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REVISION:
ADDITION OF ITEM II-26 & 27

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. July 10, 2012

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 July 3, 2012

AWARDS AND PROCLAMATIONS

-- Awards:

Community Reading Initiative
WFD Citizens Academy Graduate Certificates

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 27)

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

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

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

1. Wichita Wellness Rewards Incentive Program.
(Deferred July 3, 2012)

RECOMMENDED ACTION: Approve the Wichita Wellness Rewards incentive program.

IV. NEW COUNCIL BUSINESS

1. Appointment of Commission of Electors to Recommend Revised City Council District Boundaries.

RECOMMENDED ACTION: Appoint the Commission of Electors.

2. Amendments to Chapter 9.12 of the City Code relating to Century II Performing Arts & Convention Center, Resolution for Facility Rental Rates for Century II Performing Arts & Convention Center, and Revised Memorandums of Understanding between the City and Tenants of Century II (Wichita Symphony Society, Music Theatre of Wichita and Wichita Grand Opera).

RECOMMENDED ACTION: Place the ordinance on first reading and approve the ordinance, approve the resolution for the facility rental rates, and approve the three presented Memorandum of Understanding.

3. Unlawful Use of Weapons.

RECOMMENDED ACTION: Place the ordinance on first reading and authorize the necessary signatures.

4. 2011 Update – Task Force on Ending Chronic Homelessness.

RECOMMENDED ACTION: Receive and file the report.

(9:30 a.m. or soon thereafter)

5. Repair or Removal of Dangerous and Unsafe Structures. (Districts I, IV and VI)

Property Address	Council District
a. 2703 East 13th North	I
b. 724 West Dayton	IV
c. 1821 North Broadway	VI

RECOMMENDED ACTION: Close the public hearing, adopt the resolutions declaring the building a dangerous and unsafe structure, and accept the BCSA recommended action to proceed with condemnation allowing 10 days to start demolition and 10 days to complete removal of the structures. Any extensions of time granted to repair the structure would be contingent on the following: (1) All taxes have been paid to date as of July 10, 2012; (2) the structure has been secured as of July 10, 2012, and will continue to be kept secured; and (3) the premises are mowed and free of debris as of July 10, 2012, and will be so maintained during renovation.

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

6. General Obligation Bond and Note Sale.

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

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

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

V. NON-CONSENT PLANNING AGENDA

None

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 27)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated July 9, 2012.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2012	(Consumption on Premises)
Mary Gerges	Shesha Coffee Shop, LLC**	2628 East 21 Street North

Renewal	2012	(Consumption off Premises)
Thanh Kim Do	KC Gas and Groceries***	1102 West Maple
Jeff Parker	Kwik Shop #716***	2424 West 37th Street North
Jeff Parker	Kwik Shop #722***	3959 South Hydraulic
Jeff Parker	Kwik Shop #727***	7107 West 37th Street North
Jeff Parker	Kwik Shop #731***	710West 29th Street North
Jeff Parker	Kwik Shop #748***	2809 East Douglas
Jeff Parker	Kwik Shop #754***	4811 South Seneca
Jeff Parker	Kwik Shop #772***	2750 South Oliver Street
Harinder Pal Sira	Flying Eagle 1***	277 South Ridge Road

   *Consumption/Tavern less than 50% of gross revenues from sale of food.
   **General/Restaurant 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.

3. Preliminary Estimates:
   a. Preliminary Estimates.

   RECOMMENDED ACTION: Receive and file.

4. Deeds and Easements:
   a. Deeds and Easements.

   RECOMMENDED ACTION: Accept documents.

5. Statement of Costs:
   a. Statement of Costs.

   RECOMMENDED ACTION: Approve and file.

6. Consideration of Street Closures/Uses.
   a. Community Events - Bikers for the Homeless. (District I)
   b. Community Events - Glow Run Wichita. (District IV)
   c. Community Events - Tour de Hangar. (District V)

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.

7. Agreements/Contracts:
   a. Controlled Substance and Alcohol Testing Program Third-Party Administrator.
   b. Industrial Pretreatment Wastewater Sampling.

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

8. Design Services Agreement:
   a. Supplemental Design Agreement No. 1 for Water Main Replacement Project in Schrader neighborhood. (District I)

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

9. Property Acquisition:
   a. Partial Acquisition of 13314 West Central for the Central: 119th to 135th Street Road Improvement Project. (District V)

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

10. Repair or Removal of Dangerous and Unsafe Structures. (District II)

Property Address	Council District
a. 8000 East Tipperary	II

RECOMMENDED ACTION: Adopt the attached resolutions to schedule public hearings before the City Council on August 21, 2012 at 09:30 a.m. or as soon as possible thereafter, to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes and local ordinances.

11. Contracts and Agreements for June 2012.

RECOMMENDED ACTION: Receive and file.

12. Sale of City Properties at 1405, 1457, 1503 and 1515 South 119th. (District V)

RECOMMENDED ACTION: Approve the Real Estate Purchase Agreement and authorize all necessary signatures.

13. Appointment of Robert Hamilton as the Wichita/Sedgwick County Access Advisory Board representative to the Transit Advisory Board.

    RECOMMENDED ACTION: Approve the WSCAAB's appointment of Robert Hamilton to the TAB.

14. Resolution Authorizing Section 5316 Access to Jobs Grant.

    RECOMMENDED ACTION: Approve the resolution and authorize the necessary signatures

15. Resolution Authorizing Application for Congestion Mitigation and Air Quality (CMAQ) Compressed Natural Gas (CNG) Design.

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

16. Pass-Through Agreement with LaFamilia Senior/Community Center.

    RECOMMENDED ACTION: Approve the pass-through agreement.

17. Leasing of Site for an Outdoor Advertising Sign at 1005 East 1st Street. (District I)

    RECOMMENDED ACTION: Approve the lease agreement; approve the budget; and authorize all necessary signatures.

18. Transcription Service from Net Transcripts, Inc.

    RECOMMENDED ACTION: Approve the contract for Net Transcripts, Inc. and authorize the necessary signatures.

19. Drug Enforcement Agency - 2012 High Intensity Drug Trafficking Area Task Force (HIDTA).

    RECOMMENDED ACTION: Approve the Memorandum of Understanding.

20. Second Reading Ordinances: (First Read July 3, 2012)
    a. Second Reading Ordinances (First read July 3, 2012)

    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.

21. *ZON2012-00016 – Zone change request from SF-5 Single-family Residential ("SF-5") and B Multi-family Residential ("B") to LC Limited Commercial ("LC") on property located on the east side of North West Street, 350 feet south of West St. Louis Avenue, south of Central Avenue, 438 and 442 North West Street. (District VI)

    RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the zone change to the LC Limited Commercial district, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority vote required).

22. *VAC2012-00016 - Request to vacate a portion of platted complete access control; generally located east of Woodlawn Boulevard, on the northwest corner of 32nd Street North and Goveneour Circle. (District I)

    RECOMMENDED ACTION: Approve the document and Vacation Order, and authorize the necessary signatures.

23. *SUB2009-00068 -- Plat of Dan Schmidt Addition located on the west side of Hydraulic, ¼ mile north of 55th Street South. (District III)

    RECOMMENDED ACTION: Approve the documents and plat and authorize the necessary signatures.

24. *SUB2012-00002 -- Plat of Mel Hambelton 2nd Addition located ¼ mile east of 119th Street West, on the south side of Kellogg. (District IV)

    RECOMMENDED ACTION: Approve the documents and plat and authorize the necessary signatures.

25. *SUB2012-00009 -- Plat of Bruce Harris Addition located on the east side of West Street, ½ mile south of Central (District VI)

    RECOMMENDED ACTION: Approve the plat, authorize the necessary signatures and place the Ordinance on first reading.

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.

26. *Airport Board of Bids dated July 3, 2012.

RECOMMENDED ACTION: Receive and file.

27. *Airport Board of Bids dated July 9, 2012.

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

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Wichita Wellness Rewards Incentive Program

INITIATED BY: Department of Finance

AGENDA: Unfinished Business

Recommendation: Approve the Wichita Wellness Rewards incentive program.

Background: The City of Wichita first initiated a wellness program in 2007 with Wellness Coaches USA. The program consisted of two full-time wellness coaches who administered health risk assessments, individual health consultations, limited biometric testing and health related seminars to employees on an individual basis. The program was reviewed and it was determined that many employees were not engaging with the wellness coaches. Participation was voluntary and the program was passively marketed. Additionally, claims data indicated that incidence of key disease states was increasing. The Health Insurance Advisory Committee determined a new approach to employee wellness was needed.

In 2011, the City redeployed resources to develop its own wellness program, drawing on the talents of employee representatives from various departments, including union representatives. The program's focus strategically addresses four major controllable health issues facing the employee population: diabetes, asthma, depression and high cholesterol. It encourages employee ownership of health care by requiring employees to have an annual physical, participate in a personal Health Risk Assessment (HRA), and confer with their physician about the results of a biometric screening. Employees are incentivized to actively engage in activities that promote health and wellness and, through the direction of the physician, address health issues *before* they become chronic and costly.

On July 3, 2012, the City Council received a presentation on the Wichita Wellness Rewards program. The City Council action was to defer this item one week to allow more time for more information about the merits of this program and to compare it with alternatives offered from other community wellness providers.

Analysis: The Wichita Wellness Program is modeled after "The 7 C's of a Successful Wellness Program guideline produced by the Wellness Councils of America and emulates many of the successful programs described on Attachment 3. The 7 C's are: 1) Capture CEO support; 2) Create a cohesive Wellness Team; 3) Collect data to drive a successful Wellness Program; 4) Craft an operating plan; 5) Choose [or strategically aim] appropriate interventions; 6) Create a supportive environment; and 7) Carefully evaluate outcomes. Many of these C's can be summed up in "Create a Wellness Culture."

The Wichita Wellness Rewards incentive is employee driven. Its goal is to initiate a culture of wellness within the City organization. It is based upon actions the employee must take to earn a financial reward. Research on best practices from both the private and public sector indicates that employees must be actively engaged and take personal responsibility for improved health and wellness. The research indicates that incentive programs are the best practice for obtaining employee commitment to wellness.

Organizations such as the USD 259, the City of Derby, IMA, Cessna Aircraft, Intrust Bank and many others have all initiated wellness programs based on a reward system that requires health assessments, biometric screenings, physician visits, and individual activities to improve health and well being. An attached chart shows best practices and related outcomes from these organizations. The research also

indicates that health care costs may not decline immediately as employees initially address health issues discovered during their physician visit. It may take two to three years before costs stabilize and/or decline.

The key components of the Wichita Wellness Rewards program are:

- Employee driven
    - Supported by Health Insurance Advisory Committee
    - Supported by Wellness Committee
    - Supported by individual union members
- Physician/employee connection
    - Initiates a mandatory annual check-up
    - Requires HRA and biometric data review with physician
- Data Driven
    - Compiles HRA data annually to assess employee health
    - Reviews claims data to determine high risk disease states
    - Measures outcomes such as employee sick leave and Family Medical Leave usage
- Employee choice
    - Rewards employees for utilizing any health/wellness facility
    - Rewards employees for keeping medical conditions in an accepted range
    - Rewards employees for individual wellness activities
    - Rewards employees for preventative testing

Financial Considerations: Annually, the City's contracted benefit consultant and its actuary make recommendations to determine the working rates needed to pay the following year's medical and prescription costs. Of those rates charged to the City and its employees, $9.70 per member is set aside for wellness costs. As of February 2012, the City's 2,934 health insurance enrollees are estimated to generate $341,517 paid as part of their annual premiums earmarked for wellness services. It is part of these wellness fees that will pay for the incentive program. In its initial stage, employee participation in the Wichita Wellness Rewards program is considered at an excellent level if it reaches 40%. Attachment #1 illustrates a total cost of $270,560 if a level of 40% participation is attained during the first year. Over time, and as participation in the incentive program increases, the offset savings in claims paid will fund the increased participation cost.

Goal Impact: The Wellness Program is part of the Internal Perspective goal. The Wellness Program is a part of the City's strategic health care plan to reduce costs and improve the health of all City employees. It is designed to avoid costs by lowering future health care premiums, increase employee satisfaction and increase employee's knowledge, skills and abilities.

Legal Considerations: The Law Department has reviewed and approved the incentive program as to form.

Recommendation: Approve the Wichita Wellness Rewards incentive program.

Attachments: Wichita Wellness Cost Illustrations
Wichita Wellness Rewards
Wellness Programs Best Practices

Wichita Wellness Rewards - Cost Illustration

Attachment #1

(Premiums are based on 2012 rates.)

(Enrollment as of 02/29/2012)

Plan (Active Employees)	Enrollment Split	Lump-Sum Reward	100%	60%	50%	40%
Premium Employee	708	$ 200.00	$ 141,600.00	$ 84,960.00	$ 70,800.00	$ 56,640.00
Premium Family	1674	$ 300.00	$ 502,200.00	$ 301,320.00	$ 251,100.00	$ 200,880.00
Select Employee	86	$ 100.00	$ 8,600.00	$ 5,160.00	$ 4,300.00	$ 3,440.00
Select Family	120	$ 200.00	$ 24,000.00	$ 14,400.00	$ 12,000.00	$ 9,600.00
			$ 676,400.00	**$ 405,840.00**	**$ 338,200.00**	**$ 270,560.00**

Total Premium Contributions to Wellness:

$9.70 PEPM x 2934 (Active, Retirees, Cobra) x 12 months = $341,517.60

Employee Premium Cost Per Month:	
Premium Employee	$ 95.32
Premium Family	$ 285.24
Select Employee	$ 29.86
Select Family	$ 88.82

Total Premium Cost Per Month:	
Premium Employee	$ 476.56
Premium Family	$ 1,426.11
Select Employee	$ 392.87
Select Family	$ 1,175.01

Attachment #2

Wichita Wellness Rewards

Mandatory Elements	
Completion of the City's Medical Services Administrator's Health Risk Assessment	**REQUIRED**
Documented Annual Physical Checkup with a Primary Care Physician, including Biometric Screening	**REQUIRED**
Optional Elements Confirmed During Annual Physical	
Blood Pressure within a medically accepted range (with or without medication)	100 pts
Cholesterol within a medically accepted range (with or without medication)	100 pts
Glucose & Triglycerides within a medically accepted range (with or without medication)	100 pts
BMI within a medically accepted range	100 pts
Optional Activities Verified Proof Must be Provided	
Completion of a Tobacco Cessation Course	100 pts
Participation in a Weight Loss Program for a minimum of 3 months	100 pts
Verified Weight Loss of 5% Total Body Weight or More	100 pts
Verified Gym Activities Averaged Annually at 3X per Week	100 pts
City-Sanctioned Community Wellness Activities	25 pts per activity
On-line Completion of the Designated HRA	75 pts
Mammogram or PSA Exam	75 pts
Colonoscopy	100 pts
Dental Cleaning	75 pts
Total Score Must Equal 500 Points to Receive a Premium Discount	

Proof of Mandatory Elements will be the receipt of the "Physician Affidavit" form by the Human Resources Department

Employees may combine any of the "Optional" elements and/or activities to reach 500 points

Required proof for participation in Optional Activities may include:

- *Copies of registration forms for activities*
- *Sign-in sheets from City University*
- *Statements from Providers*
- *Copies of Gym sign-in reports*
- *Explanation of Benefits Documents (EOB)*

Attachment 3

Wellness Programs – Best Practices

Organization	Key components of Wellness Program	Wellness Program Outcomes
Lincoln Industries (nationally recognized leader in employee wellness)	• Wellness fully integrated into company culture • Leadership commitment • Insurance premium discounts tied to meeting wellness objectives • Required biometric testing • Required Health Risk Assessment • 100% of employees have wellness objectives – tied to merit increases • On site health clinic • On site fitness program	• Health care cost per person below regional norm • Well being index above national and state levels • Significant cost avoidance from successful targeting of conditions such as tobacco use, absenteeism, and injury leave • ROI is estimated at $5 to $1
City of Derby (program in place since 2009)	• Driven by Employee Wellness Committee, based on incentives and rewards • Insurance premiums discounts based on participation in a wellness point system • Incentive rewards for Health Risk Assessments • Incentive rewards for biometric screening • Provides information on healthy lifestyle choices • Incentivizes participation in organized physical and social wellbeing activities • Offers discounted gym memberships	• Reduced health care costs (0% increase in health insurance costs in 2012) • Outcomes include lower cholesterol, blood pressure, and weight for many employees
Intrust Bank	• Executive support for a culture of wellness – agenda item for employee meetings • Initiated a smoke free campus • Developed a point system for wellness program • Health premiums structured to incent employees to be tobacco free • Rewards for Health Risk Assessments • 100% of preventative and diabetes care is covered	• Increased participation in Health Risk Assessment
Cessna	• Fully integrated corporate wellness program started in 2007 for salary employees and 2011 for their bargaining unit population • Participation requires HRA completion, annual biometric screening or physical exam plus participation in behavior modification programs • Provides free quarterly on-site biometric screenings	• Reviews data to determine level of engagement and how to best engage employee • Annual HRA comparison for the individual and group trend favorably in risk factor areas • 2012 will be the first year to compare claims expense

	• Financial incentive rewards program is 3 tiered and based on a points system for successful participation • Supports an on-site fitness facility • Employees my earn up to $600 from participation in health promotion activities	• Documented increases in preventative screenings • Decrease in the duration of short term disability • Preparing for ROI program as firm results are measured 3-5 years into a program • Increases in the number of preventative and early detection screenings in several areas: 21% increase in prostrate screenings; 13% for cholesterol; and 3% for breast, cervical and colon screenings.
USD 259	• The District's supported wellness incentive program is changing from a participation program to an outcomes based wellness program • Employees who successfully participate receive up to a $240 premium discount • Employees will be separated into smoking and non-smoking categories and be evaluated on a point system based on personal health goals including blood pressure, cholesterol, triglycerides, etc., all with or without medication	• The District has data to support that wellness efforts have saved money and are helping to keep costs down, but can't quantify
IMA	• Insurance premiums discounts based on participation in a wellness point system • Incentive rewards for Health Risk Assessments • Incentive rewards for biometric screening • Incentive rewards for seeking preventative care from physician (physician visits), including waiving co-pay for visits • Incentive rewards for responding to health status challenges and participating in wellness activities • Cash incentive for spousal participation	• Annual health insurance premium trend has stabilized • Prescription drug costs stabilized • Increased participation in preventative health screenings • 90% employee participation/engagement
Chippewa County, WI (recognized by the Center for Value Based Insurance Design)	• Cash and prize incentives used to incentivize Health Risk Assessments with Biometrics • Health reimbursement accounts used to assist employees with high deductibles • Wellness activities operated through self-funded Workers Comp program • Strategic analytics and data interpretation used to target health programs and activities, based on information about plan utilization and costs by types of services	• Annual health insurance premium trend was reduced from 16.1% to 3% in five years (2004-2009) • Total health care costs were reduced in 2008 by $500,000 from 2007 • Between 2007 and 2008, premiums dropped 7%, with an 82% loss ratio that was 18% below budgeted claims

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Appointment of Commission of Electors to Recommend Revised City Council District Boundaries (All Districts)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: New Business

Recommendation: Proceed with appointment of the Commission of Electors.

Background: Charter Ordinance 173, adopted in 1998, requires the City Council to appoint a Commission of Electors this July. The Commission's task is to examine the current plan of City Council Districts and make district boundary revision recommendations to the Council by September 30, 2012. The City Council must reestablish district boundaries, taking into account the Commission's recommendations, by December 31, 2012. Because of these time constraints, it is important that the City Council appoint the Commission as soon as possible.

The Charter Ordinance does not state specific requirements regarding the size and composition of the Commission of Electors. These matters are left to the discretion of the Council. The ordinance does require that the Commission "have at least one elector from each district." In 2002, 1998, and 1992, City Council Members made one appointment each to the Commission. The Mayor made a seventh appointment, who served as the Commission's Chair and reported its final recommendation to the City Council. In 1990, the Council appointed fourteen members.

The Charter Ordinance requires that boundary lines for each City Council District be established in a manner that:

- Approximately one-sixth of the City's total population is allocated within each district, with no district having more or less than a five percentage point (5%) deviation from the one-sixth population figure;
- Reasonably compact areas in each district are maintained;
- Election precinct lines set by the County Election Commissioner are followed;
- Use of any partisan data is avoided; and
- The integrity of "broadly cohesive areas of interest" is maintained.

Previously, in 2002 and 1998, the Commission of Electors solicited comments on various alternative redistricting plans from the District Advisory Boards and other neighborhood and civic organizations before submitting a final recommendation to the City Council. Also, as in previous years, the City's Geographic Information System will be an essential aid to the Commission in determining what new district boundary option or options to recommend to the City Council.

Analysis: The City has continued to increase in geographic size and population since the 2000 Census results were used for the 2002 redistricting. The 2010 Census shows a total City population of 382,368, an increase of 38,084 from 344,284 in 2000. The target population to balance every district evenly,

therefore, would be one-sixth of the total, or 63,728. In order for the five percent deviation standard to be met, the population of each district must fall within the range of 60,542 to 66,914.

The table below indicates the degree to which the current districts comply with the Charter Ordinance standard. Only District IV falls within the target range set by the ordinance. The districts range from a low of 90 percent of the target in District III to a high of 113 percent in District V.

District	I	II	III	IV	V	VI
2010 Population	59,055	71,682	57,617	62,233	71,872	59,909
% of Target Population	93%	112%	90%	98%	113%	94%

The Commission of Electors will propose revisions to current district boundaries that provide an appropriate population balance among districts and that take into account the requirements of the Charter Ordinance. It may also consider other factors such as natural boundaries, the boundaries of local neighborhood associations, the likely magnitude and direction of future growth over the next ten years, and the manner in which the core area and Central Business District should be represented.

Financial Considerations: The redistricting process will require staff time, materials, supplies, copying and postage costs that have not specifically been budgeted for this year.

Goal Impact: Providing appropriately balanced representation on the City Council is fundamental to the fulfillment of all City goals.

Legal Considerations: The proposed process for redistricting has been reviewed and approved by the Law Department.

Recommendations/Actions: It is recommended that the City Council appoint the Commission of Electors.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Amendments to Chapter 9.12 of the City Code relating to Century II Performing Arts & Convention Center, Resolution for Facility Rental Rates for Century II Performing Arts & Convention Center, and Revised Memorandums of Understanding between the City and Tenants of Century II (Wichita Symphony Society, Music Theatre of Wichita and Wichita Grand Opera)

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Approve amendments to Chapter 9.12 of the City Code relating to Century II; approve resolution for facility rental rates of Century II; approve the Memorandums of Understanding between the City and tenants of Century II, including the Wichita Symphony Society, Music Theatre of Wichita and Wichita Grand Opera

Background: Century II Performing Arts & Convention Center is governed by Chapter 9.12 of the Code of the City of Wichita, Kansas. The last change to the Code was adopted on May 18, 1993 and made effective on May 21, 1993 through Ordinance No. 42-081. Since this time, updated processes and procedures for the daily operations of Century II require a change to the current Code.

According to Chapter 9.12.020 of the Code, the City Council establishes rates for Century II through resolution. The last resolution was adopted on November 28, 2000 and made effective on December 2, 2000 through Resolution No. R-00-419. The "round" portion of the facility operates on a system of 6-hour periods with varying rates based on the client activity in the spaces, and the "square" portion (known as Expo Hall) operates on a daily rate (6 a.m. – 12 a.m.). The two varying rate models for the same facility are difficult to interpret and can cause confusion with clients when contracted activities are shorter in length yet cross from period to period within one given day.

To address the uniqueness of the individual tenants at Century II, the City Council approved Memorandums of Understanding (MOU) with the Wichita Symphony Society, Music Theater of Wichita, and Wichita Grand Opera on March 13, 2007. These MOUs provided clarity for how the individual tenants would contract performance and rehearsal spaces at Century II, outlined the amount of space available for office rental and storage space and the payment thereof, and established covenants between the City of Wichita, Kansas and the individual tenant, that addressed specific, unique needs for each organization. At the expiration of the initial five year term, City staff notified each tenant that the current MOUs would be renegotiated during 2012 to address various issues and updated processes.

Analysis: The City Code currently contains language addressing both "policy" and "operational matters" with some of the content being outdated. A recommended revision of the Code would change the authority from the Century II Director (a position that currently does not exist) to the Division of Arts & Cultural Services Manager. The revision would also delete several sections that are operational in-nature and are already addressed in the Century II Lease Agreement, a document that has the ability to change over the course of time with review from the Division of Arts & Cultural Services Manager or his/her designee and the City's Law Department. The Ordinance presented provides updated and more succinct, descriptive language for the policy-related issues that need to be approved through the City Council.

There are several models for establishing facility rental rates at a performing arts and convention center. City staff believe that an established day rate approved by the City Council, as is currently used for Expo Hall, is the simplest and most effective method for Century II. The restructuring of the "round" building to a day rate will affect clients differently due to the uniqueness of each event. Due to this, City staff will work with clients over the next 2 ½ years to get every client to the new proposed model. For those clients that already pay a day rate in Expo Hall, there will be a rate increase for that hall since the rate has not changed since 2000. Once all clients are on the new, unified rate model, future increases will be universal and applied to all locations within Century II. The first rate adjustment will not commence until events occurring after January 1, 2014, where a 2% increase is projected for events occurring from January 1, 2014 – December 31, 2015. This increase will be finalized as part of a future budget process.

The resolution presented for the City Council regarding facility rental rates also addresses the discounts that will be offered for use of Century II. Discounts will be given to not-for-profit, 501(c)3 charitable organizations and government organizations as well as to organizations holding their convention sessions in Century II. Additional discounts are provided for performing arts organizations that use the various stages based on the number of performances in a given season and the potential usage of the City's ticketing system.

The presented Memorandums of Understanding with the three Century II tenants contain changes for daily operational purposes. The most notable changes are the removal of a fixed percentage discount for facility rentals (addressed now in the resolution presented) and stated increases in the rental for office space. Other than those two specific items, the other changes presented bring all three MOUs into alignment with updated, current language and processes. The MOUs presented have been approved by each of the Century II tenants.

Financial Considerations: The restructuring of the facility rental rates through the approval of the presented resolution will increase the overall income to Century II and the City. Due to the negotiations that will occur with clients over the course of the next 2 ½ years, an exact increase cannot be determined. If the proposed model were implemented on every annual existing client immediately, there would be an immediate increase in facility revenues of approximately 14%. In actuality, this increase will be realized incrementally through December 31, 2014 due to existing contracts already in place that will be honored and various negotiations that will need to occur with other clients.

Goal Impact: The approval of the attached documents will improve the Quality of Life for citizens and provide Economic Vitality by updating many of the processes that govern the day-to-day operations of Century II, providing clarity and future direction for both City staff and Century II clients.

Legal Consideration: The Law Department has prepared and approved as to form the Proposed ordinance amendment, Resolution for Facility Rental Rates, Memorandum of Understanding with Wichita Symphony Society, Memorandum of Understanding with Music Theatre of Wichita, and Memorandum of Understanding with Wichita Grand Opera.

Recommendations/Action: It is recommended that the City Council place the ordinance on first reading and approve the ordinance; approve the resolution for the facility rental rates; and approve the three presented Memorandums of Understanding.

Attachments: Proposed ordinance amendment
Resolution for Facility Rental Rates
Memorandum of Understanding with Wichita Symphony Society
Memorandum of Understanding with Music Theatre of Wichita
Memorandum of Understanding with Wichita Grand Opera

Delineated **First Published in The Wichita Eagle on** _____

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 9.12.010, 9.12.020, 9.12.030, 9.12.040, 9.12.050, 9.12,060, 9.12.070, 9.12.080, 9.12.090, 9.12.100, 9.12.110, 9.12.120, 9.12.130, 9.12.140, 9.12.150 9.12.160. 9.12.170, 9.12.180, 9.12.190, 9.12.200, 9.12.210 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE RULES AND REGULATIONS GOVERNING THE USE OF CENTURY II AND REPEALING THE ORIGINALS THEREOF.

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

SECTION 1. Section 9.12.010 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Authority.**

1) The Division of Arts and Cultural Services Manager or his/her designee shall have full responsibility for the operation of the Century II Performing Arts and Convention Center (Century II facility), and shall have authority to act on behalf of the City of Wichita, Kansas in all matters pertaining to the Century II facility.
2) Whenever the words "prior written approval" are used in this chapter, they refer to the approval of the Division of Arts and Cultural Services Manager or his/her designee.

SECTION 2. Section 9.12.020 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Rental charges.**

1) Any person using the Century II facility shall pay for such use the amount set forth in the rental schedule established by the City Council by resolution; provided, however, the Division of Arts and Cultural Services Manager or his/her designee may, at his/her discretion, negotiate

special rates when such rates are in the best interest of the Century II facility and the City of Wichita. The Division of Arts and Cultural Services Manager or his/her designee shall determine the classification of any use of the Century II facility for the purpose of setting the rental charge for such use, and his/her decision in this regard shall be final.

2) Base Rental**.** The base rental charge shall include as regular services normal heat or air conditioning, general overhead lighting, one set-up per contracted event, sound equipment associated with each specific hall, and routine janitorial services.

SECTION 3. Section 9.12.030 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Lease agreement.**

1) All leases shall be in writing on the City's standard form lease or upon terms negotiated by the City and executed on behalf of the City by the Division of Arts and Cultural Services Manager or his/her designee. The required fees shall be paid as scheduled in the lease, and as more specifically set out in City Code Section 9.12.040. No verbal agreement shall be binding on either party.

2) A lessee, by entering into a lease agreement, thereby waives any claim against and shall indemnify, save and hold harmless the City and its elected officials and employees against any loss, claim, or judgment for injury to persons or damage to property occasioned by, arising from or in connection with the use of the premises by lessee, unless resulting from the gross and wanton negligence of Century II facility or its employees in the operation or maintenance of the premises, proximately causing such injury or damage.

3) The lessee may be required, in the discretion of the Division of Arts and Cultural Services Manager or his/her designee, to have financial backing in escrow or cash surety for rentals, total ticket refund and stagehand expenses.

4) Prior written approval is required for any performance involving the invitation of members of the audience to the stage area or dressing rooms.

5) Lessee is responsible to make reasonable accommodations for ADA accessibility relating to lessee's event, including the distribution, operation and collection of assisted listening devices. Each party agrees to indemnify and hold harmless the other party from any liability, penalty, judgment, or claims including attorney fees paid or awarded, whether by judgment or alternative dispute resolution method, and whether civil, administrative or otherwise, which may arise or be imposed in connection with that party's failure to comply with provision of the ADA or its enforcing regulations.

6) Doors will be opened to the public a minimum of thirty (30) minutes before the advertised event time according to times established with lessee. If conditions warrant, doors will be opened earlier than planned, as determined by the Division of Arts and Cultural Services Manager or his/her designee. In no instance will the judgment of the Division of Arts and Cultural Services Manager or his/her designee be superseded by a promoter, director, the performers or any outside agency.

SECTION 4. Section 9.12.040 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Payment of fees.**

1) Unless otherwise negotiated the following applies to all rentals:

Rental fees are due and payable in advance of the use of the Century II facility. To reserve a tentative booking date, a lease agreement must be fully executed. Upon execution of a lease agreement, a deposit of ten percent (10%) or more of the rental shall be paid. The balance of the rental must be paid no later than thirty (30) days in advance of the use of the Century II facility, or upon earlier receipt of an invoice as required to maintain the definite booking date. Deposits on any event are proof of sincerity by the lessee that an event will take place and the lessee is not speculating. Therefore, deposits are not returned on any event canceled except at the discretion of the Division of Arts and Cultural Services Manager or his/her designee.

2) If compliance with the lease is deemed by the City impossible due to what is commonly understood to be an "Act of God" or if a curfew is proclaimed by the City, or if the City otherwise deems it necessary to protect life and property, then the advance deposit may be returned to the lessee and the lease canceled, with no detriment resulting to the City.

3) Definite bookings are subject to alteration by majority vote of the City Council, which maintains ultimate control over use of the Century II facility.

SECTION 5. Section 9.12.050 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Termination of lease due to casualty.**

In case of fire, casualty, civil disturbances, or other unforeseen occurrence which the City deems to have made the fulfillment of a lease by the City impossible, said lease shall be immediately terminated; and in such case, rental charges shall be refunded for the time the premises were not actually used. The lessee shall waive any claim for damages in the event of such termination.

SECTION 6. Section 9.12.060 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Alcoholic beverages.**

The use of alcoholic beverages will be allowed only when used in conformance with all state laws and City ordinances and in accordance with the "Policy Regarding Alcoholic Beverages" on file in the Century II facility administrative office.

SECTION 7. Section 9.12.070 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Subleases.**

No lessee shall assign any lease on the Century II facility, or any portion thereof, or any rights under said lease, without prior written approval.

SECTION 8. Section 9.12.080 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Objectionable performance or persons.**

Any use of the Century II facility which is contrary to sound public policy shall be denied and any lease previously consummated may be revoked for such cause. Any person whose conduct is objectionable, disorderly or disruptive to the use of the Century II facility shall be refused entrance or shall be ejected from the premises. A further, but not exclusive, definition of "objectionable" shall mean the producing, presenting, directing or participating in an obscene performance; such performances may be discontinued at any time by the City and the lessee shall hold the City harmless from any claim for such actions. This section shall not be interpreted or applied or enforced to impede or chill First Amendment expression.

SECTION 9. Section 9.12.090 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Public liability and property insurance.**

The lessee shall furnish a public liability insurance policy issued by an insurance company authorized to do business in the State of Kansas, in which the lessee is named insured and the "City of Wichita and its representatives" are named as additional insureds, for general liability insurance in a sum not less than five hundred thousand dollars covering bodily injury or death for the benefit of one or more persons on account of any one accident, together with property damage liability insurance in a sum not less than five hundred thousand dollars, or combined single limit coverage in that amount for both bodily injury and property damage. Said policy shall be written for the entire time lessee has contracted to use the Century II facility and shall be in force as required by the lease agreement. Additions or reductions of insurance coverage from this requirement in a manner which adequately protects the public interest may be directed or authorized by the Division of Arts and Cultural Services Manager or his/her designee.

SECTION 10. Section 9.12.100 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Observance of law.**

All lessees of the Century II facility shall comply with all the laws of the United States and of the State of Kansas, with all ordinances of the City of Wichita and any Century II facility rules and regulations adopted or authorized by the City Council. Violations by the lessee may result in the City cancelling the lease and discontinuing lessee's use of the Century II facility for any other purpose until lessee provides assurance of its continuing future compliance.

SECTION 11. Section 9.12.110 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Invalidity of Part.**

Should any court declare any section, clause or provision of this chapter to be unconstitutional such decision shall affect only such section, clause or provision so declared unconstitutional and shall not affect any other section, clause or provision of this chapter.

SECTION 12. Section 9.12.120 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Permit Parking for Century II Events.**

Permit parking for Century II events may be available in conjunction with a contract for Century II space rental. The provisions controlling the availability and use of such parking will be governed by the Lease Agreement for any given event, subject to the authority granted in City Code section 11.68.111.

SECTION 13. The originals of Sections 9.12.010, 9.12.020, 9.12.030, 9.12.040, 9.12.050, 9.12,060, 9.12.070, 9.12.080, 9.12.090, 9.12.100, 9.12.110, 9.12.120, 9.12.130, 9.12.140, 9.12.150, 9.12.160, 9.12.170, 9.12.180, 9.12.190, 9.12.200 and 9.12.210 of the Code of the City of Wichita, Kansas, are hereby repealed.

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

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on July 20, 2012_____

ORDINANCE NO. 49-308_

AN ORDINANCE AMENDING SECTIONS 9.12.010, 9.12.020, 9.12.030, 9.12.040, 9.12.050, 9.12,060, 9.12.070, 9.12.080, 9.12.090, 9.12.100, 9.12.110, 9.12.120, 9.12.130, 9.12.140, 9.12.150 9.12.160. 9.12.170, 9.12.180, 9.12.190, 9.12.200, 9.12.210 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE RULES AND REGULATIONS GOVERNING THE USE OF CENTURY II AND REPEALING THE ORIGINALS THEREOF.

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SECTION 1. Section 9.12.010 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Authority.**

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SECTION 2. Section 9.12.020 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Rental charges.**

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special rates when such rates are in the best interest of the Century II facility and the City of Wichita. The Division of Arts and Cultural Services Manager or his/her designee shall determine the classification of any use of the Century II facility for the purpose of setting the rental charge for such use, and his/her decision in this regard shall be final.

2) Base Rental**.** The base rental charge shall include as regular services normal heat or air conditioning, general overhead lighting, one set-up per contracted event, sound equipment associated with each specific hall, and routine janitorial services.

SECTION 3. Section 9.12.030 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Lease agreement.**

1) All leases shall be in writing on the City's standard form lease or upon terms negotiated by the City and executed on behalf of the City by the Division of Arts and Cultural Services Manager or his/her designee. The required fees shall be paid as scheduled in the lease, and as more specifically set out in City Code Section 9.12.040. No verbal agreement shall be binding on either party.

2) A lessee, by entering into a lease agreement, thereby waives any claim against and shall indemnify, save and hold harmless the City and its elected officials and employees against any loss, claim, or judgment for injury to persons or damage to property occasioned by, arising from or in connection with the use of the premises by lessee, unless resulting from the gross and wanton negligence of Century II facility or its employees in the operation or maintenance of the premises, proximately causing such injury or damage.

3) The lessee may be required, in the discretion of the Division of Arts and Cultural Services Manager or his/her designee, to have financial backing in escrow or cash surety for rentals, total ticket refund and stagehand expenses.

4) Prior written approval is required for any performance involving the invitation of members of the audience to the stage area or dressing rooms.

5) Lessee is responsible to make reasonable accommodations for ADA accessibility relating to lessee's event, including the distribution, operation and collection of assisted listening devices. Each party agrees to indemnify and hold harmless the other party from any liability, penalty, judgment, or claims including attorney fees paid or awarded, whether by judgment or alternative dispute resolution method, and whether civil, administrative or otherwise, which may arise or be imposed in connection with that party's failure to comply with provision of the ADA or its enforcing regulations.

6) Doors will be opened to the public a minimum of thirty (30) minutes before the advertised event time according to times established with lessee. If conditions warrant, doors will be opened earlier than planned, as determined by the Division of Arts and Cultural Services Manager or his/her designee. In no instance will the judgment of the Division of Arts and Cultural Services Manager or his/her designee be superseded by a promoter, director, the performers or any outside agency.

SECTION 4. Section 9.12.040 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Payment of fees.**

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2) If compliance with the lease is deemed by the City impossible due to what is commonly understood to be an "Act of God" or if a curfew is proclaimed by the City, or if the City otherwise deems it necessary to protect life and property, then the advance deposit may be returned to the lessee and the lease canceled, with no detriment resulting to the City.

3) Definite bookings are subject to alteration by majority vote of the City Council, which maintains ultimate control over use of the Century II facility.

SECTION 5. Section 9.12.050 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Termination of lease due to casualty.**

In case of fire, casualty, civil disturbances, or other unforeseen occurrence which the City deems to have made the fulfillment of a lease by the City impossible, said lease shall be immediately terminated; and in such case, rental charges shall be refunded for the time the premises were not actually used. The lessee shall waive any claim for damages in the event of such termination.

SECTION 6. Section 9.12.060 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Alcoholic beverages.**

The use of alcoholic beverages will be allowed only when used in conformance with all state laws and City ordinances and in accordance with the "Policy Regarding Alcoholic Beverages" on file in the Century II facility administrative office.

SECTION 7. Section 9.12.070 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Subleases.**

No lessee shall assign any lease on the Century II facility, or any portion thereof, or any rights under said lease, without prior written approval.

SECTION 8. Section 9.12.080 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Objectionable performance or persons.**

Any use of the Century II facility which is contrary to sound public policy shall be denied and any lease previously consummated may be revoked for such cause. Any person whose conduct is objectionable, disorderly or disruptive to the use of the Century II facility shall be refused entrance or shall be ejected from the premises. A further, but not exclusive, definition of "objectionable" shall mean the producing, presenting, directing or participating in an obscene performance; such performances may be discontinued at any time by the City and the lessee shall hold the City harmless from any claim for such actions. This section shall not be interpreted or applied or enforced to impede or chill First Amendment expression.

SECTION 9. Section 9.12.090 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Public liability and property insurance.**

The lessee shall furnish a public liability insurance policy issued by an insurance company authorized to do business in the State of Kansas, in which the lessee is named insured and the "City of Wichita and its representatives" are named as additional insureds, for general liability insurance in a sum not less than five hundred thousand dollars covering bodily injury or death for the benefit of one or more persons on account of any one accident, together with property damage liability insurance in a sum not less than five hundred thousand dollars, or combined single limit coverage in that amount for both bodily injury and property damage. Said policy shall be written for the entire time lessee has contracted to use the Century II facility and shall be in force as required by the lease agreement. Additions or reductions of insurance coverage from this requirement in a manner which adequately protects the public interest may be directed or authorized by the Division of Arts and Cultural Services Manager or his/her designee.

SECTION 10. Section 9.12.100 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Observance of law.**

All lessees of the Century II facility shall comply with all the laws of the United States and of the State of Kansas, with all ordinances of the City of Wichita and any Century II facility rules and regulations adopted or authorized by the City Council. Violations by the lessee may result in the City cancelling the lease and discontinuing lessee's use of the Century II facility for any other purpose until lessee provides assurance of its continuing future compliance.

SECTION 11. Section 9.12.110 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Invalidity of Part.**

Should any court declare any section, clause or provision of this chapter to be unconstitutional such decision shall affect only such section, clause or provision so declared unconstitutional and shall not affect any other section, clause or provision of this chapter.

SECTION 12. Section 9.12.120 of the Code of the City of Wichita, Kansas is hereby amended to read as follows: **Permit Parking for Century II Events.**

Permit parking for Century II events may be available in conjunction with a contract for Century II space rental. The provisions controlling the availability and use of such parking will be governed by the Lease Agreement for any given event, subject to the authority granted in City Code section 11.68.111.

SECTION 13. The originals of Sections 9.12.010, 9.12.020, 9.12.030, 9.12.040, 9.12.050, 9.12,060, 9.12.070, 9.12.080, 9.12.090, 9.12.100, 9.12.110, 9.12.120, 9.12.130, 9.12.140, 9.12.150, 9.12.160, 9.12.170, 9.12.180, 9.12.190, 9.12.200 and 9.12.210 of the Code of the City of Wichita, Kansas, are hereby repealed.

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

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

112000

RESOLUTION NO. 12-183

A RESOLUTION ADOPTING A SCHEDULE OF RENTALRATES
FOR CENTURY II PERFORMING ARTS AND CONVENTION CENTER

WHEREAS, the City of Wichita, Kansas, owns and operates Century II Performing Arts and Convention Center and leases space therein to parties desiring to use the facility; and,

WHEREAS, pursuant to the provisions of Section 9.12.020 of the Code of the City of Wichita, the City of Wichita, Kansas, desires to adopt a schedule of rental rates for the use of Century II Performing Arts and Convention Center;

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

SECTION 1. The City Council adopts the following schedule of rental rates for Century II Performing Arts and Convention Center:

FACILITY RENTAL RATE SCHEDULE

Location	**Event (Day Rate)**	**Move In/Out, Occupancy, Rehearsal (Day Rate)**	**Ticketed Events (Per Show)**
Concert Hall	$1,100	$385	$1,100 (local, non-profit, 501(c)3) $1,900 (all other entities)
Mary Jane Teall Theater	$500	$175	$400 (local, non-profit, 501(c)3) $500 (all other entities)
Convention Hall **Main Floor**	$1,280	$450	N/A
Convention Hall **Main Floor with Loge**	$1,800	$630	$1,800 (local, non-profit, 501(c)3) $3,500 (all other entities)
Exhibition Hall **Main Floor**	$1,280	$450	N/A
Exhibition Hall Balcony **With rental of main floor**	$300	$105	N/A
Exhibition Hall **Without rental of main floor**	$600	$210	N/A
Expo Hall	$3,750	$750	N/A
Meeting Rooms (101 – 202)	$175	$100	N/A
Meeting Room (103A or B)	$75	$50	N/A

SECTION 2. The Day Rate is defined as 6 a.m. – 12 a.m. midnight. Should a client request the usage of the facility between the hours of 12 a.m. midnight – 6 a.m., an appropriate rate will be determined by the Division of Arts & Cultural Services Manager or his/her designee based on the individual specifications and needs of the client's event.

SECTION 3. The City Council adopts the following discounts applicable to rental rates for Century II Performing Arts and Convention Center:

1. Conventions, Consumer Shows, Tradeshows, and Meetings

- 10% off facility rental rates scheduled above is available to:
    - Not-for-profit, 501(c)3 charitable organizations and government entities
    - Any government, association, club or society meeting for their international, national, regional or state convention session

- 15% off facility rental rates scheduled above is available to:
    - Facility-wide events
    - Not applicable for consumer shows

The above discounts may not be combined. The higher discount will be applied.

2. Banquets

- A banquet event may receive the "Move In/Out, Occupancy, Rehearsal" day rate with an appropriate contractual food and beverage minimum to ensure the "Event" day rate is met.

3. Performing Arts – Ticketed Events (Local, not-for-profit, 501(c)3 charitable organizations)

- 20% off facility rental rates scheduled above is available to producers:
    - Producing 4 – 10 shows over the course of a defined season

- 30% off facility rental rates scheduled above is available to producers:
    - Producing 11 – 20 shows over the course of a defined season

- 40% off facility rental rates scheduled above is available to producers:
    - Producing 21 – 30 shows over the course of a defined season

- 45% off facility rental rates scheduled above is available to producers:
    - Producing 31 or more shows over the course of a defined season

- 10% off facility rental rates scheduled above is available to producers:
    - Use of the City of Wichita's designated ticketing system
    - This discount may be added to any of the frequency discounts above

4. Performing Arts – Ticketed Events (Non-local, not-for-profit, 501(c)3 charitable organizations)

- 30% off facility rental rates scheduled above is available to these promoters.

SECTION 4. A twenty-five percent (25%) surcharge will be added to the facility rental when the event occurs on a legal holiday observed by the City of Wichita.

SECTION 5. Rental rates for ancillary spaces within the Century II facility, including, but not limited to, Service Club Room, Paint Shop, Scene Shop, Costume Shop, Connecting Lobby, and Promenade Connecting Lobby, shall be determined by the Division of Arts & Cultural Services Manager or his/her designee based on the individual specifications and needs of the client's event.

