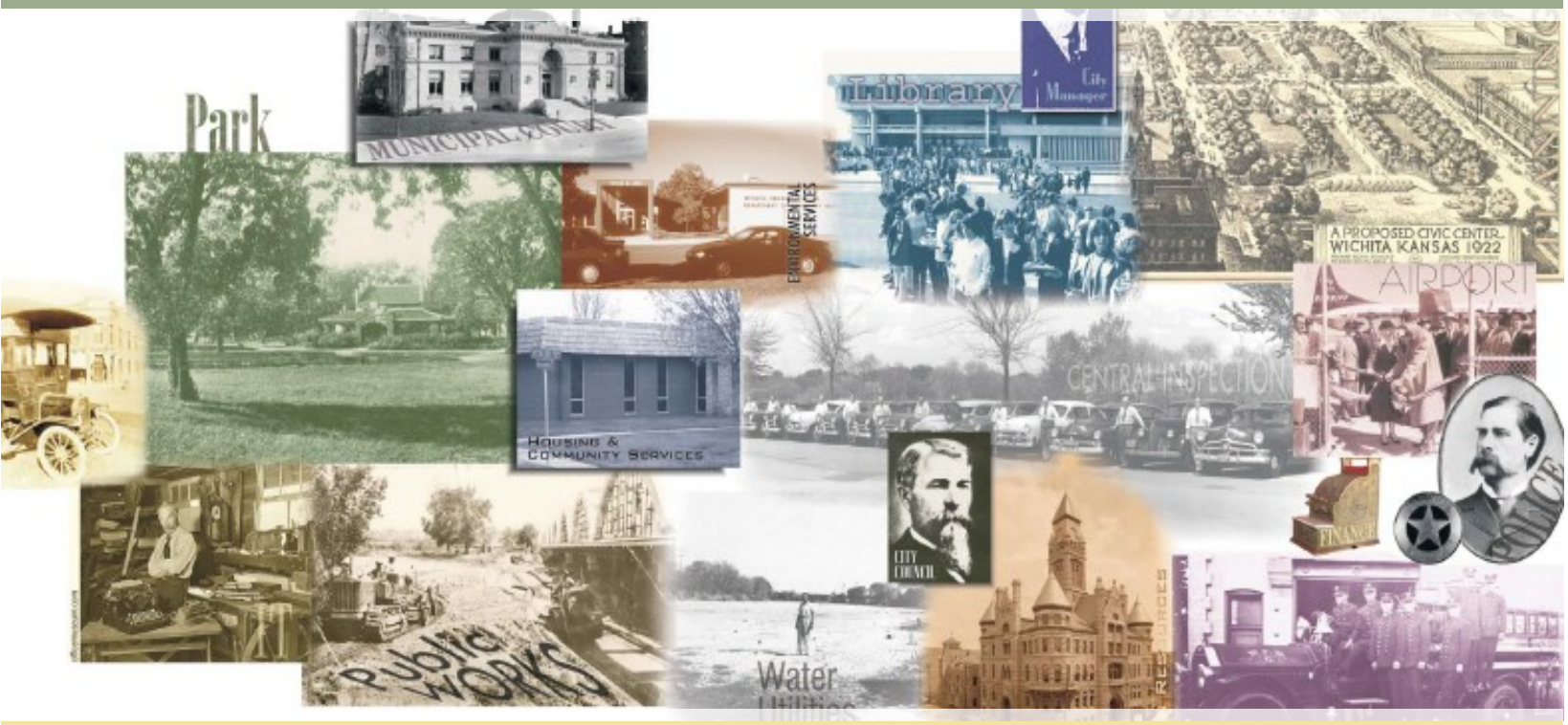
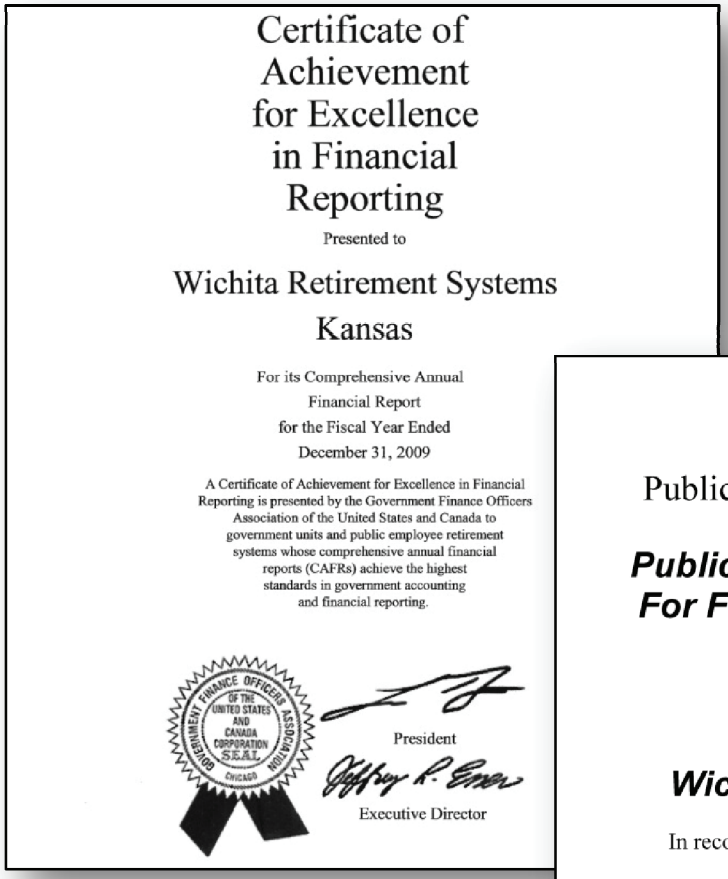
72 Police and Fire Retirement System

INTRODUCTORY SECTION



Introductory Section



Certificate of Achievement for Excellence in Financial Reporting

Presented to

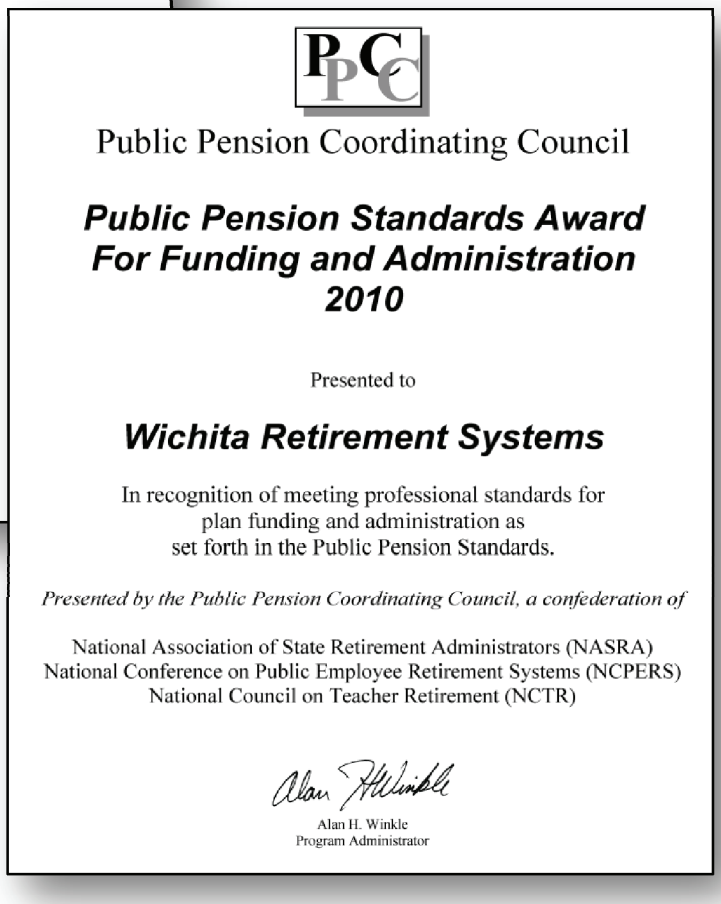
Wichita Retirement Systems
Kansas

For its Comprehensive Annual Financial Report for the Fiscal Year Ended December 31, 2009

A Certificate of Achievement for Excellence in Financial Reporting is presented by the Government Finance Officers Association of the United States and Canada to government units and public employee retirement systems whose comprehensive annual financial reports (CAFRs) achieve the highest standards in government accounting and financial reporting.

President

Executive Director



PPCC

Public Pension Coordinating Council

Public Pension Standards Award For Funding and Administration 2010

Presented to

Wichita Retirement Systems

In recognition of meeting professional standards for plan funding and administration as set forth in the Public Pension Standards.

Presented by the Public Pension Coordinating Council, a confederation of

National Association of State Retirement Administrators (NASRA)
National Conference on Public Employee Retirement Systems (NCPERS)
National Council on Teacher Retirement (NCTR)

Alan H. Winkle
Program Administrator

The Wichita Retirement Systems' Comprehensive Annual Financial Report (CAFR) for the fiscal year ended December 31, 2009 was awarded the Certificate of Achievement for Excellence in Financial Reporting by the Government Finance Officers Association of the United States and Canada (GFOA). This was the eleventh consecutive year the System received this prestigious award. The Certificate of Achievement is the highest form of recognition for excellence in state and local government financial reporting.

The Wichita Retirement Systems also received the Public Pension Coordinating Council (PPCC), Public Pension Standards Award for the fiscal year ended December 31, 2009 in recognition of meeting the professional standards for plan design and administration as set forth in the Public Pension Standards. This was the eighth consecutive year the System obtained this important award. This award is presented by the PPCC, a confederation of the National Association of State Retirement Administrators (NASRA), the National Conference on Public Employee Retirement Systems (NCPERS), and the National Council on Teacher Retirement (NCTR).

CITY OF WICHITA
www.wichita.gov

June 8, 2011

The Honorable Mayor and City Council
Police and Fire Retirement System of Wichita Board of Trustees
Wichita Employees' Retirement System Board of Trustees

The Department of Finance of the City of Wichita is pleased to present the thirteenth Comprehensive Annual Financial Report of the Wichita Retirement Systems ("WRS" or "Systems"); a single employer retirement system comprised of the Police and Fire Retirement System of Wichita, Kansas (PFRS), the Wichita Employees' Retirement System and the Wichita Employees' Plan 3 (WERS) for the year ended December 31, 2010.

Management assumes full responsibility for the completeness and reliability of the information contained in this report, based upon a comprehensive framework of internal control established for this purpose. Because the cost of internal control should not exceed anticipated benefits, the objective is to provide reasonable, rather than absolute, assurance that the financial statements are free of any material misstatements.

Our operating results and financial position are presented in accordance with generally accepted accounting principles (GAAP). To the best of our knowledge, the enclosed data is accurate in all material respects and is reported in a manner designed to fairly present our financial position and operating results.

An annual audit of the Systems' financial statements and an evaluation of the Systems' internal controls were conducted by the independent accounting firm of Allen, Gibbs & Houlik, L.C. An unqualified ("clean") opinion on the Systems' financial statements for the year ended December 31, 2010 has been issued. The independent auditors' report may be found on page 9 of the Financial Section of this report.

Management's discussion and analysis (MD&A) immediately follows the independent auditors' report (beginning on page 10) and provides a narrative introduction, overview and analysis of the financial statements. This transmittal letter is designed to complement the MD&A and should be read in conjunction with it.

Plan History

The WERS was established in 1948 to provide pension benefits to all civilian employees, their surviving spouses, and beneficiaries. The PFRS was established in 1965 to provide pension benefits to commissioned police and fire officers, their surviving spouses, and beneficiaries. All full-time employees of the City of Wichita participate in one of these two Systems.

In October 1999, the assets of the Wichita Retirement Systems were combined into a single Fund for investment purposes. Then, in October 2000, assets of WERS Plan 3 (a defined contribution plan) were separated from the combined WERS and PFRS Funds for investment, custodial, and participant record keeping purposes. Finally, in January 2004, WERS Plan 3 assets were liquidated and the proceeds were reinvested with the other assets of the Wichita Retirement Systems, which resulted in a combined single Fund for investment purposes.

Department of Finance
City Treasurer's Division • Pension Management
City Hall • 12th Floor • 455 N. Main • Wichita, Kansas 67202
T 316.268.4544 • F 316.268.4656
www.wichita.gov

How We Are Structured

A sixteen member Board of Trustees oversees the PFRS. The members include the City Manager or the City Manager's designee, the Police Chief, the Fire Chief, three fire officers and three police officers elected by PFRS members of their respective departments, and seven members appointed by the City Council. A separate sixteen member Board of Trustees oversees the WERS. The members include the City Manager or the City Manager's designee, the City Manager's appointee, seven members elected by WERS members, and seven members appointed by the City Council. The City Manager appoints a Pension Manager who manages staff to carry out the daily operations of the Retirement Systems.

System Funding and Financial Position

Funding is the process of setting aside resources for current and future use by the Systems. The objective of the Wichita Retirement Systems is to meet funding requirements through contributions, expressed as a percent of active member payroll, which will remain approximately level from year to year and will not require increases in contribution rates for future generations of citizens in the absence of plan benefit improvements.

The annual actuarial valuations, prepared by our actuary, Milliman, Inc., provide an indicator of the funded status of the Retirement Systems. As of December 31, 2010, the funded ratio of the PFRS was 92.7 percent and the funded ratio of the WERS was 95.5 percent. The funded ratio is the ratio of actuarial assets to actuarial liabilities. The actuarial liability is that portion of the present value of future benefits that will not be paid by future employer normal costs or member contributions. The difference between this liability and the actuarial value of assets at the same date is referred to as the unfunded actuarial liability (UAL), or surplus if the asset value exceeds the actuarial liability. The Retirement Systems' ordinances require that this unfunded actuarial liability (or surplus) be amortized over a 20-year rolling period.

Positive investment performance in 2009 and 2010 helped offset some of the deferred losses in 2008. The funded ratio for the PFRS improved by 0.3 percent, while the funded ratio for the WERS decreased by 0.8 percent. Without future investment returns above the investment return target of 7.75 percent, the funded ratios for the Systems could deteriorate and the required employer contributions could increase in future years. During 2010, employer contributions for the PFRS increased from 17.5 percent to 20.8 percent of annual covered payroll while employer contributions for the WERS increased from 4.7 percent to 8.4 percent of annual covered payroll. Additional information regarding the financial condition and funding status of the pension trust funds can be found in the Financial and Actuarial Sections of this report.

Investments

The WERS Board of Trustees' investment authority is found in the City of Wichita's Municipal Code, Section 2.28.090. Investment authority for the PFRS Board of Trustees is contained in Section 12 of Charter Ordinance 209.

Investment returns in 2010 were favorable. As of December 31, 2010, net assets totaled $951.8 million, an increase from the December 31, 2009 net assets of $869.9 million, or 9.4%. The investment return for the WRS' combined investment portfolio was 13.6 percent for the year ended December 31, 2010, outperforming the WRS' investment target benchmark return of 12.7 percent for the same period, and the Systems' long-term actuarial target return of 7.75 percent.

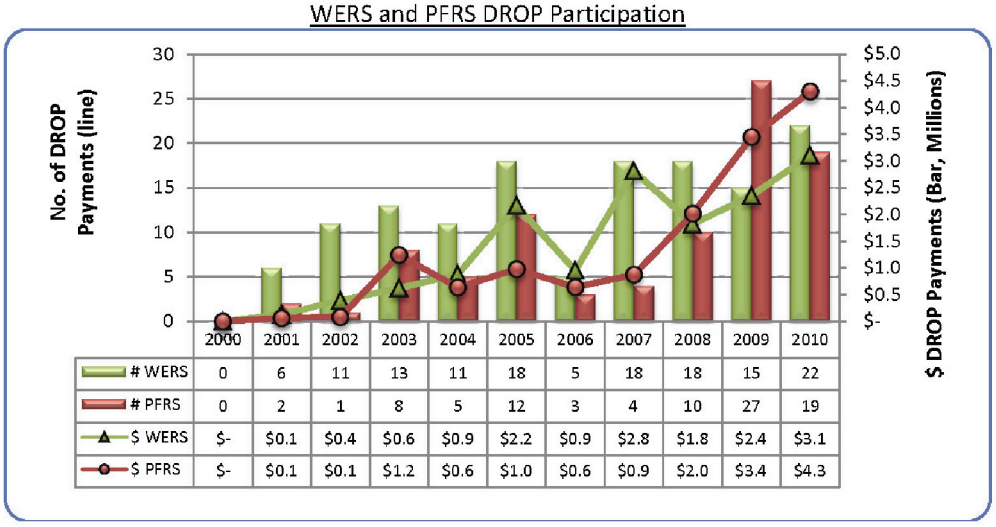
The WERS and PFRS Boards of Trustees have established an overall strategic asset allocation policy based upon the financial needs of the joint fund and the Boards' tolerance for volatility, or risk. The Boards utilize external investment managers consisting of both passive and active strategies. The portfolio is broadly diversified among equities, debt securities, and real estate, with additional diversification achieved in equities through domestic and international investing. With the assistance of the Wichita Retirement Systems' financial consultant and staff, the Trustees continue to monitor the investment program and review the policy for future changes to the asset allocation, manager allocations and possible additional investment types. For more information on investment strategies and policies, safeguards on investments and a comparative analysis of investment results over time, please refer to the Investment Section of this report, beginning on page 33.

Major Initiatives and Significant Actions

Beginning in 2000 (WERS) and 2001 (PFRS), the Wichita Retirement Systems began offering a Deferred Retirement Option Plan (DROP) to participants eligible for a retirement benefit. WERS employees electing the DROP continue to work for a

period of one to sixty months. During the DROP period, their monthly retirement benefit accumulates with interest. When they leave service, the participants receive a lump sum payment consisting of their accumulated benefit and also begin receiving their monthly pension benefit. The PFRS DROP is a backward DROP. This program allows participants, at their retirement date, to select a DROP date that is one to sixty months prior to the date they terminate service. The participant must be eligible, by both age and service, to receive a retirement benefit on the selected backward DROP date. Upon leaving service, the participant receives a lump sum payment consisting of their accumulated monthly retirement benefits and interest computed as of their backward DROP date and also begins receiving their monthly pension benefit. WERS DROP participation has increased somewhat consistently since inception, while PFRS participation has dramatically increased in the past the two years ending December 31, 2010 (see figure below).

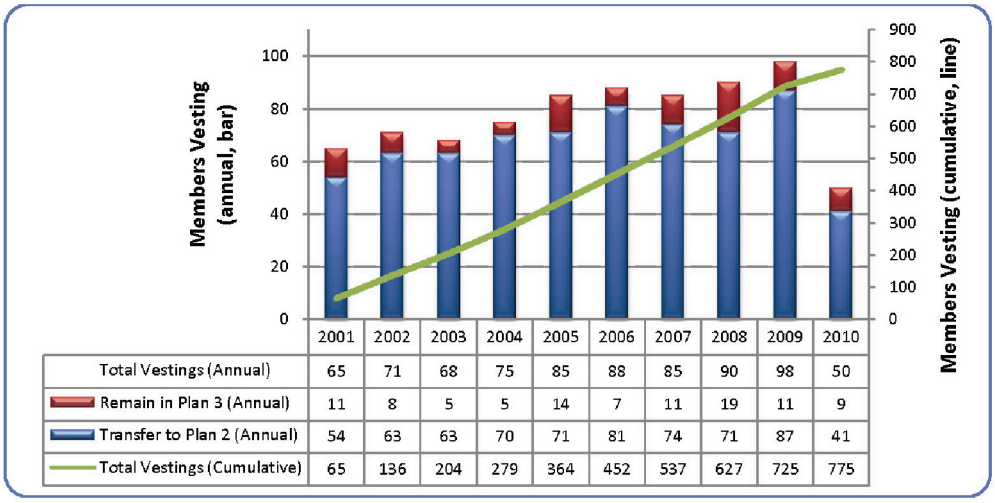
WERS and PFRS DROP Participation



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
# WERS	0	6	11	13	11	18	5	18	18	15	22
# PFRS	0	2	1	8	5	12	3	4	10	27	19
$ WERS	$-	$0.1	$0.4	$0.6	$0.9	$2.2	$0.9	$2.8	$1.8	$2.4	$3.1
$ PFRS	$-	$0.1	$0.1	$1.2	$0.6	$1.0	$0.6	$0.9	$2.0	$3.4	$4.3

All civilian employees hired after December 31, 1993 are Plan 3 members. When vested after seven years of service, Plan 3 members are required to make an election to remain in Plan 3 (a defined contribution plan) or transfer to Plan 2 (a defined benefit plan). Upon vesting, Plan 3 members attend an education program conducted by NestEgg Consulting, Inc. of Wichita, Kansas. The program provides participants with information regarding defined contribution and defined benefit plans, investment options, and asset allocation to assist them in making an informed decision regarding their pension plan selection. The following figure reflects the Plan 3 members' vesting and their plan elections:

WERS Plan 3 Members Vesting



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total Vestings (Annual)	65	71	68	75	85	88	85	90	98	50
Remain in Plan 3 (Annual)	11	8	5	5	14	7	11	19	11	9
Transfer to Plan 2 (Annual)	54	63	63	70	71	81	74	71	87	41
Total Vestings (Cumulative)	65	136	204	279	364	452	537	627	725	775

The Joint Investment Committee of the WRS conducted an asset allocation/liability study in 2010 with the assistance of the Systems' investment consultant, Callan Associates, Inc. This study, performed approximately every five years, compares the System's current asset allocation and liabilities and recommends changes to the asset allocation based on current capital market assumptions and acceptable risk tolerances. As a result of this study, the Boards adopted several changes to the System's Investment Policy effective January, 2011. These changes included the addition of timber, Treasury Inflation Protected Securities (TIPS), and commodities to the asset allocation mix. Additional changes to the System's Investment Policy included revising the allocations to domestic equity, international equity and fixed income, along with changes to the composition of the blended index used to compare investment performance. Also, the domestic equity manager structure was revised resulting in the elimination of one investment manager.

The WERS and PFRS Boards and the City Council approved Ordinance revisions in 2010 relating to the Systems' investment authority, which were also the result of the asset allocation/liability study. The primary impact of these investment authority changes was the addition of timber investments, at a maximum exposure of 10%, and the increase of the maximum allowable exposure to international assets from 25% to 35%. Additionally, both Boards and the City Council approved Ordinance revisions seeking to obtain a Cycle C Determination Letter and to conform both Plans to Section 415 Limitations of the Internal Revenue Code.

Awards

The Government Finance Officers Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the Wichita Retirement Systems (WRS) for its comprehensive annual financial report for the fiscal year ended December 31, 2009. This was the eleventh consecutive year that the government has achieved this prestigious award. In order to be awarded a Certificate of Achievement, a government must publish an easily readable and efficiently organized comprehensive annual financial report. This report must satisfy both generally accepted accounting principles and applicable legal requirements.

A Certificate of Achievement is valid for a period of one year only. We believe that our current comprehensive annual financial report continues to meet the Certificate of Achievement Program's requirements and we are submitting it to the GFOA to determine its eligibility for another certificate.

In addition, the CAFR for the fiscal year ended December 31, 2009 received the Public Pension Coordinating Council's (PPCC) Public Pension Standards Award for the eighth consecutive year. This award is in recognition of meeting professional standards for pension plan design and administration, as set forth in the Public Pension Standards.

Acknowledgments

This report was made possible through the combined efforts of the Pension Management Staff, the Controller's Office, and the City Treasurer. The report is intended to provide complete and reliable information in accordance with the Finance Department's policy of full financial disclosure. The report was prepared using the principles of governmental accounting and reporting as developed by the Governmental Accounting Standards Board (GASB).

Respectfully submitted,

Kelly Carpenter	Shawn Henning	Barbara Davis
Director of Finance	City Treasurer	Pension Manager

Wichita Employees' Retirement System Board of Trustees	
Trustee Name[1]	**Type of Membership**
Steve Coberley	Elected
Carolyn Conley (1st V.P.)	Appointed by Council Member
Bob Decker	Appointed by Council Member
Colleen Didier	Appointed by Council Member
Brent Dome	Appointed by Council Member
Mark Hall (President)	Elected
Shawn Henning (2nd V.P.)	Appointed by City Manager
Stephanie Mankins	Appointed by Council Member
Mark Manning	Elected
Guy McCormick	Elected
Russell Oliver	Designated by City Manager
Sean Seamster	Elected
Karen Walker	Elected
Melinda Walker	Elected
Vacant	Appointed by Council Member
Vacant	Appointed by Mayor

[1]Names of Trustees and Officer positions are as of December 31, 2010.

