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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. November 1, 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 October 25, 2011

AWARDS AND PROCLAMATIONS

-- Proclamations:

Veterans Day Weekend
National Diabetes Month
Turn Wichita Pink Day

-- Service Awards:

David and Beth Prentice

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 21)

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

None

IV. NEW COUNCIL BUSINESS

1. Public Hearing and Issuance of Taxable Industrial Revenue Bonds, Spirit AeroSystems, Inc. (District III)

   RECOMMENDED ACTION: Close the public hearing and approve first reading of the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Taxable Industrial Revenue Bonds for Spirit AeroSystems, Inc. in an amount not-to-exceed $15 million.

2. Resolution Considering the Establishment of a Redevelopment District, Tax Increment Financing. (District III)

   RECOMMENDED ACTION: Adopt the resolution providing notice of consideration for the establishment of the Southfork Redevelopment District and setting a public hearing for December 6, 2011.

3. Approve the project of Body Worn Cameras.

   RECOMMENDED ACTION: Approve the project of (20) twenty Body Worn Camera systems, storage and retrieval of data, (20) additional head cameras, communication hubs and holsters.

4. 2011-2013 IAFF Memorandum of Agreement.

   RECOMMENDED ACTION: Approve the proposed 2011-2013 Memorandum of Agreement between the City and the International Association of Firefighters (IAFF) Local 135.

5. 2012 Performance Contracts for Cultural Funding.

   RECOMMENDED ACTION: Approve 20 Performance Contracts for Cultural Funding for Fiscal Year (FY) 2012 and four (4) Operating Agreements.

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

6. Water and Sewer Utility Refunding Revenue Bond Sale.

   RECOMMENDED ACTION: Direct the opening and reading of the bids; award the sale of the Bonds 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 Ordinance and Resolution and authorize the publication of the Bond Ordinance; and find and declare, upon request of the Mayor, that a public emergency exists, requiring the final passage of the Bond Ordinance on the date of 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. 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 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 (simple majority vote required plus appropriate findings) or 3) Deny the zone change request (simple majority vote required plus appropriate findings).

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

None

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 21)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated October 31, 2011.

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

2. Applications for Licenses:

Name	Event	Address
Ernest D Duyon	Vegas Video	8323 West Kellogg

   RECOMMENDED ACTION: Approve the licenses.

3. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2011	(Consumption off Premises)
Yehia Roberts	YMR Group Inc. dba C&C Store***	1131 East 47th Street South
Chandana Perera	Foodmart #210***	10723 West Highway 54
Renewal	2011	(Consumption on Premises)
Jo Lynn Blood	Pine Bay Golf Course Inc*	6615 South Broadway
Renewal	2011	(Consumption on Premises)
Matthew J Ryan	Two Brothers BBQ**	3134 East Douglas
Gregory D Helms	Ty's Diner**	928 West 2nd Street North

   * Consumption/Tavern less than 50% of gross revenues from sale of food.
   **Consumption/General/Restaurant need 50% or more gross revenue from sale of food.
   ***Consumption/Retailer grocery stores, convenience stores, etc.

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

4. Preliminary Estimates:
   a. List of Preliminary Estimates. (See Attached)

   RECOMMENDED ACTION: Receive and file.

5. Consideration of Street Closures/Uses.
    a. Community Events - Intrust Bank Arena, Reba. (District I)
    b. Community Events - Intrust Bank Arena, Rock and Worship Roadshow. (District I)
    c. Community Events - Turkey Trot 10 Mile and 2K. (District VI)
    d. Community Events – Frosty 5K Run. (District VI)
    e. Community Events - Say Grace Thanksgiving Race. (District VI)

    RECOMMENDED ACTION: Approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

6. Change Orders:
    a. Change Order No. 2- ASR Overhead Power Lines.
    b. Change Order No. 2 – 21st Street Improvement, Waco to Topeka. (District VI)

    RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

7. Property Acquisition:
    a. Partial Acquisition of 13700 West Kellogg for the West Kellogg Freeway Project. (Districts IV and V)

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

8. Minutes of Advisory Boards/Commissions

    Wichita Employees' Retirement System, September 21, 2011

    RECOMMENDED ACTION: Receive and file.

9. Notice of Intent to Use Debt Financing - 1995 Midfield Road Facility Improvements.

    RECOMMENDED ACTION: Adopt the Resolution and authorize the necessary signatures.

10. Request for an Extension of Letter of Intent for Industrial Revenue Bonds, Cessna Aircraft Company. (Districts III and IV)

    RECOMMENDED ACTION: Approve an extension of the 2006 Letter of Intent to issue Industrial Revenue Bonds for Cessna Aircraft Company through December 31, 2011.

11. Approval of Capital Improvement Program for the Water Treatment Plant Repair Basins and Aerator Racks.

    RECOMMENDED ACTION: Authorize staff to proceed with the project, approve the project expenditures, adopt the Resolution and authorize the necessary signatures.

12. Approval of Capital Improvement Program for Repainting the Pipe across the Wichita – Valley Center Flood Control Project.

    RECOMMENDED ACTION: Authorize staff to proceed with the project, approve the project expenditures, adopt the resolution and authorize the necessary signatures.

13. Access to Jobs Vendor Agreement with Breakthrough Club.

    RECOMMENDED ACTION: Approve the vendor agreement with Breakthrough Club and authorize the necessary signatures.

14. Access to Jobs Vendor Agreements with ABC Taxi Cab Company and American Cab Company.

    RECOMMENDED ACTION: Approve the vendor agreements and authorize the necessary signatures.

15. 2011 Bulletproof Vest Partnership Grant.

    RECOMMENDED ACTION: Accept the 2011 Bulletproof Vest Partnership grant award.

16. 2012 Victims of Crime Act (VOCA) Grant.

    RECOMMENDED ACTION: Approve the 2012 Victims of Crime grant award.

17. Report on Claims for September 2011.

    RECOMMENDED ACTION: Receive and file.

18. Porte-Cochere Easement for Ambassador Hotel. (District I)

    RECOMMENDED ACTION: Approve the easement and authorize the necessary signatures.

19. Second Reading Ordinances: (First Read October 25, 2011)
    List of Second Reading Ordinances. (First Read October 18th and 25th, 2011)

    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.

20. *DED2011-00005 Sewer Easement Dedication and DED2011-00006 Utility Easement Dedication located on the south side of 21st Street North, east of Webb Road. (District II)

    RECOMMENDED ACTION: Accept the Dedications.

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.

21. *1995 Midfield Road Facility Improvements - Wichita Mid-Continent Airport.

    RECOMMENDED ACTION: Initiate the project and approve the budget.

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Public Hearing and Issuance of Taxable Industrial Revenue Bonds (Spirit AeroSystems, Inc.) (District III)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendations: Close the public hearing and place the bond ordinance on first reading.

Background: On May 17, 2005, the City Council approved a five-year letter of intent for issuance of up to $1,000,000,000 in Industrial Revenue Bonds to finance facilities for the benefit of Mid-Western Aircraft Systems, Inc. (now Spirit AeroSystems, Inc. "Spirit"), at 3801 S. Oliver in southeast Wichita. The May 17 action also included support for a ten-year period of property tax abatement and authorization for City staff to apply for sales tax exemption on the acquisition of the financed assets, all subject to the incentive recapture provisions of the City's current public incentives policy. The first $80,000,000 in bonds authorized under the letter of intent issued in December 2005, and an additional $252,000,000 series issued in December 2006. In 2008, the Council approved issuance of $30,000,000. On May 4, 2010, the City Council approved extension of the remaining amount of the letter of intent for five years and approved issuance of $892,983 that same year. Spirit now requests the issuance of an additional series of bonds in the aggregate principal amount of $15,000,000.

Analysis: Bond proceeds will be used to finance the ongoing modernization and expansion of the commercial aircraft manufacturing facilities Spirit acquired from The Boeing Company in June of 2005. Ongoing modernization and expansion of the facilities will enable Spirit AeroSystems, Inc. to continue existing commercial aircraft part production programs and services, to take advantage of new technology and to compete for new aircraft part manufacturing business. Spirit is continuing to manufacture major parts systems for a variety of Boeing jetliners, including the Boeing 787. In addition, Spirit has expanded its operations and customer base by winning work for other makers of commercial aircraft, as well as corporate and military aircraft.

Spirit AeroSystems, Inc. intends to purchase the bonds itself, through direct placement, and the bonds will not be reoffered for sale to the public. Kutak Rock LLP of Omaha, Nebraska, engaged by Spirit, will serve as Bond Counsel in the transaction. Spirit has agreed to comply with all conditions of the letter of intent.

Financial Considerations: Spirit 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 bond financed property will be eligible for sales tax exemption and property tax exemption for a term of ten years, subject to fulfillment of the conditions of the City's public incentives policy. The ten year tax exemption on bond financed property begins the first year following the issuance of the bonds that financed the property.

Under the City of Wichita/Sedgwick County Economic Development Incentives Policy, Mid-Western qualified for a 100% property tax abatement for an initial five year period on all bond-financed real and personal property, plus a second five years for real property only. However, Mid-Western was granted a full ten-year abatement for both real and personal property. These same terms were afforded Boeing and accordingly were used by Onex in evaluating the financial feasibility of purchasing the Wichita facilities. Mid-Western agreed to

comply with all other standard letter of intent conditions. These conditions and agreements have carried through to Spirit.

Wichita State University Center for Economic Development and Business Research performed a cost-benefit analysis using the Derby school district. The resulting benefit-cost ratios are:

City of Wichita	1.98 to one
General Fund	1.78 to one
Debt Service	2.34 to one
Sedgwick County	1.54 to one
U.S.D. 260	1.00 to one
State of Kansas	28.23 to one

Goal Impact: Economic Vitality and Affordable Living. Granting an ad valorem property tax exemption will encourage the business to create new job opportunities and stimulate economic growth for the City of Wichita and Sedgwick County.

Legal Considerations: The City's Law Department has reviewed and approved the Ordinance as to form and will review and approve all final documents prior to issuance of the bonds.

Recommendations/Actions: It is recommended that City Council close the public hearing and approve first reading of the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Taxable Industrial Revenue Bonds for Spirit AeroSystems, Inc. in an amount not-to-exceed $15 million.

Attachment: Bond Ordinance

ORDINANCE NO. 49-150

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN SPIRIT AEROSYSTEMS, INC. AND THE CITY OF WICHITA, KANSAS; APPROVING AND AUTHORIZING THE EXECUTION OF AN INDENTURE OF TRUST BETWEEN SAID CITY AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.; PLEDGING CERTAIN PAYMENTS UNDER SAID LEASE AGREEMENT AND MONEYS AND SECURITIES HELD BY THE TRUSTEE UNDER THE TERMS OF SAID INDENTURE OF TRUST; AUTHORIZING AND DIRECTING THE ISSUANCE OF INDUSTRIAL REVENUE BONDS SERIES V, 2011 (SPIRIT AEROSYSTEMS, INC. PROJECT) OF SAID CITY IN THE PRINCIPAL AMOUNT OF $15,000,000 FOR THE PURPOSE OF PROVIDING FUNDS FOR THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION AND IMPROVEMENT OF CERTAIN INDUSTRIAL AND MANUFACTURING FACILITIES OF SPIRIT AEROSYSTEMS, INC., A DELAWARE CORPORATION, IN SEDGWICK COUNTY, KANSAS; DESIGNATING THE TRUSTEE AND THE PAYING AGENT FOR SAID BONDS; AUTHORIZING THE SALE OF SAID BONDS AND THE EXECUTION OF A BOND PURCHASE AGREEMENT THEREFOR; APPROVING AND AUTHORIZING THE EXECUTION OF AN ADMINISTRATIVE SERVICE FEE AGREEMENT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN RELATED INSTRUMENTS;

WHEREAS, the City of Wichita, Kansas (the "City") desires to promote and stimulate general economic welfare and prosperity and provide greater employment opportunities within the City and its environs and thereby to further promote, stimulate and develop the economic welfare and prosperity of the State of Kansas; and

WHEREAS, pursuant to the provisions of K.S.A. 12-1740 et seq., as amended, said City is authorized to issue industrial revenue bonds of said City, and it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that industrial revenue bonds be issued for the purpose of providing funds for the acquisition, construction, reconstruction and improvement of certain industrial and manufacturing facilities of Spirit AeroSystems, Inc., a Delaware corporation (the "Company"), located within the environs of the City in Sedgwick County, Kansas, which facilities include the Project as defined in the Lease Agreement and the Indenture of Trust herein referred to approved and authorized; and

WHEREAS, the Company will acquire a leasehold interest in the Project from the City pursuant to said Lease Agreement; and

WHEREAS, by Letter of Intent dated May 17, 2005, as extended on May 4, 2010, the City has authorized the undertaking of an industrial revenue bond financing for the Project; and

WHEREAS, it is hereby found and determined that the purpose of said Letter of Intent, as so extended (the "Letter of Intent"), is to extend until May 17, 2015 the term specified in each Section 12.11(e) of those certain Lease Agreements dated as of December 1, 2005, December 1, 2006, December 1, 2008 and December 1, 2009 between the City and the Company and to be specified in those lease agreements entered into on or after May 4, 2010 by the City and the Company; and

WHEREAS, said Indenture of Trust and this Ordinance provide for the authorization and issuance of a series of such bonds;

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

Section 1. Enabling Declaration. The City Council, as governing body of the City of Wichita, Kansas, has determined and hereby declares that the Project, if in being, would promote the welfare of the City.

Section 2. Application of Letter of Intent Extension to Lease Agreements; Approval and Authorization of Lease Agreement. The City does hereby approve and confirm that the term of the Letter of Intent specified in each Section 12.11(e) of those certain Lease Agreements dated as of December 1, 2005, December 1, 2006, December 1, 2008 and December 1, 2009 between the City and the Company and to be specified in those lease agreements, including the Lease Agreement, to be dated as of December 1, 2011, between the City, as lessor, and the Company, as lessee (the "Lease"), entered into by the City and the Company on or after May 4, 2010 shall extend until May 17, 2015. The Lease be and the same is in all respects hereby approved, authorized and confirmed, and Lavonta Williams (or in her absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, and the City Clerk or Deputy City Clerk be and they are hereby authorized and directed to execute, attest and deliver the Lease for and on behalf of the City.

Section 3. Approval and Authorization of Indenture of Trust, Designation of Trustee and Paying Agent. The Indenture of Trust, to be dated as of December 1, 2011 (the "Indenture"), between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), be and the same is in all respects hereby approved, authorized and confirmed, and said Trustee is hereby designated to act as such thereunder, and the Trustee is hereby designated to act as Paying Agent for the $15,000,000 principal amount of City of Wichita, Kansas Industrial Revenue Bonds Series V, 2011 (Spirit AeroSystems, Inc. Project), authorized by this Ordinance and the Indenture and Lavonta Williams (or in her absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, and the City Clerk or Deputy City Clerk be and they are hereby authorized and directed to execute, attest and deliver the Indenture for and on behalf of said City. As provided in the Indenture, the City assigns and pledges to the Trustee certain payments under the Lease and moneys and securities held by the Trustee under the terms of the Indenture as security for such Bonds.

Section 4. Approval, Authorization and Issuance of Bonds. There is hereby created and established an issue of bonds of the City to be known and designated as "City of Wichita, Kansas Industrial Revenue Bonds Series V, 2011 (Spirit AeroSystems, Inc. Project)" (the "Bonds"), which shall consist of $15,000,000 principal amount of Bonds, to be dated as of their date of first authentication and delivery, to mature on January 1, 2022, to bear interest at the rate of 6.75% per annum, payable semiannually on January 1 and July 1 in each year, commencing July 1, 2012, and to be subject to redemption at the principal amount thereof plus accrued interest thereon to the redemption date as further provided in the Indenture and shall be in form and content and include such other details as specified herein and in the Indenture. The issuance of the Bonds is in all respects hereby approved, authorized and confirmed, and Lavonta Williams (or in her absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, and the City Clerk or Deputy City Clerk are authorized and directed to execute and seal the Bonds pursuant to the Indenture, and the Trustee is hereby authorized and directed to authenticate the Bonds, to deliver the same to the purchaser designated in the Bond Purchase Agreement hereinafter referred to for and on behalf of the City upon receipt of the purchase price therefor and to deposit the proceeds thereof with itself as trustee, in the manner provided for by this Ordinance and the Indenture. The Bonds, together with the interest thereon, are not general obligations of the City, but are special obligations payable (except to the extent paid out of moneys attributable to the proceeds derived from the sale of the Bonds or to the income from the temporary investment thereof) solely from the lease payments under the Lease, and the Bond Fund and other moneys held by the Trustee, as provided in the Indenture. Neither the credit nor the taxing power of the State of Kansas or of any political subdivision of such State is pledged to the payment of the principal of the Bonds and premium, if any, and interest thereon or other costs incident thereto.

Section 5. Authorization of the Sale of the Bonds. The sale of the Bonds pursuant to the terms of the Bond Purchase Agreement, at a purchase price of 100% of the principal amount thereof plus accrued interest from the date of authentication to the date of delivery of and payment for the Bonds, is hereby approved, authorized and confirmed. Lavonta Williams (or in her absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, is hereby authorized and directed to execute the Bond Purchase Agreement, dated as of December 1, 2011, covering the sale of the Bonds.

Section 6. Approval and Authorization of Administrative Service Fee Agreement. The Administrative Service Fee Agreement, to be dated as of December 1, 2011, between the City and the Company, (the "Fee Agreement"), be and the same is in all respects hereby approved, authorized and confirmed, and Lavonta Williams (or in her absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, and the City Clerk or Deputy City Clerk be and they are hereby authorized and directed to execute and deliver the Fee Agreement, for and on behalf of the City.

Section 7. Authority To Correct Errors, Etc. Lavonta Williams (or in her absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, the City Clerk and Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed necessary to correct errors or omissions therein or to conform the same to the other provisions of said instruments or to the provisions of this Ordinance.

Section 8. Severability. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. It shall not be necessary for the Lease, the Indenture, the Fee Agreement or the Bond Purchase Agreement to be published in the official City paper, but all such documents shall be on file in the office of the City Clerk and shall be available for inspection by any interested party.

Section 9. Further Authority. Lavonta Williams (or in her absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, the City Clerk, Deputy City Clerk, City Treasurer, City Attorney and other City officials are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents or other papers and to perform all other acts as they may deem necessary or appropriate in order to implement and carry out the matters herein authorized.

Section 10. Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication in the official City paper.

PASSED by the City Council this 15th day of November, 2011.

Signed by the _____.

_____
Lavonta Williams
Vice Mayor

Attest:

_____
City Clerk

[SEAL]

Approved as to Form:

_____
Gary E. Rebenstorf
City Attorney

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Resolution Considering the Establishment of a Redevelopment District (Tax Increment Financing) (District III)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Adopt the resolution setting a public hearing for December 6, 2011.

Background: Southfork Investment LLC, an investment group led by Jay Maxwell, has purchased approximately 50 acres of land near the intersection of 47th Street South and I-135 and owns or has options on an adjacent 22 acres at Broadway and Custy. The developer has requested assistance from the City of Wichita in the redevelopment of property, through the use of tax increment financing ("TIF"). Procedures for the use of tax increment financing require the establishment of a redevelopment district following a public hearing on the matter. At this time, the City Council is being asked to adopt a resolution setting the public hearing for December 6, 2011 to consider establishing the TIF district.

Analysis: The area proposed for redevelopment is shown on Exhibit 'A' to the attached resolution. The majority of the area is southwest of 47th and I-135, between I-135and the Riverside Drainage Canal, also known as the Big Slough. In addition, the developer is in the process of acquiring an adjacent 6 acres west of the Big Slough. This is an area that qualifies as a "blighted area" under the state TIF statutes, because a majority of the land within the proposed TIF district is within a 100 year flood plain.

Southfork Investment LLC purchased the property and worked closely with the City and the State for the improvements to the improvements to the I-135 and 47th Street South interchange. The developer is proposing to pay for a portion of improvements to the box culvert under the Kansas Turnpike and perform additional work to remove the property and several residences in the area from the 100 year flood plain. The developer plans to create a mixed use development of over 1,000,000 square feet of retail, hotel, restaurants and office space on the initial 50 acres, as well as a medical complex on the 22 acres west of the Big Slough. Tax increment financing would be used to pay for eligible redevelopment costs, on a pay-as-you-go basis, for site improvements that are secured with special assessments.

Tax increment financing allows the increased tax revenue that results from the redevelopment of property to be used to pay for eligible costs in the redevelopment project, including land acquisition, site preparation and infrastructure. Once a TIF district is established and a redevelopment project plan is adopted by City Council, the increment of increased tax revenue is set aside by the County Treasurer, to be used by the City to repay bonds issued to finance certain improvements that are specified in the redevelopment project plan. The TIF statute also allows for projects to be financed on a pay-as-you-go basis, to reimburse the developer for eligible costs as TIF funds are received. After all the eligible costs have been paid, or the City has reimbursed the maximum amount approved, the property tax increment will be terminated and all tax revenue is distributed to the City, County, School District and other applicable taxing jurisdictions.

The first step in establishing the tax increment district is the adoption of a resolution which states that the City Council is considering the establishment of the TIF district and sets the date for a public hearing on the matter. The earliest date a public hearing may be held for this project is December 6, 2011. After closing the public hearing, the City Council may adopt an ordinance establishing the redevelopment district. The final step in the approval process involves the adoption of a detailed project plan and approval of a development agreement by City Council.

The initiating resolution now before Council for adoption directs the City Clerk to publish the resolution in the City's official newspaper and to mail copies, by certified mail, to the owners and occupants of all property located within the district and to the Board of County Commissioners and Board of Education. The resolution also includes a map of the proposed district and a proposed district plan identifying potential redevelopment project areas and a general description of buildings and facilities to be constructed or improved.

District Plan: The overall plan for redeveloping the Southfork Redevelopment District is set forth in the District Plan which is attached as Exhibit B to the attached Resolution. The plan calls for development of the district in multiple phases, with each phase having a separate project area and project plan which must be adopted by the City Council by a 2/3 majority vote. The land uses for the overall project include retail, restaurant, hotel, healthcare and office developments. The use of tax increment financing includes all TIF-eligible costs, including without limitation land acquisition, site preparation and infrastructure improvements.

Pay-as-you-go TIF and Special Assessments: Southfork Investment LLC proposes to combine pay-as-you-go TIF with special assessment financing to finance those redevelopment costs that are eligible for both forms of financing. City TIF bonds will not be issued and TIF-eligible improvements will be financed with general obligation special assessment bonds, following all standard procedures including petitions and deposits of letters of credit pursuant to administrative regulations. When the improvements are completed for each phase, the City will issue SA bonds and file assessments against the property in the TIF district, which will place a tax lien on the property. Pay-as-you-go TIF revenue will be used to reimburse the developer on an annual basis with proof of payment of the specials. The developer will be responsible for paying the specials each year, regardless of whether the TIF generates enough revenue. The City is also left in the first position for reimbursement if the owner does not pay the taxes and the property is sold in tax foreclosure.

Community Improvement District: The developer also plans to request the establishment of a community improvement district (CID) to provide a 1% CID sales tax within the district.

Financial Considerations: The cost of mailing the Resolution to all owners and occupants of property located within the proposed district will be charged to Economic Development Fund and will be ultimately financed with TIF revenues.

Goal Impact: Economic Vitality and Affordable Living and Quality of Life. Redevelopment of blighted areas, distressed and declining areas, are needed to avoid economic stagnation.

Legal Considerations: State law allows cities to establish redevelopment districts in areas that are considered blighted areas based on findings that a majority of the land is within a 100 year flood plain. Such findings shall be set forth in the ordinance presented to the City Council for adoption following the public hearing on December 6, 2011. During a 30-day period following the public hearing, the Sedgwick County Board of County Commissioners and the USD 259 Board of Education will have the right to veto the establishment of the redevelopment district.

Recommendations/Actions: It is recommended that the City Council adopt the resolution providing notice of consideration for the establishment of the Southfork Redevelopment District and setting a public hearing for December 6, 2011.

Attachments: Resolution and Exhibits

Resolution No. 11-265

A RESOLUTION
STATING THE CITY OF WICHITA IS CONSIDERING THE
ESTABLISHMENT OF A REDEVELOPMENT DISTRICT
FOR THE 47TH AND I-135 REDEVELOPMENT DISTRICT
UNDER AUTHORITY OF K.S.A. 12-1770 ET SEQ.

WHEREAS, the provisions of K.S.A. 12-1770, et seq., as amended, set forth the procedure for the establishment of a redevelopment district for certain purposes in eligible areas; and

WHEREAS, the City of Wichita (the "City") is considering the establishment of a redevelopment district in a blighted area to be known as the "47th and I-135 Redevelopment District" to promote the general and economic welfare of the City;

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

Section 1. That the City is considering the establishment of a redevelopment district to be known as the 47th and I-135 Redevelopment District.

Section 2. That the City will hold a public hearing to consider the establishment of such redevelopment district on December 6, 2011 at 9:30 a.m., or as soon thereafter as possible, in the City Council Chambers, City Hall, 455 North Main Street, Wichita, Kansas.

Section 3. That a legal description of the proposed 47th and I-135 Redevelopment District is set forth in **Exhibit A** attached hereto and incorporated herein by reference. A map generally outlining the boundaries of the proposed 47th and I-135 Redevelopment District is attached hereto as **Exhibit B** and incorporated herein by reference

Section 4. That the redevelopment district plan identifying proposed redevelopment project areas along with a general description of the buildings, facilities, and improvements that are proposed to be constructed or improved in the redevelopment district is attached hereto as **Exhibit C** and incorporated herein by reference.

Section 5. That a description and map of the proposed redevelopment district shall be available for inspection by the public in the City Clerk's Office, City Hall, 13th Floor, 455 North Main Street, Wichita, Kansas, from 8:00 a.m. until 5:00 p.m., Monday through Friday, from the 1st of November, 2011 until December 6, 2011.

Section 6. That the Governing Body will consider making findings necessary for the establishment of a redevelopment district at the public hearing set to be heard herein.

Section 7. That a copy of this resolution shall be delivered to the Sedgwick County Board of County Commissioners, and to the Board of Education of Unified School District No. 259. Copies of this resolution shall also be mailed by certified mail, return receipt requested, to each owner and occupant of land within the proposed redevelopment district not more than ten (10) days following the date of the adoption of this resolution.

Section 8. That this resolution shall be published once in the official City newspaper not less than one week or more than two weeks preceding the date fixed for the public hearing. A sketch clearly delineating the proposed redevelopment district in sufficient detail to advise the reader of the particular land proposed to be included within the redevelopment district shall be published with the resolution.

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas, this 1st day of November, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, City Attorney

EXHIBIT A

LEGAL DESCRIPTION

A tract of land being located in Sections 21 and 28, Township 28 South, Range 1 East, of the 6th Principal Meridian, Sedgwick County, Kansas, being more particularly described as follows:

Commencing at the Northwest corner of the Northwest 1/4 of said Section 21; thence S89°31'13"E, on an assumed bearing for a distance of 1626.43 feet to the point of intersection with the East line of the Riverside Drainage District Easement as recorded in Deed Book 432 at Page 162; thence S6°12’07”E along the East line of said Riverside Drainage District Easement for a distance of 156.28 feet to the Point of Beginning, said point being 155.50 feet South of the North line of the NW ¼; thence N89°31’13”E parallel with the North line of said NW ¼ for a distance of 653.73 feet to a point; thence S19°28’47”E for a distance of 393.37 feet to a point on the Kansas Department of Transportation right-of-way as described in the deed, Book 1351, Page 253; thence S6°26’53”E for a distance of 129.68 feet; thence S19°28’47”E, for a distance of 1465.35 feet to a point on the right-of-way line of the Kansas Turnpike Authority as described in Condemnation Case A-55279; thence along said Kansas Turnpike Authority right-of-way line S8°42’58”W for a distance of 579.10 feet to a point on the South line of the NE ¼ of Section 21, Township 28 South, Range 1 East; thence S88°50’51”W along the South line of said NE ¼ for a distance of 176.00 feet to the Southwest corner of said NE ¼; thence S88°50’53”W along the South line of the NW ¼ of Section 21, Township 28 South, Range 1 East for a distance of 792.71 feet to a point on the East line of the Riverside Drainage Easement as recorded in Deed Book 432 at Page 162; thence South on the East right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the South line of said Section 21; thence continuing Southeasterly on the East right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the East line of the Northwest Quarter Section of said Section 28; thence continuing Southeasterly on the East right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the East right-of-way line of the Kansas Turnpike Authority; thence South on the East right-of-way line of said Kansas Turnpike Authority to a point of intersection with the West right-of-way line of said Riverside Drainage Canal Easement; thence Northwesterly on said West right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the East line the Northwest Quarter Section of said Section 28; thence Northwesterly on said West right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the South line of said Section 21; thence North on said West right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the South right-of-way line of Custy Street; thence West on the said South line of Custy Street to the East right-of-way line of U.S. 81 (Broadway); thence South on the East right-of-way line of U.S.81 to a point of intersection with the South line of Colonial Heights, Wichita, Sedgwick County, Kansas; thence West at a perpendicular angle to a point of intersection with the West right-of-way line of said U.S.81; thence North on the West right-of-way line of said

U.S.81 to a point of intersection with the southerly most North line extended of KMart Plaza South, an Addition to Wichita, Sedgwick County, Kansas; thence East on the southerly most North line extended of said Kmart Plaza South to a point of intersection with the East right-of-way line of said U.S. 81; thence South on said East right-of-way line of U.S. 81 to a point of intersection with the South line of Florence Addition to Wichita, Sedgwick County, Kansas extended; thence East on the South line of Florence Addition extended to the Southwest corner of said Florence Addition; thence East on said South line of said Florence Addition to the Southeast corner of said Florence Addition, said Southeast corner also being a Southwest corner of Southglen 3rd Addition, Wichita, Sedgwick County, Kansas; thence East on a South line of said Southglen 3rd Addition extended to a point of intersection with the East right-of-way of said Riverside Drainage Canal Easement; thence North on said East right-of-way of said Riverside Drainage Canal Easement to the Point of Beginning.

EXHIBIT "B"

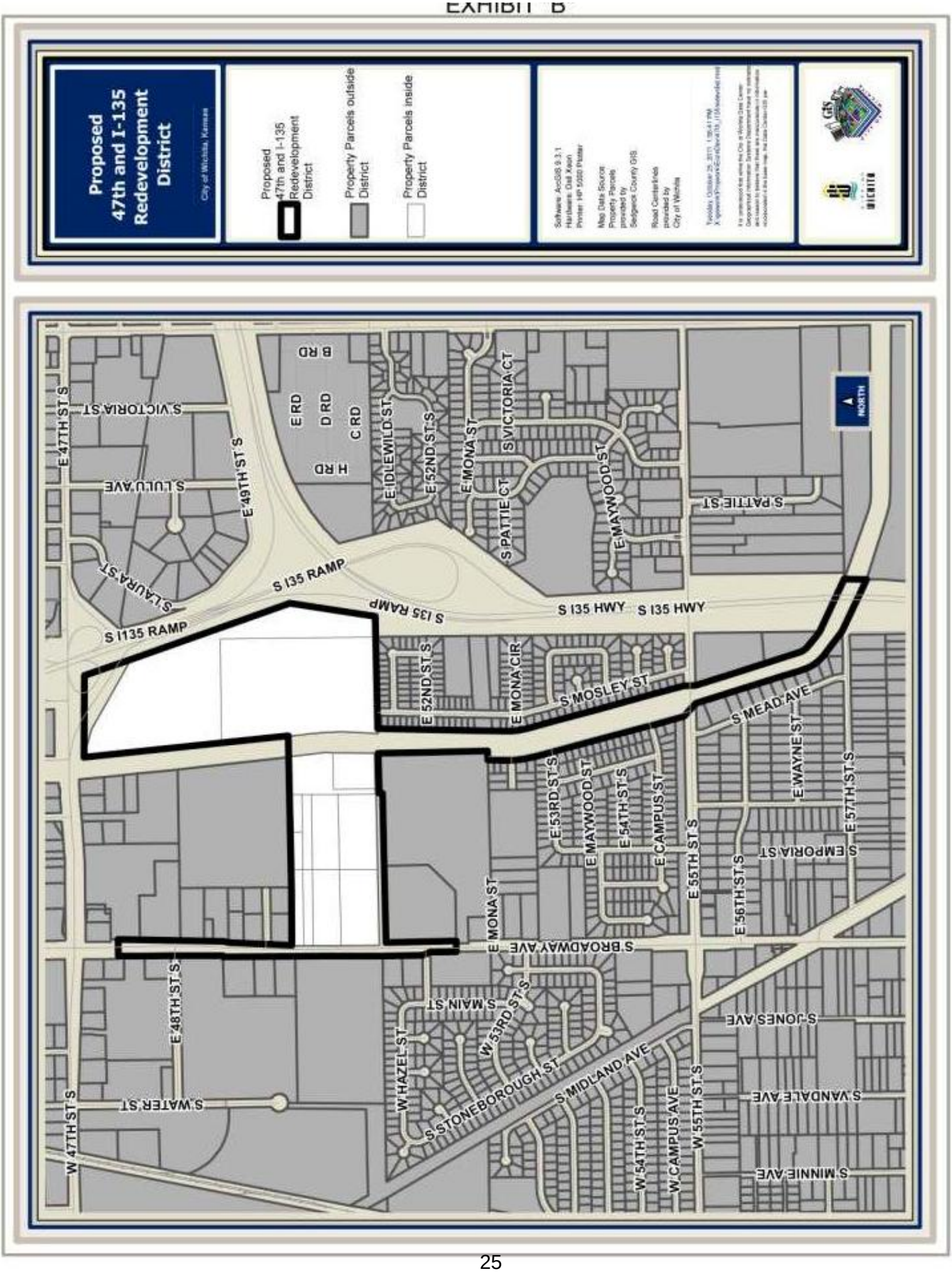
Proposed 47th and I-135 Redevelopment District
City of Wichita, Kansas
Proposed 47th and I-135 Redevelopment District
Property Parcels outside District
Property Parcels inside District
Software: ArcGIS 9.3.1
Hardware: Dell Xeon
Printer: HP 5000 Printer
Map Data Source:
Property Parcels provided by Sedgwick County GIS
Road Centerlines provided by City of Wichita
NORTH
S I135 RAMP
S I35 RAMP
S I35 HWY
S I35 HWY
E 47TH ST S
S VICTORIA ST
S LULU AVE
E 49TH ST S
S LAURA ST
B RD
E RD
D RD
C RD
H RD
E IDLEWILD ST
E 52ND ST S
E MONA ST
S VICTORIA CT
S PATTIE CT
E MAYWOOD ST
S PATTIE ST
E MONA CIR
S MOSLEY ST
S MEAD AVE
E WAYNE ST
E 57TH ST S
E 53RD ST S
E MAYWOOD ST
E 54TH ST S
E CAMPUS ST
E 55TH ST S
E 56TH ST S
S EMPORIA ST
S BROADWAY AVE
S MAIN ST
W 53RD ST S
S JONES AVE
E 48TH ST S
W HAZEL ST
S STONEBOROUGH ST
S MIDLAND AVE
S VANDALE AVE
W 47TH ST S
S WATER ST
W 54TH ST S
W CAMPUS AVE
W 55TH ST S
S MINNIE AVE

EXHIBIT C

REDEVELOPMENT DISTRICT PLAN FOR THE REDEVELOPMENT OF THE 47TH AND I-135 REDEVELOPMENT DISTRICT THROUGH TAX INCREMENT FINANCING

November 1, 2011

SECTION 1: PURPOSE

A district plan is required for inclusion in the establishment of a redevelopment district under K.S.A. 12-1771. The district plan is a preliminary plan that identifies proposed redevelopment project areas within the district, and describes in a general manner the buildings, facilities and improvements to be constructed or improved.

SECTION 2: DESCRIPTION OF TAX INCREMENT INCOME

Projects financed through tax increment financing typically involve the creation of an "increment" in real estate property tax income. The increment is generated by segregating the assessed values of real property located within a defined geographic area such that a portion of the resulting property taxes flow to the City to fund projects in the redevelopment district, and the remaining portion flows to all remaining taxing jurisdictions. The portion of property taxes flowing to the City is determined by the increase in the assessed value of the properties within the redevelopment district as a result of the new development occurring within the same area. When the current aggregate property tax rates of all taxing jurisdictions are applied to this increase in assessed property value from new development, increment income is generated. Public improvements within the district and other qualified expenditures are funded by the City and repaid over a specified period of time with this increment income. The property taxes attributable to the assessed value existing prior to redevelopment, the "original valuation," continue to flow to all taxing jurisdictions just as they did prior to redevelopment. This condition continues for the duration of the established district, as defined by statute, or until all eligible project costs are funded, whichever is of shorter duration.

SECTION 3: DESCRIPTION OF THE DISTRICT BOUNDARIES

The property within the proposed district is generally located southwest of the intersection of 47th Street South and I-135; it includes approximately 50 acres bounded between I-135 and a drainage canal and approximately 22 acres bounded by Broadway on the west and the drainage canal on the east, in Wichita, Sedgwick County, Kansas; and including all street rights of way within such described areas. The legal description of the proposed district is attached hereto and incorporated herein as Exhibit 1.

SECTION 4: BUILDINGS AND FACILITIES

The proposed district is located within the South Wichita/Haysville Area Plan. The Plan identifies and recommends a variety of land uses and infrastructure improvements to influence and guide the redevelopment of the area that is expected as a result of the

infrastructure improvements to the I-135/47th Street interchange.
The proposed redevelopment district is an area that meets the criteria for designation as a "blighted area" as defined by state law governing the establishment and financing of redevelopment districts. Property within a blighted area is legally eligible for establishment of a redevelopment district.
Under the state statutes (K.S.A. 12-1770, et. seq.) an "eligible area" for tax increment financing may include any area defined as a blighted area. The statutory definition of "blighted area" includes any area in which a majority of the property lies within the 100-year floodplain (KSA 12-1770(c)(3)). It has been determined that the majority of the proposed Project Area property lies within the 100-year floodplain following an engineer's review of the flood plain map.

SECTION 5: REDEVELOPMENT AND PROJECT AREAS

It is anticipated that all property within district will be redeveloped in multiple phases and each phase will be designated as a separate "project area" under a separate project plan, which must be adopted by the City Council by a 2/3 majority vote for each phase before the expenditure of any tax increment financing funds. The Phasing of the project areas is notionally depicted in Exhibit 2 attached hereto. The plans for redevelopment of the district generally call for development of all 72 acres into a mixed use development of approximately 4 outparcels along 47th street, approximately 1,000,000 square feet of retail space, a hotel and office space on the east side of the development and a medical park on the west 22 acres portion of the development.

Tax increment financing may be used on a pay-as-you-go basis to reimburse the cost of land acquisition and site preparation, as well as on public infrastructure improvements, such as streetscape, public parking, utility extensions, landscaping, and public plazas. Tax increment financing may not be used to pay for construction of any buildings owned by or leased to a private, nongovernmental entity.

SECTION 6: CONCLUSION

After the establishment of the redevelopment district, any redevelopment projects to be funded with tax increment financing will be presented to the Governing Body for approval through the adoption of a Redevelopment Project Plan. The Project Plan will identify the specific project area located within the established tax increment financing district and will include detailed descriptions of the projects as well as a financial feasibility study showing that the economic benefits out-weigh the costs. The Project Plan must be reviewed by the Metropolitan Planning Commission and submitted to a public hearing following further notification of property owners and occupants, before it can be adopted by a two-thirds majority vote of the Governing Body. Only then can tax increment income be spent on the redevelopment projects.

Tax increment financing does not impose any additional taxes on property located within the redevelopment district. All property within the district is appraised and taxed the

same as any other property. However, if property within the district increases in value as a result of redevelopment, the resulting increment of additional tax revenue is diverted to pay for a portion of the redevelopment costs.

EXHIBIT 1
SOUTHFORK TIF LEGAL DESCRIPTION

A tract of land being located in Sections 21 and 28, Township 28 South, Range 1 East, of the 6th Principal Meridian, Sedgwick County, Kansas, being more particularly described as follows:

Commencing at the Northwest corner of the Northwest 1/4 of said Section 21; thence S89°31'13"E, on an assumed bearing for a distance of 1626.43 feet to the point of intersection with the East line of the Riverside Drainage District Easement as recorded in Deed Book 432 at Page 162; thence S6°12’07”E along the East line of said Riverside Drainage District Easement for a distance of 156.28 feet to the Point of Beginning, said point being 155.50 feet South of the North line of the NW ¼; thence N89°31’13”E parallel with the North line of said NW ¼ for a distance of 653.73 feet to a point; thence S19°28’47”E for a distance of 393.37 feet to a point on the Kansas Department of Transportation right-of-way as described in the deed, Book 1351, Page 253; thence S6°26’53”E for a distance of 129.68 feet; thence S19°28’47”E, for a distance of 1465.35 feet to a point on the right-of-way line of the Kansas Turnpike Authority as described in Condemnation Case A-55279; thence along said Kansas Turnpike Authority right-of-way line S8°42’58”W for a distance of 579.10 feet to a point on the South line of the NE ¼ of Section 21, Township 28 South, Range 1 East; thence S88°50’51”W along the South line of said NE ¼ for a distance of 176.00 feet to the Southwest corner of said NE ¼; thence S88°50’53”W along the South line of the NW ¼ of Section 21, Township 28 South, Range 1 East for a distance of 792.71 feet to a point on the East line of the Riverside Drainage Easement as recorded in Deed Book 432 at Page 162; thence South on the East right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the South line of said Section 21; thence continuing Southeasterly on the East right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the East line of the Northwest Quarter Section of said Section 28; thence continuing Southeasterly on the East right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the East right-of-way line of the Kansas Turnpike Authority; thence South on the East right-of-way line of said Kansas Turnpike Authority to a point of intersection with the West right-of-way line of said Riverside Drainage Canal Easement; thence Northwesterly on said West right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the East line the Northwest Quarter Section of said Section 28; thence Northwesterly on said West right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the South line of said Section 21; thence North on said West right-of-way line of said Riverside Drainage Canal Easement to a point of intersection with the South right-of-way line of Custy Street; thence West on the said South line of Custy Street to the East right-of-way line of U.S. 81 (Broadway); thence South on the East right-of-way line of U.S.81 to a point of intersection with the South line of Colonial Heights, Wichita, Sedgwick County, Kansas; thence West at a perpendicular angle to a point of intersection with the West right-of-way line of said U.S.81; thence North on the West right-of-way line of said U.S.81 to a point of intersection with the southerly most North line extended of KMart

Plaza South, an Addition to Wichita, Sedgwick County, Kansas; thence East on the southerly most North line extended of said Kmart Plaza South to a point of intersection with the East right-of-way line of said U.S. 81; thence South on said East right-of-way line of U.S. 81 to a point of intersection with the South line of Florence Addition to Wichita, Sedgwick County, Kansas extended; thence East on the South line of Florence Addition extended to the Southwest corner of said Florence Addition; thence East on said South line of said Florence Addition to the Southeast corner of said Florence Addition, said Southeast corner also being a Southwest corner of Southglen 3rd Addition, Wichita, Sedgwick County, Kansas; thence East on a South line of said Southglen 3rd Addition extended to a point of intersection with the East right-of-way of said Riverside Drainage Canal Easement; thence North on said East right-of-way of said Riverside Drainage Canal Easement to the Point of Beginning.

EXHIBIT 2

MASTER SITE PLAN

Agenda Item No. IV-3

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Approve the project of Body Worn Cameras

INITIATED BY: Wichita Police Department

AGENDA: New Business

Recommendation: Approve the project.

Background: The Wichita Police Department conducted a study utilizing a Body Worn Camera system along with a storage and data retrieval system. The study consisted of a 30 day wear test period in which (6) officers from Patrol North wore the camera systems; video was captured and downloaded into a storage and retrieval system. The storage and retrieval company provided a system that allows administrators and users of the Body Worn Camera system to download, label and tag the video evidence. This evidence then can be viewed by any Department member that has access to the system. During the testing period, (2) homicide scenes were videoed and the evidence was placed into the case folder. Several other videos were also recorded and placed into case folders to be used at court. The system captured a variety of calls due to the officers wearing the camera their entire shift and videoing calls the officers made.

Analysis: The incorporation of video cameras in Law Enforcement has dramatically increased in the last few years. For the past 10 years the Wichita Police Department has had a limited amount of in car cameras. The drawback of the in car cameras is the system will only capture what is happening directly in front of the police car. The body worn camera is mounted on a head strap that attaches to the officers head. This allows for the camera to see what the officer is seeing. The other advantage the head mounted camera has over the chest mounted camera or cameras attached to Taser's or handguns, is when officers have to use their hands, draw a handgun or draw a Taser, the chest mounted camera is then obscured by the officer's movements. The head worn camera does not have this same issue because the drawing of a handgun or Taser is done at chest level or eye level and the head mounted camera is operating just above the officer's ear.

Financial Considerations: The funding for (20) twenty Body Worn Cameras, additional head cameras, holsters and communications hubs will be funded with American Reinvestment and Recovery Act Justice Assistance Grant funds approved in 2009. The additional years of storage and retrieval of the data will be funded within the Wichita Police Department's General Fund estimated at $24,000 annually.

Goal Impact: Provide a Safe and Secure Community by the implementation of the Body Worn Camera system for the enhanced protection of the citizens of the City of Wichita.

Legal Considerations: The Law Department reviewed and approved as to form the original Justice Assistance Grant award.

Recommendations/Actions: It is recommended that the City Council approve the project for (20) twenty Body Worn Camera systems, storage and retrieval of data, (20) additional head cameras, communication hubs and holsters.

Cost Analysis:

Below is the approximate cost analysis to purchase 20 Body Worn camera units, one year of evidence storage and retrieval, additional equipment to outfit 20 additional officers and a three warranty.

Product	Quantity	Price	Total
1 Year of evidence storage and retrieval usage/After 1st year per unit	20	$1,200	$24,000
Body Worn Camera System and transfer unit	20	$20,00-5 pack	$80,000
Service Plan 3 year Extension Computer	20	$1000.00	$20,000
Service Plan 3 Year Extension Head camera	20	$300.00	$6,000
Service Plan 3 Year Extension Com. Hub	20	$300.00	$6,000

Additional Equipment

Product	Quantity	Price	Total
Additional Holsters	20	$100	$2,000
Head cam, with 110 Degree IRC30 Lens	20	$500	$10,000

Shipping and Handling $1,500

Approximate Total Cost: $125,000.00

Agenda Item No. IV-4

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council Members

SUBJECT: 2011-2013 IAFF Memorandum of Agreement

INITIATED BY: Human Resources Department

AGENDA: New Business

Recommendation: Approve the proposed 2011-2013Memorandum of Agreement between the City and the International Association of Firefighters (IAFF) Local 135.

Background: The City's negotiating team and IAFF Local 135 have reached an agreement on a Memorandum of Agreement for 2011-2013. IAFF represents all employees bearing the rank of Firefighter, Fire Lieutenant, Airport Public Safety Lieutenant, and equivalent positions, and Fire Captain, Airport Public Safety Captain, and equivalent positions. The union membership ratified the agreement.

Analysis: The agreement will be in effect from December 25, 2010 through December 20, 2013. For 2011, eligible employees will receive step increases and no General Pay Adjustment (GPA). In 2012 and 2013, step increases will be frozen and employees will receive a 2.5% GPA in each year.

Other changes to the contract include:

1. Revised the implementation of acting pay for Fire employees assigned the duties of a higher position.
2. Added $25 per month education pay for employees with an associate's degree in Fire Science.
3. Each represented employee receives four Kelly days of leave each year. The contract gives employees the choice to use or be paid for all four days, with each employee making the decision in October for the following calendar year.
4. Pays employees for earned Well Days in lieu of time off.
5. Increased the Airport Safety employees' sick leave accrual day from 12 to 15 hours.
6. Increased the Airport Safety employee's holiday pay from 15 to 17 hours.
7. Changed the seniority list posting procedure.
8. Increased the uniform allowance from $600 in 2011 to $625 in 2012 and $650 in 2013.
9. Added a definition of daily staffing at 117 emergency response personnel, with the condition that,

   > "Nothing in this Article or Agreement shall be interpreted as requiring certain minimum staffing levels, requiring the assignment of specific personnel or removing the sole authority of management to determine staffing levels."

This is a three-year agreement, to be renegotiated in 2013.

Financial Considerations: The agreement is consistent with the 2012 Adopted budget. The 2012 cost of the GPA and related increases in salary-based benefits is $718,194.

Goal Area Impact: This agreement affects the City's goals of Quality of Life, Safe and Secure Community, Core Areas and Neighborhoods, Economic Vitality and Affordable Living, Efficient Infrastructure, and Internal Perspectives.

Legal Considerations: The Law Department has approved the agreement as to form.

Recommendation/Action: Approve the proposed 2011-2013 Memorandum of Agreement between the City and International Association of Firefighters Local 135.

Attachment: Memorandum of Agreement.

MEMORANDUM OF AGREEMENT

By and Between

The City of Wichita, Kansas

and

Local #135 International Association of Firefighters - Wichita, Kansas

This Memorandum of Agreement is entered into by and between the City of Wichita, Kansas, hereinafter referred to as the "City" or "Employer", and Local #135 International Association of Firefighters, hereinafter referred to as the "Union."

Date Effective	December 25, 2010
Date Ending	December 20, 2013

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Preamble

This memorandum of agreement is made and entered into following negotiations as required in the Kansas Public Employee Relations. Act. The terms of this agreement apply to only those employees who are included in the bargaining unit for which the Union was certified as the exclusive bargaining representative in the order of the Kansas Public Employee Relations Board of August 15, 1974. This agreement between the City and the Union is to be for a term beginning December 25, 2010, and ending December 20, 2013.

Article 1: Recognition

A. The City recognizes the Local #135 International Association of Firefighters, hereinafter referred to as the Union, as the exclusive representation for the purposes of meeting and conferring and the settlement of grievances for those designated in the bargaining unit.

B. The bargaining unit consists of all employees bearing the rank of Firefighter, Fire Lieutenant, Airport Public Safety Lieutenant, and equivalent positions, and Fire Captain, Airport Public Safety Captain, and equivalent positions. Excluded from the unit are all other employees.

C. In the event any classification in the bargaining is retitled, or in the event any additional classification is included in the bargaining unit by action of PERB, this memorandum of agreement shall be construed to include such retitled or additional classification in the above unit description.

Article 2: Management Rights

A. The Union recognizes that except to the extent abridged by specific provisions of this agreement, the City reserves and retains all of its rights to manage its own affairs. The rights of Management which are not abridged by this agreement shall include, but are not limited to:

(1) Direct the work of its employees;

(2) Hire, promote, demote, transfer, assign and retain employees in positions within the public agency;

(3) Suspend or discharge employees for proper cause;

(4) Maintain the efficiency of governmental operation;

(5) Relieve employees from duties because of lack of work or for other legitimate reasons;

(6) Take actions as may be necessary to carry out the mission of the agency in emergencies; and

(7) Determine the methods, means and personnel by which operations are to be carried on.

B. The above rights, responsibilities and prerogatives are inherent in the City of Wichita and its management and cannot be subject to any grievance or arbitration proceedings except as specifically provided for in this agreement.

Article 3: Employee Rights

Employees shall have certain inherent rights as individuals which shall include, among other things, the right to form, join and participate in the activities of the Union of their own choosing. Employees shall also have the right to refuse to join or participate in activities of any Union. It is the right of an employee to seek relief to any problem as specified in the grievance procedure and the filing of a grievance shall not adversely affect the employee filing the grievance.

Article 4: Stewards

A. The employer recognizes the right of the Union to designate not to exceed fourteen job stewards and alternatives.

B. The authority of job stewards and alternates designated by the Union shall be limited to and shall not exceed the following duties and activities:

1. The investigation and presentation of grievances in accordance with the provisions of the collective bargaining agreement.

2. The transmission of such messages and information which shall originate with, and are authorized by the Union or its officers, provided such messages and information:

   a. have been reduced to writing, or

   b. if not reduced to writing, are of a routine nature and do not involve work stoppages, slow downs, refusal to work, or any other interference with the employer's business.

   c. The job stewards shall not absent themselves from their place of work to attend to Union business and grievance matters without permission of their Battalion Chief/Deputy Chief of Airport Public Safety. Requests for time off to handle Union business and grievance matters shall be granted at the discretion of the department director. Such permission shall not be unreasonably withheld. Stewards may be granted 30 minute periods to attend to Union business and grievance matters as approved by the department director. The 30 minutes shall be used at the end of the shift unless the Battalion Chief/Deputy Chief of Airport Safety grants another time. When a steward is required to attend formal grievance hearings, the time shall not be assessed against the above-mentioned periods.

Article 5: Nondiscrimination

A. No employee shall be discriminated against because of race, color, creed, national origin, age, sex, religion, ancestry, disability, because of Union activity or non-Union activity or for any other reason contrary to law by either the City or the Union, all in accordance with the law.

B. If any grievance is filed under this article, and any complaint is filed with any other board, agency or court with concurrent jurisdiction concerning the same incident, said grievance shall be held in abeyance until the other board, agency or court has rendered its decision.

C. The City agrees that it shall not directly or indirectly discourage or deprive or coerce any employee in the enjoyment of any rights conferred by the laws of Kansas and the United States; that it shall not discriminate against any employee with the respect to hours, wages, or any other term or condition of employment including promotions by reason of membership in the employee organization, or participation in any of these activities; collective negotiations with the City, or institution of any grievance, complaint or proceeding under this agreement with respect to any terms or condition of employment.

Article 6: Payroll Deduction

A. The City agrees that whenever duly authorized by any employee on a form or forms appropriate for such purpose and consistent with the regulations established by Human Resources, payroll deductions shall be made and paid over in accordance with such form or forms for any or all of the following purposes:

1. Donations to the Friendship Fund.
2. Premiums for the employee health and life insurance benefits.
3. Wichita Federal Credit Union.
4. Union dues.
5. Fireman's Welfare Fund.
6. Deferred Compensation.
7. Any other deduction authorized by the City.

B. Any such authorized deductions or withdrawals shall become effective following the filing of an authorization or revocation card consistent with the procedure established by Human Resources. Withdrawal requirements from deferred compensation or health and dental plans are also subject to appropriate regulations.

Article 7: Compensation Policy

A. A pay plan shall be provided for all employees in the classified service. The pay plan consists of a salary range for each position. Salary ranges are determined by the relative difficulty and responsibility of the positions of the class, prevailing rate of pay, cost of living factors, the financial policy of the City and other economic situations.

B. The position of Firefighter Recruit is established at one range lower than Firefighter. Firefighter Recruits are eligible to participate in the health insurance program offered by the City and receive paid holidays, but are not eligible for any other fringe benefits.

An exception is made for full time employees of the City who become Firefighter Recruits. Full time employees may continue to participate in the life insurance program, in addition to a health insurance program and receive paid holidays. While the employee is in recruit training, use of accrued leaves is not permitted, nor will the recruit accrue additional leave. Prior accrued leaves and seniority for accrual of longevity benefits (vacation, sick leave, and longevity pay) will be reinstated upon appointment to Firefighter.

Assistant Airport Public Safety Supervisor will be placed in range 892 if 2912 hours per year and range 824 if 2080 hours per year and placed in the same step as if the employee remained as an Assistant Airport Public Safety Supervisor.

Airport Public Safety Supervisor will be placed in range 893 if 2912 hours per year and range 827 if 2080 hours per year and placed in the same step as if the employee remained as an Airport Public Safety Supervisor.

C. Any members of the bargaining unit who are certified as, and members of, the team assigned to Arson Investigation, Haz-Mat and Technical Rescue, will receive an additional $35.00 per pay period. EMICT certifications will receive $35.00 per pay period.

D. Employees assigned the duties of a higher position shall be compensated at the rate of pay for the higher position for those hours worked, if employees are so assigned 64 hours or more (40 hour employees) or 96 hours for a 24 hour employee, during a promotional list. This provision does not apply to Airport Public Safety.

For the purposes of the 2010 promotional list, hours earned prior to the ratification of this contract will be counted toward the 64 or 96 hour requirement, but no pay will be issued retroactively.

E. Employees working a 40 hour work week who are required to work second or third shift will receive shift differential. Employees required to work second shift will receive 15 cents per hour. Employees required to work third shift will receive 25 cents an hour.

F. Anytime an employee is off duty and is required to be available for duty, the employee is on standby status. While on standby, the employee is required to keep in continual communication with the department by beeper radio or walkie talkie. Employees on standby will be compensated at the rate of $ .50 per hour.

An employee on standby who is required to report to duty shall be guaranteed at least two hours pay at the regular rate of pay.

G. Irrespective of any of the above provisions, the employer agrees that in the event of a call back to work under departmental policy, because of an emergency, those employees called back shall receive time and one-half for all the time worked, with a minimum of 2 hours pay.

H. Dates of pay. Employees will be paid on a bi-weekly basis for all regular and constant staffing hours except overtime worked, including emergency call back hours, in that pay period. Payday shall be on the Friday following the regularly scheduled two (2) week pay period. Overtime pay will be paid at the end of the 27 day pay period.

For 40 hour employees the work week is 12:01 a.m. Saturday through 12:00 midnight Friday. A twenty-seven (27) day work period is established for employees who work a twenty-four hour shift.

Payment shall be made available to all employees prior to the end of the shift on payday. An employee who is separated or whose services are terminated may receive pay only on the next established payday.

I. Members of the bargaining unit shall receive educational pay of $50.00 per month for a baccalaureate degree and $75.00 per month for a master's degree from a college or university accredited by an agency recognized by The Kansas Board of Regents and certified as eligible by the Human Resources Department. Bargaining unit members are not eligible for tuition reimbursement.

Effective December 24, 2011. Members of the bargaining unit shall receive educational pay of $25.00 per month for an associate's degree in Fire Science, $50.00 per month for a baccalaureate degree and $75.00 per month for a master's degree from a college or university accredited by an agency recognized by The Kansas Board of Regents and certified as eligible by the Human Resources Department.

Article 8: Longevity Pay

Commencing the first full pay period after the approval of the contract, and in consideration of long and faithful service, the City shall, in addition to regular salary, pay longevity pay to long term employees. To receive longevity pay, the employee must have completed six (6) years total accumulative service with the City. The amount of this pay shall be $2.00 per month times the years of accumulative service of the employee with the City. For employees who have completed eleven (11) years total accumulative service with the City the amount of pay shall be $5.00 per month times the years of accumulative service with the City.

Article 9: Within Hourly-Range Increases

A. Frequency of increases. Effective December 24, 2011 all pay steps increases will be suspended and frozen until December 20, 2013. After an employee has successfully completed recruit training, the employee shall be advanced to the position of Firefighter and shall have a twelve month probationary period. Advancement from A to B step of the pay range may be granted after an employee has completed the probationary period. Within range increases from step B to step C, step C to step D, step D to step E, step E to step F, step F to step G, step G to step H, step H to step I,

and step I to step J, step J to step K, step K to step L, step L to step M, step M to step N and step N to step O shall be granted after 12 months satisfactory service in each step.

B. Promotions. Upon a promotion, the said employee will move to the pay range appropriate to the position to which the employee is promoted (A Firefighter promoted to Fire Lieutenant would move from Range 891 to Range 892). The promoted employee will move to the next lower step in the new pay scale. (Step H moves to step G,step I moves to step H, etc.). An additional step shall be granted at the time of promotion if the promotion occurs within 120 days of the employee's previous anniversary date. Anytime an employee is promoted or demoted a new anniversary date is established for future step movements.

Article 10: Overtime

A. The City reserves the right to schedule overtime work as required.

B. The number of personnel on duty will be determined by management. When personnel strengths fall below the minimum strength determined by management, personnel will be called from a list to fill vacant positions until minimum personnel strength is achieved.

C. Bargaining unit personnel working a 24 hour schedule will be compensated at time and one-half of the hourly rate for all hours worked in excess of 204 in a 27 day work period.

D. Employees who are scheduled to work 40 hours in one week shall be paid time and one-half for overtime if they have worked more than 40 hours in one week.

E. Except for injury leave, leaves of absence will not be computed as hours worked for the purpose of computing overtime even though the leave may have been paid leave.

Article 11: Kelly Days

Each employee working a 24 hour shift shall be granted four Kelly Days with pay. Said Kelly Days shall be scheduled at the convenience of the department so as to maintain proper firefighting capabilities. A Kelly Day shall consist of one full 24 hour shift. In October of each year, employees may choose to receive pay for the four Kelly days in lieu of paid time off. Payment will be made on the second pay period of the new payroll year.
New employees or employees transferred from a 40 hour week to a 24 hour shift shall receive one paid Kelly day off in each quarter worked.