SECTION 6. The Division of Arts & Cultural Services Manager or his/her designee has the authority to increase or decrease the facility rental rates scheduled in Section 1 and to adjust the discounts identified in Section 3 as part of future budget processes approved by the City Council. The first rental rate adjustment will not occur until January 1, 2014.

SECTION 7. This resolution shall be effective upon its publication once in the official City paper.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this 13th day of July, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

MEMORANDUM OF UNDERSTANDING

This Agreement is made and entered into this 1st day of January, 2012 (the Commencement Date).

BY AND BETWEEN **The City of Wichita, Kansas,**
a municipal corporation,
455 North Main Street
Wichita, Kansas 67202

AND **Music Theatre of Wichita, Inc.**
Century II Performing Arts & Convention Center
225 W. Douglas Ave.
Wichita, KS 67202

WITNESSETH THAT:

WHEREAS, The City of Wichita (the "City") is the owner of the community facility known as "Century II," and has agreed to enter into this Memorandum of Understanding with Music Theatre of Wichita, Inc. (MTW) to set forth certain terms and conditions upon which the City is willing to enter into leases and certain related arrangements, concerning the office space currently occupied by MTW at Century II, and also performance space and certain ancillary facilities regularly used by MTW in rehearsing and staging its performances at Century II; and,

WHEREAS, the fundamental mission of Century II is to provide a clean and safe venue for private and public gatherings, encompassing the performing arts, conventions, trade shows, banquets, meetings, public exhibits, religious programs and special events; and,

WHEREAS, The City recognizes the need for community access and for this reason, the City offers, through subsidy, affordable rates, which encourages maximum local use;

WHEREAS, MTW has contributed significant cultural, educational and economic amenities to the City of Wichita since 1972;

WHEREAS, the Scene Shop, Paint Shop, Costume Shop, and other spaces in Century II were created to accommodate the kind of production activities and education initiatives provided by MTW;

NOW, THEREFORE, the above named parties do hereby agree as follows with regard to certain specified matters relating to office space, rental rates, performances, rehearsals, auditions, and fundraising events:

1. **AGREEMENT FOR THE USE OF PREMISES.** Consistent with the terms of this Memorandum of Understanding, and during the term hereof, the City will enter into leases and certain related arrangements with MTW, concerning the use of office space currently occupied by MTW at Century II, and also the use of performance space and certain ancillary facilities regularly used by MTW in rehearsing and staging its performances at Century II. The

performance, ancillary, office and storage spaces are identified on the attached Exhibit B (but common areas such as restrooms and lobby areas included in the outlined performance space will not be subject to control by MTW except while MTW is actually using the performance space).

2. **TERM AND RENEWAL OPTIONS.** The Agreement sets an initial term of five (5) years, sets a commencement date as stated herein, and terminates the existing term. Upon the completion of each anniversary of the commencement of this MOU, unless notice of termination has been given under section 27 or 30, an additional one (1) year will be automatically added to the Agreement, unless either of the parties notifies the other to the contrary, as described below. MTW or the City may give notice of its intention to not add the additional year to the term by delivering a written notice to the other party, not less than sixty (60) days prior to the expiration of the existing year. Century II management will send a written reminder to the tenant ninety (90) days prior to the end of each year.

3. **BOOKING PROCEDURES.** MTW shall be allowed to request tentative bookings for performance spaces up to five (5) years in advance, if within the term of the Agreement. MTW will submit in writing to Century II Management or their designee dates for performance spaces for each season planned. Century II Management or their designee will confirm approval of requested dates within ten (10) business days. Once approved, specific dates will be put on "Tentative Hold". These dates shall remain on the booking calendar unless released by MTW in writing or contested by another Century II client. All tentative bookings may be contested through the process outlined in the most recent Century II Booking Policy approved by the City Council. Dates for performance spaces will become a "Definite Booking" once an "Agreement of Lease of Premises" is requested and signed by both MTW and Century II Management.

Performance and rehearsal dates that are a "Definite Booking" (dates that have been solidified through a jointly signed contract) may not be cancelled to accommodate competitive bookings unless cancelled by the City of Wichita Council through official action. In the event of such cancellations, the City will make reasonable, good faith efforts to assist MTW in ameliorating resulting disruption of the impacted performance season.

When booking potentially competing events with other organizations more than five years in the future or beyond the term of the Agreement, the City will notify MTW within ninety (90) days of the beginning of negotiations with said group of the potential conflict with its season, and MTW may seek City Council review of the booking decision.

4. **PAYMENT.** For the office space leased on a calendar year basis, MTW will pay quarterly payments, comprised of three months' rent and due on the last business day of each quarter. Quarterly invoices for office space will be issued by the City on March 15, June 15, September 15, and December 15 each year, or if any such date is not a business day, then on the next preceding business day. For the performance space leased on a seasonal basis, MTW will make quarterly rental payments through separate invoices, comprised of the rent for MTW's performance dates that were within that calendar quarter, which quarterly payments, if timely invoiced, must also be received by the City by the last business day of the quarter to which the payment corresponds. MTW may make rental payments by mail, hand-delivery or automated clearinghouse ("ACH") transfer, so long as the City receives payments on or before the applicable due dates. Payments can be mailed to: Century II, Attn: Administrative Office, 225 W. Douglas, Wichita, Kansas 67202.

5. **NON-LIABILITY AND INDEMNITY.** The City, its officials, agents or employees shall not be liable for any loss, damage, or injury to properties of any kind that are shipped or otherwise delivered to or stored in or on the Century II premises. Properties shall not be received until MTW has made proper arrangements for receiving, handling, and storage of such material. MTW shall waive any claim against and shall indemnify, save and hold harmless the City and its City Council or their representatives against claims of any and all persons for injury to persons or damage to property occasioned by or in connection with the use of the premises by MTW, unless resulting from the gross negligence of the Century II Performing Arts & Convention Center or its employees, in the operation or maintenance of the premises.

6. **WAIVER OF ANY BREACH.** Any waiver of any breach hereof or indulgence as to the payment of any installment of rent at any time, or from time to time, shall not be construed to be a waiver of any subsequent breach or imply any future indulgence.

7. **USE OF PREMISES.** The demised premises may be used and occupied only as office space, storage space, meeting space, fundraising events, performance space, rehearsal space, and shop space related to producing events (consistent with the terms of the applicable lease) unless prior written permission for other use is obtained from the City. Producing and fundraising events may include, but not be limited to, the sale and/or distribution of souvenirs, programs, and other promotional materials and items related to MTW's productions. Further, MTW shall not use or permit said premises, or any part thereof, to be used for any other purpose or purposes than those contemplated by the applicable lease. MTW shall not commit, or suffer to be committed, any waste upon said premises and MTW further agrees not to connect with electric wires, water, gas or sewer pipes, or any apparatus, machinery or device without the consent of the City, other than customary office, shop, and production equipment. MTW shall neither use nor occupy the demised premises for any unlawful, disreputable or ultra hazardous business purpose or activity nor operate or conduct its business in a manner constituting a nuisance of any kind. Upon notice or discovery, MTW agrees to promptly take action and cease any activity or use in violation of this Agreement.

8. **ADA COMPLIANCE**. MTW and the City each represent and warrant that they are cognizant of the provisions of the Americans with Disabilities Act of 1990 (ADA) to the extent that such provisions may apply to each party to this Agreement. The City represents and warrants that reasonable accommodations have been made (or are in progress) relating to accessibility standards for public facilities. MTW is responsible as the tenant for obtaining the appropriate number of assisted listening devices, and providing them for each performance. City will make available for MTW those devices it possesses on an as-is basis. City cannot warrant successful operation as it will not be in control of distribution to or use by MTW patrons. MTW remains responsible for meeting ADA requirements. MTW represents and warrants that it will make reasonable accommodations regarding provisions of the ADA ticketing for accessible and companion seating relating to the production/performance of its events, including ticket sales, distribution and collection of assisted listening receivers. Each party will agree to indemnify and hold harmless the other party for any liability, penalty, fine, punishment, judgment, or claims, whether civil, administrative or otherwise, which may arise or be imposed in connection with the indemnifying party's failure to comply with provisions of the ADA.

9. **RENTAL FEES.** As part consideration for this Agreement and as rent for the use of office space, storage space, performance space and ancillary facilities, as shown in Exhibit B of

this MOU, MTW agrees to pay to the City rent at the following rates:

a) Office Space – Rent for 2012 shall be retroactively adjusted to the rate set in the following table. Rent for office space for the current and subsequent years shall be determined in accordance with the following schedule:

Year Beginning	Cost Per Square Ft	Leased Sq Ft	Office Rent
January 1, 2012	$4.50	1644	$7,398
January 1, 2013	$4.75	1644	$7,809
January 1, 2014	$5.00	1644	$8,220
January 1, 2015	$5.25	1644	$8,631
January 1, 2016	$5.50	1644	$9,042

b) Rent for performance space and ancillary facilities shall be determined at rates based upon the City's criteria established for such space and facilities as approved by City Council. Rates for the performance space will not be increased except by vote of the City Council. Any additional rehearsal space (e.g. meeting rooms) will need to be included in the rental agreement for space if the tenant wants to guarantee the availability. However, if additional spaces are available and not being utilized for other purposes, then the tenant will be allowed to utilize the space for rehearsals at a negotiated rate with other ancillary spaces.

c) For the use of storage space, MTW agrees to pay unto the City the sum of Two Dollars and no Cents ($2.00) per square foot per year. MTW will pay quarterly payments due on the last business day of each quarter and these rental fees will be included in the quarterly office space invoice as a separate line item, and will be charged for the largest amount of storage space utilized at any time during that quarter. Current storage is nominally set at 800 square feet, but does not accurately reflect actual use. Baseline storage space used by MTW shall be provided through an evaluation from City staff. MTW will have 10 days from that notice to vacate space it does not desire to be included in the baseline calculation.

Provided, however, that it is the intent of both parties hereto that Century II shall at all times remain qualified for exemption from *ad valorem* property taxes under the Kansas Statutes, and both parties acknowledge and agree that no portion of the rental payments provided for hereunder include compensation for return on the City's investment in the leased property, as it is contemplated that the rental rates provided for herein will not exceed the amount of the City's operation, maintenance and debt service costs for Century II that are fairly allocable to the leased space used by each Century II client. Notwithstanding anything to the contrary above, the annual office space rental rate increase will be capped so as not to exceed 70% of the current commercial downtown market rate of Class C office space obtained through a commercial member of the Wichita Area Association of Realtors; provided further, however, that in the event the rate of change in office space rent paid as a result of the foregoing should be an increase or a decrease of greater than 8%, then either party may request a re-negotiation of such rates to reflect the change in market conditions.

10. **LATE PAYMENT PENALITES**. All rental installments not received (postmarks do not count) by the City by the date on which they are due shall be considered delinquent. A late charge of $25.00 will be added to the outstanding balance, which shall also accrue interest at 12% per annum until paid. The provision for such late charge and interest shall be in addition to all of the City's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting City's remedies in any manner.

11. **CONDUCT OF BUSINESS.** MTW will conduct its business and control its agents, employees and invitees in such a reasonable manner as not to create any nuisance, or wrongfully interfere with, annoy or disturb other occupants, guests, neighbors, or the City in the management of the building; provided however, the City acknowledges that MTW's use of the premises is for entertainment, which includes music, sound, and special effects which are commonly accepted uses for a production.

12. **PUBLIC LIABILITY INSURANCE.** MTW agrees to carry public liability insurance on its use of the demised premises during the term hereof, covering both the City and MTW, with companies licensed to do business in the State of Kansas for limits of not less than $500,000 for injury or death of any one person, $500,000, for any one occurrence, $500,000 property damage insurance, and contractual liability coverage recognizing this Agreement, and providing that the City and MTW shall be given a minimum of thirty (30) days written notice by such insurance company prior to cancellation, termination or change of such insurance. The City shall be named as an additional insured on the above insurance policies.

13. **UTILITIES.** The City agrees to provide and pay for all utilities, except for phone service, long distance phone service, and Internet. The City will provide a clean and well-maintained rehearsal and performance space. The City will maintain all spaces being used at a comfortable temperature. MTW agrees to pay for all other services supplied to said premises not hereinbefore enumerated throughout the term of this Agreement and all such services shall be put in MTW's name. The City, however, shall not be liable for failure to furnish any of the foregoing when such failure is caused by conditions beyond the control of the City.

14. **PARKING**. MTW shall pay $20 per month for designated parking spaces for seven (7) MTW staff vehicles. Any additional designated parking spaces can be added for an additional $20.00 per space per month when available. MTW will pay quarterly payments due on the last business day of each quarter and these parking fees will be included in the quarterly invoice for office space rental as a separate line item. When available, the City will make a good faith effort to provide MTW with an additional twenty-two (22) intermittent parking passes for an annual cost of $440 ($20 per pass, per performance season) in the Century II basement for intermittent use only, and the City will also permit MTW to use the parking spaces adjacent to MTW's leased performance space (or will make good faith efforts to make other reasonable surface parking available) on a non-exclusive basis for parking for persons participating in its activities.

15. **THE CITY OF WICHITA'S COVENANTS.** It is agreed by the parties hereto that it shall be the duty and obligation of the City herein:

a) Except as otherwise provided in this Agreement, to deliver the said premises to MTW, at commencement of the term of each lease issued under this Agreement, in "as-is" condition.
b) To provide routine maintenance and janitorial services with respect to the premises

occupied by MTW and with respect to Century II generally. This does not include meeting set-up or other special requests made by the tenant; those services will be invoiced.

c) To make reasonable efforts to ensure that sound from other events in the facility will not interfere with MTW's performances.

d) To provide to MTW without additional charges building equipment used for rehearsals and performances at Century II including lighting and sound equipment assigned to the venue, which is rented. MTW will pay for the use of any facility owned pianos or additional lighting and sound equipment.

e) To permit MTW to continue to operate its own ticketing system, to hire ushers, other front of house staff, and back of house personnel, to print and distribute its own playbills, to contract directly with properly licensed security personnel, and to schedule directly with the stagehand union in accordance with established City of Wichita stagehand contracts.

f) To allow MTW to provide food, beverages, wine and cheese style refreshments without charge, to its staff, artists, Wichita Guild, board members, contributors, and receptions in the Founders Room, and if leased, the Service Club Room during rehearsals and intermission of performances held at Century II. MTW agrees to get any necessary signed waiver (to permit the serving of beverages and food) from Century II management and the authorized food caterer for Century II. MTW agrees to indemnify the City and hold the City harmless from any loss, liability, or damage, including the cost and expense of defending any claim therefore, arising from MTW's failure to secure a necessary waiver. MTW also agrees to indemnify the City and hold the City harmless from any loss, liability or damage, including any regulatory fine, assessment or cost of defense for failure to comply with any regulatory or licensure requirement relating to service of food, alcohol or other beverages. The City expressly withholds and disclaims any suggested authority for any illegal conduct.

g) To allow MTW, contingent upon MTW's compliance with its own covenants, duties and obligations herein and in leases issued hereunder, the right to use and occupy the leased premises in accordance with the terms of the leases issued hereunder.

h) The City will exercise best efforts to continue the exceptions to exclusive catering rights that exist in its current food services contract relating to Century II, and will include these exceptions in Requests for Proposals for future food services contracts.

i) The Century II staff will make every effort to foster the continued cooperation by all tenants to maintain the Founder's Room in exceptional condition.

j) To provide MTW exclusive use of the Concert Hall box office during their normal season.

16. **MTW'S COVENANTS.** In consideration of the foregoing, MTW hereby agrees:

a) To promptly pay the specified rents for the said premises in the manner and at the times as herein provided to the City, its successors and assigns, or to its agent.

b) To keep the spaces occupied by MTW and adjacent hallways neat, clean, clear of items and obstacles, safe, and sanitary during the term of this Agreement, and to observe and comply with all regulations governing said premises made by any property-governing agency as to cleanliness, all without cost or expense to City.

c) To notify the City immediately of any major problem relative to the space, building and/or the grounds, which has come to the attention of the MTW Director.

d) To follow the Agreement the City has in effect with vendors with regard to food and

beverage in Century II with the exceptions noted in the City Covenants.

e) To allow Century II staff to annually present to the MTW board a proposal for MTW to use WichitaTIX for MTW ticket sales.

f) To reasonably accommodate other tenants who may have a use for the scene shop, costume shop, Service Club Room, paint shop, theatre trap room and shop space (referred to as ancillary facilities), provided that the use by other tenants will not interfere with MTW's operations.

17. **MUTUAL WAIVERS OF SUBROGATION.** Each party hereby waives any and all claims against the other party for any and all liability or responsibility for any loss, injury or damage to any person(s), the said premises, the building or the contents thereof which may be caused by fire, casualty, accident, or otherwise during the term of the Agreement if, but only if, and only to the extent that, such loss or damage is covered by and recoverable under valid and collectible insurance carried by the waiving party.

18. **IMPROVEMENTS AND ALTERATIONS.** MTW shall make no material changes or alteration on said premises unless it shall first have obtained City's written consent thereto.

19. **LIENS - REGULATIONS.** MTW shall not, during the term of this Agreement, permit or suffer any lien or encumbrance to attach to the premises or any part thereof and shall indemnify and save harmless the City against the same. MTW, its agents and employees, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in force or which may be hereafter adopted by the City of Wichita, Kansas, with respect to the operation and maintenance of the premises described herein. Further, MTW shall comply with all laws and ordinances of the State of Kansas and the City of Wichita, Kansas.

20. **SIGNS AND AWNINGS.** MTW agrees to comply with the established Century II signage policy that is universally applicable to all tenants. This policy is available upon request from Century II staff.

21. **INSPECTION AND ENTRY.** It shall be lawful for the City, its agents and representatives, at any reasonable hours in the day to enter into or upon said premises for the purpose of examining into the condition thereof or to make such repairs and alteration as may be necessary for the safety and preservation of the building, or in furtherance of ADA or other regulatory requirements.

22. **OWNERSHIP REPRESENTATION.** Under no circumstances shall MTW represent to any party that MTW is the owner of the property covered by the Agreement or the agent or trustee of the City. MTW understands and agrees that no authorization to act for, on or in behalf of the City, is granted to MTW.

23. **REMOVAL OF PROPERTY AND EQUIPMENT.** MTW shall have the right to remove from the said premises, at any time during the Agreement term, any and all equipment placed therein and owned by MTW, but not if the same are so permanently attached to the building that removal thereof will leave said building damaged or materially altered, and provided all rents are paid in full; and failing to do so, said improvements and/or equipment shall be and become the property of the City.

24. **NONDISCRIMINATION.** MTW agrees to comply with the requirements of City of Wichita Administrative Regulation on Nondiscrimination and Equal Opportunity Statement, which is marked Exhibit "A" hereto and incorporated herein.

25. **ASSIGNMENT AND SUBLEASE.** It is agreed that MTW may not assign property nor sublet in whole or in part any of Century II to any individual or organization.

26. **DESTRUCTION.** In the event of the destruction of the building containing said premises by fire, windstorm, or other cause, this Agreement and any lease(s) issued hereunder shall immediately terminate and cease unless the City shall within ten (10) business days thereafter notify MTW in writing of the City's desire to continue said Agreement and lease(s), in which event the City shall be obligated to restore said building in due and reasonable time to substantiate its former condition except as to any property owned by MTW therein, and in that event the rent shall be abated until said premises are restored to condition for occupancy. Slight or partial damage by fire, windstorm, or other cause, which does not render the building substantially unfit for use and occupancy shall not affect the terms of this Agreement.

27. **EVENT OF CASUALTY.** In the event the improvements on the premises shall be damaged or destroyed by a casualty as to become unusable, then the City may, if the City so elects, give notice in writing terminating this Agreement and any lease(s) issued hereunder upon proper notice.

28. **EVENTS OF DEFAULT.** The following shall be considered, for all purposes, to be defaults under and breaches of this Agreement, and of any lease(s) issued hereunder, by MTW:

a) Any failure of MTW to pay any invoices or installment after the invoice due date and for a period of ten (10) business days after notice that the payment was not made when due.
b) Failure of MTW to perform or observe any of the terms, provisions, conditions and covenants of this Agreement (or any lease(s) issued hereunder), other than the payment of rent, if such failure is not cured within ten (10) business days after written notice thereof to MTW. A reasonable cure period will be given if the nature of the default requires more time to cure and tenant is proceeding with due diligence.
c) MTW shall become bankrupt or insolvent, or file or have filed against it a petition in bankruptcy, or the reorganization or arrangement, or for the appointment of a receiver or trustee of all or a substantial portion of MTW's property, or MTW makes an assignment for the benefit of creditors.
d) The demised premises come into the hands of any person other than as expressly permitted under this Agreement.

29. **DISPUTE RESOLUTION**. Disputes arising in the performance of this Agreement or leases issued hereunder, which are not resolved by Agreement of the parties shall be decided in writing by the City's Manager of the Division of Arts & Cultural Services. This decision shall be final and conclusive unless within ten (10) business days from the date of receipt of its copy, MTW mails or otherwise furnishes a written appeal to the City Manager and City Council Members. In connection with any such appeal, MTW shall be afforded an opportunity to be heard by the City Manager and City Council Members and to offer information in support of its position. The decision of the City Council shall be subject to appeal to the district court pursuant to K.S.A. 60-2101(d).

30. **TERMINATION.** This Agreement, and any lease(s) issued hereunder, shall terminate without any further required notice upon occurrence of any of the following:

a) The expiration of the lease term or any extension thereof, if not further renewed or replaced with new leases issued under the terms of this Agreement.
b) Any default or breach of any covenants and provisions of this Agreement or any lease(s) issued hereunder by MTW and failure to cure such breach by MTW after notice periods identified hereinbefore in Section 28, in which case, MTW shall cease to be entitled to possession of the leased premises, and the City may distrain for rent due and damages and recover possession of said premises as provided by law.
c) Upon ninety (90) days notice (or, in the case of a public emergency, such shorter notice as may be necessary to accommodate such emergency), after declaration by a majority of the City Council, in a properly noticed, open public meeting, that the leased premises are needed for a public purpose. Provided, however, that once MTW's regular performance season has commenced, or is within ninety (90) days of commencing, in a given year, termination to accommodate a public purpose will not be effective until the scheduled conclusion of that season, unless the public purpose at issue is a public emergency.

31. **ENFORCEABILITY/SEVERABILITY.** No covenant, term or condition of this Agreement shall be deemed waived by City, or MTW, unless waived in writing. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

32. **BINDING ON PARTIES.** Subject to the limitations provided hereinbefore hereof, this Agreement shall be, jointly and severally, binding on the parties.

33. **NOTICE.** All MTW correspondence, notices and demands to the City must be given in writing to:

City of Wichita
Division of Cultural Arts and Services
Attention: Division Manager
Century II
225 W. Douglas
Wichita, Kansas 67202

All City correspondence, notices and demands to MTW must be given in writing to:

Music Theatre of Wichita
Attention: Producing Director
Century II
225 W. Douglas
Wichita, Kansas 67202-3100

34. **EXHIBITS.** All of the exhibits referenced hereinabove are part of the Agreement as if fully set forth herein.

35. **CAPTIONS.** The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

36. **CASH BASIS**. It is the intent of the parties that the provisions of this Agreement and any leases issued hereunder are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.)(the "Cash Basis Law") or the Kansas Budget Law (K.S.A. 79-2925) (the "Budget Law"), and therefore, notwithstanding anything to the contrary herein or in any lease contained, the City's obligations under this Agreement and any lease are to be construed in a manner that assures that the City is at all times not in violation of the Cash Basis Law or the Budget Law. Accordingly, all City financial obligations will be subject to the sufficiency of annual appropriations.

37. **AMENDMENTS; BINDING EFFECT.** This Agreement may not be altered, changed or amended, except by instrument in writing signed by the parties hereto. All terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective permitted successors in interest and legal representatives, except as otherwise herein expressly provided.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

CITY OF WICHITA, KANSAS

By_____
Carl Brewer, Mayor

Music Theatre of Wichita, Inc.

By_____
Wayne Bryan, Producing Director

ATTEST:

By_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By_____
Gary E. Rebenstorf, Director of Law

Exhibit A

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.

Exhibit B

Office Spaces:

- Office area on the second floor house left side of Concert Hall directly beside the elevator
- Office area on the second floor house left between the Founder's Room and the house left foyer.
- Office area on the third floor house left side of Concert Hall directly beside the elevator

Performance Spaces:

- Concert Hall
- Mary Jane Teall Theater
- Convention Hall

Ancillary Spaces:

- Service Club Room – rehearsal area
- Space designated in Storage 17 – rehearsal area
- Paint Shop
- Costume Shop
- Scene Shop
- Mary Jane Teall Theater Trap Room
- Welding Hallway

MEMORANDUM OF UNDERSTANDING

This Agreement is made and entered into this 1st day of January, 2012 (the Commencement Date).

BY AND BETWEEN **The City of Wichita, Kansas,**
a municipal corporation,
455 North Main Street
Wichita, Kansas 67202

AND **Music Theatre of Wichita, Inc.**
Century II Performing Arts & Convention Center
225 W. Douglas Ave.
Wichita, KS 67202

WITNESSETH THAT:

WHEREAS, The City of Wichita (the "City") is the owner of the community facility known as "Century II," and has agreed to enter into this Memorandum of Understanding with Music Theatre of Wichita, Inc. (MTW) to set forth certain terms and conditions upon which the City is willing to enter into leases and certain related arrangements, concerning the office space currently occupied by MTW at Century II, and also performance space and certain ancillary facilities regularly used by MTW in rehearsing and staging its performances at Century II; and,

WHEREAS, the fundamental mission of Century II is to provide a clean and safe venue for private and public gatherings, encompassing the performing arts, conventions, trade shows, banquets, meetings, public exhibits, religious programs and special events; and,

WHEREAS, The City recognizes the need for community access and for this reason, the City offers, through subsidy, affordable rates, which encourages maximum local use;

WHEREAS, MTW has contributed significant cultural, educational and economic amenities to the City of Wichita since 1972;

WHEREAS, the Scene Shop, Paint Shop, Costume Shop, and other spaces in Century II were created to accommodate the kind of production activities and education initiatives provided by MTW;

NOW, THEREFORE, the above named parties do hereby agree as follows with regard to certain specified matters relating to office space, rental rates, performances, rehearsals, auditions, and fundraising events:

1. **AGREEMENT FOR THE USE OF PREMISES.** Consistent with the terms of this Memorandum of Understanding, and during the term hereof, the City will enter into leases and certain related arrangements with MTW, concerning the use of office space currently occupied by MTW at Century II, and also the use of performance space and certain ancillary facilities regularly used by MTW in rehearsing and staging its performances at Century II. The

performance, ancillary, office and storage spaces are identified on the attached Exhibit B (but common areas such as restrooms and lobby areas included in the outlined performance space will not be subject to control by MTW except while MTW is actually using the performance space).

2. **TERM AND RENEWAL OPTIONS.** The Agreement sets an initial term of five (5) years, sets a commencement date as stated herein, and terminates the existing term. Upon the completion of each anniversary of the commencement of this MOU, unless notice of termination has been given under section 27 or 30, an additional one (1) year will be automatically added to the Agreement, unless either of the parties notifies the other to the contrary, as described below. MTW or the City may give notice of its intention to not add the additional year to the term by delivering a written notice to the other party, not less than sixty (60) days prior to the expiration of the existing year. Century II management will send a written reminder to the tenant ninety (90) days prior to the end of each year.

3. **BOOKING PROCEDURES.** MTW shall be allowed to request tentative bookings for performance spaces up to five (5) years in advance, if within the term of the Agreement. MTW will submit in writing to Century II Management or their designee dates for performance spaces for each season planned. Century II Management or their designee will confirm approval of requested dates within ten (10) business days. Once approved, specific dates will be put on "Tentative Hold". These dates shall remain on the booking calendar unless released by MTW in writing or contested by another Century II client. All tentative bookings may be contested through the process outlined in the most recent Century II Booking Policy approved by the City Council. Dates for performance spaces will become a "Definite Booking" once an "Agreement of Lease of Premises" is requested and signed by both MTW and Century II Management.

Performance and rehearsal dates that are a "Definite Booking" (dates that have been solidified through a jointly signed contract) may not be cancelled to accommodate competitive bookings unless cancelled by the City of Wichita Council through official action. In the event of such cancellations, the City will make reasonable, good faith efforts to assist MTW in ameliorating resulting disruption of the impacted performance season.

When booking potentially competing events with other organizations more than five years in the future or beyond the term of the Agreement, the City will notify MTW within ninety (90) days of the beginning of negotiations with said group of the potential conflict with its season, and MTW may seek City Council review of the booking decision.

4. **PAYMENT.** For the office space leased on a calendar year basis, MTW will pay quarterly payments, comprised of three months' rent and due on the last business day of each quarter. Quarterly invoices for office space will be issued by the City on March 15, June 15, September 15, and December 15 each year, or if any such date is not a business day, then on the next preceding business day. For the performance space leased on a seasonal basis, MTW will make quarterly rental payments through separate invoices, comprised of the rent for MTW's performance dates that were within that calendar quarter, which quarterly payments, if timely invoiced, must also be received by the City by the last business day of the quarter to which the payment corresponds. MTW may make rental payments by mail, hand-delivery or automated clearinghouse ("ACH") transfer, so long as the City receives payments on or before the applicable due dates. Payments can be mailed to: Century II, Attn: Administrative Office, 225 W. Douglas, Wichita, Kansas 67202.

5. **NON-LIABILITY AND INDEMNITY.** The City, its officials, agents or employees shall not be liable for any loss, damage, or injury to properties of any kind that are shipped or otherwise delivered to or stored in or on the Century II premises. Properties shall not be received until MTW has made proper arrangements for receiving, handling, and storage of such material. MTW shall waive any claim against and shall indemnify, save and hold harmless the City and its City Council or their representatives against claims of any and all persons for injury to persons or damage to property occasioned by or in connection with the use of the premises by MTW, unless resulting from the gross negligence of the Century II Performing Arts & Convention Center or its employees, in the operation or maintenance of the premises.

6. **WAIVER OF ANY BREACH.** Any waiver of any breach hereof or indulgence as to the payment of any installment of rent at any time, or from time to time, shall not be construed to be a waiver of any subsequent breach or imply any future indulgence.

7. **USE OF PREMISES.** The demised premises may be used and occupied only as office space, storage space, meeting space, fundraising events, performance space, rehearsal space, and shop space related to producing events (consistent with the terms of the applicable lease) unless prior written permission for other use is obtained from the City. Producing and fundraising events may include, but not be limited to, the sale and/or distribution of souvenirs, programs, and other promotional materials and items related to MTW's productions. Further, MTW shall not use or permit said premises, or any part thereof, to be used for any other purpose or purposes than those contemplated by the applicable lease. MTW shall not commit, or suffer to be committed, any waste upon said premises and MTW further agrees not to connect with electric wires, water, gas or sewer pipes, or any apparatus, machinery or device without the consent of the City, other than customary office, shop, and production equipment. MTW shall neither use nor occupy the demised premises for any unlawful, disreputable or ultra hazardous business purpose or activity nor operate or conduct its business in a manner constituting a nuisance of any kind. Upon notice or discovery, MTW agrees to promptly take action and cease any activity or use in violation of this Agreement.

8. **ADA COMPLIANCE**. MTW and the City each represent and warrant that they are cognizant of the provisions of the Americans with Disabilities Act of 1990 (ADA) to the extent that such provisions may apply to each party to this Agreement. The City represents and warrants that reasonable accommodations have been made (or are in progress) relating to accessibility standards for public facilities. MTW is responsible as the tenant for obtaining the appropriate number of assisted listening devices, and providing them for each performance. City will make available for MTW those devices it possesses on an as-is basis. City cannot warrant successful operation as it will not be in control of distribution to or use by MTW patrons. MTW remains responsible for meeting ADA requirements. MTW represents and warrants that it will make reasonable accommodations regarding provisions of the ADA ticketing for accessible and companion seating relating to the production/performance of its events, including ticket sales, distribution and collection of assisted listening receivers. Each party will agree to indemnify and hold harmless the other party for any liability, penalty, fine, punishment, judgment, or claims, whether civil, administrative or otherwise, which may arise or be imposed in connection with the indemnifying party's failure to comply with provisions of the ADA.

9. **RENTAL FEES.** As part consideration for this Agreement and as rent for the use of office space, storage space, performance space and ancillary facilities, as shown in Exhibit B of

this MOU, MTW agrees to pay to the City rent at the following rates:

a) Office Space – Rent for 2012 shall be retroactively adjusted to the rate set in the following table. Rent for office space for the current and subsequent years shall be determined in accordance with the following schedule:

Year Beginning	Cost Per Square Ft	Leased Sq Ft	Office Rent
January 1, 2012	$4.50	1644	$7,398
January 1, 2013	$4.75	1644	$7,809
January 1, 2014	$5.00	1644	$8,220
January 1, 2015	$5.25	1644	$8,631
January 1, 2016	$5.50	1644	$9,042

b) Rent for performance space and ancillary facilities shall be determined at rates based upon the City's criteria established for such space and facilities as approved by City Council. Rates for the performance space will not be increased except by vote of the City Council. Any additional rehearsal space (e.g. meeting rooms) will need to be included in the rental agreement for space if the tenant wants to guarantee the availability. However, if additional spaces are available and not being utilized for other purposes, then the tenant will be allowed to utilize the space for rehearsals at a negotiated rate with other ancillary spaces.

c) For the use of storage space, MTW agrees to pay unto the City the sum of Two Dollars and no Cents ($2.00) per square foot per year. MTW will pay quarterly payments due on the last business day of each quarter and these rental fees will be included in the quarterly office space invoice as a separate line item, and will be charged for the largest amount of storage space utilized at any time during that quarter. Current storage is nominally set at 800 square feet, but does not accurately reflect actual use. Baseline storage space used by MTW shall be provided through an evaluation from City staff. MTW will have 10 days from that notice to vacate space it does not desire to be included in the baseline calculation.

Provided, however, that it is the intent of both parties hereto that Century II shall at all times remain qualified for exemption from *ad valorem* property taxes under the Kansas Statutes, and both parties acknowledge and agree that no portion of the rental payments provided for hereunder include compensation for return on the City's investment in the leased property, as it is contemplated that the rental rates provided for herein will not exceed the amount of the City's operation, maintenance and debt service costs for Century II that are fairly allocable to the leased space used by each Century II client. Notwithstanding anything to the contrary above, the annual office space rental rate increase will be capped so as not to exceed 70% of the current commercial downtown market rate of Class C office space obtained through a commercial member of the Wichita Area Association of Realtors; provided further, however, that in the event the rate of change in office space rent paid as a result of the foregoing should be an increase or a decrease of greater than 8%, then either party may request a re-negotiation of such rates to reflect the change in market conditions.

10. **LATE PAYMENT PENALITES**. All rental installments not received (postmarks do not count) by the City by the date on which they are due shall be considered delinquent. A late charge of $25.00 will be added to the outstanding balance, which shall also accrue interest at 12% per annum until paid. The provision for such late charge and interest shall be in addition to all of the City's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting City's remedies in any manner.

11. **CONDUCT OF BUSINESS.** MTW will conduct its business and control its agents, employees and invitees in such a reasonable manner as not to create any nuisance, or wrongfully interfere with, annoy or disturb other occupants, guests, neighbors, or the City in the management of the building; provided however, the City acknowledges that MTW's use of the premises is for entertainment, which includes music, sound, and special effects which are commonly accepted uses for a production.

12. **PUBLIC LIABILITY INSURANCE.** MTW agrees to carry public liability insurance on its use of the demised premises during the term hereof, covering both the City and MTW, with companies licensed to do business in the State of Kansas for limits of not less than $500,000 for injury or death of any one person, $500,000, for any one occurrence, $500,000 property damage insurance, and contractual liability coverage recognizing this Agreement, and providing that the City and MTW shall be given a minimum of thirty (30) days written notice by such insurance company prior to cancellation, termination or change of such insurance. The City shall be named as an additional insured on the above insurance policies.

13. **UTILITIES.** The City agrees to provide and pay for all utilities, except for phone service, long distance phone service, and Internet. The City will provide a clean and well-maintained rehearsal and performance space. The City will maintain all spaces being used at a comfortable temperature. MTW agrees to pay for all other services supplied to said premises not hereinbefore enumerated throughout the term of this Agreement and all such services shall be put in MTW's name. The City, however, shall not be liable for failure to furnish any of the foregoing when such failure is caused by conditions beyond the control of the City.

14. **PARKING**. MTW shall pay $20 per month for designated parking spaces for seven (7) MTW staff vehicles. Any additional designated parking spaces can be added for an additional $20.00 per space per month when available. MTW will pay quarterly payments due on the last business day of each quarter and these parking fees will be included in the quarterly invoice for office space rental as a separate line item. When available, the City will make a good faith effort to provide MTW with an additional twenty-two (22) intermittent parking passes for an annual cost of $440 ($20 per pass, per performance season) in the Century II basement for intermittent use only, and the City will also permit MTW to use the parking spaces adjacent to MTW's leased performance space (or will make good faith efforts to make other reasonable surface parking available) on a non-exclusive basis for parking for persons participating in its activities.

15. **THE CITY OF WICHITA'S COVENANTS.** It is agreed by the parties hereto that it shall be the duty and obligation of the City herein:

a) Except as otherwise provided in this Agreement, to deliver the said premises to MTW, at commencement of the term of each lease issued under this Agreement, in "as-is" condition.
b) To provide routine maintenance and janitorial services with respect to the premises

occupied by MTW and with respect to Century II generally. This does not include meeting set-up or other special requests made by the tenant; those services will be invoiced.

c) To make reasonable efforts to ensure that sound from other events in the facility will not interfere with MTW's performances.

d) To provide to MTW without additional charges building equipment used for rehearsals and performances at Century II including lighting and sound equipment assigned to the venue, which is rented. MTW will pay for the use of any facility owned pianos or additional lighting and sound equipment.

e) To permit MTW to continue to operate its own ticketing system, to hire ushers, other front of house staff, and back of house personnel, to print and distribute its own playbills, to contract directly with properly licensed security personnel, and to schedule directly with the stagehand union in accordance with established City of Wichita stagehand contracts.

f) To allow MTW to provide food, beverages, wine and cheese style refreshments without charge, to its staff, artists, Wichita Guild, board members, contributors, and receptions in the Founders Room, and if leased, the Service Club Room during rehearsals and intermission of performances held at Century II. MTW agrees to get any necessary signed waiver (to permit the serving of beverages and food) from Century II management and the authorized food caterer for Century II. MTW agrees to indemnify the City and hold the City harmless from any loss, liability, or damage, including the cost and expense of defending any claim therefore, arising from MTW's failure to secure a necessary waiver. MTW also agrees to indemnify the City and hold the City harmless from any loss, liability or damage, including any regulatory fine, assessment or cost of defense for failure to comply with any regulatory or licensure requirement relating to service of food, alcohol or other beverages. The City expressly withholds and disclaims any suggested authority for any illegal conduct.

g) To allow MTW, contingent upon MTW's compliance with its own covenants, duties and obligations herein and in leases issued hereunder, the right to use and occupy the leased premises in accordance with the terms of the leases issued hereunder.

h) The City will exercise best efforts to continue the exceptions to exclusive catering rights that exist in its current food services contract relating to Century II, and will include these exceptions in Requests for Proposals for future food services contracts.

i) The Century II staff will make every effort to foster the continued cooperation by all tenants to maintain the Founder's Room in exceptional condition.

j) To provide MTW exclusive use of the Concert Hall box office during their normal season.

16. **MTW'S COVENANTS.** In consideration of the foregoing, MTW hereby agrees:

a) To promptly pay the specified rents for the said premises in the manner and at the times as herein provided to the City, its successors and assigns, or to its agent.

b) To keep the spaces occupied by MTW and adjacent hallways neat, clean, clear of items and obstacles, safe, and sanitary during the term of this Agreement, and to observe and comply with all regulations governing said premises made by any property-governing agency as to cleanliness, all without cost or expense to City.

c) To notify the City immediately of any major problem relative to the space, building and/or the grounds, which has come to the attention of the MTW Director.

d) To follow the Agreement the City has in effect with vendors with regard to food and

beverage in Century II with the exceptions noted in the City Covenants.

e) To allow Century II staff to annually present to the MTW board a proposal for MTW to use WichitaTIX for MTW ticket sales.

f) To reasonably accommodate other tenants who may have a use for the scene shop, costume shop, Service Club Room, paint shop, theatre trap room and shop space (referred to as ancillary facilities), provided that the use by other tenants will not interfere with MTW's operations.

17. **MUTUAL WAIVERS OF SUBROGATION.** Each party hereby waives any and all claims against the other party for any and all liability or responsibility for any loss, injury or damage to any person(s), the said premises, the building or the contents thereof which may be caused by fire, casualty, accident, or otherwise during the term of the Agreement if, but only if, and only to the extent that, such loss or damage is covered by and recoverable under valid and collectible insurance carried by the waiving party.

18. **IMPROVEMENTS AND ALTERATIONS.** MTW shall make no material changes or alteration on said premises unless it shall first have obtained City's written consent thereto.

19. **LIENS - REGULATIONS.** MTW shall not, during the term of this Agreement, permit or suffer any lien or encumbrance to attach to the premises or any part thereof and shall indemnify and save harmless the City against the same. MTW, its agents and employees, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in force or which may be hereafter adopted by the City of Wichita, Kansas, with respect to the operation and maintenance of the premises described herein. Further, MTW shall comply with all laws and ordinances of the State of Kansas and the City of Wichita, Kansas.

20. **SIGNS AND AWNINGS.** MTW agrees to comply with the established Century II signage policy that is universally applicable to all tenants. This policy is available upon request from Century II staff.

21. **INSPECTION AND ENTRY.** It shall be lawful for the City, its agents and representatives, at any reasonable hours in the day to enter into or upon said premises for the purpose of examining into the condition thereof or to make such repairs and alteration as may be necessary for the safety and preservation of the building, or in furtherance of ADA or other regulatory requirements.

22. **OWNERSHIP REPRESENTATION.** Under no circumstances shall MTW represent to any party that MTW is the owner of the property covered by the Agreement or the agent or trustee of the City. MTW understands and agrees that no authorization to act for, on or in behalf of the City, is granted to MTW.

23. **REMOVAL OF PROPERTY AND EQUIPMENT.** MTW shall have the right to remove from the said premises, at any time during the Agreement term, any and all equipment placed therein and owned by MTW, but not if the same are so permanently attached to the building that removal thereof will leave said building damaged or materially altered, and provided all rents are paid in full; and failing to do so, said improvements and/or equipment shall be and become the property of the City.

24. **NONDISCRIMINATION.** MTW agrees to comply with the requirements of City of Wichita Administrative Regulation on Nondiscrimination and Equal Opportunity Statement, which is marked Exhibit "A" hereto and incorporated herein.

25. **ASSIGNMENT AND SUBLEASE.** It is agreed that MTW may not assign property nor sublet in whole or in part any of Century II to any individual or organization.

26. **DESTRUCTION.** In the event of the destruction of the building containing said premises by fire, windstorm, or other cause, this Agreement and any lease(s) issued hereunder shall immediately terminate and cease unless the City shall within ten (10) business days thereafter notify MTW in writing of the City's desire to continue said Agreement and lease(s), in which event the City shall be obligated to restore said building in due and reasonable time to substantiate its former condition except as to any property owned by MTW therein, and in that event the rent shall be abated until said premises are restored to condition for occupancy. Slight or partial damage by fire, windstorm, or other cause, which does not render the building substantially unfit for use and occupancy shall not affect the terms of this Agreement.

27. **EVENT OF CASUALTY.** In the event the improvements on the premises shall be damaged or destroyed by a casualty as to become unusable, then the City may, if the City so elects, give notice in writing terminating this Agreement and any lease(s) issued hereunder upon proper notice.

28. **EVENTS OF DEFAULT.** The following shall be considered, for all purposes, to be defaults under and breaches of this Agreement, and of any lease(s) issued hereunder, by MTW:

a) Any failure of MTW to pay any invoices or installment after the invoice due date and for a period of ten (10) business days after notice that the payment was not made when due.
b) Failure of MTW to perform or observe any of the terms, provisions, conditions and covenants of this Agreement (or any lease(s) issued hereunder), other than the payment of rent, if such failure is not cured within ten (10) business days after written notice thereof to MTW. A reasonable cure period will be given if the nature of the default requires more time to cure and tenant is proceeding with due diligence.
c) MTW shall become bankrupt or insolvent, or file or have filed against it a petition in bankruptcy, or the reorganization or arrangement, or for the appointment of a receiver or trustee of all or a substantial portion of MTW’s property, or MTW makes an assignment for the benefit of creditors.
d) The demised premises come into the hands of any person other than as expressly permitted under this Agreement.

29. **DISPUTE RESOLUTION**. Disputes arising in the performance of this Agreement or leases issued hereunder, which are not resolved by Agreement of the parties shall be decided in writing by the City’s Manager of the Division of Arts & Cultural Services. This decision shall be final and conclusive unless within ten (10) business days from the date of receipt of its copy, MTW mails or otherwise furnishes a written appeal to the City Manager and City Council Members. In connection with any such appeal, MTW shall be afforded an opportunity to be heard by the City Manager and City Council Members and to offer information in support of its position. The decision of the City Council shall be subject to appeal to the district court pursuant to K.S.A. 60-2101(d).

30. **TERMINATION.** This Agreement, and any lease(s) issued hereunder, shall terminate without any further required notice upon occurrence of any of the following:

a) The expiration of the lease term or any extension thereof, if not further renewed or replaced with new leases issued under the terms of this Agreement.
b) Any default or breach of any covenants and provisions of this Agreement or any lease(s) issued hereunder by MTW and failure to cure such breach by MTW after notice periods identified hereinbefore in Section 28, in which case, MTW shall cease to be entitled to possession of the leased premises, and the City may distrain for rent due and damages and recover possession of said premises as provided by law.
c) Upon ninety (90) days notice (or, in the case of a public emergency, such shorter notice as may be necessary to accommodate such emergency), after declaration by a majority of the City Council, in a properly noticed, open public meeting, that the leased premises are needed for a public purpose. Provided, however, that once MTW's regular performance season has commenced, or is within ninety (90) days of commencing, in a given year, termination to accommodate a public purpose will not be effective until the scheduled conclusion of that season, unless the public purpose at issue is a public emergency.