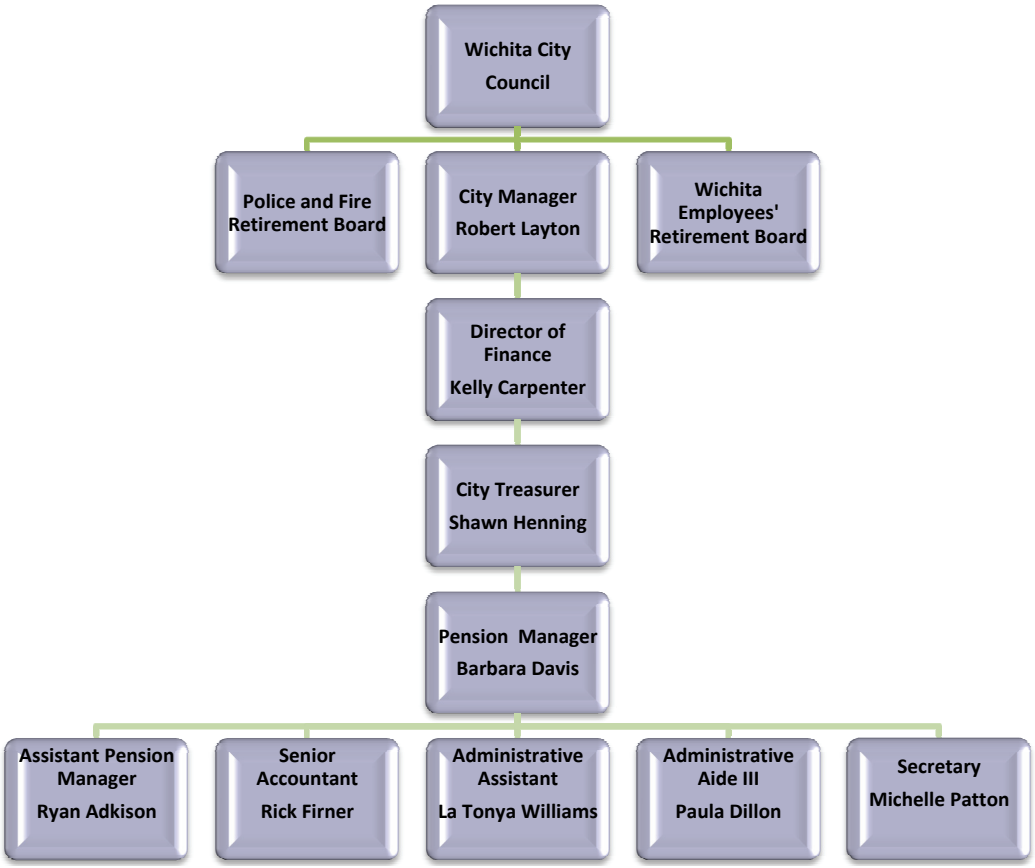
Introductory Section: Figure 1

Police and Fire Retirement System Board of Trustees	
Trustee Name[1]	**Type of Membership**
Hans Asmussen (President)	Police Elected
Ronald Blackwell	Fire Chief
Michael Crosby (1st V.P.)	Fire Elected
Joe Dessenberger	Police Elected
Marvin Fisher (2nd V.P.)	Appointed by Council Member
Mike Hastings	Appointed by Council Member
Shawn Henning	Appointed by City Manager
Jason Jones	Fire Elected
Troy Jordan	Appointed by Council Member
Warren Koehn	Fire Elected
Chester Pinkston	Police Elected
Jim Ward	Appointed by Council Member
Norman Williams	Police Chief
William Wynne	Appointed by Council Member
Vacant	Appointed by Mayor
Vacant	Appointed by Council Member

[1]Names of Trustees and Officer positions are as of December 31, 2010

Introductory Section: Figure 2

Organizational Chart



Introductory Section: Figure 3

Professional Consultants

Professional Consultants	
Actuary Milliman, Inc. 15800 W. Bluemound Rd. Suite 100 Brookfield, Wisconsin 53005	**Legal Services** Law Department, City of Wichita 455 N. Main Street, 13th Floor Wichita, Kansas 67202
Financial Consultant Callan Associates, Inc. 1660 Wynkoop Street, Suite 950 Denver, Colorado 80202	**Legal Services** Ice Miller, L.L.P. One American Square, Suite 3100 Indianapolis, Indiana 46282
Custody Institution State Street Bank and Trust Company 1200 Crown Colony Drive Quincy, Massachusetts 02169	**Defined Contribution Participant Accounting** Northeast Retirement Services 4A Gill Street Woburn, Massachusetts 01801
Independent Auditors Allen, Gibbs & Houlik, L.C. Epic Center, 301 N. Main Street, Suite 1700 Wichita, Kansas 67202	**Participant Education** NestEgg Consulting, Inc. 125 N. Market Street, Suite 1050 Wichita, Kansas 67202

Introductory Section: Figure 4

A list of professional investment managers may be found on pages 40 and 41.

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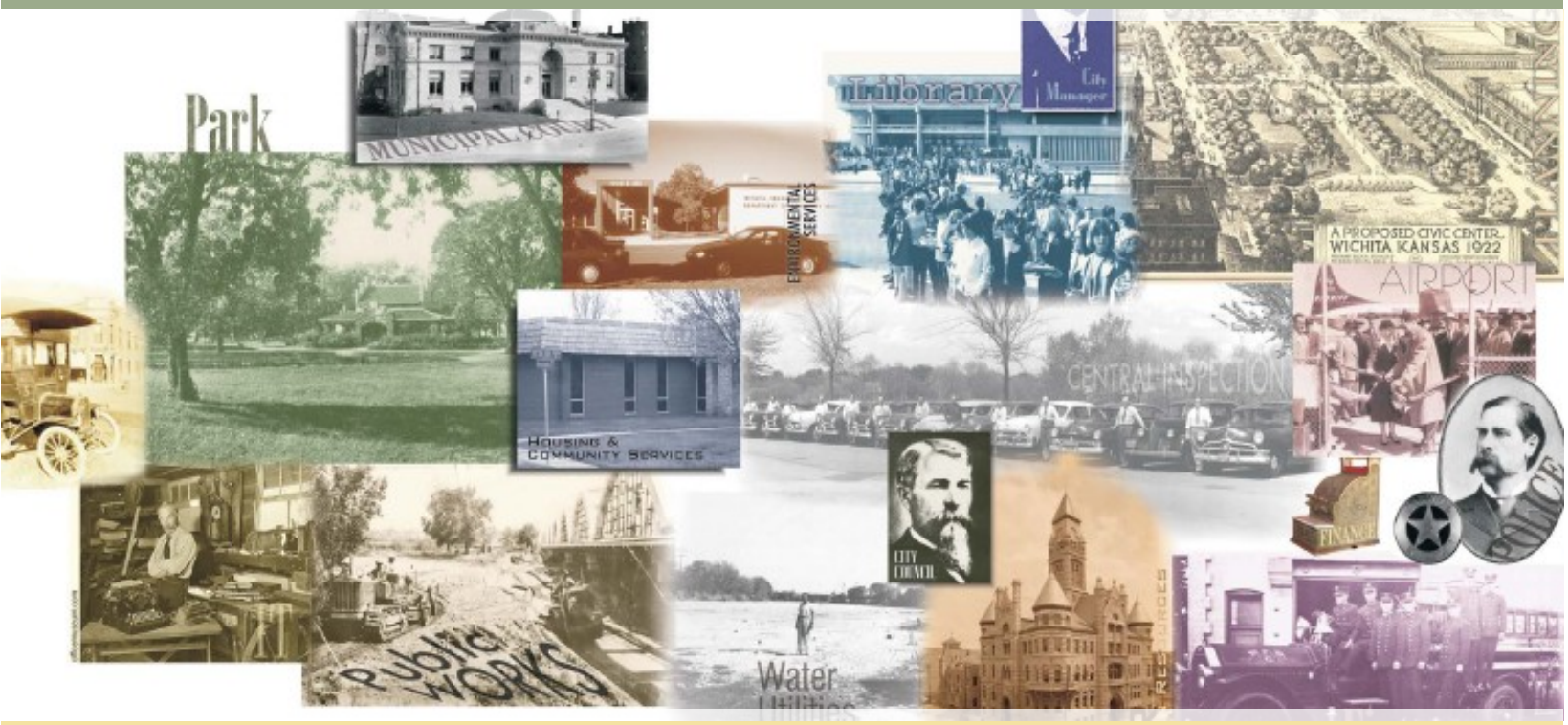
FINANCIAL SECTION



FINANCIAL SECTION

AGH
Allen, Gibbs & Houlik, L.C.
CPAs & Advisors

INDEPENDENT AUDITORS' REPORT

The Boards of Trustees
Wichita Retirement Systems
Wichita, Kansas

We have audited the accompanying statement of plan net assets of the Wichita Retirement Systems of the City of Wichita, Kansas (Systems) as of December 31, 2010, and the related statement of changes in plan net assets for the year then ended. These financial statements are the responsibility of the Systems' management. Our responsibility is to express an opinion on these financial statements based on our audit. The prior year summarized comparative information has been derived from the Systems' 2009 financial statements and in our report dated June 11, 2010, we expressed an unqualified opinion on those financial statements.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the plan net assets of the Wichita Retirement Systems of the City of Wichita, Kansas as of December 31, 2010, and the changes in plan net assets for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated June 7, 2011 on our consideration of the System's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

The management discussion and analysis and required supplementary information as listed in the table of contents are not a required part of the basic financial statements, but are supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

301 N. Main, Suite 1700 • Wichita, Kansas 67202-4868 • (316) **267-7231** • (316) **267-0339** fax • www.aghlc.com

Our audit was made for the purpose of forming an opinion on the financial statements taken as a whole. The accompanying supporting schedules on pages 29 and 30, and the introductory, investment, actuarial, and statistical sections, are presented for purposes of additional analysis and are not a required part of the basic financial statements. The supporting schedules on pages 29 and 30 have been subjected to the auditing procedures applied in our audit of the basic financial statements and, in our opinion, are fairly stated in all material respects in relation to the basic financial statements taken as a whole. The introductory, investment, actuarial, and statistical sections have not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we express no opinion on them.

Allen, Gibbs & Houlik, L.C.
CERTIFIED PUBLIC ACCOUNTANTS

June 7, 2011
Wichita, KS

Management Discussion and Analysis

Management is pleased to provide this overview and analysis of the financial activities of the Wichita Retirement Systems (WRS) for the year ended December 31, 2010. We encourage readers to consider this information in conjunction with the letter of transmittal, which begins on page 2 of this report.

Overview of the Financial Statements of the Fund

The two basic financial statements of the Fund are the Statement of Plan Net Assets and the Statement of Changes in Plan Net Assets. Statements are shown for the most recent and previous fiscal years for comparison and analysis in individual line items. The statements are prepared in conformity with accounting principles generally accepted in the United States.

The **Statement of Plan Net Assets** (see page 14) is presented for the pension trust funds at December 31, 2010, with combined total comparative information at December 31, 2009. The Statement of Plan Net Assets presents information on all of the Systems' assets and liabilities, with the difference between the two reported as net assets held in trust for future benefits. The statement is a snapshot of the financial position of the Systems at the close of the fiscal year.

The **Statement of Changes in Plan Net Assets** (see page 15) is presented for the pension trust funds for the year ended December 31, 2010, with combined total comparative information for the year ended December 31, 2009. The statement presents information showing how the Systems' net assets changed during the fiscal year.

The **Notes to the Financial Statements** (see page 16) provide additional information, which is not included in the statements themselves, but is essential to a full understanding of the financial statements.

The **Required Supplementary Information and Supporting Schedules** (see page 27) consist of schedules and related notes concerning actuarial information, funded status and required contributions of the defined benefit systems. These schedules and notes emphasize the long-term nature of pension plans and show each system's progress in accumulating sufficient assets to pay future benefits.

The **Schedules of Funding Progress** (see page 27) show actuarial trend data for the past six years. It includes the ratio of the actuarial value of assets to the actuarial liability, otherwise known as the funded ratio. The funded ratio increases or decreases over time based upon the relationships between contributions, investment performance, benefit changes, and actuarial assumption changes based upon participant information and characteristics. This schedule also shows the unfunded actuarial accrued liability as a percentage of member payroll.

The **Schedules of Employer Contributions** (see page 27) show the amount of required employer contributions determined in accordance with parameters established by Governmental Accounting Standards Board (GASB) Statement No. 25 and the percentage actually contributed.

The **Notes to the Required Supplementary Information** (see page 28) include the actuarial methods and assumptions used to determine the data included in the Schedules of Funding Progress and the Schedules of Employer Contributions.

A **Schedule of Administrative Expenses** (see page 29), a **Schedule of Investment Expenses** (see page 30), and a **Schedule of Payments to Consultants Other Than Investment Advisors** (see page 30) are included to show detail of the administrative and investment costs to operate the Systems.

Financial Statement Analysis

Plan Net Assets

The value of plan net assets increased by $81.9 million during the 2010 fiscal year. This change primarily consisted of a $94.9 million increase in cash and investments due to the appreciation of investments holdings. The investment return was 13.6% for the year ended December 31, 2010, with all portfolios generating positive returns. Investment returns by asset class were as follows: domestic equity 18.3%, international equity 7.6%, real estate 17.8%, and domestic fixed income 9.3%.

As of December 31, 2010, total securities lending obligations increased by $25.1 million, as compared to December 31, 2009. Several factors influence the amount of securities lent at any point in time, including the demand for the securities, the negotiated rebate rate and the overall market volatility.

Comparative summary financial statements for fiscal years 2009 and 2010 are shown below (see Financial Section: Figure 1 and Financial Section: Figure 2)

Summary of Plan Net Assets

	2010	2009	Increase (Decrease)
Assets			
Total cash and investments	$976,150,969	$881,210,446	$94,940,523
Total capital assets (net of depreciation)	820,572	1,001,934	(181,362)
Total receivables	37,574,868	12,781,813	24,793,055
Securities lending short-term collateral investment pool	113,338,136	138,455,969	(25,117,833)
Total assets	1,127,884,545	1,033,450,162	94,434,383
Liabilities			
Accounts payable and accrued expenses	965,014	2,819,639	(1,854,625)
Investment purchases pending	61,822,613	22,315,300	39,507,313
Securities lending obligations	113,338,136	138,455,969	(25,117,833)
Total liabilities	176,125,763	163,590,908	12,534,855
Plan Net Assets	$951,758,782	$869,859,254	$81,899,528

Financial Section: Figure 1

Summary of Changes in Plan Net Assets

	2010	2009	Increase (Decrease)
Additions			
Contributions			
Employer	$19,948,502	$15,058,139	$4,890,363
Employee	8,481,702	8,560,860	(79,158)
Net investment income	112,257,777	156,120,453	(43,862,676)
Transfers from other funds	1,276,393	1,664,681	(388,288)
Total additions	141,964,374	181,404,133	(39,439,759)
Deductions			
Pension benefits	56,356,565	51,539,779	4,816,786
Pension administration	924,859	960,025	(35,166)
Depreciation	181,362	184,614	(3,252)
Employee contributions refunded	1,325,667	1,020,604	305,063
Transfers to other funds	1,276,393	1,664,681	(388,288)
Total deductions	60,064,846	55,369,703	4,695,143
Changes in Plan Net Assets	$81,899,528	$126,034,430	$(44,134,902)

Financial Section: Figure 2

Additions to Plan Net Assets

Additions to plan net assets that are needed to finance Plan benefit obligations come primarily from employer and employee contributions and net earnings on investments. For the year ended December 31, 2010, additions totaled $142.0 million, which is a $39.4 decrease from 2009 additions of $181.4 million. Employer contributions increased by $4.9 million in 2010, or 32.5%, while employee contributions decreased by $0.08 million, or 0.9%. Net investment income decreased by $43.9 million from the prior year.

Deductions from Plan Net Assets

Deductions from plan net assets are consistent with characteristics of a mature pension system. Pension benefits increased from $51.5 million in 2009 to $56.4 million in 2010, or approximately $4.8 million (9.3%). This increase is due to new pensioners, with benefits based on higher salaries, being added to the pension payroll and to DROP and Back DROP payments, which increased from $5.8 million in 2009 to $7.4 million in 2010.

Requests for Information

Questions regarding any information provided in this report should be addressed to the Pension Management Office, City of Wichita, 455 N. Main St., 12th Floor, Wichita, KS 67202.

Wichita Retirement Systems

Statement of Plan Net Assets

December 31, 2010
(with comparative totals as of December 31, 2009)

	Police and Fire Retirement System	Employees' Retirement System	Employees' Retirement Plan 3	Totals 2010	Totals 2009
ASSETS					
Cash and temporary investments	$318,382	$147,839	$27,148	$493,369	$364,186
Receivables:					
Investment sales pending	16,917,281	16,847,353	625,988	34,390,622	9,410,873
Interest and dividends	1,470,613	1,464,535	54,417	2,989,565	3,237,435
Other	84,483	85,506	24,692	194,681	133,505
Total receivables	18,472,377	18,397,394	705,097	37,574,868	12,781,813
Investments, at fair value:					
Government short-term investment fund	7,529,727	7,498,603	278,622	15,306,952	17,678,689
Government securities: long-term	28,754,625	28,635,692	1,111,513	58,501,830	40,888,227
Corporate debt instruments: long-term	50,379,139	50,170,765	1,947,408	102,497,312	99,647,881
Mortgage and asset-backed securities	47,449,026	47,252,771	1,834,145	96,535,942	106,333,562
Corporate stocks: domestic common	172,412,490	171,699,370	6,664,613	350,776,473	297,846,669
Corporate stocks: international common	78,367,200	78,043,062	3,029,289	159,439,551	162,834,278
Real estate	13,915,206	13,857,650	537,893	28,310,749	27,336,014
Pooled funds: domestic fixed income	-	-	440,450	440,450	364,485
Pooled funds: international fixed income	2,323,575	2,313,964	89,818	4,727,357	5,131,638
Pooled funds: high yield fixed income	1,531,072	1,524,739	59,184	3,114,995	7,266,835
Pooled funds: domestic equities	57,258,958	57,022,127	2,213,348	116,494,433	101,097,243
Pooled funds: international equities	19,352,215	19,272,223	887,118	39,511,556	14,420,739
Securities lending short-term collateral investment pool	55,752,788	55,522,334	2,063,014	113,338,136	138,455,969
Total investments	535,026,021	532,813,300	21,156,415	1,088,995,736	1,019,302,229
Capital assets:					
Pension software	449,558	449,558	385,335	1,284,451	1,284,451
Less accumulated depreciation	(162,358)	(162,358)	(139,163)	(463,879)	(282,517)
Total capital assets (net of depreciation)	287,200	287,200	246,172	820,572	1,001,934
Total assets	554,103,980	551,645,733	22,134,832	1,127,884,545	1,033,450,162
LIABILITIES					
Accounts payable and accrued expenses	451,968	487,623	25,423	965,014	2,819,639
Investment purchases pending	30,411,503	30,285,797	1,125,313	61,822,613	22,315,300
Securities lending obligations	55,752,788	55,522,334	2,063,014	113,338,136	138,455,969
Total liabilities	86,616,259	86,295,754	3,213,750	176,125,763	163,590,908
NET ASSETS					
Held in trust for pension benefits	$467,487,721	$465,349,979	$18,921,082	$951,758,782	$869,859,254

Financial Section: Figure 3

The accompanying Notes to the Financial Statements are an integral part of this statement.

Wichita Retirement Systems

Statement of Changes in Plan Net Assets

For the year ended December 31, 2010
(with comparative totals for the year ended December 31, 2009)

	Police and Fire Retirement System	Employees' Retirement System	Employees' Retirement Plan 3	Totals 2010	Totals 2009
ADDITIONS					
Contributions:					
Employer	$13,119,984	$4,529,765	$2,298,753	$19,948,502	$15,058,139
Employee	4,467,983	2,664,619	1,349,100	8,481,702	8,560,860
Total contributions	17,587,967	7,194,384	3,647,853	28,430,204	23,618,999
Investment income:					
From investment activities					
Net appreciation in fair value of investments	45,661,526	45,742,773	1,808,205	93,212,504	134,441,222
Interest and dividends	11,300,331	11,437,779	391,597	23,129,707	24,565,198
Commission recapture	13,716	13,775	493	27,984	106,368
Total investing activity income	56,975,573	57,194,327	2,200,295	116,370,195	159,112,788
Less investment expense	2,195,653	2,211,285	81,676	4,488,614	3,737,028
Net income from investing activities	54,779,920	54,983,042	2,118,619	111,881,581	155,375,760
From securities lending activities					
Securities lending income	269,009	275,825	9,352	554,186	1,139,462
Less securities lending activities expenses:					
Borrower rebates	10,298	10,373	372	21,043	100,529
Management fees	74,933	79,412	2,602	156,947	294,240
Total securities lending activities expenses	85,231	89,785	2,974	177,990	394,769
Net income from securities lending activities	183,778	186,040	6,378	376,196	744,693
Total net investment income	54,963,698	55,169,082	2,124,997	112,257,777	156,120,453
Transfers from other funds	-	1,276,393	-	1,276,393	1,664,681
Total additions	72,551,665	63,639,859	5,772,850	141,964,374	181,404,133
DEDUCTIONS					
Pension benefits	26,466,067	29,890,498	-	56,356,565	51,539,779
Pension administration	421,251	429,764	73,844	924,859	960,025
Depreciation	63,477	63,477	54,408	181,362	184,614
Employee contributions refunded	492,380	191,171	642,116	1,325,667	1,020,604
Transfers to other funds	-	-	1,276,393	1,276,393	1,664,681
Total deductions	27,443,175	30,574,910	2,046,761	60,064,846	55,369,703
Change in net assets	45,108,490	33,064,949	3,726,089	81,899,528	126,034,430
Net assets held in trust for pension benefits:					
Beginning of year	422,379,231	432,285,030	15,194,993	869,859,254	743,824,824
End of year	$467,487,721	$465,349,979	$18,921,082	$951,758,782	$869,859,254

Financial Section: Figure 4

The accompanying Notes to the Financial Statements are an integral part of this statement.

Notes to the Financial Statements for the Fiscal Year Ended December 31, 2010

The Wichita Employees' Retirement System, the Police and Fire Retirement System of Wichita, and the Wichita Employees' Retirement System Plan 3 are reported as pension trust funds of the City of Wichita and its component units (the reporting entity). The plans consist of two single-employer defined benefit pension plans and a single-employer defined contribution plan, covering all full-time employees.

The defined benefit plans include the Wichita Employees' Retirement System (WERS) and the Police and Fire Retirement System (PFRS). A separate Board of Trustees administers each System. The defined contribution plan consists of the Wichita Employees' Retirement System Plan 3, which is also administered by the Wichita Employees' Retirement System Board of Trustees.

Summary of Significant Accounting Policies and Plan Asset Matters

Measurement Focus and Basis of Accounting: The Wichita Employees' Retirement System, Police and Fire Retirement System, and the Wichita Employees' Retirement System Plan 3 are reported as pension trust funds of the City of Wichita, Kansas in the City's financial statements using the economic resources measurement focus and the accrual basis of accounting. Employee and employer contributions are recognized as revenues in the period in which employee services are performed. Benefits and refunds are recognized when due and payable in accordance with the terms of each plan.

Method Used to Value Investments: Investments are reported at fair value. Short-term investments are reported at cost plus accrued interest, which approximates market or fair value. Securities traded on national or international exchanges are valued at the last trade price of the day. If no close price exists, then a bid price is used. Mortgages are valued on the basis of future principal and interest payments, and are discounted at prevailing interest rates for similar investments. Investments that do not have an established market value are reported at their estimated fair value. The Systems invest in treasury strips and various asset-backed securities, such as collateralized mortgage obligations and credit card trusts.

Capital Assets: Capital assets include equipment and software. Capital assets are defined as assets with an initial individual minimum cost of $5,000 or more. Capital assets are valued at historical cost. Major outlays for capital assets and improvements are capitalized as projects are constructed. Capital assets are depreciated using the straight-line method over useful lives of one to ten years.

Management of Plan Assets**:** The Boards of Trustees of the Systems have contractual arrangements with independent investment managers for management of the assets of the Systems. The firms have been granted discretionary authority concerning purchases and sales of investments within guidelines established by City ordinances. The Boards of Trustees also have contractual arrangements with independent firms, which monitor the investment decisions of the Systems' investment advisors.

Estimates: Preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (GAAP) requires making estimates and assumptions that affect: 1) the reported amounts of assets and liabilities; 2) disclosures, such as contingencies; and 3) the reported amounts of revenues and expenses included in the financial statements. Actual results could differ from those estimates. Some of the more significant estimates include the valuation of certain investments described in the Notes and the actuarial data included in the Required Supplementary Information.

Prior Year Comparative Information**:** The basic financial statements include certain prior year summarized comparative information in total, but not at the level of detail required for a presentation in conformity with generally accepted accounting principles. Accordingly, such information should be read in conjunction with the Systems' financial statements for the year ended December 31, 2009, from which the summarized information has been derived.

Reserves and Concentrations of Credit Risks: There are no assets legally reserved for purposes other than the payment of plan member benefits. The plans held no individual investments (other than U.S. Government and U.S. Government guaranteed obligations) where the market value exceeded five percent or more of net assets available for benefits. There are no long-term contracts for contributions.

Pending Governmental Accounting Standards Board (GASB) Statements: GASB Statement No. 54, "Fund Balance Reporting and Governmental Fund Type Definitions" was issued in February 2009 and is effective for financial statements for periods beginning after June 15, 2010. This Statement addresses fund balance classifications and disclosure of the policies in the notes to the financial statements, provides guidance on stabilization funds and clarifies definitions of governmental fund types.

GASB Statement No. 59, "Financial Instruments Omnibus", was issued in June 2010. This statement is intended to update and improve existing standards regarding financial reporting of certain financial instruments and external investment pools. The provisions of this statement are effective for the City's fiscal year ending December 31, 2011.

Insurance

The Wichita Retirement Systems participate in the City of Wichita's self-insurance fund programs of workers' compensation, group life insurance, employee liability, property damage, auto liability and general liability. Settled claims for the City of Wichita have not exceeded commercial coverage in any of the past three fiscal years. Additional information, including a general description of each program, can be found in the Comprehensive Annual Financial Report issued by the City of Wichita.

Cash, Investments and Securities Lending

Investments of the Pension Trust Funds: City Ordinance (44-812; section 2.28.090) authorizes the Wichita Employees' Retirement System and City Ordinance (Charter Ordinance 209) authorizes the Police and Fire Retirement System to invest trust fund assets in accordance with the prudent person rule, subject to the following limitations: 1) The proportion of funds invested in corporate preferred and common stock shall not exceed 70 percent; and (2) the proportion of funds invested in foreign securities shall not exceed 25 percent. Additionally, the Systems are not permitted to invest directly or indirectly in any**:**

1. Real estate, except in certain pooled arrangements with the amount of such investment not to exceed 10 percent;
2. Private equity, except in a commingled fund-of-funds vehicle with the amount of such investment not to exceed 10 percent;
3. Mortgages secured by real estate, except insured mortgages under Titles 203, 207, 220 and 221 of the Federal Housing Act;
4. Oil and gas leases or royalties;
5. Commodities;
6. Provided, however that the restrictions on investments set forth above shall not apply to funds which are invested in a mutual fund, separate account, or commingled fund operated by a qualified investment manager or insurance company for the purpose of making international investments.

Wichita Retirement Systems' Investments

Type of Investment	Fair Value
Government short-term investment fund	$ 15,306,952
Government securities, long-term	58,501,830
Corporate debt instruments, long-term	102,497,312
Mortgage and asset-backed securities	96,535,942
Corporate stocks, domestic common	350,776,473
Corporate stocks, international common	159,439,551
Real estate	28,310,749
Value of interest in pooled funds, domestic fixed income	440,450
Value of interest in pooled funds, international fixed income	4,727,357
Value of interest in pooled funds, high yield fixed income	3,114,995
Value of interest in pooled funds, domestic equities	116,494,433
Value of interest in pooled funds, international equities	39,511,556
Securities lending short-term collateral investment pool	113,338,136
Total investments	$1,088,995,736

Financial Section: Figure 5

All of the deposits and investments of the Wichita Employees' and Police and Fire Retirement Systems are held in a joint investment fund that is invested by outside money managers and are held under a custodial agreement. The pension funds follow an overall strategic allocation policy that includes investments in four asset types: domestic equities, international equities, domestic fixed income, and real estate.