Article 12: Insurance Program

A. Health Benefits. The City will extend to all employee groups the same health insurance program(s) available to all full-time City Employees. For those participating in the City plan, the City will pay 80% of the health insurance premium of the lowest cost plan offered by the City. The employee will pay 20% of health insurance costs of the lowest cost health insurance plan offered by the City and additional costs of any other health plan the employee group selects.

Participation in the health insurance program is optional with each employee.

B. The City agrees to provide basic group life insurance in the amount of two times the employee's base annual salary, rounded up to the next higher thousand. The City and employees shall share equally in the cost of the life insurance plan. The life insurance program is optional with each employee.

C. If any insurance carrier insuring the risk pays any dividend or refund in any manner, the sum shall be deposited to the Self Insurance Fund for Health Account, for the purpose of defraying health insurance costs in future years.

Article 13: Injury Leave

A. During recruit training the City will pay authorized Workers Compensation benefits to a recruit injured during training. Should a Firefighter Recruit be called to active firefighting duty and suffer an injury which is peculiar to firefighting, the Firefighter Recruit will be eligible for extended injury leave as provided in Article 13 (H).

B. After appointment to Firefighter or Airport Public Safety Officer, the City will pay benefits to the injured employee over and above the authorized Workers' Compensation benefits sufficient to allow the employee to receive up to the amount of the employee's current take home pay during the first 90 days of disability.

C. After 90 consecutive days, the employee will be paid according to the terms in the Workers' Compensation Act until released to return to work. The employee will use accrued sick leave or vacation leave as needed above the Workers' Compensation benefit to allow the employee to receive a full paycheck.

D. All injuries, including heart and lung disease, will be considered and defined in accordance with the Workers' Compensation Act of the State of Kansas and the interpretive cases arising thereunder.

E. The City shall reserve the right to have the employee examined by the physician of its choice, at the expense of the City. The employee maintains the right of getting a second opinion, at the expense of the employer pursuant to the Workers' Compensation Act of the State of Kansas.

F. The employee shall report injuries in accordance with the Wichita Fire Department Administration Manual or the City of Wichita Personnel Manual for Airport Public Safety.

G. Recurring Injury Leave. Recurring leave of absence relating to a previous injury shall be considered one and the same injury, if the injury occurs within 365 days, subject to administrative analysis and diagnosis of the injury reported by the attending physician. However, if recurring leave relating to a previous injury is required after one year (365 days) from the date of release by the physician and return to work, such leave will be treated as a new injury case.

H. Notwithstanding the foregoing, if a full time employee suffers, while on duty, (1) any injury which is peculiar to firefighting/Airport public safety work or (2) any injury while performing a function which is peculiar to firefighting work, which causes the employee to be unable to perform the employee's duty, the employee shall continue to be paid by the City on the same basis as before the injury with full benefits and no deduction from any accumulated leave or overtime accumulation during the time the employee is unable to perform duties due to the result of the injury, but no longer than one (1) year from the date of initial injury.

Decision as to the applicability of this provision shall be made by a board consisting of the Fire Chief or Airport Public Safety Chief, the President of the Union, the Human Resources Director, and two persons appointed by the City Manager. The findings and decisions of the Board may be reviewed by the City Manager. The Board's decision shall be final unless reviewed by the City Manager within ten work days after being received by the City Manager. On review, the City Manager may affirm or reverse the Board's decision. If the City Manager reverses the Board's decision, the City Manager shall state the reasons for the decision in writing.

At any time during the period for which continuing compensation is required by this provision, the employing public entity may order, at the expense of that entity, physical or medical examinations of the injured person to determine the degree of disability. During this period of disability, the injured person shall not be employed in any other manner with or without monetary compensation. Any person who is employed in violation of this paragraph forfeits the continuing compensation provided by this provision from the time such employment begins. Any salary compensation due from any type of insurance which may be carried by the city, shall revert to the city during the time for which continuing compensation is paid under this provision.

I. Both parties to this contract recognize that, under the provisions of KSA 44-505(d), the City could potentially be relieved of responsibilities for workers compensation benefits under the state Workers Compensation Act. If the City no longer has a statutory obligation to provide Workers Compensation benefits under the terms of KSA 44-505(d), then this Article shall be reopened for negotiations.

Article 14: Leaves of Absence Without Pay

A. Eligibility. A department director may grant leaves of absence without pay of up to thirty (30) calendar days. Leaves of absence will be granted unless the granting of the leave of absence would create an undue hardship in the department. Leave of absence without pay will not be granted until all vacation leave has been exhausted.

B. Requesting Leave of Absence Without Pay. Requests for leave for personal reasons shall be submitted in writing to the division head or department director, stating reasons for the request, the date the leave shall begin, and the probable date of return.

C. The City and the Union agree to comply with the provisions of the federally directed Family and Medical Leave Act. The exact provisions will follow those outlined in the City's Human Resources Policy Manual.

Article 15: Time Off for Union Business

A. The city recognizes the need for employees to be off on official Union business leave. Permission for such leave must be authorized by the department director. The department director with the aid of the division head should determine if such leave will be granted. Time off will be granted, unless by so granting the division or division's personnel strength will be materially affected in responding to emergency calls.

B. Time off for Union business is to be by an approved "Union Shift Exchange" as provided in this Article. Union shift exchanges shall not affect the regular shift exchange time allowed to be traded, provided the Union has given one (1) work shift's written notice of such leave request to the department director and division head involved. Failure to comply with the notification provision will result in denial of approved Union leave. The Union agrees that in making their request for time off for Union activities, due consideration shall be given to the qualifications of employees affected in order that there shall be no disruption of the City's operations due to lack of available qualified personnel.

C. Time off with pay shall be granted for grievance hearings for Employee Grievance Board Members and for employees engaged in grievance hearings. Time off with pay shall be granted for employee representative to attend Labor Management Committee meetings.

D. The negotiating representatives of the bargaining unit will be granted the required time off with pay necessary for the sole purpose of negotiations as approved by the department director. This time off will be limited to the actual meeting time on the days when both negotiating teams are in session or caucus.

E. The right to grant leaves for Union business is the right of the management. Management will decide if a leave should or should not be granted, predicated on the provisions set forth in this Article.

F. The Union shall be allowed time for a group orientation for recruit firefighters pursuant to Article 24, paragraph O of this memorandum.

G. Members of the Executive Board for IAFF Local 135, who are city employees, and on duty shall be allowed a reasonable time to attend the regular monthly Union meeting. Anyone attending these meetings while on duty will be subject to recall to duty if needed by the Fire Department. A list of the Executive Board members will be provided to the Fire Chief/Airport Public Safety Chief every six months (6) or when a change in the list may occur. The Chief will also be given written notice at least fifteen days in advance of such meetings. The release of Airport Public Safety personnel is subject to the approval of the Airport Public Safety Chief.

Article 16: Vacation Leave

A. Accumulation. All members of the unit will earn vacation benefits except Firefighter Recruits. Upon appointment to the position of Firefighter, an employee will earn vacation benefits.

B. Vacation leave will be earned on hours in pay status exclusive of nonscheduled overtime and will be calculated at the time the payroll is processed.

C. Base hours for computing vacation leave are 2080 per year for 40 hour per week employees. For employees working a 24 hour schedule, vacation is computed on 2912 hours which includes scheduled overtime.

D. The rate at which vacation leave is earned is determined by the start work date, benefit date, or adjusted start work date. Employees with prior creditable service are eligible to earn vacation leave based on their adjusted start work date after completion of two years continuous service from the date of rehire.

E. Vacation leave for Wichita Fire Department and Airport Public Safety 40 hour per week employees is earned at the following rate:

Years of Service	Hours of Vacation per Hours in Pay Status	(8 hour Days) Days per year
Less than 5	.0461	12
5	.0500	13
7	.0538	14
8	.0576	15
9	.0615	16
10	.0653	17
12	.0692	18
14	.0730	19
16	.0769	20
18	.0807	21
20	.0846	22
25	.0962	25

F. Vacation leave for Wichita Fire Department 24 hour employees is earned at the following rate:

Years of Service	Hours of Vacation per Hours in Pay Status	(12 hour Days) Days per year
Less than 5	.0412	10
5	.0453	11
7	.0494	12
8	.0535	13
9	.0576	14
10	.0618	15
12	.0659	16
14	.0700	17
16	.0741	18
18	.0782	19
20	.0824	20
25	.0947	23

Vacation leave for Airport Public Safety employees who work a 24 hour shift is accrued at approximately the following rate:

Years of Service	12 hour Days Days per year	15 hours Days (Effective 12-24-11) Days per year
Less than 5	10	10
5, 6, 7, 8, 9	15	15
10, 11, 12, 13, 14	17	17
15	18	18
16, 17, 18	20	20
20	21	21
21	24	24
22 or more	25	25

G. Vacation leave may not be taken in advance of vacation leave earned nor prior to completion of the probationary period. Employees must have satisfactorily completed their probationary period and have been removed from probationary status. Employees with a twelve-month probationary period must have satisfactorily completed six months of service before being eligible to take vacation or be paid for terminal vacation.

H. An employee who goes on military leave for extended active duty, resigns, or is terminated, will be paid for any unused vacation leave. The last day an employee works is the termination date except for employees retiring under the Wichita Police and Fire Retirement System. In the event of an employee's death, any vacation pay due will be paid. Employees must complete their probationary appointment (or six months satisfactorily service for those employees on a 12 month probationary period) to be eligible to receive terminal vacation pay.

I. Vacation leave is scheduled in the department according to the policies established by the department director. Vacation may not be taken in excess of the hours appearing on the paycheck stub.

J. Employees who have retired under either retirement system and who are re-employed will not receive credit for any prior service toward longevity vacation. The date of re-employment will serve as the date for computing longevity vacation.

K. Forty (40) hour per week employees are allowed to accumulate and carry forward each year 240 hours of vacation leave. Twenty four (24) hour employees are allowed to accumulate and carry forward each year 360 hours of vacation leave. Employees will be required to use or lose vacation earned in excess of 240 hours (360) before the end of the last period in which their anniversary date occurs.

L. It is the intent of the parties to reflect in this Article the vacation policy of the City as it applies to the unit as of the signing of this agreement.

Article 17: Sick Leave

A. Accrual. Firefighter Recruits are not eligible to accrue sick leave benefits. Upon appointment to the position of Firefighter, employees shall accrue sick leave at the rate of one-half day per month (6 days per year) for the first five years of creditable service. Beginning year six through year fifteen of creditable service, sick leave will be accrued at the rate of one day per month (12 days per year). Beginning year sixteen of creditable service, sick leave will be accrued at the rate of 1.167 days per month (14 days per year). Effective December 24, 2011 an accrual day for Airport Safety personnel will be 15 hours.

Employees with prior creditable service are eligible to accrue sick leave benefits based on their adjusted start work date after two years of continuous service from the date of rehire.

B. Sick leave use. Sick leave may be used for personal illness, off-the-job injury, and immediate family illness. Immediate family illness includes maternity or paternity leave and enforced quarantine.

1. Personal Illness. When taking sick leave for personal illness the employee is to notify the supervisor by phone or messenger prior to scheduled time to report to duty. Confirmation by a doctor of the illness or injury may be required as per department policy or at the direction of the Fire Chief/Airport Public Safety Chief.

   It is the employee's responsibility to keep their supervisor informed of progress of the illness or injury and an estimated return to duty date.

2. Immediate Family Illness. Sick leave may be used for members of the employee's immediate family. Immediate family is defined as spouse, children (including step children), parents, and any relative living in the employee's home. Family members not mentioned are excluded. In no event may the employee charge more than 48 hours (72 hours for 24 hour employees) per payroll year for dependent illness.

3. Enforced quarantine in accordance with community health regulations.

C. Payment. A probationary employee will not be paid for accrued sick leave used during the first six months of service. Payment for sick leave for other than probationary employees is in accordance with established policies. The accumulation of sick leave is unlimited.

D. When an employee has been on sick leave for 20 consecutive days, the City may require the employee to be examined by a physician it designates. The City may require an employee to provide a doctor's certificate anytime if sick leave abuse is suspected.

E. Well Day. Effective the 2011 payroll, year an additional day of pay (8 hours for 40 hour, 5 days per week employees, or 10 hours for 40 hour, 4 days per week employees and 24 hours for 24 hour shift employees) shall be granted to an employee who has completed the payroll year as a full-time employee, and who has not used more than 24 hours (for a 40 hour employee) or 36 hours (for a 24 hour employee) of sick leave in the preceding payroll year. Any employee who completed the previous payroll as a fulltime employee and who did not use any sick leave during the payroll year will receive one additional day of pay 8 hours or 10 hours for 40 hour week employees and 24 hours for 24 hour employees. Well day pay is granted the second pay period following the completion of payroll year.

F. Upon learning of pregnancy and having confirming documentation, the employee will notify her immediate supervisor who will in turn notify the Fire Chief/Airport Public Safety Chief through channels. The employee shall be temporarily assigned to non-hazardous duty, and the employee shall be returned to normal duty after the end of the pregnancy in accordance with the Departmental regulations (to be developed based upon medical advice and verification by the Human Resources Director).

Article 18: Emergency Leave

A. Eligibility. In the event of a death in an employee's immediate family, the employee may be allowed a leave of absence with pay up to a maximum of five (5) work days (48 hours for 24 hour employees) within the two week period immediately following the death of an immediate family member for the purpose of attending the funeral. Immediate family member is defined as an employee's spouse, children, step-children, parents, stepparents, state approved foster child, or any relative living in the employee's home . For the death of a father-in-law, mother-in-law, brother, sister, grandparents, grandchildren, daughter-in-law or son-in-law, the employee may be allowed a leave of absence up to a maximum of three (3) work days (36 hours for 24 hour employees) to be taken within a two week period immediately following the death of any of these persons. This leave must be approved by the department director and is not charged against any leave accumulation.

B. Reporting Emergency Leave. An employee who is unable to work because of a death in the immediate family must, prior to the employee's scheduled time to report, notify the employee's office or immediate supervisor by phone or messenger.

Article 19: Holidays

A. Employees of the City of Wichita and represented by the Union, shall receive holidays with pay for all legal holidays observed by the City. The City has adopted the federal long weekend plan and observes Martin Luther King Jr. birthday holiday on the third (3rd) Monday in January; President's Day on the third (3rd) Monday in February. Memorial Day will be observed on the last Monday in May.

B. Legal Holidays Observed.

New Years Day	Labor Day
Martin Luther King Jr. Birthday	Veterans Day
Presidents Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day
Personal Holiday *	

* Personal holiday will be individually scheduled by the Department Director. Personal holiday may not be taken until completion of six months of service.

C. Working on Holidays.

1. If an employee on an 8 hour shift is required to work on a holiday, the employee will be paid time and one-half for the hours worked, in addition to 8 hours holiday pay.

2. An employee on a 24 hour shift will receive, in addition to regular pay for time worked, an amount of pay equal to 12 hours times the equivalent hourly rate of the employee's salary.

3. Effective December 24, 2011 an Airport Safety employee on a 24-hour shift will receive, in addition to regular pay for time worked, an amount of pay equal to 17 hours times the equivalent hourly rate of the employee's salary.

D. Holiday Pay Disallowed.

1. When an employee does not comply with a request to work a holiday.

2. When employee is not in pay status for the entire working day preceding and for the entire working day following the holiday.

E. Holidays While on Leave for Employees Working a 40 hour Work Week. Holidays that occur during an approved leave of absence with pay, except injury leave, are not charged as days of leave taken for employees working a 40 hour work week.

F. Additional Holidays. When an additional non-working day is declared by the City Manager, such non-working day shall be treated in accordance with the policy governing holidays.

G. In lieu of the two additional days of vacation granted the 40 hour per week employees, 24 hour employees shall be granted 12 hours of additional pay on the first pay day in the months of April and October at the regular rate of pay. This provision does not apply to Airport Public Safety.

H. Holidays Falling on Non-Work Days. When a legal holiday falls on the first non-work day (Employee's Saturday) the preceding work day shall be observed; and when the holiday falls on the second non-work day (employee's Sunday) the following work day shall be observed, unless otherwise directed by the City Manager.

Article 20: Seniority-Departmental

Layoffs. In the event that a reduction in force becomes necessary due to phase-out of a program, reduction in funds, or other similar reason, the following procedures will apply:

A. The Department Director will identify the specific number and type of job classifications to be reduced.

B. The Department Director will then select employees in those job classifications who are to be laid off.

C. Employees will be selected by the Department Director on the basis of both total seniority and all annual performance ratings.

D. The list of job classifications and names of employees selected will then be submitted to the Human Resources Director. The Human Resources Director will obtain the approval of the City Manager prior to layoff.

E. An attempt will be made to provide employees selected for layoff with at least two weeks advance notice.

F. An employee who is laid off and who has previously occupied a lower position can displace or "bump" an employee in the lower position with less seniority. If the employee elects to accept the lower position (optional) rather than being laid off, the employee's salary will be kept at the current level or the last step of the lower range.

G. Recall of employees shall be limited to the department from which they were laid off. Laid off employees will be placed on a recall list for eighteen months following layoff and are required to keep Human Resources informed of their current address. Recall shall be in reverse order of layoff (i.e., the first employee laid off will be the last to be recalled). If an employee is recalled after six months on layoff, the employee may be required to pass the entrance level Firefighter physical agility examination, and the physical examination so long as the Firefighter is not penalized on the physical examination for past job related injuries or diseases that originally occurred during the Firefighter's prior employment with the City. No new employees shall be hired until all those laid off that are on the recall list have been called back to work. Call back shall be initiated by registered letter from Human Resources to the employee's last known address with fourteen calendar days permitted for response. Employees laid off while in recruit or probationary status have no rights to recall.

H. The Fire Administration shall maintain and make available an updated seniority roster at all times. The Local shall be allowed to print two such rosters per year. Any objections to the seniority list shall be reported to the Department Director.

Article 21: Probation

A. Length of Probation. The probationary period shall be 12 months for new employees. The probationary period begins upon appointment to Firefighter, the first pay period following completion of recruit training.

B. An employee may be released at any time during recruit training or the employee's probationary period.

Article 22: No Strike-Lockout

A. The Union shall not participate in any strike, in accordance with the State Law, K.S.A. 75-4333 (c) (5). The State Law defines "strike" as meaning an action taken for the purpose of coercing a change in the conditions, rights, privileges or obligations of employment through the failure by concerted action with others to report for duty or to work at usual capability in the performance of the normal duties of employment.

B. The City shall not institute, authorize, cause, aid, ratify or condone any action to provoke interruption of or prevent the continuity of work normally and usually performed by the employees for the purpose of coercing employees into relinquishing rights guaranteed under the law.

Article 23: Grievance Procedure

A. A grievance is defined as any dispute between the unit or members of the unit and Department Director or representatives concerning the terms of this Agreement or working conditions.

B. A work day, for the purposes of computing the time requirements of this grievance procedure, shall be a normal 8 hour shift, Monday through Friday. In computing the period of time, the day of the act or event shall not be included. The designated time period begins the following work day.

C. Any grievance as defined by Section A of this Article shall be settled in the following manner:

1. The grievance shall be taken in writing to the employee's immediate supervisor outside the bargaining unit within ten (10) work days of receipt of the official written notification of the discipline imposed The immediate supervisor will render a decision within ten (10) work days. Copies of the supervisor's decision will be sent to the employee, the I.A.F.F. President, and the Employee Relations Officer.

2. Should the grievance not be resolved satisfactorily by the immediate supervisor, the employee and/or the Union Representative may take the grievance to the Division Director. The employee and/or Union Representative must initiate the grievance in writing to the Division Director within ten (10) work days from the date of decision of the immediate supervisor. The grievant may have a Union Representative present any time the Division Director interviews the grievant. The Division Director will render a decision within ten (10) work days to the grievant in writing.

3. Should the grievance not be resolved satisfactorily by the Division Director the employee and/or Union Representatives may take the grievance to the Department Director. The employee and/or Union Representative must initiate the grievance in writing to the Department Director within ten (10) work days from the decision of the Division Director. The grievant may have a Union Representative present at any time the Department Director interviews the grievant. The Department Director will render a decision within fifteen (15) work days to the grievant.

4. Should the grievance not be resolved satisfactorily by the Department Director, the employee may, within ten (10) work days of the completion of step 3, appeal the grievance, in writing to the Employee Relations Officer.

5. The Employee Relations Officer shall, within fifteen (15) work days after the receipt of the appeal, contact the I.A.F.F., the employee, and all supervisory personnel concerned, and attempt to resolve the grievance. The written results of the findings of the Employee Relations Officer will be given to the employee, the I.A.F.F., and to the Human Resources Director.

   If the grievant is not satisfied with the findings of the Employee Relations Officer, he/she may request a hearing before the Grievance Board. The request must be submitted to the Employee Relations Officer within ten (10) work days following receipt of the Employee Relations Officer's response.

   Employees requesting a Grievance Board shall exchange witness and exhibit lists one week prior to the scheduled hearing. Upon request, the parties will provide copies of any exhibit not already in the possession of, or otherwise unavailable to that party.

6. The Employee Relations Officer shall:

   a. convene the Grievance Board as soon as practical and,

   b. request of the Departmental Director a letter to the Employee Relations Officer setting forth the specific reasons for the decision and the action.

7. The Employee Grievance Board shall consist of five (5) members, two (2) to be appointed by the Union, two (2) to be appointed by the City Manager and the Department Director. The fifth member shall be selected by the Union President and Department Director. The Union will bear the cost of Union Representatives serving on the grievance board. The Employee Relations Officer shall handle all correspondence related to the hearing, and establish the location, time and date of the hearing. The Board shall draw the necessary rules and regulations to conduct the hearing. Rules and regulations of the Board shall provide for the grievant and the City to have the right to:

   - present evidence supporting their position.
   - call witnesses.
   - cross examine witnesses.
   - be represented by counsel at the hearing.

   Proceedings shall be recorded. Rules drawn by the Board shall be approved by the Union and management. Witness/employees are obliged to appear before the Board during their regularly scheduled working hours when directed to do so by the Board. The Employee Relations Officer shall act as secretary to the Board during the hearing.

8. The Board shall make written findings of the fact which shall be included in the Boards recommendation and shall be forwarded to the City Manager within ten (10) work days of the conclusion of the hearing. If the Board, on any issue of fact, cannot issue a finding, the City Manager shall make an investigation. If the City Manager desires more information about any of the facts, a request shall be made of the Board, who shall hold additional hearings if necessary, and deliver all requested information to the City Manager. The City Manager shall render a decision within ten (10) work days of the City Manager's receipt of the Board's recommendation. The decision of the City Manager shall be final.

9. An employee who desires to file a grievance concerning termination of employment shall do so by filing a written grievance following procedure beginning at paragraph four of this Article.

10. The burden of proof is on the grievant except for discipline cases where the employer has the burden of proof for just cause. All steps of the grievance procedure shall be adhered to by all parties in good faith and pursuant to the prescribed time frames set out in the grievance procedure unless mutually agreed by the parties.

11. In the event the employer does not respond to the time frames set forth, the grievance may be appealed by the employee or Union automatically to the next step of the grievance procedure.

12. In the event the employee or Union fails to appeal a grievance within the time frames set forth, the matter shall be considered resolved and not subject to further processing under the grievance procedure.

13. A grievance filed on behalf of the entire Union membership may commence at step 2 of the grievance procedure.

14. The parties agree that the Department will notify the Union at least 24 hours prior to meeting with any grievant except in case of an emergency.

Article 24: Miscellaneous Provisions

A. In the first calendar year, Recruit Firefighters will be issued protective clothing and fatigue uniforms. Beginning the second calendar year, Firefighters will provide their own fatigue uniforms and will be reimbursed on the last payday of the year. The reimbursement is by cash allowance in the amount of $600 in 2011, $625 in 2012 and $650 in 2013. Allowance paid during the second year of employment will be prorated to the employee's commission date, and paid on the last payday of the second year. This does not apply to Airport Public Safety.

Cash reimbursement will be paid for all succeeding years on the last payday of each year. This uniform allowance will be prorated in the event of mid-year termination.

It will be the employee's responsibility to replace the fatigue uniform items as needed. The City shall furnish to employees all equipment in order for the employee to adequately and safely perform the job as determined by the Fire Chief.

B. Bulletin Boards. The City shall provide space on presently existing bulletin boards for the Union to post notices pertaining to Union business. With the exception of the posting of the notice of a meeting, the minutes of a meeting, or agendas, all other postings must be approved in advance by the Battalion Chief or above.

C. When an employee is requested to, and voluntarily agrees to, use the employee's automobile while in employment with the City, the employee shall be paid for miles driven on the job in accordance with the City's administrative policies and regulations governing reimbursements.

D. The City shall reimburse or furnish all safety devices which, by virtue of the employee's employment with the City, the employee is required to possess. If the employee, through willful negligence or abuse, destroys, damages or loses such equipment, uniforms, etc., they shall be replaced at the employee's expense, or the employee may be subject to disciplinary action.

E. The City shall reimburse bargaining unit members for their EMT/MICT Recertification fee upon presentation of a receipt of payment.

F. There shall be created a Safety Advisory Committee comprised of six members, three appointed from management and three from the Union. The Committee shall advise the Department Director as to job safety problems and make appropriate recommendations. This Committee will be guided, but not limited, by the following principles:

1. Make immediate and detailed investigations into each accident, death or injury to determine the fundamental causes.

2. Develop data to indicate accident sources and injury rates. Develop uniform reporting procedures.

3. Inspect the Fire Department facilities to detect hazardous physical conditions or unsafe work methods, including training procedures, at least once every 18 months.

4. Recommend changes or additions to protective equipment, protective apparel or devices for elimination of hazards of fire fighting.

5. Promote and participate in the safety program through department meetings.

6. Make recommendations for the correction of unsafe or harmful working conditions.

7. Review and analyze all reports of accidents, deaths, injuries and fire-related illnesses. Investigate causes and recommend rules and procedures for the promotion of health and safety of all Fire Department personnel.

The Committee shall have the right to make its findings and recommendations public, except those coming under Article 24, Section F (1), which can be released only for statistical purposes, or pursuant to proper discovery through the courts.

G. Jury Duty.

1. Upon receipt of an order requiring the employee to report for Jury Duty, the order will be shown to immediate supervisor.

2. Fees received by an employee for Jury Duty will be turned in to the City Treasurer's Office. An employee will not be required to return money that is received as reimbursement for travel and meals while serving on Jury Duty. Employees are to report to duty on scheduled duty days after being released from jury duty.

3. An employee is not required to return money received for Jury Duty or subpoenaed witness when performed on a regular day off, or on vacation leave.

H. Maintenance. Realizing that the Professional Firefighters duties are primarily prevention of fires, training, and responding to emergency calls, both parties recognize and agree that the Firefighter may be required during the normal work day to perform routine general maintenance and routine general refurbish duties pertaining to the firehouse facility and yard. It is the intent of management to be reasonable in its requirements pertaining to these incidental duties.

It is also understood that the Firefighter will do any item of work that must be done immediately in an emergency situation and then only as a temporary method to avoid additional loss of property or life. Except for these emergency situations, the City will at all times provide proper equipment under the circumstances involved.

The City assumes any liability associated with the completion of emergency work, maintenance or refurbishment work by the Firefighter, which is performed in good faith.

I. Shift Exchange. In general, shift exchange policy shall be interpreted as liberally as possible under the law, provided there shall be no exchange during drill and exchange shall be with a person of equal rank and job qualifications. No shift exchange shall create any overtime pay liability.

Airport Public Safety will continue to use established shift exchange policies.

J. Anytime an employee is transported from the station where the employee reported at the beginning of the duty day to another station, the employee shall be returned to the station at which the employee initially reported for duty prior to the end of the duty shift.

K. Vehicle Insurance. The City shall provide legal representation for each employee covered by this Agreement who is responsible for the operation of City vehicles or equipment. Any legal representation shall be provided by or through the City's legal staff or outside council retained by the City at no expense to the employee.

L. Educational Leave. Educational leaves of absence without pay may be granted to an employee not to exceed 12 months. Course work shall be related to a fire career. Requests shall be submitted to the Department Director in writing, and must be approved by the City Manager on the basis of presently-existing policy.

M. The Union shall be provided with written notification of all changes in the Wichita Fire Department policy before said policies go into effect where practical.

N. Group Orientation. During the course of training in recruit classes, Fire recruits will be advised of the representative status of the Employee Organization. In addition, a fact sheet prepared by the Employee Organization and approved by the Department Director, which describes the goals and objectives, voluntary nature of membership, procedures for making and revoking allotments for the payment of Employee Organization dues, the procedures for processing

grievances, and the coverage and scope of this agreement may be provided. Such information shall not be presented in a way that could be construed critical of the City or in a way that indicates that membership in the Employee Organization is mandatory. The Employee Organization shall be allowed up to one hour and a half (1 1/2 hr) with each recruit class to distribute copies of the fact sheet and this Agreement, and to discuss organizational goals, policies, procedures and this Agreement. There shall be no direct solicitation of membership in the Employee Organization at group orientations.

O. Communications. The City shall provide space in each division, and/or stations for the Union to place a communications book for information pertaining to Union business.

1. Union related mail shall be distributed through regular Fire Department inter-office mail by Fire Department personnel, provided the deliveries do not necessitate special or extra trips.

2. The Union shall be allowed to use the Fire Department E-mail system for the purpose of distributing Union related memos and information. There shall be no expectation of privacy and the City may discipline any employee in conjunction with misuse of E-mails.

P. Court Appearance.

1. Employees required to appear or be ready to appear for a job related deposition, trial or other legal proceedings in their official capacity shall be compensated as if they are on duty. Any witness fees or pay received from the court will be turned over to the City Treasurer's Office.

2. The City shall provide legal representation to Fire Department personnel in accordance with K.S.A. 75-6101 et seq. and City Code 2.62.100 et seq.

3. Employees involved in a personal court case, either as a plaintiff, defendant or subpoenaed as a witness, may be granted leave, but the time taken off must be charged to either vacation leave or to leave without pay.

4. On receipt of an order requiring an employee to make a court appearance or attend a deposition, arrangements must be made by the employee with the employee's supervisor to get permission to comply with order.

5. If an employee is required to appear or be ready to appear in a criminal matter as a witness for a government, information relating to discipline and any pending investigations of allegations of discrimination and/ or lack for truthfulness will be disclosed to the prosecutor. The prosecutor may be required to disclose the information to the criminal defendant or the defendant's attorney. The information may be used by the criminal defendant to impeach the employee who testifies. Due to the risk that impeachment may have a significant adverse affect on a criminal prosecution, no employee who has been disciplined for any form of discriminatory behavior, including harassment, or who has been found to have been untruthful in any internal investigation or in any way related to their employment, can be assigned to positions in investigations or arson.

Q. Daily Staffing. The Union and the City agree that firefighter safety is of utmost importance in the performance of the duties of the Department. It is also recognized that the effectiveness of emergency response is dependent upon the number of firefighters committed to the mitigation of the community emergencies within the scope of the Wichita Fire Department strategic plan. Therefore, to ensure safety and effectiveness, the daily recommended staffing level for the City of Wichita shall be a minimum of 117 emergency response personnel.

Emergency response personnel are positions require to respond for the proper mitigation of an emergency incident including:, Battalion Chief, Safety Officer, Captain, Lieutenant, Firefighter and other twenty-four hour emergency response personnel. Furthermore, it is understood that the minimum staff or apparatus will be maintained at Engine/Quint/Truck-three persons, and Squads- two persons. Fire Stations operating with one Engine or Quint unit permanently assigned to a one unit station location will be maintained with four personnel.

Unavoidable factors such as unscheduled leave, sick leave or personal vacation leave may result in daily staffing levels exceeding or falling below the level of 117 during the course of a duty shift. Nothing in this Article or Agreement shall be interpreted as requiring certain minimum staffing levels, requiring the assignment of specific personnel or removing the sole authority of management to determine staffing levels. Hiring off duty personnel to achieve daily staffing levels is not considered emergency call back as outlined in Article 7,G.

Article 25: Savings Clause

If any provision of this Agreement should be held invalid by any court of competent jurisdiction, or if compliance with or enforcement of any provision should be restrained by any tribunal, the remainder of this Agreement shall not be affected thereby and the parties shall enter into negotiation for the sole purpose of redrafting a mutually satisfactory replacement for such provision so affected.

Article 26: Criminal Charges

Any employee who has been charged with a crime and suspended without pay and who has subsequently been absolved of the charges, shall receive any back pay which may be due within 30 days after the employee provides the City with a verified statement of unemployment compensation paid by the State, which amount shall be deducted from any back pay due.

Article 27: Exclusions

It is expressly understood that all matters not included in this Agreement are by intention and design specifically excluded and fall within the powers, duties and responsibilities of the City of Wichita.

Article 28: Disciplinary Action

A. Employees may only be disciplined for just cause. In any grievance procedure challenging discipline, the employer bears the burden of proof.

B. At any meeting between an employee and his/her supervisor in which there is discipline to be imposed, said employee, at his/her request, shall be entitled to the presence of a Union Representative during meeting and discussion.

C. In determining the appropriate disciplinary action to be taken in a given case, the employer may not rely upon any suspension of the employee in question which occurred more than 36 months prior to the alleged or suspected cause for discipline; and, any other form of discipline which occurred more than 36 months prior to the events in question may not be relied upon in any manner in determining the appropriate discipline.

D. Employees, charged with alleged violations requiring an appearance before the Accident Review Board (ARB), would have any discipline deferred until they appear before the ARB, unless the employee waives his/her right to appear before the ARB.

E. Whenever an employee is asked to place his signature upon any document or report for disciplinary action, it is understood that said employee is merely acknowledging receipt of said document and does not indicate whether the employee agrees or disagrees with the document, report or disciplinary action.

F. Employees receiving discipline in the form of unpaid suspension shall have the option of forfeiting up to 80 hours of accrued paid vacation days for 40 hour employees or 120 hours of accrued paid vacation days for 24 hour employees.

Article 29: Substance Testing

All bargaining unit members are subject to drug and alcohol testing as set forth in DOT regulations as amended by the Federal Government except only 10% of the bargaining unit members may be tested on an annual basis.

Article 30: Duration and Termination

This Agreement shall take effect upon approval by the City Council of the City of Wichita. This Agreement shall continue in full force and effect until December 20, 2013. By mutual agreement between the parties, any provisions of this Agreement may be opened for change or modification. Any subsequent statements of understanding which result from such reopening shall be set forth and made an amendment to this Agreement, and when ratified by the parties shall constitute a change in policy.

IN WITNESS WHEREOF, THE CITY and THE UNION have hereunto set their hands this _____

FOR THE CITY OF WICHITA

_____
Robert Layton, City Manager

_____
Carl Brewer, Mayor

FOR THE LOCAL 135 IAFF

_____
Merle Rocky Bumgarner, Union President

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

2011 - Effective December 25, 2010

		A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Firefighter (2912)	891	13.2692	13.6009	13.9409	14.2895	14.6467	15.0129	15.3882	15.7729	16.1672	16.5714	16.9857	17.4103	17.8456	18.2917	18.7490
Firefighter (2080)		18.5769	19.0413	19.5173	20.0052	20.5054	21.0180	21.5435	22.0820	22.6341	23.2000	23.7800	24.3745	24.9838	25.6084	26.2486
Fire Lieutenant (2912)	892	14.6653	15.0320	15.4078	15.7930	16.1878	16.5925	17.0073	17.4325	17.8683	18.3150	18.7729	19.2422	19.7233	20.2163	20.7217
Fire Lieutenant (2080)	824	20.5315	21.0448	21.5709	22.1102	22.6629	23.2295	23.8102	24.4055	25.0156	25.6410	26.2820	26.9391	27.6126	28.3029	29.0104
Fire Captain (2912)	893	16.2602	16.6667	17.0834	17.5104	17.9482	18.3969	18.8568	19.3283	19.8115	20.3068	20.8144	21.3348	21.8682	22.4149	22.9752
Fire Captain (2080)	827	22.7643	23.3334	23.9167	24.5146	25.1275	25.7557	26.3996	27.0596	27.7361	28.4295	29.1402	29.8687	30.6154	31.3808	32.1653

2012 - Effective December 24, 2011

		A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Firefighter (2912)	891	13.6009	13.9409	14.2895	14.6467	15.0129	15.3882	15.7729	16.1672	16.5714	16.9857	17.4103	17.8456	18.2917	18.7490	19.2177
Firefighter (2080)		19.0413	19.5173	20.0052	20.5054	21.0180	21.5435	22.0820	22.6341	23.2000	23.7800	24.3745	24.9838	25.6084	26.2486	26.9048
Fire Lieutenant (2912)	892	15.0320	15.4078	15.7930	16.1878	16.5925	17.0073	17.4325	17.8683	18.3150	18.7729	19.2422	19.7233	20.2163	20.7217	21.2398
Fire Lieutenant (2080)	824	21.0448	21.5709	22.1102	22.6629	23.2295	23.8102	24.4055	25.0156	25.6410	26.2820	26.9391	27.6126	28.3029	29.0104	29.7357
Fire Captain (2912)	893	16.6667	17.0834	17.5104	17.9482	18.3969	18.8568	19.3283	19.8115	20.3068	20.8144	21.3348	21.8682	22.4149	22.9752	23.5496
Fire Captain (2080)	827	23.3334	23.9167	24.5146	25.1275	25.7557	26.3996	27.0596	27.7361	28.4295	29.1402	29.8687	30.6154	31.3808	32.1653	32.9694

2013 - Effective December 22, 2012

		A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Firefighter (2912)	891	13.9409	14.2895	14.6467	15.0129	15.3882	15.7729	16.1672	16.5714	16.9857	17.4103	17.8456	18.2917	18.7490	19.2177	19.6982
Firefighter (2080)		19.5173	20.0052	20.5054	21.0180	21.5435	22.0820	22.6341	23.2000	23.7800	24.3745	24.9838	25.6084	26.2486	26.9048	27.5775
Fire Lieutenant (2912)	892	15.4078	15.7930	16.1878	16.5925	17.0073	17.4325	17.8683	18.3150	18.7729	19.2422	19.7233	20.2163	20.7217	21.2398	21.7708
Fire Lieutenant (2080)	824	21.5709	22.1102	22.6629	23.2295	23.8102	24.4055	25.0156	25.6410	26.2820	26.9391	27.6126	28.3029	29.0104	29.7357	30.4791
Fire Captain (2912)	893	17.0834	17.5104	17.9482	18.3969	18.8568	19.3283	19.8115	20.3068	20.8144	21.3348	21.8682	22.4149	22.9752	23.5496	24.1383
Fire Captain (2080)	827	23.9167	24.5146	25.1275	25.7557	26.3996	27.0596	27.7361	28.4295	29.1402	29.8687	30.6154	31.3808	32.1653	32.9694	33.7937

Agenda Item No IV-5

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: 2012 Performance Contracts for Cultural Funding (All Districts)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: New business

- -

Recommendation: It is recommended that the City Council approve 20 Performance Contracts for Fiscal Year (FY) 2012 Cultural Funding and four (4) Operating Agreements.

Background: In 2005, the City Council approved the formation of the Cultural Funding Committee (CFC) consisting of 11 members. Members of the City Council appointed seven members. The Arts Council appointed four members. The committee consists of representatives from government, education, business, philanthropy, arts organizations and the public at large. The committee was assigned the responsibility to make recommendations to members of the City Council on the allocation of funding for operational grants for arts and cultural organizations. This year, the committee made total recommendations in the amount of $3,160,537**,** which included funding identified for Group One organizations in its five-year Operational Agreements and Cultural Funding allocations recommended for qualifying arts organizations.

Group One organizations were defined and identified in the Cultural Arts Plan, which was updated and approved by the City Council in November 2008. The definition of a Group One organization is a not-for-profit arts or cultural organization in which "public-owned facilities or land, public-owned collections (artifacts, exhibits, displays, etc.), public employees and/or significant public support of the organization's operating budget are provided by the City." These Group One organizations include the Wichita Art Museum, Wichita-Sedgwick County Historical Museum, Botanica, Mid-America All-Indian Center and Old Cowtown Museum.

In 2010, the City entered into five-year Operational Agreements with the Group One organizations to protect the City's investment in these organizations. The purpose of the Operating Agreements is to define the City's performance expectations for Group One organizations and to indentify anticipated funding amounts for five years which allows the organizations the ability to create long-term strategic plans.

Each Group One organization was required to submit an Annual Operating Agreement Report which was reviewed by the Cultural Funding Committee using performance criteria. This criterion was approved by the organizations and the City Council in November 2010 and added to the Operating Agreements at that time as an addendum. This list of performance criteria was developed to encourage Group One organizations to perform at a higher level of excellence and to determine the overall health of the organization. Once the Cultural Funding Committee reviewed the Annual Operating Agreement reports, it then submitted a recommendation to the City Council to honor the funding amounts identified for FY2012 in the Operating Agreements.

Old Cowtown Museum came under the management of the Division of Arts & Cultural Services in August of 2007 and receives the majority of its funding from the City's General Fund. As a result of this change, a legal Operating Agreement is not feasible**.** However, they are required to submit an Annual Report and expected to attain the same level of performance excellence as the other Group One organizations.

The performance criteria which were used by the Cultural Funding committee to determine the performance level and overall health of the Group One organizations included:

- Quality of the Organization
    - Demonstrates diversity of board members and rotation of members.
    - Identifies staffing levels and demonstrates staff stability.
    - Stewardship of collection (Identifies acquisitions, loans and deaccessions.)
    - Demonstrated record of producing/presenting arts of the highest quality over the past 2 or 3 years through attendance at events and participation in programs.
    - Appropriateness of the program/projects to the organization's core values; mission, audience, community, and/or constituency.
    - Organizations commitment to programs and activities reflected through attendance data.
    - Demonstrates a commitment to youth programming.
    - Identity program and percentage of cost-recovery.

- Community Impact
    - Demonstrates an effort to reach wide audiences including underserved populations.
    - Demonstrates ability to collaborate and create program partnerships with other organizations, local businesses, and schools.
    - Demonstrates ability to contribute to the quality of life for the citizens of Wichita through diversity and attendance of audience and participation in programs.
    - Rotates offerings/exhibits to enhance the experience of visitors or audience.

- Financial Stability
    - Identified different forms of financial support including grants, fundraisers and foundation.
    - Explained how operating funds from the City of Wichita were used.
    - Balanced operating budget.
    - Public commitment to programs and activities reflected through earned income data. (Including total attendance, total paid admissions, total paid memberships, and total attendance of school groups/tours.)
    - Executed a strategic plan.
    - Demonstrated three (3) year growth in earned income.
    - Maintains a three (3) to six (6) month operating reserve.

Once the Cultural Funding Committee members reviewed the five (5) Annual Operating Agreement Reports for the Group One organizations, they reviewed FY2012 Cultural Funding applications from 27 arts and cultural organizations**,** which included the five (5) Group One organizations. As a result of the approved Cultural Funding review process completed during April 5 – April 26, 2011, the committee recommended Cultural Funding for 21 of the applying organizations. The City Council approved the recommendations for funding in August 2011 as part of the FY2012 City of Wichita budget.

Analysis: The 20 Performance Contracts and four (4) Operating Agreements provide the City with a fair and equitable method of allocating funds to the arts organizations and ensure accountability of performance measures. These contracts allow for audits of the usage of City funding and a demonstration of meeting the excellence criteria developed. Funding recommendations approved as part of the FY2012 budget are below:

Group One - Cultural Funding:

Organization Name	2010 Amount Funded	2011 Amount Funded	2012 Amount Recommended
Group 1 with Operating Agreement			
Historical Museum	$136,000.00	$138,040.00	$142,181.20
The Wichita Art Museum, Inc.	$1,534,643.00	$1,557,663.00	1,604,392.52
Mid-America All-Indian Center	$157,900.00	$160,269.00	165,076.55
Botanica, The Wichita Gardens	$288,700.00	$292,560.00	301,336.00
Cowtown	$241,851.00	$245,475.00	245,475.00
Total Group One Operating Amount	**$2,359,094.00**	**$2,394,007.00**	**$2,458,461.27**

All Other Organizations - Cultural Funding:

Organization Name	2010 Amount Funded	2011 Amount Funded	Final Score	2012 Amount Recommended
Arts Partners	$40,000.00	$42,541.00	95	$41,792.00
Wichita Public Library Foundation	$41,054.00	$70,000.00	93	$63,917.00
WSU Foundation (Ulrich Museum)	$20,000.00	$35,000.00	91	$34,417.00
Botanica	$84,100.00	$28,070.00	90	$24,583.00
Wichita Symphony	$95,000.00	$110,000.00	90	$98,333.00
Music Theatre of Wichita	$85,000.00	$85,000.00	90	$78,667.00
Sedgwick County Zoological Society	$45,000.00	$58,000.00	90	$57,033.00
Chamber Music at the Barn	$10,000.00	$16,000.00	89	$9,833.00
Tallgrass Film Festival	$15,000.00	$18,000.00	88	$22,125.00
Museum of World Treasures	$15,000.00	$45,000.00	88	$34,417.00
Kansas Aviation Museum	$30,000.00	$45,000.00	87	$41,792.00
Music Theatre for Young People	$3,000.00	$6,000.00	87	$9,833.00
Old Cowtown Museum	$20,000.00	$18,188.00	87	$24,583.00
Wichita Grand Opera	$20,000.00	$0.00	87	$9,833.00
Exploration Place	$0.00	$0.00	87	$41,792.00
Mid-America All-Indian Museum	$20,000.00	$3,816.00	85	$17,700.00
Historical Museum	$20,000.00	$8,980.00	85	$7,866.00
Wichita Children's Theatre	$30,000.00	$40,000.00	81	$27,961.73
Orpheum Performing Arts Center, Ltd	$40,000.00	$35,000.00	80	$29,500.00
The Kansas African American Museum	$25,000.00	$0.00	80	$19,667.00
Arts Council**	$6,540.00	$6,540.00		$6,431.00

Organization Name	2010 Amount Funded	2011 Amount Funded	Final Score	2012 Reduced Amount
Opera Kansas	$5,000.00	$4,000.00	79	$0
Wichita Art Museum	$20,000.00	$8,491.00	78	$0
*Newman University Fine Arts	$0.00	$0.00	77	$0
*Heart of America Men's Chorus Inc.	$5,000.00	$6,000.00	73	$0
*Ballet Wichita	$10,000.00	$0.00	72	$0
*Griot's Storytelling Institute	$8,500.00	$0.00	72	$0
*Camp Allegro Wichita	NA	$0.00	66	$0
Friends University	$5,000.00	NA		Did not apply
Wichita Chamber Chorale	$2,000.00	NA		Did not apply
American Guild of Organists	$500.00	NA		Did not apply
Total supplemental recommended for all other organizations (21 organizations funded FY2012)	**$720,694.00**	**$689,626.00**		**$702,075.73**
Total Amount to Allocate	**$3,079,788.00**	**$3,083,633.00**		**$3,160,537.00**
*Scored below baseline 2012				

** Arts Council does not apply for funding. The amount allocated is to provide necessary administrative funding support for the Cultural Funding committee which is a sub-committee of the Arts Council. The amount allocated has remained the same since 2006. During the FY2012 review, the CFC decided the Arts Council should submit an application for future funding like all other organizations.

Financial Consideration: The recommended funding amounts are included in the 2012 Adopted Budget.

Goal Impact: To Enhance the Quality of Life for citizens of Wichita by protecting the City's investment in arts and cultural organizations.

Legal Consideration: The Law Department has prepared and approved the form of the proposed Performance Contracts and Operating Agreements.

Recommendations/Actions: It is recommended that City Council approve 20 Performance Contracts for Cultural Funding for Fiscal Year (FY) 2012 and four (4) Operating Agreements.

Attachments: 20 Performance Contracts
4 Operating Agreements

AGREEMENT FOR SUPPLEMENTAL FUNDING OF ARTISTIC DEVELOPMENT

This agreement is entered this **1st day of November, 2011** between the City of Wichita, KS, a municipal corporation, (hereinafter referred to as the "CITY") and **The Arts Council**, **Inc.**, a not-for-profit organization, (hereinafter referred to as "Provider").

WITNESSETH:

WHEREAS, the CITY is interested in providing funding for non-profit and governmental partners to aid the development of programs providing for the general artistic and cultural enhancement of the community, and

WHEREAS, Provider, has the facilities, expertise and ability to provide services and programs to that end, and has presented a favorable proposal to accomplish that purpose to the benefit of the community's general welfare;

NOW, THEREFORE, the parties agree as follows:

I. ***Term***. The services of Provider are to begin **January 1, 2012 through December 31, 2012** and shall be undertaken and completed in such sequence as to assure their expeditious, satisfactory completion in light of the purposes of this agreement. This agreement shall remain in force through the completion of all requirements found within the attached Scope of Services, which requirements shall in any event be completed later than one year from the date of execution.

II. ***Services to be performed***. Provider shall perform the services described in the attached Scope of Services (Attachment A), which is made a part of this agreement by reference. The CITY shall be responsible for meeting any obligations set out for it in Attachment A according to the terms stated in that document.

III. ***Billing and Payment.*** The services rendered by Provider pursuant to this agreement shall be compensated in a total amount not to exceed **Six thousand four hundred thirty one dollars ($6,431)** payable in four equal, quarterly installments and due the first business day of the month upon presentation of a detailed invoice by PROVIDER beginning **January, April, July and October, 2012.** The Scope of Services shall establish require that the performance objectives will be specific, measurable, observable, and relevant and timed.

IV. ***Independent Contractor Status.*** Provider's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the CITY. Any and all employees or agents of Provider while engaged in the performance of any work or service required by Provider under this agreement shall be considered employees of Provider only and not of the CITY. Any and all claims that may arise under the Kansas Workers' Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of Provider's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of Provider.

V. ***Acceptance Procedure.*** Provider shall render the deliverables described in Attachment A, under the terms and conditions thereof. If the CITY believes the completed work does not conform to the requirements of the agreement, it shall notify Provider in writing thereof, within the above-mentioned twenty (20) days and shall indicate with particularity in what manner the project fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.

VI. ***Nondiscrimination in Employment.*** During the performance of this agreement, Provider agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The CITY's anti-discrimination requirements, attached as Attachment B, are made a part of this agreement by reference.

VII. ***Termination by the CITY.*** If, for any cause, Provider shall fail to fulfill its obligations under this agreement in a timely and proper manner as required by this agreement, or if Provider shall violate any of the covenants, agreements, or stipulations of this agreement, the CITY shall thereupon have the right to terminate this Agreement by giving written notice to Provider of such termination, effective thirty (30) days following receipt of same, provided, however, that Provider shall be provided a reasonable time within which to remedy such deficiencies. Provider shall be entitled to receive just and equitable compensation for any satisfactory services completed prior to the effective date of such termination.

VIII. ***Termination by Provider.*** Provider may terminate this agreement at any time for failure of the City to comply with any material terms or conditions of this agreement, effective thirty (30) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies.

IX. ***Governing Law.*** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this agreement.

X. ***Waivers.*** The failure of the parties to enforce, at any time, the provisions of this agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this agreement shall be taken and construed as cumulative, that is, as being in addition to every other remedy provided by operation of law.

XI. ***Representatives of Contracting Parties.*** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

John D'Angelo, Manager
Division of Arts & Cultural Services
225 W. Douglas
Wichita, Kansas 67202
316-303-8600

(b) Representing the Provider:

Robert Lamkey, Chairman of the Board
The Arts Council
334 N. Mead
Wichita KS 67202
316-462-2787

XII. ***Insurance and Indemnification.***
Provider shall save and hold the 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 Provider, its officers, agents, servants, or employees, occurring in the performance of its services under this agreement. Provider will carry insurance of the type and in the amounts, if any, as required in the Scope of Services. Use of such coverage to policy limits shall not extinguish any remaining liability to the CITY to the extent that the claim against the CITY remains unresolved.

XIII. ***Prohibition against Assignment and delegation.*** Notwithstanding any other provision of this agreement, Provider warrants that none of Provider's duties under this agreement may be delegated to or sub-contracted to any persons other than those described in Attachment A without the express written permission of the CITY.

XIV. ***Third Party Rights.*** It is specifically agreed between the parties that it is not intended by any of the provisions of this agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

XV. ***Compliance with Laws.*** Provider shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this agreement.

XVI. ***Authorization***. By signing this agreement, the Provider's representative represents that he or she is duly authorized by Provider to execute this agreement, and that Provider has agreed to be bound by all of its terms.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor

Arts Council, Inc.

By _____
Robert Lamkey, Chairman of the Board, Arts Council, Inc.

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by the City of Wichita, Kansas and The Arts Council that it is the intent of this contract for the **Arts Council** to provide certain documentation to the City of Wichita for operational arts funding.

FIRST, the Arts Council understands and agrees that the City will evaluate outcome-based performance under this contract.

SECOND, the Arts Council understands and agrees to provide documentation as specified in The Arts Council and the City's mutual agreement. Any specifications or provisions in said mutual agreement that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of The Arts Council and the City's mutual agreement are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The Scope of Services of The Arts Council under this contract includes the following:

Goal 1
Continue operation of the Arts Council and adherence to their mission, goals, and strategic plan.

Goal 2
Continue support for the Cultural Funding process.

Goal 3
Develop long-term funding for the arts by increasing the current granting amount by 5%.

The Arts Council is required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on all printed material, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services, at 316/303-8663.

FINANCIAL MANAGEMENT

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. Budget expenditures to ensure that the sums available to The Arts Council are not over expended and that agencies will have funding to carry out operational activities over their entire contract period. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

SEMI-ANNUAL AND FINAL REPORTS

Prepare one (1) semi-annual report and one (1) year-end Final Report which include: accomplishments and adherence to and satisfaction of the original contract purposes based upon outcomes, measurements and issues/needs identified in the process of pursuing the Scope of Services. The two reports will be due to the CITY, Division of Arts and Cultural Services by the weekday on or closest to **July 31, 2012** with the Final Report due to the CITY by the weekday on or closest to **January 31, 2013.** Final Reports will be provided to the Wichita Mayor/City Council Office and to the City Manager's Office.

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Arts Partners, Inc.**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **forty one thousand seven hundred ninety two dollars ($41,792),** payable in four installments and due the first business day of the months **January, February, March, and April 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER** semi-annual reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Arts Partners, Inc.

_____
Katie S. Lynn, Executive Director
Arts Partners, Inc.

_____
Date

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Arts Partners, Inc., PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Double the number of teaching artists trained in the Signature Core Services model by December 2012 (13 additional artists).

Goal 2
Market programs to schools and parent organizations to increase earned income by 10% by December 2012.

Goal 3
Increase the number of multi-year pledges by donors by 10% over those received in 2011 by December 2012.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on all printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts and Cultural Services, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** reports and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the complete calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2013.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Botanica, Inc.,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services, and in addition to the current "Operational Agreement" allocation from the City of Wichita of $301,336, (hereafter known as "Operating Agreement") which is not subject to the terms of this particular document, **CITY** agrees to pay to **PROVIDER** the sum of **Twenty four thousand five hundred eighty three dollars ($24, 583)**, payable in four equal, quarterly installments and due the first business day of **January, April, July, and October 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual reports** describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012**. This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Botanica, Inc.

_____
Marty Miller, Executive Director
Botanica, Inc.

_____
Date

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Botanica, Inc. PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
By the end of 2012, increase gate revenues by 2% over 2011, by opening the Downing Children's Garden, to generate additional funds to maintain and build relevant horticultural displays.

Goal 2
By the end of 2012, increase rental revenues by 2% over 2011 by incorporating new marketing strategies to attract additional corporate and private events to the Gardens.

Goal 3
By the end of 2012, increase special event revenues by 2% over 2011 by producing relevant, garden-centered events that appeal to and are marketed to a wider section of the community.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on all printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the final FY2011 report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** reports and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012**, with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2013.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Chamber Music at the Barn**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **nine thousand eight hundred thirty three dollars ($9,833),** payable in four, equal, quarterly installments and due the first business day of the month beginning in **January, April, July, and October 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall establish require that the performance objectives will be specific, measurable, observable, and relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the services described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Chamber Music at the Barn

_____
Bob Scott, Director
Chamber Music at the Barn

_____
Date

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Chamber Music at the Barn**, **PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Increase attendance in the garden by 15% or by 90 people at the summer concerts by featuring classic and alternative styles of chamber music by August, 2012.

Goal 2
With expanded marketing, increase Bows at the Barn to a two-week camp by July 2012.

Goal 3
Increase annual fund donations by adding 5 new "Friends and Lovers" and increase corporate/foundation support by $20,000 by October 2012.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the complete calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2013**. Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Exploration Place, Inc.,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **forty one thousand seven hundred ninety two dollars ($41,792)**, payable in four equal, quarterly installments and due the first business day of **January, April, July, and October 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the, **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

EXPLORATION PLACE INC.

_____
Janice B. Luth, President
Exploration Place, Inc.

_____
Date

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Exploration Place Inc. PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Increase paid attendance by 5% over 2011 attendance by having new exhibits and enhanced group sales by December 2012.

Goal 2
Increase educational programming participation by 10% over 2011 program participation by expanding education offerings by December 2012.

Goal 3
Increase the net revenue of the café by 25% over 2011 café performance by trying different locations in the building and different menus by December 2012.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on all printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services, at 316/303-8663**.**

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agency will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the completed calendar year report due to the CITY by the weekday on or closest to **January 31, 2013.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this**1st day of November, 2011,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita-Sedgwick County Historical Museum**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services, and in addition to the current base annual allocation from the City of Wichita of $142,181.20 (hereafter as known as "Operational Agreement") which is not subject to the terms of this particular document, **CITY** agrees to pay to **PROVIDER** the sum of **seven thousand eight hundred sixty six dollars ($7,866)**, payable in four equal quarterly installments due the first business day in **January, April, July and October 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Wichita-Sedgwick County Historical Museum

_____

Eric Cale, Director
Wichita-Sedgwick County Historical Museum Association

_____

Date

CITY OF WICHITA, KANSAS

_____

Carl Brewer, Mayor

_____

Date

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Wichita-Sedgwick County Historical Museum**, **PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Increase paid museum attendance by 5% in 2012 over 2011 attendance by developing and effectively promoting new exhibits and programs.

Goal 2
Develop and conduct 3 new visitor surveys to analyze: visitor experience, visitor demographic and effectiveness of promotional media during the calendar year.

Goal 3
Increase board giving by 10% in 2012 over the previous year's level.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"Wichita-Sedgwick County Historical Museum activities are made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the final FY2011 report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** reports and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the complete calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2013.** . Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Mid-America All-Indian Center, Inc.** a not-for-profit corporation, hereinafter called **"PROVIDER."**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services, and in addition to the current base annual allocation from the City of Wichita of $165,076.55 (hereafter known as "Operational Agreement") which is not subject to the terms of this particular document, **CITY** agrees to pay to **PROVIDER** the sum of **seventeen thousand seven hundred dollars ($17,700)**, payable in four equal quarterly installments and due the first business day of the month beginning **January, April, July, and October 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012**. This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment

/Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Mid-America All-Indian Center, Inc.

_____
Bobbi Meairs, Chairman of the Board
Mid-America All-Indian Center, Inc.

_____
Date

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Mid-America All-Indian Center, Inc. PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'S proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'S PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Develop a series of fee-based culture art classes to increase overall attendance by 2% over 2011 attendance by December 2012.

Goal 2
Develop a series of culture arts classes to increase attendance at Community Night by 2% over the 2011 attendance by December 2012.

Goal 3
Develop marketing and outreach program that will increase 2012 tours by 2% over 2011.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant

recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

The City will prepare budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** report and one (1) year- end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2013**. Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated hereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the revisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st of November, 2011,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Museum of World Treasures Inc.,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **thirty four thousand four hundred seventeen dollars ($34,417)** payable in four equal, quarterly installments and due the first business day beginning **January, April, July, and October 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Museum of World Treasures, Inc.

_____

Mike K. Noller, President
Museum of World Treasures, Inc.

_____

Date

CITY OF WICHITA, KANSAS

_____

Carl Brewer, Mayor

_____

Date

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Museum of World Treasures, Inc., PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'S proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'S PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Increase contributed income by $50,000 versus 2011 by December 31, 2012.

Goal 2
Develop and deliver two new on-going, monthly, free with Museum admission, adult-focused programs by December 31, 2012.

Goal 3
Develop, fabricate and open two permanent exhibits and one temporary exhibit in 2012.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts and Cultural Services at 316/303-8663**.**

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

The City will prepare budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-annual and Final Reports
Prepare one (1) semi-annual **PROVIDER** report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2013.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated hereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

BOTANICA, INC. OPERATING AGREEMENT

THIS OPERATING AGREEMENT entered into this 20th day of October 2009 by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Botanica, Inc., a Kansas Not-For-Profit corporation duly organized under the laws of the State of Kansas, (hereinafter referred to as Botanica).