31. **ENFORCEABILITY/SEVERABILITY.** No covenant, term or condition of this Agreement shall be deemed waived by City, or MTW, unless waived in writing. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

32. **BINDING ON PARTIES.** Subject to the limitations provided hereinbefore hereof, this Agreement shall be, jointly and severally, binding on the parties.

33. **NOTICE.** All MTW correspondence, notices and demands to the City must be given in writing to:

City of Wichita
Division of Cultural Arts and Services
Attention: Division Manager
Century II
225 W. Douglas
Wichita, Kansas 67202

All City correspondence, notices and demands to MTW must be given in writing to:

Music Theatre of Wichita
Attention: Producing Director
Century II
225 W. Douglas
Wichita, Kansas 67202-3100

34. **EXHIBITS.** All of the exhibits referenced hereinabove are part of the Agreement as if fully set forth herein.

35. **CAPTIONS.** The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

36. **CASH BASIS**. It is the intent of the parties that the provisions of this Agreement and any leases issued hereunder are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.)(the "Cash Basis Law") or the Kansas Budget Law (K.S.A. 79-2925) (the "Budget Law"), and therefore, notwithstanding anything to the contrary herein or in any lease contained, the City's obligations under this Agreement and any lease are to be construed in a manner that assures that the City is at all times not in violation of the Cash Basis Law or the Budget Law. Accordingly, all City financial obligations will be subject to the sufficiency of annual appropriations.

37. **AMENDMENTS; BINDING EFFECT.** This Agreement may not be altered, changed or amended, except by instrument in writing signed by the parties hereto. All terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective permitted successors in interest and legal representatives, except as otherwise herein expressly provided.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

CITY OF WICHITA, KANSAS

By_____
Carl Brewer, Mayor

ATTEST:

By_____
Karen Sublett, City Clerk

Music Theatre of Wichita, Inc.

By_____
Wayne Bryan, Producing Director

APPROVED AS TO FORM:

By_____
Gary E. Rebenstorf, Director of Law

Exhibit A

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.

Exhibit B

Office Spaces:

- Office area on the second floor house left side of Concert Hall directly beside the elevator
- Office area on the second floor house left between the Founder's Room and the house left foyer.
- Office area on the third floor house left side of Concert Hall directly beside the elevator

Performance Spaces:

- Concert Hall
- Mary Jane Teall Theater
- Convention Hall

Ancillary Spaces:

- Service Club Room – rehearsal area
- Space designated in Storage 17 – rehearsal area
- Paint Shop
- Costume Shop
- Scene Shop
- Mary Jane Teall Theater Trap Room
- Welding Hallway

MEMORANDUM OF UNDERSTANDING

This Agreement is made and entered into this 1st day of January, 2012 (the Commencement Date).

BY AND BETWEEN **The City of Wichita, Kansas,**
a municipal corporation,
455 North Main Street
Wichita, Kansas 67202

AND **Wichita Grand Opera, Inc.**
Century II Performing Arts & Convention Center
225 W. Douglas Ave.
Wichita, KS 67202

WITNESSETH THAT:

WHEREAS, The City of Wichita (the "City") is the owner of the community facility known as "Century II," and has agreed to enter into this Memorandum of Understanding with Wichita Grand Opera, Inc. (WGO) to set forth certain terms and conditions upon which the City is willing to enter into leases and certain related arrangements, concerning the office space currently occupied by WGO at Century II, and also performance space and certain ancillary facilities regularly used by WGO in rehearsing and staging its performances at Century II; and,

WHEREAS, the fundamental mission of Century II is to provide a clean and safe venue for private and public gatherings, encompassing the performing arts, conventions, trade shows, banquets, meetings, public exhibits, religious programs and special events; and,

WHEREAS, The City recognizes the need for community access and for this reason, the City offers, through subsidy, affordable rates, which encourages maximum local use;

WHEREAS, WGO has contributed significant cultural, educational and economic amenities to the City of Wichita since 2002;

WHEREAS, the Scene Shop, Paint Shop, Costume Shop, and other spaces in Century II were created to accommodate the kind of production activities and education initiatives provided by WGO;

NOW, THEREFORE, the above named parties do hereby agree as follows with regard to certain specified matters relating to office space, rental rates, performances, rehearsals, auditions, and fundraising events:

1. **AGREEMENT FOR THE USE OF PREMISES.** Consistent with the terms of this Memorandum of Understanding and during the term hereof, the City will enter into leases and certain related arrangements with WGO concerning the use of office space currently occupied by WGO at Century II, and also the use of performance space and certain ancillary facilities regularly used by WGO in rehearsing and staging its performances at Century II. The

performance, ancillary, and office spaces are identified on the attached Exhibit B (but common areas such as restrooms and lobby areas included in the outlined performance space will not be subject to control by WGO except while WGO is actually using the performance space).

2. **TERM AND RENEWAL OPTIONS.** The Agreement sets an initial term of five (5) years, sets a commencement date as stated herein, and terminates the existing term. Upon the completion of each anniversary of the commencement of this MOU, unless notice of termination has been given under this section or under section 27 or 30, an additional one (1) year will be automatically added to this Agreement, unless either of the parties notifies the other to the contrary, as described below. WGO or the City may give notice of its intention to not add the additional year to the term by delivering a written notice to the other party, not less than sixty (60) days prior to the expiration of the existing year. Century II management will send a written reminder to the tenant ninety (90) days prior to the end of each year.

3. **BOOKING PROCEDURES.** WGO shall be allowed to request tentative bookings for performance spaces up to five (5) years in advance, if within the term of the Agreement. WGO will submit in writing to Century II Management or their designee dates for performance spaces for each season planned. Century II Management or their designee will confirm approval of requested dates within ten (10) business days. Once approved, specific dates will be put on "Tentative Hold". These dates shall remain on the booking calendar unless released by WGO in writing or contested by another Century II client. All tentative bookings may be contested through the process outlined in the most recent Century II Booking Policy approved by the City Council. Dates for performance spaces will become a "Definite Booking" once an "Agreement of Lease of Premises" is requested and signed by both WGO and Century II Management.

Performance and rehearsal dates that are a "Definite Booking" (dates that have been solidified through a jointly signed contract) may not be cancelled to accommodate competitive bookings unless cancelled by the City of Wichita Council through official action. In the event of such cancellations, the City will make reasonable, good faith efforts to assist WGO in ameliorating resulting disruption of the impacted performance season.

When booking potentially competing events with other organizations more than five years in the future or beyond the term of the Agreement, the City will notify WGO within ninety (90) days of the beginning of negotiations with said group of the potential conflict with its season, and WGO may seek City Council review of the booking decision.

4. **PAYMENT.** For the office space leased on a calendar year basis, WGO will pay quarterly payments comprised of three months' rent and due on the last business day of each quarter. Quarterly invoices for office space will be issued by the City on March 15, June 15, September 15 and December 15 each year, or if any such date is not a business day, then on the next preceding business day. For the performance space leased on a seasonal basis, WGO will make quarterly rental payments through separate invoices, comprised of the rent for WGO's performance dates that were within that calendar quarter, which quarterly payments, if timely invoiced, must also be received by the City by the last business of the quarter to which the payment corresponds. WGO may make rental payments by mail, hand-delivery or automated clearinghouse ("ACH") transfer, so long as the City receives payments on or before the applicable due dates. Payments can be mailed to: Century II, Attn: Administrative Office, 225 W. Douglas Ave., Wichita, Kansas 67202.

5. **NON-LIABILITY AND INDEMNITY.** The City, its officials, agents or employees shall not be liable for any loss, damage, or injury to properties of any kind that are shipped or otherwise delivered to or stored in or on the Century II premises. Properties shall not be received until WGO has made proper arrangements for receiving, handling, and storage of such material. WGO shall waive any claim against and shall indemnify, save and hold harmless the City and its City Council or their representatives against claims of any and all persons for injury to persons or damage to property occasioned by or in connection with the use of the premises by WGO, unless resulting from the gross negligence of the Century II Performing Arts & Convention Center or its employees, in the operation or maintenance of the premises.

6. **WAIVER OF ANY BREACH.** Any waiver of any breach hereof or indulgence as to the payment of any installment of rent at any time, or from time to time, shall not be construed to be a waiver of any subsequent breach or imply any future indulgence.

7. **USE OF PREMISES.** The demised premises may be used and occupied only as office space, storage space, meeting space, fundraising events, performance space, rehearsal space, and shop space related to producing events (consistent with the terms of the applicable lease) unless prior written permission for other use is obtained from the City. Producing and fundraising events may include, but not be limited to, the sale and/or distribution of souvenirs, programs, and other promotional materials and items related to WGO's productions. Further, WGO shall not use or permit said premises, or any part thereof, to be used for any other purpose or purposes than those contemplated by the applicable lease. WGO shall not commit, or suffer to be committed, any waste upon said premises and WGO further agrees not to connect with electric wires, water, gas or sewer pipes, or any apparatus, machinery or device without the consent of the City, other than customary office, shop, and production equipment. WGO shall neither use nor occupy the demised premises for any unlawful, disreputable or ultra hazardous business purpose or activity nor operate or conduct its business in a manner constituting a nuisance of any kind. Upon notice or discovery, WGO agrees to promptly take action and cease any activity or use in violation of this Agreement.

8. **ADA COMPLIANCE**. WGO and the City each represent and warrant that they are cognizant of the provisions of the Americans with Disabilities Act of 1990 (ADA) to the extent that such provisions may apply to each party to this Agreement. The City represents and warrants that reasonable accommodations have been made (or are in progress) relating to accessibility standards for public facilities. WGO is responsible as the tenant for obtaining the appropriate number of assisted listening devices, and providing them for each performance. City will make available for WGO those devices it possesses on an as-is basis. City cannot warrant successful operation as it will not be in control of distribution to or use by WGO patrons. WGO remains responsible for meeting ADA requirements. WGO represents and warrants that it will make reasonable accommodations regarding provisions of the ADA ticketing for accessible and companion seating relating to the production/performance of its events, including ticket sales, distribution and collection of assisted listening receivers. Each party agrees to indemnify and hold harmless the other party for any liability, penalty, fine, punishment, judgment, or claims, whether civil, administrative or otherwise, which may arise or be imposed in connection with the indemnifying party's failure to comply with provisions of the ADA.

9. **RENTAL FEES.** As part consideration for this Agreement and as rent for the use of office space, storage space, performance space and ancillary facilities, as shown in Exhibit B of

this MOU, WGO agrees to pay to the City rent at the following rates:

a) Office Space – Rent for 2012 shall be retroactively adjusted to the rate set in the following table. Rent for office space for the current and subsequent years shall be determined in accordance with the following schedule:

Year Beginning	Cost Per Square Ft	Leased Sq Ft	Office Rent
January 1, 2012	$4.50	832	$3,744
January 1, 2013	$4.75	832	$3,952
January 1, 2014	$5.00	832	$4,160
January 1, 2015	$5.25	832	$4,368
January 1, 2016	$5.50	832	$4,576

b) Rent for performance space and ancillary facilities shall be determined at rates based upon the City's criteria established for such space and facilities as approved by City Council. Rates for the performance space will not be increased except by vote of the City Council. Any additional rehearsal space (e.g. meeting rooms) will need to be included in the rental agreement for space if the tenant wants to guarantee the availability. However, if additional spaces are available and not being utilized for other purposes, then the tenant will be allowed to utilize the space for rehearsals at a negotiated rate with other ancillary spaces.

Provided, however, that it is the intent of both parties hereto that Century II shall at all times remain qualified for exemption from *ad valorem* property taxes under the Kansas Statutes, and both parties acknowledge and agree that no portion of the rental payments provided for hereunder include compensation for return on the City's investment in the leased property, as it is contemplated that the rental rates provided for herein will not exceed the amount of the City's operation, maintenance and debt service costs for Century II that are fairly allocable to the leased space used by each Century II tenant. Notwithstanding anything to the contrary above, the annual office space rental rate increase will be capped so as not to exceed 70% of the current commercial downtown market rate of Class C office space obtained through a commercial member of the Wichita Area Association of Realtors; provided further, however, that in the event the rate of change in office space rent paid as a result of the foregoing should be an increase or a decrease of greater than 8%, then either party may request a re-negotiation of such rates to reflect the change in market conditions.

10. **LATE PAYMENT PENALITES.** All rental installments not received (postmarks do not count) by the City by the date on which they are due shall be considered delinquent and a late charge of $25.00 will be added to the outstanding balance, which shall also accrue interest at 12% per annum until paid. The provision for such late charge and interest shall be in addition to all of the City's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting City's remedies in any manner.

11. **CONDUCT OF BUSINESS.** WGO will conduct its business, and control its agents, employees and invitees in such a reasonable manner as not to create any nuisance, or wrongfully interfere with, annoy or disturb other occupants, guests, neighbors, or the City in the

management of the building; provided however, the City acknowledges that WGO's use of the premises is for entertainment, which includes music, sound, and special effects which are commonly accepted uses for a production.

12. **PUBLIC LIABILITY INSURANCE.** WGO agrees to carry public liability insurance on its use of the demised premises during the term hereof, covering both the City and WGO, with companies licensed to do business in the State of Kansas for limits of not less than $500,000 for injury or death of any one person, $500,000, for any one occurrence, $500,000 property damage insurance, and contractual liability coverage recognizing this Agreement, and providing that the City and WGO shall be given a minimum of thirty (30) days written notice by such insurance company prior to cancellation, termination or change of such insurance. The City shall be named as an additional insured on the above insurance policies.

13. **UTILITIES.** The City agrees to provide and pay for all utilities, except for phone service, long distance phone service, and Internet. The City will provide a clean and well-maintained rehearsal and performance space. The City will maintain all spaces being used at a comfortable temperature. WGO agrees to pay for all other services supplied to said premises not hereinbefore enumerated throughout the term of this Agreement and all such services shall be put in WGO's name. The City, however, shall not be liable for failure to furnish any of the foregoing when such failure is caused by conditions beyond the control of the City.

14. **PARKING.** WGO shall pay $20 per month for designated parking spaces for six (6) WGO staff vehicles. Any additional designated parking spaces can be added for an additional $20.00 per space per month when available. WGO will pay quarterly payments due on the last business day of each quarter and these parking fees will be included in the quarterly invoice for office space rental as a separate line item. When available, the City will make a good faith effort to provide WGO with an additional twenty (20) intermittent parking passes (5 car pooling and 15 misc) for an annual cost of $400 ($20 per pass, per performance season) in the Century II basement for intermittent use only, and the City will also permit WGO to use the parking spaces adjacent to WGO's leased performance space (or will make good faith efforts to make other reasonable surface parking available) on a non-exclusive basis for parking for persons participating in its activities.

15. **THE CITY OF WICHITA'S COVENANTS.** It is agreed by the parties hereto that it shall be the duty and obligation of the City herein:

a) Except as otherwise provided in this Agreement, to deliver the said premises to WGO, at commencement of the term of each lease issued under this Agreement, in "as-is" condition.
b) To provide routine maintenance and janitorial services with respect to the premises occupied by WGO and with respect to Century II generally. This does not include meeting set-up or other special requests made by the tenant; those services will be invoiced.
c) To make reasonable efforts to ensure that sound from other events in the facility will not interfere with WGO's performances.
d) To provide to WGO without additional charges building equipment used for rehearsals and performances at Century II including lighting and sound equipment assigned to the venue, which is rented. WGO will pay for the use of any facility owned pianos or additional lighting and sound equipment.

e) To permit WGO to continue to operate its own ticketing system, to hire ushers, other front of house staff, and back of house personnel, to print and distribute its own programs, to contract directly with properly licensed security personnel, and to schedule directly with the stagehand union in accordance with established City of Wichita stagehand contracts.

f) To allow WGO to provide food, beverages, wine and cheese style refreshments without charge, to its staff, artists, committees, board members, contributors, and receptions in the Founders Room, and if leased, the Service Club Room during rehearsals and intermission of performances held at Century II. WGO agrees to get any necessary signed waiver (to permit the serving of beverages and food) from Century II management and the authorized food caterer for Century II. WGO agrees to indemnify the City and hold the City harmless from any loss, liability, or damage, including the cost and expense of defending any claim therefore, arising from WGO's failure to secure a necessary waiver. WGO also agrees to indemnify the City and hold the City harmless from any loss, liability or damage, including any regulatory fine, assessment or cost of defense for failure to comply with any regulatory or licensure requirement relating to service of food, alcohol or other beverages. The City expressly withholds and disclaims any suggested authority for any illegal conduct.

g) To allow WGO, contingent upon WGO's compliance with its own covenants, duties and obligations herein and in leases issued hereunder, the right to use and occupy the leased premises in accordance with the terms of the leases issued hereunder.

h) The City will exercise best efforts to continue the exceptions to exclusive catering rights that exist in its current food services contract relating to Century II, and will include these exceptions in Requests for Proposals for future food services contracts.

i) The Century II staff will make every effort to foster the continued cooperation by all tenants to maintain the Founder's Room in exceptional condition.

16. **WGO'S COVENANTS.** In consideration of the foregoing, WGO hereby agrees:

a) To promptly pay the specified rents for the said premises in the manner and at the times as herein provided to the City, its successors and assigns, or to its agent.

b) To keep the spaces occupied by WGO and adjacent hallways neat, clean, clear of items and obstacles, safe, and sanitary during the term of this Agreement, and to observe and comply with all regulations governing said premises made by any property-governing agency as to cleanliness, all without cost or expense to City.

c) To notify the City immediately of any major problem relative to the space, building, and/or the grounds, which has come to the attention of the WGO Director..

d) To follow the Agreement the City has in effect with vendors with regard to food and beverage in Century II with the exceptions noted in the City Covenants.

e) To allow Century II staff to annually present to the WGO board a proposal for WGO to use WichitaTIX for WGO ticket sales.

f) To reasonably accommodate other tenants who may have a use for the scene shop, costume shop, Service Club Room, paint shop, theatre trap room and shop space (referred to as ancillary facilities), provided that the use by other tenants will not interfere with WGO's operations.

17. **MUTUAL WAIVERS OF SUBROGATION.** Each party hereby waives any and all claims against the other party for any and all liability or responsibility for any loss, injury or damage to any person(s), the said premises, the building or the contents thereof which may be caused by fire, casualty, accident, or otherwise during the term of the Agreement if, but only if,

and only to the extent that, such loss or damage is covered by and recoverable under valid and collectible insurance carried by the waiving party.

18. **IMPROVEMENTS AND ALTERATIONS.** WGO shall make no material changes or alteration on said premises unless it shall first have obtained City's written consent thereto.

19. **LIENS - REGULATIONS.** WGO shall not, during the term of this Agreement, permit or suffer any lien or encumbrance to attach to the premises or any part thereof and shall indemnify and save harmless the City against the same. WGO, its agents and employees, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in force or which may be hereafter adopted by the City of Wichita, Kansas, with respect to the operation and maintenance of the premises described herein. Further, WGO shall comply with all laws and ordinances of the State of Kansas and the City of Wichita, Kansas.

20. **SIGNS AND AWNINGS.** WGO agrees to comply with the established Century II signage policy that is universally applicable to all tenants. This policy is available upon request from Century II staff.

21. **INSPECTION AND ENTRY.** It shall be lawful for the City, its agents and representatives, at any reasonable hours in the day to enter into or upon said premises for the purpose of examining into the condition thereof or to make such repairs and alteration as may be necessary for the safety and preservation of the building, or in furtherance of ADA or other regulatory requirements.

22. **OWNERSHIP REPRESENTATION.** Under no circumstances shall WGO represent to any party that WGO is the owner of the property covered by the Agreement or the agent or trustee of the City. WGO understands and agrees that no authorization to act for, on or in behalf of the City, is granted to WGO.

23. **REMOVAL OF PROPERTY AND EQUIPMENT.** WGO shall have the right to remove from the said premises at any time during the Agreement term any and all equipment placed therein and owned by WGO, but not if the same are so permanently attached to the building that removal thereof will leave said building damaged or materially altered, and provided all rents are paid in full; and failing to do so, said improvements and/or equipment shall be and become the property of the City.

24. **NONDISCRIMINATION.** WGO agrees to comply with the requirements of City of Wichita Administrative Regulation on Nondiscrimination and Equal Opportunity Statement, which is marked Exhibit "A" hereto and incorporated herein.

25. **ASSIGNMENT AND SUBLEASE.** It is agreed that WGO may not assign property nor sublet in whole or in part any of Century II to any individual or organization.

26. **DESTRUCTION.** In the event of the destruction of the building containing said premises by fire, windstorm, or other cause, this Agreement and any lease(s) issued hereunder shall immediately terminate and cease unless the City shall, within ten (10) business days thereafter notify WGO in writing of the City's desire to continue said Agreement and lease(s), in which event the City shall be obligated to restore said building in due and reasonable time to

substantiate its former condition except as to any property owned by WGO therein, and in that event the rent shall be abated until said premises are restored to condition for occupancy. Slight or partial damage by fire, windstorm, or other cause, which does not render the building substantially unfit for use and occupancy shall not affect the terms of this Agreement.

27. **EVENT OF CASUALTY.** In the event the improvements on the premises shall be damaged or destroyed by a casualty as to become unusable, then the City may, if the City so elects, give notice in writing terminating this Agreement and any lease(s) issued hereunder upon proper notice.

28. **EVENTS OF DEFAULT.** The following shall be considered, for all purposes, to be defaults under and breaches of this Agreement, and of any lease(s) issued hereunder, by WGO:

a) Any failure of WGO to pay any invoices or installment after the invoice due date and for a period of ten (10) business days after notice that the payment was not made when due.
b) Failure of WGO to perform or observe any of the terms, provisions, conditions and covenants of this Agreement (or any lease(s) issued hereunder), other than the payment of rent, if such failure is not cured within ten (10) business days after written notice thereof to WGO. A reasonable cure period will be given if the nature of the default requires more time to cure and tenant is proceeding with due diligence.
c) WGO shall become bankrupt or insolvent, or file or have filed against it a petition in bankruptcy, or the reorganization or arrangement, or for the appointment of a receiver or trustee of all or a substantial portion of WGO's property, or WGO makes an assignment for the benefit of creditors.
d) The demised premises come into the hands of any person other than as expressly permitted under this Agreement.

29. **DISPUTE RESOLUTION**. Disputes arising in the performance of this Agreement, or leases issued hereunder, which are not resolved by Agreement of the parties shall be decided in writing by the City's Manager of the Division of Arts & Cultural Services. This decision shall be final and conclusive unless within ten (10) business days from the date of receipt of its copy, WGO mails or otherwise furnishes a written appeal to the City Manager and City Council Members. In connection with any such appeal, WGO shall be afforded an opportunity to be heard by the City Manager and City Council Members and to offer information in support of its position. The decision of the City Council shall be subject to appeal to the district court pursuant to K.S.A. 60-2101(d).

30. **TERMINATION.** This Agreement, and any lease(s) issued hereunder, shall terminate without any further required notice upon occurrence of any of the following:

a) The expiration of the lease term or any extension thereof, if not further renewed or replaced with new leases issued under the terms of this Agreement.
b) Any default or breach of any covenants and provisions of this Agreement or any lease(s) issued hereunder by WGO and failure to cure such breach by WGO after notice periods identified hereinbefore in Section 28, in which case, WGO shall cease to be entitled to possession of the leased premises, and the City may distrain for rent due and damages and recover possession of said premises as provided by law.
c) Upon ninety (90) days notice (or, in the case of a public emergency, such shorter notice as may be necessary to accommodate such emergency), after declaration by a majority of

the City Council, in a properly noticed, open public meeting, that the leased premises are needed for a public purpose. Provided, however, that once WGO's regular performance season has commenced, or is within ninety (90) days of commencing, in a given year, termination to accommodate a public purpose will not be effective until the scheduled conclusion of that season, unless the public purpose at issue is a public emergency.

31. **ENFORCEABILITY/SEVERABILITY.** No covenant, term or condition of this Agreement shall be deemed waived by City, or WGO, unless waived in writing. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

32. **BINDING ON PARTIES.** Subject to the limitations provided hereinbefore hereof, this Agreement shall be, jointly and severally, binding on the parties.

33. **NOTICE.** All WGO correspondence, notices and demands to the City must be given in writing to:

City of Wichita
Division of Arts & Cultural Services
Attention: Division Manager
Century II
225 W. Douglas Ave.
Wichita, Kansas 67202

All City correspondence, notices and demands to WGO must be given in writing to:

Wichita Grand Opera
Attention: General Director
Century II
225 W. Douglas Ave.
Wichita, Kansas 67202-3100

34. **EXHIBITS.** All of the exhibits referenced hereinabove are part of the Agreement as if fully set forth herein.

35. **CAPTIONS.** The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

36. **CASH BASIS.** It is the intent of the parties that the provisions of this Agreement and any leases issued hereunder are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.) (the "Cash Basis Law") or the Kansas Budget Law (K.S.A. 79-2925) (the "Budget Law"), and therefore, notwithstanding anything to the contrary herein or in any lease contained, the City's obligations under this Agreement and any lease are to be construed in a manner that assures that the City is at all times not in violation of the Cash Basis Law or the Budget Law. Accordingly, all City financial obligations will be subject to the sufficiency of annual appropriations.

37. **AMENDMENTS; BINDING EFFECT.** This Agreement may not be altered, changed

or amended, except by instrument in writing signed by the parties hereto. All terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective permitted successors in interest and legal representatives, except as otherwise herein expressly provided.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

CITY OF WICHITA, KANSAS

By_____
Carl Brewer, Mayor

ATTEST:

By_____
Karen Sublett, City Clerk

Wichita Grand Opera, Inc.

By_____
Parvan Bakardiev, President & CEO

APPROVED AS TO FORM:

By_____
Gary E. Rebenstorf, Director of Law

Exhibit A

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 contrator 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.

Exhibit B

Office Spaces:

- Office area on the second floor house right side of Concert Hall directly beside the elevator
- Office area on the third floor house right side of Concert Hall directly beside the elevator

Performance Spaces:

- Concert Hall
- Mary Jane Teall Theater
- Convention Hall

Ancillary Spaces:

- Service Club Room – rehearsal area
- Space designated in Storage 17 – rehearsal area
- Paint Shop
- Costume Shop
- Scene Shop
- Mary Jane Teall Theater Trap Room
- Welding Hallway

MEMORANDUM OF UNDERSTANDING

This Agreement is made and entered into this 1st day of January, 2012 (the Commencement Date).

BY AND BETWEEN **The City of Wichita, Kansas,**
a municipal corporation,
455 North Main Street
Wichita, Kansas 67202

AND **Wichita Grand Opera, Inc.**
Century II Performing Arts & Convention Center
225 W. Douglas Ave.
Wichita, KS 67202

WITNESSETH THAT:

WHEREAS, The City of Wichita (the "City") is the owner of the community facility known as "Century II," and has agreed to enter into this Memorandum of Understanding with Wichita Grand Opera, Inc. (WGO) to set forth certain terms and conditions upon which the City is willing to enter into leases and certain related arrangements, concerning the office space currently occupied by WGO at Century II, and also performance space and certain ancillary facilities regularly used by WGO in rehearsing and staging its performances at Century II; and,

WHEREAS, the fundamental mission of Century II is to provide a clean and safe venue for private and public gatherings, encompassing the performing arts, conventions, trade shows, banquets, meetings, public exhibits, religious programs and special events; and,

WHEREAS, The City recognizes the need for community access and for this reason, the City offers, through subsidy, affordable rates, which encourages maximum local use;

WHEREAS, WGO has contributed significant cultural, educational and economic amenities to the City of Wichita since 2002;

WHEREAS, the Scene Shop, Paint Shop, Costume Shop, and other spaces in Century II were created to accommodate the kind of production activities and education initiatives provided by WGO;

NOW, THEREFORE, the above named parties do hereby agree as follows with regard to certain specified matters relating to office space, rental rates, performances, rehearsals, auditions, and fundraising events:

1. **AGREEMENT FOR THE USE OF PREMISES.** Consistent with the terms of this Memorandum of Understanding and during the term hereof, the City will enter into leases and certain related arrangements with WGO concerning the use of office space currently occupied by WGO at Century II, and also the use of performance space and certain ancillary facilities regularly used by WGO in rehearsing and staging its performances at Century II. The

performance, ancillary, and office spaces are identified on the attached Exhibit B (but common areas such as restrooms and lobby areas included in the outlined performance space will not be subject to control by WGO except while WGO is actually using the performance space).

2. **TERM AND RENEWAL OPTIONS.** The Agreement sets an initial term of five (5) years, sets a commencement date as stated herein, and terminates the existing term. Upon the completion of each anniversary of the commencement of this MOU, unless notice of termination has been given under this section or under section 27 or 30, an additional one (1) year will be automatically added to this Agreement, unless either of the parties notifies the other to the contrary, as described below. WGO or the City may give notice of its intention to not add the additional year to the term by delivering a written notice to the other party, not less than sixty (60) days prior to the expiration of the existing year. Century II management will send a written reminder to the tenant ninety (90) days prior to the end of each year.

3. **BOOKING PROCEDURES.** WGO shall be allowed to request tentative bookings for performance spaces up to five (5) years in advance, if within the term of the Agreement. WGO will submit in writing to Century II Management or their designee dates for performance spaces for each season planned. Century II Management or their designee will confirm approval of requested dates within ten (10) business days. Once approved, specific dates will be put on "Tentative Hold". These dates shall remain on the booking calendar unless released by WGO in writing or contested by another Century II client. All tentative bookings may be contested through the process outlined in the most recent Century II Booking Policy approved by the City Council. Dates for performance spaces will become a "Definite Booking" once an "Agreement of Lease of Premises" is requested and signed by both WGO and Century II Management.

Performance and rehearsal dates that are a "Definite Booking" (dates that have been solidified through a jointly signed contract) may not be cancelled to accommodate competitive bookings unless cancelled by the City of Wichita Council through official action. In the event of such cancellations, the City will make reasonable, good faith efforts to assist WGO in ameliorating resulting disruption of the impacted performance season.

When booking potentially competing events with other organizations more than five years in the future or beyond the term of the Agreement, the City will notify WGO within ninety (90) days of the beginning of negotiations with said group of the potential conflict with its season, and WGO may seek City Council review of the booking decision.

4. **PAYMENT.** For the office space leased on a calendar year basis, WGO will pay quarterly payments comprised of three months' rent and due on the last business day of each quarter. Quarterly invoices for office space will be issued by the City on March 15, June 15, September 15 and December 15 each year, or if any such date is not a business day, then on the next preceding business day. For the performance space leased on a seasonal basis, WGO will make quarterly rental payments through separate invoices, comprised of the rent for WGO's performance dates that were within that calendar quarter, which quarterly payments, if timely invoiced, must also be received by the City by the last business of the quarter to which the payment corresponds. WGO may make rental payments by mail, hand-delivery or automated clearinghouse ("ACH") transfer, so long as the City receives payments on or before the applicable due dates. Payments can be mailed to: Century II, Attn: Administrative Office, 225 W. Douglas Ave., Wichita, Kansas 67202.

5. **NON-LIABILITY AND INDEMNITY.** The City, its officials, agents or employees shall not be liable for any loss, damage, or injury to properties of any kind that are shipped or otherwise delivered to or stored in or on the Century II premises. Properties shall not be received until WGO has made proper arrangements for receiving, handling, and storage of such material. WGO shall waive any claim against and shall indemnify, save and hold harmless the City and its City Council or their representatives against claims of any and all persons for injury to persons or damage to property occasioned by or in connection with the use of the premises by WGO, unless resulting from the gross negligence of the Century II Performing Arts & Convention Center or its employees, in the operation or maintenance of the premises.

6. **WAIVER OF ANY BREACH.** Any waiver of any breach hereof or indulgence as to the payment of any installment of rent at any time, or from time to time, shall not be construed to be a waiver of any subsequent breach or imply any future indulgence.

7. **USE OF PREMISES.** The demised premises may be used and occupied only as office space, storage space, meeting space, fundraising events, performance space, rehearsal space, and shop space related to producing events (consistent with the terms of the applicable lease) unless prior written permission for other use is obtained from the City. Producing and fundraising events may include, but not be limited to, the sale and/or distribution of souvenirs, programs, and other promotional materials and items related to WGO's productions. Further, WGO shall not use or permit said premises, or any part thereof, to be used for any other purpose or purposes than those contemplated by the applicable lease. WGO shall not commit, or suffer to be committed, any waste upon said premises and WGO further agrees not to connect with electric wires, water, gas or sewer pipes, or any apparatus, machinery or device without the consent of the City, other than customary office, shop, and production equipment. WGO shall neither use nor occupy the demised premises for any unlawful, disreputable or ultra hazardous business purpose or activity nor operate or conduct its business in a manner constituting a nuisance of any kind. Upon notice or discovery, WGO agrees to promptly take action and cease any activity or use in violation of this Agreement.

8. **ADA COMPLIANCE**. WGO and the City each represent and warrant that they are cognizant of the provisions of the Americans with Disabilities Act of 1990 (ADA) to the extent that such provisions may apply to each party to this Agreement. The City represents and warrants that reasonable accommodations have been made (or are in progress) relating to accessibility standards for public facilities. WGO is responsible as the tenant for obtaining the appropriate number of assisted listening devices, and providing them for each performance. City will make available for WGO those devices it possesses on an as-is basis. City cannot warrant successful operation as it will not be in control of distribution to or use by WGO patrons. WGO remains responsible for meeting ADA requirements. WGO represents and warrants that it will make reasonable accommodations regarding provisions of the ADA ticketing for accessible and companion seating relating to the production/performance of its events, including ticket sales, distribution and collection of assisted listening receivers. Each party agrees to indemnify and hold harmless the other party for any liability, penalty, fine, punishment, judgment, or claims, whether civil, administrative or otherwise, which may arise or be imposed in connection with the indemnifying party's failure to comply with provisions of the ADA.

9. **RENTAL FEES.** As part consideration for this Agreement and as rent for the use of office space, storage space, performance space and ancillary facilities, as shown in Exhibit B of

this MOU, WGO agrees to pay to the City rent at the following rates:

a) Office Space – Rent for 2012 shall be retroactively adjusted to the rate set in the following table. Rent for office space for the current and subsequent years shall be determined in accordance with the following schedule:

Year Beginning	Cost Per Square Ft	Leased Sq Ft	Office Rent
January 1, 2012	$4.50	832	$3,744
January 1, 2013	$4.75	832	$3,952
January 1, 2014	$5.00	832	$4,160
January 1, 2015	$5.25	832	$4,368
January 1, 2016	$5.50	832	$4,576

b) Rent for performance space and ancillary facilities shall be determined at rates based upon the City's criteria established for such space and facilities as approved by City Council. Rates for the performance space will not be increased except by vote of the City Council. Any additional rehearsal space (e.g. meeting rooms) will need to be included in the rental agreement for space if the tenant wants to guarantee the availability. However, if additional spaces are available and not being utilized for other purposes, then the tenant will be allowed to utilize the space for rehearsals at a negotiated rate with other ancillary spaces.

Provided, however, that it is the intent of both parties hereto that Century II shall at all times remain qualified for exemption from *ad valorem* property taxes under the Kansas Statutes, and both parties acknowledge and agree that no portion of the rental payments provided for hereunder include compensation for return on the City's investment in the leased property, as it is contemplated that the rental rates provided for herein will not exceed the amount of the City's operation, maintenance and debt service costs for Century II that are fairly allocable to the leased space used by each Century II tenant. Notwithstanding anything to the contrary above, the annual office space rental rate increase will be capped so as not to exceed 70% of the current commercial downtown market rate of Class C office space obtained through a commercial member of the Wichita Area Association of Realtors; provided further, however, that in the event the rate of change in office space rent paid as a result of the foregoing should be an increase or a decrease of greater than 8%, then either party may request a re-negotiation of such rates to reflect the change in market conditions.

10. **LATE PAYMENT PENALITES.** All rental installments not received (postmarks do not count) by the City by the date on which they are due shall be considered delinquent and a late charge of $25.00 will be added to the outstanding balance, which shall also accrue interest at 12% per annum until paid. The provision for such late charge and interest shall be in addition to all of the City's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting City's remedies in any manner.

11. **CONDUCT OF BUSINESS.** WGO will conduct its business, and control its agents, employees and invitees in such a reasonable manner as not to create any nuisance, or wrongfully interfere with, annoy or disturb other occupants, guests, neighbors, or the City in the

management of the building; provided however, the City acknowledges that WGO's use of the premises is for entertainment, which includes music, sound, and special effects which are commonly accepted uses for a production.

12. **PUBLIC LIABILITY INSURANCE.** WGO agrees to carry public liability insurance on its use of the demised premises during the term hereof, covering both the City and WGO, with companies licensed to do business in the State of Kansas for limits of not less than $500,000 for injury or death of any one person, $500,000, for any one occurrence, $500,000 property damage insurance, and contractual liability coverage recognizing this Agreement, and providing that the City and WGO shall be given a minimum of thirty (30) days written notice by such insurance company prior to cancellation, termination or change of such insurance. The City shall be named as an additional insured on the above insurance policies.

13. **UTILITIES.** The City agrees to provide and pay for all utilities, except for phone service, long distance phone service, and Internet. The City will provide a clean and well-maintained rehearsal and performance space. The City will maintain all spaces being used at a comfortable temperature. WGO agrees to pay for all other services supplied to said premises not hereinbefore enumerated throughout the term of this Agreement and all such services shall be put in WGO's name. The City, however, shall not be liable for failure to furnish any of the foregoing when such failure is caused by conditions beyond the control of the City.

14. **PARKING.** WGO shall pay $20 per month for designated parking spaces for six (6) WGO staff vehicles. Any additional designated parking spaces can be added for an additional $20.00 per space per month when available. WGO will pay quarterly payments due on the last business day of each quarter and these parking fees will be included in the quarterly invoice for office space rental as a separate line item. When available, the City will make a good faith effort to provide WGO with an additional twenty (20) intermittent parking passes (5 car pooling and 15 misc) for an annual cost of $400 ($20 per pass, per performance season) in the Century II basement for intermittent use only, and the City will also permit WGO to use the parking spaces adjacent to WGO's leased performance space (or will make good faith efforts to make other reasonable surface parking available) on a non-exclusive basis for parking for persons participating in its activities.

15. **THE CITY OF WICHITA'S COVENANTS.** It is agreed by the parties hereto that it shall be the duty and obligation of the City herein:

a) Except as otherwise provided in this Agreement, to deliver the said premises to WGO, at commencement of the term of each lease issued under this Agreement, in "as-is" condition.
b) To provide routine maintenance and janitorial services with respect to the premises occupied by WGO and with respect to Century II generally. This does not include meeting set-up or other special requests made by the tenant; those services will be invoiced.
c) To make reasonable efforts to ensure that sound from other events in the facility will not interfere with WGO's performances.
d) To provide to WGO without additional charges building equipment used for rehearsals and performances at Century II including lighting and sound equipment assigned to the venue, which is rented. WGO will pay for the use of any facility owned pianos or additional lighting and sound equipment.

e) To permit WGO to continue to operate its own ticketing system, to hire ushers, other front of house staff, and back of house personnel, to print and distribute its own programs, to contract directly with properly licensed security personnel, and to schedule directly with the stagehand union in accordance with established City of Wichita stagehand contracts.

f) To allow WGO to provide food, beverages, wine and cheese style refreshments without charge, to its staff, artists, committees, board members, contributors, and receptions in the Founders Room, and if leased, the Service Club Room during rehearsals and intermission of performances held at Century II. WGO agrees to get any necessary signed waiver (to permit the serving of beverages and food) from Century II management and the authorized food caterer for Century II. WGO agrees to indemnify the City and hold the City harmless from any loss, liability, or damage, including the cost and expense of defending any claim therefore, arising from WGO's failure to secure a necessary waiver. WGO also agrees to indemnify the City and hold the City harmless from any loss, liability or damage, including any regulatory fine, assessment or cost of defense for failure to comply with any regulatory or licensure requirement relating to service of food, alcohol or other beverages. The City expressly withholds and disclaims any suggested authority for any illegal conduct.

g) To allow WGO, contingent upon WGO's compliance with its own covenants, duties and obligations herein and in leases issued hereunder, the right to use and occupy the leased premises in accordance with the terms of the leases issued hereunder.

h) The City will exercise best efforts to continue the exceptions to exclusive catering rights that exist in its current food services contract relating to Century II, and will include these exceptions in Requests for Proposals for future food services contracts.

i) The Century II staff will make every effort to foster the continued cooperation by all tenants to maintain the Founder's Room in exceptional condition.

16. **WGO'S COVENANTS.** In consideration of the foregoing, WGO hereby agrees:

a) To promptly pay the specified rents for the said premises in the manner and at the times as herein provided to the City, its successors and assigns, or to its agent.

b) To keep the spaces occupied by WGO and adjacent hallways neat, clean, clear of items and obstacles, safe, and sanitary during the term of this Agreement, and to observe and comply with all regulations governing said premises made by any property-governing agency as to cleanliness, all without cost or expense to City.

c) To notify the City immediately of any major problem relative to the space, building, and/or the grounds, which has come to the attention of the WGO Director..

d) To follow the Agreement the City has in effect with vendors with regard to food and beverage in Century II with the exceptions noted in the City Covenants.

e) To allow Century II staff to annually present to the WGO board a proposal for WGO to use WichitaTIX for WGO ticket sales.

f) To reasonably accommodate other tenants who may have a use for the scene shop, costume shop, Service Club Room, paint shop, theatre trap room and shop space (referred to as ancillary facilities), provided that the use by other tenants will not interfere with WGO's operations.

17. **MUTUAL WAIVERS OF SUBROGATION.** Each party hereby waives any and all claims against the other party for any and all liability or responsibility for any loss, injury or damage to any person(s), the said premises, the building or the contents thereof which may be

caused by fire, casualty, accident, or otherwise during the term of the Agreement if, but only if, and only to the extent that, such loss or damage is covered by and recoverable under valid and collectible insurance carried by the waiving party.

18. **IMPROVEMENTS AND ALTERATIONS.** WGO shall make no material changes or alteration on said premises unless it shall first have obtained City's written consent thereto.

19. **LIENS - REGULATIONS.** WGO shall not, during the term of this Agreement, permit or suffer any lien or encumbrance to attach to the premises or any part thereof and shall indemnify and save harmless the City against the same. WGO, its agents and employees, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in force or which may be hereafter adopted by the City of Wichita, Kansas, with respect to the operation and maintenance of the premises described herein. Further, WGO shall comply with all laws and ordinances of the State of Kansas and the City of Wichita, Kansas.

20. **SIGNS AND AWNINGS.** WGO agrees to comply with the established Century II signage policy that is universally applicable to all tenants. This policy is available upon request from Century II staff.

21. **INSPECTION AND ENTRY.** It shall be lawful for the City, its agents and representatives, at any reasonable hours in the day to enter into or upon said premises for the purpose of examining into the condition thereof or to make such repairs and alteration as may be necessary for the safety and preservation of the building, or in furtherance of ADA or other regulatory requirements.

22. **OWNERSHIP REPRESENTATION.** Under no circumstances shall WGO represent to any party that WGO is the owner of the property covered by the Agreement or the agent or trustee of the City. WGO understands and agrees that no authorization to act for, on or in behalf of the City, is granted to WGO.

23. **REMOVAL OF PROPERTY AND EQUIPMENT.** WGO shall have the right to remove from the said premises at any time during the Agreement term any and all equipment placed therein and owned by WGO, but not if the same are so permanently attached to the building that removal thereof will leave said building damaged or materially altered, and provided all rents are paid in full; and failing to do so, said improvements and/or equipment shall be and become the property of the City.

24. **NONDISCRIMINATION.** WGO agrees to comply with the requirements of City of Wichita Administrative Regulation on Nondiscrimination and Equal Opportunity Statement, which is marked Exhibit "A" hereto and incorporated herein.

25. **ASSIGNMENT AND SUBLEASE.** It is agreed that WGO may not assign property nor sublet in whole or in part any of Century II to any individual or organization.

26. **DESTRUCTION.** In the event of the destruction of the building containing said premises by fire, windstorm, or other cause, this Agreement and any lease(s) issued hereunder shall immediately terminate and cease unless the City shall, within ten (10) business days thereafter notify WGO in writing of the City's desire to continue said Agreement and lease(s), in

which event the City shall be obligated to restore said building in due and reasonable time to substantiate its former condition except as to any property owned by WGO therein, and in that event the rent shall be abated until said premises are restored to condition for occupancy. Slight or partial damage by fire, windstorm, or other cause, which does not render the building substantially unfit for use and occupancy shall not affect the terms of this Agreement.

27. **EVENT OF CASUALTY.** In the event the improvements on the premises shall be damaged or destroyed by a casualty as to become unusable, then the City may, if the City so elects, give notice in writing terminating this Agreement and any lease(s) issued hereunder upon proper notice.

28. **EVENTS OF DEFAULT.** The following shall be considered, for all purposes, to be defaults under and breaches of this Agreement, and of any lease(s) issued hereunder, by WGO:

a) Any failure of WGO to pay any invoices or installment after the invoice due date and for a period of ten (10) business days after notice that the payment was not made when due.
b) Failure of WGO to perform or observe any of the terms, provisions, conditions and covenants of this Agreement (or any lease(s) issued hereunder), other than the payment of rent, if such failure is not cured within ten (10) business days after written notice thereof to WGO. A reasonable cure period will be given if the nature of the default requires more time to cure and tenant is proceeding with due diligence.
c) WGO shall become bankrupt or insolvent, or file or have filed against it a petition in bankruptcy, or the reorganization or arrangement, or for the appointment of a receiver or trustee of all or a substantial portion of WGO's property, or WGO makes an assignment for the benefit of creditors.
d) The demised premises come into the hands of any person other than as expressly permitted under this Agreement.

29. **DISPUTE RESOLUTION**. Disputes arising in the performance of this Agreement, or leases issued hereunder, which are not resolved by Agreement of the parties shall be decided in writing by the City's Manager of the Division of Arts & Cultural Services. This decision shall be final and conclusive unless within ten (10) business days from the date of receipt of its copy, WGO mails or otherwise furnishes a written appeal to the City Manager and City Council Members. In connection with any such appeal, WGO shall be afforded an opportunity to be heard by the City Manager and City Council Members and to offer information in support of its position. The decision of the City Council shall be subject to appeal to the district court pursuant to K.S.A. 60-2101(d).