The investments of the Wichita Retirement Systems on December 31, 2010 are listed in Financial Section: Figure 5.

The pension funds invest in various asset-backed securities, such as collateralized mortgage obligations (CMO's) and credit card trusts, to maximize yields and reduce the impact of interest rate changes. These securities are based on cash flows from principal and interest payments on the underlying assets. For example, CMO's break up the cash flows from mortgages into categories with defined risk and return characteristics called tranches. The tranches are differentiated by when the principal payments are received from the mortgage pool. Changes in interest and mortgage prepayment rates may affect the amount and timing of cash flows, which would also

affect the reported estimated fair values. The pension funds utilize a combination of asset-backed securities, which vary in their degree of volatility. Although considerable variability is inherent in such estimates, management believes the estimated fair values are reasonable estimates.

The pension funds also invest in real estate through real estate investment trusts (REITS). The fair values of these investments are estimated using the net asset value of the Systems' shares owned in each trust. Market conditions have had a negative impact on the estimated fair value of real estate investments. Severe restrictions on the availability of real estate financing, as well as the economic uncertainties in the current environment, have resulted in a low volume of purchase and sale transactions. As a result, the estimates and assumptions used in determining the fair values of the real estate investments are inherently subject to significant uncertainty.

Custodial Credit Risk: The custodial credit risk for deposits is the risk that in the event of a bank failure, the Wichita Retirement Systems' (WRS) deposits may not be recovered. On December 31, 2010, the WRS' cash deposits in the amount of $493,369 were included in the City's pooled cash and temporary investments. The WRS' debt securities investments were registered in the name of WRS and were held in the possession of the WRS custodial bank, State Street.

Interest Rate Risk: Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. The interest rate risk is managed using the modified duration methodology. Duration is a measure of a fixed income's cash flow using present values, weighted for cash flows as a percentage of the investment's full price. Modified duration estimates the sensitivity of a bond's price to interest rate changes.

The Wichita Retirement Systems manage their exposure to fair value loss arising from increasing interest rates by complying with the following policy:

1. Fixed income managers have full discretion over the issues selected and may hold any mix of fixed income securities and cash equivalents.

2. Portfolio duration must not be less than 80 percent nor more than 120 percent of the duration of the Barclays Capital Aggregate Bond Index, unless the Joint Investment Committee prospectively grants a written exception. The minimum and maximum of the index range on December 31, 2010 was 3.98 and 5.98, respectively.

The modified duration of investments, expressed in years, on December 31, 2010 is shown as follows (see Financial Section: Figure 6 below):

Modified Duration of Investments

Investment Type	Fair Value	Modified Duration (years)
Government securities, long-term	$ 58,501,830	2.90
Corporate debt instruments, long-term	102,497,312	3.97
Mortgage and asset-backed securities	96,535,942	2.31
Actively managed investment totals	257,535,084	3.12
Government short-term investment fund	15,306,952	0.13
Pooled domestic fixed income securities	440,450	4.95
Pooled international and high yield fixed income securities	7,842,352	5.74
Total investment in debt securities	$281,124,838	

Financial Section: Figure 6

Credit Risk of Debt Securities: Credit risk is the risk that an issuer of an investment will not fulfill its obligations. The Wichita Retirement Systems manage exposure to investment credit risk by adhering to the following policies: (1) For active core domestic fixed income investments, bonds and preferred stocks must be rated at least "A" by Moody's or Standard and Poor's at the time of purchase; and (2) For core-plus domestic fixed income investments, the weighted average credit quality of the portfolio will not fall below AA- or equivalent. On December 31, 2010, no securities in the investment managers' portfolios were outside of the policy guidelines.

The debt investments held by the Wichita Retirement Systems on December 31, 2010, as rated by Standard and Poor's or an equivalent nationally recognized statistical rating organization, are shown in Financial Section: Figure 7.

Credit risk for investment derivative instruments results from counterparty risk assumed by the Wichita Retirement Systems. This is essentially the risk that the counterparty to a Wichita Retirement Systems' transaction will be unable to meet its obligation. Information regarding the Wichita Retirement Systems' credit risk related to derivatives is found under the derivatives disclosures on pages 20-21 of these notes.

Concentration of Credit Risk: Concentration of credit risk is the risk of loss that may be attributed to the magnitude of a government's investment with a single issuer. The Wichita Retirement Systems' investment in debt securities had no single issuer of investments that represented five percent or more of the plan assets, with exception of investments issued or implicitly guaranteed by the U.S. government and investments in mutual funds.

Foreign Currency Risk: Currency risk arises due to foreign exchange rate fluctuations. The Wichita Retirement Systems manage the exposure to foreign currency risk, per their Strategic Plan and Investment Policies, by allowing the international securities investment managers to enter into forward exchange or future contracts on foreign currency provided such contracts have a maturity of less than one year. Currency contracts are only to be utilized for the settlement of securities transactions and defensive hedging of currency positions.

Standard and Poor's Investment Ratings

Quality Rating	Total Debt Securities
AAA	$139,914,356
AA+	5,924,968
AA	10,194,405
AA-	4,075,209
A+	15,673,372
A	32,313,474
A-	24,399,943
BBB+	7,718,843
BBB	4,549,895
BBB-	2,452,843
BB+	1,173,984
BB	1,284,577
BB-	332,225
B+	3,114,995
B	952,940
B-	655,528
CCC+	45,473
CCC	8,051,811
CC	847,187
C	15,679
D	1,519,740
NR	165,989
Total credit risk debt securities	$265,377,436
Pooled domestic fixed income securities[1]	440,450
Government short term investment fund[2]	15,306,952
Total investment in debt securities	$281,124,838

[1] Pooled domestic fixed income securities funds report average quality ratings of AA2.
[2] The average quality of the holdings of the Government short-term investment fund on December 31, 2010 was A1.

Financial Section: Figure 7

All forward foreign currency contracts are carried at fair value by the Retirement Systems. As of December 31, 2010, the Systems held no forward currency contracts. If held, sales of forward currency contracts are receivables and are reported as investment sales pending in the financial statements.

The Wichita Retirement Systems' exposure to foreign currency risk on December 31, 2010 is as follows (see Financial Section: Figure 8):

Exposure to Foreign Currency Risk

Currency	Cash and Cash Equivalents	Debt Securities	Equities
Australian dollar	$ 6,727	$ -	$ 14,750,397
Canadian dollar	-	-	1,091,596
Danish krone	-	-	1,513,199
Euro	88,306	-	53,344,007
Hong Kong dollar	5	-	2,848,984
Japanese yen	901	-	33,709,572
New Zealand dollar	-	-	531,116
Norwegian krone	10,209	-	871,953
Pound sterling	162,552	-	34,492,436
Singapore dollar	27,973	-	3,410,976
Swedish krona	-	-	689,473
Swiss franc	24,733	-	10,547,739
International mutual funds (various currencies)	-	4,693,016	39,511,556
Total subject to foreign currency risk	$321,406	$4,693,016	$197,313,004

Financial Section: Figure 8

Other Risk Information: Recent market conditions have resulted in an unusually high degree of volatility and increased risks associated with certain investments held by the City and by the Wichita Employees' Retirement System and the Police and Fire Retirement System. As a result, it is at least reasonably possible that changes in the fair values of investment securities will occur in the near term and that such changes could materially affect the amounts reported in the financial statements. In addition, for the pensions systems, declines in the fair values of Plan assets could ultimately affect the funded status of the Plans. The ultimate impact on the funded status will be determined based upon market conditions in effect when the annual valuation is performed. While it is unknown at this time, the future net pension obligations and pension costs recorded by the Systems could be negatively impacted by the current market conditions.

Derivatives: Investment derivative instruments are financial contracts for which the value of the contract is dependent on the value of underlying assets, reference rates, or financial indexes. They include futures contracts, swap contracts, options contracts, and forward foreign currency exchanges. While the Wichita Retirement Systems has no formal policy specific to investment derivatives, the Wichita Retirement Systems, through its external investment managers, held credit default swaps, interest rate swaps and total return bond swaps as of December 31, 2010. The Wichita Retirement Systems enters into these investment derivative instruments primarily to enhance performance, reduce volatility, and to manage the interest rate risk of its investment portfolio. The investment derivative instruments held by the Wichita Retirement Systems on December 31, 2010 are shown in Financial Section: Figure 9. The notional values associated with these derivative instruments are generally not recorded in the financial statements; however, the amounts for the exposure on these instruments are included in the fair value of investments in the Statement of Plan Net Assets and the total changes in fair value for the year are included as investment income in the Statement of Changes in Plan Net Assets

The fair value of derivative investments is based on the exchanges when available. When an exchange is not available, fair value is determined by J.P. Morgan Chase & Co. These estimated fair values are determined in good faith by using information from J.P. Morgan's investment managers, including methods and assumptions considering market conditions and risks existing at the date of the Statement of Plan Net Assets. Such methods and assumptions incorporate standard valuation conventions and techniques, such as discounted cash flow analysis and option pricing models. All methods utilized to estimate fair values result only in general approximations of value.

Investment Derivative Instruments

Type	Classification	Change in Fair Value	Notional Value	Exposure/Fair Market Value	Counterparty	Counterparty Rating
Credit Default Swap	Investment Loss	$ (4,460)	$ 500,000	$ 20,300	Bank of America Securities LLC	A
Credit Default Swap	Investment Loss	(20,303)	1,090,000	43,600	Goldman Sachs & Co.	A
Credit Default Swap	Investment Revenue	483	170,000	6,800	JP MorganChase Bank/Greenwich Capital	AA-
Credit Default Swap	Investment Revenue	2,058	700,000	17,250	Morgan Stanley Co., Inc.	A
Interest Rate Swap	Investment Loss	(104,986)	1,950,000	(104,986)	Barclays Capital, Inc.	AA-
Interest Rate Swap	Investment Loss	(93,067)	1,920,000	(93,067)	Morgan Stanley Co., Inc.	A
Total Return Bond Swap	Investment Revenue	1,962	170,000	5,605	Bank of America Securities LLC	A
Total Return Bond Swap	Investment Revenue	6,219	459,876	381	Barclays Capital, Inc.	AA-
Total Return Bond Swap	Investment Revenue	7,209	260,000	8,572	Goldman Sachs & Co.	A
Total Return Bond Swap	Investment Revenue	1,244	91,975	76	Morgan Stanley Co., Inc.	A
	Totals	$(203,641)	$7,311,851	$(95,469)		

Financial Section: Figure 9

Securities Lending Transactions: Policies of the Board of Trustees for the Wichita Employees' Retirement and Police and Fire Retirement Systems permit the lending of securities to broker-dealers and other entities (borrowers) with a simultaneous agreement to return the collateral for the same securities in the future. The custodian of the City's pension plans is an agent in lending the plans' domestic securities for initial collateral of 102 percent of the market value of the loaned securities, international equity securities for initial collateral of 105 percent of the market value of such securities, and the initial collateral received for loans of United Kingdom (UK) Gilts shall have a value of at least 102.5 percent of the market value of such UK Gilts. Collateral may consist of cash

(U.S. and foreign currency), securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a person other than the securities borrower or affiliate, if determined appropriate by the agent under the securities lending programs it administers and such other collateral as the parties may agree to in writing.

The collateral securities cannot be pledged or sold by the City unless the borrower defaults. The agent shall require additional collateral from the borrower whenever the value of loaned securities exceeds the value of the collateral in the agent's possession, so that collateral always equals or exceeds 100 percent of the market value of the loaned securities. Contracts with the lending agent require them to indemnify the Systems, if the borrowers fail to return the securities (and if the collateral is inadequate to replace the securities lent) or fail to pay the Systems for income distributions by the securities' issuers while the securities are on loan.

At year-end, the Systems had no credit risk exposure to borrowers because the amounts the Systems owe the borrowers exceeded the amounts the borrowers owed the Systems. Securities loaned can be terminated on demand by the Systems or the borrower.

At year-end, loans were secured with cash collateral, securities collateral or letters of credit. Cash collateral is invested in the lending agent's short-term investment pool, which at year-end had a weighted average maturity of 47 days. The relationship between the maturities of the investment pool and the Systems' loans is affected by the maturities of the securities loans made by other entities that use the agent's pool, which the Systems cannot determine.

Custodial Credit Risk Related to Securities Lending: Custodial credit risk for lent securities is the risk that, in the event of the failure of the counterparty, the Systems will not be able to recover the value of its investments or collateral securities that are in possession of an outside party. Consistent with the Systems' securities lending policy, $113,338,136 was held by the counterparty acting as the Systems' agent in securities lending transactions on December 31, 2010.

Capital Assets

Capital asset activity for the year ended December 31, 2010 is displayed below (see Financial Section: Figure 10):

Capital Assets

	Beginning Balance	Decrease	Ending Balance
Pension administration software	$1,284,451	$ -	$1,284,451
Less: accumulated depreciation	(282,517)	(181,362)	(463,879)
Capital assets, net	$1,001,934	$(181,362)	$ 820,572

Financial Section: Figure 10

Wichita Employees' Retirement System

Plan Description: The Wichita Employees' Retirement System (WERS) was established to provide retirement and survivor annuities, disability benefits, death benefits, and other benefits for all regular full-time civilian employees of the reporting entity and their dependents. Plan 1 was established by City Ordinance on January 1, 1948 and became closed to new entrants as of July 19, 1981. With the initiation of Plan 2, which was established by City Ordinance on July 18, 1981, all covered employees of Plan 1 were given the option of converting to the new plan. Plan 2 was closed to new entrants with the establishment of Plan 3 by City Ordinance, effective January 1, 1994. However, upon completion of seven years of service, employees participating in Plan 3 may convert to participation in Plan 2. Establishment of, and amendments to the benefit provisions for the WERS are authorized by the City Council.

On December 31, 2010, the WERS defined benefit plan membership (Plan 1 and Plan 2) consisted of (see Financial Section: Figure 11):

Defined Benefit Plan Membership

	Plan 1	Plan 2	Total
Employees vested	61	993	1,054
Subtotal	61	993	1,054
Retirees and beneficiaries receiving benefits	830	363	1,193
Terminated employees entitled to benefits, but not receiving them	2	132	134
Subtotal	832	495	1,327
Total membership	893	1,488	2,381

Financial Section: Figure 11

Eligibility Factors and Benefit Provisions

	Plan 1	Plan 2
Eligibility for benefits	30 years credited service regardless of age; or 7 years credited service and age 60	7 years credited service and age 62
Early retirement benefits	Early retirement between age 55 and 60 on a reduced basis	Early retirement between age 55 and 62 on a reduced basis
Minimum vesting	7 years of credited service	7 years of credited service
Maximum benefit	2.5% of final average salary per year of service up to a maximum of 75%	2.25% of final average salary per year of service up to a maximum of 75%
Service-connected disability	60% of final salary	50% of final salary
Non-service connected disability	Benefit formula based on credited service with a maximum of 50% of final average salary	25% of final salary
Pre-retirement survivor benefits	Benefit formula based on credited service and number of survivors with a maximum of 75% of final average salary	Benefit formula based on credited service and number of survivors with a maximum of 75% of final average salary
Post-retirement survivor benefits	Benefit formula based on credited service and number of survivors with a maximum of 75% of final average salary	Benefit formula based on credited service and number of survivors with a maximum of 75% of final average salary
Annual post-retirement benefit increases	3% of original benefit after 12 months of retirement, not compounded	2% of original benefit after 12 months of retirement, not compounded

Financial Section: Figure 12

Funding Policy: The contribution requirements of plan members and the reporting entity are established by City Ordinance and may be amended by the governing body. Members of Plan 1 and 2 are required to contribute 6.4 and 4.7 percent of covered salaries, respectively. The City is required to contribute at an actuarially determined rate; the rate for 2010 was 8.4 percent of annual covered payroll for both Plans 1 and 2. The City may provide for pension expenses by levying ad valorem property taxes each year in the amount necessary to meet its obligation as determined by the WERS consulting actuary.

Annual Pension Cost and Net Pension Obligation: The net pension obligation (NPO) is defined as the cumulative difference between the employer's annual pension cost and the employer's annual required contributions to the plan. For 2010, the City's annual pension cost of $4,529,765 was equal to the required and actual contributions.

The employer's annual required contribution for the 2010 fiscal year was determined as part of the December 31, 2008 actuarial valuation using the Entry Age Normal actuarial cost method. Significant actuarial assumptions used for this evaluation include (a) a rate of return on the investment of present and future assets of 7.75 percent per year compounded annually, (b) projected salary increases of 4.5 percent per year compounded annually (4.0 percent attributable to inflation and 0.5 percent attributable to productivity), (c) additional projected salary increases ranging from 0.0 percent to 5.5 percent per year, depending on age, attributable to seniority/merit, and (d) the assumption that benefits will increase 3.0 percent per year (non-compounded) after retirement for Plan 1 and 2.0 percent per year (non-compounded) for Plan 2.

Subsequently, the actuarial assumptions for projected salary increases were modified with the December 31, 2009 valuation to 4.0 percent per year compounded annually (3.5 percent attributable to inflation and 0.5 percent attributable to productivity) and additional projected salary increases ranging from 0.25 percent to 3.2 percent per year, depending on age, attributable to seniority/merit.

The actuarial accrued liability, as determined by the Entry Age Normal actuarial cost method, is the portion of the actuarial present value of pension plan benefits and expenses not provided for by future normal costs. An asset valuation method is used to smooth the effect of market fluctuations. The actuarial value of assets is equal to the Expected Value (calculated using the actuarial assumed rate of 7.75 percent) plus 25 percent of the difference between the market and expected value. This smoothing method has been used since 2002. As of December 31, 2010, the System had an unfunded actuarial liability (UAL), which is being amortized as a level percent of projected payroll on an open basis. At December 31, 2010, the amortization period was 20 years.

The schedule of funding progress, presented as required supplementary information (following the notes to the financial statements), reflects multiyear trend information about whether the actuarial values of plan assets are increasing or decreasing over time relative to the actuarial accrued liability for benefits (see Financial Section: Figure 13).

Wichita Employees' Retirement System Funded Status
(as of December 31, 2010, the most recent actuarial valuation date)

Actuarial Valuation Date	Actuarial Value of Assets[1]	Actuarial Accrued Liability (AAL) Entry Age	Unfunded AAL (UAAL)	Funded Ratio	Active Member Covered Payroll	UAAL as a Percentage of Active Member Covered Payroll
	(a)	(b)	(b)-(a)	(a)/(b)	(c)	((b-a)/c)
12/31/10	$516,308	$540,436	$24,128	95.5%	$79,636	30.3%

Rounded dollar amounts are in thousands.
[1] Includes Plan 3 members who are not vested.
Financial Section: Figure 13

Schedule of Employer Contributions
(Three Year Trend Information)

Fiscal Year Ending	Employees' Retirement System Annual Required Contribution	Employees' Retirement Plan 3 Annual Required Contribution	Percentage Contributed
12/31/08	$2,450,162	$1,494,079	100%
12/31/09	2,545,331	1,478,256	100
12/31/10	4,529,765	2,298,753	100

Financial Section: Figure 14

Wichita Employees' Retirement System Plan 3

Plan Description: The reporting entity provides pension benefits for all of its full-time civilian employees hired or rehired on or after January 1, 1994. This is a defined contribution plan; therefore, benefits depend solely on amounts contributed to the plan plus investment earnings. At December 31, 2010, current membership totaled 731.

Plan 3, established by City Ordinance on April 9, 1993 and amended on February 8, 2000, requires that both the employee and the reporting entity contribute an amount equal to 4.7 percent of covered salaries. The reporting entity's contributions and earnings for each employee are 25 percent vested after three years of service, 50 percent vested after five years and are fully vested after seven years of continuous service.

Upon completion of seven years of service, employees participating in the plan will be converted to the WERS Plan 2, a defined benefit plan, unless they make an irrevocable election in Plan 3 within 90 days thereafter. If an employee converts to Plan 2, the employee's account on the date of election shall become part of Plan 2. These transactions are reflected as transfers out of Plan 3 and transfers into the Wichita Employees' Retirement System. Fully vested employees who elect to continue participation in Plan 3 beyond seven years may contribute additional amounts into the plan as permitted by the rules of the Internal Revenue Code in effect at the time of the contribution. Contributions of the reporting entity and earnings forfeited by employees who leave employment before seven years of service are used to reduce the reporting entity's contribution requirements.

For the year ending December 31, 2010, employee and employer contributions to Plan 3 totaled $1,349,100 and $2,298,753, respectively. On December 31, 2010, the WERS defined contribution Plan 3 membership consisted of (see Financial Section: Figure 15):

Defined Contribution Plan Membership

Years of Service	Employer Contribution Vesting Schedule	Number of Employees
7 years or more	100%	70
5 to 7 years	50	197
3 to 5 years	25	254
0 to 3 years	0	210
Total Membership		731

Financial Section: Figure 15

Eligibility Factors and Benefit Provisions

	Less than 7 years of service	7 or more years of service
Service-connected disability	50% of final salary; or refund of vested Plan 3 account balance	50% of final salary; or refund of vested Plan 3 account balance
Non-service connected disability	Refund of vested Plan 3 account balance	25% of final salary; or refund of vested Plan 3 account balance

Financial Section: Figure 16

Police and Fire Retirement System

Plan Description: The Police and Fire Retirement System (PFRS) is divided into three plans - Plan A, Plan B, and Plan C-79. The plans were established to provide retirement and survivor annuities, disability benefits, death benefits, and other benefits for Police and Fire Officers of the reporting entity and their dependents. All full-time active "commissioned" Police and Fire department personnel are required to participate in the plans. Plans A and B were established by City Ordinance on January 1, 1965 and Plan C-79 was established January 1, 1979 by City Ordinance. Plan B was closed to new entrants as of January 1, 1965 and Plan A was closed to new entrants as of December 31, 1978. Establishment of and amendments to the benefit provisions for the PFRS are authorized by the City Council. On December 31, 2010, the PFRS membership consisted of (see Financial Section: Figure 17):

Defined Benefit Plan Membership

	Plan A	Plan B	Plan C-79	Total
Employees				
Vested	21	-	648	669
Non-vested	-	-	420	420
Subtotal	21	-	1,068	1,089
Retirees and beneficiaries receiving benefits	455	271	166	892
Terminated employees entitled to benefits but not receiving them	-	-	35	35
Subtotal	455	271	201	927
Total membership	476	271	1,269	2,016

Financial Section: Figure 17

Eligibility Factors and Benefit Provisions

	Plans A and B	Plan C-79
Eligibility for benefits	20 years credited service regardless of age	30 years credited service regardless of age; or 20 years of credited service and age 50; or 10 years of credited service and age 55
Minimum vesting	10 years of credited service	10 years of credited service
Maximum benefit	2.5% of final average salary per year of service up to a maximum of 75%	2.5% of final average salary per year of service up to a maximum of 75%
Service-connected disability, injury	75% of final salary	75% of final salary
Service-connected disability, disease	50% of final salary	50% of final salary
Non-service connected disability	With 7 years of service, benefit formula based on credited service with a maximum of 50% final average salary	With 7 years of service, benefit formula based on credited service with a maximum of 50% final average salary
Service-connected death	Benefit formula based on number of survivors with a maximum of 75% final salary	Benefit formula based on number of survivors with a maximum of 75% final salary
Non-service connected death	Benefit formula based on credited service and number of survivors with a maximum of 66 2/3% of final average salary (Plan A); 50% of final salary (Plan B)	Benefit formula based on credited service and number of survivors with a maximum of 66 2/3% of final average salary with 3 years of service
Post-retirement survivor benefits	Benefit formula based on credited service and number of survivors with a maximum of 66 2/3% of final average salary (Plan A); 50% of final salary (Plan B)	Benefit formula based on credited service and number of survivors with a maximum of 66 2/3% of final average salary
Annual post-retirement benefit increases	2% of original benefit after 36 months of retirement, not compounded	2% of original benefit after 36 months of retirement, not compounded

Financial Section: Figure 18

Funding Policy: The contribution requirements of plan members and the reporting entity are established by City Ordinance and may be amended by the governing body. PFRS members are required to contribute 7 to 8 percent of covered salaries. The City is required to contribute at an actuarially determined rate; the rate for 2010 was 20.8 percent of annual covered payroll. The City may provide for pension expenses by levying ad valorem property taxes each year in the amount necessary to meet its obligation as determined by the consulting actuary.

Annual Pension Cost and Net Pension Obligation: The net pension obligation (NPO) is defined as the cumulative difference between the employer's annual pension cost and the employer's annual required contributions to the plan. For 2010, the City's annual pension cost of $13,119,984 was equal to the required and actual contributions.

The employer's annual required contribution for the 2010 fiscal year was determined as part of the December 31, 2008 actuarial valuation using the Entry Age Normal actuarial cost method. Significant actuarial assumptions used include (a) a rate of return on the investment of present and future assets of 7.75 percent per year compounded annually, (b) projected salary increases of 4.5 percent per year compounded annually (4.0 percent attributable to inflation and 0.5 percent attributable to productivity), (c) additional projected salary increases ranging from 0.0 percent to 2.5 percent per year, depending on age, attributable to seniority/merit, and (d) the assumption that benefits will increase 2.0 percent per year (non-compounded) commencing 36 months after retirement.

Subsequently, the actuarial assumptions for projected salary increases were modified with the December 31, 2009 valuation to 4.0 percent per year compounded annually (3.5 percent attributable to inflation and 0.5 percent attributable to productivity) and additional projected salary increases ranging from 1.0 percent to 2.75 percent per year, depending on age, attributable to seniority/merit.

The actuarial accrued liability, as determined by the Entry Age Normal actuarial cost method, is the portion of the actuarial present value of pension plan benefits and expenses not provided for by future normal costs. An asset valuation method is used to smooth the effect of market fluctuations. The actuarial value of assets is equal to the Expected Value (calculated using the actuarial assumed rate of 7.75 percent) plus 25 percent of the difference between the market and expected value. This smoothing method has been used since 2002. As of December 31, 2010, the System had an unfunded actuarial liability, which is being amortized as a level percent of projected payroll on an open basis. At December 31, 2010, the amortization period was 20 years.

The schedule of funding progress, presented as required supplementary information following the notes to the financial statements, reflects multiyear trend information about whether the actuarial values of plan assets are increasing or decreasing over time relative to actuarial accrued liability for benefits (see Financial Section: Figure 19).