WITNESSETH:

WHEREAS, Botanica is duly incorporated and empowered among other things to establish, maintain and operate Botanica, The Wichita Gardens, a significant horticulture display garden for enjoyment and education of the citizens of Wichita, the region, and area tourists; and

WHEREAS, on June 29, 1917, Coler Sim and his wife Nellie H. Sim deeded land to the City, to be known as Arthur B. Sim Park. Condition Number 6, of the Warranty Deed states the land shall not to be used other than as a recreational park. In 1985 the Sim Family approved the establishment of Botanica, The Wichita Gardens. The City and Botanica formed a public/private partnership on the 10th day of April, 1987 to operate on land, donated to the City by Coler Sim and now owned by the City, and to develop and improve facilities on that land with public funds supplied by the City and private funds and support provided by Botanica. In June of 2008, Greg Hissem, the great grandson of Coler Sim and heir of the Sim family estate, approved the expansion of Botanica, The Wichita Gardens, to build on land west of the current facility south of the Sim Golf Course and northwest of Cowtown Museum; and

WHEREAS, Botanica has contributed substantial sums of money, time and effort in connection with the establishment and development of Botanica, The Wichita Gardens, and has assured the City that it will continue to contribute and use its resources for various garden exhibits, structures and improvements as well as dedicating time and effort in the establishment, operation, maintenance, and development of Botanica, The Wichita Gardens; and

WHEREAS, it is in the best interest of the City, Botanica, and the general public that a new agreement which supersedes all prior operating agreements be entered into between the parties, redefining certain rights and obligations, establishing a clear understanding of ownership, policy considerations, facility commitments and financial commitments to ensure the operation of Botanica, The Wichita Gardens;

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter contained, the City and Botanica hereby agree as follows:

1. <u>Purpose</u>: Botanica accepts and assumes the exclusive obligation to occupy and operate Botanica, The Wichita Gardens, including lands designated for future expansion, during the term of this Agreement, and shall be responsible for the custody, care, maintenance and development of the land and garden improvements. The City's Department of Parks and Recreation shall provide management oversight to ensure that development and all improvements meet the deed covenants of the land. The City will also provide financial and in- kind services and support as needed to maintain a park

environment. Botanica will operate and manage Botanica, The Wichita Gardens in the public interest and for the uses and purposes outlined in its express mission - to maintain a significant horticulture display garden for enjoyment and education of the community and region that sets the standard of excellence for botanical gardens in the Midwest.

2. Name: Botanica agrees to continue the name of the gardens and facility as "Botanica, The Wichita Gardens" throughout the life of this Agreement.

3. Term: The term of this Agreement shall be for a period of fifty (50) years commencing _____ 2010, but is subject to periodic five-year reviews in June of said years affected by this provision. Either party may terminate this Agreement by giving written notice by June 1 of any year, which termination shall be affective the following January 1. Notwithstanding the foregoing, Botanica may, in its sole discretion, terminate this Agreement if City substantially reduces its funding.

4. Management:

A. Board of Trustees. Botanica warrants that it will maintain a Board of Trustees to govern the Botanica Inc. organization according to its Bylaws (Attachment A). The following representatives shall be permanent members of the Botanica Board:

Mayor or Designee, City of Wichita
City Manager or Designee, City of Wichita
Director of Park and Recreation, City of Wichita
Representative, Wichita Board of Park Commissioners, City of Wichita

B. Employment of Director. The City will select, with the recommendation of Botanica, a Director of Botanica, The Wichita Gardens, who shall be an employee of the City and who will supervise the overall operation of Botanica, The Wichita Gardens. The City shall establish the Director's compensation and other terms and conditions of employment as required by the City personnel policies. The Director shall also serve as the Executive Director of Botanica.

Botanica agrees that the Director, as a City employee, has specific reporting obligations to the City Council, the City Manager, and the Director of Parks and Recreation. In addition, Botanica agrees that the Director shall participate, in all activities required by the City and will be subject to the City Ordinances and the City of Wichita Administrative Regulations.

C. Employees. Under the supervision of the Botanica Board of Trustees, Botanica shall have the entire direction, control and management of all persons employed by Botanica Inc., including the authority to hire and to terminate them, and to fix their compensation, wages, benefits, sick leave, health insurance, and annual leave. No employee or agent of Botanica shall, in any way, be deemed to be an employee or agent of the City. The City shall not direct, act on the behalf of, nor be liable for the actions of any Botanica employee. The Director shall have the authority to hire, terminate, and otherwise deal with Botanica employees in accordance with the policies and procedures adopted by the Botanica Board of Trustees.

The Director shall manage the City of Wichita employees employed at Botanica, The Wichita Gardens, to perform the tasks that promote the mission of Botanica in compliance with City Personnel Policies and Procedures and subject to City Administrative Regulations. City employees will be classified and receive compensation according to the positions described in the City Personnel Policies. Botanica shall not be liable for any claims made by employees of the City arising from and out of their employment relationships.

5. Operations:

A. Rules of Operation. Botanica agrees to adopt, publish and enforce reasonable rules and regulations governing the conduct of visitors to Botanica, The Wichita Gardens, consistent with the provisions of this agreement, which rules and regulations may be revised by Botanica from time to time. Such rules and regulations must comply with legal requirements.

B. Admission Fees. Botanica shall have the right to establish, collect and retain all fees for admission including memberships to Botanica, The Wichita Gardens and for all activities held therein. The parties agree that reasonable operating and depreciation reserves, endowments, and future plans for growth may be considered in establishing the amount of such fees.

C. Concessions. Botanica shall have the exclusive authority to operate, or to cause to be operated, all concessions on Botanica property and to establish, collect and retain all charges derived from such concessions for Botanica.

D. Rentals. Botanica shall have the exclusive authority to establish, collect and retain all rent and other charges and fees for the use of the property and or facilities that are possessed by Botanica, subject to the obligation to indemnify City against losses and damage suffered to the real estate, including its improvements comprising Botanica, The Wichita Gardens, resulting from rental use.

6. Financial Considerations:

A. Gifts and Endowments. Botanica agrees to exert its reasonable efforts to secure gifts of cash, property, in kind goods and services for exhibits, bequests, and endowments for structures and other capital improvements. Botanica agrees to endeavor to show continual positive growth in private financial support measured on a rolling average of the three past accounting years.

B. Funding. Funding provided by the City through the Cultural Arts program or from the City's general fund will be administered under the established accounting and fiscal policies of the City of Wichita. Botanica shall remain one the major cultural arts organizations classified as a group I organization until such time as the City Council's Cultural Arts plan is amended or rescinded. In return for performance of duties as provided in this Agreement, and to provide financial stability for planning purposes, the City agrees to provide annual Cultural Arts funding for the operations of Botanica, The Wichita Gardens in the following calendar years and

projected amounts. The projected amounts shall be approved annually by current City Council through the budget process:

2010	$288,700
2011	$292,560
2012	$301,336
2013	$310,376
2014	$319,687

Botanica shall have equitable opportunity for additional funding under the competitive Cultural Arts Funding process and will limit expenditures and follow conditions described in the contract provided by the City.

C. Use of Funds. Botanica agrees that the assets and resources of Botanica and any funds provided by the City will be used solely and exclusively for the benefit of Botanica, The Wichita Gardens. Botanica may contract directly for capital development or improvement work, provided plans therefore have been approved by the Botanica Board of Trustees and funds are solely from Botanica resources. Any improvements to the real estate and related fixtures will become and remain the property of the City. Botanica may directly contract for and purchase plant materials, horticulture supplies and such other items related to Botanica's function so long as funds therefore are provided solely from Botanica resources.

It is agreed and understood by the parties that all endowment and/or restricted funds held by Botanica or any related entity shall be spent in accordance with any laws, rules, policies, and/or restrictions applicable to such funds.

D. Budget. Botanica shall develop an annual budget and the Board of Trustees shall approve it. The City shall inform Botanica of annual funding levels in a timely manner for preparation of the Botanica budget. It will be a goal for the Board to maintain an operating reserve to ensure financial security of Botanica, The Wichita Gardens operations in an amount equal to that necessary to satisfy between three (3) and six (6) months of operating expenses.

E. Indebtedness or Liability. Botanica shall have no authority to bind the City or its Board of Trustees in any way nor to incur any indebtedness or liability or to place or permit the placing of liens on City property.

F. Audits. Botanica shall arrange an annual independent audit that will be overseen by the Audit Committee appointed by the Botanica Board of Trustees. Inspections of financial documents related to applicable contracts, grants, gifts and trusts shall be provided upon a reasonable notification of inspection.

G. Documentation of Costs. Botanica shall document all costs with respect to the services provided to Botanica, The Wichita Gardens, under contracts, grants, gifts, trusts and City will provide documentation of in-kind services, parts and equipment provided, and such records shall be supported by properly executed payrolls, time records, invoices or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, orders or other accounting documents shall be clearly identified and readily accessible.

H. Maintenance of Records. Botanica shall maintain records according to the prescribed requirements within contracts, grants, gifts, trusts, City in-kind services and City Finance Department policies and shall retain such financial records for a period of three years, unless otherwise specified.

7. Capital Improvements:

A. Improvements. Botanica shall have the authority to recommend for approval the future design and development of Botanica, The Wichita Gardens. Projects may be funded by private funds donated to Botanica and public funds provided by the City.

B. Public Funds. All improvement projects funded with public funds shall be approved by the City Council.

C. Private Funds. Projects funded by private funds may be contracted directly between Botanica and private contractors or Botanica may pass funds through the City and the services will be acquired through the City's Purchasing Department.

D. Ownership. Botanica understands and agrees that all buildings, structural and garden improvements provided by Botanica become the property of the City. Irrespective of its ownership status, the City shall not be obligated to maintain any improvement to the real estate erected after the date of execution of this agreement without express City Council approval.

E. Contractual Right. Botanica reserves the right to contract with other individuals, agencies, institutions, organizations or firms for services deemed necessary to the operation of Botanica, The Wichita Gardens, or in the public interest with the use of private funds.

8. Utilities: Botanica shall pay all deposits and charges for electricity, water, gas, telephone, garbage and trash collection and other utilities and charges for services used by or furnished to Botanica, The Wichita Gardens. Botanica shall acquire and maintain all meters, permits, approvals, and licenses necessary to effectuate this provision. City, as owner of the land underlying Botanica, The Wichita Gardens, will cooperate with Botanica's reasonable requests in connection with establishing or maintaining such utilities.

9. Care and Maintenance. Botanica agrees to provide for the custodial upkeep of the buildings. The City's Department of Public Works will continue to provide repairs and replacement of major items including plumbing, electrical, structural and HVAC that are required to maintain the functionality of the

buildings currently existing and all Council-approved newly constructed buildings. Insurance for City owned buildings shall be maintained by the City. Botanica shall be responsible for the upkeep and maintenance of the garden exhibits and the City's Department of Parks and Recreation will continue to provide consultation and in-kind services to that end.

10. Parking lot Maintenance. The City shall, at its sole expense, maintain the existing parking lot constructed for use at Botanica, The Wichita Gardens.

11. DISCRIMINATION PROHIBITED. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this agreement or any program related to this agreement shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity funded in whole or in part with the funds made available through this agreement on the grounds of race, color, national origin, ancestry, religion, sex, age or disability. Botanica further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements" as provided in Attachment B attached hereto.

12. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments in the performance of this contract.

13. ASSIGNABILITY. Neither party shall assign or delegate any interest or duty related to this agreement without the consent of both parties.

14. TERMINATION CLAUSE. In the event of a breach of this agreement either by Botanica or the City, both parties shall as soon as possible negotiate a work-out plan to ensure that Botanica, The Wichita Gardens, continues to function to preserve the assets and improvements made by the City and Botanica supporters and donors.

15. AMENDMENTS. To provide necessary flexibility for the most effective execution of this agreement, whenever both the City and Botanica mutually agree, changes in this agreement may be effected by placing them in written form and incorporating them into this agreement.

16. RENEGOTIATION. This agreement may be renegotiated in the event alternate sources of funding become available during the term of this agreement.

17. APPENDICES. All attachments referenced in this agreement are hereby incorporated as though fully set forth herein.

Attachment A – Botanica Inc. Bylaws of the Board of Trustees

Attachment B – Nondiscrimination and Equal Employment Opportunity Statement

IN WITNESS WHEREOF, the parties have executed this contract on the 20th day of October, 2009.

Botanica Inc.

Peter Salmeron, President
Botanica Inc.

June 24th, 2009
Date

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

10-20-09
Date

ATTEST:

Karen Sublett, CMC
Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

Attachment A
BOTANICA, INC.
BYLAWS OF THE BOARD OF TRUSTEES

Adopted August 21, 1985	**Amended August 21, 1991**	**Revised January 17, 2001**
Amended October 14, 1985	**Amended October 20, 1993**	**Revised September 21, 2005**
Amended December 13, 1989	**Amended October 15, 1997**	**Revised January 16, 2008**
Amended December 12, 1990	**Revised December 22, 1998**	

ARTICLE I
OFFICE AND REGISTERED AGENT

Section 1. Principal Office. The principal office of the corporation shall be located at the headquarters in Sim Park, 701 Amidon, in Wichita, Kansas, or at such other place as may be determined by the Board of Trustees.

Section 2. Registered Office and Agent. The corporation shall have and continuously maintain a registered office and a registered agent in the State of Kansas as required by the Kansas Corporation Code. The registered agent shall be either an individual resident of the State or a member of the Board of Trustees authorized to transact business in the State.

ARTICLE II
PURPOSES AND GOVERNMENT

The corporation is a nonprofit, scientific and educational organization founded to foster, promote, develop and operate the Wichita Botanical Gardens known as Botanica, The Wichita Gardens. The corporation shall be governed by a Board of Trustees.

ARTICLE III
BOARD OF TRUSTEES

Section 1. Powers. There shall be a Board of Trustees which shall supervise and control the business, property, and affairs of the corporation except as otherwise expressly provided by law, the Articles of Incorporation, or these Bylaws. The Board of Trustees shall abide by all Botanica, Inc's Bylaws and Policies.

Section 2. Number and Qualifications. The Board of Trustees of the corporation shall be composed of no more than 24 members including representation from each of the following, all of whom have voting privileges except those noted:

City of Wichita Representation – Non-Voting

1) Mayor or Designee, City of Wichita, non-voting
2) City Manager or Designee, City of Wichita, non-voting
3) Director of Park and Recreation, City of Wichita, non-voting
4) Representative, Wichita Board of Park Commissioners, City of Wichita, non-voting

Organizational Representation – Voting

5) Representative, Friends of Botanica
6) Representative, Wichita Area Garden Council
7) Representative, Project Beauty
8) Immediate past president, Botanica, Inc., Board of Trustees
9) Emeriti Trustee, nominated by the Governance Committee as noted in Article X, Section

Section 3. Election and Term of Office. The members of the Board of Trustees shall be elected by the Board of Trustees at the annual meeting. The Governance Committee will prepare the slate to present at the annual board meeting. Each member of the Board of Trustees, with the exception of the City representatives and the Past President, shall hold office for a term of three years, with a maximum of 2 consecutive terms. The three-year term and maximum of 2 consecutive terms shall apply to the organizational representation and Emeritus Trustee position. The Past President serves a 1-year term. The City representatives serve as long as they serve in their designated position with the City of Wichita.

1) Voting. Voting shall be by written ballot. If there is but one nominee for each available vacancy and no further nominations from the floor, by general consent, the written ballot may be dispensed with and a voice vote taken on the entire slate. If there are more candidates nominated than vacancies available, written ballots for that (those) position(s) shall be taken. The number of candidates who receive the highest number of votes corresponding to the number of vacancies available shall be declared elected. In the event of a tie a subsequent ballot on those candidates shall determine the election.

Section 4. Resignation. Any Trustee may resign at any time by giving written notice to the President of the Board of Trustees. Such resignation shall take effect at the time specified therein, or, if no time is specified, at the time of acceptance thereof as determined by the President of the Board of Trustees.

Section 5. Failure to Attend Regular Meetings and Fulfilling Responsibilities. Failure of a Trustee, with the exception of the City representatives, to attend at least three-quarters of the Board of Trustees' regular meetings in a year will be considered resignation by the Trustee unless a majority of the voting Trustees then in office vote to retain such Trustee. The attendance requirement shall apply to the organizational representation and Emeritus Trustee position.

Section 5a. Removal. Any Trustee, with the exception of the City representatives, may be removed from such office, by a majority vote of the voting Trustees then in office at any regular or special meeting of the Board of Trustees called expressly for that purpose. Removal process shall apply to the organizational representation and Emeritus Trustee position.

Section 6. Vacancies. Vacancies may be filled by majority vote of the remaining voting members of the Board of Trustees then in office for the unexpired term.

Section 7. Regular Meetings. A regular meeting schedule of the Board of Trustees shall be specified by the Board of Trustees. An annual meeting of the Board of Trustees shall be held each year, at such time, day and place as shall be designated by the Board of Trustees.

Section 8. Special Meetings. Special meetings of the Board of Trustees may be called at the direction of the President or by a majority of the voting members of the Board of Trustees then in office; to be held at such time, day, and place as shall be designated in the notice of the meeting.

Section 9. Notice. Notice of the time, day, and place of any meeting, except a special meeting of the Board of Trustees shall be given at least 5 days prior to the meeting. Notice of the time, day, place and purpose of a special meeting of the Board of Trustees shall be given at least 48 hours prior to the meeting.

Section 10. Quorum. A majority of the voting Trustees then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees.

Section 11. Manner of Acting. Except as otherwise expressly required by law, the Articles of Incorporation of Botanica, Inc., or these Bylaws, the affirmative vote of a majority of the voting Trustees present at any meeting at which a quorum is present shall be the act of the Board of Trustees. Each voting Trustee shall have one vote. Voting by proxy shall not be permitted.

Section 12. Written Consent In Lieu of a Meeting. The Board of Trustees may take action without a meeting if written consent to the action is signed by a majority of the voting Trustees then in office.

Section 13. Telephone Meeting. Any one or more Trustees may participate in a meeting of the Board of Trustees by means of a conference telephone or similar telecommunications device, which allows all persons participating in the meeting to hear each other. Participation by telephone shall be equivalent to presence in person at the meeting for purposes of determining if a quorum is present.

Section 14. Conflicts of Interest.

1) In the event any Trustee has a conflict of interest that might properly limit such Trustee's fair and impartial participation in Board deliberations or decisions, such Trustee shall inform the Board of Trustees as to the circumstances of such conflict. If those circumstances require the

nonparticipation of the affected Trustee, the Board of Trustees may nonetheless request from the Trustee any appropriate non-confidential information which might inform its decisions. "Conflict of interest," as referred to herein, shall include but shall not be limited to, any transaction by or with the Board of Trustees in which a Trustee has a direct or indirect personal interest, or any transaction in which a Trustee is unable to exercise impartial judgment or otherwise act in the best interests of the corporation or the Board of Trustees.2) No Trustee shall cast a vote, nor take part in the final deliberation in any matter in which he or she, members of his or her immediate family, or any organization to which such Trustee has allegiance, has a personal interest that may be seen as competing with the interest of the Board of Trustees. Any Trustee who believes he or she may have such a conflict of interest shall so notify the Board of Trustees prior to deliberation on the matter in question, and the Board shall make the final determination as to whether any Trustee has a conflict of interest in any matter. The minutes of the Board of Trustees meeting shall reflect disclosure of any conflict of interest and the recusal of the interested Trustee.

Section 15. Legal Responsibilities.

1) Duty of Care
   a) Members of the Board of Trustees must exercise due care in all dealings with the corporation. Trustees should be reasonably informed about the corporation's activities, participate in collective decisions, and do so in good faith and with the care of an ordinary prudent person in similar circumstances. This includes careful oversight of financial matters and reading of minutes, attention to issues that are of concern to the corporation, and raising questions whenever there is something that seems unclear or questionable
   b) The duty of care is carried out by the following acts:
      i) Attendance at meetings of the Board of Trustees and appropriate committees;
      ii) Advance preparation for Board of Trustees meetings, such as reviewing reports and the agenda prior to meetings of the board;
      iii) Obtaining information (in the context of the Board meeting), before voting to make good decisions;
      iv) Use of independent judgment;
      v) Periodic examination of the credentials and performance of those who serve the corporation;
      vi) Frequent review of the corporation's finances and financial policies; and
      vii) Compliance with the filing requirements, particularly annual information returns.

2) Duty of Loyalty
   a) The duty of loyalty requires members of the Board of Trustees to exercise their power in the interest of the corporation and not in their own interest or interest of another entity, particularly one in which they have a formal relationship. When acting on behalf of the corporation, members of the Board of Trustees must put the interests of the corporation before their personal and professional interests. Conflicts of interest, including the appearance of conflicts of interest, must be avoided. This includes personal conflicts of interest or conflicts with other organizations with which a member

of the Board of Trustees is connected.

b) In practice, the duty of loyalty is carried out by the following acts:
   i) Disclosure of any conflicts of interest;
   ii) i. Adherence to the corporation's conflict-of-interest policy;
   iii) Avoidance of the use of corporate opportunities for the individual's personal gain or benefit; and
   iv) Nondisclosure of confidential information about the corporation.

3) Duty of Obedience
   a) Obedience to the corporation's central purposes must guide all decisions. The Board of Trustees must also ensure that the corporation function within the law, both the "law of the land" and these Bylaws and other policies. The Board of Trustees must remain the guardians of the mission.
   b) The duty of obedience is carried out by the following acts:
      i) Compliance with all regulatory and reporting requirements, such as filing annual information return (usually, IRS Form 990) and paying employment taxes;
      ii) Examination of all documents governing the corporation and its operation, such as these Bylaws and policies; and
      iii) Making decisions that fall within the scope of the corporation's mission and governing documents.

ARTICLE IV
OFFICERS

Section 1. Officers. The officers of the Board of Trustees shall at minimum consist of a President, Vice-President and a Treasurer. The Board of Trustees shall have such other assistant officers as the Board of Trustees may deem necessary and such officers shall have the authority prescribed by the Board. A candidate for each office shall be nominated by the Governance Committee.

Section 2. Election of Officers. The officers of the Board of Trustees shall be elected by the Trustees at the annual meeting of the Board of Trustees.

1) Voting shall be by written ballot. If there is but one nominee for each position and no further nominations from the floor, by general consent, the written ballot may be dispensed with and a voice vote taken on the entire slate. If there are nominations from the floor, written ballots for that office shall be taken. The candidate receiving a majority vote on the written ballot shall be declared elected. In the event of a tie a subsequent ballot on those candidates shall determine the election.
2) Any member of the Board of Trustees, with the exception of the City representatives, may be elected to an officer position.

Section 3. Term of Office. The officers of the Board of Trustees shall be installed at the January meeting, following their election, and shall hold office for one year or until their respective successors

shall have been duly elected. No Trustee shall serve as an officer for more than (2) consecutive terms; provided, however, any time used to fill an unexpired term of a person previously holding such office shall not be included as one such term.

Section 4. Resignation. Any officer may resign at any time by giving written notice to the President of the Board of Trustees. Such resignation shall take effect at the time specified in the notice, or if no time is specified, then immediately.

Section 5. Removal. Any officer may be removed from such office, by a majority vote of the voting members of the Board of Trustees then in office at any regular or special meeting of the Board called expressly for that purpose.

Section 6. Vacancies. A vacancy in any office may be filled by the Board of Trustees for the unexpired term.

Section 7. President. The President shall give active direction and exercise oversight pertaining to all affairs of the Board of Trustees. He or she may sign contracts or other instruments, which the Board of Trustees has authorized to be executed, and shall perform all duties incident to the office of President as may be prescribed by the Board of Trustees.

Section 8. Vice President. In the absence of the President, the Vice President shall perform the duties of the President. The Vice President shall attend all Board of Trustees meetings and carry out special assignments as requested by the President.

Section 9. Treasurer. The Treasurer shall be responsible for and oversee all financial matters of the corporation, with the exception of the Audit Committee. The Treasurer, jointly with the board President, ensures that current records are maintained, reflecting the financial condition of Botanica, Inc.

Section 10. Bonding. If requested by the Board of Trustees, any person entrusted with the handling of funds or valuable property of the Board of Trustees shall furnish, at the expense of the corporation, a fidelity bond approved by the Board of Trustees.

ARTICLE V
COMMITTEES

Section 1. Committees of Trustees. No committee shall have the authority to amend or repeal these Bylaws, elect or remove any officer or Trustee, adopt a plan of merger, or authorize the voluntary dissolution of the Board of Trustees. The following shall be standing committees of the Board of Trustees:

1) Executive Committee:
   a) Members of the committee are the President, Vice President, Treasurer, Chair of Development Committee, and Chair of Governance Committee.
   b) The President chairs the Executive Committee.
   c) The Executive Committee prepares agendas for the meetings of the Board of Trustees, acts on behalf of the Board between meetings, with responsibility to report actions to the Board for ratification or further Board action at the next meeting, carries out specific directions of the Board, and formulates and recommends actions by the full Board prior to implementation. Additionally, the Executive Committee initiates the Board's participation in developing a strategic framework for long-range planning. The Executive Committee also participates, in concert with the City of Wichita, the selection and termination of the Executive Director. The President, who chairs the Executive Committee, is responsible to report to the Board all plans, activities, and accomplishments of the Executive Committee.

2) Finance Committee
   a) Chair of the committee is the Treasurer
   b) Members of the committee will be appointed by the Chair of Finance Committee
   c) Minimum of 3 trustee members and 1 Emeritus Trustee, serving 1 year terms. Non-trustees may be invited to serve as members of the Finance Committee.
   d) The committee shall be responsible for the planning, monitoring, and evaluation of the organization's funding, financial management, facilities, assets, risks, and insurance programs. The committee shall work with the chief executive and the director of finance in developing long-range financial and capital plans; reviewing annual budgets and financial reports; and recommending internal controls and other financial policies to the board. The committee shall perform such other duties as may from time to time be required by the board.

3) Development Committee
   a) Chair of the committee will be a trustee appointed by the President.
   b) Members of the committee will be appointed by the Chair of Development Committee
   c) Minimum of 3 trustee members and 1 Emeritus Trustee, serving 1 year terms. Non-trustees may be invited to serve on the Development Committee.
   d) The role of the Development Committee is to ensure that the organization's total development program is in concert with the organization's strategic direction and needs. The committee serves as the mechanism by which board members and other volunteers are involved in the fundraising process. The Development Committee is charged with focusing the organization and its board on fundraising. This includes constant attention to the mission and case for support, the organization's accountability, the involvement of organization's constituencies, the resources required to carry out the mission, plans for cultivating and soliciting the needed private funds, fundraising involvement, and demonstration of good stewardship.

4) Governance Committee
   a) Chair of the committee will be a trustee appointed by the President
   b) Members of the committee will be appointed by the Chair of Governance Committee.

c) Minimum of 3 trustee members and 1 Emeritus Trustee, serving 1 year terms. Non-trustees may be invited to serve on the Governance Committee.
d) Members of the committee wishing to be elected as officers in any given annual election shall not participate in the officer nominating process in that year.
e) The Governance Committee ensures board effectiveness, maximum participation and performance; recommends new board members for election to the Board and ensures board policies are being observed; implements board development and growth opportunities throughout the year; ensures all board members receive orientation; and annually recommends a slate of officers to the board for approval.

5) Audit Committee:
   a) Chair of the committee will be a trustee appointed by the President.
   b) Members of the committee will be appointed by the Chair of the Audit Committee.
   c) Minimum of 2 trustee members and 1 Emeritus Trustee, serving 1 year terms, plus at least 1 non-trustee member
   d) The Audit Committee ensures that an annual is conducted, serves as liaison with the audit firm, and debriefs the board on its reports. The committee meets annually, in private, with the auditor. The committee reviews and recommends approval of the annual audit and reviews a copy of the annual IRS Form 990. The Treasurer may *not* chair this committee.

Section 2. Other Committees and Task Forces. The Board of Trustees may create and appoint members to such other committees and task forces as they shall deem appropriate. Such committees and task forces shall have the power and duties designated by the Board of Trustees, and shall give advice and make non-binding recommendations to the Board.

Section 3. Term of Office. Each member of a committee shall serve until the next annual meeting of the Board of Trustees and until a successor is appointed, unless the committee is sooner dissolved.

Section 4. Vacancies. Vacancies in the membership of committees may be filled by the President of the Board of Trustees.

Section 5. Rules. Each committee and task force may adopt rules for its meetings not inconsistent with these Bylaws or with any rules adopted by the Board of Trustees.

ARTICLE VI
NOTICE

Section 1. Notice. Whenever under the provisions of these Bylaws notice is required to be given to a Trustee, officer, or committee member, such notice shall be given in writing by first-class mail or overnight delivery service with postage prepaid to such person at his or her address as it appears on the records of the corporation. Such notice shall be deemed to have been given when deposited in the mail

or the delivery service. Notice may also be given by facsimile, electronic mail, or hand delivery, and will be deemed given when sent.

ARTICLE VII
INTERNAL AFFAIRS

Section 1. Indemnification of Trustees and Officers.

a. This corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the corporation), by reason of the fact that such person is or was a trustee, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit, or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

b. This corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a trustee, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

1) To the extent that a trustee, officer, employee, or agent of this corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue, or matter therein, such trustee, officer, employee, or agent shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

2) Any indemnification under subsections (a) and (b), unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the trustee, officer, employee, or agent is proper in the circumstances because such trustee, officer, employee, or agent has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (i) by the Board of Trustees by a majority vote of a quorum consisting of trustees who were not parties to such action, suit, or proceeding, or (ii) if such a quorum is not obtainable or, even if obtainable, a quorum of disinterested trustees so directs, by independent legal counsel in a written opinion.

3) Expenses incurred by a trustee or officer in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the trustee or officer to repay such amount if it is ultimately determined that the trustee or officer is not entitled to be indemnified by the corporation as authorized in this section. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Trustees deems appropriate.

4) The indemnification and advancement of expenses provided by, or granted pursuant to, this bylaw shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any other bylaw, agreement, vote of the members or disinterested trustees or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding such office.

5) The Board of Trustees shall have power to purchase and maintain insurance on behalf of any person who is or was a trustee, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of this bylaw.

6) For purposes of this bylaw, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its

trustees, officers and employees or agents, so that any person who is or was a trustee, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this bylaw with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

7) For purposes of this bylaw, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a trustee, officer, employee or agent of the corporation which imposes duties on, or involves services by, such trustee, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this bylaw.

8) The indemnification and advancement of expenses provided by, or granted pursuant to, this bylaw shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a trustee, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 2. Distributions of Assets. Upon the dissolution of this corporation, the Board of Trustees shall, after paying or making provisions for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United states Internal Revenue law), as the Board of Trustees shall determine. Any such assets not so disposed of shall be disposed of by the district court in the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

Section 3. No Private Benefit. No part of the net earnings of the corporation shall inure to the benefit of any member, Trustee, or officer of the corporation, or to any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting its purpose), and no member, Trustee, or officer of the corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the corporation.

Section 4. Legislative and Political Activity. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation and the

corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

ARTICLE VIII
AMENDMENTS TO BYLAWS

These Bylaws may be amended or new Bylaws adopted upon the affirmative vote of two-thirds all the voting Trustees then in office at any regular or special meeting of the Board of Trustees. The notice of the meeting shall set forth a summary of the proposed amendments. Only voting Trusteeships occupied at the time of a meeting shall be counted in determining whether a two-thirds vote of the Trustees has acted.

ARTICLE IX
FINANCES

Section 1. Fiscal year. The Fiscal Year of the corporation shall begin on the first day of January and end on the thirty-first day of December of each year.

Section 2. Deposits. All monies, securities, drafts or other monetary instruments received by the corporation shall be deposited to the account of the corporation as prescribed by the Board of Trustees.

Section 3. Authorized Signatures. All checks and drafts drawn on corporation's depositories shall require two (2) authorized signatures. Authorized signatures include the President, Vice President, Treasurer and Executive Director, and others that may be approved by the Board of Trustees. In no event shall both signatures be spouses or family members.

Section 4. Emergency Expenditures. The officers of the Board of Trustees shall have the authority to make expenditures up to $10,000 in the event of an emergency confirmed by the Audit Committee.

Section 5. Budget. The annual budget shall be prepared by the Finance Committee, the Executive Director and the staff. Final approval will be by the Board of Trustees prior to the end of the fiscal year.

Section 6. Audit. Annual independent audit will be overseen by the Audit Committee.

ARTICLE X
STAFF AND OTHER ORGANIZATIONS

Section 1. Executive Director. The Executive Director shall be employed by the City of Wichita with recommendation of the Board of Trustees. The Executive Director shall be responsible for the daily operation of the corporation subject to the authority of the Board of Trustees. It shall be the duty of the

Executive Director to keep the Board of Trustees informed at all times of the functioning of the corporation. The Executive Director shall make regular reports at meetings of the Board of Trustees, shall meet with the committees of the Board of Trustees when appropriate, and shall implement policies adopted by the Board of Trustees.

Section 2. Other Staff. The Executive Director is responsible for the hiring, promoting and evaluation of the corporation's staff. Staff positions are established or eliminated on the recommendation of the Executive Director and approval of the Board of Trustees.

Section 3. Friends of Botanica. Friends of Botanica is a group established in 1986 to support and promote the interests and growth of Botanica. Friends of Botanica's Board of Directors and committees shall work in concert with the Board of Trustees and staff of Botanica to ensure that the efforts of Friends of Botanica are consistent with the mission, goals and strategic plan of the Botanica Board of Trustees. One member of Friends of Botanica shall be appointed by the group to serve as a voting member of the Board of Trustees and attend its meetings.

Section 4. Emeriti Trustees. The designation Emeritus Trustee was created to recognize past board members' service and contributions to Botanica, Inc. There may be elected such number of Emeriti Trustees, as the Board of Trustees shall determine appropriate. A nominee proposed as an Emeritus Trustee must:

1) Be a former Trustee.
2) Maintain membership in Botanica.
3) Exhibit an ongoing active interest in Botanica
4) Be retired from the Board of Trustees.

Emeriti Trustees shall serve until their death, resignation, or refusal to serve. Emeriti Trustees are encouraged to participate in the Board of Trustee's standing committees and other committees and task forces as formed. One Emeritus Trustee will be nominated by the Governance Committee to serve as a voting member of the Board of Trustees and attend its meetings.

ADOPTED BY THE BOARD OF TRUSTEES this ____ day of _____, 2009.

_____

President

Attachment B

REVISED NON-DISCRIMINATION AND

EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM

REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **The Kansas African American Museum** a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **nineteen thousand six hundred sixty seven dollars ($19,667)** payable in four equal quarterly installments and due **January, April, July, and October 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Kansas African American Museum CITY OF WICHITA, KANSAS

_____	_____
Prisca Barnes, Director *Kansas African American Museum*	Carl Brewer, Mayor
_____	_____
Date	Date

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called **CITY**, and **The Kansas African American Museum PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Complete the Stewardship of Collection self-assessment module from the Standards and Excellence Program for History Organizations (STEPS), provided by the Association of State and Local History by the end of December 2012.

Goal 2
Increase the museum's statewide presence in 2012, as measured expansion of the board of directors to include representatives from Wichita, Kansas and at least one "national" member from outside of Kansas.

Goal 3
Increase membership in the Cowry Shell Society by 10% and general membership by 20% in 2012.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The preliminary reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2013.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011**by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **The Kansas Aviation Museum, Inc.** a not-for-profit corporation hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **forty one thousand seven hundred ninety two dollars ($41,792)** payable in four equal, quarterly installments and due **January, April, July and October 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Kansas Aviation Museum, Inc.

_____
Lon Smith, Director
Kansas Aviation Museum, Inc.

_____
Date

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **The Kansas Aviation Museum, Inc.** **PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Utilize funds to support the visits of at least 1,000 students from USD259 Title 1 schools.

Goal 2
Increase memberships by 15% over 2011 by way of direct mail to targeted, potential candidates.

Goal 3
Develop an additional, hands-on educational learning center that can be demonstrated by video no later than December 2012.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The preliminary reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2013.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Music Theatre for Young People** a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **nine thousand eight hundred thirty three dollars ($9,833)** payable in four quarterly installments due the first business day of the months **January, April, July, and October 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Music Theatre for Young People

_____
Patty Austin, President, Board of Directors
Music Theatre for Young People

_____
Date

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Music Theatre for Young People, PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Record public appearances and press releases sent and published in local media.

Goal 1
Increase average ticket sales for main stage shows by 3% over 2011 attendance figures by December of 2012 as measured by number of tickets sold.

Goal 2
Increase MTYP memberships by 3% over 2011 memberships by December of 2012 as measured by number of memberships.

Goal 3
Increase number of paid tuitions for camp and workshops over 2011 figures by 3% by December of 2012.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services or call 316-303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the **Division of Arts and Cultural Services, City of Wichita, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual provider report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The report will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2013**. Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Nondiscrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, sub purchase order or sub agreement so that such provisions will be binding upon each subcontractor, sub vendor or sub supplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **18th day of October, 2011** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Music Theater of Wichita**, a not-for-profit corporation, hereinafter called **"PROVIDER"**.

WITNESSETH:

WHEREAS, CITY desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various **CITY** staff members, and selections from the proposals were recommended to the **CITY** Council, and

WHEREAS, PROVIDER has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY**, and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services**. **PROVIDER** shall provide to the **CITY** and complete all those services specified in the **Scope of Services** description attached as **Exhibit A**, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **seventy eight thousand six hundred sixty seven dollars ($78,667)**, payable in two installments and due the first business day of the months of **February and June 2012**, upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure**. **PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER** semi-annual reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the **CITY** as liquidated damages, and not as a penalty.

4. **Term**. The term of this contract shall be from January 1, 2012 through December 31, 2012. This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other.

5. **Time of Performance.** The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance**. **PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment**. The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination**. **PROVIDER** shall comply with all applicable requirements of the **CITY** of Wichita Revised Non Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights**. It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law**. This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause**. If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Music Theatre of Wichita

_____
Wayne Bryan, Producing Artistic Director
Music Theatre of Wichita

_____
Date

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, **CITY** Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the **CITY** of Wichita, Kansas, hereinafter called **CITY**, and Music Theater of Wichita, **PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the **CITY** for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the **CITY** will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'S proposal, hereinafter called PROPOSAL, as submitted to the **CITY** by **PROVIDER**, and in accordance with provisions of the **CITY**'s Request for Funding Proposals, hereinafter called RFP, as issued by the **CITY**. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'S PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1

In order to develop our teen workshops and academy into a week-long camp, we will hold one week-long educational workshop during the summer of 2012 for 40 high school students at an offsite location.

Goal 2

In order to increase our impact on area theater educators, we will hold one week-long educational workshop for 20 educators during summer of 2012 at an offsite location.

Goal 3

In order to increase the MTWichita endowment and improve its long-term viability, we will secure 10 pledges, at a minimum of $250, during 2012 for a 3-5 year commitment.

Organizations are required by the terms of the Contract to give recognition to the **CITY** of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on printed material as appropriate, the **CITY** of Wichita logo and the following credit line: "This program is made possible in part by the **CITY** of Wichita." Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the **CITY** of Wichita, Division of Arts and Cultural Services, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, and submit them to the **CITY** of Wichita, Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202 for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 20012 Final Report shall bar the organization from contracting with the **CITY** for FY2013.

The **CITY** will prepare budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the **CITY**, Division of Arts & Cultural Services by the weekday on or closest to July 31, 2012 with the completed calendar year report due to the **CITY**, Division of Arts & Cultural Services by the weekday on or closest to January 31, 2013. Send one copy of each report to the **CITY**'s Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202

Be available to address the **CITY** Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the **CITY**, by whatever term identified herein, shall comply with the following Non Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the **CITY**, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated hereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the **CITY** of Wichita, Kansas, relating to Non Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the **CITY** of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said **CITY** for the purpose of investigation to ascertain compliance with Non Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the **CITY** in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the **CITY** or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said **CITY**, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **The Orpheum Performing Arts Centre, Inc.** a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **twenty nine thousand five hundred dollars ($29,500)** payable in four equal quarterly installments and due the first business day of the month beginning **January, April, July and October 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Orpheum Performing Arts Centre, Ltd.

_____
Jennifer Wright, President
Orpheum Performing Arts Centre, Ltd.

_____
Date

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **The Orpheum Performing Arts Centre, Inc.**, **PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Promote awareness and increase theatre interest and attendance through the distribution of shorter, more concise quarterly (as opposed to annual) newsletters featuring interesting stories related to positive improvements at the theatre and upcoming events.

Goal 2
Increase the number of events to attain a total number of offerings to achieve a total of 100 events for the year.

Goal 3
Reassess, restructure and improve annual giving campaign "Curtain Up Blub" and transition to "Friends of the Orpheum".

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts and Cultural Services, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita Association for Tallgrass Film Association,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **twenty two thousand one hundred twenty five dollars ($22,125)**, payable in two equal installments and due the first business day of **January and June 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

TALLGRASS FILM ASSOCIATION

_____

Paul Witte, President
Tallgrass Film Association

_____

Date

CITY OF WICHITA, KANSAS

_____

Carl Brewer, Mayor

_____

Date

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Tallgrass Film Association PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Tallgrass seeks to increase its educational offerings in 2012 by offering 4 classes and workshops of varying subject and price through Tallgrass Filmmakers Lab. Maintain the current educational components of the film festival (Filmmakers Panel and Free Film Friday) and add a third educational component, such as a workshop or discussion panel.

Goal 2
Increase statewide marketing of the film festival and other events in 2012 by increasing marketing efforts outside of Wichita by working with universities, and non-profit organizations in 2 to 3 communities and marketing in 2 to 3 communities utilizing public radio, print and non-traditional media.

Goal 3
Cross-promote with other local events and organizations to reach new audiences in Wichita and the surrounding area by partnering with other local events including Wichita Garden Show, Midwest Winefest, Wichita River Festival, Chamber Music at the Barn, Aviation Film Festival, Pridefest, and Zoobilee and add five organizations to the current list of Tallgrass non-profit partners.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on all printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services, at 316/303-8663**.**

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agency will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the completed calendar year report due to the CITY by the weekday on or closest to **January 31, 2013.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011**, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita State University**, a state educational institution of Kansas, contracting on behalf of its **The Wichita State University Foundation c/o The Edwin A. Ulrich Museum of Art**, hereinafter called **"PROVIDER."**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **thirty four thousand four hundred seventeen dollars ($34,417), to be allocated to the Edwin A. Ulrich Museum of Art,** payable in four, equal, quarterly installments and due the first business day of the month beginning **January, April, July, and October 2012** upon presentation of a detailed invoice by PROVIDER. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the PROVIDER are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance.** To the extent permitted by the laws of Kansas, **PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of PROVIDER to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by PROVIDER under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination.** **PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Wichita State University Foundation
Edwin A. Ulrich Museum of Art

_____
Elizabeth King, President & CEO

_____
Date

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Wichita State University Foundation**, contracting on behalf of the **Edwin A. Ulrich Museum of Art**, PROVIDER, that it is the intent of this contract for the PROVIDER to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the PROVIDER understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the PROVIDER understands and agrees to perform services as specified in the PROVIDER's proposal, hereinafter called PROPOSAL, as submitted to the CITY by PROVIDER, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the PROVIDER's PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the PROVIDER under this contract include the following:

Goal 1
Maintain flat private fundraising contributions sustaining the 260% increase realized in FY2007 to FY2010 by stronger networking and marketing the Ulrich Salon Circle by December 2012.

Goal 2
Maintain flat Ulrich membership with no decline over 2010 by developing new marketing activities by December 2012.

Goal 3
Generate Miro' mosaic conservation fundraising by raising $2 million of the $3 million campaign to restore the world masterpiece for future generations by December 2012.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on all printed material, the City of Wichita logo and the following credit line: "**This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services, (316)303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to Provider are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-annual and Final Reports

Prepare one (1) semi-annual provider report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2013.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated hereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita Children's Theatre & Dance Center,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **twenty seven thousand nine hundred sixty one dollars and seventy three cents ($27,961.73)**, payable in four (4) equal, quarterly installments and due the first business day of the month beginning **January, April, July, and October 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012**. This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Wichita Children's Theatre & Dance Center

_____

Monica Flynn, Director
Wichita Children's Theatre & Dance Center

_____

Date

CITY OF WICHITA, KANSAS

_____

Carl Brewer, Mayor

_____

Date

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

EXHIBIT A
SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Wichita Children's Theatre & Dance Center, PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Increase attendance in theater classes by 5% over 2011 attendance by adding new classes 2011-2012 sessions. This will be measured in attendance by March 2012.

Goal 2
Increase attendance at One Upon a Time shows by 2% over 2010-2011 by continuing to work with KWCH TV promotional advertising. This will be measured in attendance by April 2012.

Goal 3
To maintain level of sponsors for Wichita Children's Professional Touring Company, encourage them to find funding outside of the Kansas Arts Commission. This will be measured in March 2012 as we figure the income for the 2011-2012 season.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the **City of Wichita Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the final FY2011 report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** reports and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The report will be due to the CITY by the weekday on or closest to **July 31, 2012**, with the completed calendar year report due to the City by the weekday on or closest to **January 31, 2013**. Send one copy of each report to the **City's Division of Art & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita Grand Opera, Inc.,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **nine thousand eight hundred thirty three dollars ($9,833)**, payable in four equal, quarterly installments and due the first business day of **January, February, March and April 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

WICHITA GRAND OPERA, INC

_____

Parvan Bakardiev CEO
Wichita Grand Opera

_____

Date

CITY OF WICHITA, KANSAS

_____

Carl Brewer, Mayor

_____

Date

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Wichita Grand Opera, Inc. PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Increase 2011-2012 total season attendance by 5% of total capacity compared to 2010-2011.

Goal 2
Increase 2011-2012 contributed income by 5% over 2010-2011 figure by more effectively soliciting donors and grantors.

Goal 3
Increase 2011-2012 paid memberships by 10% over 2010-2011 figures through more effective marketing strategies.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on all printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services, at 316/303-8663**.**

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agency will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the completed calendar year report due to the CITY by the weekday on or closest to **January 31, 2013.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita Public Library Foundation, Inc.,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **sixty three thousand nine hundred seventeen dollars ($63,917)**, payable in two, equal, installments due the first business day of **January and July 2012** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER** semi-annual reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012**. This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The service of the **PROVIDER** is to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Wichita Public Library Foundation, Inc.

_____

Leah Barnhard, Executive Director
Wichita Public Library Foundation, Inc.

_____

Date

CITY OF WICHITA, KANSAS

_____

Carl Brewer, Mayor
City of Wichita

_____

Date

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Wichita Public Library Foundation, Inc., PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Offer programming of quality and variety to attract a minimum of 70,000 participants before December 31, 2012

Goal 2
Maintain satisfaction with library programs of at least 96% as reported on participant evaluations.

Goal 3
Generate use of Library materials, programs, and services at a level that generates a return on investment of no less than $4.25 per every $1.00 of City general fund tax support.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts and Cultural Services, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.** The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The preliminary reports will be due to the CITY by the weekday on or closest to **July 31, 2012,** with the completed calendar year report due to the CITY by the weekday on or closest to **January 31, 2013**. Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this **1st day of November, 2011,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **The Wichita Symphony Orchestra**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **ninety eight thousand three hundred thirty three dollars ($98,333),** payable in two equal installments. **PROVIDER** shall submit its invoices for such installments in **January 2012 and April 2012** and payment for such invoices shall be due by **February 26, 2012 and June 29, 2012**, respectively. The Scope of Services sets forth the performance objectives by which **PROVIDER**'s performance shall be measured.

3. **Acceptance Procedure. PROVIDER** shall render the Services described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER** semi-annual reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The Services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of PROVIDER to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by PROVIDER under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Wichita Symphony Orchestra

_____

Delmar Klocke, President, Board of Directors
Wichita Symphony Orchestra

_____

Date

CITY OF WICHITA, KANSAS

_____

Carl Brewer, Mayor

_____

Date

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **The Wichita Symphony Orchestra**, **PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Attract 350 ticket buyers (unique orders) who have not previously attended any WSO event through the presentation of programs that include mixed genres, non-traditional enhancements and other program specific components.

Goal 2
Increase the number of tickets sold online (all series) by at least 10% over the number sold online during the 2010-2011 season through the expanded use of new media especially for those programs likely to be of interest to younger audiences.

Goal 3
Increase the amount of revenue earned from Classics series program magazine advertising by $5,000 through a more thorough and aggressive sales campaign, including the use of non-employee sales personnel.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"Wichita Symphony activities is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts and Cultural Services, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the City of Wichita's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.** The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** reports, including one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The preliminary reports will be due to the CITY by the weekday on or closest to **July 31, 2012**, with the completed calendar year report due to the CITY by the weekday on or closest to **January 31, 2013**. Send one copy of each report to the **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

CONTRACT

For

ADMINISTRATION OF GRANT FUNDING

IN SUPPORT OF THE ARTS

THIS CONTRACT entered into this day of **1st day of November, 2011** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Sedgwick County Zoological Society**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

WITNESSETH:

WHEREAS, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

WHEREAS, CITY has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

WHEREAS, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **fifty seven thousand thirty three dollars ($57,033)** payable in four equal, quarterly installments and due the first business day of the months January, **April, July and October 2012**, upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Exhibit A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2012 through December 31, 2012.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** shall save and hold the **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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. No employee or agent of the **PROVIDER** shall be considered an employee of the **CITY**.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

9. **No Assignment.** The services to be provided by **PROVIDER** under this contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

10. **Non-Discrimination. PROVIDER** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

12. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

Sedgwick County Zoological Society, Inc.

_____
Steve Onken, Development Director
Sedgwick County Zoological Society, Inc.

_____
Date

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

SCOPE OF SERVICES

Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Sedgwick County Zoological Society Inc., PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Goal 1
Increase the Title 1 attendance by 2% over 2011 by the continuation of funding for Title 1 school programs and the expansion of program opportunities made available by December 2012.

Goal 2
Expand our communications to the Hispanic market by 20% over 2011 by developing media, way finding signs, and print materials that target the Hispanic community by December 2012.

Goal 3
Increase our social media reach by 50% over 2011 by expanding our online tactics, namely Zoo website, Facebook, and Twitter by December 2012.

Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita. Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

Financial Management

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the **City of Wichita, Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2012 contract, irrespective of any work done or goals accomplished according to the terms of the FY2012 contract, until the Final FY2011 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2012 Final Report shall bar the organization from contracting with the City for FY2013.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

Semi-Annual and Final Reports

Prepare one (1) semi-annual **PROVIDER** report and one (1) year-end Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **July 31, 2012** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2013.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

Exhibit B

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Operating Agreement Wichita Historical Museum

1. **Purpose.** The purpose of this Agreement is to define the City of Wichita's financial, personnel and operational relationship with the Wichita-Sedgwick County Historical Museum Association (Museum). The existing lease between the City and the Museum is not subject to change by this agreement.

2. **Term.** The term of this Agreement shall be for a period of five (5) years commencing upon January 1, 2010.

3. **City Funding.** In return for the Museum's performance of duties specified in this Operating Agreement, the City agrees to provide annual funding (payable to the Museum in accordance with Section 5 below) in the following calendar years and amounts:

2010	$136,000.00
2011	$138,040.00
2012	$142,181.20
2013	$146,446.64
2014	$150,840.04

Museum shall maintain its operating reserve to ensure financial security for at least 3 to 6 months of operating expenses.

Museum shall demonstrate average annual growth in earned income and/or private contributions in each rolling three year period covered by this Agreement.

4. **Personnel.** Museum employs no City personnel.

5. **Use of City Funds.** Requested funds in the "Contractual Services Account" will be disbursed by the City to Museum no later than 30 days after submission of approved invoices covering expenses for which said funds are appropriated.

Museum agrees to devote the assets, resources, and funds provided by both the City of Wichita and Museum exclusively for purposes advocating the mission of the Museum. This mission as defined by the Board of Directors is to educate the community and its visitors about local history by collecting, preserving, and interpreting materials reflecting the

heritage of Wichita and Sedgwick County. City funding for the operation of Museum shall be appropriated annually in accordance with the funding agreement in existence between the City and Museum.

6. **Supplemental City funding.** Museum may apply for Operational Grant Cultural Funding through the competitive grant process.

7. **Complete Agreement**. This agreement supersedes all prior agreements between the parties specifically dealing with funding. Unless otherwise noted, it does not apply to prior or existing leases.

8. **Rules of Operation.** Museum agrees to adopt, publish, and enforce reasonable rules and regulations governing the conduct of visitors to Museum consistent with the provisions of this Agreement, which rules and regulations may be revised by Museum from time to time.

9. **Admission Fees.** Museum shall have the right to establish, collect and retain all fees for admission to Museum and for all activities held therein. The amounts of said fees and any changes thereto shall be reported to the City.

10. **Concessions**. Museum shall have the exclusive authority to operate, or to cause to be operated, all concessions on Museum property and to establish, collect and retain all charges derived from such concessions for Museum purposes. Any concessionaire shall comply with all applicable state and local statutes, ordinances and regulations.

11. **Rental.** The Museum staff acting on behalf of the Museum Board shall have the exclusive authority to establish, collect and retain all rent and other charges and fees for use of Museum facilities and property for approved purposes.

12. **Gifts and Endowments**. Museum agrees to exert its reasonable efforts to secure gifts of cash, property, in-kind goods and services and bequests and endowments for structures, capital improvements and the like to be used for advancement of the mission of the Museum.

13. **Budget.** The City agrees to make every good faith effort to properly fund the operation of the Museum for the advancement of the mission of the Museum.

14. **Capital Improvements.** Museum shall have the authority to recommend for approval the future design and development of the facilities used by

the Museum, but no capital or structural improvements to existing buildings or additions or future construction of buildings or additions shall be made without the prior approval of the City.

15. **Utilities.** Museum has paid all deposits for electricity, water, gas, telephone, air conditioning and heating, sewer charges, garbage and trash collection, and all other utilities for services used by or furnished to Museum's facilities, and the City has acquired and maintained all meters, permits, approvals, and licenses necessary to effectuate this provision. Museum has paid, and will continue to pay for all utility charges incurred on the property.

16. **Right to Inspect.** City reserves and shall always have the right to enter Museum's facilities without cost for the purpose of viewing and ascertaining the condition of the same and to protect its interest in the premises or to inspect the operations conducted on said premises.

17. **Ownership of Property.** The original City Hall building, and land, and any and all new facilities constructed or reconstructed on the premises during the term of this Agreement, shall be and remain in the ownership of the City.

18. **Insurance.** Museum agrees to secure and maintain in force throughout the duration of this agreement the following minimum insurance coverage:

A. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	$500,000 each occurrence $500,000 each aggregate
Property Damage Liability	$500,000 each occurrence $500,000 each aggregate

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 each occurrence $500,000 each aggregate

B. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	$500,000 each accident
Property Damage Liability	$500,000 each accident
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 each accident

19. **Hold Harmless.** Without regard to the limits of such insurance, but within the requirements of the Kansas Tort Claims Act, Museum and the City agree to save and hold each other 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 its officers, agents, servants, or employees, occurring in the performance of its services under this contract.

20. **Default Cure Period.** Either party's failure to perform any of its obligations under this Agreement after a period of fourteen (14) days (or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure) after receiving written notice from the other party shall constitute a default under this Agreement. Any such written notice shall give reasonable detail in the nature and extent of the failure and identify the Agreement's provision(s) containing the obligations at issue. If the default continues after such notice and cure period, then the offending party shall be in default and the other party may pursue any remedies given in this Agreement or under the law.

21. **Mechanics Liens**. Museum and the City agree to save and hold each other free and harmless and indemnify each other against all claims for labor and materials in connection with improvements, repair or alterations to Museum that were conducted at the specific request and expense of the other, and the cost of defending against such claims, including reasonable attorney's fees.

22. **Compliance with Law.** Museum shall, at its sole cost and expense, materially comply and secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the premises covered by this Agreement, or the operations conducted thereon, and shall faithfully

observe, and secure observance with, in the use of the premises, all Municipal ordinances and State and Federal Statutes now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments, and fees assessed or levied upon Museum or the premises by reason of any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Museum or by reason of the business or other activities of Museum upon or in connection with said premises. Museum specifically agrees to maintain a tax exempt status per applicable state and federal revenue and taxation codes during the entire term of this agreement. Failure to maintain such tax exempt status shall be considered a material default of this agreement.

23. **Accounting, Record Keeping, Audit.** All accounting for the receipt and disbursement of City funding shall be performed in accordance with generally accepted accounting principles for governments. City shall make all such records available to the Museum or its authorized representative during normal business hours.

    All accounting for the receipt and disbursement of Museum funds shall be performed in accordance with generally accepted accounting principles for nonprofit organizations. Museum shall, within 180 days of the end of each year, make available to the City financial statements for the year together with an independent auditor's report signed by a certified public accountant. Museum shall make all financial records available to the City or its authorized representative for inspection, review, or audit during normal business hours.

24. **Changes in By-Laws.** Any proposed changes in the corporate powers or structure of Museum, or its by-laws which would materially affect its ability to carry out the purposes of this Agreement shall be immediately communicated to the City.

25. **Equal Employment Opportunity.** Museum shall ensure that all services and facilities offered and operated by Museum in connection with Museum are open and available to all members of the public regardless of race, religion, national origin, sex, disability and political belief.

    Museum shall observe the provisions of the Kansas Act against Discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, age or ancestry.

In all solicitations or advertisements for employees, Museum shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

26. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provision of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-29350), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the reasoned opinion of its legal counsel, the Agreement may be deemed to violated the terms of such laws.

27. **Non-Assignability.** Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the written consent of the other party.

28. **Organization's Governing Board.** It is mutually understood and agreed by the parties hereto that under no circumstances shall the City make any claim to any of the assets of the organization's governing board or its successor. The Museum shall have one (1) City Council appointed designee on the Board of Directors of the governing board, but prior to any appointment the City shall consider the recommendations of the Museum's Board of Trustees regarding such appointment.

29. **Annual Reports.** Museum agrees to submit, on an annual basis, a State of the Organization report similar to a Board of Directors' report that addresses financial stability, growth and strategic planning. The annual report should also address paid attendance, programming growth, capital improvements (if any) and the most current IRS 990 form. The organization agrees to undergo an annual review process. Any deficiencies in performance or stability will require the Board of Directors to work with the City to develop an improvement plan.

30. **Collaboration with Other Organizations**. Museum shall strive to create collaborative partnerships to share resources among multiple cultural arts organizations.

31. **Extensions.** The parties acknowledge that the operation of the Museum requires a collaborative effort by the parties and they, therefore, agree to

negotiate any and all extension, revisions, and amendments to this Agreement in good faith.

THE CITY OF WICHITA, KANSAS

By: _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law
And City Attorney

ATTEST:

_____

WICHITA-SEDGWICK COUNTY HISTORICAL MUSEUM ASSOCIATION

By: PRESIDENT, BOARD OF TRUSTEES

Wichita-Sedgwick County Historical Museum

Mission Statement: The Wichita - Sedgwick County Historical Museum's mission is to educate the community and its visitors about local history by collecting, preserving, and interpreting materials reflecting the heritage of Wichita and Sedgwick County.

Expectations of Board Members

1. **Policy**

   General expectations of Museum Board Members shall be defined in writing and periodically updated for the following purposes:

   A. To allow prospective members to make an informed decision regarding their ability to serve the Wichita-Sedgwick County Historical Museum.

   B. To ensure that the responsibilities of the Board are equitably distributed among the full membership and that adequate commitment is provided to Board-supported events and services.

   C. To provide Board members with a measure of accountability and a means of assessing their own level of performance as a member.

   D. To provide criteria for assessment of the commitment of incumbent board members eligible for reelection or reappointment.

2. **Responsibilities**

   A. Nominating Committee members are responsible for reviewing the general expectations of Museum Board members with candidates at the time of their invitation to serve.

   B. The Executive Director is responsible for including a list of general expectations in each Board member's manual and to acquaint each member with duties of care, loyalty, and obedience.

   C. The President of the Board and the Executive Director are responsible for assessing individual Board member's commitment to these general expectation to ensure full participation of members.

3. **Expectations**

   A. Board members shall demonstrated sufficient knowledge of the Museum to accurately represent its needs and services to the general public. This knowledge shall be gained through:

- Participation in general orientation within two months of appointment to the Board. Content of orientation shall include but is not limited to:
    - History of the Museum
    - Vision, Mission, Core Values, and Goals
    - Operational Budget
    - Organizational Structure
    - Staff and Volunteer Job Descriptions
- Regular review of written program reports and newsletters.
- Attendance at Museum Events.

B. Board members shall actively contribute to planning and business decisions of the Board through:

- Attendance at Board meetings. Minimum attendance expected of each individual Board member is eight meetings.
- Active participation on one or more standing committees annually. Attendance at a minimum of 50% of the meetings is expected.
- Responsiveness to Executive Committee, Committee Chairpersons or staff when asked for information or consultation on matters related to their area of expertise.

C. Board members shall support the Museum sponsored functions and events through assistance, attendance, or financial support.