30. **TERMINATION.** This Agreement, and any lease(s) issued hereunder, shall terminate without any further required notice upon occurrence of any of the following:

a) The expiration of the lease term or any extension thereof, if not further renewed or replaced with new leases issued under the terms of this Agreement.
b) Any default or breach of any covenants and provisions of this Agreement or any lease(s) issued hereunder by WGO and failure to cure such breach by WGO after notice periods identified hereinbefore in Section 28, in which case, WGO shall cease to be entitled to possession of the leased premises, and the City may distrain for rent due and damages and recover possession of said premises as provided by law.
c) Upon ninety (90) days notice (or, in the case of a public emergency, such shorter notice

as may be necessary to accommodate such emergency), after declaration by a majority of the City Council, in a properly noticed, open public meeting, that the leased premises are needed for a public purpose. Provided, however, that once WGO's regular performance season has commenced, or is within ninety (90) days of commencing, in a given year, termination to accommodate a public purpose will not be effective until the scheduled conclusion of that season, unless the public purpose at issue is a public emergency.

31. **ENFORCEABILITY/SEVERABILITY.** No covenant, term or condition of this Agreement shall be deemed waived by City, or WGO, unless waived in writing. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

32. **BINDING ON PARTIES.** Subject to the limitations provided hereinbefore hereof, this Agreement shall be, jointly and severally, binding on the parties.

33. **NOTICE.** All WGO correspondence, notices and demands to the City must be given in writing to:

City of Wichita
Division of Arts & Cultural Services
Attention: Division Manager
Century II
225 W. Douglas Ave.
Wichita, Kansas 67202

All City correspondence, notices and demands to WGO must be given in writing to:

Wichita Grand Opera
Attention: General Director
Century II
225 W. Douglas Ave.
Wichita, Kansas 67202-3100

34. **EXHIBITS.** All of the exhibits referenced hereinabove are part of the Agreement as if fully set forth herein.

35. **CAPTIONS.** The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

36. **CASH BASIS.** It is the intent of the parties that the provisions of this Agreement and any leases issued hereunder are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.) (the "Cash Basis Law") or the Kansas Budget Law (K.S.A. 79-2925) (the "Budget Law"), and therefore, notwithstanding anything to the contrary herein or in any lease contained, the City's obligations under this Agreement and any lease are to be construed in a manner that assures that the City is at all times not in violation of the Cash Basis Law or the Budget Law. Accordingly, all City financial obligations will be subject to the sufficiency of annual appropriations.

37. **AMENDMENTS; BINDING EFFECT.** This Agreement may not be altered, changed or amended, except by instrument in writing signed by the parties hereto. All terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective permitted successors in interest and legal representatives, except as otherwise herein expressly provided.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

CITY OF WICHITA, KANSAS	Wichita Grand Opera, Inc.
By_____	By_____
Carl Brewer, Mayor	Parvan Bakardiev, President & CEO
ATTEST:	APPROVED AS TO FORM:
By_____	By_____
Karen Sublett, City Clerk	Gary E. Rebenstorf, Director of Law

Exhibit A

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 contrator 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.

Exhibit B

Office Spaces:

- Office area on the second floor house right side of Concert Hall directly beside the elevator
- Office area on the third floor house right side of Concert Hall directly beside the elevator

Performance Spaces:

- Concert Hall
- Mary Jane Teall Theater
- Convention Hall

Ancillary Spaces:

- Service Club Room – rehearsal area
- Space designated in Storage 17 – rehearsal area
- Paint Shop
- Costume Shop
- Scene Shop
- Mary Jane Teall Theater Trap Room
- Welding Hallway

MEMORANDUM OF UNDERSTANDING

This Agreement is made and entered into this 1st day of January, 2012 (the Commencement Date)

BY AND BETWEEN **The City of Wichita, Kansas,**
a municipal corporation,
455 North Main Street
Wichita, Kansas 67202

AND **The Wichita Symphony Society**
Century II Performing Arts & Convention Center
225 W. Douglas Ave.
Wichita, KS 67202

WITNESSETH THAT:

WHEREAS, The City of Wichita (the "City") is the owner of the community facility known as "Century II," and has agreed to enter into this Memorandum of Understanding with Wichita Symphony Society ("WSO") to set forth certain terms and conditions upon which the City is willing to enter into leases and certain related arrangements, concerning the office space currently occupied by WSO at Century II, and also performance space and certain ancillary facilities regularly used by WSO in rehearsing and staging its performances at Century II; and,

WHEREAS, the fundamental mission of Century II is to provide a clean and safe venue for private and public gatherings, encompassing the performing arts, conventions, trade shows, banquets, meetings, public exhibits, religious programs and special events; and,

WHEREAS, The City recognizes the need for community access and for this reason, the City offers, through subsidy, affordable rates, which encourages maximum local use;

WHEREAS, WSO has contributed significant cultural, educational and economic amenities to the City of Wichita since 1944;

WHEREAS, the Scene Shop, Paint Shop, Costume Shop, and other spaces in Century II were created to accommodate the kind of production activities and education initiatives provided by WSO;

NOW, THEREFORE, the above named parties do hereby agree as follows with regard to certain specified matters relating to office space, rental rates, performances, rehearsals, auditions, and fundraising events:

1. **AGREEMENT FOR THE USE OF PREMISES.** Consistent with the terms of this Memorandum of Understanding, and during the term hereof, the City will enter into leases and certain related arrangements with WSO, concerning the use of office space currently occupied by WSO at Century II, and also the use of performance space and certain ancillary facilities regularly used by WSO in rehearsing and staging its performances at Century II. The

performance, ancillary, office and storage spaces are identified on the attached Exhibit B (but common areas such as restrooms and lobby areas included in the outlined performance space will not be subject to control by WSO except while WSO is actually using the performance space).

2. **TERM AND RENEWAL OPTIONS.** The Agreement sets an initial term of five (5) years, sets a commencement date as stated herein, and terminates the existing term. Upon the completion of each anniversary of the commencement of this MOU, unless notice of termination has been given under section 27 or 30, an additional one (1) year will be automatically added to this Agreement, unless either of the parties notifies the other to the contrary, as described below. WSO or the City may give notice of its intention to not add the additional year to the term by delivering a written notice to the other party, not less than sixty (60) days prior to the expiration of the existing year. Century II management will send a written reminder to the tenant ninety (90) days prior to the end of each year.

3. **BOOKING PROCEDURES.** WSO shall be allowed to request tentative bookings for performance spaces up to five (5) years in advance, if within the term of the Agreement. WSO will submit in writing to Century II Management or their designee dates for performance spaces for each season planned. Century II Management or their designee will confirm approval of requested dates within ten (10) business days. Once approved, specific dates will be put on "Tentative Hold". These dates shall remain on the booking calendar unless released by WSO in writing or contested by another Century II client. All tentative bookings may be contested through the process outlined in the most recent Century II Booking Policy approved by the City Council. Dates for performance spaces will become a "Definite Booking" once an "Agreement of Lease of Premises" is requested and signed by both WSO and Century II Management.

Performance and rehearsal dates that are a "Definite Booking" (dates that have been solidified through a jointly signed contract) may not be cancelled to accommodate competitive bookings unless cancelled by the City of Wichita Council through official action. In the event of such cancellations, the City will make reasonable, good faith efforts to assist WSO in ameliorating resulting disruption of the impacted performance season.

When booking potentially competing events with other organizations more than five years in the future or beyond the term of the Agreement, the City will notify MTW within ninety (90) days of the beginning of negotiations with said group of the potential conflict with its season, and MTW may seek City Council review of the booking decision.

4. **PAYMENT.** For the office space leased on a calendar year basis, WSO will pay quarterly payments, comprised of three months' rent and due on the last business day of each quarter. Quarterly invoices for office space will be issued by the City on March 15, June 15, September 15, and December 15 each year, or if any such date is not a business day, then on the next preceding business day. For the performance space leased on a seasonal basis, WSO will make quarterly rental payments through separate invoices, comprised of the rent for WSO's performance dates that were within that calendar quarter, which quarterly payments, if timely invoiced, must also be received by the City by the last business day of the quarter to which the payment corresponds. WSO may make rental payments by mail, hand-delivery or automated clearinghouse ("ACH") transfer, so long as the City receives payments on or before the applicable due dates. Payments can be mailed to: Century II, Attn: Administrative Office, 225 W. Douglas, Wichita, Kansas 67202.

5. **NON-LIABILITY AND INDEMNITY.** The City, its officials, agents or employees shall not be liable for any loss, damage, or injury to properties of any kind that are shipped or otherwise delivered to or stored in or on the Century II premises. Properties shall not be received until WSO has made proper arrangements for receiving, handling, and storage of such material. WSO shall waive any claim against and shall indemnify, save and hold harmless the City and its City Council or their representatives against claims of any and all persons for injury to persons or damage to property occasioned by or in connection with the use of the premises by WSO, unless resulting from the gross negligence of the Century II Performing Arts & Convention Center or its employees, in the operation or maintenance of the premises.

6. **WAIVER OF ANY BREACH.** Any waiver of any breach hereof or indulgence as to the payment of any installment of rent at any time, or from time to time, shall not be construed to be a waiver of any subsequent breach or imply any future indulgence.

7. **USE OF PREMISES.** The demised premises may be used and occupied only as office space, storage space, meeting space, fundraising events, performance space, rehearsal space, and shop space related to producing events (consistent with the terms of the applicable lease) unless prior written permission for other use is obtained from the City. Producing and fundraising events may include, but not be limited to the sale and/or distribution of souvenirs, programs, and other promotional materials and items related to WSO's productions. Further, WSO shall not use or permit said premises, or any part thereof, to be used for any other purpose or purposes than those contemplated by the applicable lease. WSO shall not commit, or suffer to be committed, any waste upon said premises and WSO further agrees not to connect with electric wires, water, gas or sewer pipes, or any apparatus, machinery or device without the consent of the City, other than customary office, shop, and production equipment. WSO shall neither use nor occupy the demised premises for any unlawful, disreputable or ultra hazardous business purpose or activity, nor operate or conduct its business in a manner constituting a nuisance of any kind. Upon notice or discovery, WSO agrees to promptly take action and cease any activity or use in violation of this Agreement.

8. **ADA COMPLIANCE**. WSO and the City each represent and warrant that they are cognizant of the provisions of the Americans with Disabilities Act of 1990 (ADA) to the extent that such provisions may apply to each party to this Agreement. The City represents and warrants that reasonable accommodations have been made (or are in progress) relating to accessibility standards for public facilities.. WSO is responsible as the tenant for obtaining the appropriate number of assisted listening devices, and providing them for each performance. City will make available for WSO those devices it possesses on an as-is basis. City cannot warrant successful operation as it will not be in control of distribution to or use by WSO patrons. WSO remains responsible for meeting ADA requirements. WSO represents and warrants that it will make reasonable accommodations regarding provisions of the ADA ticketing for accessible and companion seating relating to the production/performance of its events, including ticket sales, distribution and collection of assisted listening receivers. Each party will agree to indemnify and hold harmless the other party for any liability, penalty, fine, punishment, judgment, or claims, whether civil, administrative or otherwise, which may arise or be imposed in connection with the indemnifying party's failure to comply with provisions of the ADA.

9. **RENTAL FEES.** As part consideration for this Agreement and as rent for the use of office space, storage space, performance space and ancillary facilities, as shown in Exhibit B of

this MOU, WSO agrees to pay to the City rent at the following rates:

a) Office Space – Rent for 2012 shall be retroactively adjusted to the rate set in the following table. Rent for office space for the current and subsequent years shall be determined in accordance with the following schedule:

Year Beginning	Cost Per Square Ft	Leased Sq Ft	Office Rent
January 1, 2012	$4.50	2060	$9,270
January 1, 2013	$4.75	2060	$9,785
January 1, 2014	$5.00	2060	$10,300
January 1, 2015	$5.25	2060	$10,815
January 1, 2016	$5.50	2060	$11,330

b) Rent for performance space and ancillary facilities shall be determined at rates based upon the City's criteria established for such space and facilities as approved by City Council. Rates for the performance space will not be increased except by vote of the City Council. Any additional rehearsal space (e.g. meeting rooms) will need to be included in the rental agreement for space if the tenant wants to guarantee the availability. However, if additional spaces are available and not being utilized for other purposes, then the tenant will be allowed to utilize the space for rehearsals at a negotiated rate with other ancillary spaces.

c) For the use of storage space, WSO agrees to pay unto the City the sum of Two Dollars and no Cents ($2.00) per square foot per year. WSO will pay quarterly payments due on the last business day of each quarter and these rental fees will be included in the quarterly office space invoice as a separate line item, and will be charged for the largest amount of storage space utilized at any time during that quarter. Baseline storage space available to WSO is 800 Sq ft with an annual rental cost of $1,600.

Provided, however, that it is the intent of both parties hereto that Century II shall at all times remain qualified for exemption from *ad valorem* property taxes under the Kansas Statutes, and both parties acknowledge and agree that no portion of the rental payments provided for hereunder include compensation for return on the City's investment in the leased property, as it is contemplated that the rental rates provided for herein will not exceed the amount of the City's operation, maintenance and debt service costs for Century II that are fairly allocable to the leased space used by each Century II client. Notwithstanding anything to the contrary above, in years after 2012, the annual office space rental rate will be capped so as not to exceed 70% of the current commercial downtown market rate of Class C office space obtained through a commercial member of the Wichita Area Association of Realtors; provided further, however, that in the event the rate of change in office space rent paid as a result of the foregoing should be an increase or a decrease of greater than 8%, then either party may request a re-negotiation of such rates to reflect the change in market conditions.

10. **LATE PAYMENT PENALITES**. All rental installments not received (postmarks do not count) by the City by the date on which they are due shall be considered delinquent. A late charge of $25.00 will be added to the outstanding balance, which shall also accrue interest at

12% per annum until paid. The provision for such late charge and interest shall be in addition to all of the City's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting City's remedies in any manner.

11. **CONDUCT OF BUSINESS.** WSO will conduct its business and control its agents, employees and invitees in such a reasonable manner as not to create any nuisance, or wrongfully interfere with, annoy or disturb other occupants, guests, neighbors, or the City in the management of the building; provided however, the City acknowledges that WSO's use of the premises is for entertainment, which includes music, sound, and special effects which are commonly accepted uses for a production.

12. **PUBLIC LIABILITY INSURANCE.** WSO agrees to carry public liability insurance on its use of the demised premises during the term hereof, covering both the City and WSO, with companies licensed to do business in the State of Kansas for limits of not less than $500,000 for injury or death of any one person, $500,000, for any one occurrence, $500,000 property damage insurance, and contractual liability coverage recognizing this Agreement, and providing that the City and WSO shall be given a minimum of thirty (30) days written notice by such insurance company prior to cancellation, termination, or change of such insurance. The City shall be named as an additional insured on the above insurance policies.

13. **UTILITIES.** The City agrees to provide and pay for all utilities, except for phone service, long distance phone service, and Internet. The City will provide a clean and well-maintained rehearsal and performance space. The facility will maintain all spaces being used at a comfortable temperature. WSO agrees to pay for all other services supplied to said premises not hereinbefore enumerated throughout the term of this Agreement and all such services shall be put in WSO's name. The City, however, shall not be liable for failure to furnish any of the foregoing when such failure is caused by conditions beyond the control of the City.

14. **PARKING**. WSO shall pay $20 per month for designated parking spaces for six (6) WSO staff vehicles. Any additional designated parking spaces can be added for an additional $20.00 per space per month when available. WSO will pay quarterly payments due on the last business day of each quarter and these parking fees will be included in the quarterly invoice for office space rental as a separate line item. When available, the City will make a good faith effort to provide WSO with an additional twenty (20) intermittent parking passes (5 car pooling and 15 misc) for an annual cost of $400 ($20 per pass, per performance season) in the Century II basement for intermittent use only, and the City will also permit WSO to use the parking spaces adjacent to WSO's leased performance space (or will make good faith efforts to make other reasonable surface parking available) on a non-exclusive basis for parking for persons participating in its activities.

15. **THE CITY OF WICHITA'S COVENANTS.** It is agreed by the parties hereto that it shall be the duty and obligation of the City herein:

a) Except as otherwise provided in this Agreement, to deliver the said premises to WSO, at commencement of the term of each lease issued under this Agreement, in "as-is" condition.
b) To provide routine maintenance and janitorial services with respect to the premises occupied by WSO and with respect to Century II generally. This does not include

meeting set-up or other special requests made by the tenant; those services will be invoiced.

c) To make reasonable efforts to ensure that sound from other events in the facility will not interfere with WSO's performances.

d) To provide to WSO without additional charges building equipment used for rehearsals and performances at Century II including lighting and sound equipment assigned to the venue, which is rented. WSO will pay for the use of any facility owned pianos or additional lighting and sound equipment.

e) To permit WSO to continue to operate its own ticketing system, to hire ushers, other front of house staff, and back of house personnel, to print and distribute its own programs, to contract directly with properly licensed security personnel, and to schedule directly with the stagehand union in accordance with established City of Wichita stagehand contracts.

f) To allow WSO to provide food, beverages, wine and cheese style refreshments without charge, to its staff, artists, committees, board members, contributors, and receptions in the Founders Room, and if leased, the Service Club Room during rehearsals and intermission of performances held at Century II. WSO agrees to get any necessary signed waiver (to permit the serving of beverages and food) from Century II management and the authorized food caterer for Century II. WSO also agrees to indemnify the City and hold the City harmless from any loss, liability, or damage, including the cost and expense of defending any claim therefore, arising from WSO's failure to secure a necessary waiver.WSO also agrees to indemnify the City and hold the City harmless from any loss, liability or damage, including any regulatory fine, assessment or cost of defense for failure to comply with any regulatory or licensure requirement relating to service of food, alcohol or other beverages. The City expressly withholds and disclaims any suggested authority for any illegal conduct.

g) To allow WSO, contingent upon WSO's compliance with its own covenants, duties and obligations herein and in leases issued hereunder, the right to use and occupy the leased premises in accordance with the terms of the leases issued hereunder.

h) The City will exercise best efforts to continue the exceptions to exclusive catering rights that exist in its current food services contract relating to Century II, and will include these exceptions in Requests for Proposals for future food services contracts.

i) The Century II staff will make every effort to foster the continued cooperation by all tenants to maintain the Founder's Room in exceptional condition.

j) To include WSO in selecting a piano technician for Century II.

k) To allow WSO, with Century II management and food caterer's waiver, to permit patrons to bring food and beverage to the POPS Concerts. WSO agrees to indemnify the City and hold the City harmless from any loss, liability, damage, cost and expense of defending any claim therefore occurring from the caterer's waiver. WSO also agrees to indemnify the City and hold the City harmless from any loss, liability or damage, including any regulatory fine, assessment or cost of defense for failure to comply with any regulatory or licensure requirement relating to service of food, alcohol or other beverages. The City expressly withholds and disclaims any suggested authority for any illegal conduct.

l) To consider the back-to-back Young People's Concerts in one day as a single performance.

16. **WSO'S COVENANTS.** In consideration of the foregoing, WSO hereby agrees:

a) To promptly pay the specified rents for the said premises in the manner and at the times

as herein provided to the City, its successors and assigns, or to its agent.

b) To keep the spaces occupied by WSO and adjacent hallways neat, clean, clear of items and obstacles, safe, and sanitary during the term of this Agreement, and to observe and comply with all regulations governing said premises made by any property-governing agency as to cleanliness, all without cost or expense to City.
c) To notify the City immediately of any major problem relative to the space, building and/or the grounds, which has come to the attention of the WSO Director.
d) To follow the Agreement the City has in effect with vendors with regard to food and beverage in Century II with the exceptions noted in the City Covenants.
e) To allow Century II staff to annually present to the WSO board a proposal for WSO to use WichitaTIX for WSO ticket sales.
f) To reasonably accommodate other tenants who may have a use for the scene shop, costume shop, Service Club Room, paint shop, theatre trap room and shop space (referred to as ancillary facilities), provided that the use by other tenants will not interfere with WSO's operations.

17. **MUTUAL WAIVERS OF SUBROGATION.** Each party hereby waives any and all claims against the other party for any and all liability or responsibility for any loss, injury or damage to any person(s), the said premises, the building or the contents thereof which may be caused by fire, casualty, accident, or otherwise during the term of the Agreement if, but only if, and only to the extent that, such loss or damage is covered by and recoverable under valid and collectible insurance carried by the waiving party.

18. **IMPROVEMENTS AND ALTERATIONS.** WSO shall make no material changes or alteration on said premises unless it shall first have obtained City's written consent thereto.

19. **LIENS - REGULATIONS.** WSO shall not, during the term of this Agreement, permit or suffer any lien or encumbrance to attach to the premises or any part thereof and shall indemnify and save harmless the City against the same. WSO, its agents and employees, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in force or which may be hereafter adopted by the City of Wichita, Kansas, with respect to the operation and maintenance of the premises described herein. Further, WSO shall comply with all laws and ordinances of the State of Kansas and the City of Wichita, Kansas.

20. **SIGNS AND AWNINGS.** WSO agrees to comply with the established Century II signage policy that is universally applicable to all tenants. This policy is available upon request from Century II staff.

21. **INSPECTION AND ENTRY.** It shall be lawful for the City, its agents and representatives, at any reasonable hours in the day to enter into or upon said premises for the purpose of examining into the condition thereof or to make such repairs and alteration as may be necessary for the safety and preservation of the building, or in furtherance of ADA or other regulatory requirements.

22. **OWNERSHIP REPRESENTATION.** Under no circumstances shall WSO represent to any party that WSO is the owner of the property covered by the Agreement or the agent or trustee of the City. WSO understands and agrees that no authorization to act for, on or in behalf of the City, is granted to WSO.

23. **REMOVAL OF PROPERTY AND EQUIPMENT.** WSO shall have the right to remove from the said premises, at any time during the Agreement term, any and all equipment placed therein and owned by WSO, but not if the same are so permanently attached to the building that removal thereof will leave said building damaged or materially altered, and provided all rents are paid in full; and failing to do so, said improvements and/or equipment shall be and become the property of the City.

24. **NONDISCRIMINATION.** WSO agrees to comply with the requirements of City of Wichita Administrative Regulation on Nondiscrimination and Equal Opportunity Statement, which is marked Exhibit "A" hereto and incorporated herein.

25. **ASSIGNMENT AND SUBLEASE.** It is agreed that WSO may not assign property nor sublet in whole or in part any of Century II to any individual or organization.

26. **DESTRUCTION.** In the event of the destruction of the building containing said premises by fire, windstorm, or other cause, this Agreement and any lease(s) issued hereunder shall immediately terminate and cease unless the City shall within ten (10) business days thereafter notify WSO in writing of the City's desire to continue said Agreement and lease(s), in which event the City shall be obligated to restore said building in due and reasonable time to substantiate its former condition except as to any property owned by WSO therein, and in that event the rent shall be abated until said premises are restored to condition for occupancy. Slight or partial damage by fire, windstorm, or other cause, which does not render the building substantially unfit for use and occupancy shall not affect the terms of this Agreement.

27. **EVENT OF CASUALTY.** In the event the improvements on the premises shall be damaged or destroyed by a casualty as to become unusable, then the City may, if the City so elects, give notice in writing terminating this Agreement and any lease(s) issued hereunder upon proper notice.

28. **EVENTS OF DEFAULT.** The following shall be considered, for all purposes, to be defaults under and breaches of this Agreement, and of any lease(s) issued hereunder, by WSO:

a) Any failure of WSO to pay any invoices or installment after the invoice due date and for a period of ten (10) business days after notice that the payment was not made when due.
b) Failure of WSO to perform or observe any of the terms, provisions, conditions and covenants of this Agreement (or any lease(s) issued hereunder), other than the payment of rent, if such failure is not cured within ten (10) business days after written notice thereof to WSO. A reasonable cure period will be given if the nature of the default requires more time to cure and tenant is proceeding with due diligence.
c) WSO shall become bankrupt or insolvent, or file or have filed against it a petition in bankruptcy, or the reorganization or arrangement, or for the appointment of a receiver or trustee of all or a substantial portion of WSO's property, or WSO makes an assignment for the benefit of creditors.
d) The demised premises come into the hands of any person other than as expressly permitted under this Agreement.

29. **DISPUTE RESOLUTION**. Disputes arising in the performance of this Agreement or leases issued hereunder, which are not resolved by Agreement of the parties shall be decided in writing by the City's Manager of the Division of Arts & Cultural Services. This decision shall

be final and conclusive unless within ten (10) business days from the date of receipt of its copy, WSO mails or otherwise furnishes a written appeal to the City Manager and City Council Members. In connection with any such appeal, WSO shall be afforded an opportunity to be heard by the City Manager and City Council Members and to offer information in support of its position. The decision of the City Council shall be subject to appeal to the district court pursuant to K.S.A. 60-2101(d).

30. **TERMINATION.** This Agreement, and any lease(s) issued hereunder, shall terminate without any further required notice upon occurrence of any of the following:

a) The expiration of the lease term or any extension thereof, if not further renewed or replaced with new leases issued under the terms of this Agreement.
b) Any default or breach of any covenants and provisions of this Agreement or any lease(s) issued hereunder by WSO and failure to cure such breach by WSO after notice periods identified hereinbefore in Section 28, in which case, WSO shall cease to be entitled to possession of the leased premises, and the City may distrain for rent due and damages and recover possession of said premises as provided by law.
c) Upon ninety (90) days notice (or, in the case of a public emergency, such shorter notice as may be necessary to accommodate such emergency), after declaration by a majority of the City Council, in a properly noticed, open public meeting, that the leased premises are needed for a public purpose. Provided, however, that once WSO's regular performance season has commenced, or is within ninety (90) days of commencing, in a given year, termination to accommodate a public purpose will not be effective until the scheduled conclusion of that season, unless the public purpose at issue is a public emergency.

31. **ENFORCEABILITY/SEVERABILITY.** No covenant, term or condition of this Agreement shall be deemed waived by City, or WSO, unless waived in writing. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

32. **BINDING ON PARTIES.** Subject to the limitations provided hereinbefore hereof, this Agreement shall be, jointly and severally, binding on the parties.

33. **NOTICE.** All WSO correspondence, notices and demands to the City must be given in writing to:

Division of Cultural Arts and Services
Attention: Division Manager
Century II
225 W. Douglas
Wichita, Kansas 67202

All City correspondence, notices and demands to WSO must be given in writing to:

Wichita Symphony Orchestra
Attention: Executive Director
Century II
225 W. Douglas
Wichita, Kansas 67202-3100

34. **EXHIBITS.** All of the exhibits referenced hereinabove are part of the Agreement as if fully set forth herein.

35. **CAPTIONS.** The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

36. **CASH BASIS**. It is the intent of the parties that the provisions of this Agreement and any leases issued hereunder are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.)(the "Cash Basis Law") or the Kansas Budget Law (K.S.A. 79-2925) (the "Budget Law"), and therefore, notwithstanding anything to the contrary herein or in any lease contained, the City's obligations under this Agreement and any lease are to be construed in a manner that assures that the City is at all times not in violation of the Cash Basis Law or the Budget Law. Accordingly, all City financial obligations will be subject to the sufficiency of annual appropriations.

37. **AMENDMENTS; BINDING EFFECT.** This Agreement may not be altered, changed or amended, except by instrument in writing signed by the parties hereto. All terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective permitted successors in interest and legal representatives, except as otherwise herein expressly provided.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

CITY OF WICHITA, KANSAS

By_____
Carl Brewer, Mayor

The Wichita Symphony Society

By_____
Don Reinhold, Executive Director

ATTEST:

By_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By_____
Gary E. Rebenstorf, Director of Law

Exhibit A

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.

Exhibit B

Office Spaces:

- Office areas on the second floor house right side of Concert Hall directly beside the Founder's Room

Performance Spaces:

- Concert Hall
- Mary Jane Teall Theater
- Convention Hall

Ancillary Spaces:

- Service Club Room – rehearsal area
- Space designated in Storage 17 – rehearsal area
- Paint Shop
- Costume Shop
- Scene Shop
- Mary Jane Teall Theater Trap Room
- Welding Hallway

MEMORANDUM OF UNDERSTANDING

This Agreement is made and entered into this 1st day of January, 2012 (the Commencement Date)

BY AND BETWEEN **The City of Wichita, Kansas,**
a municipal corporation,
455 North Main Street
Wichita, Kansas 67202

AND **The Wichita Symphony Society**
Century II Performing Arts & Convention Center
225 W. Douglas Ave.
Wichita, KS 67202

WITNESSETH THAT:

WHEREAS, The City of Wichita (the "City") is the owner of the community facility known as "Century II," and has agreed to enter into this Memorandum of Understanding with Wichita Symphony Society ("WSO") to set forth certain terms and conditions upon which the City is willing to enter into leases and certain related arrangements, concerning the office space currently occupied by WSO at Century II, and also performance space and certain ancillary facilities regularly used by WSO in rehearsing and staging its performances at Century II; and,

WHEREAS, the fundamental mission of Century II is to provide a clean and safe venue for private and public gatherings, encompassing the performing arts, conventions, trade shows, banquets, meetings, public exhibits, religious programs and special events; and,

WHEREAS, The City recognizes the need for community access and for this reason, the City offers, through subsidy, affordable rates, which encourages maximum local use;

WHEREAS, WSO has contributed significant cultural, educational and economic amenities to the City of Wichita since 1944;

WHEREAS, the Scene Shop, Paint Shop, Costume Shop, and other spaces in Century II were created to accommodate the kind of production activities and education initiatives provided by WSO;

NOW, THEREFORE, the above named parties do hereby agree as follows with regard to certain specified matters relating to office space, rental rates, performances, rehearsals, auditions, and fundraising events:

1. **AGREEMENT FOR THE USE OF PREMISES.** Consistent with the terms of this Memorandum of Understanding, and during the term hereof, the City will enter into leases and certain related arrangements with WSO, concerning the use of office space currently occupied by WSO at Century II, and also the use of performance space and certain ancillary facilities regularly used by WSO in rehearsing and staging its performances at Century II. The

performance, ancillary, office and storage spaces are identified on the attached Exhibit B (but common areas such as restrooms and lobby areas included in the outlined performance space will not be subject to control by WSO except while WSO is actually using the performance space).

2. **TERM AND RENEWAL OPTIONS.** The Agreement sets an initial term of five (5) years, sets a commencement date as stated herein, and terminates the existing term. Upon the completion of each anniversary of the commencement of this MOU, unless notice of termination has been given under section 27 or 30, an additional one (1) year will be automatically added to this Agreement, unless either of the parties notifies the other to the contrary, as described below. WSO or the City may give notice of its intention to not add the additional year to the term by delivering a written notice to the other party, not less than sixty (60) days prior to the expiration of the existing year. Century II management will send a written reminder to the tenant ninety (90) days prior to the end of each year.

3. **BOOKING PROCEDURES.** WSO shall be allowed to request tentative bookings for performance spaces up to five (5) years in advance, if within the term of the Agreement. WSO will submit in writing to Century II Management or their designee dates for performance spaces for each season planned. Century II Management or their designee will confirm approval of requested dates within ten (10) business days. Once approved, specific dates will be put on "Tentative Hold". These dates shall remain on the booking calendar unless released by WSO in writing or contested by another Century II client. All tentative bookings may be contested through the process outlined in the most recent Century II Booking Policy approved by the City Council. Dates for performance spaces will become a "Definite Booking" once an "Agreement of Lease of Premises" is requested and signed by both WSO and Century II Management.

Performance and rehearsal dates that are a "Definite Booking" (dates that have been solidified through a jointly signed contract) may not be cancelled to accommodate competitive bookings unless cancelled by the City of Wichita Council through official action. In the event of such cancellations, the City will make reasonable, good faith efforts to assist WSO in ameliorating resulting disruption of the impacted performance season.

When booking potentially competing events with other organizations more than five years in the future or beyond the term of the Agreement, the City will notify MTW within ninety (90) days of the beginning of negotiations with said group of the potential conflict with its season, and MTW may seek City Council review of the booking decision.

4. **PAYMENT.** For the office space leased on a calendar year basis, WSO will pay quarterly payments, comprised of three months' rent and due on the last business day of each quarter. Quarterly invoices for office space will be issued by the City on March 15, June 15, September 15, and December 15 each year, or if any such date is not a business day, then on the next preceding business day. For the performance space leased on a seasonal basis, WSO will make quarterly rental payments through separate invoices, comprised of the rent for WSO's performance dates that were within that calendar quarter, which quarterly payments, if timely invoiced, must also be received by the City by the last business day of the quarter to which the payment corresponds. WSO may make rental payments by mail, hand-delivery or automated clearinghouse ("ACH") transfer, so long as the City receives payments on or before the applicable due dates. Payments can be mailed to: Century II, Attn: Administrative Office, 225 W. Douglas, Wichita, Kansas 67202.

5. **NON-LIABILITY AND INDEMNITY.** The City, its officials, agents or employees shall not be liable for any loss, damage, or injury to properties of any kind that are shipped or otherwise delivered to or stored in or on the Century II premises. Properties shall not be received until WSO has made proper arrangements for receiving, handling, and storage of such material. WSO shall waive any claim against and shall indemnify, save and hold harmless the City and its City Council or their representatives against claims of any and all persons for injury to persons or damage to property occasioned by or in connection with the use of the premises by WSO, unless resulting from the gross negligence of the Century II Performing Arts & Convention Center or its employees, in the operation or maintenance of the premises.

6. **WAIVER OF ANY BREACH.** Any waiver of any breach hereof or indulgence as to the payment of any installment of rent at any time, or from time to time, shall not be construed to be a waiver of any subsequent breach or imply any future indulgence.

7. **USE OF PREMISES.** The demised premises may be used and occupied only as office space, storage space, meeting space, fundraising events, performance space, rehearsal space, and shop space related to producing events (consistent with the terms of the applicable lease) unless prior written permission for other use is obtained from the City. Producing and fundraising events may include, but not be limited to the sale and/or distribution of souvenirs, programs, and other promotional materials and items related to WSO's productions. Further, WSO shall not use or permit said premises, or any part thereof, to be used for any other purpose or purposes than those contemplated by the applicable lease. WSO shall not commit, or suffer to be committed, any waste upon said premises and WSO further agrees not to connect with electric wires, water, gas or sewer pipes, or any apparatus, machinery or device without the consent of the City, other than customary office, shop, and production equipment. WSO shall neither use nor occupy the demised premises for any unlawful, disreputable or ultra hazardous business purpose or activity, nor operate or conduct its business in a manner constituting a nuisance of any kind. Upon notice or discovery, WSO agrees to promptly take action and cease any activity or use in violation of this Agreement.

8. **ADA COMPLIANCE**. WSO and the City each represent and warrant that they are cognizant of the provisions of the Americans with Disabilities Act of 1990 (ADA) to the extent that such provisions may apply to each party to this Agreement. The City represents and warrants that reasonable accommodations have been made (or are in progress) relating to accessibility standards for public facilities.. WSO is responsible as the tenant for obtaining the appropriate number of assisted listening devices, and providing them for each performance. City will make available for WSO those devices it possesses on an as-is basis. City cannot warrant successful operation as it will not be in control of distribution to or use by WSO patrons. WSO remains responsible for meeting ADA requirements. WSO represents and warrants that it will make reasonable accommodations regarding provisions of the ADA ticketing for accessible and companion seating relating to the production/performance of its events, including ticket sales, distribution and collection of assisted listening receivers. Each party will agree to indemnify and hold harmless the other party for any liability, penalty, fine, punishment, judgment, or claims, whether civil, administrative or otherwise, which may arise or be imposed in connection with the indemnifying party's failure to comply with provisions of the ADA.

9. **RENTAL FEES.** As part consideration for this Agreement and as rent for the use of office space, storage space, performance space and ancillary facilities, as shown in Exhibit B of

this MOU, WSO agrees to pay to the City rent at the following rates:

a) Office Space – Rent for 2012 shall be retroactively adjusted to the rate set in the following table. Rent for office space for the current and subsequent years shall be determined in accordance with the following schedule:

Year Beginning	Cost Per Square Ft	Leased Sq Ft	Office Rent
January 1, 2012	$4.50	2060	$9,270
January 1, 2013	$4.75	2060	$9,785
January 1, 2014	$5.00	2060	$10,300
January 1, 2015	$5.25	2060	$10,815
January 1, 2016	$5.50	2060	$11,330

b) Rent for performance space and ancillary facilities shall be determined at rates based upon the City's criteria established for such space and facilities as approved by City Council. Rates for the performance space will not be increased except by vote of the City Council. Any additional rehearsal space (e.g. meeting rooms) will need to be included in the rental agreement for space if the tenant wants to guarantee the availability. However, if additional spaces are available and not being utilized for other purposes, then the tenant will be allowed to utilize the space for rehearsals at a negotiated rate with other ancillary spaces.

c) For the use of storage space, WSO agrees to pay unto the City the sum of Two Dollars and no Cents ($2.00) per square foot per year. WSO will pay quarterly payments due on the last business day of each quarter and these rental fees will be included in the quarterly office space invoice as a separate line item, and will be charged for the largest amount of storage space utilized at any time during that quarter. Baseline storage space available to WSO is 800 Sq ft with an annual rental cost of $1,600.

Provided, however, that it is the intent of both parties hereto that Century II shall at all times remain qualified for exemption from *ad valorem* property taxes under the Kansas Statutes, and both parties acknowledge and agree that no portion of the rental payments provided for hereunder include compensation for return on the City's investment in the leased property, as it is contemplated that the rental rates provided for herein will not exceed the amount of the City's operation, maintenance and debt service costs for Century II that are fairly allocable to the leased space used by each Century II client. Notwithstanding anything to the contrary above, in years after 2012, the annual office space rental rate will be capped so as not to exceed 70% of the current commercial downtown market rate of Class C office space obtained through a commercial member of the Wichita Area Association of Realtors; provided further, however, that in the event the rate of change in office space rent paid as a result of the foregoing should be an increase or a decrease of greater than 8%, then either party may request a re-negotiation of such rates to reflect the change in market conditions.

10. **LATE PAYMENT PENALITES**. All rental installments not received (postmarks do not count) by the City by the date on which they are due shall be considered delinquent. A late charge of $25.00 will be added to the outstanding balance, which shall also accrue interest at

12% per annum until paid. The provision for such late charge and interest shall be in addition to all of the City's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting City's remedies in any manner.

11. **CONDUCT OF BUSINESS.** WSO will conduct its business and control its agents, employees and invitees in such a reasonable manner as not to create any nuisance, or wrongfully interfere with, annoy or disturb other occupants, guests, neighbors, or the City in the management of the building; provided however, the City acknowledges that WSO's use of the premises is for entertainment, which includes music, sound, and special effects which are commonly accepted uses for a production.

12. **PUBLIC LIABILITY INSURANCE.** WSO agrees to carry public liability insurance on its use of the demised premises during the term hereof, covering both the City and WSO, with companies licensed to do business in the State of Kansas for limits of not less than $500,000 for injury or death of any one person, $500,000, for any one occurrence, $500,000 property damage insurance, and contractual liability coverage recognizing this Agreement, and providing that the City and WSO shall be given a minimum of thirty (30) days written notice by such insurance company prior to cancellation, termination, or change of such insurance. The City shall be named as an additional insured on the above insurance policies.

13. **UTILITIES.** The City agrees to provide and pay for all utilities, except for phone service, long distance phone service, and Internet. The City will provide a clean and well-maintained rehearsal and performance space. The facility will maintain all spaces being used at a comfortable temperature. WSO agrees to pay for all other services supplied to said premises not hereinbefore enumerated throughout the term of this Agreement and all such services shall be put in WSO's name. The City, however, shall not be liable for failure to furnish any of the foregoing when such failure is caused by conditions beyond the control of the City.

14. **PARKING**. WSO shall pay $20 per month for designated parking spaces for six (6) WSO staff vehicles. Any additional designated parking spaces can be added for an additional $20.00 per space per month when available. WSO will pay quarterly payments due on the last business day of each quarter and these parking fees will be included in the quarterly invoice for office space rental as a separate line item. When available, the City will make a good faith effort to provide WSO with an additional twenty (20) intermittent parking passes (5 car pooling and 15 misc) for an annual cost of $400 ($20 per pass, per performance season) in the Century II basement for intermittent use only, and the City will also permit WSO to use the parking spaces adjacent to WSO's leased performance space (or will make good faith efforts to make other reasonable surface parking available) on a non-exclusive basis for parking for persons participating in its activities.

15. **THE CITY OF WICHITA'S COVENANTS.** It is agreed by the parties hereto that it shall be the duty and obligation of the City herein:

a) Except as otherwise provided in this Agreement, to deliver the said premises to WSO, at commencement of the term of each lease issued under this Agreement, in "as-is" condition.
b) To provide routine maintenance and janitorial services with respect to the premises occupied by WSO and with respect to Century II generally. This does not include

meeting set-up or other special requests made by the tenant; those services will be invoiced.

c) To make reasonable efforts to ensure that sound from other events in the facility will not interfere with WSO's performances.

d) To provide to WSO without additional charges building equipment used for rehearsals and performances at Century II including lighting and sound equipment assigned to the venue, which is rented. WSO will pay for the use of any facility owned pianos or additional lighting and sound equipment.

e) To permit WSO to continue to operate its own ticketing system, to hire ushers, other front of house staff, and back of house personnel, to print and distribute its own programs, to contract directly with properly licensed security personnel, and to schedule directly with the stagehand union in accordance with established City of Wichita stagehand contracts.

f) To allow WSO to provide food, beverages, wine and cheese style refreshments without charge, to its staff, artists, committees, board members, contributors, and receptions in the Founders Room, and if leased, the Service Club Room during rehearsals and intermission of performances held at Century II. WSO agrees to get any necessary signed waiver (to permit the serving of beverages and food) from Century II management and the authorized food caterer for Century II. WSO also agrees to indemnify the City and hold the City harmless from any loss, liability, or damage, including the cost and expense of defending any claim therefore, arising from WSO's failure to secure a necessary waiver.WSO also agrees to indemnify the City and hold the City harmless from any loss, liability or damage, including any regulatory fine, assessment or cost of defense for failure to comply with any regulatory or licensure requirement relating to service of food, alcohol or other beverages. The City expressly withholds and disclaims any suggested authority for any illegal conduct.

g) To allow WSO, contingent upon WSO's compliance with its own covenants, duties and obligations herein and in leases issued hereunder, the right to use and occupy the leased premises in accordance with the terms of the leases issued hereunder.

h) The City will exercise best efforts to continue the exceptions to exclusive catering rights that exist in its current food services contract relating to Century II, and will include these exceptions in Requests for Proposals for future food services contracts.

i) The Century II staff will make every effort to foster the continued cooperation by all tenants to maintain the Founder's Room in exceptional condition.

j) To include WSO in selecting a piano technician for Century II.

k) To allow WSO, with Century II management and food caterer's waiver, to permit patrons to bring food and beverage to the POPS Concerts. WSO agrees to indemnify the City and hold the City harmless from any loss, liability, damage, cost and expense of defending any claim therefore occurring from the caterer's waiver. WSO also agrees to indemnify the City and hold the City harmless from any loss, liability or damage, including any regulatory fine, assessment or cost of defense for failure to comply with any regulatory or licensure requirement relating to service of food, alcohol or other beverages. The City expressly withholds and disclaims any suggested authority for any illegal conduct.

l) To consider the back-to-back Young People's Concerts in one day as a single performance.

16. **WSO'S COVENANTS.** In consideration of the foregoing, WSO hereby agrees:

a) To promptly pay the specified rents for the said premises in the manner and at the times

as herein provided to the City, its successors and assigns, or to its agent.

b) To keep the spaces occupied by WSO and adjacent hallways neat, clean, clear of items and obstacles, safe, and sanitary during the term of this Agreement, and to observe and comply with all regulations governing said premises made by any property-governing agency as to cleanliness, all without cost or expense to City.
c) To notify the City immediately of any major problem relative to the space, building and/or the grounds, which has come to the attention of the WSO Director.
d) To follow the Agreement the City has in effect with vendors with regard to food and beverage in Century II with the exceptions noted in the City Covenants.
e) To allow Century II staff to annually present to the WSO board a proposal for WSO to use WichitaTIX for WSO ticket sales.
f) To reasonably accommodate other tenants who may have a use for the scene shop, costume shop, Service Club Room, paint shop, theatre trap room and shop space (referred to as ancillary facilities), provided that the use by other tenants will not interfere with WSO's operations.

17. **MUTUAL WAIVERS OF SUBROGATION.** Each party hereby waives any and all claims against the other party for any and all liability or responsibility for any loss, injury or damage to any person(s), the said premises, the building or the contents thereof which may be caused by fire, casualty, accident, or otherwise during the term of the Agreement if, but only if, and only to the extent that, such loss or damage is covered by and recoverable under valid and collectible insurance carried by the waiving party.

18. **IMPROVEMENTS AND ALTERATIONS.** WSO shall make no material changes or alteration on said premises unless it shall first have obtained City's written consent thereto.

19. **LIENS - REGULATIONS.** WSO shall not, during the term of this Agreement, permit or suffer any lien or encumbrance to attach to the premises or any part thereof and shall indemnify and save harmless the City against the same. WSO, its agents and employees, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in force or which may be hereafter adopted by the City of Wichita, Kansas, with respect to the operation and maintenance of the premises described herein. Further, WSO shall comply with all laws and ordinances of the State of Kansas and the City of Wichita, Kansas.

20. **SIGNS AND AWNINGS.** WSO agrees to comply with the established Century II signage policy that is universally applicable to all tenants. This policy is available upon request from Century II staff.

21. **INSPECTION AND ENTRY.** It shall be lawful for the City, its agents and representatives, at any reasonable hours in the day to enter into or upon said premises for the purpose of examining into the condition thereof or to make such repairs and alteration as may be necessary for the safety and preservation of the building, or in furtherance of ADA or other regulatory requirements.

22. **OWNERSHIP REPRESENTATION.** Under no circumstances shall WSO represent to any party that WSO is the owner of the property covered by the Agreement or the agent or trustee of the City. WSO understands and agrees that no authorization to act for, on or in behalf of the City, is granted to WSO.

23. **REMOVAL OF PROPERTY AND EQUIPMENT.** WSO shall have the right to remove from the said premises, at any time during the Agreement term, any and all equipment placed therein and owned by WSO, but not if the same are so permanently attached to the building that removal thereof will leave said building damaged or materially altered, and provided all rents are paid in full; and failing to do so, said improvements and/or equipment shall be and become the property of the City.

24. **NONDISCRIMINATION.** WSO agrees to comply with the requirements of City of Wichita Administrative Regulation on Nondiscrimination and Equal Opportunity Statement, which is marked Exhibit "A" hereto and incorporated herein.