Police and Fire Retirement System Funded Status

(as of December 31, 2010, the most recent actuarial valuation date)

Actuarial Valuation Date	Actuarial Value of Assets	Actuarial Accrued Liability (AAL) Entry Age	Unfunded AAL (UAAL)	Funded Ratio	Active Member Covered Payroll	UAAL as a Percentage of Active Member Covered Payroll
	(a)	(b)	(b-a)	(a/b)	(c)	((b-a)/c)
12/31/10	$497,926	$536,908	$38,982	92.7%	$63,077	61.8%

Rounded dollar amounts are in thousands.

Financial Section: Figure 19

Schedule of Employer Contributions

(Three Year Trend Information)

Fiscal Year Ending	Annual Required Contribution	Percentage Contributed
12/31/08	$10,549,401	100%
12/31/09	11,034,552	100
12/31/10	13,119,984	100

Financial Section: Figure 20

Required Supplementary Information

Schedules of Funding Progress

Wichita Employees' Retirement System

(Dollar amounts in thousands)

Actuarial Valuation Date	Actuarial Value of Assets[1] (a)	Actuarial Accrued Liability (AAL) Entry Age (b)	Unfunded AAL (UAAL) (b-a)	Funded Ratio (a/b)	Active Member Covered Payroll (c)	UAAL as a Percentage of Active Member Covered Payroll ((b-a)/c)
12/31/05	$479,275	$433,297	$(45,978)	110.6%	$72,367	(63.5)%
12/31/06	505,756	459,062	(46,694)	110.2	75,881	(61.5)
12/31/07	533,911	483,387	(50,524)	110.5	78,736	(64.2)
12/31/08	512,853	512,373	(480)	100.1	81,580	(0.6)
12/31/09	509,494	529,272	19,778	96.3	82,704	23.9
12/31/10	516,308	540,436	24,128	95.5	79,636	30.3

Rounded dollar amounts are in thousands.

[1] Includes Plan 3 members who are not vested.

Financial Section: Figure 21

Police and Fire Retirement System

(Dollar amounts in thousands)

Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) Entry Age (b)	Unfunded AAL (UAAL) (b-a)	Funded Ratio (a/b)	Active Member Covered Payroll (c)	UAAL as a Percentage of Active Member Covered Payroll ((b-a)/c)
12/31/05	$412,823	$414,027	$ 1,204	99.7%	$52,207	2.3%
12/31/06	444,498	439,179	(5,319)	101.2	53,530	(9.9)
12/31/07	480,820	468,115	(12,705)	102.7	57,310	(22.2)
12/31/08	472,345	496,561	24,216	95.1	60,282	40.2
12/31/09	480,556	519,935	39,379	92.4	63,055	62.5
12/31/10	497,926	536,908	38,982	92.7	63,077	61.8

Financial Section: Figure 22

Schedules of Employer Contributions

Wichita Employees' Retirement System

Fiscal Year Ending	Employees' Retirement System Annual Required Contribution	Employees' Retirement Plan 3 Annual Required Contribution	Percentage Contributed
12/31/05	$2,170,650	$1,281,156	100%
12/31/06	2,264,339	1,369,009	100
12/31/07	2,357,052	1,428,686	100
12/31/08	2,450,162	1,494,079	100
12/31/09	2,545,331	1,478,256	100
12/31/10	4,529,765	2,298,753	100

Financial Section: Figure 23

Police and Fire Retirement System

Fiscal Year Ending	Annual Required Contribution	Percentage Contributed
12/31/05	$ 7,308,916	100%
12/31/06	9,849,536	100
12/31/07	10,029,253	100
12/31/08	10,549,401	100
12/31/09	11,034,552	100
12/31/10	13,119,984	100

Financial Section: Figure 24

Notes to the Required Supplementary Information

Summary of Actuarial Methods and Assumptions

Wichita Employees' Retirement System	
Valuation date	December 31, 2010
Actuarial cost method	Entry age normal
Amortization method	Level percentage of projected payroll
Amortization approach	Open
Remaining amortization period	Rolling 20 years
Asset valuation method	Expected Value: assumes 7.75% rate of return plus 25% of the difference between the market value and the expected value of assets
Actuarial assumptions:	
Investment rate of return	7.75% per year
Projected salary increases	4.0% per year; 3.5% attributable to inflation, 0.5% attributable to productivity Additional salary increases ranging from .25% to 3.2% per year attributable to seniority/merit
Inflation rate	3.5% per year
Post-retirement benefit increases	Plan 1: 3% per year (non-compounded), commencing 12 months after retirement Plan 2: 2% per year (non-compounded), commencing 12 months after retirement

Financial Section: Figure 25

Summary of Actuarial Methods and Assumptions

Police and Fire Retirement System	
Valuation date	December 31, 2010
Actuarial cost method	Entry age normal
Amortization method	Level percentage of projected payroll
Amortization approach	Open
Remaining amortization period	Rolling 20 years
Asset valuation method	Expected Value: assumes 7.75% rate of return plus 25% of the difference between the market value and the expected value of assets
Actuarial assumptions:	
Investment rate of return	7.75% per year
Projected salary increases	4.0% per year; 3.5% attributable to inflation, 0.5% attributable to productivity Additional salary increases ranging from 1.0% to 2.75% per year attributable to seniority/merit
Inflation rate	3.5% per year
Post-retirement benefit increases	2% per year (non-compounded), commencing 36 months after retirement

Financial Section: Figure 26

Supporting Schedules

Administrative Expenses

Year ended December 31, 2010
(with comparative totals for the year ended December 31, 2009)

	Police and Fire Retirement System	Employees' Retirement System	Employees' Retirement Plan 3	Totals 2010	Totals 2009
Personal services:					
Wages	$220,374	$220,374	$ -	$ 440,748	$ 435,862
Benefits	60,462	60,462	-	120,924	100,618
Total personal services	280,836	280,836	-	561,672	536,480
Contractuals:					
Telephone	1,688	1,688	-	3,376	3,358
Postage	1,369	1,331	6	2,706	2,739
Transportation and travel	3,202	3,429	-	6,631	4,815
Data center charges	22,195	22,195	-	44,390	40,374
City administrative charges	14,605	14,605	-	29,210	28,160
Actuarial fees	30,128	34,456	1,000	65,584	105,823
Audit fees	6,776	6,776	-	13,552	13,000
Legal services	5,551	8,173	276	14,000	20,969
Advertising	-	-	-	-	3,855
Periodicals and manuals	108	108	-	216	202
Membership dues	345	1,845	-	2,190	1,915
Printing and photocopying	2,311	2,158	-	4,469	8,348
Plan 3 participant administration	-	-	30,225	30,225	29,250
Pension software expense	49,224	49,224	41,814	140,262	154,232
Depreciation	63,477	63,477	54,408	181,362	184,614
Other	610	719	378	1,707	2,409
Total contractuals	201,589	210,184	128,107	539,880	604,063
Commodities:					
Office equipment and supplies	1,364	1,364	-	2,728	2,850
Data processing equipment	638	556	145	1,339	1,128
Other	301	301	-	602	118
Total commodities	2,303	2,221	145	4,669	4,096
Total administrative expenses	$484,728	$493,241	$128,252	$1,106,221	$1,144,639

Financial Section: Figure 27

Investment Expenses

Year ended December 31, 2010
(with comparative totals for the year ended December 31, 2009)

	Police and Fire Retirement System	Employees' Retirement System	Employees' Retirement Plan 3	Totals 2010	Totals 2009
Investment expenses:					
Financial consulting	$ 138,357	$ 134,119	$ 8,434	$ 280,910	$ 173,683
Custodial bank	143,517	149,792	4,364	297,673	296,783
Investment management fees	1,913,779	1,927,374	68,878	3,910,031	3,266,562
Total investment expenses	$2,195,653	$2,211,285	$81,676	$4,488,614	$3,737,028

Financial Section: Figure 28

Payments to Consultants Other Than Investment Advisors

Year ended December 31, 2010
(with comparative totals for the year ended December 31, 2009)

Firm	Services	Police and Fire Retirement System	Employees' Retirement System	Employees' Retirement Plan 3	Totals 2010	Totals 2009
Ice Miller, LLP	Legal services	$ 5,551	$ 8,173	$ 276	$ 14,000	$ 20,969
Milliman, Inc.	Actuarial services	30,128	34,456	1,000	65,584	105,823
Allen, Gibbs & Houlik, L.C.	Auditing services	6,776	6,776	-	13,552	13,000
Northeast Retirement Services	Participant accounting	-	-	30,225	30,225	29,250
Total payments		$42,455	$49,405	$31,501	$123,361	$169,042

Financial Section: Figure 29

AGH
Allen, Gibbs & Houlik, L.C.
CPAs & Advisors

INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

Board of Trustees
Wichita Employees' Retirement System
Police and Fire Retirement System of Wichita, KS

We have audited the accompanying statement of plan net assets of the Wichita Retirement Systems of the City of Wichita, Kansas (Systems) as of and for the year ended December 31, 2010, and the related statement of changes in plan net assets for the year then ended, which collectively comprise the System's basic financial statements and have issued our report thereon dated June 7, 2011. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control over Financial Reporting

In planning and performing our audit, we considered the System's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the System's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the System's internal control over financial reporting.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of the internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the System's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on

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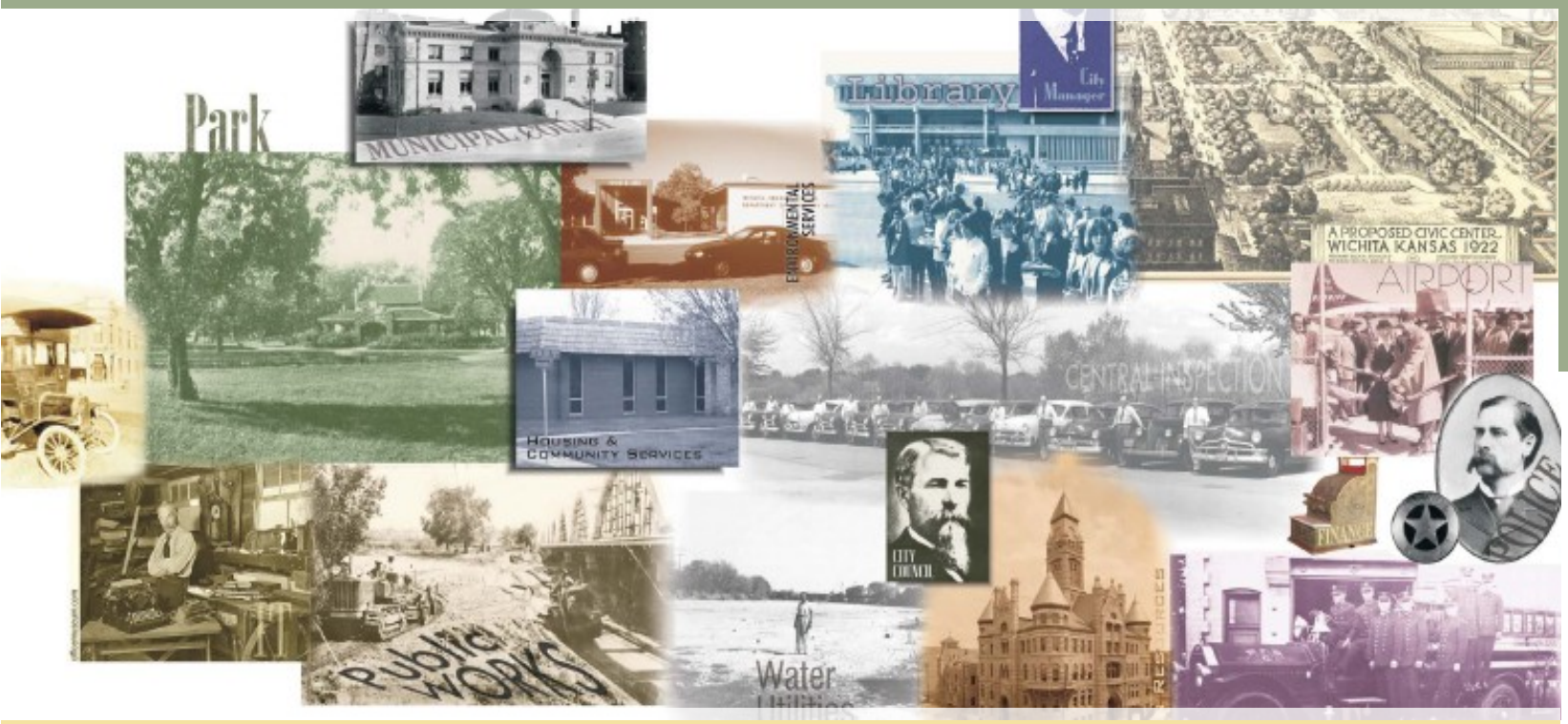
the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

This report is intended solely for the information and use of management, the City Council, and others within the entity, and is not intended to be and should not be used by anyone other than these specified parties.

Allen, Gibbs & Houlik, L.C.
CERTIFIED PUBLIC ACCOUNTANTS

June 7, 2011
Wichita, Kansas

INVESTMENT SECTION



Investment Section

CALLAN ASSOCIATES INC

SAN FRANCISCO
NEW YORK
CHICAGO
ATLANTA
DENVER

March 14, 2011

The Retirement Boards
Wichita Employees' Retirement System and Police & Fire Retirement System of Wichita
455 North Main Street, 12th Floor
Wichita, Kansas 67202

RE: Report on 2010 Investment Activities

Dear Board Members:

The Boards of Trustees of the Wichita Retirement Systems have created a Trust Fund that makes investments for the sole interest of the participants and beneficiaries of the Fund. The primary purpose of the investments is to generate rates of return at a reasonable and controlled level of risk that enable the Fund to pay all pension benefit and expense obligations when due. Accordingly, the assets of the Fund are invested in accordance with these investment objectives: (1) to fulfill current benefit obligations; (2) to maximize return within reasonable and prudent levels of risk; and (3) to maintain sufficient liquidity to meet benefit payment obligations when due.

Preservation of capital is of primary concern. The Fund seeks preservation of capital by pursuing a policy of broad diversification with the long-term objective of achieving a consistent, positive return on Fund assets. Although speculation is avoided, the Boards understand that an above-average return is associated with a certain degree of risk. Risk to be assumed must be considered appropriate for the return anticipated and consistent with the total diversification of Fund assets.

Trust Fund assets are to be invested with the care, skill, and diligence that a prudent person acting in a like capacity would undertake. The Boards acknowledge that, in the process, they have the objective of controlling the costs involved with administering and managing the investments of the Fund.

In establishing its risk tolerance, the Boards considered their ability to withstand short and intermediate-term volatility in market conditions. The Boards also reviewed the long-term characteristics of various asset classes, focusing on balancing risk with expected return. Accordingly, the Boards selected these five asset classes as allowable asset classes: large to mid-capitalization U.S. equities; small capitalization U.S. equities; U.S. fixed-income securities; non-U.S. equities (developed and emerging markets); and real estate. The "Asset Allocation" discussion that appears later in this section provides details about the Trust Fund percentages that are invested in the five asset classes.

The Boards, with information provided by their Financial Consultant, closely monitor the Fund's asset mix to assure compliance with the adopted Investment Policy Statement and appropriate City ordinances that regulate the investment process.

On an ongoing basis, the Boards implement a performance measurement and evaluation process that examines rates of return for the Trust Fund in total, the five major asset classes, and individual managers. The Boards compare returns to broad market indices and relevant "peer groups" of investment managers with similar investment styles. The schedule on the following page depicts the Fund's various rates of return. All returns are time-weighted rates of return calculated by the Fund's Financial Consultant on the basis of market value and cash flow data provided by the Fund's bank custodian.

The Retirement Boards
March 14, 2011
Page 2

2010 was another good year for institutional investors with diversified portfolios as the median portfolio rose 13%, the second consecutive year of double-digit gains. Equity markets rose markedly in the last four months of the year to finish comfortably in the black. The S&P 500 Index, a proxy for U.S. large-cap stocks, rose 15.06%. U.S. small-cap stocks, as measured by the Russell 2000 Index, surged 26.85%. Non-U.S. equities, hurt by sovereign debt concerns in Europe, did not fare as well as U.S. equities, but still produced positive returns in 2010 as the MSCI EAFE Index gained 7.75%. Interest rates declined during the year, boosting bond prices and the BC Aggregate Index higher by 6.54%. After two straight years of declines, the private real estate market rebounded in 2010 as the NCREIF Property Index increased 13.11%.

As noted in the Schedule of Investment Results, the Fund generated a total return of 13.64% for the year ended December 31, 2010, which out-performed the 12.69% return of the Fund's target benchmark (the Weighted Index). In aggregate, the Fund's U.S. large/mid cap equity, U.S. small cap equity, fixed income, and real estate managers generated returns that exceeded their respective benchmarks; only the non-U.S. equity managers, in aggregate, trailed their benchmark.

To help defray the expenses associated with the administration and investment of Trust Fund assets, the Boards have created a commission recapture program whereby the Fund's large-cap equity managers direct up to 25 percent of their trades through a large broker-dealer firm selected by the Boards.

Yours truly,

William C. Howard, CFA
Vice President

Investment Policy Summary

Strategic Plan

Assets of the Wichita Employees' and Police and Fire Retirement Systems (Fund) are invested in a diversified mix of domestic and international equities, domestic and international fixed income securities, real estate, and cash equivalents. The Fund is overseen by the Joint Investment Committee, comprised of the President of each Board, trustee representatives elected from both Boards and a City Manager's designee.

Investment Policies

The assets of the Fund are managed solely in the interest of each System's participants and beneficiaries.

The duties of the Boards include, but are not limited to, approving the asset allocation plan and investment policy contained in the Strategic Plan, annual performance review of the investment portfolio, and the hiring of a common financial consultant and actuary.

The duties of the Joint Investment Committee include, but are not limited to, making recommendations to the Boards on an asset allocation plan, an investment policy and the hiring of a common financial consultant and actuary; quarterly performance review of the investment portfolio; and the retention and termination of the Fund's investment managers and the custodial bank.

Fund assets are allocated to professional investment managers who are given full investment discretion with respect to assets under their management, subject to the mandated investment guidelines.

The following minimum standards are set for investment managers:

1. The investment firm must have $500 million or more under management;

2. The investment management firm must have five years of performance history;

3. The Fund's portfolio with the investment manager shall not constitute more than ten percent of the investment manager's total portfolio.

Investment Objectives

The Boards endeavor to earn the maximum total return on assets consistent with maintaining a prudent level of risk. In investing and reinvesting monies in the Fund, there shall be exercised the judgment and care under the circumstances then prevailing which people of prudence, discretion, and intelligence exercised in the management of their own affairs.

Total Fund returns are compared to a blended target index composed of market indices weighted to the applicable asset class median.

The blended target consists of:

- **38%** Standard & Poor's (S&P) 500 Stock Index
- **9%** Russell 2000 Index
- **20%** Morgan Stanley Capital International, Europe Australia and Far East (MSCI EAFE) Index
- **28%** Barclays Capital Aggregate Bond Index
- **5%** National Council of Real Estate Investment Fiduciaries (NCREIF) Total Index

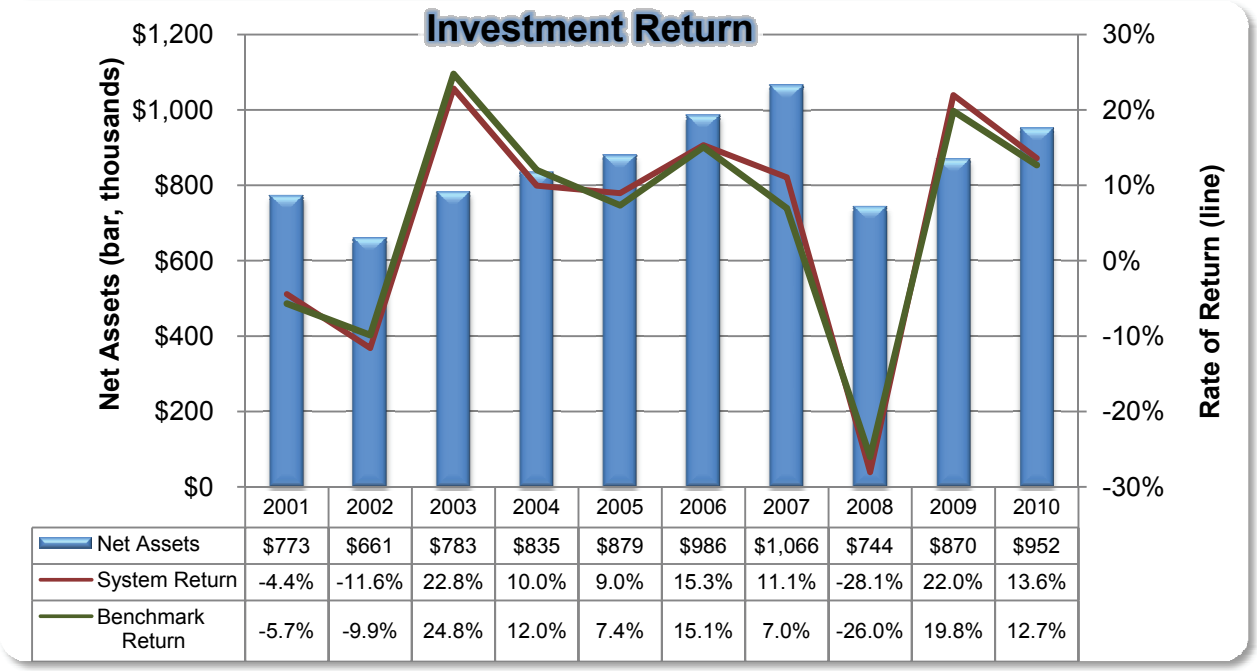
The goal of the Fund is to ensure sufficient resources to meet or exceed benefit obligations. The related investment objectives are, first, to preserve and, second, to increase the capital value of the Fund. In pursuing these objectives, the Boards will endeavor to earn the maximum total return on assets consistent with maintaining a prudent level of risk.

The Boards expect the Fund's overall returns to be less volatile than the relevant market indices. The Fund's long-term objective is to achieve an annualized rate of return that is 4.5% higher than the Consumer Price Index of Urban Wage Earners and Clerical Workers (CPI-U).

Each equity and fixed income manager's total fund return on a time-weighted basis is compared to a universe of managers employing a similar investment style. Performance relative to a manager's style group is expected to be above median in three of five calendar years, and above the 40th percentile over rolling five-year periods.

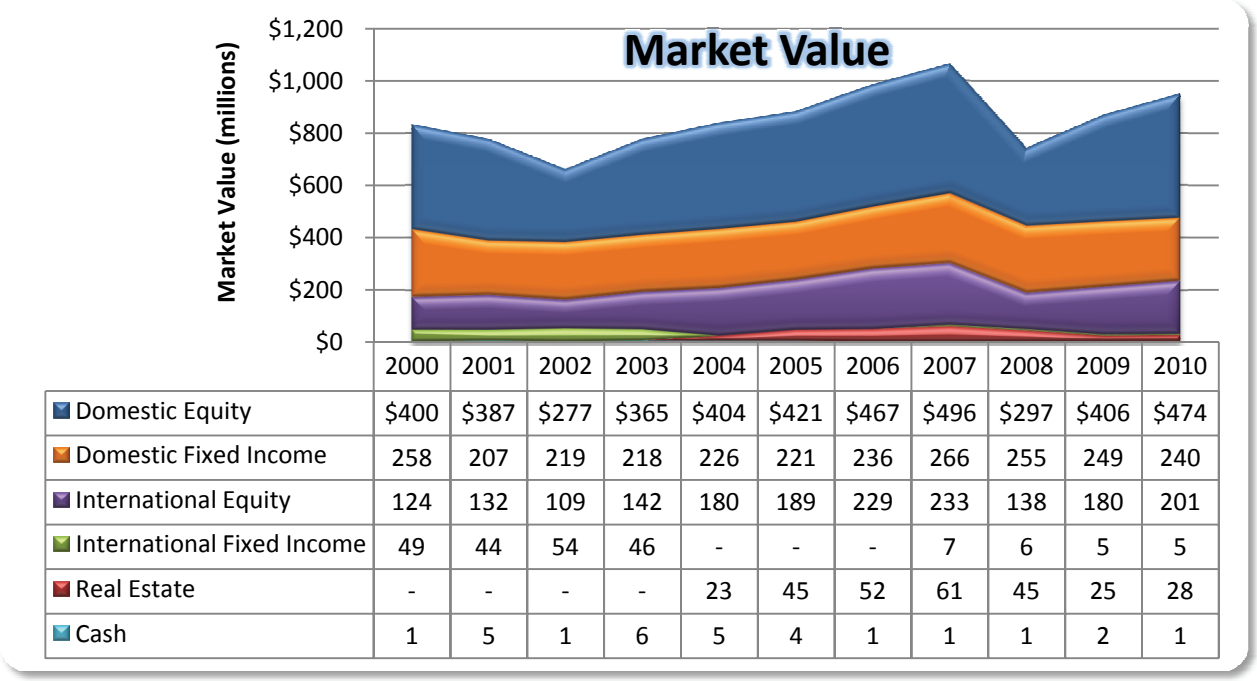
Investment Performance

The charts below (Investment Section: Figure 1 and Investment Section: Figure 2) illustrate annual portfolio investment performance compared to the benchmark and changes in the Fund's net assets based on asset class allocations at year-end. Positive returns, beginning in 2003 and continuing through 2007, are responsible for increasing the Fund's market value. After an extremely negative investment return in 2008, 2009 and 2010 returned 22.0% and 13.6%, respectively.



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Net Assets	$773	$661	$783	$835	$879	$986	$1,066	$744	$870	$952
System Return	-4.4%	-11.6%	22.8%	10.0%	9.0%	15.3%	11.1%	-28.1%	22.0%	13.6%
Benchmark Return	-5.7%	-9.9%	24.8%	12.0%	7.4%	15.1%	7.0%	-26.0%	19.8%	12.7%

Investment Section: Figure 1



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Domestic Equity	$400	$387	$277	$365	$404	$421	$467	$496	$297	$406	$474
Domestic Fixed Income	258	207	219	218	226	221	236	266	255	249	240
International Equity	124	132	109	142	180	189	229	233	138	180	201
International Fixed Income	49	44	54	46	-	-	-	7	6	5	5
Real Estate	-	-	-	-	23	45	52	61	45	25	28
Cash	1	5	1	6	5	4	1	1	1	2	1

Investment Section: Figure 2

The Investment Performance table below (see Investment Section: Figure 3) illustrates the Wichita Retirement Systems' (WRS) Fund performance compared with plan target and appropriate index comparisons. The calculations were prepared using a time weighted rate of return based on the market rate of return.