D. Board members shall make a meaningful financial gift each year of their service. In addition, Board members shall contribute to the needs of the organization through one or more of the following means:

- Identification of potential gifts-in-kind, services, or financial donors within their circle of influence
- Personal contacts with potential donors
- Identification and/or pursuit of grants or foundation funds
- Personal or business services or gifts-in-kind
- Active involvement with special events planning and implementation

E. It is important to our fund development efforts that 100% of our Board members make a financial contribution to the Museum. When we are asking foundations, corporations, and other individuals t make financial contributions in support of our programs, we must be able to say that 100% of our Board members embrace and support the mission and vision of Museum through their commitment of time and resources.

I have reviewed the above expectations and I am committed to support the vision and mission of the Wichita-Sedgwick County Historical Museum.

Operating Agreement Mid-America All-Indian Center Inc.

1. **Purpose.** The purpose of this Agreement is to define the City of Wichita's financial, personnel and operational relationship with the Mid-America All-Indian Center Inc. Any existing leasehold interest of City property held by the Mid-America All-Indian Center Inc. is not subject to change by this Agreement.

2. **Term.** The term of this Agreement shall be for a period of five (5) years commencing upon the 1st day of January, 2010.

3. **City Funding.** In return for the Mid-America All-Indian Center Inc.'s performance of duties specified in this Operating Agreement, the City agrees to provide annual funding (payable to the Mid-America All-Indian Center Inc. in accordance with Section 6 below) in the following calendar years and amounts:

2010	____$157,900.00_____
2011	____$160,268.50_____
2012	____$165,076.55_____
2013	____$170,028.85_____
2014	____$175,129.72_____

Mid-America All-Indian Center Inc. shall maintain its current operating reserve to ensure financial security for at least 3 to 6 months of operating expenses.

Mid-America All-Indian Center Inc. shall demonstrate average annual growth in earned income and/or private contributions in each rolling three year period covered by this Agreement.

4. **Personnel.** Mid-America All-Indian Center Inc. employs no City personnel, but City employees under City direction may be employed to work at the Mid-America All-Indian Center Inc. facility. These City employees are provided at the direction and request of the Mid-America All-Indian Center Board of Trustees based upon agreed positions, duties, and staffing levels. The Mid-America All-Indian Center Inc. is obligated to reimburse the City for the full personnel costs of the City employees provided in this manner, except that the Mid-America All-Indian Center Inc. will not be obligated to reimburse the City for the personnel costs of the City

employees for any time spent working for any department or facility of the City unless said time is for the direct benefit of the Mid-America All-Indian Center Inc.

5. **Employment of the Director.** The City is responsible for the hiring and/or termination of all employees of the City working at Mid-America All-Indian Center Inc., including the Director of the Mid-America All-Indian Center Inc., but shall consult with the Board of Trustees of the Mid-America All-Indian Center regarding such hirings and/or terminations. The Director will supervise the overall operation of the Mid-America All-Indian Center Inc. The City shall establish the Director's compensation and other terms and conditions of employment, but shall consult with the Mid America All Indian Center regarding such compensation and conditions.

   The Director shall take guidance and direction from the Board of Trustees of the Mid-America All-Indian Center Inc., but shall conduct all work under the direct supervision from the Director of Arts & Cultural Services. Mid-America All-Indian Center Inc. and the City agree that the City Manager or Director of Arts & Cultural Services shall consult with the Chairperson of the Board of the Mid-America All-Indian Center Inc. to complete personnel evaluations of the Mid-America All-Indian Center Inc.'s Director and will work in cooperation to determine and establish the appropriate levels of staffing for the facility.

6. **Use of City Funds.** Requested funds in the "Contractual Services Account" will be disbursed by the City to Mid-America All-Indian Center Inc. no later than 30 days after submission of approved invoices covering expenses for which said funds are appropriated.

   Mid-America All-Indian Center Inc. agrees to devote the assets, resources, and funds provided by the City of Wichita exclusively for purposes advocating the mission of the Mid-America All-Indian Center Inc. This mission as defined by the Board of Trustees is to serve as a cultural center and museum dedicated to educating people about and preserving the heritage of the American Indian. City funding for the operation of Mid-America All-Indian Center Inc. shall be appropriated annually in accordance with the funding agreement in existence between the City and Mid-America All-Indian Center Inc.

7. **Supplemental City funding.** Mid-America All-Indian Center Inc. may apply for Operational Grant Cultural Funding through the competitive grant process.

8. **Complete Agreement**. This agreement supersedes all prior agreements between the parties specifically dealing with funding. Unless otherwise noted, it does not apply to prior or existing leases.

9. **Rules of Operation.** Mid-America All-Indian Center Inc. agrees to adopt, publish, and enforce reasonable rules and regulations governing the conduct of visitors to Mid-America All-Indian Center Inc. consistent with the provisions of this Agreement, which rules and regulations may be revised by Mid-America All-Indian Center Inc. from time to time.

10. **Admission Fees.** Mid-America All-Indian Center Inc. shall have the right to establish, collect and retain all fees for admission to Mid-America All-Indian Center Inc. and for all activities held therein.

11. **Use of Facility.** Mid-America All-Indian Center Inc. shall have the exclusive right to occupy and use the facility and land pursuant to the existing leasehold interest of City property held by the Mid-America All-Indian Center Inc. for advancement of the mission of the Mid-America All-Indian Center Inc., and to establish, collect, and retain all charges derived from any rentals, charges, fees, concessions, or other uses of the facility and land for the furtherance of that mission.

12. **Gifts and Endowments.** Mid-America All-Indian Center Inc. agrees to exert its reasonable efforts to secure gifts of cash, property, in-kind goods and services and bequests and endowments for structures, capital improvements and the like to be used for advancement of the mission of the Mid-America All-Indian Center Inc.

13. **Budget.** The City agrees to make every good faith effort to aid in the funding of the operation of the Mid-America All-Indian Center Inc. for the advancement of the mission of the Mid-America All-Indian Center Inc.

14. **Capital Improvements.** Mid-America All-Indian Center Inc. shall have the authority to recommend for approval the future design and development of the facilities used by the Mid-America All-Indian Center Inc., but no capital or structural improvements to existing buildings or additions or future construction of buildings or additions shall be made without the prior approval of the City.

15. **Utilities**. Mid-America All-Indian Center Inc. shall pay all deposits and charges for two telephone lines, and the City shall be responsible for the balance of the charges for electricity, water, gas, telephone, air conditioning and heating, sewer charges, garbage and trash collection, and all other utilities and charges for services used by or furnished to Mid-America All-Indian Center Inc.'s facilities

16. **Right to Inspect.** City reserves and shall always have the right to enter Mid-America All-Indian Center Inc.'s facilities without cost for the purpose of viewing and ascertaining the condition of the same and to protect its interest in the premises

17. **Care and Maintenance**. The City agrees to provide for the upkeep of the buildings and grounds of Mid-America All-Indian Center Inc.'s facilities, to make any and all reasonably necessary repairs, replacements, renewals, to all of the property, real and personal, over which Mid-America All-Indian Center Inc. exercises responsibility under this agreement.

18. **Ownership of Property.** All buildings and land, including any and all new facilities constructed or reconstructed on the premises during the term of this Agreement at the request and expense of the City, shall be and remain in the ownership of the City, including the area commonly known as the Keeper of the Plains Plaza. All outdoor exhibits, including, but not limited to, the Village Encampment Exhibit and the Heritage Pole, shall be and remain in the ownership of the Mid-America All-Indian Center Inc.

19. **Insurance.** Mid-America All-Indian Center Inc. agrees to secure and maintain in force throughout the duration of this agreement the following minimum insurance coverage:

    Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	$500,000 each occurrence $500,000 each aggregate
Property Damage Liability	$500,000 each occurrence $500,000 each aggregate
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 each occurrence $500,000 each aggregate

20. **Hold Harmless.** Without regard to the limits of such insurance set out in section 20, but within the requirements of the Kansas Tort Claims Act, Mid-America All-Indian Center, Inc. and the City agree to save and hold each other 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 its officers, agents, servants, or employees, occurring in the performance of its services under this contract.

21. **Default Cure Period.** Either party's failure to perform any of its obligations under this Agreement after a period of fourteen (14) days (or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure) after receiving written notice from the other party shall constitute a default under this Agreement. Any such written notice shall give reasonable detail in the nature and extent of the failure and identify the Agreement's provision(s) containing the obligations at issue. If the default continues after such notice and cure period, then the offending party shall be in default and the other party may pursue any remedies given in this Agreement or under the law.

22. **Mechanics Liens.** Mid-America All-Indian Center Inc. and the City agree to save and hold each other free and harmless and indemnify the other against all claims for labor and materials in connection with improvements, repair or alterations to Mid-America All-Indian Center Inc. that were conducted at the specific request and expense of the other, and the cost of defending against such claims, including reasonable attorney's fees.

23. **Parking Lot Maintenance.** City shall at its sole expense, pave and perform all maintenance on the existing parking lot constructed for use at Mid-America All-Indian Center Inc.'s facilities and shall maintain such parking lot in good condition and repair.

24. **Compliance with Law.** Mid-America All-Indian Center Inc. shall, at its sole cost and expense, materially comply and secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the premises covered by this Agreement, or the operations conducted thereon, and shall faithfully observe, and secure observance with, in the use of the premises, all Municipal ordinances and State and Federal Statutes now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments, and fees assessed or levied upon Mid-America All-Indian Center Inc. or the premises by reason of any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Mid-America All-Indian Center Inc. or by reason of the business or other activities of Mid-America All-Indian Center Inc. upon or in connection with said premises. Mid-America All-Indian Center Inc. specifically agrees to maintain a tax exempt status per

applicable state and federal revenue and taxation codes during the entire term of this agreement. Failure to maintain such tax exempt status shall be considered a material default of this agreement.

25. **Accounting, Record Keeping, Audit.** All accounting for the receipt and disbursement of City funding shall be performed in accordance with generally accepted accounting principles for governments. City shall make all such records available to the Mid-America All-Indian Center Inc. or its authorized representative during normal business hours.

    Mid-America All-Indian Center Inc. All accounting for the receipt and disbursement of Mid-America All-Indian Center Inc. funds shall be performed in accordance with generally accepted accounting principles for nonprofit organizations. Mid-America All-Indian Center Inc. shall, within 120 days of the end of each year, make available to the City financial statements for the year together with an independent auditor's report signed by a certified public accountant. Mid-America All-Indian Center Inc. shall make all financial records available to the City or its authorized representative for inspection, review, or audit during normal business hours.

26. **Changes in By-Laws.** Any proposed changes in the corporate powers or structure of Mid-America All-Indian Center Inc., or its by-laws which would materially affect its ability to carry out the purposes of this Agreement shall be immediately communicated to the City.

27. **Equal Employment Opportunity.** Mid-America All-Indian Center Inc. shall ensure that all services and facilities offered and operated by Mid-America All-Indian Center Inc. in connection with Mid-America All-Indian Center Inc. are open and available to all members of the public regardless of race, religion, national origin, sex, disability and political belief.

    Mid-America All-Indian Center Inc. shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, age or ancestry.

    In all solicitations or advertisements for employees, Mid-America All-Indian Center Inc. shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

28. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provision of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-29350), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the reasoned opinion of its legal counsel, the Agreement may be deemed to violated the terms of such laws.

29. **Non-Assignability.** Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the written consent of the other party.

30. **Organization's Governing Board.** It is mutually understood and agreed by the parties hereto that under no circumstances shall the City make any claim to any of the assets of the organization's governing board or its successor. The City shall have one (1) City Council appointed designee on the Board of Trustees governing board, but, prior to any appointment, the City shall consider recommendations from the Board of Trustees of the Mid-America All-Indian Center regarding such appointment.

31. **Annual Reports**. Mid-America All-Indian Center Inc. agrees to submit, on an annual basis, a State of the Organization report similar to a Board of Director's report that addresses financial stability, growth and strategic planning. The annual report should also address paid attendance, programming growth, capital improvements (if any) and the most current IRS 990 form. The organization agrees to undergo an annual review process. Any deficiencies in performance or stability will require the Board of Trustees to work with the City to develop an improvement plan.

32. **Collaboration with other organizations.** Mid-America All-Indian Center Inc. agrees to use reasonable efforts to create collaborative partnerships to share resources among multiple cultural arts organizations.

33. **Extensions.** The parties acknowledge that the operation of the Mid-America All-Indian Center Inc. requires a collaborative effort by the parties and they, therefore, agree to negotiate any and all extension, revisions, and amendments to this Agreement in good faith.

THE CITY OF WICHITA, KANSAS

By: _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law
And City Attorney

ATTEST:

MID-AMERICA ALL-INDIAN CENTER, INC.

_____
By: Paula D. Langworthy
Chairperson of the Board of Trustees

SECOND SUPPLEMENTAL AGREEMENT
FOR OPERATION AND MANAGEMENT OF
THE WICHITA ART MUSEUM

THIS SECOND SUPPLEMENTAL AGREEMENT entered this date, 10-20-09, 2009, by and between THE CITY OF WICHITA, KANSAS, a municipal corporation ("City") and THE WICHITA ART MUSEUM, INC., a not-for-profit corporation duly organized under the laws of the State of Kansas ("Corporation").

WITNESSETH:

WHEREAS the city succeeded to the ownership and control over all property of the Wichita Art Museum Board effective January 1, 1998, including certain funds and trusts established for the Wichita Art Museum; and

WHEREAS the City and the Corporation entered into an Agreement for Operation and Management of the Wichita Art Museum dated January 6, 1998 ("Agreement"), by which the City designates the Corporation as its agent for the general supervision and care of the Wichita Art Museum and objects of art belonging to the City or exhibited therein; and

WHEREAS the parties supplemented that Agreement on April 14, 1998, to delegate the management and use of the trusts to the Corporation on behalf of the City and the Corporation undertook and continues those duties and obligations as set forth in that Supplemental Agreement; and

WHEREAS the parties desire to further supplement that agreement to clarify their financial relationships;

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

I. The Agreement is amended and supplemented to provide as follows:

A. Paragraph IV. B. 6. Of the Original Agreement shall be amended to add, at its conclusion, the following: The Board shall endeavor to show continual positive growth in private financial support measured on a rolling average of the three past accounting years.

B. Paragraph IV. B. 8. Of the Original Agreement shall be amended to add, at its conclusion, the following: The Board shall present annually to the incumbent City Manager and Director of Finance for the City any recommendations for capital improvements to the Museum facility and the potential coordination of those improvements with the Board's plans.

C. Paragraph VII. A. of the Original Agreement shall be amended to add, at its conclusion, the following: In return for performance of duties as provided in this Agreement, and to provide financial stability for planning purposes, the City agrees to provide annual funding for Art Museum operations in the following calendar years and amounts:

2010	$1,534,643.00
2011	$1,557,662.65
2012	$1,604,392.52
2013	$1,652,524.30
2014	$1,702,100.03

The City's provision of the above annual funding does not preclude the Corporation from receiving additional funding through the City's competitive cultural arts funding process during these years.

D. Paragraph VII. C. of the Original Agreement shall be amended, to add at its conclusion, the following: The Board agrees to maintain an operating reserve to ensure financial security of Art Museum operations in an amount equal to that necessary to satisfy between three (3) and six (6) months of operating expenses.

II. Except to the extent specifically modified by this Second Supplemental Agreement, the original provisions of the Agreement, as modified by the initial Supplemental Agreement, remain in force and effect.

IN WITNESS WHEREOF the parties have entered into this Supplemental Agreement on the date written above.

THE CITY OF WICHITA, KANSAS

By: Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law
And City Attorney

ATTEST:

THE WICHITA ART MUSEUM, INC.

By: Marni Vliet, President
Chair

Approved / Accepted By City Council
This JAN 6 1998

CITY CLERK'S ORIGINAL
RETURN TO CITY CLERK

Supplemented
April 14, 1998

January 5, 1998

COPY

AGREEMENT
FOR OPERATION AND MANAGEMENT OF
THE WICHITA ART MUSEUM

THIS AGREEMENT entered this JAN 6 1998, by and between THE CITY OF WICHITA, KANSAS, a municipal corporation ("City") and THE WICHITA ART MUSEUM, INC., a not-for-profit corporation duly organized under the laws of the State of Kansas ("Corporation").

WITNESSETH:

WHEREAS the City owns the Wichita Art Museum, a public facility located at 619 Stackman Drive, Wichita, Kansas, and established for the promotion of fine arts and the housing and exhibit of paintings and other objects of art owned by the City, including the Roland P. Murdock collection; and

WHEREAS the Corporation is a not-for-profit corporation authorized to aid, benefit, foster, promote, and support the development and welfare of the Wichita Art Museum and the education and welfare of its patrons; and

WHEREAS the City is authorized by ordinance to enter in an agreement with a not-for-profit corporation for the operation of the Wichita Art Museum: and

WHEREAS the City has determined that it is in the public interest to appoint and employee the Corporation as its agent for the general supervision and care of the Wichita Art Museum and objects of art belonging to the City or exhibited therein; and

WHEREAS the Corporation is authorized and willing to undertake the duties and obligations as set forth in this Agreement;

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

I. General

A. The City hereby appoints and employs the Corporation as its agent to plan, manage, operate, and develop the Wichita Art Museum.

B. The Corporation shall serve as the agent and representative of the City to provide housing, to care for, exhibit and maintain art, including paintings and other objects of art

owned by the City; to acquire by purchase, gift, bequest, or exchange, paintings, prints, statues, and other objects of art; as well as to maintain the Roland P. Murdock collection.

C. All operations of the Wichita Art Museum by the Corporation and its Board of Trustees shall be in accordance with the ordinances of the City of Wichita and the laws of the State of Kansas.

II. Board of Trustees

A. The Corporation shall establish and maintain Articles of Incorporation and By-Laws consistent with this Agreement which provide for organization and structure as set forth in this Section.

B. The membership of the Wichita Art Museum Board shall constitute the membership of the Corporation.

C. The governing body of the Corporation shall be its board of trustees. The Board of Trustees shall be comprised of individuals who represent the broad interests of the citizens of Wichita. The Board members shall serve without compensation.

D. The Board of Trustees should be comprised of not-to-exceed 36 members with staggered terms of office, including the City Manager who shall be an ex-officio, voting member, and additionally the Murdock Trust trustees who shall be ex-officio, non-voting members.

E. The Officers of the Board shall include at least a President, a Vice-President, a Secretary, and a Treasurer. The officers shall serve for such term as shall be established by the Board.

F. The Director of the Wichita Art Museum shall be responsible for the administration and daily operation of the Museum. The Director shall serve in an ex-officio, non-voting capacity on all committees of the Board.

G. The Board should operate through a committee structure but act as a whole on major issues of policy. All members of the Board shall be assigned to a committee.

H. The full Board shall meet on a regular schedule and its meetings shall be open to the public.

I. The Corporation agrees to maintain its status as a not-for-profit corporation, tax exempt under § 501(c)(3) of the Internal Revenue Code, properly organized and registered in the State of Kansas. Any proposed changes in the corporate powers or structure of the Corporation, or its by-laws, which would materially affect its ability to carry out the purpose of this Agreement shall be immediately communicated to the City.

III. Authority of Corporation

A. The Corporation shall have the authority to contract and operate in its own name and in the name of the Wichita Art Museum. The Corporation shall have no power or authority to bind the City by or with any contract, to impose any liability on the City, or to place any lien on property of the City. No act or contract of the Corporation shall be in the name of the City.

B. The Corporation shall have the authority to apply for and receive grants and funding from governmental agencies and private entities. The Board shall have the authority to accept or reject, in whole or in part, gifts of property and cash, including bequests, endowments, and grants appropriate to the objects and purpose of the Museum.

C. All purchases and gifts of property, including objects of art, shall be promptly applied to the use of the Museum. All funds received or raised by the Corporation shall be promptly remitted for the use of the Museum.

D. The Corporation shall have charge of maintaining, arranging, labeling, and exhibiting collections and works of art, with complete administrative control of said property.

E. The Corporation shall have the authority to operate a gift shop and restaurant at the Museum or to enter into contracts with others for such operation.

F. The Corporation shall have the authority to allow the use of the Wichita Art Museum exhibit galleries and rooms for private functions, charitable events, and educational activities under such rules and regulation as may be adopted by the Board consistent with the public purpose of the Museum.

G. No existing building nor any building which is constructed or placed upon the property, either temporarily or permanently, shall be used for the purpose of housing the operation of any multi-game, casino-style gambling on the premises.

IV. Duties of the Corporation and its Board of Trustees

A. The Corporation shall act as trustee or custodian and shall have the general supervision and care over the Wichita Art Museum and over the objects of art owned by the City and others and placed in the Wichita Art Museum.

B. The duties of the Corporation acting through its Board of Trustees shall include:

1. To be responsible for the exhibitions, collections, and programming of the Wichita Art Museum;

2. To adopt necessary rules and regulations for the exhibition and maintenance of the objects of art of the Wichita art museum;

3. To keep the Wichita Art Museum and its exhibits open and available to the public at all reasonable hours as may be determined by the Board;

4. To apply for and receive funds from the State or Federal government or any agencies thereof for the purpose of aiding the Wichita Art Museum;

5. To accept or reject as agent for the City all gifts, donations, and objects of art offered to the Wichita Art Museum and to receive and administer the same in accordance with the provisions of this Agreement;

6. To promote the Wichita Art Museum, be responsible for the sound fiscal management of the Museum, and actively work to raise funds and encourage private support of the Museum;

7. To develop a Museum master plan, marketing and promotional plan, along with other plans and developments as may be required;

8. To establish operating budget priorities for museum services and recommend financing mechanisms for implementation of art museum plans and developments;

9. To make annual reports to the City Council on the state of affairs of the Museum;

10. To perform such other duties and make such recommendations as may be requested by the City Council from time to time.

V. Buildings

The Wichita Art Museum facility shall continue to be owned by the City. The Corporation shall have no authority to transfer title to the building or its fixtures. All structural improvements, changes, or alterations to the facility, and any plans for the same, shall be subject to the final approval of the City.

VI. Objects of Art

The City shall continue to retain title to and be responsible for the objects of art titled in the name of the City or the former Wichita Art Museum Board. No title or any interest in such property shall be transferred, encumbered, or disposed of except by action of the Board, upon approval of the City Council. Any objects of art donated to the Corporation shall be held by the Board and used exclusively for Museum purposes; any funds donated to the Corporation for the purchase of art shall be held by the Board and used exclusively for the Museum. Objects of art designated permanently for Museum purposes by the City shall not be converted to other uses or permanently altered without the consent of the Board, upon approval of the City Council.

VII. Finances.

A. The City shall continue to provide financial support for the operations of the Wichita Art Museum in such amounts as found necessary or desirable by the City Council.

B. The City shall remain financially responsible for the Museum building and its major building systems and structure and the maintenance of the grounds in such manner and with such funding as shall be determined by the City on an annual basis.

C. The Board shall submit an annual budget to the City for approval in such manner as reasonably determined by the City.

D. The Board shall maintain proper books of account as to all funds and property handed by it and shall file with the City an annual operating report covering all financial transactions of the preceding calendar year, such accounting to specifically detail financial transactions involving tax funds.

VIII. Interaction with the City

A. The Director or President shall make annual reports to the City Council on the state of affairs of the Museum, business plan, financial reports, attendance and other critical

statistics, and programming plans for the future. Additional periodic reports on the state of affairs of the Museum should be filed with the City Council in such manner and frequency as requested by the Council.

B. The City shall provide and the Corporation shall use the services of the City's Finance Director, Personnel Director, and City Attorney in such manner and for such services as may be agreed in writing by the Director and City Manager from time to time.

IX. Employees of the Corporation

A. The Corporation through its Board of Trustees shall have the entire control and management of the Wichita Art Museum including the right and power to employee a qualified professional Director and the necessary subordinate employees on such terms as may be determined by the Board. Such Museum employees, however, shall continue to be eligible for City employee benefits as provided under City Council Policy 8 through such procedures as may be agreed in writing by the City Manager and the Director, unless and until changes in the employment relationship are recommended to and approved by both the City and the Corporation.

B. The Corporation shall have the right to contract with individuals or institutions for professional and other services to assist the Director in carrying out the duties under this Agreement.

X. Cash Basis and Budget Laws

It is the intent of the parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.) or the Kansas Budget law (K.S.A. 79-2925). Therefore, notwithstanding anything to the contrary herein contained, the City's obligations under this Agreement are to be construed in a manner that assures that the City is at all time not in violation of the Cash Basis law or the Budget Law

XI. Non-Discrimination

The Corporation shall not discriminate or allow discrimination in its activities or contracts under this Agreement and shall comply with the NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS attached hereto as Exhibit "A".

XII. Non-assignment

This Agreement may not be assigned or transferred by the Corporation without the express written consent of the City, which consent may be denied without cause.

XIII. Termination

A. This Agreement may be canceled and terminated at any time by mutual agreement, or by either party under circumstances and conditions as follows:

1. The Corporation may cancel and terminate this Agreement only after 90 days written notice to the City.

2. The City may cancel and terminate this Agreement at any time by first giving the Corporation's Board 90 days' notice in writing notifying the Corporation that such action is contemplated by the City and is in the public interest. The Corporation shall be given an opportunity to be heard on the matter by the City Council before such action is taken, if requested by the Board. Thereafter the City Council may take such action to cancel or terminate the Agreement as it deems appropriate.

3. Either party may cancel and terminate this Agreement immediately upon written notice in the event of material breach of the provisions of this Agreement, provided that upon written request, the breaching party may have a reasonable time in which to remedy such breach. In the event the breach is not satisfactorily remedied, the party may proceed to the immediate termination of the Agreement.

B. Upon termination of the agreement, all funds, objects of art, and property of any kind held or received on behalf of the City or the Museum shall remain with the Museum and shall be the property of the City. Any funds, objects of art, or property held in the name of the Corporation as restricted by the donors of such, shall remain at the Museum and applied for Museum purposes in the name of the Corporation.

XIV. Effective Date

This Agreement shall be effective as of January 1, 1998, and may from time to time be modified, changed, or amended only as may be mutually agreed in writing between the Corporation acting through its Board of Directors and the City, or their successors.

IN WITNESS WHEREOF the parties have entered into this Agreement on the date written above.

THE CITY OF WICHITA, KANSAS

By _____
Bob Knight, Mayor

ATTEST:

_____
Pat Burnett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, City Attorney

THE WICHITA ART MUSEUM, INC.

By _____
President

ATTEST:

_____

ART MUSEUM AGREEMENT

JAN 6 1998
p.99

AGREEMENT FOR OPERATION AND MANAGEMENT OF WICHITA ART MUSEUM.

Agenda Report No. 98-035.

On November 18, 1997, the City Council approved a new governance structure for the Wichita Art Museum. Effective January 1, 1998, the previous Wichita Art Museum board was abolished and the City became the successor in interest to all power and authority over the Wichita Art Museum. The City is authorized to enter into a contract with a not-for-profit entity for the operation and management of the Wichita Art Museum.

A 501(c)3 tax exempt organization known as the Wichita Art Museum, Inc., has been established with authority to operate and manage the Museum. This entity with a 36 member Board of Trustees is in place and scheduled to begin operation. Formal action on the management agreement is necessary.

A proposed Management Agreement with The Wichita Art Museum, Inc., was provided to the City Council and summarized in the Agenda Report on November 18, 1997. The Council has never taken formal action to approve the agreement and this action is necessary to put the new governance structure in place. Under this agreement the new entity and its Board of Trustees will assume operation and management of the Museum.

Motion --
-- carried

Knight moved that the Agreement be approved and the Mayor be authorized to execute. Motion carried 7 to 0.

7.3 Museum, Art
JAN 6 1998

Agenda Item # 11

City of Wichita
City Council Meeting
April 14, 1998

COPY

Agenda Report # 98-300

TO: Mayor and City Council

SUBJECT: Wichita Art Museum - Supplemental Agreement

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Approve the Agreement

Background: On November 6, 1997, the City Council approved a new governance structure for the Wichita Art Museum. Effective January 1, 1998, the City of Wichita succeeded the Wichita Art Museum Board to the rights, obligations, and control over the Wichita Art Museum. The former Board held several trusts in its name, primarily the Burneta Adair Endowment Trust and the Wichita Art Museum Board Trust (consisting of a number of individual trusts), invested at several local banks. A number of these trusts have restrictions on the use of the principal or income placed by their grantors.

The City of Wichita succeeded to the fiduciary responsibility for the investment, management, and proper use of these trusts. All decisions relating to the trusts now rests with the City Council, and affirmative direction through Council action is necessary for any decisions on use of the trust funds or changes in investment and management. The Council may make the decision, however, to delegate any or all of these decisions to the new board (the Wichita Art Museum, Inc.).

On January 6, 1998, the City Council approved an agreement with the Wichita Art Museum, Inc. (a §501(c)(3) tax exempt corporation) to take over the operation and management of the Art Museum. The ordinance and agreement delegated management control over the works of art to the new Board (decisions on disposition or transfer of title of art works must still be approved by Council). The new board has now also asked to have direct responsibility for the management and use of the trust funds for the continued operation of the Museum.

Analysis: The proposed Supplement Agreement delegates the Wichita Art Museum, Inc., to act on behalf of the City and have general supervision and management of all the existing and future Art Museum trust funds. This board is required to invest and use the funds in accordance with any restrictions and conditions placed by the grantors and in compliance with statutory fiduciary responsibilities. It may amend restrictions placed by only the old WAM Board, however.

The new board will report on the investment and use of the trust funds in its periodic reports to the City Council and through Council review of the Art Museum budget.

Financial Considerations: The Wichita Art Museum, Inc., will be required to continue to separately account for the investment and use of each trust fund.

Legal Considerations: The City Council has the authority to delegate the responsibility for the management and use of Art Museum trust funds. The supplemental agreement was drafted and approved as to form by the Law Department.

Recommendations/Actions: Approve the Agreement and authorize the Mayor to sign.

CITY CLERK'S ORIGINAL
RETURN TO CITY CLERK

Approved / Accepted By City Council
This APR 14 1998

SUPPLEMENTAL AGREEMENT FOR OPERATION AND MANAGEMENT OF THE WICHITA ART MUSEUM

THIS SUPPLEMENTAL AGREEMENT entered this date, APR 14 1998, by and between THE CITY OF WICHITA, KANSAS, a municipal corporation ("City") and THE WICHITA ART MUSEUM, INC., a not-for-profit corporation duly organized under the laws of the State of Kansas ("Corporation").

WITNESSETH:

WHEREAS the City succeeded to the ownership and control over all property of the Wichita Art Museum Board effective January 1, 1998, including certain funds and trusts established for the Wichita Art Museum;

WHEREAS the City and the Corporation entered into an Agreement for Operation and Management of the Wichita Art Museum dated January 6, 1998 ("Agreement"), by which the City designates the Corporation as its agent for the general supervision and care of the Wichita Art Museum and objects of art belonging to the City or exhibited therein;

WHEREAS the parties desire to supplement the Agreement to delegate the management and use of the trusts to the Corporation on behalf of the City and the Corporation is authorized and willing to undertake the duties and obligations as set forth in this Supplemental Agreement;

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

I. The Agreement is amended and supplemented to provide as follows:

A. As used in the Agreement and this Supplement Agreement the term "Trusts" shall include trusts, accounts, and funds held by the Wichita Art Museum Board on December 31, 1997, and now held by the City for the benefit and use of the Wichita Art Museum. The Trusts shall include, without limitation, the Wichita Art Museum Operating Accounts, the Burneta Adair Endowment Trust, and the Wichita Art Museum Board Trust. The parties acknowledge that some of the said Trusts are current use accounts or funds, some are endowed, and others are restricted as to use by donor or board, which board restrictions can be amended by the Corporation.

B. The Corporation shall act on behalf of City and shall have the general supervision and care over the Trusts now existing and any future trusts and funds established with the City or the Wichita Art Museum for the benefit and use or the Wichita Art Museum, subject to the

Approved / Accepted By City Council
This APR 14 1998

April 13, 1998

SUPPLEMENTAL AGREEMENT FOR OPERATION AND MANAGEMENT OF THE WICHITA ART MUSEUM

THIS SUPPLEMENTAL AGREEMENT entered this date, APR 14 1998, by and between THE CITY OF WICHITA, KANSAS, a municipal corporation ("City") and THE WICHITA ART MUSEUM, INC., a not-for-profit corporation duly organized under the laws of the State of Kansas ("Corporation").

WITNESSETH:

WHEREAS the City succeeded to the ownership and control over all property of the Wichita Art Museum Board effective January 1, 1998, including certain funds and trusts established for the Wichita Art Museum;

WHEREAS the City and the Corporation entered into an Agreement for Operation and Management of the Wichita Art Museum dated January 6, 1998 ("Agreement"), by which the City designates the Corporation as its agent for the general supervision and care of the Wichita Art Museum and objects of art belonging to the City or exhibited therein;

WHEREAS the parties desire to supplement the Agreement to delegate the management and use of the trusts to the Corporation on behalf of the City and the Corporation is authorized and willing to undertake the duties and obligations as set forth in this Supplemental Agreement;

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B. The Corporation shall act on behalf of City and shall have the general supervision and care over the Trusts now existing and any future trusts and funds established with the City or the Wichita Art Museum for the benefit and use or the Wichita Art Museum, subject to the

provisions of this Supplement Agreement. Any trusts or funds established directly with the Corporation shall be subject to their terms and under the full control and authority of the Corporation.

C. The Trusts and all funds derived from the investment of trust funds shall used by the Corporation in accordance with all restrictions and conditions on use of principal, interest, or both placed upon the Trusts and in accordance with the Agreement and the budget of the Corporation.

D. The Corporation shall separately account for the investment and use of such Trust funds upon its books and within its annual financial statement compilations and/or financial audit.

E. The Corporation shall insure the Trusts are managed in compliance with statutory trust fiduciary responsibilities including, without limitation, the Uniform Trustees' Powers Act (K.S.A. 58-1201 *et seq.*) and the Trusts for State and Political Subdivision Act (K.S.A. 58-2431 *et seq.*),

F. The parties recognize that the City has and maintains the ultimate fiduciary responsibility for the Trusts to the grantors and the public. The City shall exercise that responsibility by the review of the budget as set forth in Section VII of the Agreement and the receipt of reports on the Wichita Art Museum as set forth in Section VIII of the Agreement.

II. Except to the extent specifically modified by this Supplemental Agreement, the original provisions of the Agreement remain in force and effect.

IN WITNESS WHEREOF the parties have entered into this Supplemental Agreement on the date written above.

THE CITY OF WICHITA, KANSAS

By _____
Bob Knight, Mayor

ATTEST:

_____
Pat Burnett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, City Attorney

THE WICHITA ART MUSEUM, INC.

By _____
R. A. DeVore, President

ATTEST:

_____
W. R. Conway, Jr.

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THE CITY OF WICHITA, KANSAS

By _____
Bob Knight, Mayor

ATTEST:

Pat Burnett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, City Attorney

THE WICHITA ART MUSEUM, INC.

By _____
R. A. DeVore, President

ATTEST:

_____
W. C. CONEW JR

ART MUSEUM AGREEMENT
APR 14 1998
Chris Cherches
P. 421

WICHITA ART MUSEUM - SUPPLEMENTAL AGREEMENT.

City Manager reviewed the Item.

Agenda Report No. 98-300.

On November 6, 1997, the City Council approved a new governance structure for the Wichita Art Museum. Effective January 1, 1998, the City of Wichita succeeded the Wichita Art Museum Board to the rights, obligations, and control over the Wichita Art Museum. The former Board held several trusts in its name, primarily the Burneta Adair Endowment Trust and the Wichita Art Museum Board Trust (consisting of a number of individual trusts), invested at several local banks. A number of these trusts have restrictions on the use of the principal or income placed by their grantors.

The City of Wichita succeeded to the fiduciary responsibility for the investment, management, and proper use of these trusts. All decisions relating to the trusts now rests with the City Council, and affirmative direction through Council action is necessary for any decisions on use of the trust funds or changes in investment and management. The Council may make the decision, however, to delegate any or all of these decisions to the new board (the Wichita Art Museum, Inc.).

On January 6, 1998, the City Council approved an agreement with the Wichita Art Museum, Inc. (a _501(c)(3) tax exempt corporation) to take over the operation and management of the Art Museum. The ordinance and agreement delegated management control over the works of art to the new Board (decisions on disposition or transfer of title of art works must still be approved by Council). The new board has now also asked to have direct responsibility for the management and use of the trust funds for the continued operation of the Museum.

The Supplement Agreement delegates the Wichita Art Museum, Inc., to act on behalf of the City and have general supervision and management of all the existing and future Art Museum trust funds. This board is required to invest and use the funds in accordance with any restrictions and conditions placed by the grantors and in compliance with statutory fiduciary responsibilities. It may amend restrictions placed by only the old WAM Board, however.

The new board will report on the investment and use of the trust funds in its periodic reports to the City Council and through Council review of the Art Museum budget.

The Wichita Art Museum, Inc., will be required to continue to separately account for the investment and use of each trust fund.

Mayor Knight momentarily absent with Vice Mayor Cole in the Chair.

Motion --
-- carried

Lambke moved that the Agreement be approved and the Mayor be authorized to execute. Motion carried 6 to 0. (Rogers absent)

7.3

Museum, ART

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Water and Sewer Utility Refunding Revenue Bond Sale

INITIATED BY: Finance Department

AGENDA: New Business

Recommendation: Approve the bids.

Background: The City is offering for sale one series of Water and Sewer Utility Refunding Revenue Bonds (Series 2011A) in the principal amount of not to exceed $123,000,000 to refund previously issued and currently outstanding bonds in order to provide savings on future debt service costs to the City.

Analysis: The proceeds of the Series 2011A Bonds will be used for the current refunding of the Water and Sewer Utility Revenue Bonds, Series 1999, as well as the advance refunding of the Water and Sewer Utility Revenue Bonds, Series 2003, by providing the necessary funds to pay the principal on the redemption dates.

Bids will be accepted electronically through ***PARITY*** Electronic Bid Submission System on November 1, 2011 until 10:00 a.m. CT 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 cost.

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 2011A Refunding Revenue Bonds will mature from the years 2012 through 2028, with principal maturities structured to produce increased savings for the years 2014-2016 (nearly $2 million per year), with minimal savings in all other years. The Series 2011A Bonds are callable beginning October 1, 2021 at par.

Goal Impact: This item impacts the Economic Vitality/Affordable Living and Internal Perspective Goals through the 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 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 Ordinance and Resolution and authorize the publication of the Bond Ordinance; and (4) find and declare, upon request of the Mayor, that a public emergency exists, requiring the final passage of the Bond Ordinance on the date of introduction.

Attachments: Request for Declaration of Emergency
Resolution Authorizing Issuance of Bonds
Ordinance Authorizing Issuance of Bonds

ORDINANCE NO. 49-148

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, AUTHORIZING THE ISSUANCE OF THE CITY'S WATER AND SEWER UTILITY REFUNDING REVENUE BONDS, SERIES 2011A, IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $123,000,000 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING WATER AND SEWER UTILITY REVENUE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS AND SUPPORTING DOCUMENTS.

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

WHEREAS, the Governing Body of the City has heretofore by Ordinance No. 39-888, adopted May 26, 1987, and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility" (the "Utility"); and

WHEREAS, pursuant to the provisions of the Act (as such term is defined herein) and Ordinance No. 41-934 of the City, adopted January 26, 1993 (the "Series 1993 Ordinance"), the City issued $76,320,000 original principal amount of Water and Sewer Utility Refunding and Improvement Revenue Bonds, Series 1993, dated February 1, 1993 (the "Series 1993 Bonds"), which Series 1993 Bonds were payable from and had a first and prior lien on the Net Revenues (as such term is defined herein) derived by the City from the operation of the Utility; and

WHEREAS, pursuant to the provisions of the Act, the Series 1993 Ordinance and various ordinances and resolutions of the City, the City has heretofore issued $64,930,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 1997 (the "Series 1997 Bonds"); $29,135,000 original principal amount of Water and Sewer Utility Refunding Revenue Bonds, Series 1998 (the "Series 1998 Bonds"); $48,950,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 1999 (the "Series 1999 Bonds"); $7,220,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 2000 (the "Series 2000 Bonds"); $16,325,000 original principal amount of Water and Sewer Utility Refunding Revenue Bonds, Series 2001 (the "Series 2001 Bonds"); $120,365,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 2003 (the "Series 2003 Bonds"); $45,535,000 original principal amount of Water and Sewer Utility Refunding Revenue Bonds, Series 2005A (the "Series 2005A Bonds"); $26,695,000 Water and Sewer Utility Refunding Revenue Bonds, Series 2005B (the "Series 2005B Bonds"); $46,975,000 Water and Sewer Utility Revenue Bonds, Series 2005C (the "Series 2005C Bonds"); $51,140,000 Water and Sewer Utility Revenue Bonds, Series 2006 (the "Series 2006 Bonds"); $29,460,000 Water and Sewer Utility Revenue Bonds, Series 2008A (the "Series 2008A Bonds"); $119,775,000 Water and Sewer Utility Revenue Bonds, Series 2009A (the "Series 2009A Bonds"); $12,845,000 Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law) (the

"Series 2009B Bonds"); $31,810,000 Water and Sewer Utility Revenue Bonds, Series 2010A (the "Series 2010A Bonds"); and $17,090,000 Water and Sewer Utility Revenue Bonds, Series 2010B (Taxable Under Federal Law) (the "Series 2010B Bonds"); and

WHEREAS, the Series 1993 Bonds, Series 1997 Bonds and Series 2001 Bonds are no longer Outstanding; and

WHEREAS, in order to generate interest savings, to provide an orderly plan of finance and to restructure debt payments on bonded indebtedness of the Utility, it is found and determined to be in the best interests of the City to necessary to issue revenue bonds payable from the Net Revenues of the Utility to refund the outstanding Series 1999 Bonds and Series 2003 Bonds (collectively, the "Refunded Bonds"), in accordance with K.S.A. 10-116a and K.S.A. 10-1201 *et seq.*, all as amended and supplemented, and Charter Ordinance No. 211 of the City (collectively, the "Act"); and

WHEREAS, other than the Refunded Bonds, the City does not have outstanding any bonds payable from the Net Revenues of the Utility, other than the Series 1998 Bonds, Series 2000 Bonds, Series 2005A Bonds, Series 2005B Bonds, Series 2005C Bonds, Series 2006 Bonds, Series 2008A, Series 2009A, Series 2009B Bonds, Series 2010A Bonds and Series 2010B Bonds (collectively, the "Outstanding Parity Bonds"); and

WHEREAS, the Governing Body hereby finds and determines that each and all of the conditions precedent to the issuance of additional refunding revenue bonds on a parity with and co-equal in priority and lien to the existing revenue bond indebtedness of the Utility have, or can and will be satisfied prior to or upon the issuance of such additional revenue bonds; and

WHEREAS, the Governing Body hereby finds it necessary and desirable to provide for the issuance and delivery of the Series 2011A Bonds payable from Net Revenues of the Utility and to authorize and provide for the execution and delivery of certain agreements and supporting documents;

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 Resolution herein referenced.

Section 2. Authorization of and Security for Series 2011A Bonds; Pledge of Net Revenues. Pursuant to the Bond Ordinance, the Governing Body hereby authorizes, orders and directs that there shall be issued and delivered the following revenue bonds (the "Series 2010A Bonds"): "City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 2011A," in the aggregate total principal amount not to exceed $123,000,000, as provided by and under the authority of the Act, for the purpose of providing funds to refund the Refunded Bonds and pay Costs of Issuance associated with the Series 2011A Bonds.

The principal amount of the Series 2011A Bonds, premium, if any, and the interest thereon are secured by and shall be paid by the City solely from the Net Revenues derived from the operation of the Utility, and the rates, fees and charges collected for the use thereof or service therefrom, and not from any other fund or source; and the Series 2011A Bonds are hereby made a first and prior lien on the Net Revenues produced from the Utility, which lien is on a parity with and co-equal to each other and to the lien on the Net Revenues of the Series 1998 Bonds, the Series 2000 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds, the Series 2008A Bonds, the Series 2009A Bonds, the Series 2009B Bonds, the Series 2010A Bonds and the Series 2010B Bonds; and the City hereby irrevocably pledges the Net Revenues derived from the operation of the Utility to the payment of the Series 2011A Bonds.

The Series 2011A Bonds shall not have any priority with respect to the payment of principal or interest over each other or over any revenue bonds of the City hereafter issued in accordance with the provisions of the Resolution (as hereinafter defined) which are on a parity with the Series 2011A Bonds, nor shall any other revenue bonds of the City heretofore or hereafter issued have any priority over the payment from the Net Revenues of the principal of or the interest on the Series 2011A Bonds.

The Series 2011A Bonds shall not be nor constitute general obligations of the City nor shall they constitute an indebtedness of the City within the meaning of any constitutional or statutory provision, and the City shall be under no obligation to levy any taxes to pay any of the principal of or the interest on the Series 2011A Bonds.

Section 3. Terms, Details and Conditions of the Bonds. The Series 2011A Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such form, 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 "Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Series 2011A 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. Rate Covenant. While any of the Series 2011A Bonds remain Outstanding, the rates, fees and charges for the use of the services rendered by the Utility shall be reasonable and just and subject to the conditions and limitations in this Ordinance and the Resolution, provided, and it is hereby covenanted and agreed that, such rates, fees and charges, after payment of the costs of operating and maintaining the Utility, shall be sufficient to produce Net Revenues Available for Debt Service each year equal to not less than one hundred twenty percent (120%) of the current year's Debt Service Requirements for all revenue bond indebtedness of the Utility; shall be sufficient to comply with the conditions of this Ordinance and the Resolution and the terms of the Series 2011A Bonds and provide adequate reserves; and shall provide for at least one hundred percent (100%) coverage of the City's obligations with respect to the Payment to the City and to the repayment of Policy Costs then due and owing to the Initial Provider; provided that, in determining the Net Revenues Available for Debt Service, estimated additional net income to be derived from rate increases in effect and being charged

prior to the end of the applicable year, as determined by the Consulting Engineers, may be taken into account, and that, without giving effect to any such adjustments from rate increases, Net Revenues Available for Debt Service shall be equal to at least one hundred percent (100%) of the current year's Debt Service Requirements for all revenue bond indebtedness of the Utility.

In providing for compliance with the covenants and provisions contained herein and the Resolution, it shall be the policy of the City that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues Available for Debt Service with respect to revenue bonds issued for improvements to each such component of the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

Section 5. Maintenance of Utility; Collection, Segregation and Disposition of Revenues. The City hereby covenants to operate and maintain the Utility in accordance with the requirements set forth in the Resolution. The City hereby further covenants and agrees that from and after the date of passage of this Ordinance, the Gross Revenues derived by the City from the operation of the Utility, including the Gross Revenues from all extensions and improvements to the Utility hereafter constructed or acquired by the City, will be deposited into the Water and Sewer Utility Revenue Fund created and currently maintained by the City, and shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the City, all as more specifically provided in the Resolution.

Section 6. Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Series 2011A 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 Series 2011A 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 Series 2011A Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Series 2011A 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 Series 2011A 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 Series 2011A Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and 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 Series 2011A Bonds for so long as any of the Series 2011A 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 Series 2011A Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Series 2011A 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 Resolution, the Rebate Amount as described in the Tax Compliance Certificate.

Section 7. **Designation.** Pursuant to K.S.A. 10-620 *et seq.*, 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, 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 8. 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 Series 2011A Bonds, an Escrow Trust Agreement with a Kansas bank with trust powers to be selected by the City, to provide for the escrow of a portion of the proceeds of the Series 2010A Bonds to be used to redeem the Series 2003 Bonds (the "Escrow Agreement"), and the Series 2010A Bonds, all in accordance with the provisions of the Resolution. The Governing Body hereby further authorizes, orders and directs the Mayor and the City Clerk, City Manager 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 Series 2011A Bonds, notice of redemption of the Refunded Bonds, final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Series 2011A 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, City Manager 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 such documents 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 Series 2011A Bonds and the Official Statement.

Section 9. 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.

(The Remainder of This Page Was Intentionally Left Blank)

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on November 1, 2011.

(Seal)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

RESOLUTION NO. 11-260

OF

THE CITY OF WICHITA, KANSAS

ADOPTED NOVEMBER 1, 2011

PROVIDING FOR THE ISSUANCE OF

NOT TO EXCEED $123,000,000
WATER AND SEWER UTILITY
REFUNDING REVENUE BONDS
SERIES 2011A

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Signatures

EXHIBIT A ADDITIONAL TERMS OF THE SERIES 2011A BONDS
EXHIBIT B FINAL SIZING TERMS OF THE SERIES 2011A BONDS

RESOLUTION NO. 11-___

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, PRESCRIBING THE TERMS OF THE CITY'S WATER AND SEWER UTILITY REFUNDING REVENUE BONDS, SERIES 2011A, IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $123,000,000 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING WATER AND SEWER UTILITY REVENUE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS AND SUPPORTING DOCUMENTS.

WHEREAS, the Governing Body the City of Wichita, Kansas (the "City"), pursuant to the Bond Ordinance (as herein defined), has authorized the issuance of the Series 2011A Bonds (as herein defined) in the aggregate principal amount of not to exceed $123,000,000, payable from the Net Revenues (as herein defined) of the Utility (as herein defined); and

WHEREAS, the Bond Ordinance authorized the Governing Body of the City to adopt a resolution prescribing certain details and conditions and making certain covenants with respect to the issuance of the Series 2011A Bonds, the operation and maintenance of the Utility and the disposition of moneys deposited in the Water and Sewer Utility Revenue Fund (as herein defined);

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

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to the words and terms defined elsewhere in this Resolution, the following words and terms as used in this Resolution shall have the following meanings:

"Act" shall mean the Constitution and Statutes of the State, including Article 12, Section 5, of the Constitution of the State, Charter Ordinance No. 211, K.S.A. 10-101 *et seq.*, K.S.A. 10-116a, and K.S.A. 10-1201 *et seq.*, all as amended and supplemented.

"Additional Bonds" shall mean any additional revenue bonds issued pursuant to and in accordance with Article IX hereof.

"Annual Budget" shall mean with respect to the Utility, the City's budget of estimated receipts and expenditures on account of all Funds and Accounts created under the provisions of this Resolution, including a budget of Current Expenses, for any Fiscal Year and adopted pursuant to the provisions of Section 1004 of this Resolution.

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

"Authorized Investments" shall mean any of the following securities, and to the extent the same are at the time permitted for investment of funds held by the City pursuant to the Bond Ordinance and this Resolution:

(A) For all purposes, including as defeasance investments in refunding escrow accounts:

(1) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following paragraph (2)), or

(2) Direct non-callable obligations of (including obligations issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America.

(B) For all purposes other than defeasance investments in refunding escrow accounts:

(1) obligations of any of the following Federal agencies which obligations represent the full faith and credit of the United States of America, including:

-- Export - Import Bank
-- Farmers Home Administration
-- General Services Administration
-- U.S. Maritime Administration
-- Small Business Administration
-- Government National Mortgage Association (GNMA)
-- U.S. Department of Housing & Urban Development (PHA's)
-- Federal Housing Administration;

(2) bonds, notes or other evidences of indebtedness rated "*AAA*" by Standard & Poor's Rating Services, a division of the McGraw-Hill Companies ("S&P") and "*Aaa*" by Moody's Investors Services, Inc. ("Moody's") issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;

(3) investments in shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association,

Federal Home Loan Banks or Federal Home Loan Mortgage Corporation;

(4) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of the State or of any agency, instrumentality or local governmental unit of the State which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (A) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P and Moody's, or any successors thereto; or (B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (1) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;

(5) investment agreements with or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or S&P;

(6) Repurchase agreements secured by direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation; and

(7) Receipts evidencing ownership interests in securities or portions thereof in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation;

Provided, however, that after the defeasance of the Pre-2008 Bonds, Authorized Investments for all purposes other than defeasance investments in refunding escrow accounts shall include all investments permitted under the laws of the State.

(C) The value of the above investments shall be determined as of the end of each month. (See the definition of "Value" herein).

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

"Bond Ordinance" shall mean the ordinance of the City authorizing the issuance of the Series 2011A Bonds as further described on **Exhibit A** to this Resolution.

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

"Bond Reserve Account" shall mean the Water and Sewer Utility Bond Reserve Account initially created by the Series 1993 Ordinance.

"Bond Reserve Requirement" shall mean, collectively, the 1998 Bond Reserve Requirement as established by the Series 1998 Ordinance, the 2000 Bond Reserve Requirement as established by the Series 2000 Ordinance, the 2005A Bond Reserve Requirement as established by the Series 2005A Ordinance, the 2005B Bond Reserve Requirement as established by the Series 2005B Ordinance, the 2005C Bond Reserve Requirement as established by the Series 2005C Ordinance, the 2006 Bond Reserve Requirement as established by the Series 2006 Ordinance, the 2008A Bond Reserve Requirement as established by the Series 2008A Ordinance, the 2009A Bond Reserve Requirement as established by the Series 2009 Ordinance, the 2009B Bond Reserve Requirement as established by the Series 2009 Ordinance, the 2010A Bond Reserve Requirement and the 2010B Bond Reserve Requirement as established by the Series 2010 Ordinance, and the 2011A Bond Reserve Requirement as established by this Resolution, and any bond reserve requirement established for any subsequent series of Parity Bonds.

"Bonds" shall mean the Series 1998 Bonds, the Series 2000 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds, the Series 2008A Bonds, the Series 2009A Bonds, the Series 2009B Bonds, the Series 2010A Bonds, the Series 2010B Bonds and the Series 2011A Bonds authorized by the Bond Ordinance and this Resolution, and any Additional Bonds issued pursuant to and in accordance with Article IX hereof.

"Business Day" shall mean a day which is not a Saturday, Sunday or a day designated as a holiday by the Congress of the United States or by the legislature of the State and on which banks in the State are not authorized to be closed.

"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

absence thereof, any duly appointed Deputy City Clerk or Acting City Clerk of the City.

"City Manager" shall mean the duly appointed and acting City Manager of the City, or in the absence thereof, any duly appointed Deputy, Assistant or Acting City Manager 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 all costs of issuing the Series 2011A Bonds, and may include but are not limited to, all publication, printing, signing and mailing expenses in connection therewith, registration fees, all legal fees and expenses of Bond Counsel and other legal counsel, accounting expenses incurred in connection with the determination of Yield or Rebate Amount, all expenses incurred in connection with receiving ratings on the Series 2011A Bonds, fees of the City's financial advisor, Escrow Trustee fees, escrow verification fees, and, if applicable, premiums or expenses incurred in obtaining municipal bond insurance.

"Consulting Engineers" shall mean the engineer or engineering firm or corporation at the time employed under the provisions of Section 1005 of this Resolution.

"Current Expenses" shall mean, as applied to either component of the Utility, the City's reasonable and necessary current expenses of operation, repair and maintenance, and shall include, without limiting the generality of the foregoing, (i) all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, (ii) all administrative expenses, (iii) any reasonable payments to pension or retirement funds properly chargeable to each component of the Utility, (iv) insurance premiums, (v) engineering expenses relating to operation, repair and maintenance, (vi) legal expenses, (vii) any lawful fiscal agency commissions and expenses in connection with the payment of the principal of and the interest and any redemption premium on Outstanding Bonds, (viii) any taxes which may be lawfully imposed on either component of the Utility or the income therefrom and reserves for such taxes, (ix) the expenses of collecting rates, fees and charges for the use of and for the services furnished or to be furnished by the Utility, (x) if required by law, the payment of the principal of and the interest on outstanding bonds and other obligations heretofore issued by the City or by improvement districts heretofore annexed by the City to pay the cost of any portion of the Utility to the extent that the special assessments and taxes pledged for the payment of such principal and interest shall be insufficient for such purposes and to the extent that such payment shall not be made from the Improvement Account, and (xi) any other expenses required to be paid by the City under the provisions of this Resolution or by law. "Current Expenses" shall not include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, or any deposits or transfers to the credit of the Principal and Interest Account, the Bond Reserve Account, the Depreciation and Replacement Account or the Improvement Account.

"Date of Issuance" shall mean the date on which the Series 2011A Bonds are delivered to the Underwriter and the City receives from the Underwriter the full purchase price therefor.

"Dated Date" shall mean the dated date of the Bonds. The Dated Date of the Series 2011A Bonds is November 17, 2011.

"Debt Service" shall mean the scheduled amount of interest and maturing principal payable for that Bond year, as described in the Code.

"Debt Service Requirements" shall mean the required payments of the principal of, premium, if any, and the interest on the Bonds and any Policy Costs owing by the City, all in accordance with the terms and provisions of this Resolution or any Parity Bond Ordinance.

"Depreciation and Replacement Account" shall mean the Water and Sewer Utility Depreciation and Replacement Account initially created by the Series 1993 Ordinance.

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

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the absence thereof, any duly appointed Deputy, Assistant or Acting Director of Finance of the City.

"DTC" shall mean The Depository Trust Company.

"Escrow Agreement" shall mean the Escrow Trust Agreement dated as of November 17, 2011, between the City and the Escrow Trustee.

"Escrow Fund" shall mean the Escrow Fund created under the Escrow Agreement and held by the Escrow Trustee.

"Escrow Trustee" shall mean a Kansas bank with trust powers selected by the City, and its successors or assigns.

"Existing Bond Ordinances" shall mean, collectively, the Series 1998 Ordinance, the Series 2000 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance, the Series 2008A Ordinance, the Series 2009 Ordinance and the Series 2010 Ordinance.

"Existing Bonds" shall mean, collectively, the Series 1998 Bonds, the Series 2000 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds, the Series 2008A Bonds, the Series 2009A Bonds, the Series 2009B Bonds, the Series 2010A Bonds and the Series 2010B Bonds.

"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.

"Funds and Accounts" shall mean the Funds and Accounts created or ratified, continued and confirmed by Article V of this Resolution.

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

"Government Obligations" shall mean (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 non-callable 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).

"Gross Revenues" shall mean all receipts and revenues, including interest earnings, but excluding non-cash capital contributions, derived by the City from the Utility.

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

"Interest Payment Date" shall mean any date on which interest on the Bonds is due and payable. The Interest Payment Dates for the Series 2011A Bonds are April 1 and October 1 of each year, commencing October 1, 2012, and ending on the final maturity date of the Series 2011A Bonds, or at such other time as the Series 2011A Bonds are paid or provision is made for the payment thereof.

"Letter of Representations" shall mean that certain Blanket Letter of Representations between the City and DTC.

"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 the Bond Insurer insuring the payment when due of the principal of and interest on the Series 2011A Bonds when due as described on **Exhibit A** to this Resolution.

"Net Proceeds" shall mean any insurance proceeds or condemnation awards, paid with respect to the Utility, remaining after the payment therefrom of all expenses incurred in the collection thereof.

"Net Revenues" shall mean for any period the amount of the excess of Gross Revenues of the Utility including investment income deposited to the credit of the Revenue Fund, respectively, over the Current Expenses of the respective components of the Utility paid from the Revenue Fund during such period; such amount specifically excluding debt service payments, depreciation, amortization and capital expenditures for improvements to the Utility.

"Net Revenues Available for Debt Service" shall mean the Net Revenues.

"Operating Revenues" shall mean the Gross Revenues of the Utility less investment income and less costs and expenses of operation, maintenance and repair of the Utility.

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

"Outstanding" shall mean, as of a particular date, all Bonds theretofore issued, authenticated and delivered under the provisions of this Resolution or any Parity Bond Ordinance, except (i) Bonds theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to this Resolution or any Parity Bond Ordinance, (ii) Bonds for the payment or redemption of which moneys or investments have been deposited in accordance with Article XIII of this Resolution or any Parity Bond Ordinance, and (iii) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Resolution or any Parity Bond Ordinance.

"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.

"Parity Bonds" shall mean Additional Bonds issued pursuant to Section 902 of this Resolution.

"Parity Bond Ordinance" shall mean, collectively, the Series 1998 Ordinance, the Series 2000 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance, the Series 2008A Ordinance, the Series 2009 Ordinance, the Series 2010 Ordinance, the Bond Ordinance and this Resolution authorizing the Series 2011A Bonds, and any subsequent ordinance of the City authorizing the issuance of Parity Bonds.

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

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

"Payment to the City" shall mean the payment to the City's general fund as a payment for operation of the Utility. So long as any Series 1998 Bonds remain Outstanding, the amount of the annual Payment to the City shall be not more than five percent (5%) of the Gross Revenues of the Utility for the preceding year to the extent available after other obligations of the Utility have been met. At such time as the Series 1998 Bonds are no longer Outstanding, the amount of the annual Payment to the City shall be governed by the terms of such ordinances of the City which are then in effect with respect to the then outstanding Utility revenue bonds, subject to the approval of the provider of the bond insurance policy for the Series 1998 Bonds.