25. **ASSIGNMENT AND SUBLEASE.** It is agreed that WSO may not assign property nor sublet in whole or in part any of Century II to any individual or organization.

26. **DESTRUCTION.** In the event of the destruction of the building containing said premises by fire, windstorm, or other cause, this Agreement and any lease(s) issued hereunder shall immediately terminate and cease unless the City shall within ten (10) business days thereafter notify WSO in writing of the City's desire to continue said Agreement and lease(s), in which event the City shall be obligated to restore said building in due and reasonable time to substantiate its former condition except as to any property owned by WSO therein, and in that event the rent shall be abated until said premises are restored to condition for occupancy. Slight or partial damage by fire, windstorm, or other cause, which does not render the building substantially unfit for use and occupancy shall not affect the terms of this Agreement.

27. **EVENT OF CASUALTY.** In the event the improvements on the premises shall be damaged or destroyed by a casualty as to become unusable, then the City may, if the City so elects, give notice in writing terminating this Agreement and any lease(s) issued hereunder upon proper notice.

28. **EVENTS OF DEFAULT.** The following shall be considered, for all purposes, to be defaults under and breaches of this Agreement, and of any lease(s) issued hereunder, by WSO:

a) Any failure of WSO to pay any invoices or installment after the invoice due date and for a period of ten (10) business days after notice that the payment was not made when due.
b) Failure of WSO to perform or observe any of the terms, provisions, conditions and covenants of this Agreement (or any lease(s) issued hereunder), other than the payment of rent, if such failure is not cured within ten (10) business days after written notice thereof to WSO. A reasonable cure period will be given if the nature of the default requires more time to cure and tenant is proceeding with due diligence.
c) WSO shall become bankrupt or insolvent, or file or have filed against it a petition in bankruptcy, or the reorganization or arrangement, or for the appointment of a receiver or trustee of all or a substantial portion of WSO's property, or WSO makes an assignment for the benefit of creditors.
d) The demised premises come into the hands of any person other than as expressly permitted under this Agreement.

29. **DISPUTE RESOLUTION**. Disputes arising in the performance of this Agreement or leases issued hereunder, which are not resolved by Agreement of the parties shall be decided in writing by the City's Manager of the Division of Arts & Cultural Services. This decision shall

be final and conclusive unless within ten (10) business days from the date of receipt of its copy, WSO mails or otherwise furnishes a written appeal to the City Manager and City Council Members. In connection with any such appeal, WSO shall be afforded an opportunity to be heard by the City Manager and City Council Members and to offer information in support of its position. The decision of the City Council shall be subject to appeal to the district court pursuant to K.S.A. 60-2101(d).

30. **TERMINATION.** This Agreement, and any lease(s) issued hereunder, shall terminate without any further required notice upon occurrence of any of the following:

a) The expiration of the lease term or any extension thereof, if not further renewed or replaced with new leases issued under the terms of this Agreement.
b) Any default or breach of any covenants and provisions of this Agreement or any lease(s) issued hereunder by WSO and failure to cure such breach by WSO after notice periods identified hereinbefore in Section 28, in which case, WSO shall cease to be entitled to possession of the leased premises, and the City may distrain for rent due and damages and recover possession of said premises as provided by law.
c) Upon ninety (90) days notice (or, in the case of a public emergency, such shorter notice as may be necessary to accommodate such emergency), after declaration by a majority of the City Council, in a properly noticed, open public meeting, that the leased premises are needed for a public purpose. Provided, however, that once WSO's regular performance season has commenced, or is within ninety (90) days of commencing, in a given year, termination to accommodate a public purpose will not be effective until the scheduled conclusion of that season, unless the public purpose at issue is a public emergency.

31. **ENFORCEABILITY/SEVERABILITY.** No covenant, term or condition of this Agreement shall be deemed waived by City, or WSO, unless waived in writing. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

32. **BINDING ON PARTIES.** Subject to the limitations provided hereinbefore hereof, this Agreement shall be, jointly and severally, binding on the parties.

33. **NOTICE.** All WSO correspondence, notices and demands to the City must be given in writing to:

Division of Cultural Arts and Services
Attention: Division Manager
Century II
225 W. Douglas
Wichita, Kansas 67202

All City correspondence, notices and demands to WSO must be given in writing to:

Wichita Symphony Orchestra
Attention: Executive Director
Century II
225 W. Douglas
Wichita, Kansas 67202-3100

34. **EXHIBITS.** All of the exhibits referenced hereinabove are part of the Agreement as if fully set forth herein.

35. **CAPTIONS.** The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

36. **CASH BASIS**. It is the intent of the parties that the provisions of this Agreement and any leases issued hereunder are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.)(the "Cash Basis Law") or the Kansas Budget Law (K.S.A. 79-2925) (the "Budget Law"), and therefore, notwithstanding anything to the contrary herein or in any lease contained, the City's obligations under this Agreement and any lease are to be construed in a manner that assures that the City is at all times not in violation of the Cash Basis Law or the Budget Law. Accordingly, all City financial obligations will be subject to the sufficiency of annual appropriations.

37. **AMENDMENTS; BINDING EFFECT.** This Agreement may not be altered, changed or amended, except by instrument in writing signed by the parties hereto. All terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective permitted successors in interest and legal representatives, except as otherwise herein expressly provided.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

CITY OF WICHITA, KANSAS

By_____
Carl Brewer, Mayor

The Wichita Symphony Society

By_____
Don Reinhold, Executive Director

ATTEST:

By_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By_____
Gary E. Rebenstorf, Director of Law

Exhibit A

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.

Exhibit B

Office Spaces:

- Office areas on the second floor house right side of Concert Hall directly beside the Founder's Room

Performance Spaces:

- Concert Hall
- Mary Jane Teall Theater
- Convention Hall

Ancillary Spaces:

- Service Club Room – rehearsal area
- Space designated in Storage 17 – rehearsal area
- Paint Shop
- Costume Shop
- Scene Shop
- Mary Jane Teall Theater Trap Room
- Welding Hallway

Agenda Item No. IV-3.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Unlawful Use of Weapons

INITIATED BY: Wichita Police Department and Law Department

AGENDA: New Business

Recommendation: Approve first reading of the ordinance.

Background: The Wichita City Attorney requested a legal opinion from the Kansas Attorney General's Office regarding the possible preemption of city ordinances by the Kansas Personal and Family Protection Act, K.S.A. 75-7c01, *et seq*. Provisions of the Act preclude municipalities from imposing regulations or restrictions regarding the possession and transportation of firearms which exceed those set forth by the Act. The opinion received from the Kansas Attorney General's Office concluded that several of the City's weapon ordinances were preempted by the Act. Accordingly, amendments to the City's Ordinances regarding unlawful use of weapons are recommended.

Analysis: The proposed amendments bring the City's ordinance into compliance with State law regarding the unlawful use of weapons. The amendments no longer prohibit the open carrying of a firearm on property open to the public so long as the weapon is contained in a holster, the safety remains in place and the weapon is within the immediate control of the individual. The amendments prohibit the carrying of a loaded firearm in a motor vehicle when the weapon is accessible to the individual, unless the individual has the appropriate state issued carry concealed permit.

Lastly, the amendments exempt private security officers properly licensed by the Chief of Police and licensed armored car personnel from the prohibitions contained in the ordinances.

Financial Considerations: None.

Goal Impact: These amendments further the goal of Safe and Secure Neighborhoods.

Legal Considerations: The proposed amendments have been prepared and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council place the ordinance on first reading and authorize the necessary signatures.

Attachment: Ordinance.

First Published in The Wichita Eagle on _____

DELINEATED 03/16/2012

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTION 5.88.010 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WEAPONS AND REPEALING THE ORIGINAL OF SAID SECTION.

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

SECTION 1. Section 5.88.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Unlawful use of weapons.** (1) Unlawful use of a weapon is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, night stick, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement. This subsection shall not prohibit an ordinary pocket knife which has a spring, detent or other device which creates a bias towards closure of the blade and which requires hand pressure applied to such spring, detent or device through the

blade of the knife to overcome the bias towards closure to assist in the opening of the knife;

(b) Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, any bludgeon, sandclub a dagger, dirk, billy, blackjack, slingshot, nightstick, nun-chucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;

(c) Carrying unconcealed on one's person or in any vehicle under one's immediate control, with intent to use the same unlawfully against another, any bludgeon, sandclub, a dagger, dirk, billy, blackjack, slingshot, nightstick, nunchucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;

(d) Carrying any pistol, revolver or other firearm concealed on one's person, while on property open to the public, except when on one's land or in one's abode or fixed place of business;

(e) Carrying on one's person any unconcealed, loaded firearm, while on property open to the public, except when on one's land or in one's

abode or fixed place of business, unless the firearm is carried in a holster with its safety in place and such weapon remains within the immediate control of the person at all times;

(f) Carrying in any vehicle a loaded firearm which is under one's immediate control, while on property open to the public, ~~any loaded firearm~~, except when on one's land or in one's abode or fixed place of business;

(g) Carrying in any air, land or water vehicle an unloaded firearm that is not encased in a container which completely encloses the firearm;

(h) Carrying a loaded or unloaded firearm in a courtroom or within City Hall;

(i) Drawing a pistol, revolver, knife or any other deadly weapon upon any person;

(j) As used in this section, *"throwing star"* means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

(k) As used in this section, ‘under one’s immediate control’ shall mean within reaching distance of the person.

(2) Subsections (1)(a), (b), (c), (d), (e), (f) and (g), (h), and (i) of this subsection shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of a crime, while acting within the scope of their authority;

(c) Members of the Armed Services or Reserve Forces of the United States or the Kansas National Guard while in the performance of their official duty; or

(d) Manufacture of, transportation to, or sale of weapons to a person authorized under (a) through (c) of this subsection to possess such weapons.

(e) Qualified law enforcement officers or qualified retired law enforcement officers pursuant to the Law Enforcement Officers Safety Act ~~of 2004~~, 18 U.S.C. 926B and 18 U.S.C. 926C and amendments thereto.

(f) Individuals employed as security officers by the City of Wichita, who are authorized by the chief of police, with the approval of the city manager, to carry firearms, while acting within the scope of their authority as a security officer for the City of Wichita.

(3) Subsection (1)(d), (e) and (f) of this section shall not apply to or affect the following:

(a) ~~Watchmen, while~~ Private security officers who have been issued and are in possession of both a valid permit as required by Section 3.72.040 of this Code, and any amendments thereto, and a valid firearm permit issued by the Chief of Police pursuant to Section 3.72.210 of this code, and any amendments thereto, and are actually engaged in the performance of the duties of their employment;

(b) Private detectives licensed by the state to carry the firearm involved while actually engaged in the duties of their employment;

(c) Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(d) The State Fire Marshal, the State Fire Marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto.

(e) Special deputy sheriffs described in K.S.A. ~~2001 Supp~~. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.

(f) Persons who are employed by a licensed armored car service and whose duties include providing secured transportation,

protecting and safeguarding valuable cargo from one place to another and providing cash services for automated teller machines, all by means of bullet-resistant armored vehicles.

(4) Subsection (1)(i) of this section shall not apply to or affect historical re-enactors and actors when engaged in performances and demonstrations. Provided, however, this subsection shall only apply to those performances and demonstrations which have been approved in advance in writing by the city manager or his designee.

(5) Subsection (1)(d), (e), (f), and (g) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq., in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(6) Subsections 1(d), 1(f), and 1(g) shall not apply to:

(a) Any person carrying a concealed weapon as authorized by K.S.A. ~~2008 Supp.,~~ 75-7c01 through K.S.A. 75-7c17, and amendments thereto.

(b) The United States Attorney for the District of Kansas, the attorney general, or any district attorney or county attorney, while actually engaged in the duties of their employment or any activities incidental to

such duties; any Assistant United States Attorney if authorized by the United States Attorney for the District of Kansas and while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant attorney general if authorized by the attorney general and while actually engaged in the duties of their employment or any activities incidental to such duties; or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed and while actually engaged in the duties of their employment or any activities incidental to such duties. The provisions of this paragraph shall not apply to any person not in compliance with ~~Chapter 92, Section 4, of 2009 Session Laws of Kansas~~,, 75-7c01, *et seq.* and amendments thereto.

(7) Subsection 1(d) shall not apply to licensed hunters or fishermen, while engaged in hunting or fishing;

(8) Subsection 1(h) shall not apply to individuals employed as security officers by the City of Wichita, who are authorized by the chief of police, with the approval of the city manager, to carry firearms, while acting within the scope of their authority as a security officer for the City of Wichita.

(9) It shall be a defense that the defendant is within an exemption.

(10) Any person who violates any of the provisions of this section within the corporate limits of the city shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed $2,500.00 or by imprisonment for not more than one year, or by both such fine and imprisonment.

(11) In addition to the penalty for violation of any of the provisions of this section, it shall be the duty of the municipal court judge:

(a) To order any weapon seized in connection with such violation which is not a firearm to be forfeited to the city and the same shall be destroyed or caused to be destroyed by the chief of police whenever the weapon is no longer needed for evidence;

(b) To order any weapon seized in connection with such violation when no longer needed for evidentiary purposes, shall, in the discretion of the trial court, be:

(i) Destroyed;

(ii) Forfeited to the Wichita Police Department for use within the police department, for sale to a properly licensed federal firearms dealer or for trading to a properly licensed federal firearms dealer by the police department for other new or used firearms or accessories for the police department's use; or

(iii) Forfeited to the Kansas Bureau of Investigation for law enforcement, testing, comparison or destruction by the Kansas Bureau of Investigation Forensic Laboratory.

If weapons are sold as authorized above, the proceeds from any such sale shall be credited to the asset seizure and forfeiture fund of the Wichita Police Department. All transactions involving weapons disposed of under this subsection must have the prior approval of the city manager. All sales of weapons are subject to review by the city council.

(c) Any stolen weapon confiscated in connection with any violation of this section other than subdivision (a) of this subsection shall be returned to the person entitled to possession, if known, when the same is no longer needed for evidence. All other weapons shall be disposed of as provided in subsection (11)(a) and (b) of this section.

SECTION 2. The original of Section 5.88.010 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on July 20, 2012

11/02/2010

ORDINANCE NO. 49-309

AN ORDINANCE AMENDING SECTION 5.88.010 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE CRIME OF UNLAWFUL USE OF WEAPONS AND REPEALING THE ORIGINALS OF SAID SECTIONS.

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

Section 1. Section 5.88.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Unlawful use of weapons.** (1) Unlawful use of a weapon is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement. This subsection shall not prohibit an ordinary pocket knife which has a spring, detent or other device which creates a bias towards closure of the blade and which requires hand pressure applied to such spring, detent or device through the blade of the

knife to overcome the bias towards closure to assist in the opening of the knife;

(b) Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slingshot, nightstick, nun-chucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;

(c) Carrying unconcealed on one's person or in any vehicle under one's immediate control, with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slingshot, nightstick, nunchucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;

(d) Carrying any pistol, revolver or other firearm concealed on one's person, while on property open to the public, except when on one's land or in one's abode or fixed place of business;

(e) Carrying on one's person any unconcealed, loaded firearm, while on property open to the public, except when on one's land or in one's abode or fixed place of business;

(f) Carrying in any vehicle under one's immediate control, while on property open to the public, any loaded firearm, except when on one's land or in one's abode or fixed place of business;

(g) Carrying in any air, land or water vehicle an unloaded firearm that is not encased in a container which completely encloses the firearm;

(h) Carrying a loaded or unloaded firearm in a courtroom or within City Hall;

(i) Drawing a pistol, revolver, knife or any other deadly weapon upon any person.

(j) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

(2) Subsections (1)(a), (b), (c), (d), (e), (f) and (g), (h), and (i) of this subsection shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of a crime, while acting within the scope of their authority;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or

(d) Manufacture of, transportation to, or sale of weapons to a person authorized under (a) through (c) of this subsection to possess such weapons.

(e) Qualified law enforcement officers or qualified retired law enforcement officers pursuant to the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926B and 18 U.S.C. 926C and amendments thereto.

(f) Individuals employed as security officers by the City of Wichita, who are authorized by the Chief of Police, with the approval of the City Manager, to carry firearms, while acting within the scope of their authority as a security officer for the City of Wichita.

(3) Subsection (1)(d), (e) and (f) of this section shall not apply to or affect the following:

(a) Watchmen, while actually engaged in the performance of the duties of their employment;

(b) Private detectives licensed by the state to carry the firearm involved while actually engaged in the duties of their employment;

(c) Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(d) The State Fire Marshal, the State Fire Marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto.

(e) Special deputy sheriffs described in K.S.A. 2001 Supp. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.

(4) Subsection (1)(i) of this section shall not apply to or affect historical re-enactors and actors when engaged in performances and demonstrations. Provided, however, this subsection shall only apply to those performances and demonstrations which have been approved in advance in writing by the city manager or his designee.

(5) Subsection (1) (d), (e), (f), and (g) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the

name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(6) Subsections 1(d), 1(f), and 1(g) shall not apply to:

(a) Any person carrying a concealed weapon as authorized by K.S.A. 2008 Supp., 75-7c01 through K.S.A. 75-7c17, and amendments thereto.

(b) The United States attorney for the district of Kansas, the attorney general, or any district attorney or county attorney, while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant United States attorney if authorized by the United States attorney for the district of Kansas and while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant attorney general if authorized by the attorney general and while actually engaged in the duties of their employment or any activities incidental to such duties; or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed and while actually engaged in the duties of their employment or any activities incidental to such duties. The provisions of this paragraph shall not apply to any person not in compliance with Chapter 92, Section 4, of 2009 Session Laws of Kansas, and amendments thereto.

(7) Subsection 1(d) shall not apply to licensed hunters or fishermen, while engaged in hunting or fishing;

(8) Subsection 1(h) shall not apply to individuals employed as security officers by the City of Wichita, who are authorized by the Chief of Police, with the approval of the City Manager, to carry firearms, while acting within the scope of their authority as a security officer for the City of Wichita.

(9) It shall be a defense that the defendant is within an exemption.

(10) Any person who violates any of the provisions of this section within the corporate limits of the city shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

(11) In addition to the penalty for violation of any of the provisions of this section, it shall be the duty of the municipal court judge:

(a) To order any weapon seized in connection with such violation which is not a firearm to be forfeited to the city and the same shall be destroyed or caused to be destroyed by the chief of police whenever the weapon is no longer needed for evidence;

(b) To order any weapon seized in connection with such violation when no longer needed for evidentiary purposes, shall, in the discretion of the trial court, be:

(i) Destroyed:

(ii) Forfeited to the Wichita Police Department for use within the police department, for sale to a properly licensed federal firearms dealer or for trading to a properly licensed federal firearms dealer by the police department for other new or used firearms or accessories for the Police Department's use; or

(iii) Forfeited to the Kansas Bureau of Investigation for law enforcement, testing, comparison or destruction by the Kansas Bureau of Investigation forensic laboratory.

If weapons are sold as authorized above, the proceeds from any such sale shall be credited to the asset seizure and forfeiture fund of the Wichita Police Department. All transactions involving weapons disposed of under this subsection must have the prior approval of the city manager. All sales of weapons are subject to review by the city council;

(c) Any stolen weapon confiscated in connection with any violation of this section other than subdivision (a) of this subsection shall be returned to the person entitled to possession, if known, when the same is no longer needed for evidence. All other weapons shall be disposed of as provided in subsection (9)(a) and (b) of this section.

SECTION 2. The original of Section 5.88.010 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: 2011 Update – Task Force on Ending Chronic Homelessness

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Receive and file the report.

Background: The Wichita City Council and Sedgwick County Board of Commissioners appointed a Task Force on Ending Chronic Homelessness (TECH) in 2006. The TECH presented five recommendations to both governing bodies in 2008. One of the recommendations was the establishment of an Oversight Committee which would monitor implementation of the other four recommendations. The other recommendations are:

1. Develop a Resource and Referral Center
2. Implement a Housing First Program
3. Identify Emergency Housing options
4. Identify Sustainable Funding Sources.

These recommendations were the result of extensive study over a period of 18 months during which the Task Force met with numerous community service providers, visited other communities to learn about their homeless services programs and conducted research on best practices. Resource and Referral Center opened in January, 2012 and the Housing First program was implemented in March, 2009. A local community group, Advocates to End Chronic Homelessness (ACHE) assumed responsibility for the emergency housing options for the winter overflow shelter. The only remaining recommendation which has not been acted upon is number four above – the identification of sustainable funding sources.

Analysis: The TECH Oversight Committee meets regularly with City and County staff to track implementation activity and provides annual reports to the City Council and County Board of Commissioners. This is the third such report and will be presented by Jack Focht, chair of the original Task Force and of the Oversight Committee.

Of the 130 persons housed through the Housing First program, 26% (34) have left the program successfully. The program has also brought stability to those who continue to need assistance. Fifty-five percent (74) have been housed for over one year. Another goal of the program, to de-concentrate the placements has been achieved; 29 different apartment complexes are housing clients, within 10 different zip codes. A final highlight of the program is the 27 clients who are contributing to their housing expenses. This is the result of successful case management and advocacy on the client's behalf, with state and federal programs.

Financial Considerations: The City and County have each committed $191,368 per year, to support rent and utility payments for up to 64 participants in the Housing First program.

Goal Impact: The TECH recommendations support Safe and Secure Community, Economic Vitality and Affordable Living and Quality of Life goals.

Legal Considerations: None.

Recommendation/Action: It is recommended that the City Council receive and file the report.

Attachments: July, 2012 Oversight Committee Report

Oversight Committee Report

Presented to:
Sedgwick County Board of County Commissioners
and
City of Wichita City Council

July 2012

Sedgwick County...
working for you

CITY OF WICHITA

History of the plan development:

We are currently in year 4 (2012) of the 10 year plan.

In 2006, the City of Wichita and Sedgwick County joined together at the urging of nonprofit and faith-based organizations to form the Taskforce to End Chronic Homelessness (TECH). TECH was charged with developing a plan to end chronic homelessness in Sedgwick County to include short, intermediate, and long range strategies, as well as potential funding options as appropriate and a mechanism for reporting on goal attainment.

The term "chronically homeless" as defined by the U.S. Department of Housing and Urban Development(HUD), describes an unaccompanied person who has a disabling condition *and* has also been either continuously homeless for at least a year OR has had at least four episodes of homelessness in the past three years.

As a population, the chronically homeless have the highest rates of use of shelter and services, including ambulance rides, emergency room visits, police and EMS calls, jail time, and the court system. Consequently, they incur some of the highest associated annual costs per person.Frequent, repetitive use of these systems has not only enormous financial cost to the community, but places a significant psychological burden on providers. This financial and psychological drain has an immeasurable detrimental impact on our community.

TECH was comprised of representatives from various community sectors including business, the public school system, non-profits, people who experienced homelessness, faith communities, civic leaders, an urban neighborhood, and city and county governments. TECH met over a period of 16 months and conducted its work in four phases:

1) Studying Homelessness and Available Resources in Wichita
2) Identifying Gaps in Service to the Chronically Homeless
3) Researching Best Practices Nationally
4) Developing Strategies to End Chronic Homelessness

Responsibilities of the Oversight Committee

The Oversight Committee is responsible for working toward achieving success with ending chronic homelessness through the Sedgwick County 10 Year Plan to End Chronic Homelessness. They will ensure implementation of this Plan and its subsequent amendments by establishing standards and outcomes, overseeing the management of contracts, and monitoring/reporting progress. The Oversight Committee is responsible for increasing community awareness and raising financial/in-kind donations.

Responsibilities include:

- Development of the Resource and Referral Center
- Implementing a Housing First Program
- Identify Emergency Housing options
- Identify sustainable funding sources

UMOD Resource and Referral Center

United Methodist Open Door recently celebrated the opening of the new Resource and Referral Center, located at 402 E. Second Street. The new facility houses the agencies' administrative offices and nearly all of the Open Door ministries—the Klothes Kloset, housing programs and an expanded homeless ministry.

The new and inclusive Homeless Resource Center replaces the former Drop-in Center, offering additional facilities and improved services, such as addition shower facilities, brand new washers and dryers, and expanded secure storage.
Both Sedgwick County COMCARE, which provides mental-health and substance-abuse services, and Wichita's Housing First program, which seeks to end chronic homelessness are leasing space in the building. Partnering with other agencies in the same building essentially creates a "one-stop" resource center.

Housing First Program

The Housing Firstphilosophy is to provide housing first, and then combine that housing with access to supportive treatment services in the areas of mental and physical health, substance abuse, education, and employment.

Criteria for eligibility:

- Must meet the HUD definition of chronically homeless
- Must have a disabling condition
    - A diagnosable mental illness
    - A physical illness
    - A substance abuse diagnosis
    - A chronic physical illness, or
    - A developmental disability
- Must agree to weekly in home case management visits

Housing First Program figures as of **June30, 2012:**

- 130 persons have been housed (since March 2009)
- 34 have left the program successfully (through various means such as gaining a steady source of income, no longer requiring the assistance of the program, receiving a Section 8 voucher, receiving a HUD-VASH voucher, entering into an in-patient treatment facility, or moving to be near their family)
- 60 people remain successfully housed; 72 have been housed for over one year
- 29 different apartment complexes/property owners have been utilized
- 10 zip codes are represented
- 27 individuals are contributing to their rent and/or utilities

Housing First Works! Success Stories

- Since becoming housed In August 2009, "James" has experienced problems related to mental health, criminal tendencies, and addiction. James had a history of resistance toward applying for SSI/SSDI benefits and other services available through COMCARE.

  James recently met with the SOAR case manager to begin the benefit application process and is now working with a Supported Employment staff. James's case manager also reported another milestone for James -"he has finally quit sleeping on the pallet on his living room floor and is sleeping in his queen sized BED!"

- "Sean" was housed in July 2009 and suffered a stroke nearly one year ago. Sean has had difficulty performing tasks associated with managing a home—including trash removal and washing dishes. Case management noticed that Sean's lack of cleanliness was becoming increasingly worse and sought assistance from other agencies. Property management conducted an inspection and later issued a formal notice stating that if the home was not clean within 14 days, he would have 30 days to vacate the property.

  Sean realized the impact his unkempt home was causing and made a significant effort towards cleaning his home. He enlisted the help of a family member however the desire to live independently continues to motivate Sean to perform as many daily living skills as possible on his own. Through case management, work continues with other agencies to secure long term support to aid Sean in successfully maintaining his home.

- Two should be "Terry's" lucky number. In February 2011, Terry celebrated his second anniversary of sobriety and in July 2011 he celebrated his second anniversary in the Housing First program.

Housing First staff has never received a negative call from his property manager reporting concerns with his behavior or that of his guests yet when he entered the program; case management staff expressed concerns about the unlikelihood of his success.

Terry had participated in other supported housing programs and had never been successful. His addiction to alcohol was stronger and as a result of his drinking, his behavior changed, causing him to lose his housing. This has all changed for the better since he became a part of the Housing First program.

Emergency Housing Options

The Wichita area has had an overflow shelter since the winter of 1990. Early on, the City of Wichita, Sedgwick County and the United Way of the Plains helped provide funding for the shelter. Area churches provided shelter and Inter-Faith Ministries administered operations.

For the past four years, Advocates to End Chronic Homelessness (AECH)worked with Inter-Faith Ministries (IFM) in planning the overflow shelter for homeless people in the Wichita area. In the fall of 2011 AECH announced it would no longer take the lead.AECH and Interfaith Ministriesplanned and executed the shelters at no expense to the City or the County. Over $92,000 was raised by AECH. The City, County, and United Way previously contributed $12,500 respectively to fund the annual emergency shelter.

In January 2012, the Oversight Committee convened 60 people from various community sectors to discuss emergency shelter options. Facilitated discussion of key issues followed a detailed presentation on how the emergency shelter operated over the past four years.

As of April 2012, Inter-Faith Ministries (IFM) announced that they would take on the lead role in planning Wichita's winter overflow shelter. IFM has expressed a willingness to raise public funds for the shelter.

SSI/SSDSI Outreach, Access and Recovery (SOAR)

Nationally, only about 30 percent of individuals who apply for SSI/SSDI are approved on initial application. For people who are homeless and have no one to assist them, that percentage is cut by more than one half. When applications are denied, appeals can take an average of *one year* to complete, and in that time applicants often give up hope. With income support and Medicaid/Medicare health insurance, benefit recipients are able to access housing and physical/behavioral health care services, allowing them to pursue other life goals, including employment.

States and communities utilizing the SOAR approach report average approval ratings of over 70% in only 3 months.

The national success rate on initial applications for SSI and SSDI for all applicants is 37% with only 11% of the homeless population is estimated to receive SSI. SRS Kansas has provided training to over 300 individuals throughout the state.
In most states, once an individual is approved for SSI and Medicaid their treatment providers are able to retroactively bill Medicaid for services provided up to 90 days prior to the date of their SSI application. This means reimbursement for previously uncompensated care as well as payment for ongoing treatment.

Medical Providers and Hospitals can also receive Medicaid/Medicare reimbursement, often retroactively, for medication and direct service costs that would otherwise remain uncompensated. ER and inpatient units, the most expensive medical settings, are those most commonly used by those who are homeless and have no insurance.

COMCARE'S SOAR Case Manager has been successful in securing benefits for clients which has allowed COMCARE to retroactively bill and secure reimbursement of over $412,000, for medication and direct service costs incurred by clients who may have been homeless and uninsured at the time of service

2011 National SOAR Outcomes

- In 2011 alone, SSI/SSDI brought over $85 million into the state and local economies of participating states.

- Since 2006, there have been nearly 15,000 decisions on initial SSI/SSDI applications reported by 44 states using the SOAR approach for people who were homeless or at risk for homelessness. This is an increase of nearly 6,000 decisions over the prior year.

Sustainable Funding Sources

The Oversight Committee continues with its efforts ofidentifyingsustainable funding options.

Agenda Item No. IV-5.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Repair or Removal of Dangerous & Unsafe Structure (Districts I, IV and VI)

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendations: Adopt the resolution.

Background: On May 22, 2012, a report was submitted with respect to the dangerous and unsafe conditions on the properties below. The Council adopted a resolution providing for a public hearing to be held on this condemnation action at 9:30 a.m. or soon thereafter, on July 10, 2012.

Analysis: On May 7, 2012, the Board of Code Standards and Appeals (BCSA) held hearings on the properties listed below.

Property Address	Council District
a. 2703 E. 13th N.	I
b. 724 W. Dayton	IV
c. 1821 N. Broadway	VI

Detailed information/analyses concerning this property are included in the attachments.

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

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

Legal Considerations: The resolutions and notices of hearing was reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the resolutions declaring the building a dangerous and unsafe structure, and accept the BCSA recommended action to proceed with condemnation allowing 10 days to start demolition and 10 days to complete removal of the structures. Any extensions of time granted to repair the structure would be contingent on the following: (1) All taxes have been paid to date as of July 10, 2012; (2) the structure has been secured as of July 10, 2012, and will continue to be kept secured; and (3) the premises are mowed and free of debris as of July 10, 2012, and will be so maintained during renovation.

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

Attachments: Memorandums to Council, case summaries, and resolutions.

DATE: June 21, 2012

CDM SUMMARY

COUNCIL DISTRICT # I

ADDRESS: 2703 E 13TH N

LEGAL DESCRIPTION: THE WEST HALF OF LOTS 2, 4, 6 AND 8, EXCEPT THE NORTH 20 FEET OF LOT 2 FOR STREET, ON MABEL, NOW ESTELLE AVENUE, FAIRMOUNT PARK ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A two-story frame dwelling about 36 x 60 feet in size. Vacant and open, this structure has been badly damaged by fire. It has broken and missing transite siding; badly worn, fire-damaged, composition roof with holes and missing shingles; deteriorated side porch; fire-damaged interior walls, ceilings and floors; and the 25 x 30 foot garage/carport is fire damaged and partially collapsed.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.

B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.

C. Those open to unauthorized persons or those permitted to be attractive to loiterers, vagrants, or children.

D. The building has parts, which are so attached that they may fall and injure other property or the public.

E. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: June 21, 2012

BCSA GROUP # 1

ADDRESS: 2703 E 13TH N

ACTIVE FIELD FILE STARTED: May 15, 2007

NOTICE(S) ISSUED: Since May 15, 2007, numerous violation notices have been issued. In August 2009, a tall grass and weeds case was initiated resulting in owner compliance. In February 2010, two violations were cleared all others remain unmet. In January 2011, a neighborhood nuisance enforcement case was started and remains open. On May 24, 2012, Central Inspection staff completed an emergency board-up on this property at a cost of $298.10. It should be noted that uniform criminal complaints have been issued regarding this property and it has been the subject of neighborhood court.

PRE-CONDEMNATION LETTER: October 27, 2011

TAX INFORMATION: The 2011 taxes are delinquent in the amount of $29.64.

COST ASSESSMENTS/DATES: None

PREMISE CONDITIONS: Fire debris, bulky waste, tree debris, miscellaneous debris and tall grass and weeds.

VACANT NEGLECTED BUILDING REPORT: Open case

CENTRAL INSPECTION NUISANCE ABATEMENT REPORT: On May 24, 2012, emergency board-up in the amount of $298.10, which is pending assessment.

POLICE REPORT: In the past five years there has been one reported police incident at this location of found miscellaneous property in September 2011.

FORMAL CONDEMNATION ACTION INITIATED: March 20, 2012

RECENT DEVELOPMENTS: No repairs have been made and the structure is secured.

HISTORIC PRESERVATION REPORT: No impact

OWNER'S PAST CDM HISTORY: This owner previously had two properties in condemnation. Both were demolished by City of Wichita contractor.

BOARD OF C.S.&A. RECOMMENDATION: At the May 7, 2012, BCSA hearing, no one was present on behalf of this property.

Board Member Banuelos made a motion to refer the property to the City Council with a recommendation of condemnation, with ten days to begin demolition and ten days to complete the razing of the structure. Board Member Webb seconded the motion. The motion was approved.

STAFF RECOMMENDATION/REMARKS: Adopt the recommendation of the Board of Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

DATE: June 21, 2012

CDM SUMMARY

COUNCIL DISTRICT # IV

ADDRESS: 724 W DAYTON

LEGAL DESCRIPTION: LOTS 101 AND 103, ON DAYTON AVENUE, GLENDALE, AN ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A two-story frame dwelling about 28 x 40 feet in size. Vacant for at least 1 year, this structure has broken and missing siding; badly worn composition roof with missing shingles; deteriorated rear porch; and the 24 x 12 and 36 x 20 foot accessory structures are deteriorated.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.

B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.

C. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: June 21, 2012

BCSA GROUP # 1

ADDRESS: 724 W DAYTON

ACTIVE FIELD FILE STARTED: July 11, 1996

NOTICE(S) ISSUED: Since July 11, 1996, a notice of improvement and numerous violation notices have been issued. In September 2010, a neighborhood nuisance enforcement case was initiated resulting in City of Wichita contractor abatement. In June 2011, a tall grass and weeds case was initiated resulting in City of Wichita contractor abatement. In December 2010, Central Inspection staff completed an emergency board-up at a cost of $76.43. In May 2011, Central Inspection staff completed an emergency board-up at a cost of $689.62. In December 2011, an emergency board-up case was initiated resulting in owner compliance. In March 2012, a graffiti case was started and remains open. The Wichita Police Department has requested assistance on this property due to complaints regarding the unsecure conditions. It should be noted uniform criminal complaints have been issued regarding this property and it has been the subject of neighborhood court.

PRE-CONDEMNATION LETTER: August 5, 2011

TAX INFORMATION: The 2010 and 2011 taxes are delinquent in the amount of $2,067.64, which includes specials and interest.

COST ASSESSMENTS/DATES: There are two 2011 special assessments for emergency board-ups one in the amount of $78.72 and another in the amount of $711.67. There are two 2012 special assessments one is for lot cleanup in the amount of $818.72 and another for weed mowing in the amount of $122.78. All include interest.

PREMISE CONDITIONS: Tall grass and weeds

VACANT NEGLECTED BUILDING REPORT: None

CENTRAL INSPECTION NUISANCE ABATEMENT REPORT: On December 27, 2010, emergency board-up in the amount of $76.43. On May 26, 2011, emergency board-up in the amount of $689.62. On August 1, 2011, weed mowing in the amount of $120.00. On March 12, 2012, lot cleanup in the amount of $818.72.

POLICE REPORT: From February 2007 through May 2011 there has been nine reported police incidents at this location including; burglary residence, intimidation, unlawful possession of marijuana, arson dwelling, cigarette tobacco production violation, found miscellaneous property (2) and miscellaneous report (2).

FORMAL CONDEMNATION ACTION INITIATED: March 20, 2012

RECENT DEVELOPMENTS: No repairs have been made and the structure is unsecure with an open window.

HISTORIC PRESERVATION REPORT: No impact

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the May 7, 2012, BCSA hearing, there was no one in attendance on behalf of this property

Vacant for at least one year, this two-story frame dwelling is about 28 x 40 feet in size. This structure has broken and missing siding; badly worn composition roof with missing shingles; deteriorated rear porch; and the 24 x 12 and 36 x 20 foot accessory structures are deteriorated.

The active case was started on this property in 1996. Numerous notices have been issued, and several emergency board-ups have been done by Central Inspection staff.

Board Member Crotts made a motion to refer the property for condemnation, with ten days to begin demolition and ten days to finish the demolition. Board Member Willenberg seconded the motion. The motion carried.

STAFF RECOMMENDATION/REMARKS: Adopt the recommendation of the Board of Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

DATE: June 21, 2012

CDM SUMMARY

COUNCIL DISTRICT # VI

ADDRESS: 1821 N BROADWAY

LEGAL DESCRIPTION: LOTS 22 AND 24, BLOCK 7, FAIRVIEW ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A two-story frame dwelling about 32 x 56 feet in size. Vacant for at least 1 year, this structure has deteriorated and missing wood siding; deteriorated composition roof with missing shingles; deteriorated front and rear porches; rotted soffits, fascia and wood trim; and the 10 x 10 foot accessory structure is dilapidated.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.

B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.

C. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: June 21, 2012

BCSA GROUP # 1

ADDRESS: 1821 N BROADWAY

ACTIVE FIELD FILE STARTED: June 28, 1999

NOTICE(S) ISSUED: Since June 28, 1999, numerous notice of improvements and violation notices have been issued. In September 2007, an environmental case was initiated resulting in owner compliance. In January 2010, a neighborhood nuisance enforcement case was initiated resulting in owner compliance. In April 2011, a neighborhood nuisance enforcement case was started and remains open. On June 8, 2012, Central Inspection staff completed an emergency board-up on this property at a cost of $350.00. It should be noted that uniform criminal complaints have been issued regarding this property and it has been the subject of neighborhood court.

PRE-CONDEMNATION LETTER: November 28, 2011

TAX INFORMATION: The 2008, 2009, 2010 and 2011 taxes are delinquent in the amount of $2,583.59, which includes interest.

COST ASSESSMENTS/DATES: None

PREMISE CONDITIONS: Vehicle, vehicle parts, tires, wood and miscellaneous debris.

VACANT NEGLECTED BUILDING REPORT: None

CENTRAL INSPECTION NUISANCE ABATEMENT REPORT: On June 6, 2012, emergency board-up in the amount of $350.00, which is pending assessment.

POLICE REPORT: From May 2008 through September 2010, there have been nine reported police incidents at this location including; aggravated battery other, battery domestic violence, disorderly conduct other, (4) miscellaneous reports, mental case and larceny b all other.

FORMAL CONDEMNATION ACTION INITIATED: March 20, 2012

RECENT DEVELOPMENTS: No repairs have been made and the structure is secured.

HISTORIC PRESERVATION REPORT: This property may be listed on the national, state and/or local registers as a designated historic resource or it may be within the prescribed environs of a state or national register listed property or historic district. As a result, this matter is being referred to the City's Historical Preservation Board for review to determine compliance with any applicable Federal, State, local law or regulations.

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the May 7, 2012, BCSA hearing the owner was not present on behalf this property.
The original housing file was started on this property in 1999. Since that time, several notices have been issued. There is an open Neighborhood Nuisance Case on the property that has recently been processed for abatement by the City contractor. Taxes are delinquent for 2008, 2009, 2010, and

2011 in the amount of $2,555.96. There is junk, debris and bulky waste on the premise. The structure is not secure.

The property may be listed on the National Historic Register; therefore, if the Board action is in favor of condemnation, the property will then be submitted to the City of Wichita Historic Preservation Office who will take it to the Historic Preservation Committee for review.

Board Member Webb made a motion to refer the property to the City Council with a recommendation of condemnation, with ten days to initiate wrecking and ten days to finish the removal of the structure. Board Member Willenberg seconded the motion. The motion was approved.

STAFF RECOMMENDATION/REMARKS: Adopt the recommendation of the Board of Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

July 10, 2012
City Council Hearing
Removal of Dangerous Structures Case Summary

Address	Cncl. Dist.	Hsng. Case Age	Cndm. Init. Date	BCSA Hearing Date & Recommendation	Owner/ Rep. At BCSA ?	Open or Secure	Premise Cond. Status	Property Tax Status	Special Assessments	Pending Incurred Cost
2703 E. 13th N.	I	5 yrs. 1 mo.	03/20/12	05/07/12: 10/10	No	Secure	Fire debris, bulky waste, tree debris, miscellaneous debris and tall grass and weeds.	The 2011 taxes are delinquent in the amount of $29.64.	None	On May 24, 2012, emergency board-up in the amount of $298.10, which is pending assessment.
724 W. Dayton	IV	16 yrs.	03/20/12	05/07/12: 10/10	No	The structure is unsecure with an open window.	Tall grass and weeds	The 2010 and 2011 taxes are delinquent in the amount of $2,067.64, which includes specials and interest.	There are two 2011 special assessments for emergency board-ups one in the amount of $78.72 and another in the amount of $711.67. There are two 2012 special assessments one is for lot cleanup in the amount of $818.72 and another for weed mowing in the amount of $122.78. All include interest.	None

July 10, 2012
City Council Hearing
Removal of Dangerous Structures Case Summary

Address	Cncl. Dist.	Hsng. Case Age	Cndm. Init. Date	BCSA Hearing Date & Recommendation	Owner/ Rep. At BCSA ?	Open or Secure	Premise Cond. Status	Property Tax Status	Special Assessments	Pending Incurred Cost
1821 N. Broadway	VI	13 yrs.	03/20/12	05/07/12: 10/10	No	Secure	Vehicle, vehicle parts, tires, wood and miscellaneous debris.	The 2008, 2009, 2010 and 2011 taxes are delinquent in the amount of $2,583.59, which includes interest.	None	On June 6, 2012, emergency board-up in the amount of $350.00, which is pending assessment.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: General Obligation Bond and Note Sale

INITIATED BY: Finance Department

AGENDA: New Business

Recommendation: Approve the bids.

Background: The City is offering for sale two series of general obligation temporary notes in a principal amount of approximately $61,245,000 (Series 245 and 252) and three series of general obligation bonds (Series 805, 810 and 961) in a principal amount of approximately $16,145,000 for the purpose of providing interim and permanent financing for capital improvement projects of the City.

Analysis: The proceeds from the sale of the Series 245 and 252 Renewal and Improvement Temporary Notes will be used to provide interim financing for City-at-large, improvement district projects and improvements related to Tax Increment Financing (TIF) Districts. Due to the nature of the improvements, the Series 245 Renewal and Improvement Notes are taxable under Federal law.

The proceeds from the sale of the Series 805 Bonds will be used to permanently finance Storm Water Utility, City-at-large and other public improvement projects. The proceeds from the sale of the Series 810 Bonds will be used to permanently finance neighborhood improvements located in special improvement districts.

The proceeds from the sale of the Series 961 Bonds will be used to permanently finance improvements located within the East Bank Tax Increment Financing District.

Bids will be accepted electronically via ***PARITY*** Electronic Bid Submission System until 10:00 a.m. CT in the Finance Conference Room. 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 overall cost to the City.

Financial Considerations: The Series 245 ($6,105,000) and Series 252 ($55,140,000) Temporary Notes will mature on August 15, 2013 and will be retired using cash, the proceeds of permanent financing bonds and/or renewal notes issued at that time or from other sources. Each Series of Temporary Notes will be callable on February 14, 2013 at par. The Series 805 Bonds ($12,210,000) will mature serially over 10 and 15 years. Bonds maturing December 1, 2021, and thereafter, may be called for redemption prior to its respective maturities on and after December 1, 2020 at par. The Series 810 Bonds ($2,325,000) will mature serially over 15 and 20 years and will be paid from special assessments that are levied against benefited property.

The Series 810 Bonds maturing December 1, 2021, and thereafter, may be called for redemption and payment prior to its respective maturities on and after December 1, 2020 at par. The Series 961 Bonds ($1,610,000) are not subject to optional redemption prior to their maturity and will be paid from tax increment revenues generated from the East Bank Tax Increment Financing District.

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

Legal Considerations: The Law Department has approved the form of the ordinances and resolutions which have been prepared by Bond Counsel and, on the sale date, Bond Counsel reviews the bids for conformity to the bid conditions contained in the Official Notice of Sale and reports any irregularities in the bids to the Finance Department.

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

Attachments: For each Bond and Note series:

Request for Declaration of Emergency
Resolution Authorizing Issuance of Bonds/Notes
Ordinance Authorizing Issuance of Bonds/Notes

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 805, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $12,210,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

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

WHEREAS, the Governing Body has duly taken various actions, including the adoption, and publication, where necessary, of resolutions, ordinances and other proceedings as required by said laws, to authorize certain capital improvements in the City (the "Improvements" as further described in the herein referenced Bond Resolution), and has provided that the costs thereof shall be paid by the issuance of general obligation bonds of the City and other available funds of the City; and

WHEREAS, the Governing Body has found and determined that the combined total final costs and related expenses of the Improvements, less any available funds of the City as detailed on said **Schedule I** attached to the Resolution, leaves a balance for which funding is necessary of $12,210,000, all of which is payable by the issuance of general obligation bonds of the City, including all or any portion of any premium received on such bonds that is specified in the Resolution; and

WHEREAS, the Governing Body is authorized by the laws of the State, including K.S.A. 10-101 *et seq.,* as amended and supplemented, to issue the City's general obligation bonds to provide the necessary funds for the permanent financing of the costs and expenses of the Improvements and is required, by K.S.A. 10-106, as amended and supplemented, to sell such general obligation bonds at public sale if the principal amount thereof exceeds $2,000,000; and

WHEREAS, pursuant to Resolution No. 12-139 duly adopted June 12, 2012, the Governing Body advertised for bids at a public sale approximately $12,210,000 principal amount of the City's General Obligation Bonds, Series 805 (the "Bonds" as further described in the Bond Resolution herein referenced), for the aforesaid purpose; and such public sale has been duly held and the Governing Body has awarded the Bonds to the best bidder therefor; and

WHEREAS, the Governing Body, on September 13, 2011, adopted Ordinance No. 49-077 relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation bonds in compliance with Section (b)(5)(i) of

Securities and Exchange Commission Rule 15c2-l2, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Bonds authorized hereby as though fully set forth herein; and

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

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

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

Section 2. Authorization of and Security for the Bonds. It is hereby authorized, ordered and directed that in order to provide the necessary funds to pay the Improvement Costs, the Bonds shall be issued in an amount not to exceed $12,210,000. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.,* as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City. The full faith, credit and resources of the City are hereby irrevocably pledged to secure the prompt payment of the principal of and interest on the Bonds as the same severally become due and payable.