The Wichita Employees' Retirement System (WERS) and Police and Fire Retirement System (PFRS) funds are combined for investment purposes. The WERS consists of defined benefit Plans 1 and 2 and defined contribution Plan 3. The PFRS consists of defined benefit Plans A, B, and C.

In 2000, funds for the WERS Defined Contribution Plan 3 were separated from the combined Fund for investment management purposes. Although separately invested, these funds continued to be managed in accordance with the Investment Strategies and Policies adopted for the WRS Funds. In January 2004, the Plan 3 funds were returned to the combined Fund for investment management purposes.

Investment Performance

	Annualized Returns			
	1 year	3 years	5 years	7 years
Total portfolio:				
Fund performance[1]	13.64%	-0.09%	5.02%	6.28%
Fund Target performance[2]	12.69	-0.03	4.22	5.75
Domestic equities:				
Large-Cap equity	15.75	-2.23	4.00	5.43
S&P 500 Index	15.06	-2.85	2.29	3.85
Small-Cap equity	27.93	6.09	6.94	8.28
Russell 2000 Index	26.85	2.22	4.47	6.36
International equities:				
International equity	7.57	-5.63	4.46	7.67
MSCI EAFE Index	7.75	-7.02	2.46	6.38
MSCI ACWI (Ex-US) Index	11.60	-4.58	5.29	9.09
Domestic fixed income:				
Domestic fixed income	9.33	7.46	6.71	5.77
Barclays Capital Aggregate Index	6.54	5.90	5.80	5.10
Real estate:				
Real estate[3]	17.76	-20.43	-7.35	n/a
NCREIF Total Index	13.11	-4.18	3.51	n/a

[1] Performance does not include WERS Plan 3 assets prior to January 2004.

[2](a) From 01/01/02 - 03/31/04; 40% S&P 500 Index; 9% Russell 2000 Index; 17% Morgan Stanley Capital International All Country Ex US (MSCI ACWI) Index; 28% Barclays Capital Aggregate Bond Index; 6% Salomon Non-US$ World Govt. Bond Index.

(b) From 04/01/04 until 12/31/06; 38% S&P 500 Index; 9% Russell 2000 Index; 20% Morgan Stanley Capital International All Country Ex US (MSCI ACWI) Index; 28% Barclays Capital Aggregate Bond Index; 5% NCREIF Total Index.

(c) From 01/01/07 until the present; 38% S&P 500 Index; 9% Russell 2000 Index; 20% Morgan Stanley Capital International EAFE Index; 28% Barclays Capital Aggregate Bond Index; 5% NCREIF Total Index.

[3] Real estate investments were funded in 2004; therefore, 7 year annual return data is not available.

Investment Section: Figure 3

Asset Allocation

The Wichita Employees' and the Police and Fire Retirement Boards believe that a diversified portfolio aids in the preservation of investment principal. Growth with limited risk is the Fund's objective.

The Boards established the Joint Investment Committee to manage the assets of both Retirement Systems. Asset allocation, in conjunction with investment manager selection, has a great impact on investment performance. The Committee is responsible for recommending an Asset Allocation Plan developed with the assistance of Callan Associates, Inc., the Boards' financial consultant.

The Boards review their adopted Asset Allocation Plan at least every three years. An Asset Allocation-Only Study was completed and, as a result, changes were implemented in 2007. The Boards' commitment to the adopted Asset Allocation Plan, which ensures a diversified portfolio, is especially important to minimize the Fund's exposure to market volatility and to help preserve sufficient funding for future generations. At the end of fiscal year 2010, 71.1% of the Fund's assets were invested in equities, 25.8% in fixed income, and 3.0% in real estate. The table below (Investment Section: Figure 4) displays the Fund's actual asset allocation on December 31, 2010.

Asset Allocation Policy

As of December 31, 2010

Asset Class	Low	Target	High	Actual
Domestic Equity				
Large-Cap	18.00%	25.00%	30.00%	26.93%
Small-Cap	6.00	9.40	16.00	10.81
Index	9.00	12.60	15.00	12.19
Total Domestic Equity	33.00	47.00	61.00	49.92
Domestic Fixed Income				
Active Core	11.00	14.00	17.00	13.13
Active Core Plus	11.00	14.00	17.00	12.67
Total Domestic Fixed Income	22.00	28.00	34.00	25.80
International Equity				
Active Core	6.00	8.00	10.00	8.45
Active Core Plus	10.00	12.00	14.00	10.47
Emerging Markets Index	2.00	4.00	3.00	2.23
Total International Equity	16.00	20.00	24.00	21.15
Real Estate				
Core	2.00	3.00	5.00	2.35
Value Added	1.00	2.00	3.00	0.63
Total Real Estate	3.00	5.00	8.00	2.98
Cash	0.00	0.00	2.00	0.15

Investment Section: Figure 4

Largest Equity and Fixed Income Holdings

Ten Largest Equity Holdings by Fair Value

As of December 31, 2010

Number of Shares	Security	Fair Value	% of Total Portfolio
63,565	Chevron Corp.	$5,800,306	0.63%
17,530	Apple Inc.	5,654,477	0.61
80,900	Conoco Phillips	5,509,290	0.60
138,742	Royal Dutch Shell Plc A Shs.	4,602,981	0.50
44,450	Occidental Petroleum Corp.	4,360,545	0.47
245,805	Pfizer Inc.	4,304,046	0.47
58,300	Pepsico Inc.	3,808,739	0.41
90,110	Hewlett Packard Co.	3,793,631	0.41
116,600	Wells Fargo & Co.	3,613,434	0.39
6,055	Google Inc Cl. A	3,596,488	0.39
862,057	**Total**	**$45,043,937**	**4.88%**

Investment Section: Figure 5

Ten Largest Fixed Income Holdings by Fair Value

As of December 31, 2010

Number of Shares	Holding	Fair Value	% of Total Portfolio
16,000,000	United States Treasury Bills	$15,994,699	1.74%
6,900,000	FNMA TBA Jan 30 Single Fam.	7,462,531	0.81
6,482,809	United States Treasury Bonds	7,422,622	0.81
6,900,000	GNMA Ii TBA Jan 30 Jumbos	7,121,205	0.77
5,001,023	Federal Home Loan PC Pool G13833	5,257,326	0.57
5,100,000	US Treasury N/B	5,027,135	0.55
4,300,000	FNMA TBA 15 Yr	4,329,584	0.47
4,300,000	FNMA TBA Single Family Mortgage	4,277,167	0.47
4,160,000	Federal Home Loan Bank	4,162,619	0.45
3,400,000	Wachovia Bank Coml. Mtg. Tr.	3,583,822	0.39
62,543,832	**Total**	**$64,638,710**	**7.03%**

Investment Section: Figure 6

A complete list of portfolio holdings is available upon request from the Pension Management Office.

Investment Assets by Manager

As of December 31, 2010

Asset Category	Fair Value
Domestic fixed income	
Richmond Capital Management, Inc.	$ 121,880,488
Western Asset Management Co.	138,769,588
SSGA[1] Government Short-Term Investment Fund	15,306,952
SSGA[1] Securities Lending Short-Term Investment Pool	113,338,136
Subtotal	389,295,164
International fixed income	
Western Asset Management Co.	4,727,357
Domestic equity	
Barrow, Hanley, Mewhinney & Strauss, Inc.	63,477,225
Boston Partners Asset Management	48,823,669
Fred Alger Management, Inc.	69,241,080
ING Investment Management Co.	51,814,774
Institutional Capital LLC	62,415,620
Rainier Investment Management, Inc.	55,004,108
SSGA[1] S&P 500 Flagship Fund	115,713,287
Subtotal	466,489,763
International equity	
Mondrian Investment Partners, Limited	98,400,109
Pyramis Global Advisors Trust Company	79,172,738
SSGA[1] Emerging Markets Index Fund	21,207,229
Subtotal	198,780,076
Real Estate	
RREEF America II	22,284,937
RREEF America III	6,025,812
Subtotal	28,310,749
Defined Contribution Pooled Funds	
SSGA[1] Strategic Balanced Funds	1,392,627
Total Investment Assets	**$1,088,995,736**

[1]State Street Global Advisors

Investment Section: Figure 7

Investment Fees by Manager

Year ended December 31, 2010

Investment Management Fees:	**Fees**
Domestic Fixed Income Managers	
Richmond Capital Management, Inc.	$ 237,341
Western Asset Management Co.	346,310
International Fixed Income Manager	
Western Asset Management Co.	11,797
Domestic Equity Managers	
Barrow, Hanley, Mewhinney, & Strauss, Inc.	318,051
Boston Partners Asset Management	384,101
Fred Alger Management, Inc.	276,613
ING Investment Management Co.	363,441
Institutional Capital LLC	277,949
Rainier Investment Management, Inc.	251,901
SSGA[1] S&P 500 Flagship Fund	37,612
International Equity Managers	
Mondrian Investment Partners, Limited	517,240
Pryamis Global Advisors Trust Company	518,223
SSGA[1] Emerging Markets Index Fund	32,533
Real Estate Managers	
RREEF America II	249,694
RREEF America III	87,225
Subtotal Investment Management Fees	3,910,031
Other Investment Service Fees:	
Custodian Fees	
State Street Bank and Trust Company	297,673
Investment Consultant and Performance Measurement Fees	
Callan Associates, Inc.	277,242
NestEgg Consulting, Inc.	3,668
Subtotal Other Investment Service Fees	578,583
Total Investment Fees	**$4,488,614**

[1]State Street Global Advisors

Investment Section: Figure 8

Investment Summary by Type of Investment

As of December 31, 2010

Type of Investment	Fair Value	% of Total Portfolio
Domestic equities:		
Consumer discretionary	$ 52,334,429	4.81%
Consumer staples	21,097,492	1.94
Energy	36,546,360	3.36
Financial services	58,272,632	5.34
Health care	43,298,792	3.98
Industrials	50,963,908	4.68
Information technology	62,522,128	5.74
Materials	14,149,242	1.30
Telecommunications services	6,465,892	0.59
Utilities	5,125,601	0.47
Total domestic equities	350,776,476	32.21
Domestic equities - commingled funds	116,494,433	10.70
International equities:		
Consumer discretionary	16,638,199	1.53
Consumer staples	22,576,472	2.07
Energy	16,978,423	1.56
Financial services	28,280,471	2.60
Health care	18,673,368	1.71
Industrials	15,373,125	1.41
Information technology	6,710,011	0.62
Materials	10,946,480	1.01
Telecommunications services	17,037,474	1.56
Utilities	6,225,528	0.57
Total international equities	159,439,551	14.64
International equities - commingled funds	39,511,556	3.63
Domestic fixed income:		
Government securities: long-term	58,501,829	5.38
Corporate debt instruments: long-term	102,497,311	9.41
Mortgage-backed securities	96,535,941	8.86
Total domestic fixed income	257,535,081	23.65
Domestic high yield fixed income - commingled funds	3,114,995	0.29
International fixed income - commingled funds	4,727,357	0.43
Domestic fixed income - commingled funds	113,778,586	10.45
Real estate - commingled funds	28,310,749	2.60
Short-term investments	15,306,952	1.40
Total Invested Assets[1]	**$1,088,995,736**	**100.00%**

[1]Amounts do not include the City's cash deposits of $493,369.

Investment Section: Figure 9

Brokerage Commissions

Year ended December 31, 2010 (Continued on next page)

Brokerage Firm	Number of Shares Traded	Total Commissions	Commissions Per Share
ABG Amro Asia Ltd.	93,000	$ 518	$0.00557
ABN Amro Bank N. V. Hong Kong	199,229	528	0.00265
Baird Robert W. & Co., Inc.	1,703,788	4,178	0.00245
Banco Bilbao Vizcaya Argentari	58,364	82	0.00141
Barclays Bank Plc.	1,001,554	2,189	0.00219
Barclays Capital	157,719	3,822	0.02423
Barclays Capital Le.	163,902	3,493	0.02131
Bloomberg Tradebook LLC	76,790	1,164	0.01516
BNY Convergex	74,900	2,278	0.03042
BNY Convergex LJR	993,945	44,926	0.04520
Broadcort Capital (Thru MI)	183,600	5,631	0.03067
BTIG, LLC	138,772	3,582	0.02581
Cantor Fitz Eur.	164,554	338	0.00205
Capital Institutional Svcs. Inc. Equities	41,435	1,701	0.04106
China International. Cap Corp. HK Secs. Ltd.	63,200	207	0.00328
CIBC World Markets Corp.	40,400	1,616	0.04000
Citigroup Global Markets, Inc.	6,267,112	9,279	0.00148
Citigroup Global Markets Ltd.	379,328	4,371	0.01152
Citigroup Global Markets UK Equity Ltd.	141,194	1,571	0.01113
CLSA Singapore Pte. Ltd.	167,158	1,639	0.00980
Cowen & Co., LLC	113,500	4,020	0.03542
Credit Lyonnais Securities (USA), Inc.	90,200	792	0.00878
Credit Lyonnais Securities (Asia)	529,612	2,037	0.00385
Credit Suisse Securities (Europe) Ltd.	662,273	5,325	0.00804
Credit Suisse Securities (USA), LLC	166,567,002	22,800	0.00014
Credit USA	71,200	25	0.00035
Cuttone & Co. Inc.	99,480	1,795	0.01805
Daiwa Securities (HK) Ltd.	77,864	1,032	0.01326
Daiwa Securities America, Inc.	109,696	1,681	0.01533
Deutsche Bank Ag London	214,069	4,603	0.02150
Deutsche Bank Securities, Inc.	298,041,367	4,614	0.00002
Deutsche Morgan Grenfell Secs.	78,479	858	0.01093
Dowling & Partners	40,490	1,400	0.03457
Evolution Beeson Gregory Ltd.	99,798	1,297	0.01300
Fox River Execution Technology, LLC	85,820	1,287	0.01500
Friedman Billings & Ramsey	97,631	3,232	0.03311
Goldman Sachs & Co.	181,433,678	20,963	0.00012
Goldman Sachs Capital Markets LP	44,715	854	0.01909
Goldman Sachs Intl.	1,044,651	19,952	0.01910
Hong Kong & Shanghai Banking Corp.	69,500	622	0.00895
HSBC Bank Plc.	61,723	978	0.01585
Instinet	143,305	3,365	0.02348
Instinet U.K. Ltd.	286,370	1,618	0.00565
Investment Technology Group, Inc.	405,537	6,618	0.01632
Investment Technology Group Ltd.	125,275	511	0.00408
ISI Group, Inc.	85,886	3,047	0.03548
ITG Inc.	212,778	4,218	0.01982
ITG Securities (Hk) Ltd.	122,000	94	0.00077
J.P. Morgan Clearing Corp.	12,091,315	507	0.00004
J.P. Morgan Securities, Inc.	368,425	9,034	0.02452
Jefferies & Company, Inc.	4,353,909	6,346	0.00146

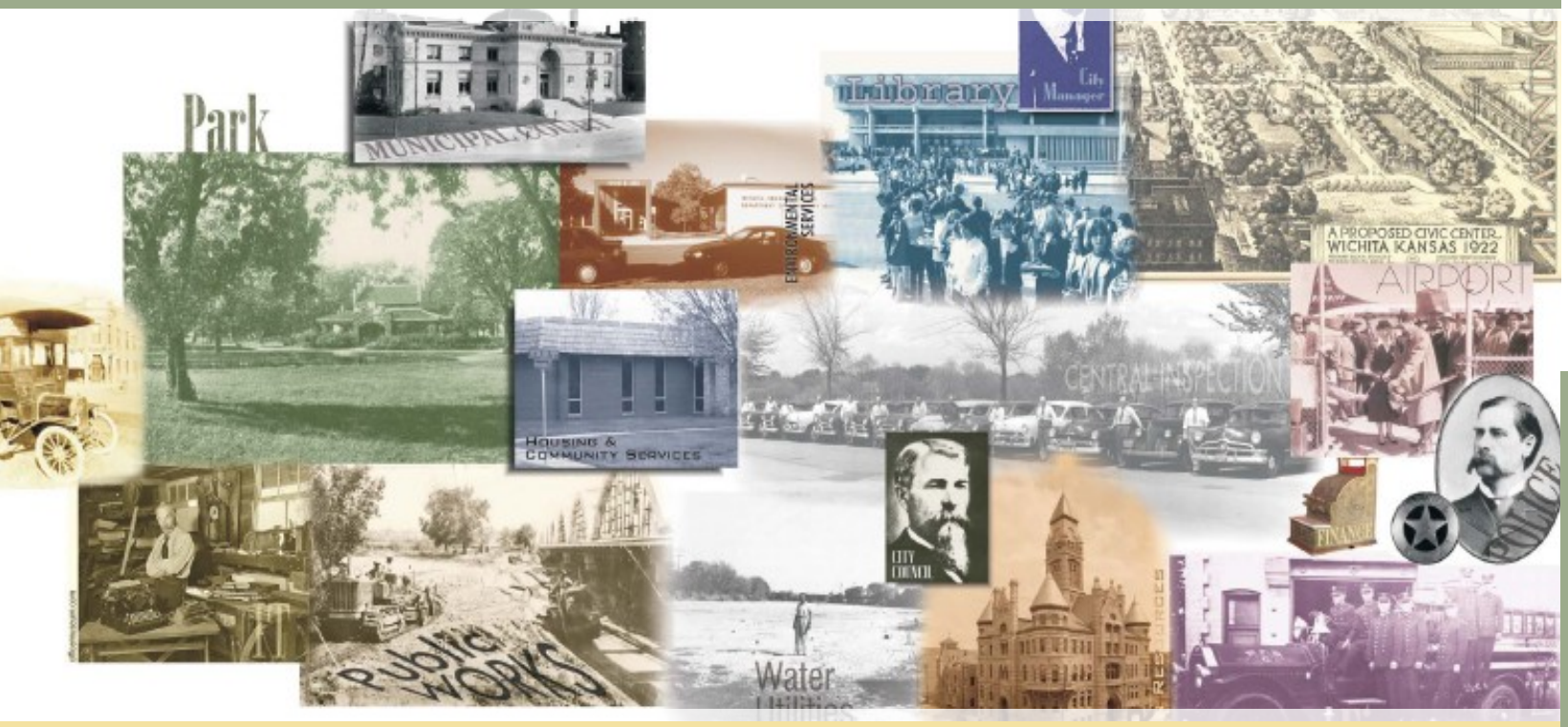
Brokerage Commissions

Year ended December 31, 2010 (Continued from previous page)

Brokerage Firm	Number of Shares Traded	Total Commissions	Commissions Per Share
JP Morgan Securities Australia Ltd.	116,018	$ 1,335	$0.01151
JP Morgan Securities Ltd.	347,408	5,034	0.01449
JP Morgan Securities, Inc.	175,340,783	2,093	0.00001
JP Morgan Securities (Asia Pacific) Ltd.	143,300	891	0.00622
Keefe Bruyette & Woods, Inc.	93,977	1,940	0.02064
Knight Securities	152,248	3,863	0.02537
Liquidnet Europe Ltd.	210,386	4,417	0.02100
Liquidnet, Inc.	486,105	8,431	0.01734
Macquarie Equities Ltd. (Sydney)	122,610	480	0.00392
Macquaries Equities (USA), Inc.	41,010	1,578	0.03849
Macquarie Securities Ltd.	590,456	4,736	0.00802
Merrill Lynch Intl.	1,370,376	13,769	0.01005
Merrill Lynch Pierce Fenner & Smith, Inc.	1,216,781	11,433	0.00940
Merrill Lynch Professional Clearing Corp.	3,033,499	2,044	0.00788
Mitsubishi UFJ Securities (USA)	54,543	430	0.00262
Monument Securities Ltd.	54,866	144	0.03547
Morgan Keegan & Co., Inc.	115,370	4,092	0.01894
Morgan Stanley & Co. Intl.	153,847	2,913	0.00004
Morgan Stanley Co. Inc.	255,678,936	10,752	0.02266
Morgan Stanley Dean Witter Inv.	78,201	1,772	0.00814
Morgan Stanley Securities Ltd.	69,023	562	0.00075
National Financial Services Corp.	807,600	602	0.02875
National Financial Services LLC	74,224	2,134	0.01845
Nomura Intl. PLC	301,381	5,560	0.00542
Nomura Intl. (Hong Kong) Ltd.	59,000	320	0.00012
Nomura Securities Intl., Inc.	23,339,795	2,709	0.03824
Pacific Crest Securities	52,287	1,999	0.00001
Pershing LLC	46,473,714	292	0.01316
Pipeline Trading Systems LLC	421,902	5,554	0.02169
Piper Jaffray	49,400	1,072	0.03192
Piper Jaffray Ltd.	64,291	2,052	0.02809
Pulse Trading LLC	127,455	3,580	0.00018
Raymond James & Associates, Inc.	7,037,930	1,256	0.04000
Raymond James Trust Co.	80,241	3,210	0.00014
RBC Capital Markets	10,387,023	1,468	0.02000
Rosenblatt Securities LLC	104,050	2,081	0.00575
Sanford C. Bernstein Ltd.	1,153,923	6,638	0.02712
Sanford C. Bernstein Co. LLC	140,695	3,816	0.02650
SG Americas Securities LLC	102,993	2,730	0.02012
Societe Generale London Branch	40,760	820	0.00441
Sterne Agee & Leach, Inc.	44,960	198	0.03995
Stifel Nicolaus & Co., Inc.	102,810	4,107	0.01966
The Royal Bank of Scotland N.V.UK Equity	175,946	3,458	0.01417
UBS Ag	857,711	12,155	0.01258
UBS Securities Asia Ltd.	95,855	1,205	0.00007
UBS Securities LLC	62,625,994	4,689	0.02233
UBS Warburg LLC	51,428	1,148	0.03434
Weeden & Co.	213,184	7,321	0.00162
Wells Fargo Securities, LLC	1,432,105	2,317	0.03786
William Blair & Co. LLC	40,945	1,550	0.01151
Remaining 138 Firms	1,488,882	45,654	0.05607
Total	**1,277,355,719**	**$443,042**	**$0.00035**

Investment Section: Figure 10

ACTUARIAL SECTION



Actuarial Section

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May 26, 2011

The Retirement Boards
Wichita Employees' Retirement System and
Police and Fire Retirement System of Wichita, Kansas
455 North Main Street, 12th Floor
Wichita, Kansas 67202

Subject: Certification of December 31, 2010 Actuarial Valuations

Dear Board Members:

We certify that the information included herein and contained in the 2010 Actuarial Valuation Reports is accurate and fairly presents the actuarial position of the Wichita Employees' Retirement System (WER) and the Police and Fire Retirement System of Wichita, Kansas (WPF) as of December 31, 2010.

All calculations have been made in conformity with generally recognized and accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the City ordinances and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries who are experienced in performing valuations for public retirement systems. They are members of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

Actuarial Valuations

The primary purpose of the valuation report is to determine the City's contribution rate to fund each System on an actuarial basis, to describe the current financial condition of the System, and to analyze changes in the System's condition. In addition, the reports provide information required by the System in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and they provide various summaries of the underlying data.

Valuations are prepared for each System annually, as of December 31 of each year, the last day of the System's plan and fiscal year.

Financing Objective of the Systems

The funding objective of each Retirement System is to establish and receive contributions which:

- when expressed as percents of active member payroll, will remain approximately level from generation to generation of Wichita citizens, and
- when combined with present assets and future investment return will be sufficient to meet the financial obligations of the Systems to present and future retirees and beneficiaries.

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The financial objective is addressed within the annual actuarial valuations. The valuation process develops contribution rates that are sufficient to fund the plan's current normal cost (i.e. the costs assigned by the valuation method to the year of service about to be rendered), as well as to fund unfunded actuarial liabilities as level percents of active member payroll. The most recent annual actuarial valuations were completed based upon population data, asset data and plan provisions as of December 31, 2010. For both the Wichita Employees' Retirement System and the Police and Fire Retirement System of Wichita, Kansas actuarial liabilities exceeded valuation assets. This difference, called the unfunded actuarial liability, was $24.1 million for the Wichita Employees' Retirement System and $39.0 million for the Police and Fire Retirement System of Wichita, Kansas. The unfunded actuarial liability was amortized as a level percent of payroll over 20 years in both Systems.

An asset smoothing method is used in the valuation process so investment experience is recognized over a period of time. The positive investment performance in both 2009 and 2010 offset some of the deferred losses from 2008. However, the rate of return on the actuarial value of assets for 2010 that was less than the assumed rate of 7.75%, despite a return on market value of 13%. This generated an experience loss on assets for both Systems. While there were experience gains on liabilities, the net experience from all sources during 2010 was an actuarial loss for the Wichita Employees' Retirement System and an actuarial gain for the Police and Fire Retirement System of Wichita, Kansas. The actuarial value of assets in both Systems exceeds the market value by 6 to 7%. This difference declined from last year, but there are still significant deferred investment losses from prior years that have not yet been fully recognized. Without investment returns over the next few years above the assumed rate of return of 7.75%, the deferred investment loss will be recognized and contribution rates can be expected to increase.

On the basis of the 2010 valuations, it is our opinion that the Retirement Systems are meeting their basic financial objectives and continue in sound condition in accordance with the actuarial principles of the level percent of payroll financing.

Plan Provisions

The plan provisions used in the actuarial valuations are described on pages 53 to 56 for the Wichita Employees' Retirement System and pages 61 to 63 for the Police and Fire Retirement System of Wichita, Kansas.

Data

In preparing the December 31, 2010 actuarial valuations, we have relied upon member and asset data provided by the Retirement Program Administrator. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior year's data. If the underlying data or information is inaccurate or incomplete, our calculations may need to be revised.

Actuarial Methods and Assumptions

The actuarial methods and assumptions have been selected by the Board of Trustees of the Systems based upon the analysis and advice of the actuary and other professionals. These assumptions and methods are detailed on pages 48 to 50 for the Wichita Employees' Retirement System and pages 56 to 58 for the Police and Fire Retirement System of Wichita, Kansas. The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. The actuarial methods and assumptions are based on a study of actuarial experience for the five year period ending December 31, 2008.

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In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are individually reasonably related to the experience of the System and offer the best estimate of anticipated experience. We believe they comply with the requirements of Governmental Accounting Standards Board Statement No. 25. Nevertheless, the emerging costs will vary from those presented in this valuation to the extent actual experience differs from that projected by the actuarial assumptions.