"Pre-2008 Bonds" shall mean, collectively, the Series 1998 Bonds, the Series 2000 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds and the

Series 2006 Bonds.

"Pre-2009 Bonds" shall mean, collectively, the Series 1998 Bonds, the Series 2000 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds and the Series 2008A Bonds.

"Pre-2010 Bonds" shall mean, collectively, the Series 1998 Bonds, the Series 2000 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds, the Series 2009A Bonds and the Series 2009B Bonds.

"Principal and Interest Account" shall mean the Water and Sewer Utility Principal and Interest Account created by the Series 1993 Ordinance.

"Principal Payment Date" shall mean any date on which the principal of the Bonds is due and payable. The Principal Payment Dates for the Series 2011A Bonds are October 1 of each year, commencing October 1, 2012, and continuing annually thereafter until such time as the aggregate principal amount of the Series 2011A Bonds has been paid or provision is made for the payment thereof.

"Purchase Price" shall mean, with respect to the Series 2011A Bonds, the original purchase price for such series as described on **Exhibit B** to this Resolution.

"Rating Agency" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., the rating agency assigning a rating to the Series 2011A Bonds.

"Rebate Account" shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, Rebate Account created by this Resolution.

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

"Redemption Fund" shall mean the Redemption Fund created by this Resolution.

"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" shall mean this Resolution adopted by the Governing Body of the City on November 1, 2011, prescribing the terms and details of the Series 2011A Bonds.

"Revenue Fund" shall mean the City's existing Water and Sewer Utility Revenue Fund.

"Series A, 1993 Bonds" shall mean the City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series A, 1993, authorized by the Series 1993 Ordinance, issued in the original principal amount of $26,455,000, and dated February 1, 1993, none of which remain Outstanding.

"Series B, 1993 Bonds" shall mean the City of Wichita, Kansas Water and Sewer Utility Refunding and Improvement Revenue Bonds, Series B, 1993, authorized by the Series 1993 Ordinance, issued in the original principal amount of $49,865,000, and dated February 1, 1993, none of which remain Outstanding.

"Series 1993 Bonds" shall mean, collectively, the City's Series A, 1993 Bonds and Series B, 1993 Bonds.

"Series 1993 Ordinance" shall mean Ordinance No. 41-934 of the City, adopted January 26, 1993, which authorized issuance of the Series 1993 Bonds.

"Series 1998 Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 1998, authorized by the Series 1998 Ordinance, in the original principal amount of $29,135,000, and dated September 1, 1998.

"Series 1998 Ordinance" shall mean Ordinance No. 43-954 of the City, adopted September 1, 1998, which authorized issuance of the Series 1998 Bonds.

"Series 1999 Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 1999, authorized by the Series 1999 Ordinance, in the principal amount of $48,950,000, and dated July 1, 1999.

"Series 1999 Ordinance" shall mean Ordinance No. 44-257 of the City, adopted June 8, 1999, which authorized issuance of the Series 1999 Bonds.

"Series 2000 Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2000, authorized by the Series 2000 Bond Ordinance, in the principal amount of $7,220,000, and dated June 1, 2000.

"Series 2000 Ordinance" shall mean Ordinance No. 44-663 of the City, adopted June 13, 2000, which authorized issuance of the Series 2000 Bonds.

"Series 2003 Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2003, authorized by the Series 2003 Ordinance, in the principal amount of $120,365,000 and dated February 1, 2003.

"Series 2003 Ordinance" shall mean Ordinance No. 45-547 of the City, adopted February 4, 2003, which authorized issuance of the Series 2003 Bonds.

"Series 2005A Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 2005A, authorized by the Series 2005A Ordinance, in the principal amount of $45,535,000 and dated the date of issuance thereof.

"Series 2005A Ordinance" shall mean, collectively, Ordinance No. 46-581 and Resolution No. 05-228 of the City, passed and adopted, respectively, on April 26, 2005, which authorized the issuance of the Series 2005A Bonds.

"Series 2005B Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 2005B, authorized by the Series 2005B Ordinance, in the principal amount of $26,695,000 and dated the date of issuance thereof.

"Series 2005B Ordinance" shall mean, collectively, Ordinance No. 46-634 and Resolution No. 05-406 of the City, passed and adopted, respectively, on August 2, 2005, which authorized the issuance of the Series 2005B Bonds.

"Series 2005C Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2005C, authorized by the Series 2005C Ordinance, in the principal amount of $46,975,000 and dated October 1, 2005.

"Series 2005C Ordinance" shall mean, collectively, Ordinance No. 46-670 and Resolution No. 05-502 of the City, passed and adopted, respectively, on October 4, 2005, which authorized the issuance of the Series 2005C Bonds.

"Series 2006 Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2006, authorized by the Series 2006 Ordinance, in the principal amount of $51,140,000 and dated December 1, 2006.

"Series 2006 Ordinance" shall mean, collectively, Ordinance No. 47-300 and Resolution No. 06-609 of the City, passed and adopted, respectively, on November 14, 2006, which authorized the issuance of the Series 2006 Bonds.

"Series 2008A Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2008A, authorized by the Series 2008A Ordinance, in the principal amount of $29,460,000 and dated April 1, 2008.

"Series 2008A Ordinance" shall mean, collectively, Ordinance No. 47-866 and Resolution No. 08-170 of the City, passed and adopted, respectively, on April 1, 2008, which authorized the issuance of the Series 2008A Bonds.

"Series 2009 Bonds" shall mean, collectively, the Series 2009A Bonds and the Series 2009B Bonds.

"Series 2009 Ordinance" shall mean, collectively, Ordinance No. 48-351 and Resolution No. 09-174 of the City, passed and adopted, respectively, on June 16, 2009, which authorized the issuance of the Series 2009 Bonds.

"Series 2009A Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009A, authorized by the Series 2009 Ordinance, in the principal amount of $119,775,000 and dated June 30, 2009.

"Series 2009B Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), authorized by the Series 2009 Ordinance, in the principal amount of $12,845,000 and dated June 30, 2009.

"Series 2010 Bonds" shall mean, collectively, the Series 2010A Bonds and the Series 2010B Bonds.

"Series 2010 Ordinance" shall mean Ordinance No. 48-834 and Resolution No. 10-257 of the City, passed and adopted, respectively, on September 21, 2010, which authorized the issuance of the Series 2010 Bonds.

"Series 2010A Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2010A, authorized by the Series 2010 Ordinance, in the principal amount of $31,810,000 and dated October 15, 2010.

"Series 2010B Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2010B (Taxable Under Federal Law), authorized by the Series 2010 Ordinance, the principal amount of $17,090,000 and dated October 15, 2010.

"Series 2011A Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, authorized by the Bond Ordinance and this Resolution, in the principal amount set forth on **Exhibit B** to this Resolution and dated the Dated Date.

"Sewer Utility" shall mean and include the sanitary sewer system now owned and operated by the City, and consisting of sewage disposal works, sewers, drains, pumping plants, force mains, service connections, canals, ponds, machinery, equipment and other property appurtenant thereto and any improvements, extensions and enlargements to the Sewer Utility hereafter constructed or acquired.

"State" shall mean the State of Kansas.

"Tax Compliance Agreement" shall mean the Certificate Relating to Arbitrage and Related Tax Matters, executed by the City, dated as of and delivered on the Date of Issuance, 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.

"Term Bonds" shall mean the Term Bonds, if any, described on **Exhibit B** to this Resolution.

"Underwriter" shall mean the original purchaser of the Series 2011A Bonds as set forth on **Exhibit A** to this Resolution.

"Utility" shall mean the combined City of Wichita, Kansas Water Utility and Sewer Utility, and any improvements, extensions and enlargements thereto hereafter constructed or

acquired.

"Value," for purposes of complying with the requirements of this Resolution shall mean the value of the Authorized Investments (which Value shall be determined as of the end of each month), calculated as follows:

(A) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times)* -- the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(B) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or in *The New York Times* -- the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the City in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; and

(C) as to certificates of deposit and bankers acceptances -- the face amount thereof, plus accrued interest.

Provided, however, that when the Pre-2010 Bonds are no longer Outstanding, "Value" shall be the amortized cost of an obligation or the market cost thereof, whichever is lower.

Should the value of the Authorized Investments be required for any other legal purpose, the Value shall be calculated in accordance with the applicable laws and regulations.

"Water Utility" shall mean and include the waterworks system now owned and operated by the City and consisting of real estate, water rights, purification and pumping plants, reservoirs, mains, wells, pipelines, meters, hydrants, service connections, machinery, equipment and other property appurtenant thereto, and any improvements, extensions and enlargements to the Water Utility hereafter constructed or acquired.

"2011A Bond Reserve Requirement" shall mean a sum equal to greater of the amount of interest which shall become due and payable on the Series 2011A Bonds during the next Fiscal Year (determined in each year) or the maximum amount of interest which shall become due and payable on the Series 2011A Bonds in any subsequent year, except that, in no event shall the amount of the 2011A Bond Reserve Requirement ever exceed the amount which is the lesser of ten percent (10%) of the original principal amount of the Series 2011A Bonds (determined as of the date of issuance of the Series 2011A Bonds), the maximum annual principal and interest requirements on the Series 2011A Bonds (determined as of the date of issuance of the Series 2011A Bonds), or one hundred twenty-five percent (125%) of the average annual debt service on the Series 2011A Bonds (determined as of the date of issuance of the Series 2011A Bonds).

"2011A Bond Reserve Subaccount" shall mean the Water and Sewer Utility Refunding

Revenue Bonds, Series 2011A, Bond Reserve Subaccount created by this Resolution within the Bond Reserve Account.

"2011A Costs of Issuance Account" shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, Costs of Issuance Account created by this Resolution.

"2011A Principal and Interest Subaccount" shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, Principal and Interest Subaccount created by this Resolution within the Principal and Interest Account.

Section 102. Rules of Interpretation.

(A) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(B) Wherever in this Resolution it is provided that any party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(C) All references in this Resolution to designated "Articles", "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this Resolution as originally executed. The words "herein", "hereof", "hereunder" and other words of similar import refer to this Resolution as a whole and not to any particular Article, Section or subdivision.

(D) The Table of Contents and the Article and Section headings of this Resolution shall not be treated as a part of this Resolution or as affecting the true meaning of the provisions hereof.

ARTICLE II

THE BONDS

Section 201. Authorization of and Security for Series 2011A Bonds; Pledge of Net Revenues. Pursuant to the Bond Ordinance, the Governing Body hereby authorizes, orders and directs that there shall be issued and delivered the following series of revenue bonds (referred to collectively, as the "Series 2011A Bonds"): (a) "City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 2011A," in the aggregate total principal amount not to exceed $123,000,000, as provided by and under the authority of the Act, for the purpose of providing the funds to pay the cost of refunding the Refunded Bonds and pay Costs of Issuance associated with the Series 2011A Bonds.

The principal amount of the Series 2011A Bonds, premium, if any, and the interest thereon are secured by and shall be paid by the City solely from the Net Revenues derived from

the operation of the Utility, and the rates, fees and charges collected for the use thereof or service therefrom, and not from any other fund or source. The Series 2011A Bonds are hereby made a first and prior lien on the Net Revenues produced from the Utility, which lien is on a parity with and co-equal to the lien on the Net Revenues of the Existing Bonds; and the City hereby irrevocably pledges the Net Revenues derived from the operation of the Utility to the payment of the Series 2011A Bonds.

The Series 2011A Bonds shall not have any priority with respect to the payment of principal or interest over any revenue bonds of the City hereafter issued in accordance with the provisions of Section 902 of this Resolution which are on a parity with the Series 2011A Bonds, nor shall any other revenue bonds of the City heretofore or hereafter issued have any priority over the payment from the Net Revenues of the principal of or the interest on the Series 2011A Bonds.

The Series 2011A Bonds shall not be nor constitute general obligations of the City nor shall they constitute an indebtedness of the City within the meaning of any constitutional or statutory provision, and the City shall be under no obligation to levy any taxes to pay any of the principal of or the interest on the Series 2011A Bonds.

Section 202. Description of Series 2011A Bonds. The Series 2011A Bonds shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount thereof maturing on any Principal Payment Date, and shall be numbered in such manner as the Bond Registrar shall determine. The Series 2011A Bonds shall be dated the Dated Date. The Series 2011A Bonds shall mature or be subject to mandatory redemption on the dates and shall bear interest at the rates per annum (computed on the basis of a 360-day year of 12 30-day months) set forth on **Exhibit A** to this Resolution. Such interest shall be payable on the Interest Payment Dates to the Owners as their names appear on the Registration Books at the close of business on the Record Dates. The Series 2011A Bonds shall mature in the amounts on the Principal Payment Dates or be subject to mandatory redemption in the amounts set forth on **Exhibit B** to this Resolution. The City Manager or his designee or the Finance Director is hereby authorized to approve the final principal amount, the amount due on each maturity or mandatory redemption date, the amount to deposit in accounts and funds established under this Resolution and the amount of Purchase Price for the Series 2011A Bonds as to be set forth on **Exhibit B** to this Resolution; provided (a) the final principal amount shall not exceed the maximum principal amount for the Series 2011A Bonds set forth in Section 201 of this Resolution, (b) 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, (c) the amount deposited in the 2011A Bond Reserve Subaccount shall equal the 2011A Bond Reserve Requirement, and (d) such amounts approved by the City Manager or his designee or the Finance Director are consistent with the other terms and provisions of this Resolution.

The Series 2011A Bonds will be issued and distributed in book-entry-only form through DTC, by depositing with 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 Series 2011A Bonds maturing on the respective Principal Payment Dates as authorized herein. The manner of payment of the principal of and the interest on the Series

2011A Bonds to DTC, and other matters relating to the distribution of the Series 2011A Bonds in book-entry-only form through DTC, shall be governed by the Letter of Representations.

In the event, subject to the operational rules of DTC, (i) DTC determines not to continue to act as securities depository for the Series 2011A Bonds, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Series 2011A Bonds would adversely affect the interests of the beneficial owners of such Series 2011A 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 Series 2011A 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. If issued in certificated form, the certificates representing the Series 2011A Bonds shall be numbered in such manner as the Series 2011A Bond Registrar shall determine.

Section 203. Designation of Paying Agent and Bond Registrar. Pursuant to K.S.A. 10-620 *et seq.*, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State, Topeka, Kansas, is hereby designated as the initial Paying Agent and Bond Registrar for the Series 2011A 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 hereby 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 Series 2011A 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 204(A) and as governed by the terms of the Letter of Representations.

In the event that the Series 2011A Bonds should be issued and delivered in certificated form at anytime after the initial delivery of the Series 2011A Bonds, the Fiscal Agent shall maintain Registration Books for the ownership of the Series 2011A Bonds on behalf of the City; and the Paying Agent will make payment for the Series 2011A Bonds directly to the Owners as shown by said Registration Books in the manner set forth in the following Section 204(B).

Section 204. Method and Place of Payment of Series 2011A Bonds.

(A) Series 2011A 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 Series 2011A Bonds maturing on the respective Principal Payment Dates will be issued to DTC in New York, New York; and such certificates will be immobilized in its custody. Purchases of the Series 2011A Bonds in denominations permitted by Section 202 hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Series 2011A Bonds on DTC's records. The ownership interest of each actual purchaser of

each Series 2011A 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 Series 2011A 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 Series 2011A Bonds are Subsequently Issued. The principal of, premium, if any, and the interest on the Series 2011A 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 any premium, if any, on the Series 2011A Bonds shall be paid to the Owner of each Series 2011A Bond upon presentation and surrender of the Series 2011A Bond to the Paying Agent for payment and cancellation on the maturity date, or the redemption date, as the case may be, of the Series 2011A Bond. The interest on the Series 2011A Bonds shall be mailed by the Paying Agent to the Owner of each Series 2011A 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 205. Method of Execution and Authentication of Series 2011A Bonds. The Series 2011A Bonds shall be executed for and on behalf of the City by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the City Clerk, and the seal of the City shall be affixed or imprinted thereon. The Series 2011A 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 with the seal of the City affixed or imprinted thereon. The Series 2011A Bonds shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed or imprinted thereon. In the event that any of the aforementioned officers shall cease to hold such offices before the Series 2011A Bonds are issued and delivered, the Series 2011A Bonds may be issued and transferred to other owners as though said officers had not ceased to hold office, and such signatures appearing on the Series 2011A Bonds shall be valid and sufficient for all purposes as if they had remained in office until such issuance or transfer.

The Series 2011A Bonds shall not be valid obligations under the provisions of the Bond Ordinance and this Resolution until authenticated by a duly authorized representative of the Bond Registrar by the manual execution of the Certificate of Authentication appearing on each Series 2011A Bond. It shall not be necessary that the same representative of the Bond Registrar execute the Certificate of Authentication on all of the Series 2011A Bonds.

Section 206. 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 207. Registration, Transfer and Exchange of Bonds. In the event the Series 2011A 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 a series of the Series 2011A Bonds remains issued in book-entry-only form, DTC shall be considered to be the Owner of such series of Series 2011A Bonds, and such payments shall be made only to DTC in accordance with Section 204(A) of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such series of Series 2011A Bonds, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Surrender and Cancellation of Bonds. Whenever any Outstanding Bond shall be delivered to the Bond Registrar for cancellation pursuant to this Resolution, upon payment of the principal amount thereof and the interest thereon or for replacement pursuant to this Resolution, such Bond shall be canceled by the Bond Registrar and the canceled Bond shall be returned to the City Clerk, or such canceled Bond shall be destroyed by the Bond Registrar and a certificate evidencing such destruction shall be furnished to the City.

Section 209. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any certificate representing a Bond is mutilated, lost, stolen or destroyed, the City may execute and the Bond Registrar may authenticate 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 certificate, such mutilated certificate shall first be surrendered to the City or the Bond Registrar, and, in the case of any lost, stolen or destroyed certificate, there shall first be furnished to the Bond Registrar and the City evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Bond Registrar. In the event any such certificate shall have matured, then and in such event instead of issuing a duplicate certificate, the City and the Bond Registrar may pay the same without the physical surrender of such certificate. The City and the Bond Registrar may charge to the Owner of such certificate their reasonable fees and expenses in connection with replacing a mutilated, stolen, lost or destroyed certificate.

Section 210. Execution and Delivery of Series 2011A Bonds. The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Series 2011A Bonds without unnecessary delay in the form and manner herein specified, including a reasonable quantity of replacement bond certificates for use in accordance with the provisions of this Resolution; and when executed the Series 2011A 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 Series 2011A Bonds shall have been executed, registered and authenticated as required by this Resolution, the Series 2011A Bonds shall be delivered at one time to or upon the order of the Underwriter, but only upon receipt by the City of the full Purchase Price therefor; and the proceeds of the Series 2011A Bonds shall immediately be applied by the City as in the Bond Ordinance and this Resolution provided.

Upon the issuance of the Series 2011A Bonds, there shall be filed with the Fiscal Agent and with the Treasurer of the State, the following:

(A) an executed original or certified copies of the Bond Ordinance and this Resolution, together with an affidavit of publication of the Bond Ordinance;

(B) an opinion of Bond Counsel to the effect that the Series 2011A Bonds constitute valid and legally binding special obligations of the City and that the interest on the Series 2011A Bonds is not includable in gross income for purposes of Federal income taxation and is exempt from

Kansas income taxation, subject to such restrictions and limitations as shall be described therein; and

(C) such other certificates, opinions, statements, receipts and documents as are required by the Act or as Bond Counsel shall reasonably require for delivery of the Series 2011A Bonds.

Section 211. Official Statement. The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared in the initial offering and sale of the Series 2011A Bonds, and the subsequent insertion of interest rates, yields and related information for the Series 2011A Bonds. The lawful use of the final Official Statement in the reoffering of the Series 2011A Bonds by the Underwriter is hereby approved and authorized.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Optional Redemption. The Series 2011A Bonds maturing 2012 through 2021, inclusive, shall become due on their respective maturities without the option of prior payment. At the option of the City, the Series 2011A Bonds maturing October 1, 2022, and thereafter, may be called for redemption and payment prior to their respective maturities on and after October 1, 2021. The Series 2011A Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid, at a redemption price of par, plus accrued interest thereon to the date established for such redemption and payment.

Section 302. Sinking Fund Redemption. Any Term Bonds shall also be subject to mandatory redemption and payment as described on **Exhibit B** to this Resolution.

Section 303. Selection of Bonds to be Redeemed.

(A) The Series 2011A Bonds shall be redeemed only in the principal amount of $5,000, or integral multiples thereof. When less than all of the Outstanding Series 2011A Bonds are to be redeemed and paid prior to maturity, such Series 2011A Bonds shall be redeemed in such manner as the City shall determine, with Series 2011A Bonds of less than a full maturity to be selected by lot in units of $5,000.

(B) In the case of a partial redemption of Series 2011A Bonds when Series 2011A 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 shall be treated as though it were a separate Series 2011A 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 Series 2011A Bond is selected for redemption, then upon notice of intention to redeem such $5,000 unit or units, the Owner or the Owner's duly authorized agent shall forthwith present and surrender such Series 2011A Bond to the Bond Registrar and Paying Agent (i) for payment of the redemption price (including the redemption premium, if any, and interest to the date fixed for redemption) of the $5,000 unit or units of face value called for redemption, and (ii) for exchange, without charge to the Owner

thereof, for a new Series 2011A Bond of the aggregate principal amount of the unredeemed portion of the principal amount of such Series 2011A Bond. If the Owner of any Series 2011A Bond of a denomination greater than $5,000 shall fail to present such Series 2011A Bond as aforesaid, such Series 2011A Bond shall, nevertheless, become due and payable on the redemption date to the extent of the amount called for redemption.

Section 304. Notice of Redemption. If the City elects to call any Series 2011A Bond for redemption and payment prior to the maturity thereof, it shall give written notice of such intention to the Paying Agent not less than sixty (60) days (or such lesser period of time acceptable to the Paying Agent) prior to the date selected for payment of the Series 2011A Bonds to be so called. The Paying Agent shall, upon receipt of any such written notice from the City, mail a written notice of redemption which notice shall specify the date selected for redemption and describe the Series 2011A Bonds to be so called (such description to include the series, principal amount, maturities and CUSIP numbers, if any, of the Series 2011A Bonds to be so called). Such written notice to be given by the Paying Agent shall be mailed by United States first class mail on a date which is not less than thirty (30) days prior to the date fixed for redemption to the Owners of the Series 2011A Bonds subject to the call as shown by the Registration Books, unless any Owner has waived such written notice of redemption, and, if applicable, to the Bond Insurer. 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. However, failure to give any notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of the Series 2011A Bonds. Any notice of redemption shall state the date of the redemption, the place or places at which Series 2011A Bonds shall be presented for payment, the series, maturities and numbers of the Series 2011A Bonds or portions thereof to be redeemed and the principal amount thereof being redeemed, the price to be paid for the Series 2011A Bonds to be redeemed, shall state that interest on the Series 2011A Bonds described in the notice will cease to accrue from and after the date established for redemption, and shall state that the redemption is conditioned upon there being on deposit on the date of redemption, sufficient money to pay the full redemption price of the Series 2011A Bonds to be redeemed.

Section 305. Effect of Call for Redemption. On or before the redemption date, funds or Government Obligations shall be deposited with the Paying Agent in an amount sufficient to provide for the payment of the redemption price of the Series 2011A Bonds called for redemption on the date established for redemption. Upon the deposit of such funds or Government Obligations, and notice having been given as provided in Section 304 above, the Series 2011A Bonds or portions thereof thus called for redemption shall cease to bear interest on the specified redemption date and shall no longer be entitled to the protection, benefit or security of the Bond Ordinance and this Resolution and shall not be deemed to be Outstanding under the provisions hereof.

ARTICLE IV

FORM OF BONDS

Section 401. Form of Bonds Generally. The definitive typewritten or printed form of the certificates representing Bonds issued under the Bond Ordinance and this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act.

Section 402. Form of Series 2011A Bonds. The definitive typewritten or printed form of the certificates representing the Series 2011A Bonds issued under the Bond Ordinance and this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State, 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 Series 2011A Bonds, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Series 2011A Bonds; and hereby further authorizes, orders and directs Bond Counsel, in the event the Series 2011A Bonds are issued in certificated form at any time after the initial issuance and delivery of the Series 2011A Bonds, to prepare the form of and cause such certificated Series 2011A Bonds to be printed.

ARTICLE V

FUNDS AND ACCOUNTS

Section 501. Ratification of Existing Funds and Accounts of the Utility; Administration. Simultaneously with the issuance of the Series 1993 Bonds, and as directed by the Series 1993 Ordinance, there were created within the Treasury of the City the following separate Funds and Accounts of the Utility:

(A) Water and Sewer Utility Principal and Interest Account (the "Principal and Interest Account");

(B) Water and Sewer Utility Bond Reserve Account (the "Bond Reserve Account");

(C) Water and Sewer Utility Depreciation and Replacement Account (the "Depreciation and Replacement Account"); and

(D) Water and Sewer Utility Improvement Account (the "Improvement Account"), and within the Improvement Account, the following subaccounts:

(1) Improvement Account Subaccount for Water Utility Improvements (the "Water Improvement Account"), and

(2) Improvement Account Subaccount for Sewer Utility Improvements (the "Sewer Improvement Account").

The foregoing Funds and Accounts originally created by the Series 1993 Ordinance, and the subaccounts thereof ratified, confirmed and continued by the Series 1998 Ordinance, the Series 2000 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance, the Series 2008A Ordinance, the Series 2009 Ordinance and the Series 2010 Ordinance are hereby ratified, confirmed and continued for the security and benefit of the Owners of the Bonds; and the City consents and agrees that so long as any of the Bonds remain outstanding and unpaid, the City will maintain and administer said funds and accounts in accordance with the provisions of the Series 1998 Ordinance, the Series 2000 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance, the Series 2008A Ordinance, the Series 2009 Ordinance, the Series 2010 Ordinance and the Bond Ordinance and this Resolution.

Section 502. Creation of Additional Funds and Accounts of the Utility; Administration; Escrow Fund. Simultaneously with the issuance of the Series 2011A Bonds, there shall be created within the Treasury of the City the following additional separate Funds and Accounts of the Utility:

(A) Within the Principal and Interest Account, the following additional subaccount: Principal and Interest Subaccount for Water and Sewer Utility Refunding Revenue Bonds, Series 2011A (the "2011A Principal and Interest Subaccount");

(B) Within the Bond Reserve Account, the following additional subaccount: Bond Reserve Subaccount for Water and Sewer Utility Refunding Revenue Bonds, Series 2011A (the "2011A Bond Reserve Subaccount");

(C) Costs of Issuance Account for Water and Sewer Utility Refunding Revenue Bonds, Series 2011A (the "2011A Costs of Issuance Account");

(D) Redemption Fund for Water and Sewer Utility Refunding Revenue Bonds, Series 2011A (the "Redemption Fund"); and

(E) Rebate Account for Water and Sewer Utility Refunding Revenue Bonds, Series 2011A (the "Rebate Account").

Additionally, there is established with the Escrow Trustee under the Escrow Trust Agreement the Escrow Fund for the Water and Sewer Utility Refunding Revenue Bonds, Series 2011A (the "Escrow Fund").

The Governing Body hereby covenants and agrees that the Funds and Accounts created by this Section, shall be maintained and administered by the City in accordance with the

provisions of this Resolution; and the Governing Body hereby covenants and agrees that the City shall make deposits into, disbursements from, and shall invest moneys in, each and all of said Funds and Accounts as hereinafter in this Resolution provided. The Governing Body hereby further covenants and agrees that (i) the Accounts referred to in subsections (A) and (B), and each of them, shall be continued for the security and benefit of the Owners of the Series 2011A Bonds for so long as any of the Series 2011A Bonds remain Outstanding and unpaid; (ii) that the Costs of Issuance Account referred to in subsection (C) shall be administered and terminated as provided by Section 503 hereof; (iii) that the Redemption Fund referred to in subsection (D) shall be administered and terminated as provided by Section 602 hereof; and (iv) that the Rebate Account referred to in subsection (E) shall be administered and terminated as provided by Section 704 hereof and the Tax Compliance Agreement. The Escrow Fund referenced in this Section shall be administered by the Escrow Trustee in accordance with the Escrow Trust Agreement.

The City shall maintain a practice of keeping separate and distinct accounts and subaccounts within the Funds and Accounts herein referred to and as created by this Resolution for the separate operations of the Water Utility and the Sewer Utility for budget and accounting purposes; provided, however, such segregation of the Funds and Accounts, and any subaccounts thereof, for such purpose shall have no effect upon the pledge and lien of the Bonds on the Net Revenues of the Utility.

Section 503. Costs of Issuance Account. The Governing Body hereby further covenants and agrees that the moneys deposited to the 2011A Costs of Issuance Account shall be immediately expended, to the extent possible, to pay the Costs of Issuance of the Series 2011A Bonds, and, that any moneys remaining in the 2011A Costs of Issuance Account on the date which is thirty (30) days prior to the first Principal Payment Date of the Series 2011A Bonds shall all be transferred to the 2011A Principal and Interest Subaccount to pay a portion of the first principal due on the Series 2011A Bonds; and that the 2011A Costs of Issuance Account shall thereafter be terminated.

ARTICLE VI

DISPOSITION OF BOND PROCEEDS AND OTHER MONEYS

Section 601. Disposition of Series 2011A Bond Proceeds and Other Moneys.

(A) Series 2011A Bonds. The proceeds of the Series 2011A Bonds (*i.e.*, the Purchase Price), upon receipt shall be immediately deposited and credited as follows:

(1) to the credit of the 2011A Costs of Issuance Account, the sum set forth on **Exhibit B** to this Resolution;

(2) to the credit of the 2011A Principal and Interest Subaccount, the amount of accrued interest received as a portion of the Purchase Price to be applied to the first interest payment on the Series 2011A Bonds;

(3) to the credit of the 2011A Bond Reserve Subaccount, the sum equal to the 2011A Bond Reserve Requirement set forth on **Exhibit B** to this Resolution;

(4) to the credit of the Redemption Fund, the sum set forth on **Exhibit B t**o this Resolution; and

(5) the balance of the proceeds to the Escrow Fund held by the Escrow Trustee.

(B) Other Moneys. Simultaneously with delivery of the Series 2011A Bonds, amounts on deposit in the Series 1999 Bond Reserve Subaccount and the Series 2003 Bond Reserve Subaccount shall be immediately deposited and credited as follows:

(1) to the credit of the 2011A Bond Reserve Subaccount, the sum equal to the 2011A Bond Reserve Requirement set forth on **Exhibit B** to this Resolution;

(2) to the credit of the Redemption Fund, the sum, if any, set forth on **Exhibit B t**o this Resolution; and

(3) to the credit of the Escrow Fund held by the Escrow Trustee, the sum, if any, set forth on **Exhibit B t**o this Resolution.

Section 602. Redemption Fund; Escrow Fund; Refunding. The Series 1999 Bonds are hereby authorized to be redeemed on December 15, 2011, and the Series 2003 Bonds are hereby authorized to be redeemed on October 1, 2013. All funds deposited in the Redemption Fund shall be immediately deposited with the Fiscal Agent for the Series 1999 Bonds and used solely to pay the principal of and interest and premium, if any, on the Series 1999 Bonds at their redemption date. An Escrow Fund shall be established pursuant to the Escrow Agreement and shall be used solely to pay the principal of and interest and premium, if any, on the Series 2003 Bonds at their redemption date. Any moneys remaining in the Escrow Fund after the Series 2003 Bonds have been redeemed shall be transferred to the City and deposited into the 2011A Principal and Interest Subaccount.

ARTICLE VII

COLLECTION AND APPLICATION OF REVENUES; INSUFFICIENT FUNDS; REBATE ACCOUNT

Section 701. Collection, Segregation and Disposition of Revenues. The City covenants and agrees that from and after the date of adoption of the Bond Ordinance and this Resolution, the Gross Revenues derived by the City from the operation of the Utility, including the Gross Revenues from all extensions and improvements to the Utility hereafter constructed or acquired by the City, will be deposited into the Water and Sewer Utility Revenue Fund (the "Revenue Fund") heretofore created and currently maintained by the City, and shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the City. From and after the adoption of this Resolution, the City will allocate all of the moneys held in the Revenue Fund to the Funds and Accounts of the Utility as follows:

(A) The cost of operating and maintaining the Utility shall be paid currently as bills accrue. Such amount as may be necessary in the opinion of the Governing Body to pay the reasonable and proper expenses of operation and maintenance for the ensuing sixty (60) days may be retained and accumulated in the Revenue Fund before making transfers to other Funds and Accounts.

(B) There shall next, on the first (1st) day of each month, be transferred from the Revenue Fund and deposited to the Principal and Interest Account, for credit to the respective Subaccounts thereof, the following amounts:

(1) an equal pro rata portion of the amount of interest which will become due on the Outstanding Bonds on the next succeeding Interest Payment Date; plus

(2) an equal pro rata portion of the amount of principal that will become due on the Outstanding Bonds on the next succeeding Principal Payment Date;

to the end that at all times thirty (30) days prior to each Interest Payment Date and Principal Payment Date, or to any date of redemption, if applicable, there shall be sufficient moneys in the Principal and Interest Account to transmit the amount of maturing interest and principal on the Outstanding Bonds to the Paying Agent for payment to the Owners when due.

All amounts paid and credited to the 2011A Principal and Interest Subaccount shall be used for the sole purpose of paying the interest on and the principal of the Series 2011A Bonds as and when the same become due, and may also be used for paying any fees of the Bond Registrar and Paying Agent in connection with the Series 2011A Bonds.

(C) There shall next, on the first (1st) day of each month, be transferred from the Revenue Fund and deposited to the Bond Reserve Account, for the credit of the respective subaccounts thereof as appropriate, the amount, if any, required to restore the Bond Reserve Account to the Bond Reserve Requirement.

Simultaneously with the issuance of the Series 2011A Bonds, the City shall deposit in the 2011A Bond Reserve Subaccount an amount equal to the 2011A Bond Reserve Requirement. All earnings on investments from the 2011A Bond Reserve Subaccount (other than any required deposits to the Rebate Account) shall accrue to and become a part of the 2011A Bond Reserve Subaccount until it achieves and is being maintained at the 2011A Bond Reserve Requirement at which time such investment earnings shall be transferred to the 2011A Principal and Interest Subaccount. The 2011A

Bond Reserve Subaccount shall be used solely for the payment of principal and interest on the Series 2011A Bonds for which funds might not otherwise be available, or to pay a like amount of final maturing Series 2011A Bonds. Should the City expend any portion of the 2011A Bond Reserve Subaccount and thereby reduce it below the 2011A Bond Reserve Requirement (except for the purpose of retiring all Outstanding Series 2011A Bonds), or should a valuation of the 2011A Bond Reserve Subaccount indicate that it is below the 2011A Bond Reserve Requirement, the City shall resume the monthly transfers to the 2011A Bond Reserve Subaccount as set forth above such that the 2011A Bond Reserve Subaccount will accumulate to the 2011A Bond Reserve Requirement within twelve (12) months of the date of the related deficiency.

(D) After providing for the payments and transfers set forth in and required by the preceding subsections, there shall next be transferred from the Revenue Fund proportionate monthly amounts equal to the next required Payment to the City.

(E) The required status of the Depreciation and Replacement Account shall be fifteen percent (15%) of the Operating Revenues of the Utility for the preceding year. The City shall, after providing for the payments and transfers set forth in and required by the preceding subsections, next set aside and transfer monthly from the Revenue Fund, minimum monthly amounts to the end that the Depreciation and Replacement Account will reach its required status within a period of thirty (30) months from the first such transfer. All earnings on investments from the Depreciation and Replacement Account shall accrue to and become a part of the Depreciation and Replacement Account until it achieves its required status, and thereafter shall be transferred to the Improvement Account.

Except as hereinafter provided, all amounts credited to the Depreciation and Replacement Account shall be used by the City for the purpose of (i) making extraordinary maintenance and repairs to the Utility, (ii) making capital improvements in and to the Utility, and (iii) keeping the Utility in good repair and working order so that it may continue in effective and efficient operation. If no other funds are available therefor, moneys in the Depreciation and Replacement Account may be used to pay the costs of operating and maintaining the Utility.

If the City shall ever be compelled to use and expend any part of the Depreciation and Replacement Account for the purposes specified above, and such use shall reduce the amount of the Depreciation and Replacement Account below its required status, then the City covenants and agrees that after making all payments or credits at the time required to be made by the City under the provisions of the foregoing subsections, it

will thereafter resume the minimum monthly payments and credits from the Revenue Fund into the Depreciation and Replacement Account to the end that it shall have again attained its required status within a period of eighteen (18) months.

(F) In addition to the monthly transfers set forth in and required by the preceding subsections, the provisions of the Series 1998 Ordinance, the Series 2000 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance, the Series 2008A Ordinance, the Series 2009 Ordinance and the Series 2010 Ordinance, all moneys remaining in the Revenue Fund on each January 1, which shall not be required for the operation and maintenance of the Utility or for the transfers required by the preceding subsections for a period of ninety (90) days, shall be credited to the Improvement Account. Moneys in the Improvement Account may be used for the following purposes:

(1) to pay operational and maintenance expenses of the Utility;

(2) to make payments into or increase the amounts in any of the Funds and Accounts referred to in the preceding subsections to cover potential deficiencies in or to anticipate future requirements of those Funds and Accounts;

(3) to pay the costs of making repairs to or extending, enlarging or improving the Utility;

(4) to pay and redeem at or prior to maturity, or to purchase, Bonds or other outstanding indebtedness of the Utility at the fair market price thereof, or to transfer moneys to the Improvement Account to be used to pay debt service on general obligation debt of the City which were issued to pay the costs of extensions, enlargements or improvements to the Utility; or

(5) to make transfers to the Revenue Fund.

The Improvement Account shall be continued and maintained until all Series 2011A Bonds authorized by the Bond Ordinance and this Resolution are no longer Outstanding.

Section 702. Insufficient Moneys in Funds and Accounts. Should there be at any time insufficient moneys in any or all of the Funds and Accounts described in the preceding subsections to pay any deficiencies in principal or interest payments required by the terms of any Outstanding Bonds, then such principal and interest shall be payable out of the first available Net Revenues received thereafter by the City from the operation of the Utility, including transfers

from the Depreciation and Replacement Account and the Improvement Account, after providing only for immediately necessary operation and maintenance expense of the Utility.

Section 703. Transfer of Funds to Paying Agent. The Director of Finance is hereby authorized and directed to withdraw from the Principal and Interest Account and forward to the Paying Agent sums sufficient to pay both the principal of and premium, if any, and the interest on the Outstanding Bonds as and when the same become due, and also to pay the charges of the Paying Agent for acting in such capacity in the payment of the principal of and the interest on the Bonds, and said charges shall be forwarded to the Paying Agent over and above the amount for the payment of the principal of and the interest on the Bonds.

Section 704. Deposits into and Application of Moneys in Rebate Account.

(A) The City shall deposit into the Rebate Account such amounts as are required to be deposited therein pursuant to the Tax Compliance Agreement. All earnings on investments of moneys held in the Rebate Account shall be retained in the Rebate Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Rebate Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Tax Compliance Agreement), for payment to the United States of America, and neither the City nor the Owner of any Series 2011A Bond shall have any right in or claim to such money. All amounts held in the Rebate Account shall be governed by this Section and by the Tax Compliance Agreement.

(B) The City shall remit part or all of the balance in the Rebate Account to the United States of America in accordance with the Tax Compliance Agreement (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Rebate Account after redemption and payment of all of the Series 2011A Bonds and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Rebate Account and shall be deposited into the Revenue Fund and be used only for Utility purposes.

(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 Tax Compliance Agreement shall survive the defeasance or payment in full of the Series 2011A Bonds.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Tax Compliance Agreement for at least six (6) years after the date on which no Series 2011A Bonds shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Rebate Account and any Rebate Amount are set forth in a "Tax Compliance Agreement", dated as of the Date of Issuance of the Series 2011A

Bonds. The form and text of the Tax Compliance Agreement 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 the Director of Finance are hereby authorized to execute and deliver the Tax Compliance Agreement for and on behalf of the City.

ARTICLE VIII

DEPOSIT AND INVESTMENT OF MONEYS; TAX COVENANTS

Section 801. Deposits. Cash moneys in each of the funds and accounts herein created and established shall be deposited in accordance with the laws of the State.

Section 802. Investments. Moneys held in the funds and accounts herein created or established may be invested by the City in Authorized Investments 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 that, such moneys shall not be invested in such manner as will violate the provisions of the Tax Compliance Agreement. Interest on any obligations held in any fund or account shall (except the amounts which are required to be deposited into the Rebate Account in accordance with the Tax Compliance Agreement) accrue to and become a part of said fund or account, except as might hereafter or elsewhere in this Resolution be required. The Value of the investments held in the funds and accounts as provided by this Article shall be determined as of the end of each calendar month. Except as otherwise provided herein, in the event that the amount held in any fund or account is in excess of the amount required to be held in such fund or account, such excess shall be transferred to the Revenue Fund. Authorized Investments in the 2011A Bond Reserve Subaccount shall mature within five (5) years of the investment therein.

All investments made pursuant hereto shall be made in accordance with the Tax Compliance Agreement.

Section 803. Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Series 2011A 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 Series 2011A Bonds 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 Series 2011A Bonds.

The Governing Body of the City hereby further covenants that it will use and expend the proceeds of the Series 2011A 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 Series 2011A 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, to have caused the Series 2011A Bonds to be "arbitrage bonds" within the meaning of the Code; and 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 Series 2011A Bonds for so long as any of the Series 2011A Bonds remain Outstanding and unpaid.

Without limiting the generality of the foregoing, the City 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 Series 2011A Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Series 2011A Bonds; and the City 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 Amounts as described in the Tax Compliance Agreement.

ARTICLE IX

ADDITIONAL BONDS

Section 901. Prior Lien Bonds. The City covenants that it will not hereafter issue any revenue bonds which would in any way be superior to the Bonds or have any prior claim to the Net Revenues of the Utility.

Section 902. Parity Lien Bonds. The City may issue additional revenue bonds for Utility extensions, enlargements and improvements, which additional bonds shall be co-equal with the Bonds in stature and priority, but only under the following conditions:

(A) When the issuance of additional revenue bonds payable from Net Revenues of the Utility of equal stature and priority is permitted by the statutes of the State.

(B) When the average annual Net Revenues Available for Debt Service derived by the City from the operation of the Utility for the two (2) years next preceding the issuance of such additional bonds, together with estimated additional net income from rate increases in existence at the time of such new issue, which would have been generated for the two (2) years preceding issuance of such additional bonds, shall be in an amount equal to at least one hundred twenty percent (120%) of the maximum annual Debt Service Requirements (expressly including the City's obligations with respect to the repayment of amounts then due and owing under the terms of any Bond Reserve Insurance Policy) for any ensuing year of all then outstanding revenue indebtedness of the Utility when added to the Debt Service Requirements of such proposed additional bonds. Whenever it is provided in this Section that an estimate shall be

obtained of the income which would have been derived from rate increases, such estimates shall be prepared by the Consulting Engineers.

(C) When the City shall not be in default in the making of any payments at the time required to be made by it into the respective Funds and Accounts of the Utility and shall not be in default in any covenants or procedures established in any ordinance or resolution of the City authorizing existing indebtedness of the Utility.

(D) When all reductions in the Bond Reserve Account shall be restored thereto.

(E) When provision is made for a deposit to the Bond Reserve Account in such amount as will be required, following such deposit, to maintain in the Bond Reserve Account an amount which has the same relationship to the total amount of Outstanding Bonds as the 2011A Bond Reserve Requirement bears to the Series 2011A Bonds.

(F) When the Resolution authorizing such additional bonds shall contain substantially the same terms, conditions, covenants and procedures as established in this Resolution.

As an alternative to the foregoing, the City may issue additional revenue bonds for the purpose of refunding Outstanding Bonds without complying with the requirements of Section 902(B), which additional revenue refunding bonds shall be on a parity with and co-equal with the Bonds.

Section 903. Subordinate Lien Bonds. In addition to the authority to issue parity lien bonds as set forth in the preceding Section, the City may issue revenue bonds which shall be junior and subordinate to the Bonds. If at any time the City shall be in default in paying any of the interest on or the principal of the Bonds or in making any of the transfers required to any of the Accounts or Funds herein specified, then the City shall make no payment of either the principal of or the interest on such subordinate bonds until all conditions of default shall be cured.

ARTICLE X

COVENANTS OF THE CITY

Section 1001. Rate Covenant. While any of the Bonds remain Outstanding, the rates, fees and charges for the use of the services rendered by the Utility shall be reasonable and just and subject to the conditions and limitations in the Bond Ordinance and this Resolution provided; and it is hereby covenanted and agreed that such rates, fees and charges, after payment of the costs of operating and maintaining the Utility, shall be sufficient to produce Net Revenues Available for Debt Service each year equal to not less than one hundred twenty percent (120%) of the current year's Debt Service Requirements for all revenue bond indebtedness of the Utility; shall be sufficient to comply with the conditions of the Bond

Ordinance and this Resolution and the terms of the Bonds and provide adequate reserves; and shall provide for at least one hundred percent (100%) coverage of the City's obligations with respect to the Payment to the City; provided that, in determining the Net Revenues Available for Debt Service, estimated additional net income to be derived from rate increases in effect and being charged prior to the end of the applicable year, as determined by the Consulting Engineers, may be taken into account, and that, without giving effect to any such adjustments from rate increases, Net Revenues Available for Debt Service shall be equal to at least one hundred percent (100%) of the current year's Debt Service Requirements for all revenue bond indebtedness of the Utility.

In providing for compliance with the covenants and provisions contained in this Section 1001, it shall be the policy of the City that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues Available for Debt Service with respect to revenue bonds issued for improvements to each such component of the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

Section 1002. Maintenance of Utility. The City covenants and agrees that it will faithfully and punctually perform all duties with respect to the Utility required by the Act, by the applicable rate ordinances and by this Resolution, including the fixing and collecting of rates, fees and charges for the use of the Utility and the deposit of the same in the special Funds and Accounts created by this Resolution; and the City covenants and binds itself not to sell, mortgage, lease or rent or in anyway dispose of the Utility or any substantial part thereof, until the principal of and all of the interest on all Outstanding Bonds shall have been paid in full, or unless and until provision shall have been made for the payment of the full amount of said principal of and interest then remaining outstanding and unpaid; and the City, will continuously maintain the Utility in good repair and working order, and will operate its Utility in a business like and efficient manner.

Section 1003. Insurance. The City will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Utility as would be carried by a privately owned utility with similar property and performing similar functions, insofar as the properties are of an insurable nature; and in the event of loss or damage, the City will use the proceeds of such insurance to reconstruct or replace the damaged or destroyed property, or if such reconstruction or replacement be unnecessary, then such proceeds shall be used in redeeming or paying off Outstanding Bonds of the Utility, in accordance with their call provisions. The City also will carry general liability insurance in amounts not less than the then maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the State's tort claims act or other similar future law (currently $500,000.00 per occurrence). In lieu of the foregoing, the City may establish a self-insurance program which will provide substantially the same protection for the Owners.

Section 1004. Financial Reports. As long as any Bonds are Outstanding, the City shall keep proper and separate books of records and accounts in which complete and correct entries shall be made showing the Gross Revenues collected for services by the Utility and all sums expended in the operation thereof and all sums deposited in the Funds and Accounts above

mentioned and all disbursements, transfers and transactions relating to the Utility as a whole, and to the several components of the Utility separately.

The Utility shall make comparative quarterly reports to the Office of the City Manager relative to Utility incomes, Utility expenses and net income from operations. If any such quarterly report shall disclose that the City will not have available the necessary funds for carrying out and complying with all of the requirements of this Resolution, then the City shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for the use and services of the Utility which will provide adequate funds to meet such requirements.

The City shall annually cause an audit to be made by a certified public accountants' firm of the operation of the Utility, which audit shall be open to public inspection and shall be completed within one hundred eighty (180) days after the completion of the City's Fiscal Year. If the audit shall disclose that proper provision has not been made for carrying out and complying with all of the requirements of this Resolution, then the City shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for the use of services of the Utility which will provide adequate funds to meet all such requirements. The City shall also prepare an Annual Budget in its customary form estimating anticipated expenditures and income and containing a statement relative to the amounts of insurance being carried and to be carried. The books and accounts shall be kept in accordance with generally accepted accounting principles.

As long as the Pre-2009 Bonds are Outstanding, the audit shall include the following information:

(A) A classified statement of the Gross Revenues received, the expenditures for operation and maintenance, the expenditures for all other purposes, the net Operating Revenues and the amount of any capital expenditures made from such Operating Revenues during the year.

(B) A complete balance sheet of the Fiscal Year's operations, particularly indicating the amount of moneys set aside for the various Funds and Accounts as herein provided for.

(C) A statement showing all Outstanding Bonds which have been called, purchased, matured or paid during the year and a statement of all interest thereon paid during the year.

(D) A statement of the number of customers served by the Utility at the end of the year.

(E) A statement of the gross amount of insurance carried on the Utility's properties, showing the names of the insurers, the expiration dates of the policies and the premiums thereon.

(F) A statement by the auditor of any recommendations suggested as to financial procedures and accounting practices employed by the City.

(G) A statement of the Net Revenues Available for Debt Service of the Utility.

(H) A statement of any amounts to be deposited in the Rebate Account.

As long as the Pre-2009 Bonds are Outstanding, the Annual Budget shall contain normal budgetary items, including:

(A) An estimate of the receipts from the Utility during the next ensuing Fiscal Year.

(B) A statement of the estimated cost of operating the Utility during the next ensuing Fiscal Year.

(C) A statement of any anticipated unusual expenses for the Utility during the next Fiscal Year.

(D) A statement of any necessary replacements to the Utility which may be anticipated during the next Fiscal Year.

(E) A statement of the amount of principal and interest to be paid on Outstanding Bonds and any general obligation bonds to be paid from Gross Revenues of the Utility during the next Fiscal Year.

(F) A statement of the total estimated expenditures to be made from the Gross Revenues of the Utility during the next Fiscal Year.

(G) A statement of the estimated Net Revenues Available for Debt Service during the next Fiscal Year.

As long as the Pre-2009 Bonds are Outstanding, copies of such audit and such budget shall be mailed to the Underwriter, to the Bond Insurer, if any, and to the Kansas Bank Commissioner within thirty (30) days after the same are received by the City.

The Owner of any Bond or such Owner's duly authorized attorney, accountant or investment counselor and, the Bond Insurer, if any, shall have the right at all reasonable times during normal business hours to inspect the any records, accounts or data relating thereto in accordance with State law.

Section 1005. Consulting Engineers; Consulting Engineers' Report. The City covenants that it will, for the purpose of performing and carrying out the duties imposed on the Consulting Engineers by this Resolution, employ an independent engineer or engineering firm or corporation having a nationwide and favorable reputation for skill and experience in such work.

Not less than every three (3) years, the City will cause the Consulting Engineers to make an examination and written report on the condition and operation of the Utility, such report to include recommendations as to any changes in such operation deemed desirable. Such report shall also make references to any unusual or extraordinary items of maintenance and repair and any extensions, enlargements or improvements that may be needed in the period prior to the preparation of the next consultant's report required by this Section. A copy of such report will be filed in the Office of the City Clerk, and duplicate copies thereof shall be mailed promptly to the Underwriter and to the Bond Insurer, if any.

ARTICLE XI

DEFAULT AND REMEDIES

Section 1101. Default. Each of the following occurrences is hereby declared to be an "Event of Default" under this Resolution:

(A) Payment of the principal and of the redemption premium, if any, of any Outstanding Bond shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or

(B) Payment of any installment of interest on any Outstanding Bond shall not be made when the same shall become due and payable; or

(C) The City shall for any reason be rendered incapable of fulfilling its obligations hereunder; or

(D) Any substantial part of the Utility shall be destroyed or damaged to the extent of impairing its efficient operation or adversely affecting its Gross Revenues and the City shall not within a reasonable time commence the repair, replacement or reconstruction thereof and proceed thereafter to complete with reasonable dispatch the repair, replacement or reconstruction thereof; or

(E) Final judgment for the payment of money shall be rendered against the City as a result of the ownership, control or operation of the Utility and any such judgment shall not be discharged within one hundred twenty (120) days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to stay the execution of or levy under such judgment, order, decree or process or the enforcement thereof, or

(F) An order or decree shall be entered, with the consent or acquiescence of the City, appointing a receiver or receivers of the Utility or any part thereof or of the Gross Revenues thereof, or if such order or decree, having been entered without the consent or acquiescence of the City, shall not be vacated or discharged or stayed on appeal within sixty (60) days after the entry thereof; or

(G) Any proceeding shall be instituted, with the consent or acquiescence of the City, for the purpose of effecting a composition between the City and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any Federal or State statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the Net Revenues Available For Debt Service of the Utility; or

(H) The City shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Outstanding Bonds, the Bond Ordinance or in this Resolution on the part of the City to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the City by the Bond Insurer, if any, or the Owner of any Outstanding Bond.

In determining whether an Event of Default shall have occurred with respect to the due and prompt payment of the principal of and/or the interest on any Series 2011A Bonds or whether a payment on the Series 2011A Bonds has otherwise been made under the terms and provisions of this Resolution, no effect shall be given to payments made under any Municipal Bond Insurance Policy.

If an Event of Default shall have occurred and be continuing, the City shall request the Paying Agent to promptly notify the Bond Insurer, if any, and the Owners of such default.

Section 1102. Remedies. The Bond Ordinance and this Resolution and all of the provisions thereof and hereof shall constitute a contract between the City, the Bond Insurer, if any, and each of the Owners of Series 2011A Bonds issued under the Bond Ordinance and this Resolution, and any such Owner of any one or more of the Series 2011A Bonds may by suit, action, mandamus, injunction or other proceeding, either at law or in equity, enforce and compel performance of all duties, obligations and conditions determined and required by this Resolution, subject to the limitations of Section 1103 hereof.

Upon the happening and continuance of any Event of Default, then and in every such case any Owner may proceed, subject to the provisions of this Section and of Section 1103 hereof, to protect and enforce the rights of the Owners by a suit, action or special proceeding in equity, or at law, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy as such Owner shall deem most effectual to protect and enforce such rights.

Anything in this Resolution to the contrary notwithstanding, if at any time moneys in the Principal and Interest Account shall not be sufficient to pay the interest on or the principal of the Bonds as the same shall become due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Section or otherwise, shall be applied as follows:

(A) If the principal of all the Bonds shall not have become due and payable, all such moneys shall be applied:

first: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

second: to the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Resolution), in the order of their due dates, with interest on the principal amount of such Bonds at the respective rates specified therein from the respective dates upon which such Bonds became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Bonds due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

third: to the payment of the interest on and the principal of the Bonds, to the purchase and retirement of the Bonds and to the redemption of the Bonds, all in accordance with the provisions of this Resolution.

(B) If the principal of all of the Bonds shall have become due and payable, all such moneys shall be applied:

first: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any

discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds, and then to the payment of any interest due and payable after maturity on the Bonds, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds; and

second: to the payment of the principal of the Bonds, ratably, to the persons entitled thereto, without preference or priority of any Bond over any other Bond.

Whenever moneys are to be applied by the City pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Director of Finance in her sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Paying Agent in trust for the proper purpose shall constitute proper application by the City; and the City shall incur no liability whatsoever to any Owner or to any other person for any delay in applying any such moneys, so long as the City acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Resolution as may be applicable at the time of application by the Director of Finance. Whenever the Director of Finance shall exercise such discretion in applying such moneys, she shall fix the date (which shall be an Interest Payment Date unless she shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Director of Finance shall give such notice as she may deem appropriate of the fixing of any such date, and shall not be required to make payment to the Owner of any unpaid Bond until such Bond shall be surrendered to the Paying Agent for appropriate endorsement, or for cancellation if fully paid.

In case any proceeding taken by any Owner on account of any default shall have been discontinued or abandoned for any reason, then and in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights and remedies of the Owners shall continue as though no such proceedings had been taken.

No Owner of any of the Bonds shall have any right in any manner whatever to affect, disturb or prejudice the security of this Resolution 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.

No remedy herein conferred on the Owners is intended to be exclusive of any other remedy or remedies, and each and every remedy conferred shall be cumulative and shall be in addition to every other remedy given hereunder and under the Act or now or hereafter existing at law or in equity or by statute.

No delay or omission of any Owner to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and

remedy given by this Article to the Owners may be exercised from time to time and as often as may be deemed expedient.

Section 1103. Limitation on Exercise of Remedies by Owners. No Owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Bond Ordinance or this Resolution or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (i) an Event of Default shall have occurred, (ii) the Owners of twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding shall have made written request to the City, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and (iii) the City shall thereafter fail or refuse to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case, at the option of the City, to be conditions precedent to the execution of the powers and trusts of the Bond Ordinance and this Resolution, and to any action or cause of action for the enforcement of the Bond Ordinance and this Resolution, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the Bond Ordinance or this Resolution by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of the Bonds then Outstanding. Nothing in the Bond Ordinance or this Resolution contained shall, however, affect or impair the right of any Owner to payment of the principal of and the interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of, premium, if any, and the interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 1104. Remedies Cumulative. No remedy herein conferred on the City, the Bond Insurer, if any, or the Owners is intended to be exclusive of any other remedy or remedies, but each and every such remedy conferred shall be cumulative and shall be in addition to every other remedy given hereunder and under the Act or now or hereafter existing at law or in equity or by statute.

No delay or omission of any Owner to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Owners may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the City, the Bond Insurer, if any, or by the Owners, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 1105. No Obligation to Levy Taxes. Nothing contained in the Bond Ordinance or this Resolution shall be construed as imposing on the City any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or the interest on the Bonds.

ARTICLE XII

AMENDMENTS

Section 1201. Amendments. Except as set forth herein, the provisions of the Bonds authorized by the Bond Ordinance and this Resolution, and the provisions of the Bond Ordinance or this Resolution may be modified or amended at any time by the City with the prior written consent of the Bond Insurer, if any, and the Owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds herein authorized at the time Outstanding; provided, however, that no such modification or amendment shall permit or be construed as permitting (i) the extension of the maturity of the principal of any of the Bonds issued hereunder, or the extension of the maturity of any interest on any Bonds issued hereunder, or (ii) a reduction in the principal amount of any Bonds or the rate of interest thereon, or (iii) a reduction in the aggregate principal amount of Bonds, the consent of one hundred percent (100%) of the Owners of which, together with the prior written consent of any Bond Insurer, if any, is required for any such amendment or modification.

The City may from time to time, without the consent of or notice to any of the Owners, but with fifteen (15) days written notice to any rating agency which has assigned a rating to the Series 2011A Bonds, provide for amendments to the Bonds, the Bond Ordinance or this Resolution, for any one or more of the following purposes:

(A) to cure any ambiguity or formal defect or omission in the Bond Ordinance or this Resolution or to make any other change not prejudicial to the Owners;

(B) to grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners;

(C) to provide for the issuance of coupon bonds and the exchange of fully registered Series 2011A Bonds for coupon bonds upon such terms and conditions as the City shall determine; provided, however, that no such amendments shall 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 Series 2011A Bonds for such coupon bonds will not cause the interest on the Series 2011A Bonds to be includable in the gross income of the recipients thereof under the provisions of applicable Federal law; or

(D) to conform this Resolution to the Code or future applicable Federal law concerning tax exempt obligations.

Any provision of this Resolution expressly recognizing or granting rights in or to any Bond Insurer may not be amended in any manner which affects the rights of such Bond Insurer hereunder without the prior written consent of such Bond Insurer.

Section 1202. Written Evidence of Amendments. Every amendment or modification of a provision of the Bonds, the Bond Ordinance or of this Resolution to which the prior written consent of the Owners and/or of any Bond Insurer is given as above provided shall be expressed in an ordinance or resolution of the City, as applicable, amending or supplementing the provisions of the Bond Ordinance or this Resolution and shall be deemed to be a part of the Bond Ordinance or this Resolution, as applicable. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification, if any. Prior to the adoption of such ordinance or resolution, the City shall receive an opinion from Bond Counsel to the effect that the proposed amendment is in compliance with the requirements of the preceding Section and that the passage of the ordinance or resolution authorizing such amendment will not adversely affect the tax-exempt status of the interest on the Bonds. At least fifteen (15) days prior to the execution of any such amendment or modification of the Bond Ordinance or this Resolution, the City shall furnish the Bond Insurer, if any, and any rating agency which has assigned a rating on the Series 2011A Bonds with a copy of the amendment, change or modification proposed to be made. 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 Owners of any Bond or prospective purchaser or Owners of any Bond authorized by the Bond Ordinance and this Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental ordinance or resolution will be sent by the City Clerk to any such Owner or prospective Owner. A certified copy of all proceedings relating to the execution of every such amendatory or supplemental ordinance or resolution, if any, shall be furnished to any Bond Insurer.