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

Section 4. Levy and Collection of Annual Tax. The Governing Body hereby covenants that it shall annually make provision for the payment of the principal of and interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City.

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

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

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

Section 6. Designation of Paying Agent and Bond Registrar. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State, 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 7. Further Authority. The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Bonds and the Bonds in accordance with the provisions of the Bond Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates

required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

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

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

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

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PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on July 10, 2012.

(Seal) _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 810, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $2,325,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

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

WHEREAS, pursuant to and under the authority of K.S.A. 12-6a01 *et seq.*, as amended and supplemented, the Governing Body has duly taken various actions, including the adoption, and publication, where necessary, of resolutions, ordinances and other proceedings as required by said laws, to authorize certain capital improvements in the City (the "Improvements" as further described in the herein referenced Bond Resolution), and has provided that the costs thereof shall be paid from special assessments collected in cash and/or by the issuance of general obligation bonds of the City; and

WHEREAS, the Governing Body has found and determined that the combined total final costs and related expenses of the Improvements, less any cash paid by the owners of the real properties against which special assessments therefore were levied and less other available funds of the City as detailed on said **Schedule I** attached to the Resolution, leaves a balance for which funding is necessary of $2,325,000, all of which is chargeable to and has been specially assessed against various real properties in the City benefited by the respective Improvements and which special assessments were not paid within the time provided by law; and

WHEREAS, the Governing Body is authorized by the laws of the State, including K.S.A. 10-101 *et seq.*, as amended and supplemented, to issue the City's general obligation bonds to provide the necessary funds for the permanent financing of the costs and expenses of the Improvements specially assessed against benefited real property and not paid in cash within the time provided by law; and is required, by K.S.A. 10-106, as amended and supplemented, to sell such general obligation bonds at public sale if the principal amount thereof exceeds $2,000,000; and

WHEREAS, pursuant to Resolution No. 12-139 duly adopted June 12, 2012, the Governing Body advertised for bids at a public sale approximately $2,325,000 principal amount of the City's General Obligation Bonds, Series 810 (the "Bonds" as further described in the Bond Resolution herein referenced), for the aforesaid purpose; and such public sale has been duly held and the Governing Body has awarded the Bonds to the best bidder therefor; and

WHEREAS, the Governing Body, on September 13, 2011, adopted Ordinance No. 49-077 relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation bonds in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Bonds authorized hereby as though fully set forth herein; and

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

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

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

Section 2. Authorization of and Security for the Bonds. It is hereby authorized, ordered and directed that in order to provide the necessary funds to pay the Improvement Costs, the Bonds shall be issued in an amount not to exceed $2,325,000. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.,* as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon from the collection of special assessment taxes which have been levied against real properties in the City which benefited from the Improvements, and if not so paid, then said principal and interest shall be paid from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City. The full faith, credit and resources of the City are hereby irrevocably pledged to secure the prompt payment of the principal of and interest on the Bonds as the same severally become due and payable.

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

Section 4. Levy and Collection of Annual Tax. The Governing Body hereby covenants that it shall annually make provision for the payment of the principal of, premium, if any, and interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the maturing principal and interest on the Bonds when due, then the Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amount of special assessment taxes collected. Notwithstanding the foregoing, the Governing Body may permit the deferral of special assessments provided such deferrals do not adversely impact the tax-exempt status of the interest on the Bonds and comply with applicable State law and provided further that the City-at-large provides for the payment of principal of and interest on the Bonds in accordance with the further terms of this Ordinance.

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

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

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

Section 6. Designation of Paying Agent and Bond Registrar. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State, 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 7. Further Authority. The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Bonds and the Bonds in accordance with the provisions of the Bond Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

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

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

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

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on July 10, 2012

(Seal) _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 961 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $1,610,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY REDEVELOPMENT COSTS IN CONNECTION WITH THE EAST BANK REDEVELOPMENT DISTRICT; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

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

WHEREAS, pursuant to and under the authority of K.S.A. 12-1770 *et seq.*, as amended and supplemented (the "TIF Act"), and Ordinance No. 42-966 passed on December 12, 1995, as modified by Ordinance No. 45-339 adopted on June 25, 2002, and Ordinance No. 46-407 passed on November 23, 2004, the Governing Body of the City has established the East Bank Redevelopment District (the "Redevelopment District"); and

WHEREAS, pursuant to Ordinance No. 45-983 of the City passed on February 3, 2004, the Governing Body of the City has approved the East Bank Redevelopment District, WaterWalk Redevelopment Project Plan, dated January 27, 2004, which described the WaterWalk Redevelopment Project (the "Project"), identified the boundaries of the WaterWalk Project Area (the "Project Area") and indicated the City's intent to use the Tax Increment (as defined in the TIF Act) generated from real property within the Project Area to pay for debt service on general obligation bonds issued by the City to finance certain redevelopment costs of the Project; and

WHEREAS, pursuant to Article 12, Section 5 of the Constitution of the State and Charter Ordinance No. 156 of the City, the Governing Body by actions duly taken has further authorized the issuance of general obligation bonds for the payment of certain costs of the Project; and

WHEREAS, the Governing Body has found and determined that the costs and related expenses of the Project which have not been previously paid from the proceeds of bonds or other available funds of the City are not less than $1,610,000, and that it is necessary and desirable to issue general obligation bonds of the City to pay such costs as detailed on **Schedule I** attached to the hereinafter defined Bond Resolution (the "Improvements"); and

WHEREAS, the Governing Body is authorized by the laws of the State of Kansas, including K.S.A. 10-101 *et seq.*, as amended and supplemented, to issue the City's general obligation bonds to provide the necessary funds for the permanent financing of the costs and

expenses of the Improvements and is required, by K.S.A. 10-106, as amended and supplemented, to sell such general obligation bonds at public sale if the principal amount thereof exceeds $2,000,000; and

WHEREAS, pursuant to Resolution No. 12-139 duly adopted June 12, 2012, the Governing Body advertised for bids at a public sale for approximately $1,610,000 of the City's General Obligation Bonds, Series 961 (Taxable Under Federal Law) (the "Bonds" as further described in the Bond Resolution herein referenced), for the aforesaid purpose; and such public sale has been duly held and the Governing Body has awarded the Bonds to the best bidder therefor; and

WHEREAS, the Governing Body, on September 13, 2011, adopted Ordinance No. 49-077 relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation bonds in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Bonds authorized hereby as though fully set forth herein; and

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

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

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

Section 2. Tax Increment Fund. The City covenants and agrees that from and after the delivery of the Bonds and continuing as long as any of the Bonds remain outstanding and unpaid, all of the Tax Increment from the Redevelopment District will be paid and deposited into special fund (the "Tax Increment Fund") as required by the TIF Act, and that said revenues shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the City and administered and applied solely for the purposes and in the manner provided in the TIF Act. Moneys deposited in the Tax Increment Fund from the Tax Increment generated from the Project Area (the "the Tax Increment Revenues"), are pledged to the payment of the Bonds and any bonds issued on a parity with the Bonds.

Section 3. Authorization of and Security for the Bonds. It is hereby authorized, ordered and directed that in order to provide the necessary funds to pay the Improvement Costs, the Bonds shall be issued in an amount not to exceed $1,610,000. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.,* as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon from Tax Increment Revenues, and if not so paid, then said principal and interest shall be paid from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City. The pledge of the Tax Increment Revenues to the payment of the principal of and interest on the Bonds under this Ordinance is on a parity with the City's General Obligation Bonds, Series 959 Bonds (Taxable Under Federal Law), dated August 1, 2007, and the City's General Obligation Bonds Series 960, dated August 1, 2007. The full faith, credit and resources of the City are hereby irrevocably pledged to secure the prompt payment of the principal of and interest on the Bonds as the same severally become due and payable.

Section 4. Terms, Details and Conditions of the Bonds. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Bond Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Bonds, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.,* as amended and supplemented.

Section 5. Levy and Collection of Annual Tax. The Governing Body hereby covenants that it shall annually make provision for the payment of the principal of and interest on the Bonds as and when the same becomes due and payable by collecting the Tax Increment Revenues as provided by law; provided, that if the amounts collected from the Tax Increment Revenue are insufficient to fully pay the maturing principal and interest on the Bonds when due, then the Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amount of the Tax Increment Revenue collected.

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

Section 7. Further Authority. The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Bonds and the Bonds in accordance with the provisions of the Bond Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk,

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

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

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

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

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PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on July 10, 2012.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 245 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $6,105,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

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

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

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

WHEREAS, the Governing Body has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 243, dated February 9, 2012 (the "Original Notes"), the proceeds of which were expended for interim financing for costs of the Original Improvements; and

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

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

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

WHEREAS, pursuant to Resolution No. 12-139 duly adopted June 12, 2012, the Governing Body advertised for bids at a public sale approximately $6,105,000 principal amount of the City's General Obligation Renewal and Improvement Temporary Notes, Series 245 (Taxable Under Federal Law), for the purpose of renewing interim financing for the Original Improvements and providing new interim financing for the Improvements and such public sale has been duly held and the Governing Body has awarded the Notes to the best bidder therefor; and

WHEREAS, the Governing Body, on September 13, 2011, adopted Ordinance No. 49-078 relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation temporary notes in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Notes authorized hereby as though fully set forth herein; and

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

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

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

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

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

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

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

Section 5. Designation of Paying Agent and Note Registrar. Pursuant to K.S.A. 10-620 *et seq.,* as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Notes. The Treasurer of the State of Kansas, Topeka, Kansas, is hereby designated as the initial Paying Agent and Note Registrar for the Notes; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Note Registrars with respect to the Notes upon fifteen (15) days' written notice to the then acting Paying Agent and Note Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Note Registrar and Paying Agent in connection with such designation.

Section 6. Further Authority. The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Notes and the Notes in accordance with the provisions of the Note Resolution. The Governing Body hereby further authorizes, orders, and directs the City Clerk of the City to countersign the Notes and the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall

approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

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

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

Section 7. 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.

[Remainder of Page Intentionally Left Blank]

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on July 10, 2012.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 252, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $55,140,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

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

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

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

WHEREAS, the Governing Body has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 250, dated February 9, 2012 (the "Original Notes"), a portion of the proceeds of which were expended for interim financing for costs of the Original Improvements; and

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

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

WHEREAS, pursuant to Resolution No. 12-139 duly adopted June 12, 2012, the Governing Body advertised for bids at a public sale approximately $55,140,000 principal amount of the City's General Obligation Renewal and Improvement Temporary Notes, Series 252, for the purpose of renewing interim financing for the Original Improvements and providing new interim financing for the Improvements and such public sale has been duly held and the Governing Body has awarded the Notes to the best bidder therefor; and

WHEREAS, the Governing Body, on September 13, 2011, adopted Ordinance No. 49-078 relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation temporary notes in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Notes authorized hereby as though fully set forth herein; and

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

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

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

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

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by this Note Ordinance to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the collection of special assessments taxes which will be levied against real properties in the City benefiting from certain of the Original Improvements and Improvements, and from the proceeds of general obligation bonds which will subsequently be issued by the City

for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose.

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

Section 4. Levy and Collection of Annual Tax. The Governing Body hereby covenants that it shall make provision for the payment of the principal of and interest on the Notes on the Maturity Date by the levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor upon the completion of the Original Improvements and the Improvements, as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the principal of and interest on the Notes on the Maturity Date, or if any of the Original Improvements or the Improvements are not completed by the Maturity Date or the Governing Body is otherwise hindered from then levying and collecting such special assessment taxes, and for any of the costs of the Original Improvements or the Improvements which are to be paid by the City-at-large, then said Governing Body shall provide for the payment of all or any portion of the principal of and/or interest on the Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the amounts collected from such special assessment taxes and/or the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes. Notwithstanding the foregoing, the Governing Body may permit the deferral of special assessments provided such deferrals do not adversely impact the tax-exempt status of the interest on the Notes and comply with applicable State law and provided further that the City-at-large provides for the payment of principal of and interest on the Notes in accordance with the further terms of this Ordinance. In lieu of issuing renewal temporary notes or general obligation bonds of the City to fund costs of the Original Improvements or the Improvements which are to be paid by the City-at-large, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

Section 5. Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Notes remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the

interest on the Notes under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Notes.

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

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

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

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

approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

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

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

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

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PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on July 10, 2012.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

RESOLUTION NO. 12-_____

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 10, 2012

AUTHORIZING THE ISSUANCE OF

NOT TO EXCEED $12,210,000

GENERAL OBLIGATION BONDS
SERIES 805

DATED AUGUST 1, 2012

4847-9513-9087.1

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Schedule I: The Improvements

Exhibit A Additional Terms of the Series 805 Bonds
Exhibit B Final Sizing Terms of the Series 805 Bonds

RESOLUTION NO. 12-_____

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 805, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $12,210,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE BONDS; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Bond Ordinance (as herein defined), has authorized the issuance of the Bonds in the aggregate principal amount not to exceed $12,210,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Bonds; and

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

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

ARTICLE I
DEFINITIONS

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

"Act" shall mean the Constitution of the State (including particularly Article 12, Section 5 thereof), Charter Ordinance No. 156, K.S.A. 10-101 *et seq.*, K.S.A. 12-685 *et seq.*, and K.S.A. 13-1024c, all as amended and supplemented.

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

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

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

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

"Bond Ordinance" shall mean the ordinance authorizing the issuance of the 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.

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

"Bonds" shall mean the General Obligation Bonds, Series 805, dated August 1, 2012, of the City of Wichita, Kansas, which are authorized by and will be issued pursuant to the authority of the Bond Ordinance and this Resolution; provided the original principal amount of the Bonds shall not exceed $12,210,000.

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

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

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

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

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the Yield on the Bonds or investment of the proceeds of the Bonds, and in connection with receiving municipal bond insurance and/or ratings on the Bonds. An amount for Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements.

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

"Dated Date" shall mean the dated date of the Bonds which is August 1, 2012.

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

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

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

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

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

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

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

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

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

"Government Obligations" 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 obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

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

"Improvement Costs" shall mean the amount of capital expenditures for an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Bonds, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds, unless such amounts are entitled to be reimbursed under State and Federal law.

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

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

"Interest Payment Dates" shall be June 1 and December 1 of each year commencing June 1, 2013, and ending December 1, 2027, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

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

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

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

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

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

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

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

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

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

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

"Principal Payment Date" shall mean December 1 of each year, commencing December 1, 2013, and ending December 1, 2027, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

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

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

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

"Resolution" or "Bond Resolution" shall mean this Resolution, adopted by the Governing Body of the City on July 10, 2012, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

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

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

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

ARTICLE II
AUTHORIZATION, ISSUANCE AND DELIVERY OF BONDS

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

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and the interest thereon from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City. Pursuant to the Bond Ordinance, the full faith, credit and resources of the City are irrevocably pledged to secure the prompt payment of the principal of and the interest on the Bonds as the same severally becomes due and payable.

Section 2.02 **Description and Details of Bonds**. The Bonds shall be designated "City of Wichita, Kansas, General Obligation Bonds, Series 805." All of the Bonds shall be dated the Dated Date and shall become due on the dates set forth on **Exhibit A** to this Resolution (the "Principal Payment Dates"). The Bonds shall bear interest at the rates described on **Exhibit A** to this Resolution (computed on the basis of a 360-day year of 12 30-day months) and shall be payable on the Interest Payment Dates. The City Manager, the Finance Director or the City Manager's designee is hereby authorized to approve the final principal amount, maturity schedule (including any mandatory redemption) and Purchase Price for the Bonds as to be set forth on **Exhibit B** to this Resolution provided the final principal amount shall not exceed $12,210,000, the principal shall mature or be subject to mandatory redemption on the dates and at the interest rates shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

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

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

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

Section 2.03 **Designation of Paying Agent and Bond Registrar**. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body has elected to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State, Topeka, Kansas, has been designated as the initial Paying Agent and Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days'

written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

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

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

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

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

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

Section 2.05 Method of Execution and Authentication of Bonds. The Bonds shall be executed for and on behalf of the City by the manual or facsimile signatures of its Mayor and

City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The Bonds shall be registered in the Office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk, on a Certificate of Registration printed on the Bonds, with the City's official seal or a facsimile thereof, impressed or imprinted opposite said signature. The Bonds shall be registered by the State Treasurer in the municipal bond register in the State Treasurer's office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State Treasurer on a Certificate of State Treasurer printed on the Bonds, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature.

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

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

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

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

Section 2.08 Registration, Transfer and Exchange of Bonds. In the event the Bonds are subsequently issued in certificated form, the City shall cause books evidencing the registration and transfer of the ownership of the Bonds as provided in this Resolution to be kept

by the Bond Registrar (the "Registration Books"), and the Bonds may be transferred only upon the Registration Books and upon the surrender thereof to the Bond Registrar duly endorsed for transfer or accompanied by an assignment duly executed by the Owner thereof, or his agent, in such form as shall be satisfactory to the Bond Registrar. Upon the surrender for transfer of any certificated Bond at its office, the Bond Registrar shall authenticate and deliver in the name of the transferee or transferees a new certificated Bond or Bonds of authorized denominations in the aggregate principal amount of the surrendered certificated Bond. The Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such transfer or exchange.

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

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

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

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

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

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

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

ARTICLE III
REDEMPTION OF BONDS

Section 3.01 Optional Redemption. The Bonds maturing December 1, 2013, to December 1, 2020, inclusive, shall mature and become due on their respective maturity dates without the option of prior redemption and payment. At the option of the City, the Bonds maturing December 1, 2021, and thereafter, may be called for redemption and payment prior to the respective stated maturities thereof on and after December 1, 2020. 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 (the date being so set for redemption and payment being referred to as the "Redemption Date"). Bonds called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount) of 100% of the principal amount thereof, plus accrued interest to the Redemption Date.

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

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

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

Section 3.04 **Notice of Redemption**. Unless waived by the Fiscal Agent, the City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than forty-five (45) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Bonds so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

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

Section 3.05 **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Bonds or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Bonds selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000

units of face value represented by any Bond is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Bond or Bonds of the same maturity and in the amount of the unredeemed portion of such Bond as provided by **Section 3.02** above. All Bonds selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

Section 3.06 **Effect of Call for Redemption**. Whenever any Bond, or one or more of the $5,000 units of face value represented by any Bond, has been selected for redemption and payment as provided in this Article, all interest on such Bond, or such one or more of the $5,000 units of face value represented by any such Bond, shall cease from and after the Redemption Date, provided funds are then available for its payment at the price hereinbefore specified.

ARTICLE IV
FUNDS AND ACCOUNTS

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

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Bonds, Series 805;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Bonds, Series 805, to be created within the City's Debt Service Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Bonds, Series 805.

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

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

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

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Bond and the amount of purchase price premium, if any, shown on **Exhibit B** to be deposited in the Principal and Interest Accounts; and

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

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

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

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

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

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

Section 5.07 **Surplus in Improvement Account**. All moneys remaining in the Improvement Account after the completion of the Improvements and the payment of all Improvement Costs shall be immediately transferred to the Principal and Interest Account.

Section 5.08 **Substitution of Improvements**. The City may elect to substitute or add other improvements pursuant to this Section provided the following conditions are met: (a) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the

Substitute Improvement has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) a resolution or ordinance authorizing the use of the proceeds of the Bonds to pay the Improvement Costs of the Substitute Improvement has been adopted by the Governing Body of the City, (c) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Bonds to include the Substitute Improvement and (d) the City has received an opinion of Bond Counsel to the effect that the Substitute Improvement will not adversely affect the tax-exempt status of the Bonds under State or federal law and the Substitute Improvement has been authorized pursuant to this Section and the laws of the State.

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

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

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

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

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

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

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

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

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

ARTICLE VII
PROVISION FOR PAYMENT OF BONDS

Section 7.01 **Levy and Collection of Annual Taxes**. Pursuant to the Bond Ordinance, the Governing Body covenants that it shall annually make provision for the payment of the principal of and the interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City.

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

required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said taxes.

ARTICLE VIII
DEFAULT AND REMEDIES

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

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

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

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

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

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

Section 8.03 Remedies Cumulative; Delay or Omission Not Waiver. No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be

exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Bond of any default or breach of duty or contract by the City shall extend to or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

ARTICLE IX
AMENDMENTS

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

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

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

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

(C) Permit a preference or priority of any Bond or Bonds over any other Bond or Bonds; or

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

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

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

ARTICLE X
DEFEASANCE

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

for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

ARTICLE XI
MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

(The Remainder of this Page was Intentionally Left Blank)

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on July 10, 2012.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

SCHEDULE I

THE IMPROVEMENTS

EXHIBIT A

ADDITIONAL TERMS OF THE SERIES 805 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 July 10, 2012, and authorizing and providing for the issuance of the Bonds.

"Original Purchaser" shall mean _____, _____, _____, the original purchaser of the Bonds.

Maturity Schedule. All of the Bonds shall be become due or be subject to mandatory redemption on the dates and shall bear interest as the rates per annum as follows:

Maturity or Mandatory Redemption Date	**Interest Rate**
December 1, 2013	%
December 1, 2014	
December 1, 2015	
December 1, 2016	
December 1, 2017	
December 1, 2018	
December 1, 2019	
December 1, 2020	
December 1, 2021	
December 1, 2022	
December 1, 2023	
December 1, 2024	
December 1, 2025	
December 1, 2026	
December 1, 2027	

EXHIBIT B

FINAL SIZING TERMS OF THE SERIES 805 BONDS

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

"Purchase Price" for the Bonds shall be the par value of the Bonds, *i.e.,* the principal amount of $_____, plus a premium of $_____, plus accrued interest to the date of delivery.

Maturity Schedule. All of the Bonds shall be become due in the amounts and on the dates set forth below:

Maturity Date	**Maturing Principal**
December 1, 2013	$
December 1, 2014	
December 1, 2015	
December 1, 2016	
December 1, 2017	
December 1, 2018	
December 1, 2019	
December 1, 2020	
December 1, 2021	
December 1, 2022	
December 1, 2023	
December 1, 2024	
December 1, 2025	
December 1, 2026	
December 1, 2027	

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

Approved by:

_____
Title: Director of Finance
City of Wichita, Kansas

RESOLUTION NO. 12-_____

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 10, 2012

AUTHORIZING THE ISSUANCE OF

NOT TO EXCEED $2,325,000

GENERAL OBLIGATION BONDS
SERIES 810

DATED AUGUST 1, 2012

4819-2623-5151.1

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RESOLUTION NO. 12-____

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 810, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $2,325,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE BONDS; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Bond Ordinance (as herein defined), has authorized the issuance of the Bonds in the aggregate principal amount not to exceed $2,325,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Bonds; and

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

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

ARTICLE I
DEFINITIONS

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

"Act" shall mean K.S.A. 10-101 *et seq.*, and K.S.A. 12-6a01 *et seq.*, all as amended and supplemented, under the authority of which statutes the Improvements are authorized and the Bonds are issued.

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

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

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

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

"Bond Ordinance" shall mean the ordinance authorizing the issuance of the 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.

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

"Bonds" shall mean the General Obligation Bonds, Series 810, dated August 1, 2012, of the City of Wichita, Kansas, which are authorized by and will be issued pursuant to the authority of the Bond Ordinance and this Resolution; provided the original principal amount of the Bonds shall not exceed $2,325,000.

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

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

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

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

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the Yield on the Bonds or investment of the proceeds of the Bonds, and in connection with receiving municipal bond insurance and/or ratings on the Bonds. An amount for Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements.

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

"Dated Date" shall mean the dated date of the Bonds which is August 1, 2012.

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

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

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

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

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

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

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

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

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

"Government Obligations" 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 obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

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

"Improvement Costs" shall mean the amount of capital expenditures for an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Bonds, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds, unless such amounts are entitled to be reimbursed under State and Federal law.

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

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

"Interest Payment Dates" shall be June 1 and December 1 of each year commencing June 1, 2013, and ending December 1, 2032, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

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

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

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

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

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

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

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

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

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

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

"Principal Payment Date" shall mean December 1 of each year, commencing December 1, 2013, and ending December 1, 2032, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

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

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

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

"Resolution" or "Bond Resolution" shall mean this Resolution adopted by the Governing Body of the City on July 10, 2012, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

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

"Term Bonds" shall mean the Term Bonds, if any, described on **Exhibit B** to this Resolution.

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

ARTICLE II
AUTHORIZATION, ISSUANCE AND DELIVERY OF BONDS

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

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

Ordinance, the full faith, credit and resources of the City are irrevocably pledged to secure the prompt payment of the principal of and the interest on the Bonds as the same severally becomes due and payable.

Section 2.02 **Description and Details of Bonds**. The Bonds shall be designated "City of Wichita, Kansas, General Obligation Bonds, Series 810." All of the Bonds shall be dated the Dated Date and shall become due on the dates set forth on **Exhibit A** to this Resolution (the "Principal Payment Dates"). The Bonds shall bear interest at the rates described on **Exhibit A** to this Resolution (computed on the basis of a 360-day year of 12 30-day months) and shall be payable on the Interest Payment Dates. The City Manager, the Finance Director or the City Manager's designee is hereby authorized to approve the final principal amount, maturity schedule (including any mandatory redemption) and Purchase Price for the Bonds as to be set forth on **Exhibit B** to this Resolution provided the final principal amount shall not exceed $2,325,000, the principal shall mature or be subject to mandatory redemption on the dates and at the interest rates shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

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

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

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

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

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

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

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

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

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

(B) In the Event Certificated Bonds are Subsequently Issued. The principal of, premium, if any, and the interest on the Bonds shall be payable in lawful money of the United States of America by check or draft of the Paying Agent. The principal of and premium, if any, on the Bonds shall be paid to the Owner of each Bond upon presentation and surrender of the Bond to the Paying Agent for payment and cancellation on the maturity date or redemption date, as the case may be, of the Bond. The interest on the Bonds shall be mailed by the Paying Agent to the Owner of each Bond at the Owner's

address as it appears on the Registration Books on the Record Dates, or at such other address as is provided in writing by such Owner to the Bond Registrar.

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

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

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

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

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

certificated form are issued at any time after the initial issuance and delivery of the Bonds, to prepare the form of and cause such certificated Bonds to be printed.

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

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

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

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

Section 2.09 Mutilated, Lost, Stolen or Destroyed Bonds. In the event any certificate representing a Bond is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Bond there shall first be furnished to the Fiscal Agent and the City,

evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Bond shall have matured or been called for redemption, instead of issuing a duplicate bond the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Bond their reasonable fees and expenses in connection with the replacement of such Bond or Bonds.

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

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

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

ARTICLE III
REDEMPTION OF BONDS

Section 3.01 Optional Redemption. The Bonds maturing December 1, 2013, to December 1, 2020, inclusive, shall mature and become due on their respective maturity dates without the option of prior redemption and payment. At the option of the City, the Bonds maturing December 1, 2021, and thereafter, may be called for redemption and payment prior to the respective stated maturities thereof on and after December 1, 2020. 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 (the date being so set for redemption and payment being referred to as the "Redemption Date"). Bonds called for redemption and payment as

aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount) of 100% of the principal amount thereof, plus accrued interest to the Redemption Date.

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

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

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

Section 3.04 **Notice of Redemption**. Unless waived by the Fiscal Agent, the City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than forty-five (45) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Bonds so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

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

Section 3.05 **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Bonds or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Bonds selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000 units of face value represented by any Bond is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Bond or Bonds of the same maturity and in the amount of the unredeemed portion of such Bond as provided by **Section 3.03** above. All Bonds selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

Section 3.06 **Effect of Call for Redemption**. Whenever any Bond, or one or more of the $5,000 units of face value represented by any Bond, has been selected for redemption and payment as provided in this Article, all interest on such Bond, or such one or more of the $5,000 units of face value represented by any such Bond, shall cease from and after the Redemption Date, provided funds are then available for its payment at the price hereinbefore specified.

ARTICLE IV
FUNDS AND ACCOUNTS

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

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Bonds, Series 810;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Bonds, Series 810, to be created within the City's Debt Service Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Bonds, Series 810.

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

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

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

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Bonds and the amount of purchase price premium, if any, shown on **Exhibit B** to be deposited in the Principal and Interest Account; and

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

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

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

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

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

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

Section 5.07 **Surplus in Improvement Account**. All moneys remaining in the Improvement Account after the completion of the Improvements and the payment of all Improvement Costs shall be immediately transferred to the Principal and Interest Account.

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

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

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

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

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

(A) The City shall deposit into the Excess Earnings Account such amounts as are required to be deposited therein pursuant to the Certificate as to Arbitrage and Related Tax Matters. All earnings on investments of moneys held in the Excess Earnings Account shall be retained in the Excess Earnings Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Excess Earnings Account shall be held by the City in trust, to the extent required to satisfy the

Rebate Amount (as defined in the Certificate as to Arbitrage and Related Tax Matters), for payment to the United States of America, and neither the City nor the Owner of any Bond shall have any right in or claim to such money. All amounts held in the Excess Earnings Account shall be governed by this Section and by the Certificate as to Arbitrage and Related Tax Matters.

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

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

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

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

ARTICLE VII
PROVISION FOR PAYMENT OF BONDS

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

and interest on the Bonds when due, then the Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amount of special assessment taxes collected.

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

ARTICLE VIII
DEFAULT AND REMEDIES

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

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

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

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

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

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all

Owners of the Outstanding Bonds. Nothing in this Resolution, in the Bond Ordinance or in the Bonds shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Bonds to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Bonds held by such Owner, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Bonds without reference to or consent of any other Owner.

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

ARTICLE IX
AMENDMENTS

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

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent

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

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

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

(C) Permit a preference or priority of any Bond or Bonds over any other Bond or Bonds; or

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

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

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

ARTICLE X
DEFEASANCE

Section 10.01 Defeasance. When all or any part of the principal of, premium, if any, and the interest on the Bonds shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Bond Ordinance and this Resolution shall cease and determine with respect to that principal, premium and interest so paid. The Bonds shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State and having full trust power; at or prior to the maturity or redemption date of the Bonds, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are

guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Bonds, the premium, if any, and the interest thereon to the date of maturity or the Redemption Date, as the case may be; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments, provided always that if any Bonds shall be redeemed prior to the maturity thereof, the City shall have elected to redeem such Bonds and notice of such redemption shall have been given as provided by the terms of this Resolution. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank in trust for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

ARTICLE XI
MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on July 10, 2012.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

SCHEDULE I

THE IMPROVEMENTS

EXHIBIT A

ADDITIONAL TERMS OF THE SERIES 810 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 July 10, 2012, and authorizing and providing for the issuance of the Bonds.

"Original Purchaser" shall mean _____, _____, _____, the original purchaser of the Bonds.

Maturity Schedule. All of the Bonds shall be become due or be subject to mandatory redemption on the dates and shall bear interest as the rates per annum as follows:

Maturity or Mandatory Redemption Date	**Interest Rate**
December 1, 2013	%
December 1, 2014	
December 1, 2015	
December 1, 2016	
December 1, 2017	
December 1, 2018	
December 1, 2019	
December 1, 2020	
December 1, 2021	
December 1, 2022	
December 1, 2023	
December 1, 2024	
December 1, 2025	
December 1, 2026	
December 1. 2027	
December 1, 2028	
December 1, 2029	
December 1, 2030	
December 1. 2031	
December 1, 2032	

EXHIBIT B

FINAL SIZING TERMS OF THE SERIES 810 BONDS

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

"Purchase Price" for the Bonds shall be the par value of the Bonds, *i.e.,* the principal amount of $_____, plus a premium of $_____, plus accrued interest to the date of delivery.

Maturity Schedule. All of the Bonds shall be become due in the amounts and on the dates set forth below:

Maturity Date	**Maturing Principal**
December 1, 2013	$
December 1, 2014	
December 1, 2015	
December 1, 2016	
December 1, 2017	
December 1, 2018	
December 1, 2019	
December 1, 2020	
December 1, 2021	
December 1, 2022	
December 1, 2023	
December 1, 2024	
December 1, 2025	
December 1, 2026	
December 1. 2027	
December 1, 2028	
December 1, 2029	
December 1, 2030	
December 1. 2031	
December 1, 2032	

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

Approved by:

_____
Title: Director of Finance
City of Wichita, Kansas

4819-2623-5151.1

RESOLUTION NO. _____

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 10, 2012

AUTHORIZING THE ISSUANCE OF

NOT TO EXCEED $1,610,000

GENERAL OBLIGATION BONDS
SERIES 961
(TAXABLE UNDER FEDERAL LAW)

DATED AUGUST 1, 2012

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Schedule I: The Improvements

Exhibit A Additional Terms of the Series 961 Bonds

Exhibit B Final Sizing Terms of the Series 961 Bonds

RESOLUTION NO. _____

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 961 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $1,610,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY CERTAIN REDEVELOPMENT COSTS IN CONNECTION WITH THE EASTBANK REDEVELOPMENT DISTRICT; PRESCRIBING THE TERMS AND DETAILS OF THE BONDS; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Bond Ordinance (as herein defined), has authorized the issuance of the Bonds in the aggregate principal amount not to exceed $1,610,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Bonds; and

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

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

ARTICLE I
DEFINITIONS

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

"Act" shall mean K.S.A. 10-101 *et seq.*, as amended and supplemented, and K.S.A. 12-1770 *et seq.*, as amended and supplemented, Article 12, Section 5, of the Constitution of the State, and Charter Ordinance No. 156 of the City, under the authority of which statutes, Constitution and ordinance the Improvements are authorized and the Bonds are issued.

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

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

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

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

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

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

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

"Bonds" shall mean the General Obligation Bonds, Series 961 (Taxable Under Federal Law), dated August 1, 2012, of the City of Wichita, Kansas, which are authorized by and will be issued pursuant to the authority of the Bond Ordinance and this Resolution; provided the original principal amount of the bonds shall not exceed $1,610,000.

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

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

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the Yield on the Bonds or investment of the proceeds of the Bonds, and in connection with receiving municipal bond insurance and/or ratings on the Bonds. An amount for Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements.

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

"Dated Date" shall mean the dated date of the Bonds which is August 1, 2012.

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

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

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

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

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

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

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

"Government Obligations" 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 obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

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

"Improvement Costs" shall mean the amount of capital expenditures for an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Bonds, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds, unless such amounts are entitled to be reimbursed under State and Federal law.

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

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

"Interest Payment Dates" shall be June 1 and December 1 of each year commencing June 1, 2013, and ending December 1, 2023, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

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

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

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

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

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

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

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

"Parity Bonds" shall mean the City's General Obligation Bonds, Series 959 (Taxable Under Federal Law), dated August 1, 2007, the City's General Obligation Bonds, Series 960, dated August 1, 2007, and any additional bonds issued under the provisions of Section 2.13 of this Resolution.

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

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

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

"Principal Payment Date" shall mean December 1 of each year, commencing December 1, 2013, and ending December 1, 2023, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Purchase Price" shall mean the original purchase price of the Bonds described on **Exhibit A** to this Resolution.

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

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

"Resolution" or "Bond Resolution" shall mean this Resolution adopted by the Governing Body of the City on July 10, 2012, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

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

"Tax Increment Fund" shall have the meaning set forth in the Bond Ordinance.

"Tax Increment Revenues" shall have the meaning set forth in the Bond Ordinance.

"Term Bonds" means the Term Bonds, if any, described on Exhibit A to this Resolution.

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

ARTICLE II
AUTHORIZATION, ISSUANCE AND DELIVERY OF BONDS

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

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and the interest thereon from Tax Increment Revenues, and if not so paid, then said principal and interest shall be paid from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City. The pledge of the Tax Increment Revenues to the payment of the principal of and interest on the Bonds under the Ordinance is on a parity with the Parity Bonds. Pursuant to the Bond Ordinance, the Tax Increment Revenues and the full faith, credit and resources of the City are irrevocably pledged to secure the prompt payment of the principal of and the interest on the Bonds as the same severally becomes due and payable.

Section 2.02 Description and Details of Bonds. The Bonds shall be designated "City of Wichita, Kansas, General Obligation Bonds, Series 961 (Taxable Under Federal Law)." All of the Bonds shall be dated the Dated Date and shall become due on the dates set forth on **Exhibit A** to this Resolution (the "Principal Payment Dates"). The Bonds shall bear interest at the rates described on **Exhibit A** to this Resolution (computed on the basis of a 360-day year of

12 30-day months) and shall be payable on the Interest Payment Dates. The City Manager, the Finance Director or the City Manager's designee is hereby authorized to approve the final principal amount, maturity schedule (including any mandatory redemption) and Purchase Price for the Bonds as to be set forth on **Exhibit B** to this Resolution provided the final principal amount shall not exceed $1,610,000, the principal shall mature or be subject to mandatory redemption on the dates and at the interest rates shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

counterparts of a Certificate of Destruction describing Bonds so destroyed and evidencing such destruction shall be furnished by the Fiscal Agent to the City, or such Bond shall be canceled and the canceled Bond shall be returned to the City.

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

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

Section 2.13 **Parity Bonds**. The City may issue additional bonds payable out of the Tax Increment Revenues or any part thereof which stand on a parity or equality with the Bonds provided (a) the City is not in default in the payment of the principal of or interest on the Bonds or any Parity Bonds and (b) the City obtains an opinion of Bond Counsel to the effect that the proposed Parity Bonds are validly issued under State law. The City will make equal provision for paying the principal of and interest on additional bonds issued under the conditions set forth in this Section from the Tax Increment Revenues.

Section 2.14 **Junior Lien Bonds**. In addition to the authority to issue Parity Bonds as set forth in Section 2.13 of this Resolution, the City may, when permitted by State law, issue bonds which have a lien on the Tax Increment Revenues that is junior and subordinate to the lien of the Bonds and any Parity Bonds on such revenues. If at any time there are insufficient Tax Increment Revenues to pay the principal of and interest on the Bonds and any Parity Bonds when they are due, the City shall make no payments of either principal or interest from the Tax Increment Revenue on such subordinate bonds until the Tax Increment Revenues are sufficient to pay, when due, the principal of and interest on the Bonds and any Parity Bonds.

ARTICLE III
REDEMPTION OF BONDS

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

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

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

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

Section 3.04 **Notice of Redemption**. Unless waived by the Fiscal Agent, the City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than forty-five (45) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Bonds so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

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

and after the Redemption Date, and (v) that the Bonds so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

Section 3.05 **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Bonds or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Bonds selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000 units of face value represented by any Bond is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Bond or Bonds of the same maturity and in the amount of the unredeemed portion of such Bond as provided by **Section 3.03** above. All Bonds selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

Section 3.06 **Effect of Call for Redemption**. Whenever any Bond, or one or more of the $5,000 units of face value represented by any Bond, has been selected for redemption and payment as provided in this Article, all interest on such Bond, or such one or more of the $5,000 units of face value represented by any such Bond, shall cease from and after the Redemption Date, provided funds are then available for its payment at the price hereinbefore specified.

ARTICLE IV
FUNDS AND ACCOUNTS

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

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Bonds, Series 961 (Taxable Under Federal Law); and

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Bonds, Series 961 (Taxable Under Federal Law), to be created within the City's Debt Service Fund.

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

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

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

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Bonds and the amount of purchase price premium, if any, shown on **Exhibit B** to be deposited in the Principal and Interest Account; and

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

Section 5.02 Disposition of Principal and Interest Account. The City shall deposit from the Tax Increment Fund to the Principal and Interest Account on or before each Principal Payment Date and Interest Payment Date an amount equal to the principal and/or interest due on the Bonds on such date. All deposits from the Tax Increment Fund to the Principal and Interest Account shall be on a parity with deposits made from the Tax Increment Fund to the principal and interest accounts established for Parity Bonds. Moneys deposited in the Principal and Interest Account from the proceeds of the Bonds as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Bonds on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from the Tax Increment Fund or other sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of, premium, if any, and the interest on the Bonds, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

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

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

Section 5.05 Deficiency of Tax Increment Revenues. If at any time the Tax Increment Revenues received by the City are insufficient to make any payment on the principal of or interest on the Bonds when due and the City, as required by the Bond Ordinance, uses other moneys to make such payment or payments, the City may use subsequent Tax Increment Revenues to reimburse itself for such payments.

Section 5.06 Disposition of Improvement Account. Moneys in the Improvement Account shall be used solely for the purpose of paying the Improvement Costs. The City

covenants that in the making of the Improvements, it will perform all duties and obligations relative to such Improvements as are now or may be hereafter imposed by the Act and the provisions of this Resolution.

Section 5.07 **Withdrawals from Improvement Account**. Withdrawals from the Improvement Account shall be made only for a purpose within the scope of the Improvements and as payment for Improvement Costs and the amount of such payments shall represent only the contract price or reasonable value of the property, labor, materials, service or obligations being paid for, or if such payment is not being made pursuant to an express contract, such payments shall not be in excess of the reasonable value thereof.

Section 5.08 **Surplus in Improvement Account**. All moneys remaining in the Improvement Account after the completion of the Improvements and the payment of all Improvement Costs shall be immediately transferred to the Principal and Interest Account.

Section 5.09 **Substitution of Improvements**. The City may elect to substitute or add other improvements pursuant to this Section provided the following conditions are met: (a) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) a resolution or ordinance authorizing the use of the proceeds of the Bonds to pay the Improvement Costs of the Substitute Improvement has been adopted by the Governing Body of the City, (c) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Bonds to include the Substitute Improvement and (d) the City has received an opinion of Bond Counsel to the effect that the Substitute Improvement has been authorized pursuant to this Section and the laws of the State.

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

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

Section 6.02 **Investments**. Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month.

ARTICLE VII
PROVISION FOR PAYMENT OF BONDS

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

Section 7.02 Disposition of Taxes; Untimely Receipt. The Tax Increment Revenues collected and deposited into the Tax Increment Fund shall be transferred into the Principal and Interest Account to make timely payment of the principal of and interest on then Bonds when due; provided, if at any time the amount in the Principal and Interest Account shall be insufficient to make the payments of the principal of and the interest on the Bonds when required, the Director of Finance is authorized to cause to be transferred to the Principal and Interest Account from the City's general funds, the amount required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said Tax Increment Revenues.

ARTICLE VIII
DEFAULT AND REMEDIES

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

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

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

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

Section 8.02 Rights of Owners; Limitations. The covenants and agreements of the City contained herein, in the Bond Ordinance and in the Bonds shall be for the equal benefit, protection and security of the Owners of any or all of the Bonds, all of which Bonds shall be of

equal rank and without preference or priority of any one Bond over any other Bond in the application of the moneys herein pledged to the payment of the principal of, premium, if any, and the interest on the Bonds, or otherwise, except as to the rate of interest, Principal Payment Date and right of prior redemption as provided in this Resolution.

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

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

ARTICLE IX
AMENDMENTS

Section 9.01 **Amendments**. The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to more precisely identify the Improvements, or (iv) to provide for the issuance of coupon bonds and the exchange of the fully registered Bonds for coupon bonds upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in

this clause (iv) shall not become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon bonds or the exchange of the fully registered Bonds for such coupon bonds, is not prohibited under the provisions of applicable Federal law.

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

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

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

(C) Permit a preference or priority of any Bond or Bonds over any other Bond or Bonds; or

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

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

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

ARTICLE X
DEFEASANCE

Section 10.01 Defeasance. When all or any part of the principal of, premium, if any, and the interest on the Bonds shall have been paid and discharged, then the requirements

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

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Severability. In case any one or more of the provisions of the Bond Ordinance, this Resolution or of the Bonds issued thereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Bond Ordinance, this Resolution or the Bonds appertaining thereto, but the Bond Ordinance, this Resolution and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Bonds or in the Bond Ordinance or this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 11.02 Further Authority. The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing

Body this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby.

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

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

Section 11.03 **Governing Law**. This Resolution, the Bond Ordinance and the Bonds shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

Section 11.04 **Effective Date**. This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

(The Remainder of this Page was Intentionally Left Blank)

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on July 10, 2012.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

SCHEDULE I

THE IMPROVEMENTS

EXHIBIT A

ADDITIONAL TERMS OF THE SERIES 961 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 July 10, 2012, and authorizing and providing for the issuance of the Bonds.

"Original Purchaser" shall mean _____, _____, _____, the original purchaser of the Bonds.

Maturity Schedule. All of the Bonds shall be become due or be subject to mandatory redemption on the dates and shall bear interest as the rates per annum as follows:

Maturity or Mandatory Redemption Date	**Interest Rate**
December 1, 2013	%
December 1, 2014	
December 1, 2015	
December 1, 2016	
December 1, 2017	
December 1, 2018	
December 1, 2019	
December 1, 2020	
December 1, 2021	
December 1, 2022	
December 1, 2023	

EXHIBIT B

FINAL SIZING TERMS OF THE SERIES 961 BONDS

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

"Purchase Price" for the Bonds shall be the par value of the Bonds, *i.e.,* the principal amount of $_____, plus a premium of $_____, plus accrued interest to the date of delivery.

Maturity Schedule. All of the Bonds shall be become due in the amounts and on the dates set forth below:

Maturity Date	**Maturing Principal**
December 1, 2013	$
December 1, 2014	
December 1, 2015	
December 1, 2016	
December 1, 2017	
December 1, 2018	
December 1, 2019	
December 1, 2020	
December 1, 2021	
December 1, 2022	
December 1, 2023	

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

Approved by:

_____
Title: Director of Finance
City of Wichita, Kansas

RESOLUTION NO. 12-_____

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 10, 2012

AUTHORIZING THE ISSUANCE OF

NOT TO EXCEED $6,105,000

GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES SERIES 245 (TAXABLE UNDER FEDERAL LAW)

DATED AUGUST 9, 2012

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RESOLUTION NO. 12-_____

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 245 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $6,105,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE NOTES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE NOTES, AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Note Ordinance (as herein defined), has authorized the issuance of the Notes in the aggregate principal amount not to exceed $6,105,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Notes; and

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

WHEREAS, the Governing Body has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 243 (Taxable Under Federal Law), dated February 9, 2012 (the "Original Notes"), the proceeds of which were expended for interim financing for costs of the Original Improvements; and

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

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

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

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

ARTICLE I
DEFINITIONS

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

"Act" shall mean the Constitution of the State of Kansas (including particularly Article 12, Section 5 thereof), Charter Ordinance No. 156 of the City, K.S.A. 10-123, K.S.A. 12-1770 *et seq.*, and K.S.A. 13-1024c *et seq.*, all as amended and supplemented, under the authority of which the Improvements were authorized, the Original Notes were issued and the Notes are issued.