The actuary prepared the following supporting schedules for the Comprehensive Annual Financial Report:

Actuarial Section

Summary of Actuarial Methods and Assumptions
Schedule of Active Member Valuation Data
Solvency Test
Derivation of Retirement Systems Experience Gain/(Loss)

Financial Statements Section

Schedule of Employer Contributions
Schedule of Funding Progress

Retirement System staff prepared the schedules shown in the Statistical Section of the report, based in part upon the material prepared by the actuary.

I, William V. Hogan, F.S.A. am a Member of the American Academy of Actuaries and a Fellow of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

I, Timothy J. Herman, F.S.A. am a member of the American Academy of Actuaries and a Fellow of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

Respectfully submitted,

Milliman, Inc.

Sincerely,

William V. Hogan
William V. Hogan, FSA, MAAA
Principal & Consulting Actuary

Timothy J. Herman
Timothy J. Herman, FSA, MAAA
Consulting Actuary

Milliman

Wichita Employees' Retirement System (WERS) Actuarial Information

Actuarial Cost Method

The actuarial cost method is a procedure for allocating the actuarial present value of pension plan benefits and expenses to time periods. The method used for the valuation is known as the Entry Age Normal actuarial cost method, and has the following characteristics:

- The annual normal costs for each individual active member are sufficient to accumulate the value of the member's pension at time of retirement;
- Each annual normal cost is a constant percentage of the member's year-by-year projected covered compensation.

The Entry Age Normal actuarial cost method allocates the actuarial present value of each member's projected benefits on a level basis over the member's assumed pensionable compensation rates between the entry age of the member and the assumed exit age.

The portion of the actuarial present value allocated to the valuation year is called the *normal cost*. The portion of the actuarial present value not provided for by the actuarial present value of future normal costs is called the *actuarial liability*. Deducting actuarial assets from the actuarial liability determines the *unfunded actuarial liability or (surplus)*. WERS had an unfunded actuarial liability of $24.1 million as of December 31, 2010.

Actuarial Assumptions Used for Valuations

Retirement System contribution requirements and actuarial present values are calculated by applying experience assumptions to the benefit provisions and participant information of the Retirement System, using the actuarial cost method. These assumptions were proposed by the Fund's actuary following the completion of an experience study covering the period December 31, 2003 through December 31, 2008, and adopted by the Board on September 16, 2009. An experience study is performed every five years.

The actuarial valuation of assets is based on the "Expected Value plus 25%" method, which smoothes the effect of market value fluctuations by recognizing 25% of the difference between the expected actuarial value and the market value of assets. The Board first adopted this methodology for the December 31, 2002 valuation. Actuarial gains and losses reduce or increase the unfunded actuarial liability or surplus, which is amortized over a rolling 20-year amortization period.

Net Investment Rate of Return

The investment return rate (net of administrative expenses) used for actuarial valuation calculations is 7.75% a year, compounded annually. This rate consists of 3.50% in recognition of long-term price inflation and 4.25% in recognition of a real rate of return over price inflation. This assumption, used to equate the value of payments due at different points in time, was adopted by the Board and was first used for the December 31, 1981 valuation, although the allocation between inflation and real return has changed periodically, most recently in 2009.

Salary Projections

These assumptions are used to project current salaries to determine average annual compensation. They consist of the same inflation component used for the investment return assumption, a component reflecting productivity and the competition from other employers for personnel, and a years of service component to reflect promotion and longevity increments (see Actuarial Section: Figure 1).

Salary increases are assumed to occur mid-year. The salary increase assumptions will produce 4.25% annual increases in active member payroll (the inflation and productivity base rate), given a constant active member group size. This is the same payroll growth assumption used to amortize the unfunded actuarial liability. The rate of return over assumed wage growth is 3.50% per year. These assumptions were first used for the December 31, 2009 valuation.

Annual Rate of Salary Increases

Years of Service	Inflation Component	Productivity Component	Merit and Longevity	Total
1	3.50%	0.50%	3.20%	7.20%
2	3.50	0.50	3.00	7.00
3	3.50	0.50	2.80	6.80
4	3.50	0.50	2.60	6.60
5	3.50	0.50	2.40	6.40
6	3.50	0.50	2.20	6.20
7	3.50	0.50	2.00	6.00
8	3.50	0.50	1.80	5.80
9	3.50	0.50	1.70	5.70
10	3.50	0.50	1.60	5.60
11	3.50	0.50	1.50	5.50
12	3.50	0.50	1.40	5.40
13	3.50	0.50	1.30	5.30
14	3.50	0.50	1.20	5.20
15	3.50	0.50	1.06	5.06
16	3.50	0.50	0.92	4.92
17	3.50	0.50	0.78	4.78
18	3.50	0.50	0.64	4.64
19	3.50	0.50	0.50	4.50
20	3.50	0.50	0.50	4.50
21	3.50	0.50	0.50	4.50
22	3.50	0.50	0.50	4.50
23	3.50	0.50	0.50	4.50
24	3.50	0.50	0.50	4.50
25	3.50	0.50	0.50	4.50
>25	3.50	0.50	0.25	4.25

Actuarial Section: Figure 1

Rates of Retirement and Deferred Retirement Option Plan (DROP) Elections

The rates displayed in Actuarial Section: Figure 2 are used to measure the probability of eligible members retiring under either the regular retirement provisions or the Deferred Retirement Option Plan (DROP).

In addition, the following assumptions would apply to members in this category:

- Plan 1: 70% of members with 30 or more years of service will elect the DROP with an average DROP period of 48 months. The remaining 30% are assumed to retire immediately.
- Plan 2: 70% of members with 33.33 or more years of service and are at least 62 will elect the DROP with an average DROP period of 36 months.

All members of the Retirement System were assumed to retire on or before age 70.

This assumption was first used for the December 31, 2009 valuation.

Marriage

Seventy percent of members were assumed to be married for purposes of death benefits. In each case, the male was assumed to be three years older than the female.

Sick Leave

The calculated normal retirement benefits were increased by 4% to account for the inclusion of unused sick leave in the calculation of service credit. This assumption was last revised with the December 31, 2004 valuation.

Rates of Retirement

Retirement Age	Plan 1	Plan 2
55	15%	5%
56	15	5
57	15	5
58	15	5
59	15	5
60	40	5
61	40	5
62	20	30
63	20	30
64	20	40
65	100	40
66	N/A	30
67	N/A	30
68	N/A	30
69	N/A	30
70	N/A	100

Actuarial Section: Figure 2

Forfeiture of Vested Benefits

A percentage of the actuarial present value of vested termination benefits is assumed to be forfeited by a withdrawal of accumulated contributions. This percentage is applied individually based on years of service. The data in Actuarial Section: Figure 3 was first used for the December 31, 2004 actuarial valuation.

Forfeiture of Vested Benefits

Years of Service	Percent Forfeiting
< 15	60%
15 - 19	40
20 - 24	20
>= 25	0

Actuarial Section: Figure 3

Plan 3 Transfer

Plan 3 (defined contribution plan) members are assumed to elect Plan 2 if they acquire seven years of service. An actuarial reserve is held for the difference between the market and actuarial value of assets. This assumption was last revised for the December 31, 2004 valuation.

Mortality Table

The RP-2000 mortality tables (RP-2000 Healthy Annuitant Tables, RP-2000 Disabled Table and RP-2000 Employee Table) were first used for the December 31, 2004 valuation (see Actuarial Section: Figure 4). The Healthy Annuitant and Employee Tables are set forward two years for males to fit the observed experience of the group. The RP-2000 Tables are used with generational mortality. These tables measure the probabilities of members dying before retirement and the probabilities of each pension payment being made after retirement.

Future Life Expectancy (years)

Sample Ages[1]	Men	Women
50	30.4	34.6
55	25.7	29.7
60	21.2	25.1
65	16.9	20.7
70	13.0	16.7
75	9.7	13.0
80	6.9	9.8
85	4.8	7.1

[1] Ages in 2000

Actuarial Section: Figure 4

Rates of Separation from Active Membership

This assumption (see Actuarial Section: Figure 5 below) measures the probabilities of a member terminating employment. The rates do not apply to members who are eligible to retire. This assumption was last revised for the December 31, 2009 valuation.

Rates of Separation

Sample Ages	Years of Service	Annual Termination Probability
Any	0	25.00%
-	1	19.00
-	2	14.00
-	3	11.00
-	4	9.00
25	Over 4	9.00
30	-	7.00
35	-	5.25
40	-	4.00
45	-	3.50
50	-	2.50
55	-	1.50
60	-	1.50

Actuarial Section: Figure 5

Rates of Disability

This assumption measures the probabilities of a member becoming disabled (see Actuarial Section: Figure 6 below). Disabilities are assumed to be non-duty related. These rates were first used for the December 31, 2009 valuation.

Rates of Active Member Disability

Sample Ages	% Becoming Disabled During the Next Year
25	0.02%
30	0.03
35	0.04
40	0.07
45	0.10
50	0.18
55	0.32
60	0.53

Actuarial Section: Figure 6

Wichita Employees' Retirement System Actuarial Tables

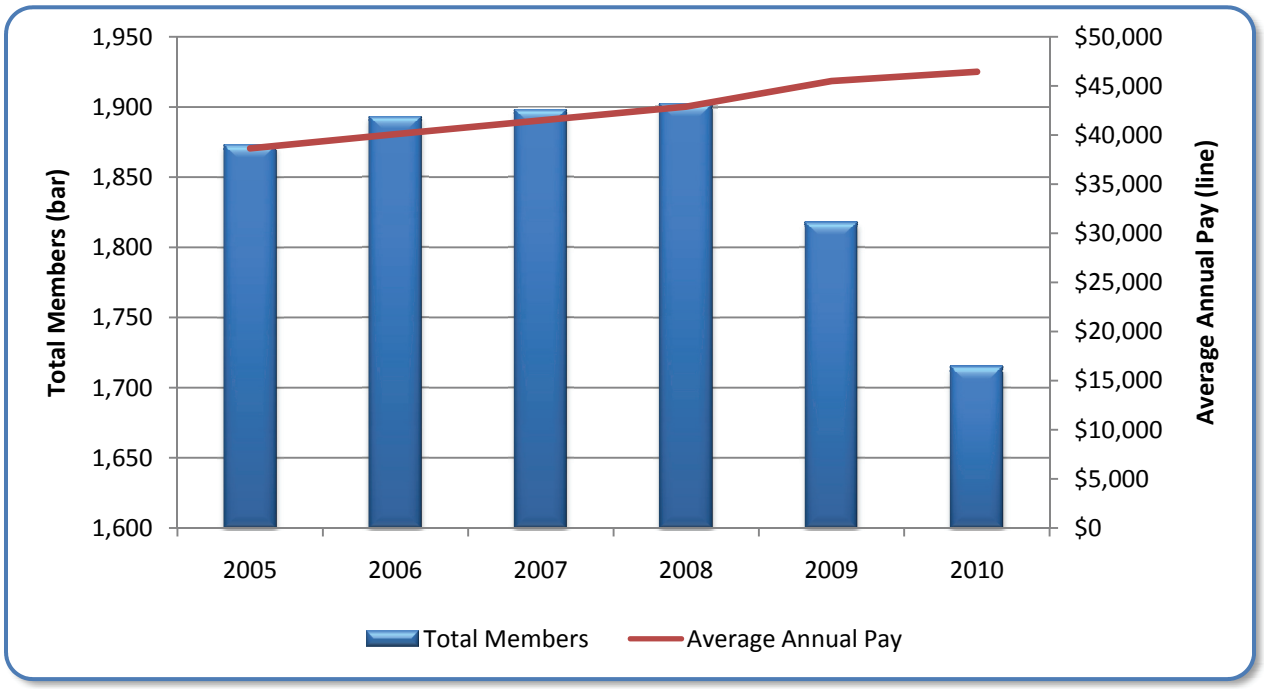
Active Member Valuation Data

Valuation Date	Number of Members				Annual Payroll ($000's)	Average Annual Pay	% Increase In Average Annual Pay
	Plan 1	Plan 2	Plan 3[1]	Total			
12/31/2005	151	900	822	1,873	$72,367	$38,637	(1.0)%
12/31/2006	134	922	837	1,893	75,881	40,085	3.7
12/31/2007	113	947	838	1,898	78,736	41,484	3.5
12/31/2008	92	958	852	1,902	81,580	42,892	3.4
12/31/2009	80	998	740	1,818	82,704	45,492	6.1
12/31/2010	61	993	661	1,715	79,636	46,435	2.1

[1] Does not include vested Plan 3 Members

Actuarial Section: Figure 7

Average Annual Pay and Total Members



Actuarial Section: Figure 8

Retirants and Beneficiaries Added to and Removed From Rolls

	Added to Rolls		Removed from Rolls		End of Year Rolls		Annual Pensions	
Year Ended	#	Annual Pensions[1]	#	Annual Pensions[1]	#	Annual Pensions[1]	Average Pension	Average Increase
12/31/2005	58	$1,256,205	40	$403,572	1,080	$22,803,853	$21,115	5.3%
12/31/2006	63	1,205,241	41	580,114	1,102	24,146,982	21,912	3.8
12/31/2007	77	1,763,901	47	665,077	1,132	25,757,557	22,754	3.8
12/31/2008	79	1,879,045	44	693,343	1,167	27,520,308	23,582	3.6
12/31/2009	66	1,338,875	52	708,830	1,181	28,730,505	24,327	3.2
12/31/2010	71	1,847,020	59	949,872	1,193	29,855,835	26,056	2.9

[1] Values are estimated based on annualized pension amounts.

Actuarial Section: Figure 9

Solvency Test

	Aggregate Actuarial Liability for						
	(1)	(2)	(3)		Portion of Actuarial Liabilities Covered by Reported Assets		
Valuation Date	Active Member Contributions	Retirants and Beneficiaries[1]	Active Members (Employer Financed) Portion)	Reported Valuation Assets	(1)	(2)	(3)
12/31/2005	$43,397,403	$228,408,201	$161,491,272	$479,274,508	100%	100%	128.5%
12/31/2006	45,475,389	237,860,848	175,725,905	505,755,995	100	100	126.6
12/31/2007	46,189,489	256,374,002	180,823,537	533,911,465	100	100	127.9
12/31/2008	46,541,280	272,176,420	193,655,822	512,853,345	100	100	100.2
12/31/2009	49,152,328	279,396,973	200,722,170	509,493,888	100	100	90.1
12/31/2010	50,473,365	293,227,477	196,734,871	516,307,845	100	100	87.7

[1] Includes vested terminated members.

Actuarial Section: Figure 10

System Experience

For the year ended December 31, 2010, the Wichita Employees' Retirement System generated an actuarial loss of $2.8 million, or 0.5% of the beginning of the year actuarial liability (see Actuarial Section: Figure 11).

Derivation of System Experience Gain/ (Loss)

			Year Ended 12/31/10 (in millions)
(1)		UAL[1] at start of year	$ 19.8
(2)	+	Normal cost for year	10.2
(3)	+	Assumed investment return on (1) and (2)	2.3
(4)	-	Actual contributions (member + City)	10.6
(5)	-	Assumed investment return on (4)	0.4
(6)	=	Expected UAL at end of year	21.3
(7)	+	Increase (decrease) from amendments	0.0
(8)	+	Increase (decrease) from assumption changes	0.0
(9)	=	Expected UAL after changes	21.3
(10)	=	Actual UAL at year end	24.1
(11)	=	Experience gain (loss) (9) – (10)[2]	(2.8)
(12)	=	Percent of beginning of year AL	0.5%

[1] Unfunded Actuarial Liability/(Surplus)

[2] Of this amount, $11.9 million of the experience loss is due to an experience loss on the actuarial value of assets and $9.1 million represents an experience gain on liabilities.

Actuarial Section: Figure 11

Summary of Benefit Provisions for the Wichita Employees' Retirement System Defined Benefit Plans 1 and 2

Plan 1 is a closed plan, which is applicable to members employed prior to July 18, 1981 who did not elect to be covered by Plan 2. Plan 2 is applicable to members employed prior to July 18, 1981 who elected to be covered by Plan 2, those employed or re-employed on or after July 18, 1981 and before January 1, 1994, and Plan 3 members who, upon vesting, elect to become members of Plan 2.

Normal Retirement

- **Eligibility**
  - Plan 1: Age 60 with seven or more years of service, or any age with 30 or more years of service.
  - Plan 2: Age 62 with seven or more years of service.
- **Benefit**
  - Plan 1: Years of service times 2.5% of final average salary, to a maximum of 75%.
  - Plan 2: Years of service times 2.25% of final average salary, to a maximum of 75%.
- **Final Average Salary**
  - Average for the three consecutive years within the last 10 years of service that produce the highest average salary.

Early Retirement

- **Eligibility**
  - Age 55 with seven or more years of service.
- **Benefit**
  - An amount computed as for normal retirement, but reduced for each month retirement precedes age 60 under Plan 1 and age 62 under Plan 2. The amount of reduction per month of early retirement is:
    - Plan 1: A service graduated percentage for each month retirement precedes age 60. The percentage is .05 of 1% if service is 29 years but less than 30 years, increasing by .05 of 1% for each additional year service is less than 30 years, to a maximum of .50 of 1% if service is less than 20 years.
    - Plan 2: An age graduated percentage for each month retirement precedes age 62. The percentage is 0.6% for each month that the member's age precedes age 62, up to a maximum of 50.4% at age 55.

Service-Connected Disability

- **Eligibility**
  - No age or service requirement. Disability must be permanent and total, and precludes performance of any duties for a City position commensurate with the employee's training, experience, and education.
- **Benefit**
  - Plan 1: 60% of final rate of salary.
  - Plan 2: 50% of final rate of salary.

Non-Service Connected Disability

- **Eligibility**
  - Seven or more years of service and under age 60, Plan 1, or age 62, Plan 2. Disability must be permanent and total, and precludes performance of any duties for a City position commensurate with the employee's training, experience, and education.
- **Benefit**
  - Plan 1: 30% of final average salary plus 1% of final average salary for each year of service in excess of seven years, to a maximum of 50%.
  - Plan 2: 25% of final rate of salary.

Deferred Retirement Option Plan (DROP)

- **Eligibility**
  - Must be eligible for retirement, and elect to participate in the DROP for 1 to 60 months.
- **DROP Benefit**
  - Benefit computed based on years of service, final average salary as of DROP election date, which is paid into member's notational DROP account during the deferral period. Member continues to make required employee contributions during the deferral period. Interest at an annual rate of 5% is credited to the notational DROP account. Voluntary termination of employment during the DROP period results in a loss of accrued interest. Balance of DROP account is payable within 90 days of actual termination of employment.

Deferred Retirement

- **Eligibility**
  - Termination of service.
    - Plan 1: 7 or more years of service and under age 60.
    - Plan 2: 7 or more years of service and under age 62.
- **Deferred Benefit**
  - Deferred pensioner may apply for a reduced retirement benefit upon meeting the applicable age requirement for early retirement (55 years) or an unreduced pension upon meeting the applicable age requirement for normal retirement (60 years, Plan 1 or 62 years, Plan 2). A refund of employee contributions, plus 5% annual interest, may be elected in lieu of a retirement benefit.
  - Retirement benefit is computed as for normal retirement. Deferred pensions are adjusted during the deferral period based on changes in the National Average Earnings Index, up to 5.5% annually.

Pre-Retirement Survivor Benefit

- **Eligibility - Surviving spouse and minor child**
  - Death of employee with seven or more years of credited service.
- **Benefit**
  - 50% of the benefit earned by the deceased employee at the time of death, plus 10% of the deceased employee's final average salary for each minor child under age 18, to a maximum of 75% of final average salary. If no surviving spouse, benefit is 20% of final average salary on account of each child to a maximum of 60% of final average salary; terminates when child reaches age 18.
- **Designated Beneficiary**
  - When no spouse or minor child is eligible for a survivor's benefit, the beneficiary designated by the retiree.
- **Benefit**
  - Accumulated contributions plus 5% annual interest, and one month's salary for each full year of service, not to exceed six months of salary.

Post-Retirement Survivor Benefit

- **Eligibility**
  - Spouse must have been married to retired employee for one year or more, at time of death if retired after January 1, 2000. If retired prior to January 1, 2000, must have been married to retired employee at retirement.
  - Minor child must be must be under age 18.
- **Benefit**
  - 50% of benefit paid to retiree at time of death, plus 10% of retiree's final average salary for each minor child under age 18, to a maximum of 75% of final average salary. If no surviving spouse, benefit is 20% of final average salary on account of each child to a maximum of 60% of final average salary; terminates when child reaches age 18.
  - Plan 1: $1,500 funeral benefit.
- **Designated Beneficiary**
  - When no spouse or minor child is eligible for a survivor's benefit, the beneficiary designated by the retiree.
- **Benefit**
  - Final partial benefit due retiree through date of death, plus balance, if any, of contributions and interest.
  - Plan 1: $1,500 funeral benefit.

Refund of Contributions

- **Eligibility**
  - Termination of employment without eligibility for any other benefit.
- **Amount**
  - Accumulated contributions at the time of termination, plus 5% annual interest.

Post-Retirement Adjustment of Pension Benefit

- **Eligibility**
  - Plan 1: Completion of 12 months of retirement and annually thereafter.
  - Plan 2: Completion of 12 months of retirement and annually thereafter (effective February 19, 2000).
- **Benefit**
  - Plan 1: 3% of base pension benefit (not compounded).
  - Plan 2: 2% of base pension benefit (not compounded).

Employee Contributions

- Plan 1: 6.4% of base salary, longevity and overtime pay.
- Plan 2: 4.7% of base salary and longevity pay (effective February 19, 2000).

Employer Contributions

- Actuarially determined amounts which, together with employee contributions and investment earnings, will fund the obligations of the System in accordance with accepted actuarial principles.

Unused Sick Leave

- Accumulated unused sick leave is converted to service credits for the purpose of computing annual benefits.

Summary of Benefit Provisions for the Wichita Employees' Retirement System Defined Contribution Plan 3

Plan 3 is applicable to members employed on or after January 1, 1994 who have not become covered by Plan 2. Plan 3 members automatically transfer to Plan 2 at the time they acquire 7 years of service, unless they file an irrevocable election to remain in Plan 3.

Employee Contributions

- 4.7% of compensation (effective February 19, 2000).

Employer Contributions

- 4.7% of compensation (effective February 19, 2000).

Vesting of Contributions

- Employee contributions and investment earnings thereon are 100% vested.
- Employer contributions and investment earnings thereon are 25% vested after three years of service, 50% vested after five years of service, and 100% vested after seven years of service.

Distribution of Vested Accounts

- Vested accounts are payable upon termination of City employment or death of employee.

Service-Connected Disability

- **Eligibility**
  - No age or service requirement. Disability must be permanent and total, and precludes the performance of any duties for a City position commensurate with the employee's training, experience, and education.
- **Benefit**
  - 50% of final rate of salary; or distribution of vested Plan 3 account.

Non-Service Connected Disability

- **Eligibility**
  - Seven or more years of service and under age 62. Disability must be permanent and total, and precludes the performance of any duties for City position commensurate with the employee's training, experience, and education.

- **Benefit**
  - 25% of final rate of salary; or distribution of vested Plan 3 account.

A more detailed description of Plan provisions is available upon request from the Pension Management Office.

Police and Fire Retirement System (PFRS) Actuarial Information

Actuarial Cost Method

The actuarial cost method is a procedure for allocating the actuarial present value of pension plan benefits and expenses to time periods. The method used for the valuation is known as the Entry Age Normal actuarial cost method, and has the following characteristics:

- The annual normal costs for each individual active member are sufficient to accumulate the value of the member's pension at time of retirement;
- Each annual normal cost is a constant percentage of the member's year-by-year projected covered compensation;
- Normal costs for Plans A and B (closed plans) were based on Plan C (open plan) assumptions and benefit conditions.

The Entry Age Normal actuarial cost method allocates the actuarial present value of each member's projected benefits on a level basis over the member's assumed pensionable compensation rates between the entry age of the member and the assumed exit age. By applying the Entry Age Normal cost method as described above, the ultimate normal cost will remain level as a percent of active member payroll (if actuarial assumptions are realized) as Plan A and Plan B members leave active status and are replaced by members entering Plan C.

The portion of the actuarial present value allocated to the valuation year is called the *normal cost*. The portion of the actuarial present value not provided for by the actuarial present value of future normal costs is called the *actuarial liability*. Deducting actuarial assets from the actuarial liability determines the *unfunded actuarial liability or (surplus)*. PFRS had an unfunded actuarial accrued liability of $39.0 million as of December 31, 2010.

Actuarial Assumptions Used for Valuations

Retirement System contribution requirements and actuarial present values are calculated by applying experience assumptions to the benefit provisions and participant information of the Retirement System, using the actuarial cost method. These assumptions were proposed by the Fund's actuary following the completion of an experience study covering the period December 31, 2003 through December 31, 2008, and adopted by the Board September 23, 2009. An experience study is performed every five years.

The actuarial valuation of assets is based on the "Expected Value plus 25%" method, which smoothes the effect of market value fluctuations by recognizing 25% of the difference between the expected actuarial value and the market value of assets. The Board first adopted this methodology for the December 31, 2002 valuation. Actuarial gains and losses reduce or increase the unfunded actuarial liability or surplus, which is amortized over a rolling 20-year amortization period.

Net Investment Rate of Return

The investment rate of return (net of administrative expenses) used for actuarial valuation calculations was 7.75% a year, compounded annually. This rate consists of 3.50% in recognition of long-term price inflation and 4.25% in recognition of a real rate of return over price inflation. This assumption, used to equate the value of payments due at different points in time, was adopted by the Board and was first used for the December 31, 1980 valuation, although the allocation between inflation and real return has changed periodically, most recently in 2009.

Salary Projections

These assumptions are used to project current salaries to determine average annual compensation. They consist of the same inflation component used for the investment return assumption, a component reflecting productivity and the competition from other employers for personnel, and a years of service component to reflect promotion and longevity increments (see Actuarial Section: Figure 12).

Salary increases are assumed to occur mid-year. The salary increase assumptions will produce 4.50% annual increases in active member payroll (the inflation and productivity base rate) given a constant active member group size. This is the same payroll growth assumption used to amortize the unfunded actuarial liability. The rate of return over assumed wage growth is 3.25% per year. These assumptions were first used for the December 31, 2009 valuation.