Section 1203. Consent Required in Addition to Owner Consent. Unless otherwise provided in this Section, if any series of Series 2011A Bonds are insured under a Municipal Bond Insurance Policy, the Bond Insurer's consent shall be required in addition to Owner consent, when required, for the following purposes (i) the execution and delivery of any supplemental Ordinance or Resolution; (ii) removal of the Paying Agent and selection and appointment of any successor paying agent; and (iii) the initiation or approval of any action not described in the foregoing clause (i) or (ii) which requires Owner consent.

ARTICLE XIII

DEFEASANCE

Section 1301. Defeasance. When the principal of all of the Series 2011A Bonds and any Parity Bonds, the premium thereon, if any, and the interest thereon shall have been paid and discharged, then the requirements contained herein and the pledge of Net Revenues made hereunder and all other rights granted hereby shall cease and determine. Bonds shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Paying Agent or a bank located in the State and having full trust powers, at or

prior to the maturity or redemption date of the Bonds, as the case may be, in trust for and irrevocably appropriated thereto, cash moneys and/or non-callable direct obligations of the United States of America, or obligations the principal of and interest on which are guaranteed by the United States of America (if approved by any applicable Bond Insurer), or other investments allowed by State law (if approved by any applicable Bond Insurer) which, together with the interest to be earned on such investments, will be sufficient for the payment of the principal of the Bonds, the premium thereon, if any, and the interest accrued to the date of maturity or redemption, 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 such 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 in this Resolution. Any moneys which at any time shall be deposited with the Paying Agent or said bank in the State by or on behalf of the City for the purpose of paying and discharging any of the Bonds shall be and are hereby assigned, transferred and set over to the Paying Agent or such bank in the State 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 deposited with the Paying Agent or said bank in the State shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution. At such time as a Bond shall be deemed to be paid, it shall no longer be secured by or entitled to the benefits of this Resolution, except for the purposes of any such payment from such moneys or Government Securities.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Parties Interested Herein. Nothing in the Bond Ordinance or this Resolution expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the City, the Bond Insurer, if any, the Bond Registrar and Paying Agent and the Owners of the Series 2011A Bonds, any right, remedy or claim under or by reason of the Bond Ordinance or this Resolution, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in the Bond Ordinance or this Resolution contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Bond Insurer, if any, the Bond Registrar and Paying Agent and the Owners of the Series 2011A Bonds.

Section 1402. Severability. In case any one or more of the provisions of the Bond Ordinance, this Resolution or of the Bonds issued hereunder 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 of the Bonds appertaining thereto, but the Bond Ordinance, this Resolution and said Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained herein. In case any covenant, stipulation, obligation or agreement contained in the Bonds, the Bond Ordinance or in 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 1403. Continuing Disclosure Certificate. To assist the Underwriter in complying with Rule 15c2-12 of the Securities and Exchange Commission, the City is hereby authorized to execute and deliver a Continuing Disclosure Certificate dated as of the Date of Issuance of the Series 2011A Bonds (the "Continuing Disclosure Certificate"), under which the City will provide certain annual financial information and notice of the occurrence of certain material events, all as more particularly set forth therein.

Section 1404. Further Authority. The Mayor, the City Clerk, the City Manager, the Director of Finance, and other City officials as necessary or required, are hereby authorized, ordered and directed to execute any and all documents and agreements required to be executed pursuant to this Resolution or in connection with the issuance, sale and delivery of the Series 2011A Bonds, including, but not limited to, this Resolution, the Official Statement, the Escrow Trust Agreement, the Continuing Disclosure Certificate, together with any and all supporting documents and certificates required in the issuance of the Series 2011A Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Series 2011A 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 concurrently with adoption of this Resolution, with such minor corrections or amendments thereto as the Mayor or other signatory shall approve, which approval shall be evidenced by his execution thereof; and the Mayor, the City Clerk, the City Manager, the Director of Finance, and other City officials as necessary or required, 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; and further, to furnish and provide any and all notices and documents at the times indicated to the various parties as required in the several Articles of this Resolution, including, but not limited to, the Underwriter for the Series 2011A Bonds and the Bond Insurer, if any.

The execution and attestation of this Resolution, the Official Statement, the Escrow Trust Agreement, the Continuing Disclosure Certificate 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, correctness and completeness of said documents and each of them.

The City 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 this Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Series 2011A Bonds, the Official Statement, the Escrow Trust Agreement, the Continuing Disclosure Certificate, and the Utility, all as necessary to carry out, give effect to and comply with the transactions contemplated hereby and thereby.

Section 1405. Previous Ordinances Controlling. To the extent any provision of this Resolution is in conflict with the Series 1998 Ordinance, the Series 1998 Ordinance shall control so long as any Series 1998 Bonds remain outstanding; to the extent any provision of this

Resolution is in conflict with the Series 2000 Ordinance, the Series 2000 Ordinance shall control so long as any Series 2000 Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2005A Ordinance, the Series 2005A Ordinance shall control so long as any Series 2005A Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2005B Ordinance, the Series 2005B Ordinance shall control so long as any Series 2005B Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2005C Ordinance, the Series 2005C Ordinance shall control so long as any Series 2005C Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2006 Ordinance, the Series 2006 Ordinance shall control so long as any Series 2006 Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2008A Ordinance, the Series 2008A Ordinance shall control so long as any Series 2008A Bonds remain outstanding, to the extent any provision of this Resolution is in conflict with the Series 2009 Ordinance, the Series 2009 Ordinance shall control so long as any Series 2009 Bonds remain outstanding and to the extent any provision of this Resolution is in conflict with the Series 2010 Ordinance, the Series 2010 Ordinance shall control so long as any Series 2010 Bonds remain outstanding.

Section 1406. Governing Law. The Bond Ordinance, this Resolution and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1407. Effective Date. This Resolution shall take effect and be in full force from and after its passage by the Governing Body.

[Remainder of page intentionally left blank]

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on November 1, 2011.

(Seal)

_____
Carl Brewer, Mayor

ATTEST:

By_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

ADDITIONAL TERMS OF THE SERIES 2011A BONDS

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

"Bond Ordinance" shall mean Ordinance No. _____ of the City passed by the Governing Body on November 1, 2011, and authorizing and providing for the issuance of the Series 2011A Bonds.

"Underwriter" shall mean _____, _____, _____.

Maturity Schedule. All of the Series 2011A Bonds shall become due or be subject to mandatory redemption on the dates and shall bear interest as the rates per annum as follows:

SERIES 2011A BONDS

Principal or Mandatory Redemption Date	Interest Rate Per Annum
October 1, 2012	%
October 1, 2013	
October 1, 2014	
October 1, 2015	
October 1, 2016	
October 1, 2017	
October 1, 2018	
October 1, 2019	
October 1, 2020	
October 1, 2021	
October 1, 2022	
October 1, 2023	
October 1, 2024	
October 1, 2025	
October 1, 2026	
October 1, 2027	
October 1, 2028	
October 1, 2029	

EXHIBIT B

FINAL SIZING TERMS OF THE SERIES 2011A BONDS

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

"Purchase Price" for the Series 2011A Bonds shall be the par value of the Series 2011A Bonds, *i.e.*, $_____, the principal amount of the Series 2011A Bonds, plus accrued interest to the date of delivery, plus a premium of $_____.

Maturity Schedule. All of the Series 2011A Bonds shall become due in the amounts and on the dates set forth below:

SERIES 2011A SERIAL BONDS

Principal Payment Date	Amount of Principal Payment
October 1, 2012	
October 1, 2013	
October 1, 2014	
October 1, 2015	
October 1, 2016	
October 1, 2017	
October 1, 2018	
October 1, 2019	
October 1, 2020	
October 1, 2021	
October 1, 2022	
October 1, 2023	
October 1, 2024	
October 1, 2025	
October 1, 2026	
October 1, 2027	
October 1, 2028	
October 1, 2029	

Deposits. Proceeds of the Series 2011A Bonds shall be deposited as follows:

(1) to the credit of the 2011A Costs of Issuance Account, the sum of $_____;

(2) to the credit of the Redemption Fund, the sum of $_____; and

(3) to the credit of the Escrow Fund, the sum of $_____.

Series 1999 Bond Reserve Subaccount and Series 2003 Bond Reserve Subaccount moneys shall be deposited as follows:

(1) to the credit of the 2011A Bond Reserve Subaccount, the sum of $_____;

(2) to the credit of the Redemption Fund, the sum of $_____; and

(3) to the credit of the Escrow Fund, the sum of $_____.

Approved by:

_____
Title: _____
City of Wichita, Kansas

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,* November 1, 2011, of an ordinance entitled:

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, AUTHORIZING THE ISSUANCE OF THE CITY'S WATER AND SEWER UTILITY REFUNDING REVENUE BONDS, SERIES 2011A, IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $123,000,000 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING WATER AND SEWER UTILITY REVENUE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS AND SUPPORTING DOCUMENTS.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 2011A Bonds occur on the same day bids are received and to enable the City to deliver the Series 2011A Bonds authorized by said Ordinance on November 17, 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 November 1, 2011.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

Agenda Item No. V-1

City of Wichita
City Council Meeting
November 1, 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)

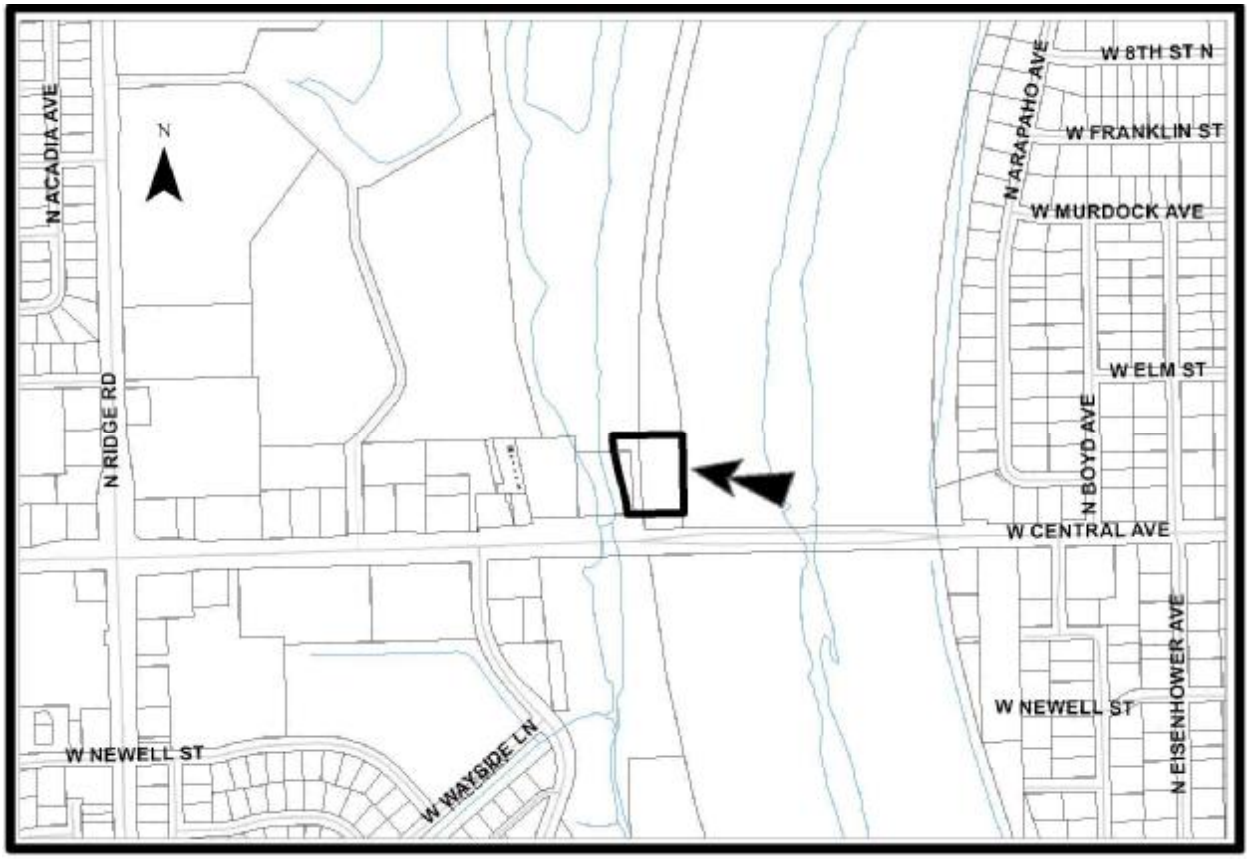
INITIATED BY: Metropolitan Area Planning Department

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 and 10-2).

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 its 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.

The Wichita City Council heard the application on August 16, 2011, and voted to return the application to the MAPC for additional consideration on the basis that there was new information that had not been considered in their previous hearings.

The MAPC re-considered the case on September 22, 2011. The applicant was not present nor was any additional information provided for the MAPC's consideration. The agent for the contract purchaser was present, and he asked the MAPC to approve the application as requested. The MAPC considered three motions. The first motion offered was to take no further action since there had not been any new information presented. The first motion failed for lack of a second. The second motion offered was to approve the request as originally recommended by the MAPC (staff recommendation). A substitute motion to approve as requested by the applicant was offered, and failed for lack of a second. The second motion to approve as initially recommended by the MAPC was approved 10-2.

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 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 (simple majority vote required plus appropriate findings) or 3) Deny the zone change request (simple majority vote required plus appropriate findings).

Attachments:

- Ordinance
- MAPC Minutes of: February 24, 2011, March 24, 2011, April 21, 2011, May 26, 2011, June 23, 2011 and September 22, 2011
- June 20, 2011, Poe & Associates, Inc. memo
- DAB V memo
- Aerial with overlays

OCA150004

ORDINANCE NO. 49-151

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 15th day of November, 2011.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

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 <u>quit claim</u> deed. However, the title company prepared a title insurance commitment assigning <u>fee simple</u> interest to the City of Wichita and prepared a <u>warranty</u> 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 <u>quit claim</u> deed, not a <u>warranty deed</u>, 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.

EXCERPT MINUTES OF THE SEPTEMBER 22, 2011 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION

Case No.: ZON2011-01 – Richard D. Hoskinson / Brent Thomas or Chris Bohm request Limited Commercial ("LC") zoning on 1.95 unplatted acre 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 reviewed at five previous Metropolitan Area Planning Commission (MAPC) meetings. Planning staff had prepared for the February 24, 2011, 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. At the February 24, 2011 meeting, 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 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 for approval to 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. On June 23, 2011, the MAPC recommended approval as recommended by staff (8-3).

The request was referred to District Advisory Board (DAB) V. District Advisory Board V reviewed the request on July 11, 2011, and recommended approval as recommended by staff (6-0).

The City Council reviewed the application on August 16, 2011. The action of the City Council was to return the application to the MAPC for further consideration on the basis that there was new information for the MAPC to consider.

At the time this report was updated for the MAPC meeting of September 22, 2011, planning staff had not received any new information to pass on to the MAPC.

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.

1. 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.

JAY HINKEL, DEPUTY CITY ATTORNEY commented that the Chairman had received a letter from Mr. Dick Hoskinson dated September 20, 2011.

CHAIRMAN FARNEY confirmed that was correct.

HINKEL stated that in that letter, recusal of Commissioner Mitchell from voting on item #4 - ZON2011-01 on today's agenda was requested for a number of reasons. He said he would like to address several statements made in the letter.

HINKEL said the first statement was that this hearing is a continuation of the public hearing of this matter that commenced on February 24, 2011. He said that is an incorrect presumption. He said the Planning Commission made its recommendation on this matter on June 23, 2011. He said the return of this matter by the City Council to the Planning Commission for reasons stated by the governing body was not a continuation of the February 24, 2011, public hearing as stated in the letter. He said the action taken by the Planning Commission in June, 2011, concluded their recommendation.

HINKEL referenced Section 9c mentioned in the letter regarding the Planning Commission Bylaws with reference to the provision that the Chair may grant permission upon the request of a commission member to refrain from participating in the discussion and voting on an item. He said the City Council has a requirement that all Board members participate in all votes unless they are specifically recused. He said there is no presumed carryover of recusal from one concluded action to another by these Bylaws.

HINKEL mentioned Section 44 of Roberts Rules of Order newly revised 1970 version referred to in the letter adopted by the Planning Commission under the Bylaws regarding a recused member being granted permission by the voting body to vote. He said after consulting the volume, he found no support for that argument with this particular version of Roberts Rules of Order.

HINKEL concluded by saying that the letter challenges Commissioner Mitchell's participation based on certain ex-parte contacts. He said under Section 10 of the Bylaws ex-parte contacts are not prohibited, it simply calls for a disclosure along with the nature of any information that was obtained that may have a bearing on a particular Commissioner's decision. He concluded his remarks by stating that it was his recommendation that Commissioner Mitchell not be required to be recused in this matter.

DALE MILLER presented a brief Staff Report.

ALDRICH asked for the exact wording of the motion by the City Council to send this item back to the Planning Commission.

DIRECTOR SCHLEGEL said he didn't recall the exact language of the motion but said the item was sent back to the Planning Commission for reconsideration so the applicant could provide additional information that had not been provided previously.

ALDRICH said he seemed to remember that the motion was to give the applicant an opportunity to provide expert testimony or witnesses that pertained directly to the case. He asked if there were any additional experts present at today's meeting.

MILLER stated that neither the applicant nor the agent was at this meeting, so there was no one to present any new information.

ALDRICH asked then how can this body hear the case again.

CHAIR FARNEY suggested that the Commission address any questions after the public hearing. He invited the applicant or agent to address the Commission. Seeing no one, he opened the floor up for public comment.

TIM AUSTIN, POE AND ASSOCIATES, AGENT FOR CONTRACT BUYER said for the record the contract buyer's position, also covered previously, is that the property should be zoned and that discussion of the easement would more appropriately be held at the time of platting. He said that is consistent with the 2008 zoning action relative to this property, which was to deal with easements at the time of platting.

JIM WEBER, SEDGWICK COUNTY PUBLIC WORKS, DEPUTY DIRECTOR said Sedgwick County was opposed to zoning public right-of-ways, which they believe sets up an unrealistic expectation that someone might be able to do something privately with that right-of-way. He requested that the Commission move forward with their previous action, and not rezone the flood control right-of-way.

MARNELL asked if Mr. Weber knew of any other zoning case where the County opposed the application because easements were involved.

WEBER replied no.

ALDRICH said again, this application was sent back to the Planning Commission for a specific reason. He said if the Planning Commission is not going to hear any additional testimony on this; he does not see how the Commission can hear the case and make a decision on it. He said the Commission is not hearing any experts so it seems to him that it is a moot point. He said he realized that Staff's recommendation was to reaffirm the previous decision on the application and send it back to Council, but he said he feels uncomfortable with the whole situation.

DIRECTOR SCHLEGEL briefly outlined the various options available to the Commission on the matter including reaffirming the previously taken action, reversing the previous recommendation or taking no action at all.

DOWNING requested legal assistance. He said he believed the governing body can send a case back to the Planning Commission to look at again for no cause at all. He said he thought the Commission should look at the case and if they decide the previous recommendation was a good decision, reaffirm that action

and send the case back to the governing body. He said the minutes will reflect that neither the agent nor the owner/applicant were present to give testimony.

HINKEL said he believed Commissioner Downing had the options set out accurately. He reiterated the options available which were to re-submit the original recommendation, submit a new or altered recommendation with reasons why, or to take no action. He noted that if the Commission fails to take action; however, it will be deemed as a resubmission of the original recommendation.

ALDRICH referred to the background in the Staff Report and asked about the reference to the District Court Case No. A-31849. He asked for clarification that the easement holder (Sedgwick County Commission) has control over the property.

MILLER said that information came from the Sedgwick County Commission agenda item.

BOB PARNACOTT, COUNTY COUNSELOR responded that the language was contained in the court documents so Commissioner Aldrich was correct.

ALDRICH said if the District Court says that, then it is a final determination on restrictions on the property. He said if that is the case then this is a moot issue anyway.

> **MOTION:** To take no action.
>
> **ALDRICH** moved. The motion died due to lack of a second.
>
> **SUBSTITUTE MOTION:** To reaffirm the previous decision on the application and approve subject to staff recommendation.
>
> **MILLER STEVENS** moved, **MCKAY** seconded the motion.

MARNELL commented that the Planning Commission has consistently stayed out of private agreements. He referenced some of the cases over the years where people have asked that property not be zoned because it was contrary to covenants or promises outside the purview of the duties of the Planning Commission, which is land use. He said if this property had not had this easement and the Commission was looking at a simple land issue; there is no doubt in his mind that they would not have approved this. He said it is his opinion that the Commission should approve this and let the other pieces fall where they will. He said he has no intention of undermining the Wichita-Valley Center Floodway, which he feels is extremely important. He suggested that applications in the future not reference easements on property.

> **SECOND SUBSTITUTE MOTION:** To grant the original application as requested by the applicant.
>
> **MARNELL** moved. The motion died due to lack of a second.

The **ORIGINAL MOTION** carried (10-2). **ALDRICH** and **MARNELL** – 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

Scale: 1" = 150'
S 1/4 Cor. Sec 15,
T27S, R1W
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 #2904 315 also Cond C–30343 (deed: City of Wichita to Hoskinson)

Agenda Item No. II-5a

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Community Events – Intrust Bank Arena (Reba)
(District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure, the event promoter, Tenille Matzek, Intrust Bank Arena Event Coordinator is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure requests have been submitted:

Reba November 5, 2011 7:00 am – November 6, 2011 2:00 am

- William Street, St. Francis Street to Commerce Street.
- Waterman Street, St. Francis Street to Emporia Street – West bound lane.

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

Agenda Item No. II-5b

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Community Events – Intrust Bank Arena (Rock & Worship Roadshow) (District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure, the event promoter, Tenille Matzek, Intrust Bank Arena Event Coordinator is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure requests have been submitted:

Rock & Worship Roadshow November 18, 2011 7:00 am – November 19, 2011 2:00 am

- William Street, St. Francis Street to Commerce Street.
- Waterman Street, St. Francis Street to Emporia Street – West bound lane.

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

Agenda Item No. II-5c

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Community Events – Turkey Trot 10 Mile and 2K (District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure, the event promoter Clark Ensz, Clark Ensz, Inc. is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Turkey Trot November 19, 2011 8:00 am – 12:00 pm

- Sim Park Drive, Stackman Drive to Murdock Street
- McLean Boulevard, Seneca Street to Meridian Avenue
- McLean Boulevard, northbound to Central Avenue

The promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring of off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing Certificate of Liability Insurance on file with the Community Events Coordinator.

Agenda Item No. II-5d

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Community Events – Frosty 5K Run (District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure the event promoter Mike Kramp, Central Branch YMCA Director is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure requests have been submitted:

2012 Frosty 5K Run January 1, 2012 9:00 am – 3:00 pm

- Third Street, Broadway Avenue to Waco Avenue
- Waco Avenue, Third Street to First Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing Certificate of Liability Insurance on file with the Community Events Coordinator.

Agenda Item No. II-5e

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Community Events – Say Grace Thanksgiving Race (District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure, the event promoter Clark Ensz, Clark Ensz, Inc. is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Say Grace Thanksgiving Race November 24, 2011 8:00 am – 12:00 pm

- Emporia Street, Thirteenth Street to Tenth Street
- Topeka Street, Thirteenth Street to Elm Street
- Thirteenth Street, Topeka Avenue to Emporia Avenue
- Twelfth Street, Topeka Avenue to Emporia Avenue
- Eleventh Street, Topeka Avenue to Emporia Avenue
- Tenth Street, Topeka Avenue to Sante Fe Street
- Ninth Street, Topeka Avenue to Sante Fe Street
- Pine Street, Topeka Avenue to Sante Fe Street
- Elm Street, Topeka Avenue to Sante Fe Street
- Sante Fe Street, Tenth Street to Ninth Street
- Emporia Circle, Ninth Street to Ninth Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring of off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the

streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing Certificate of Liability Insurance on file with the Community Events Coordinator.

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Change Order No. 2- ASR Overhead Power Lines (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the change order.

Background: On August 24, 2010, the City Council approved a contract with JF Electric Inc. to construct the overhead electric lines to power the Aquifer Storage and Recovery Facility (ASR). During construction, a number of conditions were encountered that required additional work items.

Analysis: The additional work consists of field modifications required on the construction of 43 miles of overhead power lines. The individual items are listed on the attached work order.

Financial Considerations: The total cost of the additional work is $13,235, with the total paid by the Water Utility. The original contract amount is $9,495,422. This change order plus a previous change order represents 0.13% of the original contract amount. Funding is available within the existing project budget.

Goal Impact: The project addresses the Efficient Infrastructure goal by providing a needed water supply.

Legal Considerations: The Law Department has approved the change order as to form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve Change Order No. 2 and authorize the necessary signatures.

Attachments: Change Order No. 2.

August 31, 2011

PUBLIC WORKS-ENGINEERING **CHANGE ORDER**

To: JF Electric Inc

Project: W-549-012 Overhead Power Lines ASR BP H1.

Change Order No.: 1002
Purchase Order No.: 030648
CHARGE TO OCA No.: 633970

Project No.: 788012
OCA No.: 633970
PPN: 788012

Please perform the following extra work at a cost not to exceed <u>$13,235.32</u>

Additional Work:

1. Replace guy stub with 50' pole at Golden Prairie and 72nd St. Salvage guy stub to City.
2. Add anchor and guy to pole D9-24-03.
3. Move neutral up on pole for SCEC at 117th St. Dead End.
4. Add 2 anchors, 2 down guys, 1 span guy and reframe pole C10-23-02 for a Double Dead End at 103rd and 109th.
5. Change out 50' pole with a 45' pole and lower cross arm for Sedgwick County Electrical Cooperative (SCEC).
6. Replace pole with 50' Dead End pole at Old Settlers and 72nd St. Salvage guy stub pole to City.
7. Install spare 50' single circuit pole at 72nd and Spring Lake.
8. Relocate pole at 72nd and Golden Prairie.
9. Modify guy support at 96th and Old Settlers. Salvage stub pole to City
10. Add 50' double circuit pole at 84th and Golden Prairie.
11. Relocate tap pole at Well 34 for pipeline work

Reason for Additional Work:

1. Obstacles at intersection necessitated pole relocation and replacement
2. An additional anchor at bend point was required to support poles.
3. SCEC required that the neutral be moved up the pole for additional clearance from SCEC facilities.
4. Added a double Dead End and Slack Span for Conductor. This required extra guys and reframing. Westar requires segregation of facilities.
5. SCEC requested a reduced height pole and lowering of a cross arm for additional clearance. Salvaged 50' pole to Item 7 work listed below.
6. Pole modification was required due to clearance with road ROW at intersection.
7. An additional 50' pole at road crossing was required to reduce span length and support cross-connect jumpers.
8. A pole required to be moved for additional clearance from intersection.
9. Modifications to support angles at a bend resulted in salvage of pole to the City.
10. An additional 50' pole was required at a road crossing 84th to support cross-connect jumpers.
11. The tap pole for the flow control structure required relocation due to a conflict with the proximity of the pipeline work.

Item	Negot'd/Bid	Qty	Unit Price	Extension
1. Guy Pole Replacement		Negot'd	1LS@	$592.20
2. Add Anchor (D9-24-03)		Negot'd	1LS@	$161.50
3. Neutral Relocate (SCEC)		Negot'd	1LS@	$592.20
4. System Segregation		Negot'd	1LS@	$1,610.60
5. Pole Exchange (50'to 45')		Negot'd	1LS@	$1,776.60
6. DE Pole (50')		Negot'd	1LS@	$888.30
7. Single Circuit Pole (50')		Negot'd	1LS@	$2,498.74
8. Pole Relocate		Negot'd	1LS@	$592.20
9. Stub Pole (Salvage)		Negot'd	1LS@	$296.10
10. Double Circuit Pole (50')		Negot'd	1LS@	$3,042.48
11. Tap Pole Relocate		Negot'd	1LS@	$1,184.40

CIP Budget Amount: $23,600,000.00 Original Contract Amt.: $9,495,422.00

Consultant: CH2M Hill
Exp. & Encum. To Date: $23,554,241.48

CO Amount: $13,325.32
Unencum. Bal. After CO: $45,758.52

Current CO Amt.: $13,235.32
Amt. of Previous CO's: $0.00
Total of All CO's: $13,235.32
% of Orig. Contract / 25% Max.: .13%
Adjusted Contract Amt.: $9,508,657.32

Recommended By:

_____ _____
Dennis H. Sanders Date
Construction Admin Mgr.
RW Beck & Associates

Approved:

_____ _____
Stan Breitenbach, P.E. Date
Special Project Engineer

Approved:

_____ _____
Contractor Date

Approved:

_____ _____
Jim Armour, P.E. Date
City Engineer

Approved:

_____ _____
Alan King Date
Director of Public Works & Utilities

Approved as to Form:

_____ _____
Gary Rebenstorf Date
Director of Law

By Order of the City Council:

_____ _____
Carl Brewer Date
Mayor

Attest:_____
City Clerk

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Change Order No. 2 – 21st Street Improvement, Waco to Topeka (District VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the change order.

Background: On February 9, 2010, the City Council approved a contract with Kansas Paving, Inc. to improve 21st Street between Topeka and Waco, including the intersection of 21st and Broadway. A part of the work included improvements to the approaches to the BNSF railroad crossing at 21st, east of Broadway. BNSF installed the crossing materials. After the work began, a number of field conditions were encountered that were not known at the time the project was bid. A change order has been prepared for the cost of the additional work.

Analysis: The additional work included: BNSF extended the length of the rail crossing which increased the cost of traffic control provided by Kansas Paving and paid by the City. The excavation of 21st Street revealed a number of water service lines that served more than one customer. Those lines were replaced with individual lines for each customer. The amount of sidewalk installed was greater than expected due to the poor condition of existing sidewalk at project boundaries. A complete list of the additional work is itemized on the attached change order document.

Financial Considerations: The total cost of the additional work is $85,367, with $64,624 paid by General Obligation Bonds and $20,743 by the Water Utility. The original contract amount is $3,266,914. This change order plus a previous change order represents 2.82% of the original contract amount. Funding is available within the existing project budget.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through an important transportation corridor.

Legal Considerations: The Law Department has approved the change order as to form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve Change Order No. 2 and authorize the necessary signatures.

Attachments: Change Order No. 2.

October 14, 2011

PUBLIC WORKS-ENGINEERING

CHANGE ORDER

To: Conspec, Inc. d/b/a Kansas Paving

Project: 21st & Broadway Intersection Improvements (21st Street North, Topeka to Waco)

Change Order No.: 2
Purchase Order No.: 030111
CHARGE TO OCA No.: 706934 - $64,623.64
636229 - $20,743.00

Project No.: 472-84295
OCA No.: 706934 / 636229
PPN: 205400 / 779618

Please perform the following extra work at a cost not to exceed $85,366.64

Additional Work: Adjust bid item quantities

Reason for Additional Work: Measured quantity bid items based on final field measurements.

Items (636229)	Negot'd/Bid	Qty		Unit Price	Extension
20" Water Line	Bid	19.5	lf	100.00	1,950.00
12" Water Line	Bid	(18.0)	lf	49.00	(882.00)
8" Water Line	Bid	(27.0)	lf	26.00	(702.00)
6" Water Line	Bid	(12.0)	lf	18.00	(216.00)
2" Water Line	Bid	(7.0)	lf	12.00	(84.00)
Short Service 1"	Bid	7.0	ea	600.00	4,200.00
Long Service 1"	Bid	10.0	ea	1,500.00	15,000.00
Asphalt Pvmt Replaced (temp.)	Bid	(267.0)	lf	20.00	(5,340.00)
Sand Fill, Flush & Vibrate	Bid	(21.0)	lf	10.00	(210.00)

Additional Work: Replace lead joint pipe

Reason for Additional Work: Upon excavation of existing 20" water main at Market, the existing horizontal bend was found leaking through the lead joints. Contractor will remove and replace the existing bend using mega lugs for restraint.

Items (636229)	Negot'd/Bid	Qty		Unit Price	Extension
20" Water Line	Bid	6.5	lf	100.00	650.00
Fittings, sleeves	Negot'd	1.0	LS	4,194.00	4,194.00

Additional Work: Remove waterline connection off hydrant lead

Reason for Additional Work: While attempting a shutdown for tie-in on Line 1B at Market, an existing connection was discovered on a fire hydrant lead along with bad valves in the system. Existing pipe, inoperable valve, and hydrant will be removed to simplify the system. Water Dept. will supply the fire hydrant.

Items (636229)	Negot'd/Bid	Qty		Unit Price	Extension
8" Water Line	Bid	14.0	lf	26.00	364.00
6" Water Line	Bid	10.0	lf	18.00	180.00
Valve, fittings, blocking	Negot'd	1.0	LS	1,639.00	1,639.00

Additional Work: Repair 24" VCP storm sewer pipe

Reason for Additional Work: A section of existing 24" VCP storm sewer pipe at Sta 35+31, 26' Rt. is in poor structural condition and needs repaired.

Items (706934**)**	**Negot'd/Bid**	**Qty**		**Unit Price**	**Extension**
24" VCP repair	Negot'd	1.0	LS	2,829.75	2,829.75

Additional Work: Fill existing storm sewer with flowable fill

Reason for Additional Work: Upon excavation for boring steel casing under BNSF r/w, the distance between the existing 16" waterline and existing 15" storm sewer is too close and will not allow safe installation of the casing without risking damage to the 16" waterline. The storm sewer casing alignment is shifted further north and requires the old storm sewer to be filled with flowable fill.

Items (706934**)**	**Negot'd/Bid**	**Qty**		**Unit Price**	**Extension**
High Strength Flowable Fill	Bid	100.0	lf	60.00	6,000.00

Additional Work: Fill existing storm sewer manhole with flowable fill

Reason for Additional Work: Unforeseen condition - During 30" steel casing installation under BNSF r/w, the casing pushed through an abandoned sewer manhole damaging the integrity of the manhole structure. The structure and voids need filled with flowable fill.

Items (706934**)**	**Negot'd/Bid**	**Qty**		**Unit Price**	**Extension**
High Strength Flowable Fill	Negot'd	10.0	cy	85.50	855.00

Additional Work: Change traffic service box lid

Reason for Additional Work: Standard service boxes use square pre-cast concrete tops. With special sidewalk jointing patterns, a different ring and lid will be used so the lid can be set in place and sidewalk poured around it.

Items (706934**)**	**Negot'd/Bid**	**Qty**		**Unit Price**	**Extension**
Traffic manhole lid	Negot'd	16.0	ea	390.45	6,247.20

Additional Work: Asphalt and concrete hook-ups

Reason for Additional Work: Asphalt hook-ups are needed were existing parking lots do not match new sidewalk elevations. Concrete hookups are needed in alleys and streets where the existing pavement is in poor condition.

Items (706934**)**	**Negot'd/Bid**	**Qty**		**Unit Price**	**Extension**
Pvmt Removal	Bid	248.5	sy	3.00	745.50
Asphalt parking lot tie-in	Negot'd	179.5	sy	23.10	4,146.45
Concrete Pvmt (8")(Reinf)	Bid	69.0	sy	37.00	2,553.00
Pvmt Removal (pkg lot)	Bid	7.0	sy	2.25	15.75
Concrete Pvmt Base Course (6")	Bid	7.0	sy	30.00	210.00

Additional Work: J-box and wire

Reason for Additional Work: Bashaam's business sign is located on City r/w. In lieu of

relocating the sign, the property owner has agreed to a Minor Street Permit. The electrical service will need modified since power came through a pole removed during the project.

Items (706934**)**	**Negot'd/Bid**	**Qty**		**Unit Price**	**Extension**
Electrical hookup	Negot'd	1.0	LS	525.53	525.53

Additional Work: Re-locate pole bases

Reason for Additional Work: Two pole bases at Sta 32+39, Lt and Sta 33+18, Lt. must be relocated to provide sufficient clearance to meet ADA guidelines

Items (706934**)**	**Negot'd/Bid**	**Qty**		**Unit Price**	**Extension**
Re-locate pole base	Negot'd	1.0	LS	725.34	725.34

Additional Work: Adjust bid item quantities

Reason for Additional Work: Adjust final measured quantities based on final field measurements

Items (706934**)**	**Negot'd/Bid**	**Qty**		**Unit Price**	**Extension**
Driveway Concrete (6")	Bid	168.0	sf	3.75	630.00
Driveway Concrete (8")(Reinf)	Bid	658.1	sf	5.00	3,290.50
Portable Changeable Message Board	Bid	(3.0)	dy	65.00	(195.00)
Asphalt Pvmt Replaced (temp.)	Bid	75.0	lf	25.00	1,875.00
Erosion Control BMP (Silt Fence)	Bid	(693.0)	lf	0.78	(540.54)
Erosion Control BMP (Back of Curb)	Bid	(298.0)	lf	0.90	(268.20)
Erosion Control BMP (Curb Inlet)	Bid	(16.0)	ea	45.00	(720.00)
Erosion Control BMP (Area Inlet)	Bid	(1.0)	ea	45.00	(45.00)
Erosion Control BMP (Ditch Check)	Bid	(3.0)	ea	65.00	(195.00)
Sidewalk Concrete Pvmt (4")	Bid	7,964.0	sf	2.50	19,910.00

Additional Work: Delete parking lot pavement and adjust bid item quantities
Reason for Additional Work: Existing KDHE monitoring station at the parking lot site prevents completion of the parking lot pavement. Adjust final measured quantities based on final field measurements.

Items (706934**)**	**Negot'd/Bid**	**Qty**		**Unit Price**	**Extension**
Reinf Crushed Rock Base (6")	Bid	(103.0)	sy	8.00	(824.00)
Conc Parking Lot Pvmt (5" Reinf)	Bid	(103.0)	sy	22.00	(2,266.00)
Edge Curb	Bid	(65.0)	lf	5.00	(325.00)
Erosion Control BMP (Silt Fence)	Bid	(188.0)	lf	0.78	(146.64)
Erosion Control BMP (Area Inlet)	Bid	(1.0)	ea	45.00	(45.00)

Additional Work: Traffic control for track extensions

Reason for Additional Work: On March 8th, City Council approved an agreement with BNSF to replace the two west tracks due to the deteriorated and unsafe crossing material. Contractor will provide traffic control for the full road closure while BNSF completes their work.

Items (706934**)**	**Negot'd/Bid**	**Qty**		**Unit Price**	**Extension**
Construction Traffic Control	Negot'd	1.0	LS	16,747.50	16,747.50

Additional Work: Railroad insurance

Reason for Additional Work: On March 8th, City Council approved an agreement with BNSF to replace the two west tracks due to the deteriorated and unsafe crossing material. BNSF, by not completing the crossing material and causing delay, the contractor's railroad protective liability insurance expired. The policy must be renewed for the contractor to complete the work.

Items (706934**)**	**Negot'd/Bid**	**Qty**		**Unit Price**	**Extension**
RR protective insurance	Negot'd	1.0	LS	2,887.50	2,887.50

CIP Budget Amount: $7,750,000.00 (706934) $756,000.00 (636299)	**Original Contract Amt.: $3,266,914.44**
Consultant: TranSystems	Current CO Amt.: $85,366.64
Total Exp. & Encum. To Date: $6,054,696.53 (706934) **$599,641.39 (636229)**	**Amt. of Previous CO's: $7,075.00**
CO Amount: $64,623.64 (706934) **$20,743.00 (636229)**	**Total of All CO's: $92,441.64**
Unencum. Bal. After CO: $1,630,679.83 (706934) **$135,615.61 (636229)**	**% of Orig. Contract / 25% Max.: 2.82%**
	Adjusted Contract Amt.: $3,359,356.08

Recommended By:

_____ _____
Greg Baalman, P.E. Date
Construction Engineer

Approved:

_____ _____
Jim Armour, P.E. Date
City Engineer

Approved:

_____ _____
Contractor Date

Approved

_____ _____
Alan King Date
Director of Public Works & Utilities

Approved as to Form:

_____ _____
Gary Rebenstorf Date
Director of Law

By Order of the City Council:

_____ _____
Carl Brewer Date
Mayor

Attest:_____
City Clerk

CITY OF WICHITA
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 13700 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 property located at 13700 West Kellogg is an undeveloped commercially zoned tract at the northwest corner of Auburn Hills Road and Kellogg Drive. The tract is separated from Auburn Hills Drive by a platted reserve. The project requires the south 40 feet of the parcel as well as a corner clip. The acquisition area totals 9,614.61 square feet. Additionally, the project requires total access control from the parcel to Kellogg.

Analysis: The acquisition was appraised at $33,650 ($3.50 per square foot). The owner rejected this offer. The combination of the required access control and the existing reserve between the parcel and Auburn Hills Drive could potentially land-lock the entire parcel. The owner agreed to accept this risk and sell the required land in exchange for $60,300 or $6.27 per square foot of land acquired.

Financial Considerations: A budget of $60,500 is requested. This includes $60,300 for the acquisition and $200 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.

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Notice of Intent to Use Debt Financing
1995 Midfield Road Facility Improvements

INITIATED BY: Department of Airports

AGENDA: Consent

Recommendation: Adopt the Resolution.

Background: The Airport Authority relies on the City of Wichita for the issuance of General Obligation bonds and/or notes for capital projects. In order to use debt financing for a project, it is necessary to declare that a public necessity exists for, and that the public safety, service, and welfare will be advanced by, the authorization of certain capital improvements to the Mid-Continent Airport facility. Additionally, the nature of said improvements, the estimated costs thereof, and the manner of payment, needs to be disclosed. The actual issuance of the bonds/notes will require a separate authorization from the City Council. Debt financing can be in the form of temporary notes for durations as short as six months for timing considerations, or in the form of General Obligation bonds for long term financing.

Analysis: In a concurrent agenda item, the City Council, sitting as the Wichita Airport Authority, will take action on a request to establish a project to allow for renovating and updating the facility at 1995 Midfield Road that is under lease to AOPA Insurance Agency. It is appropriate to make notice of the intent to use debt financing for this project with the specific financing amount and length being identified when the actual issuance of the bonds/notes are authorized in the future by the City Council.

Financial Considerations: The project budget requested is $160,000, which represents the maximum cost that will be financed with General Obligation bonds/notes. If the debt is issued, the source of repayment for the bonds/notes will be Airport revenues.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is leveraged through the use of financing for capital projects.

Legal Considerations: The Law Department has approved the Authorizing Resolution as to form.

Recommendation/Action: It is recommended that the City Council adopt the Resolution and authorize the necessary signatures.

Attachments: Authorizing Resolution.

OCA = 500496; UC1 = 1006

(Published in the Wichita Eagle on November 4th and 11th 2011.)

RESOLUTION NO. 11-261

A RESOLUTION DECLARING THAT A PUBLIC NECESSITY EXISTS FOR, AND THAT THE PUBLIC SAFETY, SERVICE AND WELFARE WILL BE ADVANCED BY, THE AUTHORIZATION OF LAND ACQUISITION AND/OR CERTAIN CAPITAL IMPROVEMENTS TO THE WICHITA MID-CONTINENT AIRPORT FACILITY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS; THE ESTIMATED COSTS THEREOF; AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 3-114 provides that an airport authority established pursuant to K.S.A. 3-162 shall have the power to equip, improve and maintain an airport; and,

WHEREAS, K.S.A. l3-1348a provides that a city having an airport authority established pursuant to K.S.A. 3-162 is authorized to issue general obligation bonds for the purpose of purchasing land for airport purchases or for the construction, enlargement, reconstruction, repair or addition to or of any improvements to any such lands.

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

SECTION 1. That a public necessity exists for, and that the public safety, service and welfare will be advanced by, the authorization of land acquisition and/or certain capital improvements, specifically,

1995 Midfield Road Improvements

to the Wichita Mid-Continent Airport facility operated by the Wichita Airport Authority of the City of Wichita, Kansas (such land acquisition and/or improvement to be referred to herein as the "Project").

SECTION 2. That the cost of the above described Project is estimated to be One Hundred and Sixty Thousand Dollars ($160,000), exclusive of the cost of interest on borrowed money, to be paid by the Wichita Airport Authority of the City of Wichita. Said Wichita Airport Authority cost shall be financed through the issuance of general obligation bonds under the authority of K.S.A. l3-1348a, as amended by Charter Ordinance No. 78 of the City of Wichita, Kansas. The maximum principal amount of bonds issued for this Project shall not exceed $160,000.

SECTION 3. That to the extent the Project is a capital improvement, the above described Project shall be made in accordance with the Plans and Specifications prepared under the direction of the Airport Engineering and Planning Manager and approved by the Wichita Airport Authority. Said plans and specifications are to be placed on file in the office of the Airport Engineering and Planning Manager located at Wichita Mid-Continent Airport.

OCA = 500496; UC1 = 1006

SECTION 4. That the City Clerk shall make proper publication of this resolution, which shall be published once each week for two consecutive weeks in the official City paper and which shall be effective from and after said publication.

ADOPTED at Wichita, Kansas, November 1, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Request for an Extension of Letter of Intent for Industrial Revenue Bonds (Cessna Aircraft Company) (Districts III and IV)

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendation: Approve the extension of the Letter of Intent for Industrial Revenue Bonds.

Background: Since 1990, the City Council has approved Letters of Intent for Industrial Revenue Bonds totaling a not-to-exceed principal amount of $1.2 billion to finance the expansion and modernization of Cessna Aircraft Company facilities in Wichita. Along with the letters of intent, the Council approved a five-plus-five-year 100% ad valorem tax exemption for all Cessna property financed with bond proceeds. Since 1990, approximately $1,232,277,000 in IRBs was issued to Cessna.

On November 14, 2006 the City of Wichita approved a Letter of Intent (LOI) for Industrial Revenue Bonds (IRBs) in an amount not-to-exceed $800,000,000 for a period of five years. Cessna is now requesting that the LOI be extended through December 31, 2011 to accommodate the issuance of IRBs in December 2011.

Analysis: Cessna Aircraft Company was incorporated in 1927 to manufacture and sell aircraft. Cessna Aircraft Company is the largest manufacturer of general aviation aircraft. Cessna also manufacturers aircraft parts and accessories and provides aircraft maintenance and support services. Cessna currently has four major product lines: Citation business jets, single engine turboprop Caravans, Cessna single engine piston aircraft and aftermarket services. The family of business jets currently produced by Cessna includes the Citation CJ1, Citation CJ1+, Citation CJ2, Citation CJ3, Citation Bravo, Citation Encore, Citation XLS, Citation Sovereign and Citation X.

Bond proceeds have been utilized to finance expansion and upgrading of facilities located at the Cessna Wichita facilities, including technology and manufacturing equipment to accommodate increased personnel and space required to develop and manufacture the four business jet aircraft produced in Wichita.

An analysis of the uses of IRB funds authorized under the 2006 Letter of Intent is:

Building Improvements	$ 373,300,000
Furniture, fixtures and tooling	503,970,000
Miscellaneous and contingencies	23,730,000
Total Cost of Project	$ 800,000,000

Business machinery and equipment is no longer subject to ad valorem taxation in the State of Kansas. However, Cessna understands that the M&E tax exemption does not apply to production tooling that is fabricated in-house. Bond proceeds will therefore be used to finance the cost of tooling and not machinery and equipment.

Financial Considerations: Cessna Aircraft Company 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. Under the City's Economic Development Incentive policy, the Company qualifies for a 100% five-plus-five-year tax exemption on property purchased with bond proceeds.

A cost/benefit analysis based on the fiscal and economic impact model of the Wichita State University's Center for Economic Development and Business Research was conducted at the time the Letter of Intent was approved in 2006, showing the following cost/benefit ratios:

City	1.52 to one
County	1.21 to one
USD 259	1.15 to one
State	4.78 to one

Goal Impact: Economic Vitality and Affordable Living. Granting an ad valorem property tax exemption and sales tax exemption will stimulate economic growth for the City of Wichita and Sedgwick County.

Legal Considerations: The Law Department has reviewed the extension letter and approved it as to form.

Recommendations/Actions: It is recommended that City Council approve an extension of the 2006 Letter of Intent to issue Industrial Revenue Bonds for Cessna Aircraft Company through December 31, 2011.

Attachments: None.

Agenda Item No. II-11

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Approval of Capital Improvement Program for the Water Treatment Plant Repair Basins and Aerator Racks (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the initiation of a Capital Improvement Project (CIP) and authorize staff to proceed with a project to begin structural repairs of the aerators and recoating of the reservoirs and basins at the Water Treatment Plant and related reservoirs.

Background: The City of Wichita's Water Treatment Plant uses aeration racks as the first stage of water treatment. These are exposed concrete structures in which the raw water flows through freely. During the winter months, some of the water will freeze and cause the concrete supports to deteriorate. The floors and walls of the treatment basins and concrete tops of the underground reservoirs are also aging and must be repaired.

Analysis: The aeration racks will most likely require a structural study followed by necessary repairs. The floors and walls of the basins will involve a variety of repairs ranging from masonry work to a spray on coating. One reservoir top must be completely recoated and resealed per Kansas Department of Health and Environment.

Financial Consideration: These repairs will be made in stages; $200,000 is proposed in 2011 to provide a structural repair investigation and design for the aerator racks and the recoating of one reservoir. Any additional funds will be used for masonry work on the exterior of the basins. Additional funding needed to complete repairs is proposed in 2013, 2014, 2015 and 2016. Funds for this effort are included in the Proposed 2011 CIP.

Goal Impact: This project addresses the Ensure Efficient Infrastructure goal by maintaining and optimizing public systems.

Legal Considerations: The resolution has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council authorize Staff to proceed with the project, approve the project expenditures, adopt the Resolution and authorize the necessary signatures.

Attachments: Resolution and Notice of Intent.

RESOLUTION NO. 11-262

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, AND TO ISSUE REVENUE BONDS IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $200,000 EXCLUSIVE OF THE COST OF INTEREST ON BORROWED MONEY, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), has heretofore by Ordinance No. 39-888, adopted May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility"; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 et seq., as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas (collectively, the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

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

SECTION 1. Pursuant to the laws of the State of Kansas, including the Act, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, WTP Repair Basins & Aerator Racks (W-024) (the "Project"). The total costs of the Project are estimated to be two hundred thousand dollars ($200,000) exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.

SECTION 2. It is hereby found and determined that the construction of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed two hundred thousand dollars ($200,000), exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

SECTION 4. It is hereby found and determined to be necessary, before such revenue bonds can be issued, to publish one time in the City's official newspaper a Notice of the Governing Body's intention to initiate and complete the Project and to issue such revenue bonds, such Notice to be in the form which is attached hereto and made a part hereof by reference as though fully set forth herein. If, within Fifteen (15) days from and after the date of the publication of the Notice, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If a sufficient protest to the Project and the issuance of the revenue bonds is not filed within said Fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the sale and issuance of the revenue bonds.

SECTION 5. This Resolution shall be in force and take effect from and after its adoption and approval.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, not less than two-thirds of the members voting in favor thereof, on November 1, 2011.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

OCA: _183632

(Published in the Wichita Eagle, on November 4th, 2011.)

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $200,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 11-262, duly adopted November 1, 2011, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, WTP Repair Basins & Aerator Racks (W-024) (called the "Project"). The total costs of the Project are estimated to be two hundred thousand dollars ($200,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $200,000 under the authority of K.S.A. 10-1201 et seq., as amended and supplemented including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within said fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the issuance of the revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on November 1, 2011.

_____
CARL BREWER, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Agenda Item No. II-12

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Approval of Capital Improvement Program for Repainting the Pipe across the Wichita – Valley Center Flood Control Project (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the initiation of a Capital Improvement Project (CIP) and authorize staff to proceed with a project to repaint the pipe across the Wichita – Valley Center Flood Control Project.

Background: The City of Wichita has the majority of its pipeline buried underground. There are locations throughout the system where burying the pipeline is not possible and these pipelines are exposed.

Analysis: The coating on this pipeline has been deteriorating for several years and must be repainted to protect the pipeline. The location of the pipeline requires the painting to be performed by a contractor with the appropriate fall protection equipment and training.

Financial Consideration: It is estimated that repainting this pipeline will cost approximately $500,000. Funds for this effort are included in the Proposed 2011 CIP.

Goal Impact: This project addresses the Ensure Efficient Infrastructure goal by maintaining and optimizing public systems.

Legal Considerations: The resolution has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council authorize staff to proceed with the project, approve the project expenditures, adopt the resolution and authorize the necessary signatures.

Attachments: Resolution and Notice of Intent.

RESOLUTION NO. 11-263

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, AND TO ISSUE REVENUE BONDS IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $200,000 EXCLUSIVE OF THE COST OF INTEREST ON BORROWED MONEY, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), has heretofore by Ordinance No. 39-888, adopted May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility"; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 et seq., as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas (collectively, the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

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

SECTION 1. Pursuant to the laws of the State of Kansas, including the Act, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, WTP Repair Basins & Aerator Racks (W-024) (the "Project"). The total costs of the Project are estimated to be two hundred thousand dollars ($200,000) exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.

SECTION 2. It is hereby found and determined that the construction of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed two hundred thousand dollars ($200,000), exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

SECTION 4. It is hereby found and determined to be necessary, before such revenue bonds can be issued, to publish one time in the City's official newspaper a Notice of the Governing Body's intention to initiate and complete the Project and to issue such revenue bonds, such Notice to be in the form which is attached hereto and made a part hereof by reference as though fully set forth herein. If, within Fifteen (15) days from and after the date of the publication of the Notice, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If a sufficient protest to the Project and the issuance of the revenue bonds is not filed within said Fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the sale and issuance of the revenue bonds.

SECTION 5. This Resolution shall be in force and take effect from and after its adoption and approval.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, not less than two-thirds of the members voting in favor thereof, on November 1, 2011.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

OCA: 183632

(Published in the Wichita Eagle, on November 4, 2011.)

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $200,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 11-263, duly adopted November 1, 2011, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, WTP Repair Basins & Aerator Racks (W-024) (called the "Project"). The total costs of the Project are estimated to be two hundred thousand dollars ($200,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $200,000 under the authority of K.S.A. 10-1201 et seq., as amended and supplemented including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within said fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the issuance of the revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on November 1, 2011.

_____
CARL BREWER, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

RESOLUTION NO. 11-264

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, AND TO ISSUE REVENUE BONDS IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $500,000 EXCLUSIVE OF THE COST OF INTEREST ON BORROWED MONEY, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), has heretofore by Ordinance No. 39-888, adopted May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility"; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 et seq., as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas (collectively, the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

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

SECTION 1. Pursuant to the laws of the State of Kansas, including the Act, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Repainting Big Ditch Pipe (W-023) (the "Project"). The total costs of the Project are estimated to be five hundred thousand dollars ($500,000) exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.

SECTION 2. It is hereby found and determined that the construction of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed five hundred thousand dollars ($500,000), exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

SECTION 4. It is hereby found and determined to be necessary, before such revenue bonds can be issued, to publish one time in the City's official newspaper a Notice of the Governing Body's intention to initiate and complete the Project and to issue such revenue bonds, such Notice to be in the form which is attached hereto and made a part hereof by reference as though fully set forth herein. If, within Fifteen (15) days from and after the date of the publication of the Notice, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If a sufficient protest to the Project and the issuance of the revenue bonds is not filed within said Fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the sale and issuance of the revenue bonds.

SECTION 5. This Resolution shall be in force and take effect from and after its adoption and approval.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, not less than two-thirds of the members voting in favor thereof, on _____, 2011.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

OCA: 183632

(Published in the Wichita Eagle, on November 4, 2011.)

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $500,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 11-264, duly adopted November 1, 2011, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Repainting of Big Ditch Pipe (W-023) (called the "Project"). The total costs of the Project are estimated to be five hundred thousand dollars ($500,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $500,000 under the authority of K.S.A. 10-1201 et seq., as amended and supplemented including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within said fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the issuance of the revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on November 1, 2011.

_____
CARL BREWER, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Access to Jobs Vendor Agreement with Breakthrough Club

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the agreement.

Background: The Access to Jobs program provides rides to and from work for low-income workers. Since the start of the program in October, 2000, Access to Jobs has provided over 655,894 rides. By entering into a vendor agreement with Breakthrough Club, the program can provide over 3,000 more rides a year to low-income clients in a very cost-effective manner.

Analysis: Part of the Access to Jobs grant from the Federal Transit Administration (FTA) is to provide half the cost of the rides for low-income clients who are trying to enter the work force. The other half of the cost is borne by Social and Rehabilitation Services (SRS), COMCARE, the Mental Health Association, and Cerebral Palsy Research Foundation of Kansas (CPRFK).

Financial Considerations: The Access to Jobs rides will be purchased with grants from the FTA (50%) and a local match (50%) from the four agencies listed above. No City funds will be involved in purchasing rides from Breakthrough Club.

Goal Impact: To Ensure an Efficient Infrastructure by maintaining and optimizing public facilities and assets.

Legal Considerations: The Law Department has reviewed and approved the vendor agreement as to form.

Recommendation/Actions: It is recommended that the City Council approve the vendor agreement with Breakthrough Club and authorize the necessary signatures.

Attachment: Vendor agreement with Breakthrough Club

ACCESS TO JOBS
Vendor Agreement

This Agreement is entered into this 16th day of September, 2011 by and between the City of Wichita - Wichita Transit, hereinafter referred to as "City", and Breakthrough Club hereinafter referred to as "Vendor." Hereinafter both "City" and "Vendor" shall be jointly referred to as "parties."

WHEREAS, The purpose of the program is to provide transportation services for employment purposes under project number KS-37-X001-00, entitled Job Access and Reverse Commute grant program, and

WHEREAS, The Vendor guarantees the ability to provide transportation services in a safe and professional nature, as required by City, to qualified clientele within the geographic boundaries of the City of Wichita.

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

1. Term: This Agreement shall become a legal and binding contract upon signature of same by both parties, commencing September 2011, for a period of one year ending September 2012 with the option to renew for up to two (2) additional, successive one (1) year terms.

2. Compensation: Parties expressly understand and agree that payments made to Vendor pursuant to the terms of this Agreement shall be on a fee-for-service basis according to the rates outlined in Appendix A and according to the method of billing and payment as set forth in Appendix A.

3. Termination: This Agreement may be terminated by either party, upon thirty (30) days written notice, stating the effective date of the termination. Whether this Agreement is cancelled by City or Vendor as provided herein, Vendor shall be paid for work satisfactorily completed to date of termination, as long as the provisions applicable to Billing and Payment have been met by Vendor.

4. Indemnification: Vendor shall indemnify, defend and hold harmless the City of Wichita and the City Council, directors, officers, employees, agents, legal representatives, heirs, successors and assigns (collectively referred to as "Indemnified Parties") from and against any and all losses, costs, injuries, claims, damages, expenses and liabilities, including attorneys' fees (without limitations), collectively referred to as "Liabilities," arising out of or resulting from, (i) the provision by Vendor of transportation services hereunder, or (ii) the failure of the Vendor to fulfill any of its obligations pursuant to this Agreement.

5. Duties: Vendor shall perform duties pursuant to this Agreement as listed in Appendix B. City shall perform duties pursuant to this Agreement as listed in Appendix B. All duties listed in the Appendix B are set forth in KS-37-X001-00.

6. Local and Federal Compliance: The parties shall comply with the requirements of all applicable federal, state, and local rules and regulations, standard assurances, and one time submissions, listed under Appendix A, B, and C.

7. Assignment: Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

8. Amendments: This Agreement may not be amended unless such amendment is in writing and signed by both parties.

9. Incorporation of Appendices: Appendix A, B, and C are attached hereto and made a part hereof.

IN WITNESS WHEREOF, City and Vendor have executed this Agreement as of the day and year first above written.

CITY COUNCIL –WICHITA, KS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett
City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf
City of Wichita, Department of Law

Breakthrough Club
Non-Profit Corporation
Wichita, KS 67214

_____
Doug Winkley
Interim Executive Director, Breakthrough Club

APPENDIX A
GENERAL CONTRACTUAL PROVISIONS FOR VENDORS

It is mutually agreed by and between the City of Wichita – Wichita Transit and Vendor that it is the purpose of this program that Vendor provide transportation services to "Eligible Passengers" as defined herein, in order to provide access to employment and services that facilitate continued employment. The program is named, "ACCESS To JOBS."

GENERAL PROVISIONS.

A. AUTHORITY TO CONTRACT.

1. **Affirmation of Legal Authority**. Vendor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of Vendor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Vendor to act in connection with the application and to provide such additional information as may be required.

2. **Required Documentation**. Domestic (Kansas) corporations, limited liability companies, or other business forms requiring statutory conformance shall furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. Domestic corporations shall furnish a copy of its Corporate Resolution evidencing the authority to sign this Agreement, executed by the Corporation's Secretary or Assistant Secretary.