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

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

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

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

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

Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements and the Original Improvements.

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

"Dated Date" shall mean the dated date of the Notes, which is August 9, 2012.

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

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

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

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

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

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

"Government Obligations" 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 obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

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

"Improvement Costs" shall mean the amount of capital expenditures for an Original Improvement and/or an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Notes, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds unless such amounts are entitled to be reimbursed under State and Federal law.

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

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

"Interest Payment Date" shall be August 15, 2013.

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

"Maturity Date" shall mean August 15, 2013.

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

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

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

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

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

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

"Notes" shall mean General Obligation Renewal and Improvement Temporary Notes, Series 245 (Taxable Under Federal Law), dated August 9, 2012, of the City of Wichita, Kansas, in the principal amount set forth on **Exhibit A** which are authorized by and will be issued pursuant to the authority of the Note Ordinance and this Resolution.

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

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

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

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

(whether upon or prior to the Maturity Date of the Notes), and (iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Resolution.

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

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

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

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

"Principal Payment Date" shall mean the Maturity Date.

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

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

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

"Resolution" or "Note Resolution" shall mean this Resolution adopted by the Governing Body of the City on July 10, 2012, prescribing the terms and details of the Notes.

"State" shall mean the State of Kansas.

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

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

ARTICLE II
AUTHORIZATION, ISSUANCE AND DELIVERY OF NOTES

Section 2.01 Authorization of and Security for Notes. Pursuant to the Note Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to provide interim financing for the Original Improvements and the Improvements, there shall be issued the Notes. In all matters relating to the issuance, registration

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

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

Section 2.02 Description and Details of Notes. The Notes shall be designated "City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 245 (Taxable Under Federal Law)." The Notes shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of the Notes. The Notes shall be dated the Dated Date, shall mature on the Maturity Date, and shall bear interest at the rate set forth on **Exhibit A** to this Resolution. The Notes shall bear interest from their Dated Date (computed on the basis of a 360-day year of 12 30-day months) and such interest shall become due and payable on the Interest Payment Date. The City Manager, the Finance Director, or the City Manager's designee is hereby authorized to approve the final principal amount and Purchase Price for the Bonds as to be set forth on **Exhibit A** to this Resolution provided the final principal amount shall not exceed $6,105,000 which shall be the par value of the Notes unless otherwise indicated on **Exhibit A**, the principal shall mature on the date and at the interest rate shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

certificated form are issued at any time after the initial issuance and delivery of the Notes, to prepare the form of and cause such certificated Notes to be printed.

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

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

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

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

Section 2.09 Mutilated, Lost, Stolen or Destroyed Notes. In the event any certificate representing a Note is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Note, such mutilated Note shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Note there shall first be furnished to the Fiscal Agent and the City,

evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Note shall have matured, instead of issuing a duplicate note the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Note their reasonable fees and expenses in connection with the replacement of such Note or Notes.

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

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

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

ARTICLE III
REDEMPTION OF NOTES

Section 3.01 Optional Redemption. At the option of the City, the Notes may be called for redemption and payment prior to their stated maturity, in whole or in part, on and after February 14, 2013 (the date being so set for redemption and payment being referred to as the "Redemption Date"). Notes called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount), of 100% of the principal amount, plus accrued interest to the Redemption Date.

Section 3.02 Selection of Notes to be Redeemed. The Notes shall be redeemed only in face amounts of $5,000 or integral multiples thereof and if the City elects to call for redemption

less than all of the Notes at the time Outstanding, the Notes shall be redeemed in such equitable manner as the City shall determine, with Notes of less than a full maturity to be selected by lot in units of $5,000.

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

Section 3.03 **Notice of Redemption**. Unless waived by the Fiscal Agent, the City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than forty-five (45) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Notes so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

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

Section 3.04 **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Notes or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Notes selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000 units of face value represented by any Note is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Note or Notes in the

amount of the unredeemed portion of such Note as provided by **Section 3.02** above. All Notes selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

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

ARTICLE IV
FUNDS AND ACCOUNTS

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

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 245 (Taxable Under Federal Law); and

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 245 (Taxable Under Federal Law), to be created within the City's Capital Project Fund.

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

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

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

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Notes and the amount of purchase price premium, if any, shown on **Exhibit A** to be deposited in the Principal and Interest Account; and

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

Section 5.02 **Disposition of Principal and Interest Account.** Moneys deposited in the Principal and Interest Account from the proceeds of the Notes as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Notes on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other

sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of and the interest on the Notes, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

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

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

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

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

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

Section 5.07 Surplus in Improvement Account. All moneys remaining in the Improvement Account after the completion of the Original Improvements and the Improvements and the payment of all Improvement Costs, including paying of the cost of refunding the Original

Notes issued for the Original Improvements, shall be immediately transferred to the Principal and Interest Account.

Section 5.08 Substitution of Improvements. The City may elect to substitute or add other improvements paid for with the proceeds of the Notes pursuant to this Section provided the following conditions are met: (a) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) a resolution or ordinance authorizing the use of the proceeds of the Notes to pay the Improvement Costs of the Substitute Improvement has been adopted by the Governing Body of the City, (c) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Bonds to include the Substitute Improvement and (d) the City has received an opinion of Bond Counsel to the effect that the Substitute Improvement has been authorized pursuant to this Section and the laws of the State.

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

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

Section 6.02 Investments. Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month.

ARTICLE VII
PROVISION FOR PAYMENT OF NOTES

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

at-large, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

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

ARTICLE VIII
DEFAULT AND REMEDIES

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

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

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

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

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

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all

Owners of the Outstanding Notes. Nothing in this Resolution, in the Note Ordinance or in the Notes shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Notes to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Notes held by him, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Notes without reference to or consent of any other Owner.

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

ARTICLE IX
AMENDMENTS

Section 9.01 Amendments. The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to more precisely identify improvements, or (iv) to provide for the issuance of coupon Notes and the exchange of the fully registered Notes for coupon Notes upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (v) shall not become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon notes or the exchange of the fully registered Notes for such coupon notes, is not prohibited under the provisions of the applicable Federal law.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent of the Owners of not less than seventy-five percent (75%) in principal amount of the Notes then Outstanding, such consent to be evidenced by an instrument or instruments executed by the

Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of one hundred percent (100%) of the Owners of the Notes then Outstanding:

(A) Extend the Maturity Date of any Note;

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

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

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

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

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

ARTICLE X
DEFEASANCE

Section 10.01 Defeasance. When all or any part of the principal of and the interest on the Notes shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Note Ordinance and this Resolution shall cease and determine with respect to that principal and interest so paid. The Notes shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State of Kansas and having full trust power; at or prior to the Maturity Date of the Notes, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the

principal of the Notes and the interest thereon to the Maturity Date; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Notes or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank in trust for the respective Owners of the Notes, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Severability. In case any one or more of the provisions of the Note Ordinance, this Resolution or of the Notes issued thereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Note Ordinance, this Resolution or the Notes appertaining thereto, but the Note Ordinance, this Resolution and the Notes shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Notes or in the Note Ordinance or this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 11.02 Further Authority. The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby.

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

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

Section 11.03 Governing Law. This Resolution, the Note Ordinance and the Notes shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

Section 11.04 Effective Date. This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

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ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on July 10, 2012.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

SCHEDULE I

THE ORIGINAL IMPROVEMENTS AND THE IMPROVEMENTS

EXHIBIT A

ADDITIONAL TERMS OF THE SERIES 245 NOTES

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

"Note Ordinance" shall mean Ordinance No. _____ of the City, passed by the Governing Body on July 10, 2012, and authorizing and providing for the issuance of the Notes.

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

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

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

The final principal amount of the Notes is $6,105,000.

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

Approved by:

_____
Title: Director of Finance
City of Wichita, Kansas

4826-8127-5407.1

RESOLUTION NO. 12-_____

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 10, 2012

AUTHORIZING THE ISSUANCE OF

NOT TO EXCEED $55,140,000

GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES SERIES 252

DATED AUGUST 9, 2012

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Schedule I The Original Improvements and the Improvements

Exhibit A Additional Terms of the Series 252 Notes

RESOLUTION NO. _____

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 252, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $55,140,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE NOTES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE NOTES, AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Note Ordinance (as herein defined), has authorized the issuance of the Notes in the aggregate principal amount not to exceed $55,140,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Notes; and

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

WHEREAS, the Governing Body has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 250, dated February 9, 2012 (the "Original Notes"), a portion of the proceeds of which were expended for interim financing for costs of the Original Improvements; and

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

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

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

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

ARTICLE I
DEFINITIONS

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

"Act" shall mean the Constitution of the State of Kansas (including particularly Article 12, Section 5 thereof), Charter Ordinance Nos. 156 and 78 of the City, K.S.A. 10-101 *et seq.*, K.S.A. 10-123, K.S.A. 12-1736 *et seq.*, K.S.A. 12-6a01 *et seq.*, K.S.A. 12-685 *et seq.*, and K.S.A. 13-1024c, K.S.A. 13-1348a, all as amended and supplemented, under the authority of which the Improvements were authorized, the Original Notes were issued and the Notes are issued.

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

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

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

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

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

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

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Notes, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the yield on the Notes or investment of the proceeds of the Notes, and in connection with receiving municipal bond insurance and/or ratings on the Notes. An amount for Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements and the Original Improvements.

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

"Dated Date" shall mean the dated date of the Notes, which is August 9, 2012.

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

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

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

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

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

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

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

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

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

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

"Improvement Costs" shall mean the amount of capital expenditures for an Original Improvement and/or an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Notes, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds unless such amounts are entitled to be reimbursed under State and Federal law.

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

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

"Interest Payment Date" shall be August 15, 2013.

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

"Maturity Date" shall mean August 15, 2013.

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

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

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

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

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

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

"Notes" shall mean the General Obligation Renewal and Improvement Temporary Notes, Series 252, dated August 9, 2012, of the City of Wichita, Kansas, in the principal amount set forth on **Exhibit A** which are authorized by and will be issued pursuant to the authority of the Note Ordinance and this Resolution.

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

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

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

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

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

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

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

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

"Principal Payment Date" shall mean the Maturity Date.

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

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

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

"Resolution" or "Note Resolution" shall mean this Resolution adopted by the Governing Body of the City on July 10, 2012, prescribing the terms and details of the Notes.

"State" shall mean the State of Kansas.

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

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

ARTICLE II
AUTHORIZATION, ISSUANCE AND DELIVERY OF NOTES

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

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

Section 2.02 Description and Details of Notes. The Notes shall be designated "City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 252." The Notes shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of the Notes. The Notes shall be dated the Dated Date, shall mature on the Maturity Date, and shall bear interest at the rate set forth on **Exhibit A** to this Resolution. The Notes shall bear interest from their Dated Date (computed on the basis of a 360-day year of 12 30-day months) and such interest shall become due and payable on the Interest Payment Date. The City Manager, the Finance Director, or the City Manager's designee is hereby authorized to approve the final principal amount and Purchase Price for the Bonds as to be set forth on **Exhibit A** to this Resolution provided the final principal amount shall not exceed $55,140,000 which shall be the par value of the Notes unless otherwise indicated on **Exhibit A**, the principal shall mature on the date and at the interest rate shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

The Notes will initially be distributed in book-entry-only form through DTC, by depositing with DTC (or the Fiscal Agent as agent for DTC) one certificate, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Notes. The manner of payment of the principal of and the interest on the Notes to DTC, and

other matters relating to the distribution of the Notes in book-entry-only form through DTC, shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

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

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

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

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

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

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

(A) Notes Issued and Delivered in Book-Entry-Only Form. One certificate registered in the name of DTC's nominee, Cede & Co., for the total principal amount of the Notes will be issued to DTC in New York, New York (or to the Fiscal Agent as agent for DTC) and such certificate will be immobilized in its custody. Purchases of the Notes in denominations permitted by **Section 2.02** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Notes on DTC's records. The ownership interest of each actual purchaser of each Note (the "beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Transfers of

ownership will be effected on the records of DTC and its Participants pursuant to the rules and procedures established by DTC and its Participants. Payment of principal and interest on the Notes will be made in same day funds directly to DTC. The transfer of principal and interest to Participants of DTC will be the responsibility of DTC; the transfer of principal and interest to beneficial owners by Participants of DTC will be the responsibility of such Participants. Neither the City nor the Paying Agent and Note Registrar will be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its Participants or persons acting through such Participants.

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

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

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

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

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

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

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

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

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

Notes delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Notes surrendered, shall be secured by the Note Ordinance and

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

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

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

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

Section 2.12 Official Statement. The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared for use in the initial offering and sale of the Notes, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating

agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Notes. The lawful use of the final Official Statement in the reoffering of the Notes by the Original Purchaser is hereby approved and authorized.

ARTICLE III
REDEMPTION OF NOTES

Section 3.01 **Optional Redemption**. At the option of the City, the Notes may be called for redemption and payment prior to their stated maturity, in whole or in part, on and after February 14, 2013 (the date being so set for redemption and payment being referred to as the "Redemption Date"). Notes called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount), of 100% of the principal amount, plus accrued interest to the Redemption Date.

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

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

Section 3.03 **Notice of Redemption**. Unless waived by the Fiscal Agent, the City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than forty-five (45) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Notes so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

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

Section 3.04 **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Notes or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Notes selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000 units of face value represented by any Note is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Note or Notes in the amount of the unredeemed portion of such Note as provided by **Section 3.02** above. All Notes selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

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

ARTICLE IV
FUNDS AND ACCOUNTS

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

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 252;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 252, to be created within the City's Capital Project Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 252.

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

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

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

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Notes and the amount of purchase price premium, if any, shown on **Exhibit A** to be deposited in the Principal and Interest Account; and

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

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

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

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

Section 5.04 Surplus in Principal and Interest Account. Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all

general obligation note issues of the City shall be transferred and paid into the General Fund of the City.

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

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

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

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

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

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

Section 6.02 Investments. Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided, however, that no such investment shall be made for a period extending longer than to

the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established; and provided further, that such moneys shall not be invested in such manner as will violate the provisions of the Certificate as to Arbitrage and Related Tax Matters. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall (except the amounts which are required to be deposited into the Excess Earnings Account in accordance with the Certificate as to Arbitrage and Related Tax Matters) accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month. All investments made pursuant hereto shall be made in accordance with the Certificate as to Arbitrage and Related Tax Matters.

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

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

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

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

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

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Excess Earnings Account and any Rebate Amount are set forth in a Certificate as to Arbitrage and Related Tax Matters dated as of the Date of Issuance. The

form and text of the Certificate as to Arbitrage and Related Tax Matters is hereby approved and accepted by the Governing Body, and all of the covenants, duties and responsibilities therein contained which are to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and the City Clerk or Director of Finance, as appropriate, or such other officer as may be directed by the Mayor, shall be and are hereby authorized to execute and deliver the Certificate as to Arbitrage and Related Tax Matters for and on behalf of the City. The entire text of the Certificate as to Arbitrage and Related Tax Matters is by reference hereby incorporated in and made a part of this Resolution as though fully set forth at this place.

ARTICLE VII
PROVISION FOR PAYMENT OF NOTES

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

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

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.01 Resolution Constitutes Contract; Remedies of Owners. The provisions of the Note Ordinance and this Resolution, and all of the covenants and agreements therein and herein contained, shall constitute a contract between the City and the Owners, and the Owner or

Owners of any of the Notes at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

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

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

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

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

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

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

exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

ARTICLE IX
AMENDMENTS

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

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

(A) Extend the Maturity Date of any Note;

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

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

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

Section 9.02 **Written Evidence of Amendments.** Any and all modifications or amendments to this Resolution or of the Notes shall be made in the manner hereinabove

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

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

ARTICLE X
DEFEASANCE

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

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Notes remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the

interest on the Notes under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Notes.

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

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

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

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

Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby.

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

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

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

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

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ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on July 10, 2012.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

SCHEDULE I

THE ORIGINAL IMPROVEMENTS AND THE IMPROVEMENTS

EXHIBIT A

ADDITIONAL TERMS OF THE SERIES 252 NOTES

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

"Note Ordinance" shall mean Ordinance No. _____ of the City, passed by the Governing Body on July 10, 2012, and authorizing and providing for the issuance of the Notes.

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

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

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

The final principal amount of the Notes is $_____.

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

Approved by:

_____
Title: Director of Finance
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,* July 10, 2012, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 805, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $12,210,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 805 Bonds occur on the same day bids are received and to enable the City to deliver the Series 805 Bonds authorized by said Ordinance on August 9, 2012.

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 July 10, 2012.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit,* July 10, 2012, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 810, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $2,325,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 810 Bonds occur on the same day bids are received and to enable the City to deliver the Series 810 Bonds authorized by said Ordinance on August 9, 2012.

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 July 10, 2012.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit,* July 10, 2012, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 961 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $1,610,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY REDEVELOPMENT COSTS IN CONNECTION WITH THE EAST BANK REDEVELOPMENT DISTRICT; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 961 Bonds occur on the same day bids are received and to enable the City to deliver the Series 961 Bonds authorized by said Ordinance on August 9, 2012.

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 July 10, 2012.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit,* July 10, 2012, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 245 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $6,105,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 245 Notes occur on the same day bids are received and to enable the City to deliver the Series 245 Notes authorized by said Ordinance on August 9, 2012.

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 July 10, 2012.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit,* July 10, 2012, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 252, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $55,140,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 252 Notes occur on the same day bids are received and to enable the City to deliver the Series 252 Notes authorized by said Ordinance on August 9, 2012.

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 July 10, 2012.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL JULY 10, 2012

a. Storm Water Drain #384 to serve Sierra Hills 2nd Addition (north of Pawnee, west of 143rd Street East) (468-84815/751506/485397) Traffic to be maintained during construction using flagpersons and barricades. (District II) - $518,000.00

b. Water Distribution System to serve Woods North 3rd Addition (south of 29th Street North, west of 127th Street East) (448-90554/735478/470151) Does not affect existing traffic. (District II) - $83,000.00

c. Lateral 429, Four Mile Creek Sewer to serve Woods North 3rd Addition (south of 29th Street North, west of 127th Street East) (468-84821/744337/480029) Does not affect existing traffic. (District II) - $130,000.00

d. Water Distribution System to serve Scenic Landscapes (south of Maple, east of Julia) (448-90543/735471/470144) Traffic to be maintained during construction using flagpersons and barricades. (District V) - $27,560.00

e. 13th Street, Hydraulic to Oliver (13th Street North from Hydraulic east to Oliver) (472-84320/706933/635803/624100/205399/752025/652018) See special provisions. (District I) - $17,360,000.00

DEEDS AND EASEMENTS – JULY 10, 2012

a. Storm Water Drainage and Detention Basin Improvements Easement dated June 11th, 2012 from Palladio Developers, Inc. for a pond lying within Reserves C and D, Sierra Hills 2nd Addition, an addition to Wichita, Sedgwick County, Kansas, (OCA #751506) No cost to City.
b. Storm Water Drainage and Detention Basin Improvements Easement dated June 21st, 2012 from Motorcar Realty, LLC for a pond lying within the westerly 117.00 feet of Lot 4, Block 1, Kiser West Addition, an addition to Wichita, Sedgwick County, Kansas, except that part of said Lot 4 platted as part of Lot 1, Block 1, Kiser West Second Addition, an addition to Wichita, Sedgwick County, Kansas. (OCA #751510) No cost to City.

Statements of Cost:

PAVING

a. Paving on Westport, Kap, Kentucky Lane, Willoughby, Willowby Circle and Kentucky Court to serve Silverton Addition (north of 13th Street North, west of 135th Street West). Total Cost - $453,416.83 (plus idle fund interest - $74.32, plus temporary note interest - $1,108.85). Financing to be issued at this time - $454,600. (766254/472-84462/490-272).

b. Paving on Fontana, Park Ridge and Chambers to serve Fontana 4th Addition (east of 119th Street West, north of 29th Street North). Total Cost - $393,386.01 (plus idle fund interest – $31.99, plus temporary note interest - $1,132). Financing to be issued at this time - $394,550. (766244/472-84800/490-262).

c. Paving Left turn lanes on Orme, at the intersection of Orme and Oliver Street; deceleration lanes including a commerical driveway approach on both the east and west sides of Oliver (along Oliver, south of Kellogg). Total Cost - $207,271.79 [plus idle fund interest – ($342.39), plus temporary note interest - $1,320.60]. Financing to be issued at this time - $208,250. (766231/472-84823/490-249).

d. Paving on 33rd Street North from the west line of Carl Barbee Addition to the west line of Arkansas Avenue; Mascot from the south line of North Elementary School Addition to the south line of 33rd Street North (north of 29th Street North, east of Seneca). Total Cost - $325,073.93 (plus idle fund interest - $194.43, plus temporary note interest - $431.64). Financing to be issued at this time - $325,700. (766256/472-84909/490-274).

e. Paving on Willowgreen Circle, from the east line of Casa Bella 3rd Addition, to and including the cul-de-sac, to serve Casa Bella 3rd Addition (north of Pawnee, west of 127th Street East). Total Cost - $166,693.99 (plus idle fund interest – $19.11, plus temporary note interest - $386.90). Financing to be issued at this time - $167,100. (766261/472-84945/490-279).

f. Paving on Chesterfield from the north line of 13th Street to 330 feet north of the north line of 13th Street to serve Greenwich Office Park 2nd and Berkeley Square 1st Additions (north of 13th, west of Greenwich). Total Cost - $194,163.82 (plus idle fund interest – $70.54, plus temporary note interest - $365.64). Financing to be issued at this time - $194,600. (766263/472-84959/490-281).

Agenda Item No. II-6a.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Community Events – Bikers for the Homeless (District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure the event promoter Mike Furches, Mosaic Church is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Bikers for the Homeless July 29, 2012 6:00 am – 4:00 pm

- Market Street, English Street to William 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 special events.

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-6b.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Community Events – Glow Run Wichita (District IV)

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 Dina Myers, KC Running Club is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Glow Run Wichita August 11, 2012 6:00 pm – 12:00 am

- Sycamore Street, Maple Street to Taft Street
- Taft Street, Sycamore Street to McLean Boulevard
- McLean Boulevard, Taft Street to Harry Street
- McLean Boulevard, Harry Street to Maple Street
- Maple Street, McLean Boulevard to Sycamore 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 special events.

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-6c.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Community Events – Tour de Hangar (District V)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure the event promoter Ryan Hiser, Hangar One Steakhouse is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Tour de Hangar July 21, 2012 8:00 am – 12:00 pm

- Julia Street, West Kellogg Drive to Pueblo Drive, not to impede access to Monterrey Restaurant.

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 special events.

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.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Controlled Substance and Alcohol Testing Program Third-Party Administrator

INITIATED BY: Human Resources Department

AGENDA: Consent

Recommendation: Approve the contract.

Background: The City of Wichita began random drug and alcohol testing in 1995 in compliance with the Omnibus Transportation Employee Testing Act of 1991. Testing at that time was limited to employees required to have a Commercial Driver's License to do their jobs. The testing pool was expanded to contain approximately 1,874 employees in safety sensitive positions, and approximately 500 drug and 188 alcohol tests are now conducted annually.

Since 1997, the City's Human Resources Department has managed the random screening process with the assistance of a third party administrator to ensure the federal requirements for diligence and documentation are met. The City has contracted with Foley Carrier Services, L.L.C. since 2007. In 2012, solicitation was required and RFP #FP240010 was issued.

Seven proposals were received, and three chosen for interviews based on available network for collection of samples, pricing, and experience. Foley Carrier Services, LLC, was selected to continue providing services to the City. Foley Carrier Services, LLC specializes in federal Department of Transportation safety regulation compliance with special emphasis on substance abuse testing programs. This firm serves over 10,000 companies throughout the country.

Analysis: Contracting with a third party to administer the Controlled Substances and Alcohol Testing Program is less expensive than operating the program with City staff and provides the City with protection against claims of bias in the selection and testing process. Employees who are identified with drug or alcohol abuse problems are referred to mandatory treatment programs and must be released by a substance abuse professional before returning to work.

Financial Considerations: There will be an administration fee of $2,000 per year, with a $37 per test fee for urine drug testing and $40 fee for breath alcohol testing for the remainder of 2012 – June 30, 2013. Costs are paid by each department. The contract will be for one year with annual renewable options for four (4) years.

Goal Impact: Internal Perspectives. Increased Productivity will result through this proactive approach to employee problems. Reduced and avoided costs will be achieved through reduction in preventable accidents and returning recovered employees to their positions.

Legal Considerations: The Law Department has reviewed and approved the contract as to form.

Recommendations/Actions: It is recommended that the City Council approve the contract and authorize the necessary signatures.

CONTRACT

For

CONTROLLED SUBSTANCE & ALCOHOL TESTING PROGRAM THIRD-PARTY ADMINISTRATOR

BLANKET PURCHASE ORDER # BP240047

THIS CONTRACT entered into this 3rd day of July, 2012, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **BIRD DOG SOLUTIONS, INC. DBA FOLEY CARRIER SERVICES, LLC,** 655 Winding Brook Drive, Glastonbury, CT 06033, Telephone Number (800) 253-5506 hereinafter called **"CONTRACTOR"**.

WITNESSETH:

WHEREAS, the **CITY** has solicited a proposal for Controlled Substance & Alcohol Testing Program Third-Party Administrator (Formal Proposal – FP240010); and

WHEREAS, CONTRACTOR has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY.**

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services.** **CONTRACTOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP240010, which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal – FP240010, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation.** **CITY** agrees to pay to **CONTRACTOR** for services as per the proposal, plans, specifications, addenda and Contractor's proposal of FP240010 due on March 31, 2012 and as approved by the City Council on July 10, 2012.

Program Administration Fee *Includes:*	**Price**
• Web Access • Recordkeeping and Reporting • After-Hours Emergency Support • Random Selection Management • Client Consultation • Audit Support • Collection Site Management • Blind Specimen Testing • Educational Materials	$2,000/Per Year For All Employees
Drug Testing Fee (primary site)	$37.00 Per Test
Drug Testing Fee (third party site)	$47.00 Per Test
Alcohol Testing Fee	$40.00 Per Test
On-Site Training	Call for Pricing

3. **Term.** The term of this contract shall be for a one-year period from **July 10, 2012 through June 30, 2013**, with the option to renew the contract under the same terms and conditions for up to four (4) successive one (1) year terms by mutual agreement of both parties. This contract is subject to cancellation by the **CITY**, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **CONTRACTOR.**

4. **Indemnification and Insurance.**

a. **CONTRACTOR** 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 **CONTRACTOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

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

6. **Compliance with Laws.** **CONTRACTOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

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

8. **Non-Discrimination.** **CONTRACTOR** 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 hereto as Exhibit A.

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

10. **No Arbitration**. The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

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

12. **Representative's Authority to Contract.** By signing this contract, the representative of the contractor or CONTRACTOR represents the he or she is duly authorized by the contractor or CONTRACTOR to execute this contract, and that the contractor or CONTRACTOR has agreed to be bound by all its provisions.

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

ATTEST:

Janis Edwards
Deputy City Clerk

CITY OF WICHITA, KANSAS

Carl G. Brewer, Mayor

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

BIRD DOG SOLUTIONS, INC. DBA FOLEY CARRIER SERVICES, LLC

Signature

CHRIS BECK
Print Signature Name

VICE PRESIDENT FINANCE, SECRETARY
Title (*President or Corporate Officer*)

EXHIBIT A

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, Contractor 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, Contractor 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 Contractor.

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

1. The Contractor, 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 contractor, 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 Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, 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 Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The Contractor, 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 Contractor, 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 Contractor, 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 Contractor, 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, subcontractor 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, Contractors 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 Contractors, 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, Contractor 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.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Industrial Pretreatment Wastewater Sampling (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve a contract to allow A & E Analytical Laboratory, Inc. to provide industrial wastewater sampling services.

Background: Historically, the Sewage Treatment Division's pretreatment program has conducted regular wastewater sampling events to monitor the liquid waste streams from industries that are permitted to discharge into the City's sanitary sewer system. Regular monitoring is a requirement of the division's pretreatment program in accordance with the General Pretreatment Regulations 40 CFR Part 403, as approved by the Kansas Department of Health and Environment and the Environmental Protection Agency. If regular monitoring is not conducted, the Sewage Treatment Division would be in violation of its National Pollutant Discharge Elimination System permits. Staff has determined a more efficient service delivery model that provides cost savings for the City and maintains existing position vacancies within the Sewage Treatment Division. As a result, the Sewage Treatment Division released a Request for Proposal (RFP) to pursue fulfilling the sampling requirements through contracted services. An RFP was released on March 9, 2012, seeking industrial wastewater sampling services. Three proposals were received on March 30, 2012.

Analysis: The Staff Screening and Selection Committee (SSCS) reviewed and evaluated all three proposals and conducted interviews on May 22, 2012. The SSCS evaluated each proposal on the following criteria: mandatory elements, project understanding and presentation, technical qualifications, approach, and proposed fees. Based on the cost, approach, and superior understanding of the project scope exhibited during the interview, A & E Analytical Laboratory, Inc. was the unanimous choice to receive the committee's recommendation.

Financial Considerations: This contract is for the sampling services proposed by A & E Analytical Laboratory, Inc. during the RFP process. The proposed contract is for $44,310, which is based on an estimated 422 sample events per year at $105 per sample event. The actual cost of the contract will depend on the number of sample events conducted each year and may fluctuate with the number of permitted industries and its varying discharge permit requirements. At the proposed contracted rate, staff estimates a cost savings of $20,000 per year versus staffing the position and performing the work in-house.

Funding for this contract is available in the Sewage Treatment operating budget contractual services.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing reliable, compliant, and secure utilities.

Legal Considerations: The Law Department has reviewed and approved the contract as to form.

Recommendations/Actions: It is recommended that City Council approve the contract with A & E Analytical Laboratory, Inc. and authorize the necessary signatures.

Attachments: A & E Analytical Laboratory, Inc. contract.

CONTRACT
for
INDUSTRIAL PRETREATMENT WASTEWATER SAMPLING

BLANKET PURCHASE ORDER NUMBER BP240055

THIS CONTRACT entered into this 10th day of July, 2012, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **A & E ANALYTICAL LABORATORY, INC.**, (Performance Vendor Code Number –807270-001), 2626 S. Rock Road, Suite 114, Wichita, Kansas, 67210, Telephone Number (316) 618-8787, hereinafter called "**VENDOR**".

WITNESSETH:

WHEREAS, the **CITY** has solicited proposals for **Industrial Pretreatment Wastewater Sampling** (Formal Proposal – FP240015) [Commodity Code Number 92685]; and

WHEREAS, VENDOR has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY,**

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services. VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal –FP240015 [Commodity Code Number - 92685], which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans, and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal – FP240015 shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation. CITY** agrees to pay to **VENDOR** the following amount for **Industrial Pretreatment Wastewater Sampling**, Formal Proposal – FP240015 [Commodity Code Number - 92685], for the Public Works & Utilities Department, Sewage Treatment Division of the City of Wichita as shown below as compensation as per the **VENDOR's** proposal of March 30, 2012:

$105.00 per sampling event

To provide the various services and perform tasks as outlined in **VENDORS's** proposal and attached hereto as Exhibit B.

VENDOR will send a monthly report to the **CITY** in a format to be designated by the **CITY**. This report is to list the sampling activity performed in the previous month and the associated fees. **CITY** will then pay the **VENDOR** for completed services provided.

An estimated 422 sampling events are anticipated, but count is subject to change.

3. **Term.** The term of this contract shall be from **July 10, 2012 through June 30, 2013,** with options to renew the contract under the same terms and conditions for two (2) successive one (1) year terms by mutual agreement of the parties. This contract is subject to cancellation by the **CITY**, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **VENDOR**.

4. **Indemnification and Insurance.**

a. **VENDOR** 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 **VENDOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract.

b. **VENDOR** will carry insurance coverage during the term of this Contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, xcu (explosion, collapse and underground) hazards when applicable, Product/Completed 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

2. 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

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	$100,000 each accident

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

6. **Compliance with Laws. VENDOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this contract.

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

8. **No Arbitration**. The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

9. **Non-Discrimination. VENDOR** 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 hereto as Exhibit A.

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

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

12. **Representative's Authority to Contract.** By signing this contract, the representative of the contractor or vendor represents the he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.

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

ATTEST:

Karen Sublett
City Clerk

CITY OF WICHITA, KANSAS

Carl G. Brewer
Mayor

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

A & E ANALYTICAL LABORATORY, INC.

Sara S. Crumrine
(Signature)

Sara S. Crumrine
(Print Name)

President
Title *(President or Corporate Officer)*

Exhibit A

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, 11141; 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.

Analytical Laboratory
2626 S. Rock Road Suite 114 Wichita, KS 67210
Office: 316-618-8787 Fax: 316-618-0832

Proposal for #FP240015 -- Industrial Pretreatment Wastewater Sampling

Primary contact: Sara Crumrine, Laboratory Director
Email: sara@aelabonline.com

Alternate contact: Jessica Jensen
Email: jessica@aelabonline.com

Amount of Request:

- $105 per sampling event, as defined by RFP 240015
- $44,310 per contract year with 422 sampling events (estimated contract value subject to change.)
- Additional sampling events will be billed at the same rate of $105.

Detailed cost analysis is available upon request.

Project Understanding

A & E Laboratory is responding to the need for industrial pretreatment wastewater sampling for the City of Wichita. This sampling includes multiple locations throughout Wichita, at varying frequencies and for a variety of analytical parameters. All services will be provided from our Wichita location.

As Contractor, A & E will provide all equipment, materials and labor necessary to perform all the specified proposal requirements while observing and complying with all laws and regulations for the duration of the contract.

This organization has no conflict of interest as per Certifications 1-3, regarding any officer or employee of the companies involved with this bid including the City of Wichita.

A & E Laboratory provides equal employment opportunities to all employees and applicants for employment. Employment decisions are based solely on an individual's qualifications for the position being filled.

Technical Qualifications

Organization

A & E Analytical Laboratory, Inc. was established in Wichita in 1974. It has been a women owned business since 2008, when purchased by Sara Crumrine and Jessica Jensen. The purpose of this corporation is to provide sampling and analytical services to corporations, water treatment facilities, environmental consulting organizations and other entities that may require such services.

The facility is certified by KDHE in accordance with NELAP regulations. The certification number is E-10378. (Copy of certificate is included.)

Staff

A & E Laboratory has three full-time employees and two part-time employees.

- Sara Crumrine, Laboratory Director
  - Graduate of Chadron State College in Chadron, NE with a bachelor's degree in Environmental Biology, minor in Agriculture and Communications.
  - Certified as a Class II Wastewater Operator with the State of Kansas.
  - As a former lab technician in an industrial/production environment, she performed numerous sampling and analysis duties to fulfill the requirements of the industry's NPDES permit; including gaining field pH certification for her employer.
  - In addition to her Laboratory Director duties, she oversees and assists with all aspects of industrial sampling.

- Jessica Jensen, Quality Assurance Officer (QAO)
  - Graduate of Morningside College in Sioux City, IA with a bachelor's degree in Chemistry and Biology, minor in Spanish.
  - Former chemist from the water department of SDK Laboratories
    - She led the department, which focused on microbiological, potable and non-potable water testing.
  - As QAO, she has been responsible for scheduling and delegating industrial sampling responsibilities at A & E.

- Anna DiSalvo, full-time laboratory technician
  - Graduate of Friends University with a degree in Field Biology
  - Working toward Master's Degree at Wichita State University
  - Her responsibilities include industrial sampling, sample analysis, and data entry.

- Additional A & E Laboratory staff perform in-house analyses and assist with industrial sampling as needed.

Quality Control

Our Quality Assurance Plan is designed to meet or exceed the standards for environmental laboratories as required by the Kansas Department of Health and Environment (KDHE) and the National Environmental Laboratory Accreditation Program (NELAP). It is described in detail in the Quality Assurance Plan (QAP) and associated Standard Operating Procedures (SOPs). The management of the laboratory is committed to thorough implementation of the quality system and of the standards.

The quality system provides policies and procedures for the guidance of laboratory personnel, including procedures for

- all aspects of sample handling and analysis.
- sample management, including use of chains of custody.
- all required support systems.
- client contact and communication.

The procedures above include the requirement that all laboratory personnel familiarize themselves with all aspects of the quality system that relate to their functions in the laboratory and implement the quality system as written in all of their work.

An electronic version of our QAP manual is available upon request.

Demonstration of Capability for Scope of Services

Sampling is a routine part of our daily activities. A & E Laboratory currently performs both grab and composite sampling at numerous Wichita industries for compliance with City of Wichita regulations. We establish an individualized monthly schedule for each industry and implement it. These sampling schedules are random, but representative of a 'typical' flow for each industry. A sample copy of a monthly schedule is available for your review upon request. We also provide sampling on an 'as needed' basis for any clients that require it.

A quarterly sampling schedule will be submitted to the City for approval prior to the beginning of the quarter. Additional sampling will be added to the schedule upon request from the City. A & E has sufficient equipment and staff to allow for additional sampling events.

As Contractor for this bid, A & E will schedule and fulfill all sampling requirements as requested. A & E will work collectively with all parties involved with transportation and analysis to ensure the samples for the City are received in a timely manner.

A & E will follow all protocol for proper sampling and handling techniques to ensure a quality sample with appropriate paperwork is delivered to the designated laboratory for analysis. A & E is certified to run onsite pH analysis, according to Michelle Wade, the KDHE laboratory accreditation officer.

When questions or concerns arise, the City should contact a designated representative. All issues will be addressed and resolved to all parties' satisfaction. A written corrective action will be completed and sent to the involved parties.

Based on experiences as both a laboratory and onsite sampling service, A & E believes they are the best qualified option to fulfill Scope of Services requirements A-H.

References

Please contact these references to verify our record of professionalism, quality, accessibility and responsiveness to our clients.

Darling International – Mr. Tony Kroulik, (316) 264-1063

- grab sampling for City over limit fees
- onsite pH analysis
- prepare monthly data report

Hiland Dairy – Mr. John Starkey, (316) 267-4221

- composite and grab sampling for City over limit fees

Universal Lubricants – Mr. Greg Van Stechelman, (316) 832-3640

- collection of monthly City samples for analysis
- onsite pH analysis
- sample pick up and delivery to laboratory

Chisholm Creek Utility Authority – Mr. Randall Harris, (316) 838-4748

- onsite pH analysis
- sample pick up and delivery to laboratory

Hill's Pet Nutrition – Mr. Kyle Ramsey, (785) 230-8281

- onsite composite and grab sampling for compliance with City of Emporia requirements
- onsite pH analysis
- sample pick up and delivery to laboratory

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Supplemental Design Agreement No. 1 for Water Main Replacement Project in Schrader neighborhood (District I)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve Supplemental Agreement No. 1.

Background: On November 7, 2006, the City Council approved an agreement with Ruggles & Bohm, P.A. to prepare the design of a water main replacement project for an area south of Harry and west of Hillside. There was no funding for this project until the new Capital Improvement Program was approved by the City Council on March 6, 2012.

Analysis: The supplemental agreement will provide design services to renew permits, redistribute the plans to utilities, and update the plans to current standards due to delays in bidding the project due to lack of funding.

Financial Considerations: Payment to Ruggles and Bohm for this supplemental agreement is on a lump sum basis in the amount of $3,500. It will be funded 100% by the Water Utility and funding is available within the project budget. With this supplemental agreement, the total design fee will be $44,000.

Goal Impact: The agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of a water main replacement project.

Legal Considerations: The Supplemental Agreement No. 1 has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve Supplemental Agreement No. 1 and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 1.

SUPPLEMENTAL AGREEMENT NO. 1

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED SEPTEMBER 22, 2006

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

RUGGLES. & BOHM, P.A.

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated September 22, 2006) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to WATER MAIN REPLACEMENT IN SCHRADER NEIGHBORHOOD.

WHEREAS, Paragraph IV.B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

WATER MAIN REPLACEMENT IN SCHRADER NEIGHBORHOOD
(Project No. 448 90214, OCA #636161)

- Update plans to meet City water line replacement policy requirements.

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:
Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the lump sum amount of **$3,500.00**

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in the force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2012.

CITY OF WICHITA

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RUGGLES & BOHM, P.A.

_____
(Name and Title)

ATTEST:

_____

CITY OF WICHITA
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 13314 West Central for the Central: 119th to 135th Street Road Improvement Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 19, 2008, the City Council approved the design concept to improve Central Avenue from 119th Street West to 135th Street West. The project will require the acquisition of all or part of 25 tracts. The proposed project includes straightening Central, providing signalization at the intersection of Central and 135th Street, and improving area storm drainage. The property at 13314 West Central is improved with a single-family residence. The improvements currently back up to a wooded corridor along the creek that runs through the northern and eastern portion of the property. After the taking for road right-of-way, the majority of the trees along the north property line will be removed, and the property will have an arterial roadway to the north and the former arterial, existing Central Avenue, to the south. .

Analysis: The owner rejected the appraised offer of $74,300, which was comprised of $18,000 for the right-of-way, $31,000 as damages to the remainder, $25,000 to replace the onsite garage, and $300 for a temporary construction easement. Through negotiation, the owner agreed to accept $125,000. This amount includes $73,000 for the land and damages to the remainder, $2,000 for the temporary easement, $25,000 for the garage, and $25,000 to move, store, and relocate the machinery in the garage.

Financial Considerations: The funding source is General Obligations Bonds. A budget of $136,500 is requested. This includes $125,000 for the property and $1,500 for closing costs and related charges.

Goal Impact: The acquisition of this tract is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

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

Recommendation/Action: It is recommended that the City Council; 1) approve the contract; 2) approve the budget; and 3) authorize all necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

13314 W Central

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

PROJECT: Chisholm Creek Diversion Levee Certification Project DATE:

COUNTY: Sedgwick TRACT NO.: 37

CITY OF WICHITA, KANSAS

A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT made and entered into this___day of_____, 2012, by and between:

Leland R. and Linda Sue League, husband and wife (Landowners), and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, Landowners hereby agree to convey fee title to the City of Wichita by warranty deed to the following described real property in Sedgwick County to wit:

A parcel of land lying in the Northwest Quarter of Section 24, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

The North 60 feet of the East 626.13 feet of the West 1043.55 feet of the north 208.71 feet of said Northwest Quarter of Section 24, except the East 245 feet thereof.

Additionally, landowners hereby agree to convey a temporary easement for construction of public improvements over the following described real property in Sedgwick County to wit:

A parcel of land lying in the East 626.13 feet of the West 1043.55 feet of the North 208.71 feet of Northwest Quarter of Section 24, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, except the East 245 feet thereof, said parcel of land being more particularly described as follows:

Commencing at the northwest corner of said parcel; thence S00˚44’15”E, 60.00 feet along the west line of said parcel to the Point of Beginning; thence N88˚33’39”E, 262.66 feet parallel with the north line of said Quarter; thence S01˚26’21”E, 20.00 feet; thence S88˚33’39”W, 140.00 feet parallel with the north line of said Quarter; thence S82˚44’20”W, 49.29 feet; thence S88˚33’39”W, 73.93 feet parallel with the north line of said Quarter to the west line of said parcel; thence N00˚44’15”W, 25.00 feet to the Point of Beginning.

It is understood and agreed that landowner is responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and

indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property. The City agrees to purchase the above described real estate, and to pay therefore, the following amount within 30 days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 22,868 Sq. Ft. for right-of-way	$73,000.00
Approximately 5,748 Sq. Ft. for temporary easement	$ 2,000.00
Garage	$25,000.00
Cost to Cure including relocation and storage of equipment	$25,000.00
TOTAL	**$125,000.00**

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out including claims that Landowners may assert pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C.A. 4601, et. Seq.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

_____ _____

Leland R. League Linda Sue League

BUYER:
City of Wichita, KS, a municipal corporation

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council Members

SUBJECT: Repair or Removal of Dangerous & Unsafe Structure (District II)

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendations: Adopt the attached resolution to schedule the required City Council public hearing to consider condemnation of the structure at 8000 East Tipperary, which has been deemed dangerous and unsafe per Kansas State Statutes.

Background: On June 4, 2012, the Board of Code Standards and Appeals conducted a hearing on the property listed below. The building on the property is considered a dangerous and unsafe structure per State Statutes and local ordinances, and is being presented in order to schedule a condemnation hearing before the City Council. The Board of Code Standards and Appeals has recommended that the City Council proceed with condemnation, demolition and removal of the dangerous building on this property.

Analysis: Minimum Housing Code violation notices have been issued on the structure; however, compliance has not been achieved. Pre-condemnation and formal condemnation letters have also been issued and the time granted for repair or removal has expired. No actions have been taken by the property owners and/or other interested parties to complete required building repairs or to remove the dangerous building.

Property Address	Council District
a. 8000 East Tipperary	II

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

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

Legal Considerations: The Law Department has reviewed and approved the resolution as to form.

Recommendations/Actions: It is recommended that the City Council adopt the attached resolutions to schedule a public hearing before the City Council on August 21, 2012 at 9:30 a.m. or soon thereafter, to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes and local

ordinances.

Attachments: Letters to Council, summaries, and resolutions.

GROUP # 1

NOTICE OF DEMOLITION ACTION

This is to certify that the property located at **8000 E TIPPERARY** and legally described as: **LOT 10, BLOCK 1, FIRST ADDITION TO VICKRIDGE, SEDGWICK COUNTY, KANSAS, EXCEPT BEGINNING AT THE SOUTHEAST CORNER OF LOT, THENCE WEST 15.5 FEET; THENCE NORTH 150 FEET TO A POINT ON THE REAR LINE OF SAID LOT; THENCE EAST 5.5 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH TO THE PLACE OF BEGINNING**, is the subject of a demolition action by the City of Wichita, Kansas, under the provisions of Section 18.16 of the Code of the City of Wichita. Unless certain improvements to the structure(s) located thereon are commenced and completed by **August 21, 2012** such structures are subject to being demolished and the costs associated therewith charged, as a lien, against the above-described real property.