Annual Rate of Salary Increases

Years of Service	Inflation Component	Productivity Component	Merit and Longevity	Total
1	3.50%	0.50%	2.75%	6.75%
5	3.50	0.50	2.75	6.75
10	3.50	0.50	2.75	6.75
15	3.50	0.50	2.75	6.75
20	3.50	0.50	1.00	5.00
25	3.50	0.50	1.00	5.00
30	3.50	0.50	1.00	5.00

Actuarial Section: Figure 12

Forfeiture of Vested Benefits

A percentage of the actuarial present value of vested termination benefits will be forfeited by a withdrawal of accumulated contributions. The percentage is applied individually based on years of service. This table (Actuarial Section: Figure 13 below) was first used for the December 31, 2004 valuation.

Forfeiture of Vested Benefits

Years of Service	Percent Forfeiting
10 – 14	100%
>= 15	0

Actuarial Section: Figure 13

Rates of Retirement

These rates (see Actuarial Section: Figure 14 and Actuarial Section: Figure 15) are used to measure the probability of eligible members retiring and applicable elections under the BackDROP program. It is assumed that members who retire under service retirement provisions elect a BackDROP of up to five years which maximizes the actuarial value of the retirement benefit determined as of the retirement date. These rates were first used for the December 31, 2009 valuation.

Rates of Retirement for Plans A and B

	% Retiring During Year	
Years of Service	Police	Fire
28 or less	5%	5%
29	5	5
30	10	5
31	10	5
32	30	25
33	50	25
34	50	25
35	100	100
Over 35	100	100

Actuarial Section: Figure 14

Rates of Retirement for Plan C

	% Retiring During Year	
Years of Service	Police	Fire
50	10%	5%
51	10	5
52	10	5
53	10	10
54	10	10
55	10	10
56	30	20
57	30	20
58	30	20
59	30	20
60	100	100
Over 60	100	100

Actuarial Section: Figure 15

Rates of Separation from Active Membership

This assumption measures the probabilities of a member terminating employment. The rates (see Actuarial Section: Figure 16) do not apply to members who are eligible to retire. These rates were first used for the December 31, 2009 valuation.

Rates of Separation

Sample Ages	Years of Service	% Separating Within Year	
		Police	Fire
All	0	10.00%	8.00%
-	1	8.00	6.00
-	2	6.00	4.50
-	3	4.00	3.00
-	4	3.00	2.00
25	Over 4	3.00	1.00
30	-	3.00	1.00
35	-	2.50	0.95
40	-	1.90	0.85
45	-	0.70	0.50
50	-	0.00	0.00
55	-	0.00	0.00

Actuarial Section: Figure 16

Rates of Disability

This assumption measures the probabilities of a member receiving a disability retirement (see Actuarial Section: Figure 17). The rates do not apply to members who are eligible to retire. The rates of recovery from disability are assumed to be zero. These rates were first used for the December 31, 1999 valuation.

Rates of Disability

Sample Ages	Percent Disabled During the Year	
	Police	Fire
20	0.10%	0.09%
25	0.16	0.14
30	0.33	0.30
35	0.55	0.49
40	0.77	0.68
45	0.98	0.87
50	1.20	1.06
55	1.42	1.14

Actuarial Section: Figure 17

Mortality Table

The RP-2000 mortality tables (RP-2000 Healthy Annuitant Tables, RP-2000 Disabled Table and RP-2000 Employee Table) were first used for the December 31, 2004 valuation (see Actuarial Report: Figure 18 below). The RP-2000 Tables are used with generational mortality. These tables measure the probabilities of members dying before retirement and the probabilities of each pension payment being made after retirement.

Future Life Expectancy (years)

Sample Ages[1]	Men	Women
50	32.3	34.6
55	27.6	29.7
60	23.0	25.1
65	18.5	20.7
70	14.5	16.7
75	10.9	13.0
80	7.9	9.8
85	5.6	7.1

[1] Ages in 2000

Actuarial Report: Figure 18

Marriage

Eighty percent of members are assumed to be married for purposes of death benefits. In each case, the male was assumed to be three years older than the female.

Sick Leave

The calculated normal retirement benefits were increased by 4% to account for the inclusion of unused sick leave in the calculation of service credit. This assumption was last revised for the December 31, 2004 valuation.

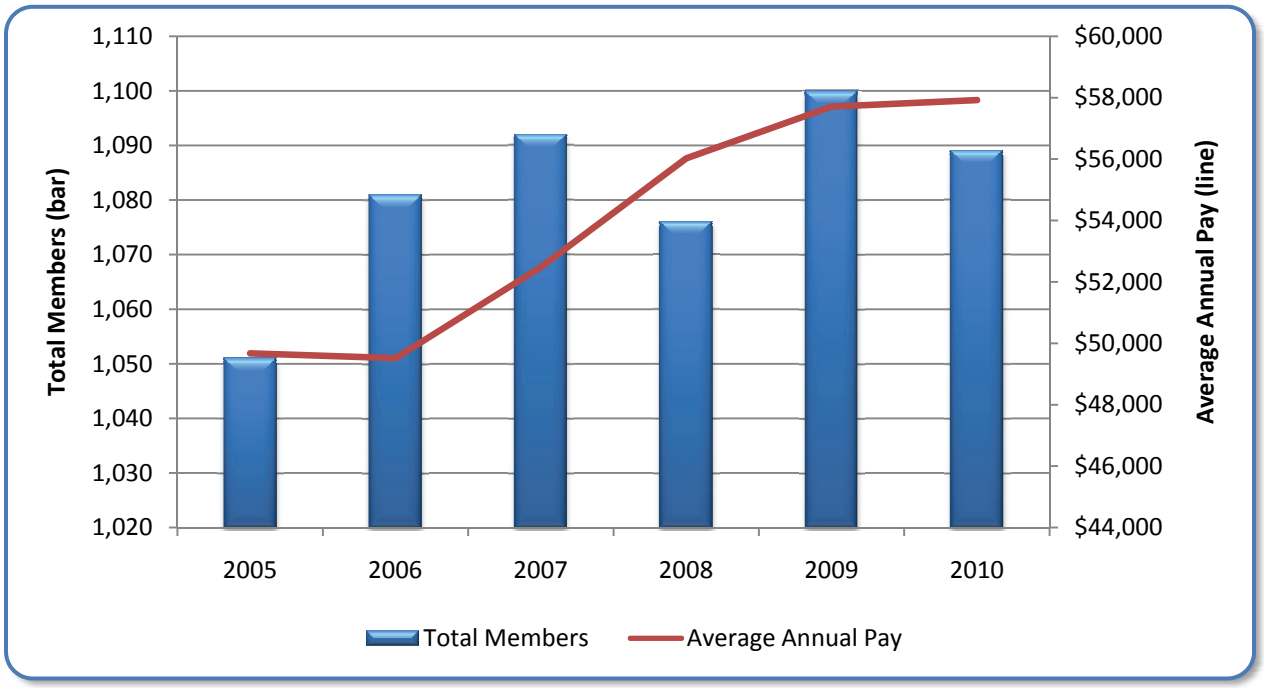
Police and Fire Retirement System Actuarial Tables

Active Member Valuation Data

Valuation Date	Number of Members: Plan A	Plan B	Plan C	Total Members	Annual Payroll ($000's)	Average Annual Pay	% Increase In Average Annual Pay
12/31/2005	62	1	988	1,051	$52,207	$49,674	4.9%
12/31/2006	59	1	1,021	1,081	53,530	49,519	-0.3
12/31/2007	57	0	1,035	1,092	57,310	52,482	6.0
12/31/2008	47	0	1,029	1,076	60,282	56,024	6.7
12/31/2009	32	0	1,068	1,100	63,479	57,708	3.0
12/31/2010	21	0	1,068	1,089	63,077	57,922	0.4

Actuarial Section: Figure 19

Average Annual Pay and Total Members



Actuarial Section: Figure 20

Retirants and Beneficiaries Added to and Removed from Rolls

Year Ended	Added to Rolls #	Added to Rolls Annual Pensions[1]	Removed from Rolls #	Removed from Rolls Annual Pensions[1]	End of Year Rolls #	End of Year Rolls Annual Pensions[1]	Annual Pensions Average Pension	Annual Pensions Average Increase
12/31/2005	24	$ 704,201	21	$213,529	837	$17,829,449	$21,302	4.0%
12/31/2006	29	715,353	26	389,856	840	18,349,917	21,845	2.5
12/31/2007	21	548,513	28	452,202	833	18,777,464	22,542	3.2
12/31/2008	39	510,543	32	417,236	840	19,492,053	23,205	2.9
12/31/2009	57	1,959,741	24	398,908	873	21,357,569	24,465	5.4
12/31/2010	47	1,439,435	28	541,662	892	22,570,141	25,303	3.4

[1] Values are estimated based on annualized pension amounts.

Actuarial Section: Figure 21

Solvency Test

Valuation Date	Aggregate Actuarial Liability for (1) Active Member Contributions	(2) Retirants and Beneficiaries[1]	(3) Active Members (Employer Financed) Portion)	Reported Valuation Assets	Portion of Actuarial Liabilities Covered by Reported Assets (1)	(2)	(3)
12/31/2005	$44,057,922	$201,560,068	$159,408,592	$412,822,760	100%	100%	99.2%
12/31/2006	48,361,719	216,449,174	174,368,239	444,497,827	100	100	103.1
12/31/2007	53,686,866	230,893,426	183,534,348	480,820,001	100	100	106.9
12/31/2008	58,050,319	238,590,747	199,920,080	472,345,191	100	100	87.9
12/31/2009	60,326,408	257,298,665	202,309,181	480,555,562	100	100	80.5
12/31/2010	63,515,814	270,693,677	202,698,947	497,925,786	100	100	80.8

[1] Includes vested terminated members.

Actuarial Section: Figure 22

System Experience

During the 12 months ended December 31, 2010 the Police and Fire Retirement System generated an actuarial gain of $2.0 million, or 0.4% of the beginning of the year actuarial liability (see Actuarial Section: Figure 23).

Derivation of System Experience Gain/ (Loss)

			Year Ended 12/31/10 (in millions)
(1)		UAL[1] at start of year	$ 39.4
(2)	+	Normal cost for year	15.6
(3)	+	Assumed investment return on (1) and (2)	4.3
(4)	-	Actual contributions (member + City)	17.6
(5)	-	Assumed investment return on (4)	0.7
(6)	=	Expected UAL at end of year	41.0
(7)	+	Increase (decrease) from amendments	0.0
(8)	+	Increase (decrease) from assumption changes	0.0
(9)	=	Expected UAL after changes	41.0
(10)	=	Actual UAL at year end	39.0
(11)	=	Experience gain (loss) (9) – (10)[2]	2.0
(12)	=	Percent of beginning of year AL	0.4%

[1] Unfunded Actuarial Liability/(Surplus)

[2] Of this amount, $10.1 million of the experience loss is due to an experience loss on the actuarial value of assets and $12.1 million represents an experience gain on liabilities.

Actuarial Section: Figure 23

Summary of Police and Fire Retirement System Benefit Provisions

Plan A is a closed plan which is applicable to members who entered the System between January 1, 1965 and December 31, 1978; and to members who entered prior to January 1, 1965 and elected Plan A coverage. Plan B is a closed plan which is applicable to members who entered the System prior to January 1, 1965 and elected Plan B coverage. Plan C is an open plan which is applicable to members entering the System after December 31, 1978.

Service Retirement

- **Eligibility**
  - Plan A and Plan B: Any age with 20 years of service.
  - Plan C: Age 55 with between 10 and 20 years of service, age 50 with 20 or more years of service, or any age with 30 years of service.
- **Benefit**
  - Years of service times 2.5% of final average salary, to a maximum of 75%.
- **Final Average Salary**
  - Average for the three consecutive years within the last 10 years of service that produce the highest average salary.

Deferred Retirement

- **Eligibility**
  - 10 or more years of service (does not include survivor benefits if service is less than 20 years) and under age 55. Deferred pensioner may apply for a normal retirement benefit upon attainment of age 55. A refund of employee contributions, plus 5% annual interest, may be elected in lieu of a retirement benefit.
- **Deferred Benefit**
  - Retirement benefit is computed as for normal retirement. Deferred pensions are adjusted during the deferral period based on changes in the National Average Earnings Index, up to 5.5% annually.

Backward Deferred Retirement Option Plan (Back DROP)

- **Eligibility**
  - Must be eligible for retirement and, prior to retirement, elect the Back DROP for a period of 1 to 60 months.
- **Benefit**
  - Under the Back DROP, the member may elect a benefit based on a retirement date up to 60 months prior to the current date. The monthly benefit is computed based on service, final average salary and benefit formula at the selected prior date. The DROP account available to the retiring member is the computed benefit multiplied by the number of months of Back DROP plus applicable post-retirement adjustments and 5% annual compounded interest. Members are eligible to elect a five-year Back DROP beginning January 1, 2003.

Service-Connected Disability

- **Eligibility**
  - No age or service requirement. Disability must be permanent and preclude employee from performing the duties of their position.
- **Benefit**
  - 75% of final salary.
- **Conditions**
  - Benefit plus earnings from gainful employment cannot exceed current salary for rank held at time of disability. Benefit is recomputed at age 55 using service retirement formula, updated final average salary, and service credit for period of disability.

Non-Service Connected Disability

- **Eligibility**
  - Seven or more years of service if under age 55. Disability must be permanent and preclude employee from performing the duties of their position.
- **Benefit**

- 30% of final average salary plus 1% of final average salary for each year of service in excess of seven years. Maximum is 50% of final average salary.

- **Conditions**
  - Benefit plus earnings from gainful employment cannot exceed current salary for rank held at the time of disability.

Pre-Retirement Survivor Benefits Service-Connected Death

- **Eligibility**
  - When death results from performance of duty as a fire fighter or police officer, there is no minimum service requirement. Spouse and minor children of member at the time of death are eligible for a survivor's benefit.
- **Benefit**
  - 50% of final salary plus 10% of final salary for each minor child under age 18, to a maximum of 75% of final salary. If no surviving spouse, benefit is 20% of final salary for each child to a maximum of 60% of final salary; terminates when child reaches age 18.

Pre-retirement Benefits Non-Service Connected Death

- **Eligibility:** Spouse and minor children of member at the time of death.
  - Plan A and Plan C: Three or more years of service.
  - Plan B: Twenty or more years of service.
- **Benefit**
  - Plan A and Plan C: 35% of final average salary plus 1% of final average salary for each year of service over three years to a maximum of 50% of final average salary, plus 10% of final average salary on account of each minor child under age 18 to a maximum of 66 2/3% of final average salary. If no surviving spouse, benefit is 15% of final average salary on account of each child to a maximum of 50% of final average salary; terminates when child reaches age 18.
  - Plan B: 50% of final salary.
- **Designated Beneficiary**
  - The beneficiary designated by an unmarried member or by a married member who fails to meet the service requirements for the surviving spouse benefit.
- **Benefit**
  - Member's accumulated contributions plus 5% annual interest, beginning January 1, 2000.

Post-Retirement Survivor Benefit

- **Eligibility**
  - Twenty or more years of service. If retired prior to January 1, 2000, surviving spouse must have been married to retired member at date of retirement. Effective January 1, 2000, surviving spouse must have been married to retired member for a minimum of 12 months at time of death.
- **Benefit**
  - Plan A and Plan C: 35% of final average salary plus 1% of final average salary for each year of service over three years to a maximum of 50% of final average salary, plus 10% of final average salary for each minor child under age 18 to a maximum of 66 2/3%. If no surviving spouse, 15% for each child to a maximum of 50%.
  - Plan B: 50% of final salary to surviving spouse or children under age 18.

Refund of Contributions

- **Eligibility**
  - Termination of employment without eligibility for any other benefit.
- **Amount**
  - Accumulated contributions at the time of termination plus 5% annual interest, beginning January 1, 2000.

Funeral Benefit

- **Eligibility**
  - Member who retired after November 21, 1973
- **Amount**
  - $750

Post-Retirement Adjustment of Pension Benefit

- **Eligibility**
  - Annually after completion of 36 months of retirement.
- **Amount**
  - 2% of base pension benefit (not compounded).

Employee Contributions

- **Plan A:**
  - 8% of salary.
- **Plan B:**
  - 6% of salary.
- **Plan C:**
  - 7% of salary

Employer Contributions

- Actuarially determined amounts which, together with employee contributions and investment earnings, will fund the obligations of the System in accordance with accepted actuarial principles.

Unused Sick Leave

- Accumulated unused sick leave is converted to service credits for the purpose of computing annual benefits.

A more detailed description of Plan provisions is available upon request from the Pension Management Office.

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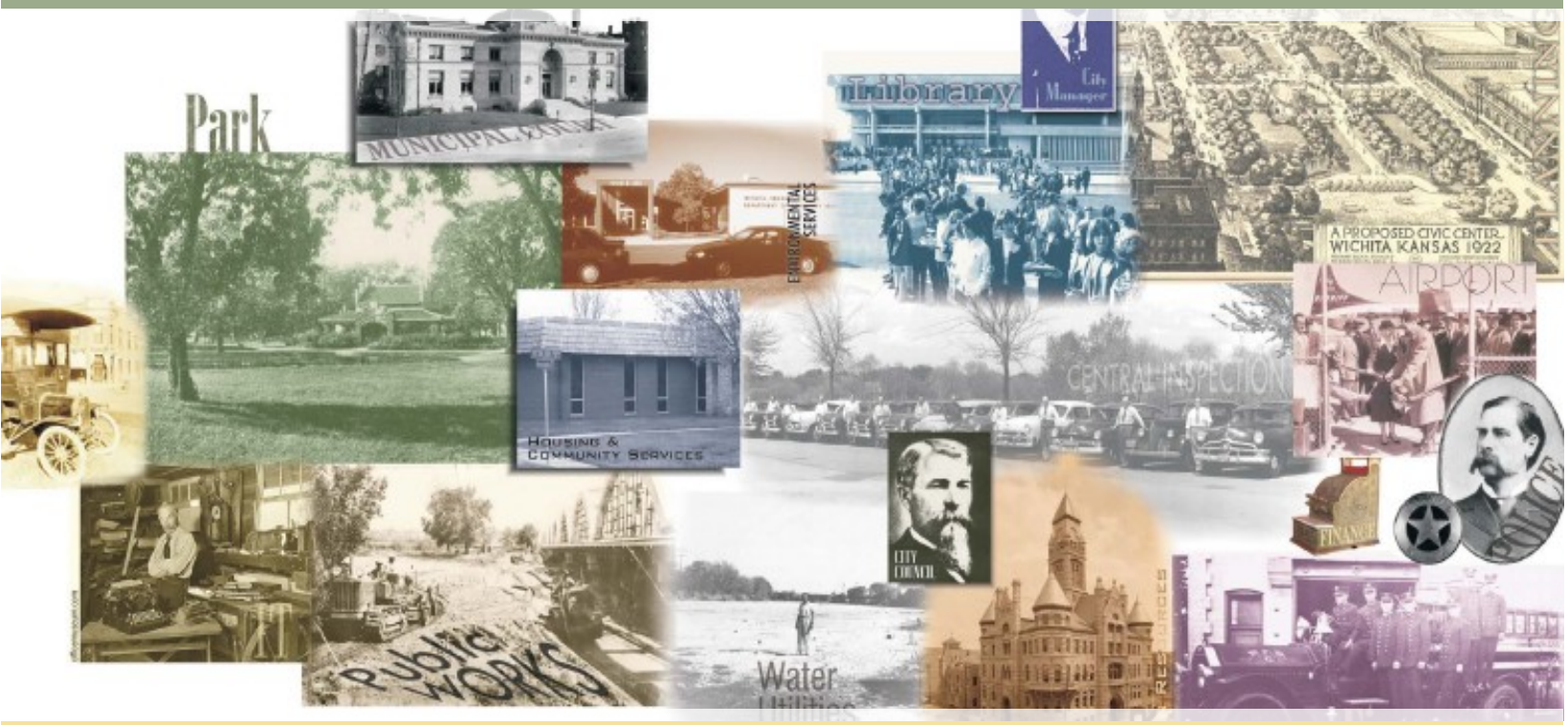
STATISTICAL SECTION



STATISTICAL SECTION

Statistical Section Overview

This section presents detailed schedules showing trends regarding changes in net assets including deductions from net assets for benefits and refunds beginning on page 66, average benefit payments beginning on page 70, and retired members by type and benefit amount beginning on page 72. These schedules may be considered useful in evaluating the condition of the Systems and understanding the information presented in the financial statements, note disclosures and required supplementary information.

The Schedule of Changes in Plan Net assets, including deductions from net assets for benefits and refunds, is derived from the Comprehensive Annual Financial Reports for the relevant fiscal year. All other information is derived from internal sources of the Systems, except for information that is derived from the actuarial valuations of the plans.

Changes in Plan Net Assets (Last Ten Fiscal Years)

Wichita Employees' Retirement System (continued on next page)

	2010	2009	2008	2007
ADDITIONS				
Employer contributions	$ 4,529,765	$ 2,545,331	$ 2,450,162	$ 2,357,052
Employee contributions	2,664,619	2,639,080	2,621,076	2,543,563
Net investment income (loss)	55,169,082	78,011,118	(150,525,640)	54,108,853
Transfers from other funds[1]	1,276,393	1,664,681	2,019,289	2,102,726
Total additions to plan net assets	63,639,859	84,860,210	(143,435,113)	61,112,194
DEDUCTIONS				
Benefits				
Service retirement	23,806,845	22,406,162	21,107,131	19,618,444
Survivors benefit	2,478,774	2,449,423	2,369,917	2,174,019
DROP lump sum	3,104,564	2,352,858	1,820,599	2,809,284
Qualified domestic relations order	74,004	81,064	63,516	60,617
Disability (service)	78,511	75,314	76,736	100,921
Disability (non-service)	254,152	262,579	286,251	218,443
Funeral	93,649	55,317	71,192	70,929
Contribution refunds (separation)	191,171	247,890	313,595	232,417
Pension administration	429,764	444,112	438,411	384,528
Depreciation	63,477	64,615	34,266	-
Total deductions from plan net assets	30,574,910	28,439,334	26,581,614	25,669,602
Change in net assets	33,064,949	56,420,876	(170,016,727)	35,442,592
Net assets held in trust for pension benefits				
Beginning of year	432,285,030	375,864,154	545,880,881	510,438,289
End of year	$465,349,979	$432,285,030	$375,864,154	$545,880,881

[1] Transfers from Employees' Retirement Plan 3 as a result of full vesting option of converting to Plan 2.

Statistical Section: Figure 1

Changes in Plan Net Assets (Last Ten Fiscal Years)

Police and Fire Retirement System (continued on next page)

	2010	2009	2008	2007
ADDITIONS				
Employer contributions	$ 13,119,984	$ 11,034,552	$ 10,549,401	$ 10,029,253
Employee contributions	4,467,983	4,443,524	4,277,247	4,056,022
Net investment income (loss)	54,963,698	75,500,370	(140,686,744)	49,134,414
Total additions to plan net assets	72,551,665	90,978,446	(125,860,096)	63,219,689
DEDUCTIONS				
Benefits				
Service retirement	17,657,242	16,313,729	15,124,453	14,767,792
Survivors benefit	2,569,695	2,367,563	2,293,653	2,175,191
Backward DROP[1] lump sum	4,296,127	3,444,839	2,013,670	873,050
Qualified domestic relations order	115,432	93,762	80,179	72,056
Disability (service)	1,745,289	1,557,901	1,459,306	1,476,513
Disability (non-service)	65,394	64,377	63,359	62,342
Funeral	16,618	14,891	18,351	15,578
Contribution refunds (separation)	492,380	295,424	493,516	254,190
Pension administration	421,521	438,348	418,165	366,637
Depreciation	63,477	64,615	34,266	-
Total deductions from plan net assets	27,443,175	24,655,449	21,998,918	20,063,349
Change in net assets	45,108,490	66,322,997	(147,859,014)	43,156,340
Net assets held in trust for pension benefits				
Beginning of year	422,379,231	356,056,234	503,915,248	460,758,908
End of year	$467,487,721	$422,379,231	$356,056,234	$503,915,248

[1] Backward Deferred Retirement Option Plan became effective January 1, 2001.

Statistical Section: Figure 2

Changes in Plan Net Assets (Last Ten Fiscal Years)

Wichita Employees' Retirement System (continued from previous page)

2006	2005	2004	2003	2002	2001
$ 2,264,339	$ 2,170,650	$ 2,084,558	$ 2,007,656	$ 1,957,922	$ 1,843,213
2,445,103	2,358,466	2,279,422	2,397,597	2,236,973	2,066,480
67,028,887	36,074,046	38,840,471	76,871,558	(49,114,617)	(21,590,153)
1,983,067	1,562,135	1,528,790	1,138,869	1,328,831	1,023,882
73,721,396	42,165,297	44,733,241	82,415,680	(43,590,891)	(16,656,578)
18,731,065	17,647,226	16,589,983	15,796,197	14,809,378	14,154,115
2,069,030	1,940,571	1,807,897	1,697,975	1,601,217	1,504,236
947,843	2,168,410	879,053	622,675	391,801	127,652
59,079	56,532	55,836	59,640	60,443	35,074
110,817	124,673	141,872	155,315	152,542	148,335
210,243	199,428	222,810	166,783	165,928	202,639
73,779	59,210	63,852	78,124	55,102	57,791
287,379	251,710	387,089	276,261	255,091	330,726
355,954	296,883	271,128	264,853	270,292	247,111
-	-	-	-	-	-
22,845,189	22,744,643	20,419,520	19,117,823	17,761,794	16,807,679
50,876,207	19,420,654	24,313,721	63,297,857	(61,352,685)	(33,464,257)
459,562,082	440,141,428	415,827,707	352,529,850	413,882,535	447,346,792
$510,438,289	$459,562,082	$440,141,428	$415,827,707	$352,529,850	$413,882,535

Changes in Plan Net Assets (Last Ten Fiscal Years)

Police and Fire Retirement System (continued from previous page)

2006	2005	2004	2003	2002	2001
$ 9,849,536	$ 7,308,916	$ 6,925,467	$ 5,043,505	$ 4,746,504	$ 4,796,863
3,789,743	3,652,348	3,482,237	3,296,499	3,104,036	2,926,844
59,897,041	31,745,327	33,716,897	65,824,556	(41,805,821)	(18,244,453)
73,536,320	42,706,591	44,124,601	74,164,560	(33,955,281)	(10,520,746)
14,350,119	13,820,287	13,253,231	12,785,027	12,244,565	11,777,516
2,080,107	2,007,215	1,910,236	1,875,774	1,821,252	1,746,985
641,517	977,977	635,674	1,240,509	79,407	63,161
64,614	66,348	57,753	62,615	61,975	59,943
1,558,438	1,414,202	1,447,143	1,528,118	1,430,210	1,382,186
69,970	68,801	72,761	77,412	65,294	64,124
18,655	51,950	18,657	6,086	7,469	14,431
384,672	313,219	283,197	192,808	415,274	419,984
354,904	315,068	262,061	264,386	261,074	240,802
-	-	-	-	-	-
19,522,996	19,035,067	17,940,713	18,032,735	16,386,520	15,769,132
54,013,324	23,671,524	26,183,888	56,131,825	(50,341,801)	(26,289,878)
406,745,584	383,074,060	356,890,172	300,758,347	351,100,148	377,390,026
$460,758,908	$406,745,584	$383,074,060	$356,890,172	$300,758,347	$351,100,148

Changes in Plan Net Assets (Last Ten Fiscal Years)

Wichita Employees' Retirement System Plan 3 (continued on next page)

	2010	2009	2008	2007
ADDITIONS				
Employer contributions	$ 2,298,753	$ 1,478,256	$ 1,494,079	$ 1,428,686
Employee contributions	1,349,100	1,478,256	1,494,079	1,428,686
Net investment income (loss)	2,124,997	2,608,965	(4,387,641)	1,542,383
Transfers from other funds	-	-	-	-
Total additions to plan net assets	5,772,850	5,565,477	(1,399,483)	4,399,755
DEDUCTIONS				
Contribution refunds	642,116	477,290	698,751	864,999
Pension administration	73,844	77,565	69,865	32,639
Depreciation	54,408	55,384	29,371	-
Transfers to other funds[1]	1,276,393	1,664,681	2,019,289	2,102,726
Total deductions from plan net assets	2,046,761	2,274,920	2,817,276	3,000,364
Change in net assets	3,726,089	3,290,557	(4,216,759)	1,399,391
Net assets held in trust for pension benefits				
Beginning of year	15,194,993	11,904,436	16,121,195	14,721,804
End of year	$18,921,082	$15,194,993	$11,904,436	$16,121,195

[1] Transfers to Employees' Retirement System upon full vesting in WERS Plan 3.