B. RELATIONSHIP OF PARTIES.

1. It is agreed that the legal relationship between Vendor and City of Wichita is of a contractual nature. Both parties assert and believe that Vendor is acting as an independent vendor in providing the services and performing the duties required by the City of Wichita hereunder. Vendor is at all times acting as an independent vendor and not as an officer, agent, or employee of the City of Wichita. As an independent vendor, Vendor, and employees of Vendor will not be within the protection or coverage of City of Wichita's worker's compensation insurance subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall Vendor, and employees of Vendor, be entitled to any current or future benefits provided to employees of City of Wichita. Further, City of Wichita shall not be responsible for withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by City of Wichita to Vendor.

C. PERSONNEL.

1. **Qualified Personnel.** Vendor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any other contractual relationship with City of Wichita. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.

2. **Minimum Wages**. Vendor shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.

3. **Employee Conflict of Interest.** Vendor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

4. **Employee Background Checks**. The parties to this Agreement recognize that those entities or persons providing government funded services to the public are subject to public scrutiny. Consequently, by entering into this Agreement, Vendor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5 below. Such compliance will require the use of criminal or other legal background checks upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.

5. **Participant Safeguard.** Vendor certifies that:

   a) Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement or during the term of this agreement shall not be permitted to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;

   b) Persons with convictions during the ten-year period concluding on the date of execution of this Agreement or during the pendency of this Agreement for crimes of moral turpitude, including, but not limited to, sex offenses and crimes against children, shall not be permitted to interact in any way with persons served pursuant to this Agreement; and

   c) Persons having been convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding

on the date of execution of this Agreement, or during the pendency of this Agreement, shall not be permitted to operate a vehicle in which a person served pursuant to this Agreement is a passenger. For purposes of this section, “serious traffic offense” shall not include any offense deemed a “traffic infraction” under K.S.A. 8-2116 and 8-2118.

d) Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City of Wichita Department of Law. The Department of Law’s decision shall be final for purposes of compliance with this Agreement. The term “conviction” shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and shall include being placed into a diversion or deferred judgement program in lieu of prosecution.

D. PROHIBITION OF CONFLICTS OF INTEREST.

1. **Interest of Public Officials and Others**. No officer or employee of the City of Wichita, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person’s personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested; nor shall any officer or employee of City of Wichita or any member of its governing body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

2. **Interest of Vendor**. Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

3. **Employee Conflicts**. Situations in which a) an employee of the City of Wichita shall also be an employee of the Vendor at the time of the Agreement, b) an employee of the Vendor seeks additional/alternative employment with City of Wichita during term of the Agreement, or c) an employee of the City of Wichita seeks additional/alternate employment with Vendor during term of this Agreement, shall require written notice to the City of Wichita. The City of Wichita shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Vendor or Vendor’s competitors.

E. FUNDING.

1. **Cash Basis and Budget Laws.** The right of the City of Wichita to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City of Wichita shall at all times stay in conformity with such laws, and as a condition of this Agreement the City of Wichita reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

F. RECORDS, REPORTS AND INSPECTION.

1. **Documentation of Costs.** All costs incurred by Vendor for which Vendor purports to be entitled to reimbursement shall be supported by proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.

2. **Maintenance of Records.** Except as otherwise authorized by City of Wichita, Vendor shall retain such documentation as listed in paragraphs F1 and F3 for a period of three (3) years after receipt of the final expenditure report under this Agreement, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond the three (3) year period.

3. **Reports.** During the term of this Agreement, Vendor shall furnish City of Wichita, in such form as City of Wichita may require, such statements, records, reports, data and information as City of Wichita requests pertaining to matters covered by this Agreement. Payments to Vendor will be withheld by City of Wichita if Vendor fails to provide all required reports in a timely, complete and accurate manner, until such time as all reports are furnished to City of Wichita.

4. **Audit.** Vendor shall provide for an annual independent audit of its financial records which apply to this Agreement only and shall supply a copy of said audit to City of Wichita.

5. **Availability of Records**. Vendor agrees to make any and all of its records, books, papers, documents, and data available to City of Wichita, or to the authorized representative of the federal, state or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions at any time during

the term of this Agreement and for a period of three (3) years following the final payment under the terms of this Agreement.

6. **Confidentiality**. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records.

G. METHOD OF BILLING AND PAYMENT.

1. **Billing Procedures**. Vendor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City of Wichita. Payment shall be made as soon as procedures allow after receipt of billing.

   a) **Monthly Billing.** A monthly billing system will be used and all billings, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period. Failure to submit timely billings will result in extended delays in receiving payment from City of Wichita for such services.

   b) **Billing Content.** All billings from Vendor to City of Wichita shall include an itemization of each ride provided with the units of service, date of ride, Eligible Passengers names, and total rides or units of service provided for each passenger.

   c) **Billing Procedure.** City of Wichita will process the billings, verify the information/data submitted, and issue a check pursuant to City of Wichita's standard purchasing procedures.

   d) **Charges for Service.** Transportation reimbursements will be made on a per trip basis. The cost per trip within the geographical confines of the City of Wichita, will be at a rate of $6.00 per trip.

   e) **Extended Trips.** Trips made beyond the geographical boundaries of the City of Wichita, will be at a higher rate than that set forth in d, above. The rate for these trips will be negotiated as the need for service expansion warrants.

   f) **Rates Reviewed.** Trip rates will be reviewed on a quarterly basis, and may be subject to revision. Any change in trip rates will be agreed upon by the City and Vendor, in writing, before implementation.

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2. **Support Documentation**. Billing shall be supported with documentation required by City of Wichita including, but not necessarily limited to, that documentation described in Section F above.

3. **Reimbursement Restrictions**. Payments shall be made to Vendor only for items and services provided to support the Agreement purpose when such items and services are specifically authorized by this Agreement. City of Wichita reserves the right to disallow reimbursement for any item or service billed by Vendor if City of Wichita believes that such item or service was not provided to support the Agreement purpose or was not authorized by Agreement.

4. **Service by Vendor**.
   a) Service is to be provided by the Vendor in a prompt and courteous manner. Passengers are to be authorized by the City before Vendor provides eligible rides. Passengers are to be picked up no later than fifteen (15) minutes after the scheduled pick-up time. If a situation dictates, that the fore-mentioned condition may not be met, Vendor must contact City immediately.

   b) Vendor must have a back-up system in place to ensure that authorized rides from the City are provided and that no Eligible Passenger is left stranded.

   c) Vendor will not collect any charge from an Eligible Passenger.

   d) Vendor shall comply with the Federal Drug and Alcohol regulations, as set forth in Appendix C. Pre-employment, post accident, and random tests shall be conducted for any and all safety sensitive Vendor positions that perform duties under the terms of this Agreement.

H. LICENSES AND PERMITS.

Vendor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this Agreement. Vendor shall maintain worker's compensation insurance in amounts not less than minimum statutory requirements. Vendor shall notify City of Wichita immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by City of Wichita, in its discretion.

I. INSURANCE.

Vendor shall provide to City of Wichita a Certificate of Insurance evidencing Comprehensive General Liability, Professional Liability, and Comprehensive Automobile Liability coverage as follows:

1) Bodily Injury:	$500,000	Each Occurrence
2) Property Damage:	$500,000	Each Occurrence
3) Personal Injury:	$500,000	Each Person
4) Automobile Liability (owned, not owned, hired, rented or otherwise):		
a) Bodily Injury	$500,000	Each Accident
b) Property Damage	$500,000	Each Accident
5) Professional Liability	$500,000	
6) Workers Compensation / Employers Liability	$100,000	Each Accident

J. SUBCONTRACTING.

None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City of Wichita. All approved subcontracts must conform to applicable requirements set forth in this Agreement and in its appendices, exhibits and amendments, if any. Notwithstanding the City of Wichita's consent to any subcontractors, vendors shall remain fully responsible for all obligations of this Agreement, including indemnification of City of Wichita for all acts of subcontractors.

K. TERMINATION OF AGREEMENT.

1. **Termination for Cause.** If Vendor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Vendor shall violate any of the terms, covenants, conditions or stipulations of this Agreement, City of Wichita shall thereupon have the right to terminate this Agreement by giving written notice to Vendor of such termination, specifying the effective date thereof.

   In the event of termination, such information prepared by Vendor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, at the option of the City of Wichita, become the property of the City of Wichita and be immediately turned over to the City

of Wichita. Vendor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Vendor shall not be relieved of liability to City of Wichita by virtue of any breach of this Agreement by Vendor and City of Wichita may withhold any payments to Vendor for the purpose of set off until such time as the exact amount of damages due City of Wichita from Vendor are determined.

2. **Termination of Agreement on Other Grounds.** This Agreement may be terminated in whole or in part by either party, upon thirty (30) days written notice, stating the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto.

L. NOTIFICATION.

Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, sent by registered or certified mail (return receipt requested) or sent by means of telefacsimile or telecopier, to the party whom said notice is to be given. Notices delivered in person or sent via telefacsimile or telecopier shall be deemed to be served effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be served forty-eight (48) hours after the date said notice is postmarked to the addressee, postage prepaid.

Contractor: City of Wichita – Wichita Transit
Attn: Director
Address: 777 E. Waterman
Phone: (316) 352-4805
Fax: (316) 337-9287

Vendor: Breakthrough Club
Attn: Doug Winkley
Address: 1010 N. Main
Phone: (316) 269-2534
Fax: (316)264-1450

M. MISCELLANEOUS.

1. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right or

remedy. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.

2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

3. In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.

4. Both parties hereto represent and agree that: (I) they have reviewed all aspects of this Agreement; (ii) they have been given the opportunity to review this Agreement with counsel; and (iii) they have carefully read and fully understand all provisions of this Agreement.

APPENDIX B
VENDOR / CITY CONTRACTUAL DUTIES

GENERAL CONDITIONS.

A. DEFINITIONS.

1. **Unit of Service.** One, one-way trip equals one unit of service per Eligible Passenger. A round trip taken by an Eligible Passenger equals two units of service.

2. **Service**. Transportation to and from specific employment or employment related site as authorized by City for Eligible Passengers.

3. **Eligible Passenger.** Residents of the greater Wichita Employment area who are certified and approved as eligible by City of Wichita.

B. VENDOR DUTIES:

1. Vendor agrees that any funds provided for services under this Agreement will be paid on a fee-for-services basis only.

2. Vendor shall be subject to annual audit in accordance with the provisions set forth in Appendix A.

3. Vendor agrees that its records used in preparation of all reports are subject to review by City to ensure the accuracy and validity of the information reported.

4. Vendor shall promptly provide notice to the City if it is unable to provide the required quantity or quality of services.

5. Vendor agrees that all rides are to be pre-authorized by the City.

6. Vendor shall maintain all applicable records on such forms as designated by the City.

7. Vendor agrees that they will not provide “private” or unauthorized rides to Eligible Passengers.

8. Vendor shall comply with the Federal Drug and Alcohol regulations as set forth in Appendix C. Pre-employment, post accident, and random tests shall be conducted for any and all safety sensitive Vendor positions that perform duties under the terms of this Agreement.

9. Service is to be provided by the Vendor in a prompt and courteous manner. Passengers are to be authorized by the City for eligible rides. Passengers are to be picked up no later than fifteen (15) minutes after

the scheduled pick up time. If conditions dictate that this is not possible for a particular trip, Vendor must notify City immediately.

10. Vendor must have a back up system in place to ensure that authorized rides from City are provided and that no Eligible Passenger is left stranded.

11. Vendor will not collect any charge from the Eligible Passenger.

12. Vendor must utilize car seats and booster seats, as per K.S.A. 8-1344, and K.S.A. 8-2501, when transporting minors (14 and under).

C. CITY DUTIES:

1. Provide all Administrative services necessary to implement the program.

2. Oversee the daily exercise of the program and assure compliance of the regulations as set forth in the entire contractual document.

3. Schedule and coordinate all transportation rides with the appropriate Vendor.

4. Issue payments to Vendor as described in Appendix A, based on authorized trips.

APPENDIX C
FEDERAL AND STATE REGULATIONS

U. S. FEDERAL

FTA has developed certain Standard Terms and Conditions required by DOT. These contractual provisions required by DOT, as set forth in FTA Circular 4220.1C, dated May 1, 1995, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Vendor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

A. PROJECT IMPLEMENTATION

1. **Application of Federal, State, and Local Laws and Regulations:**

a) Federal laws or laws authorizing Project approval control Project implementation. The Vendor acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the Project on the date the authorized City official signs the Master Agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when the Vendor executes the Master Agreement, and might apply to that Master Agreement. The Vendor agrees that the most recent of such Federal requirements will govern the administration of the Project at any particular time, unless FTA issues a written determination otherwise. FTA's written determination may be issued as a Special Condition or Requirement within the Master Agreement or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of this Master Agreement. All standards or limits within this Master Agreement are minimum requirements, unless modified by FTA.

b) Except when a Federal statute or regulation preempts State of Kansas, City of Wichita, or territorial law, no provision of the Master Agreement shall require the Vendor to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State of Kansas, City of Wichita, or territorial law. Thus if any provision or compliance with any provision of the Grant Agreement, Cooperative Agreement or this Master Agreement violate State of Kansas, City of Wichita, or territorial law, or would require the Vendor to violate State of Kansas, City of Wichita, or territorial law, the Vendor agrees to notify the City immediately in writing. Should this occur, the City and the Vendor agree to make appropriate arrangements to proceed with or, if necessary, terminate the Project as quickly as possible.

2. **Vendor's Responsibility to Federal Requirements.**

a) Entities Affected - Only the entities that are signatories to this Master Agreement for the Project are parties to that agreement. Accordingly, the City agrees to take appropriate measures necessary to ensure all Project participants comply with applicable Federal requirements affecting their performance.

b) Documents Affected - Applicable provisions of the Federal statutes, regulations, and directives establishing that Federal requirement determine the extent to which a specific Federal requirement affects a Vendor as participant. Accordingly, the Vendor agrees to ensure that they will comply with applicable Federal requirements.

3. **No Federal Government Obligations to Third Parties.** The Vendor agrees that, absent either Federal, State of Kansas, or City of Wichita Governments express written consent, the Governments shall not be subject to any obligations or liabilities to any recipient, or any other person not a party to the Master Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Governments in or approval of any solicitation, or sub-agreement, the Governments continue to have no obligations or liabilities to any party.

4. **Changes in Project Performance (including Disputes, Breaches, Defaults or Litigation).** The Vendor agrees to notify the City immediately of any change in conditions (such as its legal, financial, or technical capacity), or any other event that may significantly affect the Vendors ability to perform the Project in accordance with the terms of the Master Agreement. In addition, the Vendor agrees to notify the City immediately of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Governments interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. The Vendor agrees to inform the City before naming either the City or the Federal Government as a party to litigation for any reason, in any forum.

B. CIVIL RIGHTS

The Vendor agrees to comply with all applicable civil rights statutes, and implementing regulations including, but not limited to the following:

1. **Nondiscrimination in Transit Programs.** The Vendor agrees to comply with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

2. **Nondiscrimination - Title VI of the Civil Rights Act.** The Vendor agrees to comply with all requirements prohibiting discrimination on the

basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements FTA may issue.

3. **Equal Employment Opportunity.** The Vendor agrees to comply with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements City and FTA may issue. Those equal employment opportunity (EEO) requirements include, but are not limited to, the following:

(a) General Requirements - The Vendor agrees as follows:

(1) It will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Vendor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor also agrees to comply with any implementing requirements the City and FTA may issue.

(b) If the Vendor is required to submit and obtain City approval of its EEO program, that EEO program approved by the City is incorporated by reference and made part of the Master Agreement. Failure by the Vendor to carry out the terms of that EEO program shall be treated as a violation of the Master Agreement. Upon notification to the Vendor of its failure to carry out the approved EEO program, the City may impose such remedies as it considers appropriate, including termination of financial funds in accordance with this Master Agreement, or other measures that may affect the Vendors eligibility to obtain future financial funds for transportation projects.

4. **Nondiscrimination on the Basis of Sex.** To the extent applicable, the Vendor agrees to comply with Title IX of the Education Amendments of

1972, as amended, 20 U. S.C. § § 1680 et seq., which prohibit discrimination on the basis of sex., and any subsequent Federal requirements.

5. **Nondiscrimination on the Basis of Age.** The Vendor agrees to comply with the applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S. C. § § 61 01 et seq., and implementing regulations, which prohibits discrimination on the basis of age.

6. **Access Requirements for Persons with Disabilities.** The Vendor agrees to comply with the requirements of 49 U. S. C. § 5 3 01 (d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Vendor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S. C. § § 121 01 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

   (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

   (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

   (c) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

   (d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

   (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations
   and in Commercial Facilities," 28 C.F.R. Part 36;

   (f) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

   (g) U.S. Equal Employment Opportunity Commission, "Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(i) FTA regulations, "Transportation for Elderly and Handicapped Persons, 49 C.F.R. Part 609; and

(j) Any implementing requirements FTA may issue.

7. **Drug or Alcohol Abuse: Confidentiality and Other Civil Rights Protections.** The Vendor agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Pub. L. 91-616, Dec. 31, 1970, and the Public Health Service Act of 1912, 42 U.S. C. § § 290dd-3 and 290ee-3, including any amendments to these acts.

8. **Other Nondiscrimination Statutes.** The Vendor agrees to comply with any other nondiscrimination statute(s) that may apply to the Project.

C. ENERGY CONSERVATION.

The Vendor agrees to comply with the mandatory energy efficiency standards and policies within the applicable energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

D. SUBSTANCE ABUSE.

1. **Drug Abuse.**

(a) The Vendor agrees to comply with U.S. DOT regulations, "Drug-Free Workplace Requirements(Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§ 702 et seq.

(b) To the extent applicable, the Vendor agrees to comply with FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 653, and any guidance on the drug abuse provisions of 49 U.S.C. § 5331 that FTA or U.S. DOT may issue.

2. **Alcohol Abuse**. To the extent applicable, the Vendor agrees to comply with FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R. Part 654, and any guidance on the alcohol abuse provisions of 49 U.S.C. § 5331 that FTA or U.S. DOT may issue.

STATE OF KANSAS

A. AGREEMENT WITH KANSAS LAW.
All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

B. DISCLAIMER OF LIABILITY.
Neither the State of Kansas nor any agency thereof, nor the City, shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

C. RESPONSIBILITY FOR TAXES.
Neither the State of Kansas, nor the City, shall be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Access to Jobs Vendor Agreements with ABC Taxi Cab Company and American Cab Company

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the agreements.

Background: The Access to Jobs program provides rides to and from work for low-income workers. Since the start of the program in October, 2000, Access to Jobs has provided over 655,894 rides. By entering into vendor agreements with ABC Taxi Cab Company and American Cab Company, the program can provide over 2,500 more rides a year to low-income clients in a very cost-effective manner.

Analysis: Part of the Access to Jobs grant from the Federal Transit Administration (FTA) is to provide half the cost of the rides for low-income clients who are trying to enter the work force. The other half of the cost is borne by Social and Rehabilitation Services (SRS), COMCARE, the Mental Health Association, and the Breakthrough Club.

Financial Considerations: The Access to Jobs rides will be purchased with grants from the FTA (50%) and a local match (50%) from the four agencies listed above. No City funds will be involved in purchasing rides from ABC Taxi Cab Company and American Cab Company.

Goal Impact: To Ensure an Efficient Infrastructure by maintaining and optimizing public facilities and assets.

Legal Considerations: The Law Department has reviewed and approved the vendor agreements as to form.

Recommendation/Actions: It is recommended that the City Council approve the vendor agreements and authorize the necessary signatures.

Attachments: Vendor agreements with ABC Taxi Cab Company and American Cab Company

ACCESS TO JOBS
Vendor Agreement

This Agreement is entered into this 11th day of June, 2011 by and between the City of Wichita - Wichita Transit, hereinafter referred to as "City", and the ABC Taxi Cab Company, Inc. hereinafter referred to as "Vendor." Hereinafter both "City" and "Vendor" shall be jointly referred to as "parties."

WHEREAS, The purpose of the program is to provide transportation services for employment purposes under project number KS-37-X001-00, entitled Job Access and Reverse Commute grant program, and

WHEREAS, The Vendor guarantees the ability to provide transportation services in a safe and professional nature, as required by City, to qualified clientele within the geographic boundaries of the City of Wichita.

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

1. Term: This Agreement shall become a legal and binding contract upon signature of same by both parties, commencing June 2011, for a period of one year ending June 2012 with the option to renew for up to two (2) additional, successive one (1) year terms.

2. Compensation: Parties expressly understand and agree that payments made to Vendor pursuant to the terms of this Agreement shall be on a fee-for-service basis according to the rates outlined in Appendix A and according to the method of billing and payment as set forth in Appendix A.

3. Termination: This Agreement may be terminated by either party, upon thirty (30) days written notice, stating the effective date of the termination. Whether this Agreement is cancelled by City or Vendor as provided herein, Vendor shall be paid for work satisfactorily completed to date of termination, as long as the provisions applicable to Billing and Payment have been met by Vendor.

4. Indemnification: Vendor shall indemnify, defend and hold harmless the City of Wichita and the City Council, directors, officers, employees, agents, legal representatives, heirs, successors and assigns (collectively referred to as "Indemnified Parties") from and against any and all losses, costs, injuries, claims, damages, expenses and liabilities, including attorneys' fees (without limitations), collectively referred to as "Liabilities," arising out of or resulting from, (i) the provision by Vendor of transportation services hereunder, or (ii) the failure of the Vendor to fulfill any of its obligations pursuant to this Agreement.

5. Duties: Vendor shall perform duties pursuant to this Agreement as listed in Appendix B. City shall perform duties pursuant to this Agreement as listed in Appendix B. All duties listed in the Appendix B are set forth in KS-37-X001-00.

6. Local and Federal Compliance: The parties shall comply with the requirements of all applicable federal, state, and local rules and regulations, standard assurances, and one time submissions, listed under Appendix A, B, and C.

7. Assignment: Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

8. Amendments: This Agreement may not be amended unless such amendment is in writing and signed by both parties.

9. Incorporation of Appendices: Appendix A, B, and C are attached hereto and made a part hereof.

IN WITNESS WHEREOF, City and Vendor have executed this Agreement as of the day and year first above written.

CITY COUNCIL, WICHITA, KS

ATTEST:

_____
Carl Brewer -Mayor

_____
Karen Sublett
City Clerk

ABC Taxi Company, Inc.
400 S. Greenwood
Wichita, KS 67211

_____
Ted Hill, President/CEO

APPROVED AS TO FORM:

_____
Gary Rebensendorf
City of Wichita, Department of Law

APPENDIX A
GENERAL CONTRACTUAL PROVISIONS FOR VENDORS

It is mutually agreed by and between the City of Wichita – Wichita Transit and Vendor that it is the purpose of this program that Vendor provide transportation services to "Eligible Passengers" as defined herein, in order to provide access to employment and services that facilitate continued employment. The program is named, "ACCESS To JOBS."

GENERAL PROVISIONS.

A. AUTHORITY TO CONTRACT.

1. **Affirmation of Legal Authority**. Vendor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of Vendor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Vendor to act in connection with the application and to provide such additional information as may be required.

2. **Required Documentation**. Domestic (Kansas) corporations, limited liability companies, or other business forms requiring statutory conformance shall furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. Domestic corporations shall furnish a copy of its Corporate Resolution evidencing the authority to sign this Agreement, executed by the Corporation's Secretary or Assistant Secretary.

B. RELATIONSHIP OF PARTIES.

1. It is agreed that the legal relationship between Vendor and City of Wichita is of a contractual nature. Both parties assert and believe that Vendor is acting as an independent vendor in providing the services and performing the duties required by the City of Wichita hereunder. Vendor is at all times acting as an independent vendor and not as an officer, agent, or employee of the City of Wichita. As an independent vendor, Vendor, and employees of Vendor will not be within the protection or coverage of City of Wichita's worker's compensation insurance subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall Vendor, and employees of Vendor, be entitled to any current or future benefits provided to employees of City of Wichita. Further, City of Wichita shall not be responsible for withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by City of Wichita to Vendor.

C. PERSONNEL.

1. **Qualified Personnel.** Vendor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any other contractual relationship with City of Wichita. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.

2. **Minimum Wages**. Vendor shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.

3. **Employee Conflict of Interest.** Vendor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

4. **Employee Background Checks**. The parties to this Agreement recognize that those entities or persons providing government funded services to the public are subject to public scrutiny. Consequently, by entering into this Agreement, Vendor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5 below. Such compliance will require the use of criminal or other legal background checks upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.

5. **Participant Safeguard.** Vendor certifies that:

   a) Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement or during the term of this agreement shall not be permitted to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;

   b) Persons with convictions during the ten-year period concluding on the date of execution of this Agreement or during the pendency of this Agreement for crimes of moral turpitude, including, but not limited to, sex offenses and crimes against children, shall not be permitted to interact in any way with persons served pursuant to this Agreement; and

   c) Persons having been convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding

on the date of execution of this Agreement, or during the pendency of this Agreement, shall not be permitted to operate a vehicle in which a person served pursuant to this Agreement is a passenger. For purposes of this section, “serious traffic offense” shall not include any offense deemed a “traffic infraction” under K.S.A. 8-2116 and 8-2118.

d) Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City of Wichita Department of Law. The Department of Law’s decision shall be final for purposes of compliance with this Agreement. The term “conviction” shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and shall include being placed into a diversion or deferred judgement program in lieu of prosecution.

D. PROHIBITION OF CONFLICTS OF INTEREST.

1. **Interest of Public Officials and Others**. No officer or employee of the City of Wichita, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person’s personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested; nor shall any officer or employee of City of Wichita or any member of its governing body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

2. **Interest of Vendor**. Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

3. **Employee Conflicts**. Situations in which a) an employee of the City of Wichita shall also be an employee of the Vendor at the time of the Agreement, b) an employee of the Vendor seeks additional/alternative employment with City of Wichita during term of the Agreement, or c) an employee of the City of Wichita seeks additional/alternate employment with Vendor during term of this Agreement, shall require written notice to the City of Wichita. The City of Wichita shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Vendor or Vendor’s competitors.

E. FUNDING.

1. **Cash Basis and Budget Laws.** The right of the City of Wichita to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City of Wichita shall at all times stay in conformity with such laws, and as a condition of this Agreement the City of Wichita reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

F. RECORDS, REPORTS AND INSPECTION.

1. **Documentation of Costs.** All costs incurred by Vendor for which Vendor purports to be entitled to reimbursement shall be supported by proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.

2. **Maintenance of Records.** Except as otherwise authorized by City of Wichita, Vendor shall retain such documentation as listed in paragraphs F1 and F3 for a period of three (3) years after receipt of the final expenditure report under this Agreement, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond the three (3) year period.

3. **Reports.** During the term of this Agreement, Vendor shall furnish City of Wichita, in such form as City of Wichita may require, such statements, records, reports, data and information as City of Wichita requests pertaining to matters covered by this Agreement. Payments to Vendor will be withheld by City of Wichita if Vendor fails to provide all required reports in a timely, complete and accurate manner, until such time as all reports are furnished to City of Wichita.

4. **Audit.** Vendor shall provide for an annual independent audit of its financial records which apply to this Agreement only and shall supply a copy of said audit to City of Wichita.

5. **Availability of Records**. Vendor agrees to make any and all of its records, books, papers, documents, and data available to City of Wichita, or to the authorized representative of the federal, state or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions at any time during

the term of this Agreement and for a period of three (3) years following the final payment under the terms of this Agreement.

6. **Confidentiality**. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records.

G. METHOD OF BILLING AND PAYMENT.

1. **Billing Procedures**. Vendor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City of Wichita. Payment shall be made as soon as procedures allow after receipt of billing.

   a) **Monthly Billing.** A monthly billing system will be used and all billings, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period. Failure to submit timely billings will result in extended delays in receiving payment from City of Wichita for such services.

   b) **Billing Content.** All billings from Vendor to City of Wichita shall include an itemization of each ride provided with the units of service, date of ride, Eligible Passengers names, and total rides or units of service provided for each passenger.

   c) **Billing Procedure.** City of Wichita will process the billings, verify the information/data submitted, and issue a check pursuant to City of Wichita's standard purchasing procedures.

   d) **Charges for Service.** Transportation reimbursements will be made on a per trip basis. The cost per trip within the geographical confines of the City of Wichita, will be at a rate of $15.00 per trip and $6.00 for a no-show.

   e) **Extended Trips.** Trips made beyond the geographical boundaries of the City of Wichita, will be at a higher rate than that set forth in d, above. The rate for these trips will be negotiated as the need for service expansion warrants.

   f) **Rates Reviewed.** Trip rates will be reviewed on a quarterly basis, and may be subject to revision. Any change in trip rates will be agreed upon by the City and Vendor, in writing, before implementation.

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2. **Support Documentation**. Billing shall be supported with documentation required by City of Wichita including, but not necessarily limited to, that documentation described in Section F above.

3. **Reimbursement Restrictions**. Payments shall be made to Vendor only for items and services provided to support the Agreement purpose when such items and services are specifically authorized by this Agreement. City of Wichita reserves the right to disallow reimbursement for any item or service billed by Vendor if City of Wichita believes that such item or service was not provided to support the Agreement purpose or was not authorized by Agreement.

4. **Service by Vendor**.
   a) Service is to be provided by the Vendor in a prompt and courteous manner. Passengers are to be authorized by the City before Vendor provides eligible rides. Passengers are to be picked up no later than fifteen (15) minutes after the scheduled pick-up time. If a situation dictates, that the fore-mentioned condition may not be met, Vendor must contact City immediately.

   b) Vendor must have a back-up system in place to ensure that authorized rides from the City are provided and that no Eligible Passenger is left stranded.

   c) Vendor will not collect any charge from an Eligible Passenger.

   d) Vendor shall comply with the Federal Drug and Alcohol regulations, as set forth in Appendix C. Pre-employment, post accident, and random tests shall be conducted for any and all safety sensitive Vendor positions that perform duties under the terms of this Agreement.

H. LICENSES AND PERMITS.

Vendor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this Agreement. Vendor shall maintain worker's compensation insurance in amounts not less than minimum statutory requirements. Vendor shall notify City of Wichita immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by City of Wichita, in its discretion.

I. INSURANCE.

Vendor shall provide to City of Wichita a Certificate of Insurance evidencing Comprehensive General Liability, Professional Liability, and Comprehensive Automobile Liability coverage as follows:

1) Bodily Injury:	$500,000	Each Occurrence
2) Property Damage:	$500,000	Each Occurrence
3) Personal Injury:	$500,000	Each Person
4) Automobile Liability (owned, not owned, hired, rented or otherwise):		
a) Bodily Injury	$500,000	Each Accident
b) Property Damage	$500,000	Each Accident
5) Professional Liability	$500,000	
6) Workers Compensation / Employers Liability	$100,000	Each Accident

J. SUBCONTRACTING.

None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City of Wichita. All approved subcontracts must conform to applicable requirements set forth in this Agreement and in its appendices, exhibits and amendments, if any. Notwithstanding the City of Wichita's consent to any subcontractors, vendors shall remain fully responsible for all obligations of this Agreement, including indemnification of City of Wichita for all acts of subcontractors.

K. TERMINATION OF AGREEMENT.

1. **Termination for Cause.** If Vendor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Vendor shall violate any of the terms, covenants, conditions or stipulations of this Agreement, City of Wichita shall thereupon have the right to terminate this Agreement by giving written notice to Vendor of such termination, specifying the effective date thereof.

   In the event of termination, such information prepared by Vendor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, at the option of the City of Wichita, become the property of the City of Wichita and be immediately turned over to the City

of Wichita. Vendor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Vendor shall not be relieved of liability to City of Wichita by virtue of any breach of this Agreement by Vendor and City of Wichita may withhold any payments to Vendor for the purpose of set off until such time as the exact amount of damages due City of Wichita from Vendor are determined.

2. **Termination of Agreement on Other Grounds.** This Agreement may be terminated in whole or in part by either party, upon thirty (30) days written notice, stating the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto.

L. NOTIFICATION.

Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, sent by registered or certified mail (return receipt requested) or sent by means of telefacsimile or telecopier, to the party whom said notice is to be given. Notices delivered in person or sent via telefacsimile or telecopier shall be deemed to be served effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be served forty-eight (48) hours after the date said notice is postmarked to the addressee, postage prepaid.

Contractor: City of Wichita – Wichita Transit
Attn: Director
Address: 777 E. Waterman
Phone: (316) 352-4805
Fax: (316) 337-9287

Vendor: ABC Taxi Cab Company
Attn: Ted Hill
Address: 400 S. Greenwood
Phone: (316) 262-7511
Fax: (316)262-0732

M. MISCELLANEOUS.

1. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right or

remedy. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.

2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

3. In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.

4. Both parties hereto represent and agree that: (I) they have reviewed all aspects of this Agreement; (ii) they have been given the opportunity to review this Agreement with counsel; and (iii) they have carefully read and fully understand all provisions of this Agreement.

APPENDIX B
VENDOR / CITY CONTRACTUAL DUTIES

GENERAL CONDITIONS.

A. DEFINITIONS.

1. **Unit of Service.** One, one-way trip equals one unit of service per Eligible Passenger. A round trip taken by an Eligible Passenger equals two units of service.

2. **Service**. Transportation to and from specific employment or employment related site as authorized by City for Eligible Passengers.

3. **Eligible Passenger.** Residents of the greater Wichita Employment area who are certified and approved as eligible by City of Wichita.

B. VENDOR DUTIES:

1. Vendor agrees that any funds provided for services under this Agreement will be paid on a fee-for-services basis only.

2. Vendor shall be subject to annual audit in accordance with the provisions set forth in Appendix A.

3. Vendor agrees that its records used in preparation of all reports are subject to review by City to ensure the accuracy and validity of the information reported.

4. Vendor shall promptly provide notice to the City if it is unable to provide the required quantity or quality of services.

5. Vendor agrees that all rides are to be pre-authorized by the City.

6. Vendor shall maintain all applicable records on such forms as designated by the City.

7. Vendor agrees that they will not provide “private” or unauthorized rides to Eligible Passengers.

8. Vendor shall comply with the Federal Drug and Alcohol regulations as set forth in Appendix C. Pre-employment, post accident, and random tests shall be conducted for any and all safety sensitive Vendor positions that perform duties under the terms of this Agreement.

9. Service is to be provided by the Vendor in a prompt and courteous manner. Passengers are to be authorized by the City for eligible rides. Passengers are to be picked up no later than fifteen (15) minutes after

the scheduled pick up time. If conditions dictate that this is not possible for a particular trip, Vendor must notify City immediately.

10. Vendor must have a back up system in place to ensure that authorized rides from City are provided and that no Eligible Passenger is left stranded.

11. Vendor will not collect any charge from the Eligible Passenger.

12. Vendor must utilize car seats and booster seats, as per K.S.A. 8-1344, and K.S.A. 8-2501, when transporting minors (14 and under).

C. CITY DUTIES:

1. Provide all Administrative services necessary to implement the program.

2. Oversee the daily exercise of the program and assure compliance of the regulations as set forth in the entire contractual document.

3. Schedule and coordinate all transportation rides with the appropriate Vendor.

4. Issue payments to Vendor as described in Appendix A, based on authorized trips.

APPENDIX C
FEDERAL AND STATE REGULATIONS

U. S. FEDERAL

FTA has developed certain Standard Terms and Conditions required by DOT. These contractual provisions required by DOT, as set forth in FTA Circular 4220.1C, dated May 1, 1995, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Vendor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

A. PROJECT IMPLEMENTATION

1. **Application of Federal, State, and Local Laws and Regulations:**

a) Federal laws or laws authorizing Project approval control Project implementation. The Vendor acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the Project on the date the authorized City official signs the Master Agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when the Vendor executes the Master Agreement, and might apply to that Master Agreement. The Vendor agrees that the most recent of such Federal requirements will govern the administration of the Project at any particular time, unless FTA issues a written determination otherwise. FTA's written determination may be issued as a Special Condition or Requirement within the Master Agreement or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of this Master Agreement. All standards or limits within this Master Agreement are minimum requirements, unless modified by FTA.

b) Except when a Federal statute or regulation preempts State of Kansas, City of Wichita, or territorial law, no provision of the Master Agreement shall require the Vendor to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State of Kansas, City of Wichita, or territorial law. Thus if any provision or compliance with any provision of the Grant Agreement, Cooperative Agreement or this Master Agreement violate State of Kansas, City of Wichita, or territorial law, or would require the Vendor to violate State of Kansas, City of Wichita, or territorial law, the Vendor agrees to notify the City immediately in writing. Should this occur, the City and the Vendor agree to make appropriate arrangements to proceed with or, if necessary, terminate the Project as quickly as possible.

2. **Vendor's Responsibility to Federal Requirements.**

a) Entities Affected - Only the entities that are signatories to this Master Agreement for the Project are parties to that agreement. Accordingly, the City agrees to take appropriate measures necessary to ensure all Project participants comply with applicable Federal requirements affecting their performance.

b) Documents Affected - Applicable provisions of the Federal statutes, regulations, and directives establishing that Federal requirement determine the extent to which a specific Federal requirement affects a Vendor as participant. Accordingly, the Vendor agrees to ensure that they will comply with applicable Federal requirements.

3. **No Federal Government Obligations to Third Parties.** The Vendor agrees that, absent either Federal, State of Kansas, or City of Wichita Governments express written consent, the Governments shall not be subject to any obligations or liabilities to any recipient, or any other person not a party to the Master Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Governments in or approval of any solicitation, or sub-agreement, the Governments continue to have no obligations or liabilities to any party.

4. **Changes in Project Performance (including Disputes, Breaches, Defaults or Litigation).** The Vendor agrees to notify the City immediately of any change in conditions (such as its legal, financial, or technical capacity), or any other event that may significantly affect the Vendors ability to perform the Project in accordance with the terms of the Master Agreement. In addition, the Vendor agrees to notify the City immediately of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Governments interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. The Vendor agrees to inform the City before naming either the City or the Federal Government as a party to litigation for any reason, in any forum.

B. CIVIL RIGHTS

The Vendor agrees to comply with all applicable civil rights statutes, and implementing regulations including, but not limited to the following:

1. **Nondiscrimination in Transit Programs.** The Vendor agrees to comply with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

2. **Nondiscrimination - Title VI of the Civil Rights Act.** The Vendor agrees to comply with all requirements prohibiting discrimination on the

basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements FTA may issue.

3. **Equal Employment Opportunity.** The Vendor agrees to comply with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements City and FTA may issue. Those equal employment opportunity (EEO) requirements include, but are not limited to, the following:

(a) General Requirements - The Vendor agrees as follows:

(1) It will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Vendor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor also agrees to comply with any implementing requirements the City and FTA may issue.

(b) If the Vendor is required to submit and obtain City approval of its EEO program, that EEO program approved by the City is incorporated by reference and made part of the Master Agreement. Failure by the Vendor to carry out the terms of that EEO program shall be treated as a violation of the Master Agreement. Upon notification to the Vendor of its failure to carry out the approved EEO program, the City may impose such remedies as it considers appropriate, including termination of financial funds in accordance with this Master Agreement, or other measures that may affect the Vendors eligibility to obtain future financial funds for transportation projects.

4. **Nondiscrimination on the Basis of Sex.** To the extent applicable, the Vendor agrees to comply with Title IX of the Education Amendments of

1972, as amended, 20 U. S.C. § § 1680 et seq., which prohibit discrimination on the basis of sex., and any subsequent Federal requirements.

5. **Nondiscrimination on the Basis of Age.** The Vendor agrees to comply with the applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S. C. § § 61 01 et seq., and implementing regulations, which prohibits discrimination on the basis of age.

6. **Access Requirements for Persons with Disabilities.** The Vendor agrees to comply with the requirements of 49 U. S. C. § 5 3 01 (d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Vendor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S. C. § § 121 01 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

   (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

   (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

   (c) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

   (d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

   (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations
   and in Commercial Facilities," 28 C.F.R. Part 36;

   (f) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

   (g) U.S. Equal Employment Opportunity Commission, "Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(i) FTA regulations, "Transportation for Elderly and Handicapped Persons, 49 C.F.R. Part 609; and

(j) Any implementing requirements FTA may issue.

7. **Drug or Alcohol Abuse: Confidentiality and Other Civil Rights Protections.** The Vendor agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Pub. L. 91-616, Dec. 31, 1970, and the Public Health Service Act of 1912, 42 U.S. C. § § 290dd-3 and 290ee-3, including any amendments to these acts.

8. **Other Nondiscrimination Statutes.** The Vendor agrees to comply with any other nondiscrimination statute(s) that may apply to the Project.

C. ENERGY CONSERVATION.

The Vendor agrees to comply with the mandatory energy efficiency standards and policies within the applicable energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

D. SUBSTANCE ABUSE.

1. **Drug Abuse.**

(a) The Vendor agrees to comply with U.S. DOT regulations, "Drug-Free Workplace Requirements(Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§ 702 et seq.

(b) To the extent applicable, the Vendor agrees to comply with FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 653, and any guidance on the drug abuse provisions of 49 U.S.C. § 5331 that FTA or U.S. DOT may issue.

2. **Alcohol Abuse**. To the extent applicable, the Vendor agrees to comply with FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R. Part 654, and any guidance on the alcohol abuse provisions of 49 U.S.C. § 5331 that FTA or U.S. DOT may issue.

STATE OF KANSAS

A. AGREEMENT WITH KANSAS LAW.
All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

B. DISCLAIMER OF LIABILITY.
Neither the State of Kansas nor any agency thereof, nor the City, shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

C. RESPONSIBILITY FOR TAXES.
Neither the State of Kansas, nor the City, shall be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

ACCESS TO JOBS
Vendor Agreement

This Agreement is entered into this 11th day of June, 2011 by and between the City of Wichita - Wichita Transit, hereinafter referred to as "City", and American Cab Inc. hereinafter referred to as "Vendor." Hereinafter both "City" and "Vendor" shall be jointly referred to as "parties."

WHEREAS, The purpose of the program is to provide transportation services for employment purposes under project number KS-37-X001-00, entitled Job Access and Reverse Commute grant program, and

WHEREAS, The Vendor guarantees the ability to provide transportation services in a safe and professional nature, as required by City, to qualified clientele within the geographic boundaries of the City of Wichita.

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

1. Term: This Agreement shall become a legal and binding contract upon signature of same by both parties, commencing June 2011, for a period of one year ending June 2012 with the option to renew for up to two (2) additional, successive one (1) year terms.

2. Compensation: Parties expressly understand and agree that payments made to Vendor pursuant to the terms of this Agreement shall be on a fee-for-service basis according to the rates outlined in Appendix A and according to the method of billing and payment as set forth in Appendix A.

3. Termination: This Agreement may be terminated by either party, upon thirty (30) days written notice, stating the effective date of the termination. Whether this Agreement is cancelled by City or Vendor as provided herein, Vendor shall be paid for work satisfactorily completed to date of termination, as long as the provisions applicable to Billing and Payment have been met by Vendor.

4. Indemnification: Vendor shall indemnify, defend and hold harmless the City of Wichita and the City Council, directors, officers, employees, agents, legal representatives, heirs, successors and assigns (collectively referred to as "Indemnified Parties") from and against any and all losses, costs, injuries, claims, damages, expenses and liabilities, including attorneys' fees (without limitations), collectively referred to as "Liabilities," arising out of or resulting from, (i) the provision by Vendor of transportation services hereunder, or (ii) the failure of the Vendor to fulfill any of its obligations pursuant to this Agreement.

5. Duties: Vendor shall perform duties pursuant to this Agreement as listed in Appendix B. City shall perform duties pursuant to this Agreement as listed in Appendix B. All duties listed in the Appendix B are set forth in KS-37-X001-00.

6. Local and Federal Compliance: The parties shall comply with the requirements of all applicable federal, state, and local rules and regulations, standard assurances, and one time submissions, listed under Appendix A, B, and C.

7. Assignment: Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

8. Amendments: This Agreement may not be amended unless such amendment is in writing and signed by both parties.

9. Incorporation of Appendices: Appendix A, B, and C are attached hereto and made a part hereof.

IN WITNESS WHEREOF, City and Vendor have executed this Agreement as of the day and year first above written.

CITY COUNCIL –WICHITA, KS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett
City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf
City of Wichita, Department of Law

American Cab, Inc.
400 S. Greenwood
Wichita, KS 67211

_____
Ted Hill President/CEO

APPENDIX A
GENERAL CONTRACTUAL PROVISIONS FOR VENDORS

It is mutually agreed by and between the City of Wichita – Wichita Transit and Vendor that it is the purpose of this program that Vendor provide transportation services to "Eligible Passengers" as defined herein, in order to provide access to employment and services that facilitate continued employment. The program is named, "ACCESS To JOBS."

GENERAL PROVISIONS.

A. AUTHORITY TO CONTRACT.

1. **Affirmation of Legal Authority**. Vendor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of Vendor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Vendor to act in connection with the application and to provide such additional information as may be required.

2. **Required Documentation**. Domestic (Kansas) corporations, limited liability companies, or other business forms requiring statutory conformance shall furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. Domestic corporations shall furnish a copy of its Corporate Resolution evidencing the authority to sign this Agreement, executed by the Corporation's Secretary or Assistant Secretary.

B. RELATIONSHIP OF PARTIES.

1. It is agreed that the legal relationship between Vendor and City of Wichita is of a contractual nature. Both parties assert and believe that Vendor is acting as an independent vendor in providing the services and performing the duties required by the City of Wichita hereunder. Vendor is at all times acting as an independent vendor and not as an officer, agent, or employee of the City of Wichita. As an independent vendor, Vendor, and employees of Vendor will not be within the protection or coverage of City of Wichita's worker's compensation insurance subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall Vendor, and employees of Vendor, be entitled to any current or future benefits provided to employees of City of Wichita. Further, City of Wichita shall not be responsible for withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by City of Wichita to Vendor.

C. PERSONNEL.

1. **Qualified Personnel.** Vendor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any other contractual relationship with City of Wichita. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.

2. **Minimum Wages**. Vendor shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.

3. **Employee Conflict of Interest.** Vendor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

4. **Employee Background Checks**. The parties to this Agreement recognize that those entities or persons providing government funded services to the public are subject to public scrutiny. Consequently, by entering into this Agreement, Vendor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5 below. Such compliance will require the use of criminal or other legal background checks upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.

5. **Participant Safeguard.** Vendor certifies that:

   a) Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement or during the term of this agreement shall not be permitted to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;

   b) Persons with convictions during the ten-year period concluding on the date of execution of this Agreement or during the pendency of this Agreement for crimes of moral turpitude, including, but not limited to, sex offenses and crimes against children, shall not be permitted to interact in any way with persons served pursuant to this Agreement; and

   c) Persons having been convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding

on the date of execution of this Agreement, or during the pendency of this Agreement, shall not be permitted to operate a vehicle in which a person served pursuant to this Agreement is a passenger. For purposes of this section, “serious traffic offense” shall not include any offense deemed a “traffic infraction” under K.S.A. 8-2116 and 8-2118.

d) Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City of Wichita Department of Law. The Department of Law’s decision shall be final for purposes of compliance with this Agreement. The term “conviction” shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and shall include being placed into a diversion or deferred judgement program in lieu of prosecution.

D. PROHIBITION OF CONFLICTS OF INTEREST.

1. **Interest of Public Officials and Others**. No officer or employee of the City of Wichita, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person’s personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested; nor shall any officer or employee of City of Wichita or any member of its governing body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

2. **Interest of Vendor**. Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

3. **Employee Conflicts**. Situations in which a) an employee of the City of Wichita shall also be an employee of the Vendor at the time of the Agreement, b) an employee of the Vendor seeks additional/alternative employment with City of Wichita during term of the Agreement, or c) an employee of the City of Wichita seeks additional/alternate employment with Vendor during term of this Agreement, shall require written notice to the City of Wichita. The City of Wichita shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Vendor or Vendor’s competitors.

E. FUNDING.

1. **Cash Basis and Budget Laws.** The right of the City of Wichita to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City of Wichita shall at all times stay in conformity with such laws, and as a condition of this Agreement the City of Wichita reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

F. RECORDS, REPORTS AND INSPECTION.

1. **Documentation of Costs.** All costs incurred by Vendor for which Vendor purports to be entitled to reimbursement shall be supported by proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.

2. **Maintenance of Records.** Except as otherwise authorized by City of Wichita, Vendor shall retain such documentation as listed in paragraphs F1 and F3 for a period of three (3) years after receipt of the final expenditure report under this Agreement, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond the three (3) year period.

3. **Reports.** During the term of this Agreement, Vendor shall furnish City of Wichita, in such form as City of Wichita may require, such statements, records, reports, data and information as City of Wichita requests pertaining to matters covered by this Agreement. Payments to Vendor will be withheld by City of Wichita if Vendor fails to provide all required reports in a timely, complete and accurate manner, until such time as all reports are furnished to City of Wichita.

4. **Audit.** Vendor shall provide for an annual independent audit of its financial records which apply to this Agreement only and shall supply a copy of said audit to City of Wichita.

5. **Availability of Records**. Vendor agrees to make any and all of its records, books, papers, documents, and data available to City of Wichita, or to the authorized representative of the federal, state or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions at any time during

the term of this Agreement and for a period of three (3) years following the final payment under the terms of this Agreement.

6. **Confidentiality**. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records.

G. METHOD OF BILLING AND PAYMENT.

1. **Billing Procedures**. Vendor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City of Wichita. Payment shall be made as soon as procedures allow after receipt of billing.

   a) **Monthly Billing.** A monthly billing system will be used and all billings, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period. Failure to submit timely billings will result in extended delays in receiving payment from City of Wichita for such services.

   b) **Billing Content.** All billings from Vendor to City of Wichita shall include an itemization of each ride provided with the units of service, date of ride, Eligible Passengers names, and total rides or units of service provided for each passenger.

   c) **Billing Procedure.** City of Wichita will process the billings, verify the information/data submitted, and issue a check pursuant to City of Wichita's standard purchasing procedures.

   d) **Charges for Service.** Transportation reimbursements will be made on a per trip basis. The cost per trip within the geographical confines of the City of Wichita, will be at a rate of $15.00 per trip and $6.00 for a no-show.

   e) **Extended Trips.** Trips made beyond the geographical boundaries of the City of Wichita, will be at a higher rate than that set forth in d, above. The rate for these trips will be negotiated as the need for service expansion warrants.

   f) **Rates Reviewed.** Trip rates will be reviewed on a quarterly basis, and may be subject to revision. Any change in trip rates will be agreed upon by the City and Vendor, in writing, before implementation.

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2. **Support Documentation**. Billing shall be supported with documentation required by City of Wichita including, but not necessarily limited to, that documentation described in Section F above.

3. **Reimbursement Restrictions**. Payments shall be made to Vendor only for items and services provided to support the Agreement purpose when such items and services are specifically authorized by this Agreement. City of Wichita reserves the right to disallow reimbursement for any item or service billed by Vendor if City of Wichita believes that such item or service was not provided to support the Agreement purpose or was not authorized by Agreement.

4. **Service by Vendor**.
   a) Service is to be provided by the Vendor in a prompt and courteous manner. Passengers are to be authorized by the City before Vendor provides eligible rides. Passengers are to be picked up no later than fifteen (15) minutes after the scheduled pick-up time. If a situation dictates, that the fore-mentioned condition may not be met, Vendor must contact City immediately.

   b) Vendor must have a back-up system in place to ensure that authorized rides from the City are provided and that no Eligible Passenger is left stranded.

   c) Vendor will not collect any charge from an Eligible Passenger.

   d) Vendor shall comply with the Federal Drug and Alcohol regulations, as set forth in Appendix C. Pre-employment, post accident, and random tests shall be conducted for any and all safety sensitive Vendor positions that perform duties under the terms of this Agreement.

H. LICENSES AND PERMITS.

Vendor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this Agreement. Vendor shall maintain worker's compensation insurance in amounts not less than minimum statutory requirements. Vendor shall notify City of Wichita immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by City of Wichita, in its discretion.

I. INSURANCE.

Vendor shall provide to City of Wichita a Certificate of Insurance evidencing Comprehensive General Liability, Professional Liability, and Comprehensive Automobile Liability coverage as follows:

1) Bodily Injury:	$500,000	Each Occurrence
2) Property Damage:	$500,000	Each Occurrence
3) Personal Injury:	$500,000	Each Person
4) Automobile Liability (owned, not owned, hired, rented or otherwise):		
a) Bodily Injury	$500,000	Each Accident
b) Property Damage	$500,000	Each Accident
5) Professional Liability	$500,000	
6) Workers Compensation / Employers Liability	$100,000	Each Accident

J. SUBCONTRACTING.

None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City of Wichita. All approved subcontracts must conform to applicable requirements set forth in this Agreement and in its appendices, exhibits and amendments, if any. Notwithstanding the City of Wichita's consent to any subcontractors, vendors shall remain fully responsible for all obligations of this Agreement, including indemnification of City of Wichita for all acts of subcontractors.

K. TERMINATION OF AGREEMENT.

1. **Termination for Cause.** If Vendor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Vendor shall violate any of the terms, covenants, conditions or stipulations of this Agreement, City of Wichita shall thereupon have the right to terminate this Agreement by giving written notice to Vendor of such termination, specifying the effective date thereof.

   In the event of termination, such information prepared by Vendor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, at the option of the City of Wichita, become the property of the City of Wichita and be immediately turned over to the City

of Wichita. Vendor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Vendor shall not be relieved of liability to City of Wichita by virtue of any breach of this Agreement by Vendor and City of Wichita may withhold any payments to Vendor for the purpose of set off until such time as the exact amount of damages due City of Wichita from Vendor are determined.

2. **Termination of Agreement on Other Grounds.** This Agreement may be terminated in whole or in part by either party, upon thirty (30) days written notice, stating the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto.

L. NOTIFICATION.

Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, sent by registered or certified mail (return receipt requested) or sent by means of telefacsimile or telecopier, to the party whom said notice is to be given. Notices delivered in person or sent via telefacsimile or telecopier shall be deemed to be served effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be served forty-eight (48) hours after the date said notice is postmarked to the addressee, postage prepaid.

Contractor: City of Wichita – Wichita Transit
Attn: Director
Address: 777 E. Waterman
Phone: (316) 352-4805
Fax: (316) 337-9287

Vendor: American Cab Company
Attn: Ted Hill
Address: 400 S. Greenwood
Phone: (316) 262-7511
Fax: (316)262-0732

M. MISCELLANEOUS.

1. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right or

remedy. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.

2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

3. In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.

4. Both parties hereto represent and agree that: (I) they have reviewed all aspects of this Agreement; (ii) they have been given the opportunity to review this Agreement with counsel; and (iii) they have carefully read and fully understand all provisions of this Agreement.

APPENDIX B
VENDOR / CITY CONTRACTUAL DUTIES

GENERAL CONDITIONS.

A. DEFINITIONS.

1. **Unit of Service.** One, one-way trip equals one unit of service per Eligible Passenger. A round trip taken by an Eligible Passenger equals two units of service.

2. **Service**. Transportation to and from specific employment or employment related site as authorized by City for Eligible Passengers.

3. **Eligible Passenger.** Residents of the greater Wichita Employment area who are certified and approved as eligible by City of Wichita.

B. VENDOR DUTIES:

1. Vendor agrees that any funds provided for services under this Agreement will be paid on a fee-for-services basis only.

2. Vendor shall be subject to annual audit in accordance with the provisions set forth in Appendix A.

3. Vendor agrees that its records used in preparation of all reports are subject to review by City to ensure the accuracy and validity of the information reported.

4. Vendor shall promptly provide notice to the City if it is unable to provide the required quantity or quality of services.

5. Vendor agrees that all rides are to be pre-authorized by the City.

6. Vendor shall maintain all applicable records on such forms as designated by the City.

7. Vendor agrees that they will not provide “private” or unauthorized rides to Eligible Passengers.

8. Vendor shall comply with the Federal Drug and Alcohol regulations as set forth in Appendix C. Pre-employment, post accident, and random tests shall be conducted for any and all safety sensitive Vendor positions that perform duties under the terms of this Agreement.

9. Service is to be provided by the Vendor in a prompt and courteous manner. Passengers are to be authorized by the City for eligible rides. Passengers are to be picked up no later than fifteen (15) minutes after

the scheduled pick up time. If conditions dictate that this is not possible for a particular trip, Vendor must notify City immediately.

10. Vendor must have a back up system in place to ensure that authorized rides from City are provided and that no Eligible Passenger is left stranded.

11. Vendor will not collect any charge from the Eligible Passenger.

12. Vendor must utilize car seats and booster seats, as per K.S.A. 8-1344, and K.S.A. 8-2501, when transporting minors (14 and under).

C. CITY DUTIES:

1. Provide all Administrative services necessary to implement the program.

2. Oversee the daily exercise of the program and assure compliance of the regulations as set forth in the entire contractual document.

3. Schedule and coordinate all transportation rides with the appropriate Vendor.

4. Issue payments to Vendor as described in Appendix A, based on authorized trips.

APPENDIX C
FEDERAL AND STATE REGULATIONS

U. S. FEDERAL

FTA has developed certain Standard Terms and Conditions required by DOT. These contractual provisions required by DOT, as set forth in FTA Circular 4220.1C, dated May 1, 1995, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Vendor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

A. PROJECT IMPLEMENTATION

1. **Application of Federal, State, and Local Laws and Regulations:**

a) Federal laws or laws authorizing Project approval control Project implementation. The Vendor acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the Project on the date the authorized City official signs the Master Agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when the Vendor executes the Master Agreement, and might apply to that Master Agreement. The Vendor agrees that the most recent of such Federal requirements will govern the administration of the Project at any particular time, unless FTA issues a written determination otherwise. FTA's written determination may be issued as a Special Condition or Requirement within the Master Agreement or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of this Master Agreement. All standards or limits within this Master Agreement are minimum requirements, unless modified by FTA.

b) Except when a Federal statute or regulation preempts State of Kansas, City of Wichita, or territorial law, no provision of the Master Agreement shall require the Vendor to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State of Kansas, City of Wichita, or territorial law. Thus if any provision or compliance with any provision of the Grant Agreement, Cooperative Agreement or this Master Agreement violate State of Kansas, City of Wichita, or territorial law, or would require the Vendor to violate State of Kansas, City of Wichita, or territorial law, the Vendor agrees to notify the City immediately in writing. Should this occur, the City and the Vendor agree to make appropriate arrangements to proceed with or, if necessary, terminate the Project as quickly as possible.

2. **Vendor's Responsibility to Federal Requirements.**

a) Entities Affected - Only the entities that are signatories to this Master Agreement for the Project are parties to that agreement. Accordingly, the City agrees to take appropriate measures necessary to ensure all Project participants comply with applicable Federal requirements affecting their performance.

b) Documents Affected - Applicable provisions of the Federal statutes, regulations, and directives establishing that Federal requirement determine the extent to which a specific Federal requirement affects a Vendor as participant. Accordingly, the Vendor agrees to ensure that they will comply with applicable Federal requirements.

3. **No Federal Government Obligations to Third Parties.** The Vendor agrees that, absent either Federal, State of Kansas, or City of Wichita Governments express written consent, the Governments shall not be subject to any obligations or liabilities to any recipient, or any other person not a party to the Master Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Governments in or approval of any solicitation, or sub-agreement, the Governments continue to have no obligations or liabilities to any party.

4. **Changes in Project Performance (including Disputes, Breaches, Defaults or Litigation).** The Vendor agrees to notify the City immediately of any change in conditions (such as its legal, financial, or technical capacity), or any other event that may significantly affect the Vendors ability to perform the Project in accordance with the terms of the Master Agreement. In addition, the Vendor agrees to notify the City immediately of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Governments interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. The Vendor agrees to inform the City before naming either the City or the Federal Government as a party to litigation for any reason, in any forum.

B. CIVIL RIGHTS

The Vendor agrees to comply with all applicable civil rights statutes, and implementing regulations including, but not limited to the following:

1. **Nondiscrimination in Transit Programs.** The Vendor agrees to comply with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

2. **Nondiscrimination - Title VI of the Civil Rights Act.** The Vendor agrees to comply with all requirements prohibiting discrimination on the

basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements FTA may issue.

3. **Equal Employment Opportunity.** The Vendor agrees to comply with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements City and FTA may issue. Those equal employment opportunity (EEO) requirements include, but are not limited to, the following:

(a) General Requirements - The Vendor agrees as follows:

(1) It will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Vendor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor also agrees to comply with any implementing requirements the City and FTA may issue.

(b) If the Vendor is required to submit and obtain City approval of its EEO program, that EEO program approved by the City is incorporated by reference and made part of the Master Agreement. Failure by the Vendor to carry out the terms of that EEO program shall be treated as a violation of the Master Agreement. Upon notification to the Vendor of its failure to carry out the approved EEO program, the City may impose such remedies as it considers appropriate, including termination of financial funds in accordance with this Master Agreement, or other measures that may affect the Vendors eligibility to obtain future financial funds for transportation projects.