Statistical Section: Figure 3

Changes in Plan Net Assets (Last Ten Fiscal Years)

Wichita Employees' Retirement System Plan 3 (continued from previous page)

2006	2005	2004	2003	2002	2001
$ 1,369,009	$ 1,281,156	$ 1,219,589	$ 1,214,823	$ 1,203,471	$ 1,214,229
1,369,009	1,281,156	1,219,589	1,214,823	1,203,471	1,214,229
1,876,517	978,703	1,107,359	1,602,631	(797,704)	(449,836)
-	-	-	-	-	560
4,614,535	3,541,-15	3,546,537	4,032,277	1,609,238	1,979,182
786,140	628,696	400,787	384,769	526,655	472,505
31,374	29,512	33,056	33,395	34,860	45,569
-	-	-	-	-	-
1,983,067	1,562,135	1,528,790	1,138,869	1,328,831	1,024,442
2,800,581	2,220,343	1,962,633	1,557,033	1,890,346	1,542,516
1,813,954	1,320,672	1,583,904	2,475,244	(281,108)	436,666
12,907,850	11,587,178	10,003,274	7,528,030	7,809,138	7,372,472
$14,721,804	$12,907,850	$11,587,178	$10,003,274	$7,528,030	$7,809,138

Average Benefit Payments (Last Ten Fiscal Years)

Wichita Employees' Retirement System (continued on next page)

	2010	2009	2008	2007
Average monthly pension				
0 - 5 Years of Service	$ -	$ -	$ -	$ -
5 - 10 Years of Service	404	593	528	554
10 - 15 Years of Service	974	1,158	821	894
15 - 20 Years of Service	1,429	1,482	1,547	1,180
20 - 25 Years of Service	2,046	2,173	2,250	1,895
25 - 30 Years of Service	3,250	2,870	3,137	3,015
30+ Years of Service	3,234	2,758	3,760	3,443
Average for All Years of Service	$1,997	$2,084	$2,420	$2,199
Average final average salary				
0 - 5 Years of Service	$ -	$ -	$ -	$ -
5 - 10 Years of Service	2,212	2,962	2,660	4,493
10 - 15 Years of Service	3,248	3,904	3,089	3,414
15 - 20 Years of Service	3,733	3,451	3,901	3,239
20 - 25 Years of Service	4,043	4,192	4,133	3,432
25 - 30 Years of Service	4,839	4,225	4,371	4,215
30+ Years of Service	4,527	4,008	5,005	4,591
Average for All Years of Service	$3,977	$3,929	$4,094	$3,861
Number of members retiring				
0 - 5 Years of Service	-	-	-	-
5 - 10 Years of Service	1	6	4	2
10 - 15 Years of Service	5	10	16	9
15 - 20 Years of Service	9	5	9	7
20 - 25 Years of Service	12	5	6	9
25 - 30 Years of Service	6	23	25	29
30+ Years of Service	3	4	18	1
Total for All Years of Service	36	53	78	57

Statistical Section: Figure 4

Average Benefit Payments (Last Ten Fiscal Years)

Police and Fire Retirement System (continued on next page)

	2010	2009	2008	2007
Average monthly pension				
0-5 Years of Service	$ 290	$ -	$ -	$ -
5 - 10 Years of Service	-	3,016	-	-
10 - 15 Years of Service	2,852	2,237	2,539	-
15 - 20 Years of Service	-	3,834	-	-
20 - 25 Years of Service	2,431	2,968	2,806	2,458
25 - 30 Years of Service	3,371	4,172	3,953	3,721
30+ Years of Service	1,993	4,034	4,725	3,439
Average for All Years of Service	$2,589	$3,243	$3,354	$2,891
Average final average salary				
0-5 Years of Service	$ 2,956	$ -	$ -	$ -
5 - 10 Years of Service	-	3,341	-	-
10 - 15 Years of Service	5,058	5,074	4,536	-
15 - 20 Years of Service	-	4,893	-	-
20 - 25 Years of Service	4,705	4,900	4,709	3,979
25 - 30 Years of Service	4,882	5,773	5,489	5,034
30+ Years of Service	4,269	5,378	6,300	4,585
Average for All Years of Service	$4,584	$5,043	$5,105	$4,322
Number of members retiring				
0-5 Years of Service	1	0	0	0
5 - 10 Years of Service	0	2	0	0
10 - 15 Years of Service	2	4	2	0
15 - 20 Years of Service	0	1	0	0
20 - 25 Years of Service	1	9	5	7
25 - 30 Years of Service	4	6	5	3
30+ Years of Service	2	1	1	1
Total for All Years of Service	10	23	13	11

Statistical Section: Figure 5

Average Benefit Payments (Last Ten Fiscal Years)

Wichita Employees' Retirement System (continued from previous page)

2006	2005	2004	2003	2002	2001
$ -	$ -	$ -	$ -	$ -	$ -
436	532	420	424	547	428
692	712	893	838	930	845
1,129	1,288	1,062	1,235	1,598	1,585
2,038	1,567	1,627	1,808	1,875	1,896
3,342	3,251	3,467	2,889	3,254	2,831
2,265	2,460	2,062	3,087	2,308	2,547
$2,342	$2,270	$2,210	$2,206	$2,327	$2,120
$ -	$ -	$ -	$ -	$ -	$ -
2,538	2,532	2,426	2,669	2,830	2,394
2,708	2,692	2,996	2,776	2,922	2,719
2,932	3,399	2,848	3,484	4,453	3,030
3,720	3,545	3,462	3,115	3,390	3,520
4,520	4,465	4,686	4,034	4,511	3,917
3,020	3,818	2,878	4,116	3,266	3,426
$3,830	$3,864	$3,730	$3,635	$4,012	$3,462
-	-	-	-	-	-
5	5	3	3	4	5
4	1	4	3	5	3
5	11	7	7	8	3
9	6	6	10	5	6
25	25	18	27	24	19
1	4	3	2	3	4
49	52	41	52	49	40

Average Benefit Payments (Last Ten Fiscal Years)

Police and Fire Retirement System (continued from previous page)

2006	2005	2004	2003	2002	2001
$ -	$ -	$ -	$ -	$1,112	$ -
4,549	2,629	2,390	612	-	1,526
2,249	3,277	2,578	2,045	3,006	1,171
3,393	-	3,194	3,427	2,739	2,465
2,346	2,306	2,282	1,956	2,791	2,396
3,252	3,184	3,054	3,084	2,970	2,748
3,437	4,484	3,540	3,207	6,143	2,948
$2,868	$3,249	$3,057	$2,642	$2,885	$2,339
$ -	$ -	$ -	$ -	$2,448	$ -
4,221	2,919	2,998	3,582	-	3,227
4,559	3,912	2,967	2,996	3,543	3,387
3,023	-	4,179	3,798	3,355	3,767
3,774	3,979	3,995	3,816	3,815	4,481
4,782	4,467	4,271	4,192	4,323	3,939
4,746	5,118	4,765	4,276	8,190	3,930
$4,322	$4,391	$4,271	$3,950	$4,113	$3,877
0	0	0	0	2	0
1	1	1	2	0	2
4	1	1	2	1	1
1	0	3	1	1	3
5	4	4	1	3	3
6	9	11	4	7	4
1	4	8	6	1	1
18	19	28	16	15	14

Retired Members by Type and Benefit Amount

Wichita Employees' Retirement System (as of December 31, 2010)

Amount of Monthly Benefit	Active in DROP	Non-Service Disability	QDRO[1]	Service	Service Disability	Survivor	Grand Total
$ 0-500	-	3	1	81	-	89	174
500-1000	2	11	1	139	1	81	235
1000-1500	3	6	-	118	2	51	180
1500-2000	4	2	-	118	1	28	153
2000-2500	6	-	1	82	-	7	96
2500-3000	12	-	1	106	-	1	119
3000-3500	15	-	-	91	-	-	107
3500-4000	12	-	-	67	-	-	79
4000-4500	7	-	-	48	-	-	55
4500-5000	3	-	-	16	-	-	19
>5000	7	-	-	40	-	-	47
Total	71	22	4	906	4	257	1,264

[1] Qualified Domestic Relations Order

Statistical Section: Figure 6

Retired Members by Type and Benefit Amount

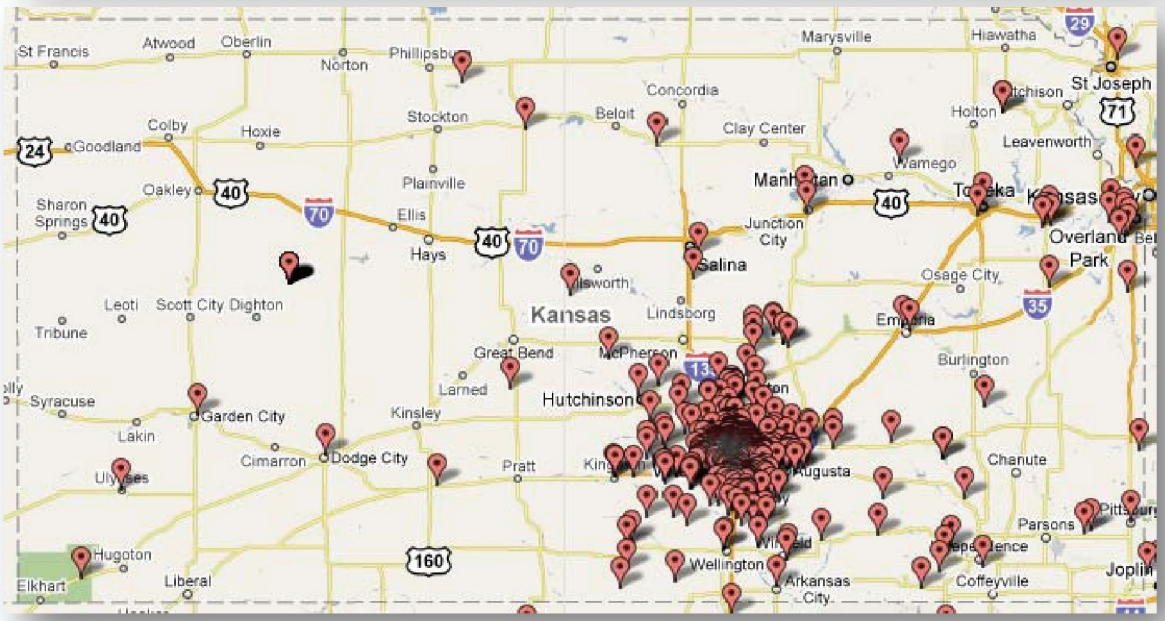
Police and Fire Retirement System (as of December 31, 2010)

Amount of Monthly Benefit	Non-Service Disability	QDRO[1]	Recalc. Service Disability	Service	Service Disability	Survivor	Grand Total
$ 0-500	-	-	-	5	-	11	16
500-1000	3	8	-	40	4	57	112
1000-1500	3	3	1	84	-	36	127
1500-2000	-	-	2	165	1	39	207
2000-2500	-	-	4	114	3	22	143
2500-3000	-	-	9	83	15	3	110
3000-3500	-	-	11	62	15	1	89
3500-4000	-	-	14	29	10	1	54
4000-4500	-	-	3	17	1	-	21
4500-5000	-	-	1	7	1	-	9
>5000	-	-	1	3	-	-	4
Total	6	11	46	609	50	170	892

[1] Qualified Domestic Relations Order

Statistical Section: Figure 7

Retiree Locations



Department of Finance

City Treasurer's Division • Pension Management

City Hall • 12th Floor • 455 N. Main • Wichita, Kansas 67202

T 316.268.4544 • **F** 316.268.4656

www.wichita.gov

City of Wichita
City Council Meeting
August 16, 2011

TO: Mayor and City Council

SUBJECT: Street Closures: Streets crossing the Union Pacific Railroad in northeast Wichita (District I)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the street closures.

Background: The Union Pacific Railroad (UPRR) is performing track maintenance on their track in northeast Wichita. The UPRR will be reconstructing the track structure at three crossing locations within the Wichita city limits. The crossing locations are: 37th Street North between Hydraulic and Hillside, Hillside south of 45th Street North, and 45th Street North east of Hillside. UPRR has scheduled the reconstruction of these crossings beginning August 17th, weather permitting, at the crossing on 37th Street. The railroad is requesting a two-day street closure for each of the three locations. During the street closure the railroad will remove the existing crossing material, install new rail panels, adjust the rail elevation and install new crossing material.

Analysis: The UPRR is responsible for the placement of the required detour signs, construction signs and barricades as well as the notification of area businesses and residents. During the arterial street closures, traffic will be detoured to adjacent arterial streets.

Financial Consideration: There is no cost to the City.

Goal Impact: This project addresses the Efficient Infracstructure goal by maintaining safe and dependable transporation systems.

Legal Consideration: The City Council has legislative authority under the powers granted in the Kansas Constitution, Art. 12, § 5 to temporarily close a street not a part of a designated federal or state highway system in order to secure the public safety and welfare. A motion is the appropriate format for such action.

Recommendation/Actions: It is recommended that the City Council approve the street closure.

Attachment: Map

LOCATION
Wichita
PARK CITY
KECHI
BEL AIRE
WOODLAWN
ROCK RD
WEBB RD
GREENWICH
PAWNEE
OLIVER
HILLSIDE
GROVE
HYDRAULIC
WASHINGTON
BROADWAY
ST FRANCIS
ARKANSAS
MERIDIAN
SHERIDAN
WEST
HOOVER
RIDGE
TYLER
MAPLE
CENTRAL
DOUGLAS
KELLOGG
LINCOLN
HARRY
EDGEMOOR
MT VERNON
GELDIGE WASHINGTON BLVD
McCORMICK
SENECA
WASSAL
McARTHUR
McARTHUR RD
Mc CONNELL
AIR FORCE BASE
OAKLAWN
WICHITA
MID-CONTINENT
AIRPORT
SCHULTZ
MAIZE
COLWICH
53rd ST NO
45 TH ST NO
53 RD ST NO
37 TH ST NO
29th ST NO
21ST ST NO
13TH ST NO
119th ST W
135 TH ST WEST
151 ST ST WEST
31st ST SO
47th ST SO
55th ST SO
63rd ST SO
12TH ST EAST
1st ST
2nd ST
9th ST
11th ST
13th ST
25th
33rd
37th ST NO
45th ST NO
29th STREET NO
21ST ST NO
13TH ST NO
MAPLE
TAFT
TRACY
SOUTHWEST BLVD
MCLEAN BLVD
MCLEAN
DOUGLAS
LEWIS
HARRY
PAWNEE
GREENWICH
WOODLAWN
ROCK RD
WEBB RD
HILLSIDE
HYDRAULIC
WASHINGTON
BROADWAY
MERIDIAN
WEST
HOOVER
RIDGE
TYLER
MAPLE
CENTRAL
DOUGLAS
KELLOGG
LINCOLN
HARRY
PAWNEE
MT VERNON
EDGEMOOR
OLIVER
HILLSIDE
GROVE
BLUFF
MURDOCK
GELDIGE WASHINGTON BLVD
HYDRAULIC
WASSAL
McARTHUR
McARTHUR RD
SENECA
PAWNEE
31st ST SO
47th ST SO
55th ST SO
63rd ST SO
WICHITA
MID-CONTINENT
AIRPORT
SCHULTZ
MAIZE
COLWICH
Wichita Air America City
1888

Second Reading Ordinances for August 16, 2011 (first read on August 9, 2011)

ZON2011-00015 and CON2011-00019 – City zone change request from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") with a Conditional Use (CON2011-19) for a Personal Improvement Service; generally located north of 2nd Street on the east side of Meridian Avenue, 318 North Meridian. (District VI)

ORDINANCE NO. 49-061

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

Nuisance Abatement Assessments. (Districts I, II, III, IV and VI)

ORDINANCE NO. 49-066

An ordinance making a special assessment to pay for the cost of Cutting Weeds in the city of Wichita, Kansas.

ORDINANCE NO. 49-067

An ordinance making a special assessment to pay for the cost of abating certain public health nuisances (Lot Clean Up) under the provision of section 7.40.050 of the code of the city of Wichita, Kansas. Be it ordained by the governing body of the city of Wichita, Kansas.

City of Wichita
City Council Meeting
August 16, 2011

TO: Wichita Airport Authority (WAA)

SUBJECT: Partial Redemption of Airport Special Facilities Revenue Bonds, Series A, 2003 (FlightSafety International, Inc.)
Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve request to call and redeem $200,000 principal amount of Bonds, on September 1, 2011, and authorize the necessary signatures.

Background: In November of 2003, the Wichita Airport Authority issued its Airport Special Facilities Revenue Bonds, Series A, 2003, in the original principal amount of $2,860,000, to finance a building expansion at the FlightSafety International Training Center located at 1851-1951 Airport Road for the benefit of FlightSafety International (FlightSafety). As of July 14, 2011, FlightSafety had certified to the Bond Trustee that the project had been completed, with approximately $204,000 in Bond proceeds remaining in the Project Fund established under the applicable Bond Indenture.

Analysis: Pursuant to Section 5.10 of the Lease for the Project, such remaining proceeds are to be transferred from the Project Fund to the Surplus Fund under the Indenture. Pursuant to Section 4.3 of the Indenture, the deposit of such proceeds in the Surplus Fund is deemed to constitute FlightSafety's request to call and redeem Bonds under Section 2.18(a) of the Indenture in the greatest amount possible in authorized increments (in this case, $200,000 in Bonds). Section 4.3 of the Indenture then further provides that any remaining balance in the Surplus Fund will be transferred to the Debt Service Fund established under the Indenture, to pay accrued or subsequent interest until fully exhausted. Under Section 2.18(a) of the Indenture, the call and redemption is characterized as "at the option of the Issuer, upon the request of the Tenant," and for this reason, the Bond Trustee has asked the WAA to approve the call.

Financial Considerations: Bond principal and interest paid pursuant to the redemption and call will be paid from the Surplus Fund under the Indenture, and to the extent there are any costs of redemption not covered by funds available under the Indenture, FlightSafety will be responsible for paying them.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through cooperating with Airport tenants in the management of bond financings, which is critical to maintaining the economic development benefit of Airport leasing programs.

Legal Considerations: The attached Certificate of Completion, which includes the Issuer's approval of the request for redemption and call, has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the request to call and redeem $200,000 principal amount of Bonds, on September 1, 2011, and authorize the necessary signatures.

Attachments: Certificate of Completion.

CERTIFICATE OF COMPLETION

July 14, 2011

U.S. Bank National Association,
as Trustee
100 Wall Street, Ste. 1600
New York, New York 10005
Attention: Corporate Trust Services

Re: $2,860,000 The Wichita Airport Authority of the City of Wichita, Kansas Adjustable Mode Airport Facility Revenue Bonds Series A, 2003 (FlightSafety International Inc.) (the "Bonds")

Ladies and Gentlemen:

The Bonds were issued pursuant to a Trust Indenture dated as of November 1, 2003 (the "Indenture") between The Wichita Airport Authority of the City of Wichita, Kansas (the "Issuer") and Wachovia Bank, National Association, succeeded by U.S. Bank National Association, as trustee (the "Trustee"). The Issuer leased the Project to FlightSafety International Inc. (the "Tenant") pursuant to a Lease dated as of November 1, 2003 (the "Lease") between the Issuer and the Tenant. All capitalized terms used in this certificate that are not defined in this certificate shall have the meanings given such terms in the Indenture and the Lease.

As of the date hereof, approximately $204,000.00 of Bond proceeds remain in the Project Fund.

The undersigned Tenant Representative hereby delivers this Officer's Certificate with respect to completion of the Project and certifies pursuant to Section 5.8 of the Lease that:

1. the Project has been completed to the satisfaction of the Tenant; and
2. all labor, services, materials and supplies used in the completion of the Project have been paid for.

The undersigned Tenant Representative hereby requests that the Trustee:

1. pursuant to Section 5.10 of the Lease, transfer all moneys remaining in the Project Fund to the Surplus Fund;
2. pursuant to Section 4.3 of the Indenture, use moneys in the Surplus Fund to redeem $200,000 principal amount of the Bonds, which is the greatest principal amount of the Bonds possible to be redeemed (in denominations of integrals of $5,000 over $100,000) from such deposit, on September 1, 2011, which is the earliest redemption date on which Bonds may be redeemed;
3. pursuant to Section 4.3 of the Indenture, transfer any amount in the Surplus Fund that is not being used to pay the principal amount of Bonds being redeemed on September 1, 2011 to the Debt Service Fund to pay the accrued interest due on

such Bonds being redeemed on September 1, 2011 and, if any amounts still remain, to pay interest on the Bonds on such September 1, 2011 and any other Interest Payment Date until all such amounts are expended; and

4. pursuant to Section 2.19 of the Indenture, cause a notice of redemption, substantially in the form attached hereto as Exhibit A, to be delivered to the Holders of Bonds called for redemption no later than August 2, 2011.

By its signature below, the Issuer authorizes the Trustee to redeem $200,000 of the Bonds as requested by the Tenant.

This certificate is given without prejudice to any rights against third parties which now exist or which may subsequently come into being.

[*Signature follows on next page.*]

This certificate is given as of the date set forth above.

FLIGHTSAFETY INTERNATIONAL INC.

Thomas A. Eff

Tenant Representative
Vice President & General Counsel

AGREED:

THE WICHITA AIRPORT AUTHORITY OF
THE CITY OF WICHITA, KANSAS

By: _____
Name: _____
Title: _____

[*Completion Certificate for $2,860,000 The Wichita Airport Authority of the City of Wichita, Kansas Adjustable Mode Airport Facility Revenue Bonds Series A, 2003 (FlightSafety International Inc.)*]

Exhibit A

NOTICE OF REDEMPTION

THE WICHITA AIRPORT AUTHORITY OF THE CITY OF WICHITA, KANSAS
ADJUSTABLE MODE AIRPORT FACILITY REVENUE BONDS SERIES A, 2003
(FLIGHTSAFETY INTERNATIONAL INC.)

Dated August __, 2011

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Trust Indenture dated as of November 1, 2003 (the "Indenture") between the Wichita Airport Authority of the City of Wichita, Kansas (the "Issuer") and Wachovia Bank, National Association, succeeded by U.S. Bank National Association, as trustee (the "Trustee"), that a portion of the Issuer's outstanding Adjustable Mode Airport Facility Revenue Bonds Series A, 2003 (FlightSafety International Inc.) (the "Bonds"), dated and issued November 20, 2003, as described below, are hereby called for redemption on September 1, 2011. Each of the Bonds so called for redemption shall be redeemed at the redemption price indicated below as a percentage of the principal amount thereof plus accrued interest to the date of redemption.

The Bonds to be redeemed are as follows:

Maturity Date (November 1,)	Principal Amount Outstanding	Principal Amount to be Redeemed	Bond Certificate Number	CUSIP Number	Redemption Price
2031	$2,860,000	$200,000	R-1	967246HA0	100%

Registered owners of the Bonds called for redemption are required to present the same at the principal corporate trust office of U.S. Bank National Association, as set forth below, for payment of the redemption price and accrued interest.

If by Mail:
U.S. Bank
Corporate Trust Services
P.O. Box 64111
St. Paul, MN 55164-0111

If by Hand or Overnight Mail:
U.S. Bank
Corporate Trust Services
60 Livingston Avenue
1st Fl – Bond Drop Window
St. Paul, MN 55107

1-800-934-6802

From and after the redemption date of September 1, 2011, interest on the Bonds being redeemed shall cease to accrue and be payable.

Under the provisions of the Interest and Dividend Tax Compliance Act of 1983, a paying agent making payments of principal of and interest on municipal securities may be obligated to withhold a 28% tax from remittance to individuals who have failed to furnish the paying agent with a valid taxpayer identification number (employer identification number or Social Security Number, as appropriate). Owners of the above-described Bonds who wish to avoid the imposition of this tax should submit certified taxpayer identification numbers when presenting their Bonds for collection or a properly completed Internal Revenue Service Form W-9, entitled "Payors Request for Taxpayer Identification Number" or exemption certificate or equivalent.

CUSIP numbers are included herein solely for the convenience of the owners of the above-described Bonds. No representation is made as to their accuracy or correctness on the Bonds or as included herein.

THE WICHITA AIRPORT AUTHORITY OF THE CITY OF WICHITA, KANSAS

By: U.S. Bank National Association, Trustee