4. **Nondiscrimination on the Basis of Sex.** To the extent applicable, the Vendor agrees to comply with Title IX of the Education Amendments of

1972, as amended, 20 U. S.C. § § 1680 et seq., which prohibit discrimination on the basis of sex., and any subsequent Federal requirements.

5. **Nondiscrimination on the Basis of Age.** The Vendor agrees to comply with the applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S. C. § § 61 01 et seq., and implementing regulations, which prohibits discrimination on the basis of age.

6. **Access Requirements for Persons with Disabilities.** The Vendor agrees to comply with the requirements of 49 U. S. C. § 5 3 01 (d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Vendor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S. C. § § 121 01 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

   (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

   (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

   (c) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

   (d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

   (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations
   and in Commercial Facilities," 28 C.F.R. Part 36;

   (f) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

   (g) U.S. Equal Employment Opportunity Commission, "Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(i) FTA regulations, "Transportation for Elderly and Handicapped Persons, 49 C.F.R. Part 609; and

(j) Any implementing requirements FTA may issue.

7. **Drug or Alcohol Abuse: Confidentiality and Other Civil Rights Protections.** The Vendor agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Pub. L. 91-616, Dec. 31, 1970, and the Public Health Service Act of 1912, 42 U.S. C. § § 290dd-3 and 290ee-3, including any amendments to these acts.

8. **Other Nondiscrimination Statutes.** The Vendor agrees to comply with any other nondiscrimination statute(s) that may apply to the Project.

C. ENERGY CONSERVATION.

The Vendor agrees to comply with the mandatory energy efficiency standards and policies within the applicable energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

D. SUBSTANCE ABUSE.

1. **Drug Abuse.**

(a) The Vendor agrees to comply with U.S. DOT regulations, "Drug-Free Workplace Requirements(Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§ 702 et seq.

(b) To the extent applicable, the Vendor agrees to comply with FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 653, and any guidance on the drug abuse provisions of 49 U.S.C. § 5331 that FTA or U.S. DOT may issue.

2. **Alcohol Abuse**. To the extent applicable, the Vendor agrees to comply with FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R. Part 654, and any guidance on the alcohol abuse provisions of 49 U.S.C. § 5331 that FTA or U.S. DOT may issue.

STATE OF KANSAS

A. AGREEMENT WITH KANSAS LAW.
All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

B. DISCLAIMER OF LIABILITY.
Neither the State of Kansas nor any agency thereof, nor the City, shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

C. RESPONSIBILITY FOR TAXES.
Neither the State of Kansas, nor the City, shall be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council Members

SUBJECT: 2011 Bulletproof Vest Partnership Grant

INITIATED BY: Wichita Police Department

AGENDA: Consent

Recommendation: Accept the grant award.

Background: The Bulletproof Vest Partnership (BVP) grant provides funds for law enforcement agencies to purchase bulletproof vests in an effort to reduce injury and death to law enforcement officers. The Wichita Police Department has been a recipient of this grant for the past nine years.

Analysis: National Institute of Justice approved vests purchased by the Wichita Police Department will be eligible for reimbursement of up to 50 percent. Currently a typical vest service life is five years and requires replacement at the expiration of such time. The funding will be used to purchase new and replacement vests for police officers.

Financial Considerations: The City of Wichita is awarded $2,130.93 for the purchase of bulletproof vests. This funding will help the Wichita Police Department make efficient use of limited financial resources.

Goal Impact: Provide a Safe and Secure Community by ensuring that Wichita Police Officers have adequate safety equipment to perform their job duties.

Legal Considerations: The Law Department has reviewed and approved as to from the grant award.

Recommendations/Actions: It is recommended the City Council accept the 2011 Bulletproof Vest Partnership grant award.

Attachments: None.

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: 2012 Victims of Crime Act (VOCA) Grant

INITIATED BY: Wichita Police Department

AGENDA: Consent

Recommendation: Approve the 2012 grant award.

Background: The Federal Victims of Crime Act (VOCA) Crime Victim Assistance grant program is administered by the Kansas Governor's Federal Grants Program. In 2001, the City Council approved the initial grant application for VOCA funding, which established a Victim Assistance Unit (VAU) in the Wichita Police Department. The 2011 grant approved by Council on August 24, 2010 provides funding for one VAU Program Coordinator position. The Program Coordinator is responsible for providing direct victim assistance and coordination with established community resources. The Program Coordinator works closely with several victim services agencies, including the Wichita Area Sexual Assault Center, YWCA Women's Crisis Shelter, Catholic Charities, U.S. Attorney's Victim Assistance Office, District Attorney's Victim/Witness staff, and Assistant District Attorneys.

Analysis: The VAU is responsible for facilitating a coordinated response to the needs of crime victims and developing and implementing internal and external training programs. Victim assistance is focused on the primary and secondary victims of violent crime, including death cases and elderly burglary victims. The VAU has been instrumental in working with the Wichita Police Department's violent crimes and burglary sections to assist victims with restoring stability to their lives, and aiding in the reduction of secondary victimization. The grant funding is for the continuation of the Victim Assistance Unit for Federal FY 2012, beginning October 1, 2011 through September 30, 2012.

Financial Considerations: The total grant request is $89,745; 80 percent ($71,796) provided by VOCA funding and a 20 percent ($17,949) local match requirement, which is budgeted in the General Fund.

Goal Impact: Provide a Safe and Secure community by providing assistance to victims of violent crimes not served through other agencies.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the City Council approve the 2012 Victims of Crime grant award.

Attachments: 2012 VOCA Grant Award & Assurances.

Kansas

governor@ks.gov

Office of the Governor **Sam Brownback, Governor**

October 10, 2011

Ms. Debbie Nguyen
City of Wichita Police Department
455 N. Main
Wichita, KS 67202

Dear Ms. Nguyen:

I am pleased to inform you that the agency will receive a grant award from the Federal Victims of Crime Act (VOCA) grant program. These grant funds will assist the agency in providing effective services for victims of crime. I commend you for your commitment to providing these important services for Kansans.

Two important documents are included in this notification, the Grant Assurances and the Reporting Requirements. In order to process the grant award, please print a copy of the Grant Assurances following this letter. Read and initial each page and have the required individual sign the Grant Assurances. An original signed copy must be mailed to the Governor's Grants Program at 900 SW Jackson Street, Room 304N, Topeka, KS 66612-1220. This document must be returned by October 21, 2011.

The Reporting Requirements also are attached. All reports are required to be submitted through the Grant Portal. The Reporting Requirements provide the procedures and instructions for managing the VOCA grant award.

Kay Steward is the agency's primary contact regarding the VOCA grant program. She can be reached by email at kay.steward@ks.gov or by phone at 785-291-3205.

Please do not hesitate to contact my office if you have any questions. Thank you for all your work on behalf of crime victims in Kansas.

With Warm Regards,

Sam Brownback

Sam Brownback
Governor

Governor's Grants Program
900 SW Jackson Street, Room 304 North
Topeka, KS 66612-1220
Voice (785) 291-3205 * Fax: (785) 291-3204

KANSAS GOVERNOR'S GRANTS PROGRAM
Federal Victims of Crime Act Victim Assistance Program
Grant Assurances for Fiscal Year 2012

The grant award listed below is available for expenditure in accordance with the agency's approved application under the Federal Victims of Crime Act (hereinafter "VOCA"), as established by 42 U.S.C. §10601 *et seq.* and amendments thereto for the period beginning October 1, 2011 and ending September 30, 2012. The grant funds distributed to the Subgrantee by the State of Kansas will be administered by the Kansas Governor's Grants Program (hereinafter "KGGP") and used to provide crime victim assistance programs as allowed by 42 U.S.C. §10601 *et seq.* and amendments thereto. The distribution of grant funds is contingent upon receipt of adequate funds and appropriations to the KGGP.

The Catalog of Federal Domestic Assistance, or CFDA, number for the Federal Victims of Crime Act Victim Assistance Program is 16.575. This document contains information specific to this federal grant program.

The grant awarded to **City of Wichita Police Department** (hereinafter "Subgrantee") is for the total amount of **$89,745**. The portion of the grant award funded by the VOCA grant award (80% of the total grant project) is **$71,796**. The portion of the grant award that must be funded by the Subgrantee (20% non-federal cash or in-kind match) is **$17,949**. The use of non-federal match is restricted to the same guidelines, purposes and allowable costs as the federal funds.

The grant project number for this grant award is **12-VOCA-32**.

With acceptance of this grant award, the Subgrantee agrees to the following:

1. **AWARD PERIOD:** This grant award is for the period October 1, 2011 to September 30, 2012. The Subgrantee shall not allocate any expenditure made or incurred prior to October 1, 2011 or after September 30, 2012 to this grant award. The Subgrantee shall not allocate any expenditure for any event, activity, or conference that will occur outside the grant award period. All grant award obligations must be paid within 30 days following the end of the grant award period.

2. **APPROVED PURPOSES:** Grant funds awarded as a result of the Subgrantee's grant application shall be expended only for the purpose approved by the KGGP and in accordance with any terms and conditions the KGGP attaches to the grant award. The Subgrantee shall not use grant funds to supplant federal, state, or local funds that would otherwise be available for crime victim services.

   The Subgrantee shall not use grant funds to make direct payments to any crime victim or a dependent of any crime victim.

   Grant funds shall not be used for construction and/or purchase of land.

   The Subgrantee shall not use funds, either directly or indirectly, to support the Association of Community Organizations for Reform Now (ACORN).

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All terms of the grant award are non-negotiable by the Subgrantee.

3. **COMPLIANCE WITH REGULATIONS, POLICIES & PROCEDURES:** The Subgrantee shall comply with all applicable state and federal laws and regulations, including, but not limited to, provisions of the VOCA grant program, the provisions of 28 C.F.R. applicable to grants, the Federal Program Guidelines for VOCA, the VOCA Program Guidelines and Reporting Requirements as established by the KGGP, and the requirements of the Federal Office of Justice Programs' Financial Guide, effective edition. (To obtain a copy of the Financial Guide, call 1-800-458-0786 and/or access the guide on-line at www.ojp.usdoj.gov/financialguide/index.htm effective edition.)

4. **USE OF VOLUNTEERS:** The Subgrantee shall use volunteers unless the KGGP determines that the Subgrantee has proven that a compelling reason exists to waive this requirement.

5. **REPORTING REQUIREMENTS:** The Subgrantee shall comply with any evaluative, statistical, or financial reporting requirements of the VOCA or those set by the KGGP.

6. **TRAINING AND TECHNICAL ASSISTANCE:** The Subgrantee shall participate in KGGP -sponsored training or technical assistance events as required by the KGGP.

7. **DISSEMINATION OF CRIME VICTIMS' RIGHTS INFORMATION:** The Subgrantee assures that services and assistance provided by VOCA-funded staff and volunteers to crime victims shall include the dissemination of crime victims' rights information, including the statutory rights of crime victims and crime victim compensation. VOCA-funded staff and volunteers shall receive information and training on crime victim compensation and on all applicable laws pertaining to crime victims' rights.

8. **TIME AND ACTIVITY:** The Subgrantee shall keep daily time and activity records for all staff funded by this grant project that document the services and grant projects that the staff person worked on and the time spent providing the services or programs.

   Job descriptions for all grant-funded staff shall be maintained by the Subgrantee and available for review. These grant funds shall be utilized for the provision of approved services only and the job descriptions must reflect this requirement.

   The time and activity records shall be signed by the staff member and supervisor and shall be kept and compiled in the grant files and the employees' files. These requirements extend to outside employees and persons who will perform contractual work.

9. **SERVICE FEES:** The Subgrantee shall not charge a fee of any kind for any service provided under this grant award. The Subgrantee shall not generate income of any kind through services funded with VOCA grant funds without the prior express written approval of the KGGP.

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10. **CONFIDENTIALITY:** The Subgrantee assures that procedures have been or will be developed to ensure the confidentiality of records pertaining to persons receiving assistance or services from any Subgrantee grant project assisted by VOCA. The Subgrantee shall comply with all applicable federal and state confidentiality laws, including but not limited to the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11383 and amendments thereto.

11. **PUBLISHED MATERIAL:** All issued statements, publicity releases, or other documents describing the funded grant projects, as well as all materials developed or published with funds from this grant award, shall contain an acknowledgment of support comparable to the following:

"This grant project is funded or partially funded by the Federal Victims of Crime Act as administered by the Kansas Governor's Grants Program. The opinions, findings and conclusions, or recommendations expressed in this publication, program, or exhibition are those of the author(s) and do not necessarily reflect the views of the Office of the Kansas Governor or the U.S. Department of Justice."

The Subgrantee assures that two copies of all materials published with funds from this grant award shall be submitted to the KGGP at least 30 days prior to publication. Similarly, the Subgrantee shall submit two copies of all training information including training dates, agendas and handout materials funded by this grant award to the KGGP at least 30 days prior to the training dates.

12. **EQUAL EMPLOYMENT OPPORTUNITY PLAN:** The Subgrantee assures that it has formulated an equal employment opportunity plan (EEOP) if required by federal and state law. The Subgrantee assures that it has provided to the KGGP the name of a civil rights person who has lead responsibility for ensuring that all applicable civil rights requirements are met. This person shall act as a liaison for civil rights issues with the U.S. Justice Department, Office of Justice Programs, Office of Civil Rights.

The Subgrantee shall complete the Federal Office of Civil Rights' Certification Form and submit it to the KGGP. The Certification Form must be received by the KGGP before the Subgrantee is allowed access to VOCA funds.

13. **CIVIL RIGHTS AND NONDISCRIMINATION:** The Subgrantee assures that all grant projects provided by the Subgrantee shall comply with all applicable nondiscrimination requirements including, but not limited to, the VOCA; the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3789(d); Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000(d) *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990), as amended, 42 U.S.C. §12131 *et seq.*; Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.*; the Age Discrimination Act of 1975, 42 U.S.C. §6101 *et seq.*; Department of Justice Nondiscrimination Regulations, 28 C.F.R. Part 42, Subparts C, D, E, and G; Department of Justice regulations on disability discrimination, 28 C.F.R. Part 35 and Part 39

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administrative requirements; and 28 C.F.R. Part 46 and all U.S. Justice Department, Office of Justice Programs policies and procedures regarding the protection of human research subjects.

The Subgrantee assures that in the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, national origin, sex, age, or disability against the Subgrantee, the Subgrantee shall forward a copy of the findings to the KGGP and the U.S. Justice Department, Office of Justice Programs, Office of Civil Rights.

14. **EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS**: The Subgrantee assures that all grant projects provided by the Subgrantee shall comply with the Equal Treatment for Faith-Based organizations, 28 C.F.R. Part 38 and amendments thereto. The Subgrantee shall not discriminate against prospective program beneficiaries on the basis of religion. The Subgrantee shall not use grant funds for inherently religious activities, such as worship, religious instruction or proselytization.

15. **LIMITATION ON LOBBYING ACTIVITIES:** The Subgrantee shall not use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification, or adoption of any law, regulation or policy, at any level of government, without the express prior approval of the Federal Office of Justice Programs or the KGGP.

16. **LIMITED ENGLISH PROFICIENCY**: The Subgrantee assures that procedures have been or will be developed to ensure meaningful access by persons with limited English proficiency that are eligible for assistance or services from any Subgrantee program assisted under VOCA.

    For additional guidance in complying with the LEP assurance, please refer to DOJ's *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* at 67 C.F.R. 41455 (June 18, 2002) or www.lep.gov.

17. **HISTORIC PRESERVATION:** The Subgrantee assures its compliance with the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*, Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §470, Executive Order 11593, and the Archeological and Historic Preservation Act of 1966, 16 U.S.C. §569 a-1, *et seq.* The Subgrantee shall comply with all Federal, State and local environmental laws and regulations applicable to the development and implementation of the activities to be funded under this award.

18. **ACCOUNTING:** The Subgrantee assures that grant fund accounting, auditing, and monitoring procedures necessary to maintain records as the KGGP prescribes shall be employed to ensure fiscal control, proper management, and proper expenditure of grant funds. The Subgrantee shall maintain books, records, documents and other evidence to summarize costs in order to identify the costs directly with the delivery of services,

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specific outcomes, and benefits outlined in the approved grant application. This means that at a minimum:

(a) the Subgrantee shall keep records that segregate the grant funds from all other funds received by the Subgrantee, keep its accounting for this grant project separate from the accounting of other funds, and spend and report in accordance with the approved grant project budget by program and budget-line items;

(b) the Subgrantee shall keep supporting documentation for all direct costs charged to this grant project. This includes invoices and other financial documentation for all paid expenses, the portion of the grant project supplied by other sources of revenue, contracts for services, and other records that facilitate an effective compliance review; and

(c) the Subgrantee shall adhere to the applicable administrative requirements, cost principles, and common rules as referenced in the Federal Office of Justice Programs' Financial Guide, effective edition.

Charges made for personnel services (including, but not limited to, salaries, wages and fringe benefits) will be based on payrolls documented in accordance with the generally accepted practice of the organization and be approved by a responsible official(s) of the organization.

19. **RECORDS:** The Subgrantee assures that all records shall be subject at all reasonable times to inspection, review, or audit by State personnel and other personnel duly authorized by the KGGP, as well as Federal personnel. The Subgrantee assures that all financial records, supporting documentation, statistical records, and all other records pertinent to the grant award shall be retained by the Subgrantee for at least five years following the end of the grant project period.

20. **EQUIPMENT:** The Subgrantee shall submit reports detailing the purchase of equipment within 30 days of the payment date. The Subgrantee assures that equipment purchased through this grant project shall continue to be used for the purpose it was purchased for as long as needed, whether or not the agency continues to be supported by VOCA. The Subgrantee assures that services provided that utilize the equipment purchased by this grant program shall continue to be reported to the KGGP annually for as long as the equipment is used. The Subgrantee assures that, to the extent practicable, all equipment and products purchased with grant funds shall be American made.

21. **FAILURE TO COMMENCE GRANT PROJECT:** If the activities described in the grant application have not commenced within 60 days after acceptance of the grant award, the Subgrantee shall report in writing the steps taken to initiate the grant project, the reasons for delay and the expected starting date. If the activities have not commenced within the next 30 days of receipt of the above correspondence, a further statement in writing regarding the delay shall be submitted to the KGGP. Upon receipt of the second correspondence, the KGGP may terminate the grant and all unused grant funds shall be returned together with a complete accounting of all expenditures.

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22. **RIGHT TO TERMINATE:** The KGGP reserves the right to terminate any grant award and cease payment to the Subgrantee for failure to comply with applicable laws, regulations, and/or terms and conditions of the grant assurances. Further, the KGGP may seek reimbursement of any or all grant funds and may reclaim any equipment, durable goods, videos, and other property purchased with these grant funds if the Subgrantee fails to perform in accordance with the terms of the grant assurances and reporting requirements.

23. **DISCLAIMER OF LIABILITY:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any Subgrantee beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

24. **FRAUD, WASTE AND ABUSE:** The Subgrantee shall promptly refer to the U.S. Department of Justice, Office of the Inspector General and the KGGP any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has submitted a false claim for VOCA grant funds under the False Claims Act or committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving VOCA grant funds. Potential fraud, waste, abuse, or misconduct should be reported to:

Office of the Inspector General U.S. Department of Justice Investigations Division 950 Pennsylvania Ave, N.W. Room 4706 Washington, DC 20530 oig.hotline@usdoj.gov Hotline: 800-869-4499 Hotline Fax: 202-616-9881	AND	Governor's Grants Program Landon State Office Bldg, Room 304 North 900 SW Jackson Street Topeka, KS 66612-1220

25. **INSURANCE:** The KGGP shall not purchase any insurance against loss or damage to any personal property purchased with grant funds. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), the Subgrantee shall bear the risk of any loss or damage to any personal property purchased with grant funds.

26. **MISUSE OF GRANT FUNDS:** The Subgrantee understands and agrees that misuse of grant funds may result in a range of penalties, including suspension of current and future grant funds, suspension or debarment from state and/or federal grants, recoupment of monies provided under the grant award, and civil and/or criminal penalties.

27. **TEXT MESSAGING:** The Subgrantee is encouraged to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this grant, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

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28. **ADDITIONAL REQUIREMENTS:** The Subgrantee understands and agrees to comply with any additional requirements that may be imposed during the grant performance period if the KGGP determines that the agency is a high-risk Subgrantee.

29. **UNUSED FUNDS:** The Subgrantee shall return to the KGGP any unobligated grant funds on hand within 10 business days after the final Financial Status Report is due.

30. **CORRESPONDENCE AND REPORTS:** All correspondence, reports, and other documentation required by this grant shall be submitted through the Governor's Grants Program Grant Portal at https://www.kansas.gov/grants/index.do, with the exception of the Grant Assurances that require the original to be mailed to the **Governor's Grants Program, Landon State Office Building, Room 304 North, 900 SW Jackson Street, Topeka, Kansas 66612-1220**.

31. **SPECIAL CONDITIONS:**

(a) **The Subgrantee assures that VOCA-funded staff members attend the Annual Crime Victims' Rights Conference each fiscal year.**

(b) **The Subgrantee assures that, if an approved line item, "Direct Assistance to Victims" funds shall be used only for the immediate health and safety of crime victims. Written documentation to support the use of these funds for this purpose must be maintained. Further, the Subgrantee assures that gift cards will not be provided directly to victims as a substitute for cash.**

(c) **The Subgrantee shall attend the webinar training regarding the Grant Assurances, the EEOP Special Condition, and the Reporting Requirements on October 17, 2011. Subgrantees that do not participate in the scheduled webinar will be required to attend an in-person training in Topeka prior to dissemination of any grant funds. Information on the time and instructions will be sent by the KGGP at a later date.**

(d) **The Subgrantee shall complete the Federal Office of Civil Rights' Certification Form and submit it to the KGGP. The Certification Form must be received by the KGGP before the Subgrantee is allowed access to VOCA funds, no later than October 28, 2011.**

(initial)

32. SIGNATURE:

10-11-11

Signature of Authorized Certifying Official — Date

Carl Brewer

Type or Print Name of Authorized Certifying Official

Mayor

Title

455 N. Main, Wichita, KS 67202

Address (Street, City, State, Zip Code)

(initial)

CITY OF WICHITA

DEPARTMENT OF LAW
INTEROFFICE MEMORANDUM

TO: Karen Sublett, City Clerk

FROM: Gary E. Rebenstorf, Director of Law

SUBJECT: Report on Claims for September 2011

DATE: October 17, 2011

The following claims were approved by the Law Department during the month of September 2011.

Appleby, Suzanne	$ 2,811.76
AT&T	$19,320.97
Hackard, Richard	$ 1,400.00
Hamlett, John	$ 220.00
Kansas Gas Service	$ 695.21
Kansas Gas Service	$ 1,072.02
Koc, Vahit	$ 536.49
Nausler, Maureen	$ 661.29
Om, Pich	$ 5,247.43****
Sanchez, Jane	$ 500.00

*City Manager Approval
** Settled for lesser amount than claimed
***Settled for more than amount claimed
****Overspray paint claim

cc: Robert Layton, City Manager
Kelly Carpenter, Director of Finance

City of Wichita
City Council Meeting
November 1, 2011

TO: Mayor and City Council

SUBJECT: Porte-Cochere Easement for Ambassador Hotel (District I)

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendation: Approve the easement.

Background: On September 13, 2011, the City Council approved a project plan and development agreement for redevelopment of the Douglas Place Building into the Ambassador Hotel, a boutique hotel consisting of 117 guest rooms. Development of the hotel also includes a construction of a porte-cochere on the south side of the building, facing an urban park which is being developed as part of the project. The location of the porte-cochere will require the developer to build within the public right-of-way. Additionally, the developer will need to install underground pipes through the right-of-way to support the installation of a grease trap for the hotel's restaurant.

The developer's lender and tax credit investor are requesting the City provide a permanent easement for the porte-cochere and grease trap in order to secure lending. The easement will provide air rights for the installation and maintenance of the porte-cochere and below ground access to install pipes and a grease trap located in the Urban Park.

Analysis: The easement will allow the developer to construct the porte-cochere and install underground pipes for the grease trap as part of the redevelopment of the hotel. Delivery of the easement is contingent on the City's purchase of the urban park land, which is contingent on the developer securing project financing per the development agreement.

Financial Considerations: The developer will be responsible for costs related to the relocation of any utilities that are within the right of way.

Goal Impact: Economic Vitality and Affordable Living and Quality of Life. Business prospects and workers seeking to relocate are attracted to a new city that takes care of its older sections.

Legal Considerations: The form of the easement has been approved by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the easement and authorize the necessary signatures.

Attachments: Porte-Cochere Easement

AFTER RECORDING MAIL TO:
CCC Investments, LLC
151 N. Rock Island, Suite 1A
Wichita, KS 67202
Attn: David C. Burk

(Space left blank for recording purposes)

DECLARATION OF PORTE-COCHERE AND UTILITY EASEMENT

THIS DECLARATION OF PORTE-COCHERE AND UTILITY EASEMENT (this "***Declaration***") is made and entered into as of the 1st day of November, 2011 by the CITY OF WICHITA, KANSAS, a corporate body politic and political subdivision of the State of Kansas (the "***City***").

WITNESSETH

WHEREAS, CCC INVESTMENTS, LLC owns real property located at 104 South Broadway Avenue in the City of Wichita, County of Sedgwick, Kansas, more particularly described on Exhibit A attached hereto and made a part hereof (the "***Hotel Property***", the owner at any time of such Hotel Property being referred to herein as the "***Hotel Owner***") and the improvements thereon.

WHEREAS, the City owns right-of-way commonly known as the east-west alley between Broadway Avenue and Topeka Avenue on the south side of Douglas Avenue, depicted on Exhibit B attached hereto and made a part hereof (the "***Right-of-Way Property***", the owner at any time of such Right-of-Way Property being referred to herein as the "***Right-of-Way Owner***").

WHEREAS, the City and DOUGLAS PLACE, LLC, a Kansas limited liability corporation ("***Douglas Place***"), entered into a Development Agreement dated September 13, 2011, whereby the City, among other things, granted to Douglas Place and its affiliates an option to construct a porte-cochere attached to the Hotel Property and over the Right-of-Way Property.

WHEREAS, said Development Agreement makes provisions whereby the City would purchase real property located at 114 South Broadway Avenue in the City of Wichita, County of Sedgwick, Kansas, (the "**Urban Park Property**" the owner of which, if acquired by the City per the provisions of the Development Agreement, being referred to herein as the "**Urban Park Owner**") and grant to Douglas Place and its affiliates an option to construct a porte-cochere attached to the Hotel Property and over and on a portion of the Urban Park Property more particularly described on Exhibit C attached hereto and made a part hereof.

WHEREAS, the Hotel Owner and Right-of-Way Owner desire to grant for the benefit of themselves and their successors and assigns, an air rights easement for the construction,

maintenance and use of a porte-cochere (the "***Porte-Cochere***") attached to the Hotel Property and over the Right-of-Way Property and for underground use for piping that will run underground to a grease trap location in the Urban Park Property, and

WHEREAS, in the event that the City acquires the Urban Park Property per the provisions of the Development Agreement, the Hotel Owner and Urban Park Owner desire to grant for the benefit of themselves and their successors and assigns an easement for the construction (including footings and foundations), maintenance and use of a Porte-Cochere attached to the Hotel Property and over and on the Urban Park Property and for an easement for the construction, maintenance and use of a underground grease trap and piping from the Hotel Property to the grease trap (the "***Grease Trap***").

NOW, THEREFORE, in consideration of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Hotel Owner, Right-of-Way Owner and Urban Park Owner for themselves and their respective successors and assigns, state as follows:

1. Declaration of Easements. The Right-of-Way Owner, for itself as owner of the Right-of-Way Property and its successors and assigns, hereby grants and conveys to the Hotel Owner a perpetual exclusive air rights easement, as an appurtenance to the Hotel Property over the Right-of-Way Property for the construction, maintenance and use of the Porte-Cochere, in the location shown on Exhibit D, attached hereto and made a part hereof, commencing at an elevation over the Right-of-Way Property that is at least 14 feet above the grade of the Right-of-Way Property, and an underground utility easement for the Grease Trap piping. Additionally, the Urban Park Owner, for itself as owner of the Urban Park Property and its successors and assigns, hereby grants and conveys to the Hotel Owner a perpetual exclusive easement, as an appurtenance to the Hotel Property over and on the Urban Park Property for the construction (including footings and foundations), maintenance and use of the Porte-Cochere, in the location shown on Exhibit D, attached hereto and made a part hereof, and an underground utility easement for the Grease Trap and associated piping.

2. Consent to Attachment. The Hotel Owner hereby consents to the attachment of the Porte-Cochere to the Hotel Property, provided the manner of attachment shall be in accordance with good construction practice, in the manner customary for improvements of such type and so as not to impose an unreasonable load on the Hotel Property. The Hotel Owner shall comply with all applicable building codes and permitting processes.

3. Public Access. To the extent practical, public access to and through the Right-of-Way Property and Urban Park Property under the Porte-Cochere shall be maintained at all times.

4. Destruction. In the event the Porte-Cochere is destroyed by fire or other casualty, the Hotel Owner may rebuild the Porte-Cochere without any further consent, except such consents as may be required by a governmental authority.

5. Removal of Porte-Cochere. If the Hotel Owner should ever require the Porte-Cochere or any part thereof to be permanently removed, the Hotel Owner shall, at its cost and expense, cause the Porte-Cochere to be removed and the places where the Porte-Cochere connects to the Hotel Property to be restored to a condition suitable without the Porte-Cochere. Upon such removal and repair, this Declaration shall automatically terminate and become null and void.

6. Maintenance of Porte-Cochere and Grease Trap. The Hotel Owner shall, at all times during the term of this Declaration, maintain the Porte-Cochere and Grease Trap in good repair and condition, at its sole expense.

7. Benefits and Duration. The easements granted in this Declaration is perpetual and unless and until terminated, amended or revoked by the filing of a written and duly executed (by the Hotel Owner, the Right-of-Way Owner and the Urban Park Owner) termination, amendment or release of easement, as applicable, in the Register of Deeds for Sedgwick County, shall run with the land and shall bind the Hotel Owner, the Right-of-Way Owner and the Urban Park Owner, and their respective successors and assigns in ownership, for so long as, and to the extent such persons or entities own any interest in the Hotel Property, the Right-of-Way Property and the Urban Park Property, as applicable.

8. Utility Relocation. The relocation of any utilities necessitated by the construction of the Porte-Cochere and Grease Trap shall be at the sole cost and expense of the Hotel Owner.

9. Indemnity. The Hotel Owner agrees to indemnify and hold harmless the Right-of-Way Owner and the Urban Park Owner from any and all claims resulting from the Hotel Owner's use and occupancy of the Porte-Cochere and Grease Trap and the easements granted in this Declaration, including but not limited to collapse or failure of the Porte-Cochere or Grease Trap, increased cost that may arise from the necessity of construction or repair of public facilities that is caused by the presence of the Porte-Cochere or Grease Trap, and the cost of repair or replacement of the Porte-Cochere or Grease Trap.

10. Annulment. In the event that the City does not acquire the Urban Park Property per the provisions of the Development Agreement, the easements granted in this Declaration are null and void.

11. Governing Law. This Declaration shall be governed by the laws of the State of Kansas.

12. Enforceability. The unenforceability of any provision of this Declaration shall not render the remaining provisions hereof unenforceable or void.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Hotel Owner, Right-of-Way Owner and Urban Park Owner have executed and delivered this Declaration as of the day and year first above written.

CCC INVESTMENTS, LLC (Hotel Owner)

BY: _____
David C. Burk

CITY OF WICHITA, STATE OF KANSAS (Right-of-Way Owner and Urban Park Owner)

BY: _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk (Corporate Seal)

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, Mayor of the City of Wichita, Kansas, and _____, City Clerk of such City, who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same, by and for, and as the free act and deed of such City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Notary Public

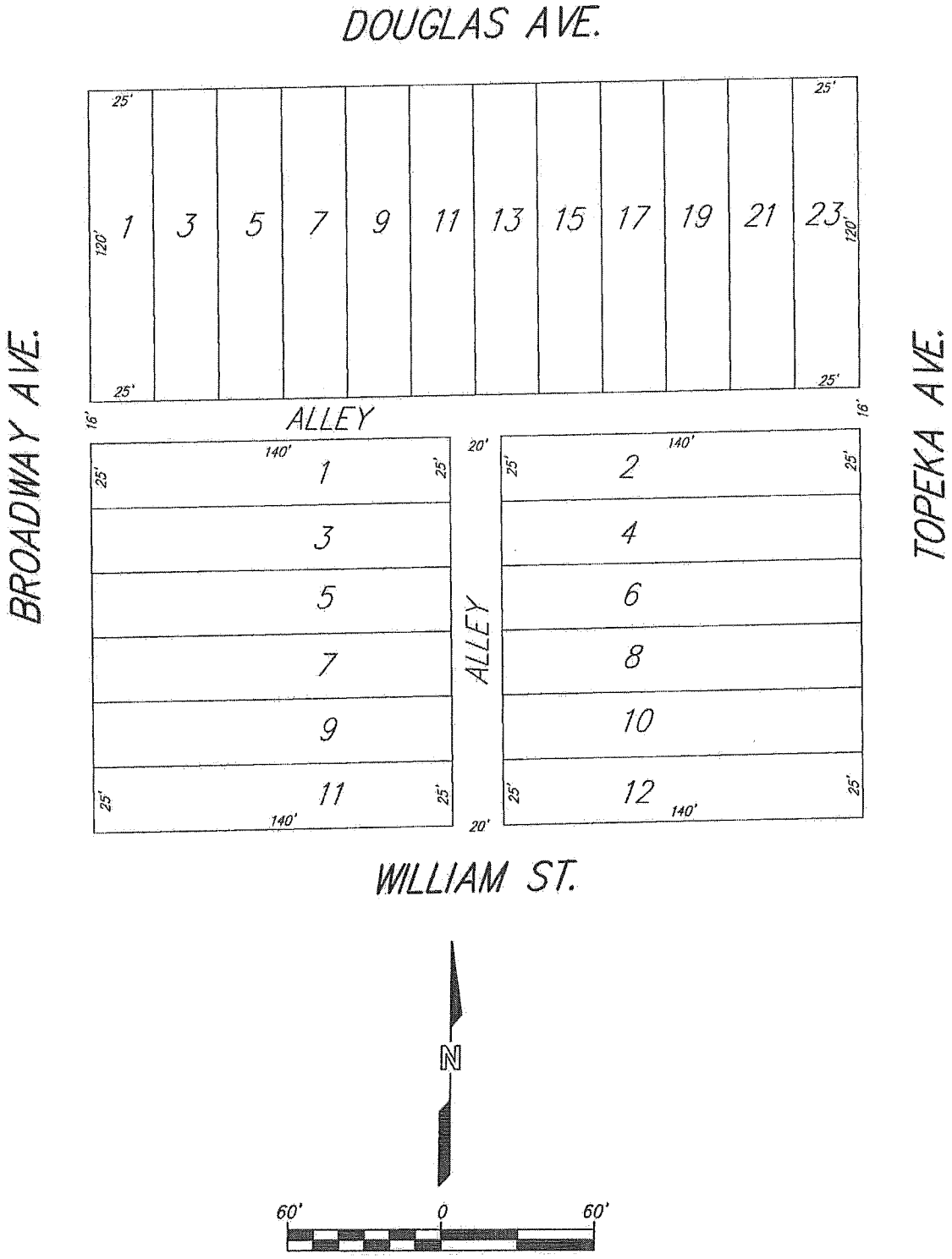
_____

My Appointment Expires:

EXHIBIT A

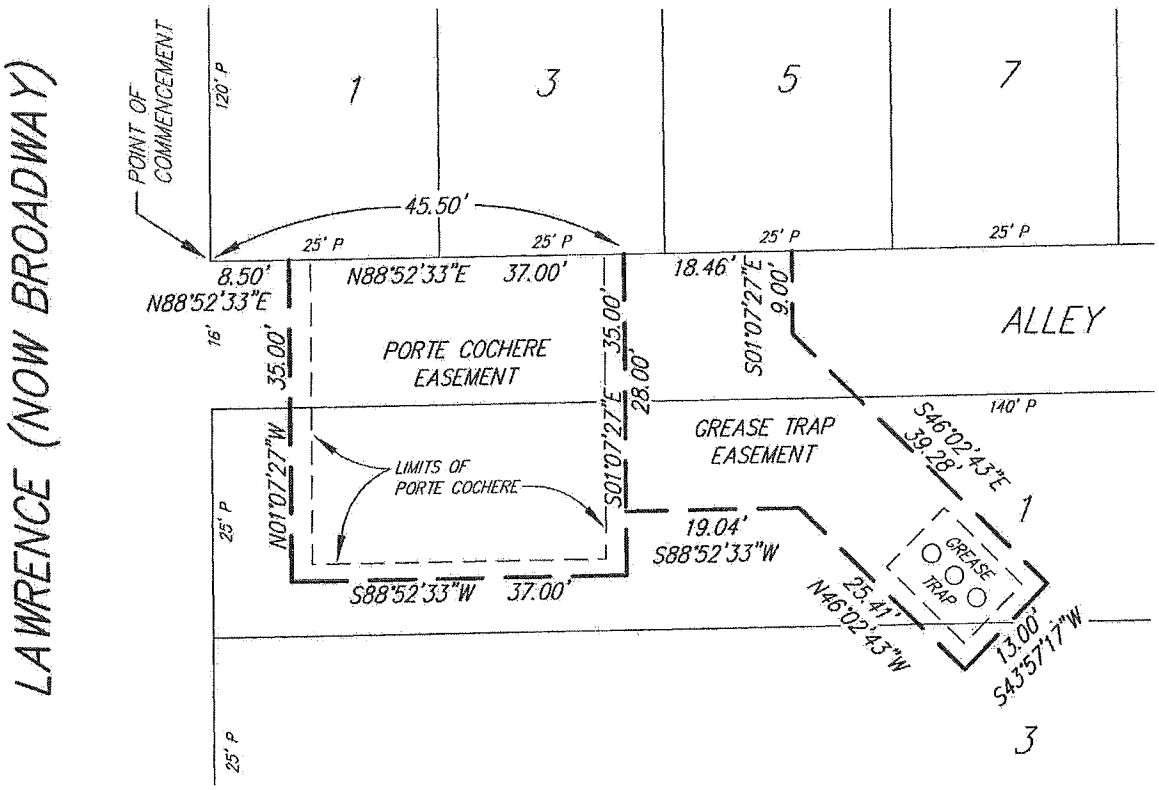
Lots 1, 3 and 5 on Douglas Ave., N.A. English's Addition to the City of Wichita (Sedgwick County), Kansas.

EXHIBIT B



DWG FILE: EXHIBIT B
PROJECT NO. 3839E

EXHIBIT C

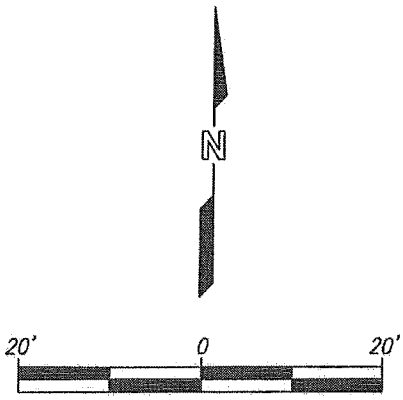


PORTE COCHERE EASEMENT

That part of Lot 1 on Lawrence Ave. and the east-west alley located between Douglas Ave. and William St. and between Lawrence Ave. and Topeka Ave. as platted in N.A. English's Addition to the City of Wichita (Sedgwick County), Kansas; described as commencing at the southwest corner of Lot 1 on Douglas Ave. in said addition; thence N88°52'33"E along the south line of said Lot 1, 8.50 feet to the place of beginning; thence continuing N88°52'33"E along the south line of said Lot 1 and the south line of Lot 3 on Douglas Ave., 37.00 feet; thence S01°07'27"E, perpendicular to said south line, 35.00 feet; thence S88°52'33"W, parallel with said south line, 37.00 feet; thence N01°07'27"W, perpendicular to said south line, 35.00 feet to the place of beginning.

GREASE TRAP EASEMENT

That part of Lots 1 and 3 on Lawrence Ave. and the east-west alley located between Douglas Ave. and William St. and between Lawrence Ave. and Topeka Ave. as platted in N.A. English's Addition to the City of Wichita (Sedgwick County), Kansas; described as commencing at the southwest corner of Lot 1 on Douglas Ave. in said addition; thence N88°52'33"E along the south line of said Lot 1 and the south line of Lot 3 on Douglas Ave. in said addition, 45.50 feet to the place of beginning; thence continuing N88°52'33"E along the south line of said Lot 3 and the south line of Lot 5 on Douglas Ave. in said addition, 18.46 feet; thence S01°07'27"E, perpendicular to said south line, 9.00 feet; thence S46°02'43"E, 39.28 feet; thence S43°57'17"W, 13.00 feet; thence N46°02'43"W, 25.41 feet; thence S88°52'33"W, parallel with said south line, 19.04 feet; thence N01°07'27"W, perpendicular to said south line, 28.00 feet to the place of beginning.

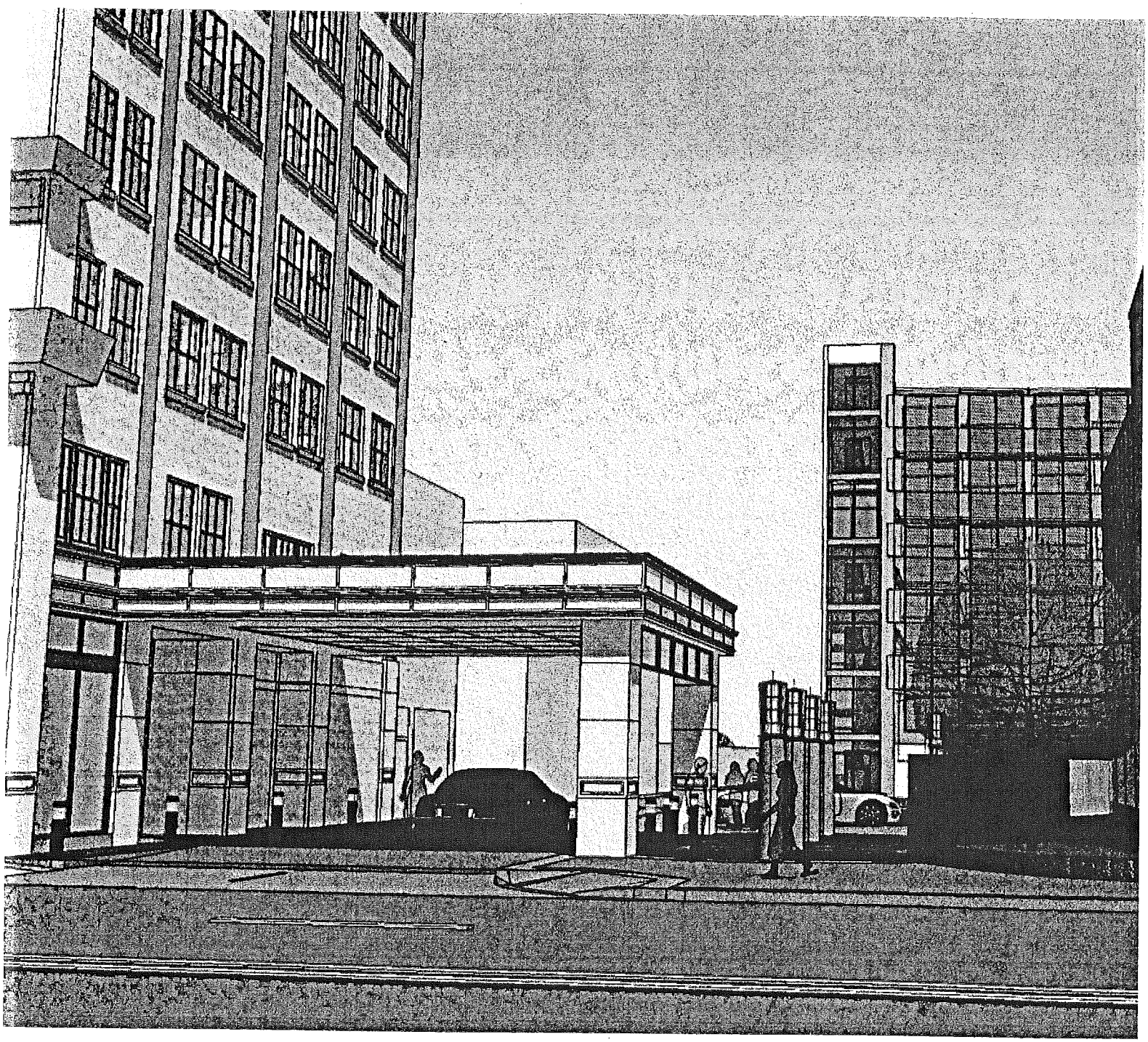


WILLIAM K. CLEVENGER
LICENSED
LS-1437
10/20/11
KANSAS
LAND SURVEYOR

DWG FILE: EXHIBIT C
PROJECT NO. 3839E

EXHIBIT D

[Depiction of Porte-Cochere]



Second Reading Ordinances for November 1, 2011 (first read on October 25, 2011)

ZON2011-00025 – City Zone Change from SF-5 Single-Family Residential ("SF-5") to TF-3 Two-Family Residential ("TF-3"), generally located east of Bebe Street and north of North 2nd Street West (316 N. Bebe). (District IV)

ORDINANCE NO. 49-148

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

Second Reading Ordinances for November 1, 2011 (first read October 18, 2011)

Public Hearing on Proposed Assessments for fourteen (14) Paving Projects ; ten (10) Water Projects; nine (9) Sewer Projects, and six (6) Storm Sewer Projects in the February Bond Sale Series 808. (Districts; II, III, IV, V, VI)

(490-247/472-84613)

ORDINANCE NO. 49-113

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving Mainsgate, Chelmsford, Chelmsford Courts, & Flutter Circle, (North of 21st, West of 159th Street East)

(490-228/472-84637)

ORDINANCE NO. 49-114

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving Bristol Circle, (East of Greenwich, South of Kellogg)

(490-216/472-84646)

ORDINANCE NO. 49-115

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving Pueblo, Mariposa, & Sierra, (South of Kellogg, East of Ridge)

(490-234/472-84718)

ORDINANCE NO. 49-116

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving New Jersey Drive, Valley Forge Road, & Brandywine Road, (East of Oliver, North of 31st Street South)

(490-252/472-84777)

ORDINANCE NO. 49-117

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving Elm, (North of Central, West of West Street)
(490-251/472-84778)

ORDINANCE NO. 49-118

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving Elm, (North of Central, West of West Street)

(490-254/472-84783)

ORDINANCE NO. 49-119

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving New Jersey, & Bunker Hill Drive, (North of 31st Street South, East of Oliver)

(490-264/472-84797)

ORDINANCE NO. 49-120

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving Shadybrook, (South of 21st, West of 127th Street East)

(490-258/472-84816)

ORDINANCE NO. 49-121

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving Franklin Street, (North of Central , West of I-235)

(490-271/472-84871)

ORDINANCE NO. 49-122

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving Sycamore Circle, (North of 55th Street South, East of Seneca)

(490-266/472-84874)

ORDINANCE NO. 49-123

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving Michelle, Casa Bella, Tara Falls, & Michelle Circle, (North of Pawnee, West of 127th Street East)

(490-268/472-84885)

ORDINANCE NO. 49-124

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of improving Toben Street, (West of Webb, South of 37th Street North)

(470-122/448-90241)

ORDINANCE NO. 49-125

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90241, TO SERVE SILVERTON ADDITION, (North of 13th St. North, West of 135th St. West)**.**

(470-119/448-90418)

ORDINANCE NO. 49-126

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90418, TO SERVE STONEBRIDGE COMMERCIAL ADDITION, (South of 37th St. North, East of Maize)**.**

(470-114/448-90423)

ORDINANCE NO. 49-127

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90423, TO SERVE SUMMITT CROSSING ADDITION, (South of 21st, West of 127th East)**.**

(470-121/448-90458)

ORDINANCE NO. 49-128

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90458, TO SERVE CORNFIELD ADDITION, (North of 55th St. South, East of Seneca)**.**

(470-116/448-90470)

ORDINANCE NO. 49-129

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90470, TO SERVE FIREPOINT ADDITION, (West of Webb, South of 37th St. North)**.**

(470-117/448-90471)

ORDINANCE NO. 49-130

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90471, TO SERVE ANGEL FIRE ADDITION, (North of 47th St. South, East of West Street)**.**

(470-123/448-90482)

ORDINANCE NO. 49-131

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90482, TO SERVE DAVIS GARDENS ADDITION, (Along Elm, West of Sheridan)**.**

(470-125/448-90490)

ORDINANCE NO. 49-132

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90490, TO SERVE IDEAL ACRES & GOW ACRES ADDITIONS, (South of 13th, East of Zoo Blvd.)**.**

(470-127/448-90497)

ORDINANCE NO. 49-133

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90497, TO SERVE PARKWILDE ADDITION, (South of St Louis, East of Young)**.**

(480-896/468-84227)

ORDINANCE NO. 49-134

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of MAIN 6, COWSKIN INTERCEPTOR FORCE MAIN SEWER TO SERVE SOUTHWEST PASSAGE & RED ROCK VILLAGE ADDITION, (South of Pawnee, West of 119th St. West)**.**

(480-924/468-84351)

ORDINANCE NO. 49-135

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of LATERAL 23, MAIN 13, SOUTHWEST INTERCEPTOR SEWER TO SERVE RESTHAVEN GARDENS OF MEMORY & UNPLATTED TRACTS, (At Kellogg, East of 119th St. West)**.**

(480-984/468-84551)

ORDINANCE NO. 49-136

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of LATERAL 415, FOUR MILE CREEK SEWER TO SERVE BELLECHASE SECOND ADDITION, (East of 127th St. East, North of Harry)**.**

(480-005/468-84571)

ORDINANCE NO. 49-137

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of LATERAL 1, MAIN 6A, NORTHWEST INTERCEPTOR SEWER TO SERVE STONEBRIDGE COMMERCIAL ADDITION, (South of 37th St. North, East of Maize)**.**

(480-002/468-84579)

ORDINANCE NO. 49-138

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of LATERAL 6, MAIN 10, FOUR MILE CREEK TO SERVE SUMMITT CROSSING ADDITION, (South of 21st, West of 127th St. East)**.**

(480-998/468-84584)

ORDINANCE NO. 49-139

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of LATERAL 16, MAIN 7, NORTHWEST INTERCEPTOR SEWER TO SERVE FONTANA 4TH ADDITION, (North of 29th St. North, East of 119th St West)**.**

(480-994/468-84598)

ORDINANCE NO. 49-140

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of LATERAL 153, MAIN 4, SANITARY SEWER NO. 23 TO SERVE WALNUT GROVE & BARBEE SUBDIVISION ADDITIONS, (North of 33rd St. North, West of Jeanette)**.**

(480-996/468-84613)

ORDINANCE NO. 49-141

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of LATERAL 154, MAIN 4, SANITARY SEWER #23 TO SERVE WALNUT GROVE ADDITION, (South of 35th St. North, East of Seneca)**.**

(485365/468-84463)

ORDINANCE NO. 49-142

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of SWD No. 343, Cedar View Village Addition, (East of Greenwich, South of Kellogg)**.**

(485364/468-84464)

ORDINANCE NO. 49-143

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of SWS No. 640, Cedar View Village Addition, (East of Greenwich, South of Kellogg)**.**

(485371/468-84552)

ORDINANCE NO. 49-144

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of SWD No. 351, Belle Chase 2nd Addition, (East of 127th Street East, North of Harry)**.**

(485378/468-84580)

ORDINANCE NO. 49-145

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of SWD No. 355, Summit Crossing Addition, (South of 21st, West of 127th Street East)**.**

(485381/468-84681)

ORDINANCE NO. 49-146

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of SWD No. 368, Silverton Addition, (North of 13th, West of 135th Street West)**.**

(485382/468-84682)

ORDINANCE NO. 49-147

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of SWS No. 658, Waterfront Residential Addition, (North of 13th, East of Webb)**.**

City of Wichita
City Council Meeting
November 1, 2011

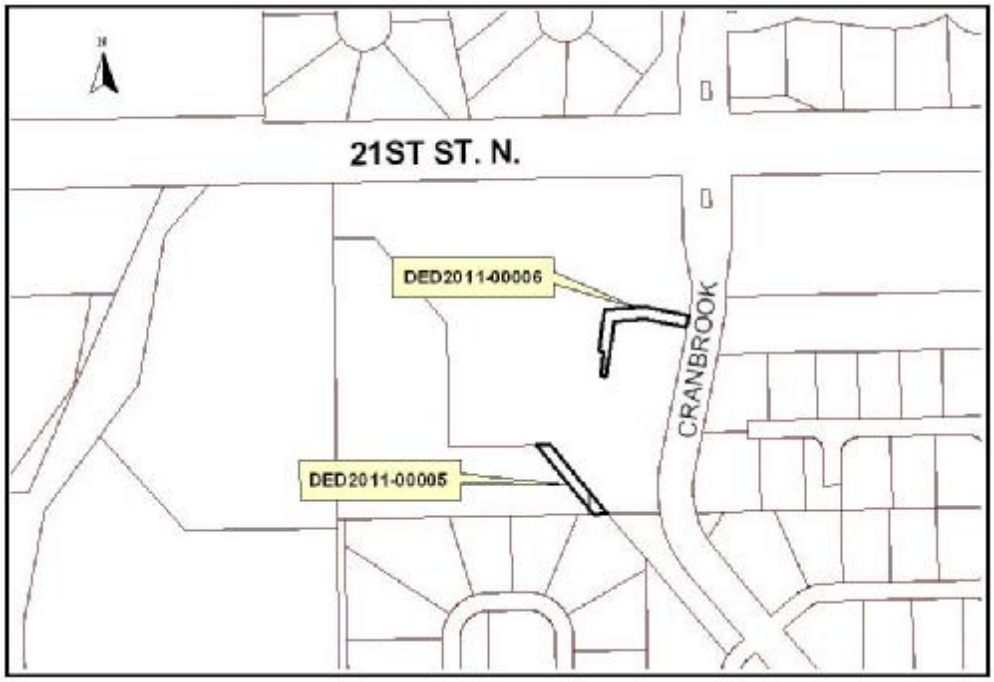
TO: Mayor and City Council

SUBJECT: DED2011-00005 Sewer Easement Dedication and DED2011-00006 Utility Easement Dedication located on the south side of 21st Street North, east of Webb Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Accept the Dedications.



Background: The Dedications are associated with Lot Split Case No. SUB2011-00044 (Remington Place Addition) and were requested by City of Wichita Public Works and Utilities Department.

Analysis: The Dedication DED2011-00005 is for construction, operation, maintenance and repair of sanitary sewer. The Dedication DED2011-00006 is for construction, maintenance and repair of public utilities.

Financial Considerations: There are no financial considerations associated with the dedications.

Goal Impact: Approval of the dedications will ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The Dedications have been approved as to form by the Law Department and will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedications.

Attachment: Sewer Easement Dedication
Utility Easement Dedication

SANITARY SEWER EASEMENT

THIS EASEMENT made this 21st day of SEPTEMBER, 2011, by and between 21st and Cranbrook, LLC of the first part and the City of Wichita of the second part.

WITNESSETH: That the said first party, in consideration of the sum of One Dollar ($1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the said second party a perpetual right-of-way and easement for the purpose of construction, maintaining, and repairing sanitary sewer over, along, and under the following described real estate situated in Sedgwick County, Kansas; to wit:

See attached Exhibit A to wit:

And said second party is hereby granted the right to enter upon said premises at any time for the purpose of construction, operating, maintaining, and repairing such sewer and all other public utilities.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first written.

21st and Cranbrook, LLC

APPROVED AS TO FORM:

Clifford Nies

Clifford Nies, Managing Member

Gary E. Rebenstorf,
Director of Law

State of Kansas)
) SS
Sedgwick County)

The foregoing instrument was acknowledged before me this 21st day of Sept.,

2011 Clifford Nies, Managing Member of 21st and Cranbrook, LLC.

_____, Notary Public
(signature of notary officer)

CYNTHIA N. MILES
NOTARY PUBLIC
My Appt. Exp. 9-3-13
STATE OF KANSAS

DEO 2011-05
(4/5 of SUB 2011-44)

My appointment expires: 9-3, 2013.

Ruggles & Bohm P.A.
Engineering, Surveying, Land Planning

924 North Main
Wichita, Kansas 67203

(316) 264-8008
fax (316) 264-4621

www.rbkansas.com
info@rbkansas.com

SANITARY SEWER EASEMENT EXHIBIT A

That part of Lot 1, Block 1 and Reserve "N", Remington Place, an Addition to Wichita, Sedgwick County, Kansas, described as commencing at the southeast corner of said Lot 1; thence S88°49'59"W along the south line of said Lot 1, 91.72 feet to the west line of the 40' Cooperative Refinery Association Easement recorded at Misc. Book 500, Page 470 and Book 239, Page 589; thence continuing S88°49'59"W along said south line, 25.83 feet; thence N40°26'10"W, parallel with said west line, 161.45 feet a point on the easterly most north line of said Reserve "N"; thence N88°49'59"E along said north line, 25.83 feet to said west line; thence S40°26'10"E along said west line, 161.45 feet to the place of beginning.

WILLIAM K. CLEVENGER
LICENSED
LS-1437
10/5/11
KANSAS
LAND SURVEYOR

UTILITY EASEMENT

THIS EASEMENT made this 5 day of October, 2011, by and between 21st and Cranbrook, LLC of the first part and the City of Wichita of the second part:

WITNESSETH: That the said first party, in consideration of the sum of One Dollar ($1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the said second party a perpetual right-of-way and easement for the purpose of construction, maintaining, and repairing public utilities over and under the following described real estate situated in Sedgwick County, Kansas; to wit:

See attached Exhibit A to wit:

And said second party is hereby granted the right to enter upon said premises at any time for the purpose of construction, operating, maintaining, and repairing such sewer and all other public utilities.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first written.

21st and Cranbrook, LLC

Clifford Nies

Clifford Nies, Managing Member

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

State of Kansas)
) SS
Sedgwick County)

The foregoing instrument was acknowledged before me this 5th day of Oct.,

2011 Clifford Nies, Managing Member of 21st and Cranbrook, LLC.

Cynthia N. Miles, Notary Public
(signature of notary officer)

My appointment expires: 9-3, 2013.

CYNTHIA N. MILES
NOTARY PUBLIC
My Appt. Exp. 9-3-13
STATE OF KANSAS

DED 2011-06
(1/3 # SUB 2011-41)

Ruggles & Bohm P.A.
Engineering, Surveying, Land Planning

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UTILITY EASEMENT EXHIBIT A

That part of Lot 1, Block 1, Remington Place, an Addition to Wichita, Sedgwick County, Kansas, described as beginning at the southerly point of curve of the northerly curve on the east line of said Lot 1; thence S11°07'33"W along said east line, 20.01 feet; thence N80°14'41"W, 75.72 feet; thence S88°49'59"W, parallel with the north line of said Lot 1, 55.26 feet; thence S08°54'36"W, 100.00 feet; thence N81°05'24"W, 10.00 feet; thence N08°54'36"E, 44.41 feet; thence S88°49'59"W, parallel with said north line, 10.16 feet; thence N08°54'36"E, 74.13 feet; thence N88°49'59"E, parallel with said north line, 73.93 feet; thence S80°14'41"E, 78.11 feet to the place of beginning.

WILLIAM K. CLEVENGER
LICENSED
LS-1437
10/5/11
KANSAS
LAND SURVEYOR

City of Wichita
City Council Meeting
November 1, 2011

TO: Wichita Airport Authority

SUBJECT: 1995 Midfield Road Facility Improvements
Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Initiate the project and approve the budget.

Background: The facility at 1995 Midfield Road was constructed in 1982 and is in need of renovating and updating. The property is owned by the Wichita Airport Authority (WAA) which has contractual responsibility to maintain and update this property. The lease with AOPA Insurance Agency was approved by the WAA on September 13, 2011, and it incorporates a rental rate that recovers the capital maintenance expenditures. This project is included in the Capital Improvement Program for 2011.

Analysis: Improvements will include replacement of wall and floor coverings, remodel of the kitchen/break room area, component replacement in the HVAC system and extension of the WAA's energy management system to this facility. Individual elements will be purchased under the appropriate procurement guidelines.

Financial Considerations: The requested budget is $160,000. The project will be funded with Airport revenue, either directly or through the repayment of General Obligation bonds.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through accommodating tenants and making improvements which will enhance facilities.

Legal Considerations: The proposed action is within the statutory powers of the Wichita Airport Authority. The Law Department has approved the resolution to be used for the funding authorization.

Recommendations/Actions: It is recommended that the Wichita Airport Authority initiate the project and approve the budget.

Attachments: None.