_____
Donte Martin, Interim Superintendent, Office of Central Inspection
City of Wichita

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, That on this _____day of _____, 2012, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Donte Martin, Interim Superintendent of the Office of Central Inspection, City of Wichita, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

_____
Notary Public

My Appointment Expires:
_____

TO: The Mayor and City Council
Wichita, Kansas

RE: Statement of Dangerous or Unsafe Structure

The following described structure is in a dangerous or unsafe condition:

(a) Description of Structure: A two-story frame dwelling about 54 x 74 feet in size. Vacant and open, this structure has been damaged by fire. It has fire-damaged brick veneer; fire-damaged and missing wood shingles; and the attached garage has been fire damaged.

(b) Street Address: 8000 E TIPPERARY

(c) Owners:
Mark Y Blum Jr
6311 E English
Wichita KS 67218

John Rigby Carey
8080 E Central #200
Wichita KS 67206

(d) Resident Agent: None

(e) Occupant: None

(f) Lienholders of Record:
Kelly Arnold, County Clerk
Sedgwick County Courthouse
525 N Main
Wichita KS 67203

Chris McElgunn, Attorney
301 N Main #1600
Wichita KS 67202

(g) Mortgage Holder(s): None

(h) Interested Parties: None

DATE: June 20, 2012

CDM SUMMARY

COUNCIL DISTRICT # II

ADDRESS: 8000 E TIPPERARY

LEGAL DESCRIPTION: LOT 10, BLOCK 1, FIRST ADDITION TO VICKRIDGE, SEDGWICK COUNTY, KANSAS, EXCEPT BEGINNING AT THE SOUTHEAST CORNER OF LOT, THENCE WEST 15.5 FEET; THENCE NORTH 150 FEET TO A POINT ON THE REAR LINE OF SAID LOT; THENCE EAST 5.5 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH TO THE PLACE OF BEGINNING

DESCRIPTION OF STRUCTURE: A two-story frame dwelling about 54 x 74 feet in size. Vacant and open, this structure has been damaged by fire. It has fire-damaged brick veneer; fire-damaged and missing wood shingles; and the attached garage has been fire damaged.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.

B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.

C. Those open to unauthorized persons or those permitted to be attractive to loiterers, vagrants, or children.

D. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

OCA: 230200

_____PUBLISHED IN THE WICHITA EAGLE ON_____
RESOLUTION NO. _____

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: **LOT 10, BLOCK 1, FIRST ADDITION TO VICKRIDGE, SEDGWICK COUNTY, KANSAS, EXCEPT BEGINNING AT THE SOUTHEAST CORNER OF LOT, THENCE WEST 15.5 FEET; THENCE NORTH 150 FEET TO A POINT ON THE REAR LINE OF SAID LOT; THENCE EAST 5.5 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH TO THE PLACE OF BEGINNING** KNOWN AS **8000 E TIPPERARY** MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the **10th day of July 2012**, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.
That a hearing will be held on the **21st day of August 2012**, before the governing body of the city at **9:30 A.M.,** or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at LOT 10, BLOCK 1, FIRST ADDITION TO VICKRIDGE, SEDGWICK COUNTY, KANSAS, EXCEPT BEGINNING AT THE SOUTHEAST CORNER OF LOT, THENCE WEST 15.5 FEET; THENCE NORTH 150 FEET TO A POINT ON THE REAR LINE OF SAID LOT; THENCE EAST 5.5 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH TO THE PLACE OF BEGINNING, known as: 8000 E TIPPERARY, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is A two-story frame dwelling about 54 x 74 feet in size. Vacant and open, this structure has been damaged by fire. It has fire-damaged brick veneer; fire-damaged and missing wood shingles; and the attached garage has been fire damaged.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this **10th day of July 2012.**

_____
Carl Brewer, Mayor

(SEAL)

ATTEST:_____
Karen Sublett, City Clerk

OCA: 230200

_____PUBLISHED IN THE WICHITA EAGLE ON July 13, 2012
RESOLUTION NO. 12-180

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: **LOT 10, BLOCK 1, FIRST ADDITION TO VICKRIDGE, SEDGWICK COUNTY, KANSAS, EXCEPT BEGINNING AT THE SOUTHEAST CORNER OF LOT, THENCE WEST 15.5 FEET; THENCE NORTH 150 FEET TO A POINT ON THE REAR LINE OF SAID LOT; THENCE EAST 5.5 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH TO THE PLACE OF BEGINNING** KNOWN AS **8000 E TIPPERARY** MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the **10th day of July 2012**, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.
That a hearing will be held on the **21st day of August 2012**, before the governing body of the city at **9:30 A.M.,** or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at LOT 10, BLOCK 1, FIRST ADDITION TO VICKRIDGE, SEDGWICK COUNTY, KANSAS, EXCEPT BEGINNING AT THE SOUTHEAST CORNER OF LOT, THENCE WEST 15.5 FEET; THENCE NORTH 150 FEET TO A POINT ON THE REAR LINE OF SAID LOT; THENCE EAST 5.5 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH TO THE PLACE OF BEGINNING, known as: 8000 E TIPPERARY, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is A two-story frame dwelling about 54 x 74 feet in size. Vacant and open, this structure has been damaged by fire. It has fire-damaged brick veneer; fire-damaged and missing wood shingles; and the attached garage has been fire damaged.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this **10th day of July 2012.**

_____
Carl Brewer, Mayor

(SEAL)

ATTEST:_____
Karen Sublett, City Clerk

CONTRACTS & AGREEMENTS
BLANKET PURCHASE ORDERS RENEWAL OPTIONS
JUNE 2012

COMMODITY TITLE	EXPIRATION DATE	VENDOR NAME	DEPARTMENT	ORIGINAL CONTRACT DATES	RENEWAL OPTIONS REMAINING
Alternative Correctional Housing Program Audit	6/30/2013	Wichita State University	Office of Central Inspection	7/15/2011 - 6/30/2012	1 - 1 year option
Closed Captioning Services for City 7	6/30/2013	Caption Colorado, LLC	City Manager's Office	7/1/2009 - 6/30/2010	1 - 1 year option
Cowskin Creek Wetlands Monitoring Services	6/30/2013	Burns & McDonnell	Public Works & Utilities	7/1/2010 - 6/30/2011	2 - 1 year options
Employee Health & Benefit Consulting Services	6/30/2013	Aon Risk Services	Finance	7/8/2008 - 6/30/2009	Last option
Haunted Attraction at Watson Park	6/30/2013	Prairie Pines Festivals LLC	Park & Recreation	7/21/2010 - 6/30/2011	2 - 1 year options
Janitorial Services for the Transit Centers	6/30/2013	Steam Supreme	Wichita Transit	7/1/2010 - 6/30/2011	Last option
Maintenance Service on Power Files	6/30/2013	Records Retrieval Systems	Police	7/1/2002 - 6/30/2003	Annual basis
Methane (Surface) Monitoring & Reporting at Brooks Landfill	6/30/2013	Aquaterra Environmental Solutions, Inc.	Public Works & Utilities	8/1/2010 - 6/30/2011	2 - 1 year options
Paper Products, Group 5 Items 1 & 2, Group 9	6/30/2013	Massco, Inc.	Various	7/1/2010 - 6/30/2011	Last option
Paper Products, Group 7	6/30/2013	Lafe T Williams & Associates	Various	7/1/2010 - 6/30/2011	Last option
Paper Products, Groups 1 & 3	6/30/2013	Southwest Paper Company, Inc.	Various	7/1/2010 - 6/30/2011	Last option
Paper Products, Groups 2, 6, & 8, Group 10 Items 1-3	6/30/2013	XPEDX	Various	7/1/2010 - 6/30/2011	Last option
Public Internet Access for Branch Libraries	6/30/2013	Hubris Communications, Inc	Library	7/1/2010 - 6/30/2011	Last option
Reprographic Services	6/30/2013	City Blue Print, Inc.	Various	7/1/2010 - 6/30/2011	Last option
Uniforms - Fire Department	6/30/2013	Baysinger Police Supply, Inc.	Fire	7/1/2011 - 6/30/2012	1 - 1 year option
Uniforms - Housing Department	6/30/2013	Industrial Uniform Co., LLC DBA Logo Depot	Housing & Community Services	7/1/2011 - 6/30/2012	1 - 1 year option
Waterworks Fittings	6/30/2013	Wichita Winwater Works Company	Public Works & Utilities	7/1/2010 - 6/30/2011	Last option

PROFESSIONAL CONTRACTS UNDER $25,000
JUNE 2012

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT

ANNUAL MAINTENANCE CONTRACTS OVER $25,000
DIRECT PURCHASE ORDERS FOR JUNE 2012

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT
Lucity Inc.	DP240430	Software Maintenance/Support	$33,000.00
Progressive Solutions Inc	DP240494	Software Maintenance/Support	$42,660.98
Galaxie Business Equipment Inc.	DP240499	Software Maintenance/Support	$58,331.00

CITY OF WICHITA
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Sale of City Properties at 1405, 1457, 1503 and 1515 South 119th (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the sale.

Background: The City acquired four residential properties at the above addresses as part of the project to improve 119th Street West from Kellogg to Maple. The project required the utilization of portions of the front yards and the reconstruction of the driveways. The properties are all currently zoned residential and improved with single-family residences. The houses have been vacant since acquired in mid-2010. All the houses have a single story with a basement and attached two car garages. The City Council declared the properties surplus to the City's needs on January 10, 2012. The parcels have been marketed since that time on the internet, in newspaper advertisements, in mailings to real estate professionals and by open house showings.

Analysis: There was a contract on the properties as a package but it was withdrawn. The properties were put back onto the open market. The City received four offers for all four properties as a group ranging between $295,000 and $150,000. The highest offer of $295,000 for all four houses is comprised of $57,500 for 1405 South 119th; $72,500 for 1457 South 119th; $82,500 for 1503 South 119th and $87,500 for 1515 South 119th. The buyer intends to renovate the properties and lease or sell them.

Financial Considerations: The City will receive cash consideration for the sale of the properties. In addition, the sale of these properties to a private party will place additional value into the tax base and relieve the City of any maintenance costs. The funds will be deposited into the capital project to reduce future debt requirements.

Goal Impact: The sale and redevelopment of this property will support Efficient Infrastructure by returning funds to the capital improvement funds and, Economic Vitality by promoting the redevelopment of vacant properties.

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

Recommendation/Action: It is recommended that the City Council approve the Real Estate Purchase Agreement and authorize all necessary signatures.

Attachments: Real Estate Purchase Agreement and aerial.

119th Street Properties

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REAL ESTATE SALE CONTRACT

THIS AGREEMENT, Made and entered into this 22 day of JUNE, 2012 by and between the City of Wichita, a municipal corporation, party of the First Part, hereinafter referred to as "Seller," whether one or more, and, Central Plains Development, LLC, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a quit claim deed the following described real property, situated in Sedgwick County, Kansas, to-wit:

   a. All of Tax Key Number D-43339 except:

   Beginning at the Northeast Corner of Lot 5, Bledsoe Addition to Sedgwick County, Kansas; thence South along the East line of said Lot 5 a distance of 134 feet to the Southeast Corner of said Lot 5; thence West along the South line of said Lot 5 a distance of 6.00 feet; thence Northerly for a distance of 134.21 feet to the point of beginning, containing 401.97 square feet more or less, retained for road right-of-way; and,

   Beginning at the Northeast Corner of Lot 6, Bledsoe Addition to Sedgwick County, Kansas; thence South, along the East line of said Lot 6, a distance of 76 feet; thence West, parallel with the North line of said Lot 6, a distance of 9.20 feet; thence Northerly for a distance of 76.10 feet to a point on said North line of said Lot 6 and 6.00 feet West of said Northeast Corner of said Lot 6; thence East along said North line of said Lot 6 a distance of 6.00 feet to the point of beginning, containing 577.55 square feet more or less, retained for road right-of-way;

   b. All of Tax Key Number D-43340 except:

   Beginning at the Southeast Corner of Lot 6, Bledsoe Addition to Sedgwick County, Kansas; thence North along the East line of said Lot 6 a distance of 56 feet; thence West, parallel with the South line of said Lot 6, a distance of 9.20 feet; thence Southerly for a distance of 56.09 feet to a point on said South line of said Lot 6 and 11.75 feet West of said Southeast Corner of said Lot 6; thence East along said South line of said Lot 6 a distance of 11.75 feet to the point of beginning, containing 586.55 square feet more or less, retained for road right-of-way; and,

   Beginning at the Northeast Corner of Lot 7, Bledsoe Addition to Sedgwick County, Kansas; thence South along the East line of said Lot 7 a distance of 134 feet to the Southeast Corner of said Lot 7; thence West along the South line of said Lot 7 a distance of 17.50 feet; thence Northerly for a distance of 134.20 feet to a point on the North line of said Lot 7 and 11.75 feet West of said Northeast Corner of said Lot 7; thence East along said North line of said Lot 7 a distance of 11.75 feet, to the point of beginning, containing 1,959.58 square feet more or less, retained for road right-of-way;

c. All of Tax Key Number D-43516 except:

Beginning at the Southeast Corner of Lot 1, Block A, Bolton Addition to Sedgwick County, Kansas; thence West along the South line of said Lot 1 a distance of 26.25 feet; thence Northerly to a point on the North line of said Lot 1 and 17.50 feet West of the Northeast Corner of said Lot 1; thence East along said North line of said Lot 1 a distance of 17.50 feet to said Northeast Corner of said Lot 1; thence South along the East line of said Lot 1 a distance of 200 feet to the point of beginning, containing 4,374.63 square feet more or less, retained for road right-of-way;

d. All of Tax key Number D-43266 except:

Beginning at the Southeast Corner of Lot 4, Block 2, Wheatridge Addition to Sedgwick County, Kansas; thence West along the South line of said Lot 4 a distance of 35.00 feet; thence Northerly to a point on the North line of said Lot 4 and 26.25 feet West of the Northeast Corner of said Lot 4; thence East along said North line of said Lot 4 a distance of 26.25 feet to said Northeast Corner of said Lot 4; thence South along the East line of said Lot 4 a distance of 200 feet to the point of beginning, containing 6,124.48 square feet more or less, retained for road right-of-way.

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to Buyer of the above-described real property, the sum of Two Hundred Ninety-five Thousand Dollars and No Cents ($295,000) in the manner following to-wit: cash at closing.

3. Buyer shall, within five (5) days after the execution of this contract, deliver to Security 1st Title, LLC (the "Title Company') the sum of Ten Thousand Dollars and No Cents ($10,000.00) as earnest money (the "Earnest Money"). The Earnest Money shall be deposited with the Title Company as a guarantee that the terms and conditions of this Agreement shall be fulfilled by Buyer. Said Earnest Money shall be applied to the Purchase Price due at Closing, subject to the conditions and contingencies set forth herein. In the event this Agreement is terminated at any time as a result of the breach of the Agreement by Buyer, Seller shall be entitled to the Earnest Money as its sole and exclusive remedy for such termination.

4. Seller and Buyer agree to convey title in and to the above-described real property, subject to easements, restrictions and special assessments of record, if any, acceptable to the other party. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid by Buyer.

5. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

6. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer), and interest, if any shall be adjusted and prorated as of the closing date. Taxes and specials shall be pro-rated for calendar year on the basis of 100% of taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.

7. The Seller further agrees to convey the above-described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.

8. Seller shall place no encumbrances on the property during the period from execution of this contract to closing. In addition, Seller shall be responsible for carrying such insurance as is reasonable on the improvements up until the closing date.

9. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before August 31, 2012.

10. Possession to be given to Buyer at closing.

11. Closing costs shall be paid 50% by Buyer and 50% by Seller.

12. The parties covenant and agree that except for closing, title insurance and commissions referenced elsewhere herein, each is solely responsible for the payment of any fee for brokerage, technical or other professional services relating to the execution and performance of this Contract incurred by such party.

13. Seller makes no warranty or guarantee as to the suitability of the real property proposed for trade for the intended use of Buyer. Therefore, Buyer covenants and agrees that Buyer at Buyer's own expense, shall examine the real property in order to determine such suitability including but not limited to:

    A. Soils data and geology, drainage, hydrology and topographical features that would affect any present or future intended use;
    B. The presence or absence of any contamination by any hazardous substance;
    C. The quality and quantity of water available by on-site water wells, and the availability of a permit or permits therefore;
    D. The nature, extent, and cost of public utilities needed to serve all or a portion of such real property;
    E. The extent and cost of compliance with subdivision regulations, building codes and other applicable rules and regulations involving public improvements, private improvements, access, building setbacks, public dedications, platting and replatting requirements of such real property;
    F. The nature and extent of zoning and subdivision statutes, laws, ordinances and regulations affecting the present use, and the ease or difficulty involved in the zone-change and subdivision approval procedures necessary or desirable to allow for the Buyer's intended use or uses.

14. Buyer also covenants and agrees that Buyer, his agents, successors and assigns any future use of the property as described above for the following uses shall be prohibited:

    A. Adult Book and Video Stores
    B. Community Correctional Facilities
    C. Half-way Houses
    D. Drug or Alcohol Rehabilitation Facilities
    E. Multi-game, Casino-style Gambling Facilities

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Appointment of Robert Hamilton as the Wichita/Sedgwick County Access Advisory Board representative to the Transit Advisory Board

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Appoint Robert Hamilton as the Wichita / Sedgwick County Access Advisory Board (WSCAAB) representative to the Transit Advisory Board (TAB).

Background: In November, 2005, the City of Wichita entered into a settlement agreement to resolve alleged Americans with Disabilities Act violations at specific City facilities. As part of the settlement agreement, the City of Wichita is a member of the WSCAAB. The mission of WSCAAB is to enhance the community by the contributions of persons with disabilities; to make a positive difference in their relationship with the City of Wichita and businesses that serve it by working toward providing access to facilities, programs, and employment, enabling persons with disabilities to participate in the social and economic life of the City, thereby achieving maximum personal independence. As a stakeholder in transit issues, WSCAAB appoints a member to the TAB.

Analysis: Transit is essential to the independence of many persons with disabilities. WSCAAB has duly appointed Robert Hamilton as the WSCAAB representative to the TAB.

Financial Considerations: There are no financial considerations.

Goal Impact: This appointment addresses the Quality of Life goal by ensuring that citizens are satisfied with the quality of life.

Legal Considerations: The Law Department has determined that this appointment process complies with the TAB and WSCAAB bylaws.

Recommendations/Actions: It is recommended that the City Council approve the WSCAAB's appointment of Robert Hamilton to the TAB.

Attachment: None.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Resolution Authorizing Section 5316 Access to Jobs Grant (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve resolution authorizing filing of grant applications and pledging sufficient matching funds.

Background: The Federal Transit Administration (FTA) grant application process requires a resolution by the governing body authorizing staff to file grant application to receive funds and administer the grant's program. The purpose of the resolution is to authorize staff to file for eligible federal funds for the support of Enhanced Services and Demand-Responsive Services for Fiscal Years 2012-2013. Two separate grants will be applied for: Enhanced Services continuing the current East Harry and South Main fixed routes and Demand-Responsive Services providing Americans with Disabilities Act (ADA) rides to low-income individuals. Transit staff held a public hearing on January 6, 2012, with no adverse comments. The funds are 50% federal funds and 50% local matching funds.

Analysis: The proposed resolution authorizes the filing of applications for the following funding:

Enhanced Services:
- § Federal portion - $216,667
- § Local portion - $216,667
- § Total - $433,334

Demand-Responsive Services:
- § Federal portion - $249,158
- § Local portion - $249,158
- § Total - $498,316

The Transportation Policy Body, which develops and approves transportation plans for the Wichita Area Metropolitan Planning Organization, will award up to $465,825 in federal funds to applicants of Job Access and Reverse Commute (JARC) funds.

Financial Consideration: The request is $465,825 in total federal funds through the JARC program. The local match required is $465,825.

Goal Impact: To Ensure Efficient and Effective Infrastructure by maintaining and optimizing public facilities and assets.

Legal Consideration: The Law Department has reviewed and approved the resolution authorizing filing of grant as to form.

Recommendation/Actions: It is recommended that the City Council approve the resolution and authorize the necessary signatures.

Attachment: Resolution Authorizing Section 5316 Access to Jobs Grant

RESOLUTION No. _____

**A RESOLUTION AUTHORIZING
THE FILING OF AN APPLICATION
WITH THE WICHITA AREA METROPOLITAN PLANNING ORGANIZATION
FOR A GRANT WITH THE DEPARTMENT OF TRANSPORTATION, UNITED
STATES OF AMERICA UNDER
SECTION 5316 OF THE SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT
TRANSPORTATION EQUITY ACT:
A LEGACY FOR USERS (SAFETEA-LU)
TO SUPPORT LOCAL 2012-2013 JOB ACCESS
AND REVERSE COMMUTE PROGRAM**

WHEREAS, the Wichita Area Metropolitan Planning Organization is authorized to make Job Access and Reverse Commute grants for the Dept. of Transportation for mass transportation projects; and

WHEREAS, the contract for financial assistance will impose certain obligations upon the applicant, including the provision by it of the local share of the project cost in the program; and

WHEREAS, it is required by the U.S. Department of Transportation in accord with the provisions of Title VI of the Civil Rights Act of 1964, as amended, and the U.S. Department of Transportation requirements there under; and

WHEREAS, it is the goal of the applicant that disadvantaged business enterprises be utilized to the fullest extent possible in connection with this/these project(s), and that definite procedures shall be established and administered to ensure that disadvantaged business shall have the maximum feasible opportunity to compete for contracts when procuring construction contracts, supplies, equipment contracts, or consultant and other services; and

WHEREAS, the applicant desires financial assistance for the following projects: provide transportation services in urban areas to assist low income individuals in accessing employment opportunities; thereby creating a more cooperative effort among the transportation providers, human services agencies, employers and affected individuals.

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

1. The City Manager or designee is authorized to execute and file an application on behalf of the City of Wichita, Kansas, with the Federal Transit Administration for Federal assistance under 49 U.S.C. Chapter 53, Title 23, United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration to aid in financing 49 U.S.C. §5307 projects.

2. That the City Manager or designee is authorized to execute and file with its application the annual certifications and assurances and other documents the Federal Transit Administration requires before awarding a federal assistance grant or cooperative agreement.

3. That the City Manager or designee is authorized to execute the grant and cooperative agreements with the Federal Transit Administration on behalf of the City of Wichita.

CERTIFICATION

The undersigned duly qualified Mayor, acting on behalf of the City of Wichita, which is the Designated Recipient of Urbanized Area Formula Program assistance under the provisions of 49 U.S.C. §5307, certifies that the foregoing is a true and correct copy of a resolution adopted at a legally-convened meeting of the City of Wichita.

ADOPTED, at Wichita, Kansas on_____ 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Resolution Authorizing Application for Congestion Mitigation and Air Quality (CMAQ) Compressed Natural Gas (CNG) Design (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve resolution authorizing filing of grant application and pledging sufficient matching funds.

Background: The Federal Transit Administration (FTA) grant application process requires a resolution by the governing body authorizing staff to file grant applications to receive funds and administer the grant's program. The purpose of the resolution is to authorize staff to file for eligible federal funds for assessment and design of a CNG fueling facility. Transit staff held a public hearing on July 9, 2012, with no adverse comments. CMAQ funds are Federal Highway Administration (FHWA) funds that are transferred to FTA for use for transit services. The funds are 80% federal funds and 20% local matching funds. A second resolution for each grant is required by the Kansas Department of Transportation (KDOT) to pledge sufficient matching funds.

Analysis: The proposed resolution authorizes the filing of applications for the following funding:

- Federal portion - $80,000
- Local portion - $20,000
- Total - $100,000

The Transportation Policy Body, which develops and approves transportation plans for the Wichita Area Metropolitan Planning Organization, awarded the $80,000 federal portion to Wichita Transit for the CMAQ grant June 12, 2012.

Financial Consideration: The total request is $100,000. The federal share is $80,000, and the local match is $20,000 and will be funded by the Transit Fund.

Goal Impact: To Ensure Efficient and Effective Infrastructure by maintaining and optimizing public facilities and assets.

Legal Consideration: The Law Department has reviewed and approved the resolution authorizing filing of grant as to form.

Recommendation/Actions: It is recommended that the City Council approve the resolution and authorize the necessary signatures.

Attachments:
- Resolution Authorizing Application for CMAQ CNG Design
- KDOT Form 1312 CMAQ Request

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING
THE FILING OF AN APPLICATION
WITH THE FEDERAL TRANSIT ADMINISTRATION,
AN OPERATING ADMINISTRATION OF THE
UNITED STATES DEPARTMENT OF TRANSPORTATION,
FOR FEDERAL TRANSPORTATION ASSISTANCE
AUTHORIZED BY 49 U.S.C.,
AND OTHER FEDERAL STATUTES ADMINISTERED BY THE
FEDERAL TRANSIT ADMINISTRATION
TO SUPPORT FY 2012 CONGESTION MITIGATION AND AIR
QUALITY (CMAQ) PROJECTS**

WHEREAS, the Federal Transportation Administrator has been delegated authority to award federal financial assistance for transportation projects; and

WHEREAS, the grant or cooperative agreement for federal financial assistance will impose certain obligations upon the City of Wichita and may require the City to provide the local share of the project cost; and

WHEREAS, the City of Wichita has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project; and

WHEREAS, the City of Wichita desires financial assistance for support of the following projects: Pursuant to CMAQ – Assessment and Design of a CNG Fueling Facility.

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

1. The City Manager or designee is authorized to execute and file an application on behalf of the City of Wichita, Kansas, with the Federal Transit Administration for Federal assistance under 49 U.S.C., United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration to aid in financing 49 U.S.C.

2. That the City Manager or designee is authorized to execute and file with its application the annual certifications and assurances and other documents the Federal Transit Administration requires before awarding a federal assistance grant or cooperative agreement.

3. That the City Manager or designee is authorized to execute the grant and cooperative agreements with the Federal Transit Administration on behalf of the City of Wichita.

CERTIFICATION

The undersigned duly qualified Mayor, acting on behalf of the City of Wichita, which is the Recipient of CMAQ assistance under the provisions of 49 U.S.C., certifies that the foregoing is a true and correct copy of a resolution adopted at a legally-convened meeting of the City of Wichita.

ADOPTED at Wichita, Kansas on _____, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

KANSAS DEPARTMENT OF TRANSPORTATION

BUREAU OF LOCAL PROJECTS

REQUEST FOR CONGESTION MITIGATION AND AIR QUALITY (CMAQ)

IMPROVEMENT PROGRAM PROJECT

County/City: _____

WHEREAS, The Secretary of Transportation of the State of Kansas, hereinafter referred to as the "Secretary," has been designated as an agent for _____ under an agreement dated _____ , or, will be designated as an agent for _____under an agreement to be executed at a later date and,

WHEREAS, the Federal-Aid Highway Act of 1956, as amended, and subsequent acts and amendments, provides Federal-Aid funds to assist the counties, cities, and other political sub-divisions in improving their roads and streets and congestion mitigation activities that provide air quality benefits, and,

WHEREAS, The above-noted county/city desires to improve a certain portion of their road or street system or other related project that will contribute to air quality improvements and reduce congestion, now, therefore,

WHEREAS, The county/city request the Secretary program the following Congestion Mitigation Air Quality Improvement project _____

_____

_____

ESTIMATED costs of such improvements are as follows:

Federal Funds	$ _____
Local Funds	$ _____
ESTIMATED Total for Project	$ _____
Proposed Let Date	_____

Submit One (1) Copy of the document along with Approved TIP documentation

BE IT RESOLVED: That sufficient funds of _____ County/City are now, or will be available and are hereby pledged to the Secretary in the amount and at the time required for the supplementing of federal funds available for the completion of this project. Prior to Federal Authorization, any project expenditures made by the County/City are ineligible for federal funding and remain the responsibility of the County/City. Upon cancellation of the project by the County/City, the County/City shall reimburse the Secretary within thirty (30) days after receipt of statement of cost incurred by the Secretary prior to cancellation.

Day _____ Month _____ Year _____, at _____, Kansas.

Recommend for Approval: APPROPRIATE LOCAL OFFICIAL(S)

_____ _____

County/City Engineer or Administrator Chairperson/Mayor

ATTEST: _____

Member

_____ _____

County/City Clerk Member

DOT Form 1312 (Original 3/10)

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Pass-Through Agreement with LaFamilia Senior/Community Center (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the pass-through agreement.

Background: Each year, the Federal Transit Administration (FTA) provides grant money for use in providing urban public transportation services. The amount of funding is based upon a complex formula involving miles driven, passenger rides provided, population area, density serviced, etc.

Analysis: The City will pass through funds to LaFamilia in order to support a Hispanic Mobility Coordinator. LaFamilia will provide a bilingual individual who can coordinate and translate information regarding public transportation. The Hispanic Mobility Coordinator will create a volunteer escort program and provide community education at training events for individuals interested in public transit. For Fiscal Year 2012, the total federal and local amount of pass-through funding is $25,000 for planning and coordination. The funds are 80% federal ($20,000) and 20% local match ($5,000), which LaFamilia is responsible for. The City will have no part in operating these transportation programs. It will give guidance for the federal reporting required under the grant. By signing the attached pass-through agreement, LaFamilia will agree to adhere to all federal program requirements attached to the grant.

Financial Considerations: No City funds are required. LaFamilia will pay the matching portion.

Goal Impact: To Ensure an Efficient and Effective Infrastructure by maintaining and optimizing public facilities and assets.

Legal Considerations: The City's Law Department has reviewed and approved this agreement as to form.

Recommendations/Actions: It is recommended that the City Council approve the pass-through agreement.

Attachment: Pass-Through Agreement between LaFamilia and Wichita Transit.

PASS-THROUGH AGREEMENT
Between LAFAMILIA and WICHITA TRANSIT

This pass-through agreement (Agreement) is entered into by and between LaFamilia Senior/Community Center ("LAFAMILIA") and the City of Wichita Transit Department ("WT") on July _____, 2012.

WT and LAFAMILIA both engage in planning activities within the WT metropolitan area and are committed to continuing such activities in a cooperative and coordinated manner. The purpose of this Agreement is to provide for allocation of federal funds available under the Urban Mass Transportation Act of 1964 ("Act") to provide support to planning activities provided by LAFAMILIA. It is, therefore, mutually agreed as follows:

1. **Term.** The Agreement shall be effective upon execution by all parties, terminating after receipt of final payment, unless terminated earlier as allowed below.

2. **Allocation of FY2012 Section 5307 Funds.** For FY2012, LAFAMILIA shall have one employee perform transit planning activities for WT. WT has applied for $25,000 in section 5307 (CFDA 20.507) funding under the KS-90-X140 grant. Section 5307 funding requires all grantee or sub-grantee recipients to fund 20% of the total cost as a local match; the Federal Transit Administration (FTA) provides the remaining 80% federal portion for the total cost of the project. The total allocation for LAFAMILIA's covered activities for FY2012 is **$25,000**; the federal portion is **$20,000** and LAFAMILIA's portion is **$5,000** for the required 20% local match.

3. **Application for Section 5307 Funding.** WT shall apply to the FTA for funding under Paragraph 2. The funds received by LAFAMILIA shall be matched at an appropriate percentage (20% of the total allocation) by in-kind sources provided by LAFAMILIA and shall be available for use by LAFAMILIA as its governing body deems appropriate within the FTA requirements, as set out in Exhibits C and D attached.

4. **Carryover of Funds.** Funds allocated to LAFAMILIA's activities pursuant to Paragraph 3 may be carried over.

5. **Future Allocation of 5307 Funds.** Based on the availability of Section 5307 funds, LAFAMILIA may be subject to less apportionment than the $20,000 federal portion available for allocation in a fiscal year. This will be determined during the annual planning meeting.

6. **Compliance with Laws.** WT and LAFAMILIA hereby agree, in the performance of this Agreement, to comply with all applicable federal, state, and local laws, including specifically all relevant requirements of the Act, as appropriate, which may separately and individually apply to their respective jurisdictions.

7. **Extension of Agreement.** WT and LAFAMILIA may extend this Agreement on a year-to-year basis with written approval of both parties. Funds are secured in the agreement year and subject to be spent within FTA requirements.

8. **Reports and Information.** LAFAMILIA, at such times and in such forms as WT or its designated and authorized representative(s) may require, shall furnish to WT, the FTA, or their designated and authorized representative(s) such statements, records, reports, data, and information as they may request pertaining to matters covered by this Agreement.

9. **Audits and Inspections.** LAFAMILIA shall, at anytime, and as often as WT may deem necessary, make available to WT, or its designated and authorized representative(s), for examination of all its records and data pertaining to matters covered by this Agreement for the purpose of making audits, oversights, examinations, excerpts, and transcriptions.

10. Per OMB Circular A-133: **Pass-through Entity Responsibilities**. A pass-through entity shall perform the following for the federal awards it makes:

    a. Identify federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the federal award.

    b. Advise subrecipients of requirements imposed on them by federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

    c. Monitor the activities of subrecipients as necessary to ensure that federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

    d. Ensure that subrecipients expending $300,000 *($500,000 for fiscal years ending after December 31, 2003)* or more in federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

    e. Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

    f. Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

    g. Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

11. **Discrimination.**

    a. **Discrimination Prohibited.** No recipient or proposed recipient of any 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 subjected 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, physical handicap, sex, or age. (Reference Title VI of the Civil Rights Act of 1964 – Pub. L. 88-352). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of LAFAMILIA receiving funds pursuant to this Agreement.

b. LAFAMILIA further agrees to implement and comply with the "Revised Nondiscrimination and Equal Employment Opportunity Statement" for contracts or Agreements as provided in Exhibit A attached hereto and to specifically comply with the requirements of the Americans with Disabilities Act of 1990, as amended.

12. **Payments.**

a. **Method of Payment.** Compensation and method of payment for LAFAMILIA activities relative to conducting the project activities as herein described will be carried out as specified in Exhibit B attached and will be administered under the established accounting and fiscal policies of WT.

b. **Total Payments.** Total payments for LAFAMILIA activities will be in the contracted amount of $20,000 FTA portion and $5,000 local match starting at time of execution of contract.

c. **Restriction on Disbursements.** No grant funds shall be disbursed to LAFAMILIA or a contractor except pursuant to a written contract that incorporates by reference the general conditions of this Agreement.

13. **Termination Clause.** Whenever either of the parties hereto determines that termination of this Agreement is in such party's best interest, then the Agreement may be terminated by giving written notification to the other party. A determination may include, but not be limited to:

a. Failure of either party to comply with any or all items contained within Sections 1 through 12 of this Agreement, contract exhibits, and/or provisions of any subsequent contractual amendments executed relative to this Agreement;

b. This Agreement may be terminated if project funds to WT under the grant are suspended or terminated;

c. Either party hereto may also, by giving thirty (30) days notice, terminate this Agreement for convenience; and

d. Upon receipt of notice of termination, LAFAMILIA shall: (1) discontinue further commitments of contract funds to the extent they relate to the terminated portion of the Agreement; (2) promptly cancel all Agreements and/or orders to subcontractors utilizing funds under this Agreement; (3) submit, within a reasonable period of time to be specified by WT, a cancellation settlement proposal which shall include a final statement for the Agreement, or reimbursement of unearned funds previously distributed.

14. **Appendices.** All exhibits referenced below and all amendments or mutually agreed upon modification(s) made by both parties are hereby incorporated as though fully set forth herein. In case of conflict in terms between this Agreement and Exhibit C or D, the terms of Exhibit C or D shall take precedence.

Exhibit A	Nondiscrimination and Equal Employment Opportunity Statement
Exhibit B	Scope of Services and Method of Payment
Exhibit C	FY2012 Certifications and Assurances for FTA Assistance Programs
Exhibit D	FTA 2012 Master Agreement of October 1, 2011

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

LAFAMILIA
By order of the Board

_____
Bob Reyes, President

APPROVED AS TO FORM:

_____
Dr. Carla A. Lee, Director

CITY OF WICHITA, KANSAS
By order of the City Council

_____
Carl Brewer, Mayor

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

ATTEST:

_____
Karen Sublett, City Clerk

Exhibit A
Nondiscrimination and Equal Employment Opportunity Statement

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

A. During the performance of this Agreement, the contractor, subcontractor, vendor, or supplier of the City, or any of its agencies, shall comply with all 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 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 Agreement 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 o have breached this Agreement 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 Agreement, and it may be canceled, terminated, or suspended in whole or in part by the contracting agency; and

5. The contractor shall include the provisions of Paragraph 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 Nondiscrimination - Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice nondiscrimination – 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 and 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 the 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 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 – 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 Subsection 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; and

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 Agreement, 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.

Exhibit B
Scope of Services and Method of Payment

LAFAMILIA will provide transit planning activities in support of general public transportation services in the City of Wichita, Kansas, under federal guidelines.

Specific services/activities provided by LAFAMILIA in support of general public transportation services shall include, but not be limited to, the following:

1. Providing bilingual individual who can coordinate information regarding public transportation;
2. Create a volunteer escort program to assist individuals in using public transit;
3. Provide community education and training events/opportunities for individuals interested in public transit; and
4. Translate WT materials into Spanish and assist individuals in filling out applications.

The amount of funds anticipated from the Federal Transit Administration Section 5307 grant in FY2012 is $20,000.00. The total allocation for costs for LAFAMILIA's transit-related planning activities for FY2012 is **$25,000**. The federal portion is **$20,000**, and LAFAMILIA's in-kind portion is **$5,000** for the required 20% local match. As the designated recipient of federal funds, WT will disperse the available federal funds that are appropriately matched under the terms of the grant.

The matching portion will be in the form of an in-kind match of 20% ($5,000) provided by LAFAMILIA on an expenditure basis.

Exhibit C
Fiscal Year 2012 Certifications and Assurances for FTA Assistance Programs

The 2012 Certifications and Assurances will be on file for review at Wichita Transit, 777 E. Waterman, as of January 1, 2012.

Exhibit D
FTA 2012 Master Agreement

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53, Title 23, United States Code (Highways),
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,
as amended by the SAFETEA-LU Technical Corrections Act of 2008,
the Transportation Equity Act for the 21st Century, as amended,
the National Capital Transportation Act of 1969, as amended,
the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5,
February 17, 2009, or other Federal laws that FTA administers.

FTA MA(18)
October 1, 2011
http://www.fta.dot.gov/documents/18-Master.pdf

CITY OF WICHITA
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Leasing of Site for an Outdoor Advertising Sign at 1005 East 1st Street (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the lease.

Background: The City currently leases space at 1005 East 1st Street for a 3-pole, 6 foot by 24 foot outdoor advertising structure. The current rent is $220 per year. The outdoor advertising company has received an administrative adjustment from the Planning Department and the Office of Central Inspection to reduce the number of poles from three to one, and changing the sign from a 6 foot by 24 foot (144 square feet) conventional sign to a 12 foot by 12 foot (144 square feet) LED sign.

Analysis: Based on maximum height limits, the outdoor advertising company has determined that a 12 foot by 12 foot sign is not optimal. They intend to install an 8 foot by 16 foot (129 square foot) structure. As this is a significant upgrade in the type of structure, a new lease has been drafted. The lease agreement provides for a thirty-year term with three, five-year options. Annual base rental is $4,000 or 10% of gross sales revenue from sign rental, whichever is greater. Base rent is payable in monthly installments of $333.33 with any bonus rent based on annual sales. Upon termination of the lease, the lessee will remove the sign structure.

Financial Considerations: The City will receive rent revenues as described above. The lessee shall be responsible for all costs of installation, operation, and maintenance of the structure.

Goal Impact: The modification of the sign contributes to the Continued Revitalization of the Core Area.

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

Recommendation/Action: It is recommended that the City Council; 1) approve the lease agreement; 2) approve the budget; and 3) authorize all necessary signatures.

Attachments: Aerial map and lease agreement.

CLEARCHANNEL OUTDOOR

CLEAR CHANNEL OUTDOOR, INC. LEASE AGREEMENT

1. This Lease Agreement ("Lease") is effective June 27, 20 12 and entered into between City of Wichita ("Landlord") and Clear Channel Outdoor, Inc., a Delaware Corporation ("Tenant"). Landlord hereby leases to Tenant the real estate commonly known as 1005 E. 1st St. (see exhibit A) in the County of Sedgwick in the State of Kansas ("Property") whose permanent property tax number and/or legal description are attached as Exhibit A. The Property is leased for the purpose of erecting, maintaining, operating, improving, supplementing, posting, painting, illuminating, repairing, repositioning and/or removing outdoor advertising structures, including, without limitation, fixture connections, electrical supply and connections, panels, signs, copy and any equipment and accessories as Tenant may place thereon (collectively, the "Structures"). This Lease includes all necessary rights of ingress and egress. Tenant may license the use of the Structures, or any portion thereof, for any lawful purpose. The advertising face will be 8' X 16', single face, facing west. Structure shall be located on site as shown on exhibit A. This lease is for the purpose of relocating current two faced 6'x12' signs on property.

2. This Lease shall commence on September 1, 2012, (Commencement Date) and unless terminated as hereinafter provided, shall continue for an Initial Term of thirty (30) years from the first day of the month following erection of the advertising structure (Sign Completion Date). If a government or quasi-government entity acquires the Property, then the lease shall be extended to the date, which is 30 years from the date of acquisition. This lease agreement is subject to building permits being issued by governing body(ies).

3. On the date construction is completed (or if this Lease is a renewal of an existing lease, then upon the commencement date above) rent shall commence from the first day of the first month following erection of the advertising structure (Sign Completion Date) at the rate of $ 4,000 base per year or 10% of **GROSS SALES**, whichever is greater. With all subsequent installments due to Landlord upon the anniversary date of the Sign Completion Date. Base is payable in twelve (12) monthly installments. Balance to be computed at end of each lease year & paid by separate check within 60 days after lease anniversary. The term "Sign Completion Date" shall mean that date upon which the Structure, and all appurtenances thereto, have been erected and the Structure is ready and available for the purpose of displaying illuminated advertising copy. Tenant does further agree to install a Bird Barrier on structure.

4. This Lease shall continue in full force and effect for its initial terms and thereafter for subsequent like Three (3), Five (5) year terms with a 10% increase for each subsequent like term, unless not less than ninety (90) days before the end of the last such subsequent successive like term Landlord or Tenant gives notice of termination. During any term of this Lease and for a period of ninety (90) days following any termination of this Lease, Landlord grants Tenant the right of first refusal to match any offer acceptable to Landlord for the use or purchase of all or any portion of the Property. A copy of any such third party offer received by Landlord shall be delivered to Tenant. Tenant shall then have ten (10) business days in which to match such offer by giving notice of acceptance to Landlord. If ownership of the Property changes, Landlord shall promptly notify Tenant of such change. Prior to transferring ownership of the Property, Landlord shall furnish the new owner with a copy of this Lease.

5. Tenant is the owner of the Structures and has the right to remove the Structures at any time or within one hundred twenty (120) days following the termination of this Lease. If for any reason, Tenant's Structures are removed, materially damaged or destroyed, all rent payments shall cease until the Structures are rebuilt. If the Structures are removed for any reason, only the above-ground portions of the Structures need be removed. Tenant has the sole right to make any necessary applications with, and obtain permits from, governmental entities for the construction, use and maintenance of the Structures, and Landlord hereby grants Tenant a limited power of attorney for this purpose. All such permits shall remain the property of Tenant. Tenant shall have no obligation to pursue any zoning matter or to continue to maintain any permit. Any such action shall be at Tenant's option.

6. Landlord and Landlord's tenants, agents, employees or other persons acting on Landlord's behalf, shall not place or maintain any object on the Property or any neighboring property owned or controlled by Landlord which, in Tenant's sole opinion, would obstruct the view of the advertising copy on the Structures. If Landlord fails to remove the obstruction within five (5) days after notice from Tenant, Tenant may in its sole discretion: (a) remove the obstruction at Landlord's expense; (b) cancel this Lease, remove any or all of the Structures, and receive all pre-paid rent for any unexpired term of this Lease; or (c) reduce the rent to One Hundred Dollars ($100.00) per year while the obstruction continues. Tenant may trim or remove any trees and vegetation currently on the Property and on any neighboring property owned or controlled by the Landlord as often as Tenant in its sole discretion deems appropriate to prevent obstructions. Without limiting the foregoing, Landlord shall not permit the Property or any neighboring property owned or controlled by Landlord to be used for off-premise advertising.

7. If, in Tenant's sole opinion: (a) the view of the Structures' advertising copy becomes entirely or partially obstructed; (b) electrical service is unavailable; (c) the Property cannot safely be used for the erection or maintenance of the Structures for any reason; (d) the Property becomes unsightly; (e) there is a diversion, reduction or change in directional flow of traffic from the street or streets currently adjacent to or leading to or past the Property; (f) the Strucutes' value for advertising purposes is diminished; (g) Tenant is unable to obtain or maintain any necessary permit for the erection, use and/or maintenance of the Structures; or (h) the Structures' use is prevented or restricted by law, or Tenant is required by any governmental entity to reduce the number of billboards operated by it in the city, county or state in which the Structures are located; then Tenant may immediately at its option either: (i) reduce rent in direct proportion to the loss suffered; or (ii) cancel this Lease and receive all pre-paid rent for any unexpired term of this Lease. In addition, if Tenant is prevented from

illuminating its signs by law, or other cause beyond Tenant's control, the rent shall be reduced by one-third for such period of non-illumination.

8. If the Structures or the Property, or any part thereof, are condemned by proper authorities; taken without the exercise of eminent domain, whether permanently or temporarily; or any right-of-way from which the Structures are visible is relocated, Tenant shall have the right to relocate the Structures on Landlord's remaining property or to terminate this Lease upon not less than thirty (30) days' notice and to receive all pre-paid rent for any unexpired term of this Lease. Tenant shall be entitled to all compensation and other remedies provided by law, including, without limitation, just compensation for the taking of the Structures and Tenant's leasehold interest in this Lease, and/or relocation assistance. Landlord shall assert no rights in such interests. If condemnation proceedings are initiated, Landlord shall use its best efforts to include Tenant as a party thereto. No right of termination set forth anywhere in this Lease may be exercised prior to the sale to any entity with the power of eminent domain or by or for the benefit of any entity with the power of eminent domain.

9. Landlord represents that it is the owner (or owner's authorized agent) of the Property and has the authority to enter into this Lease.

10. If the Property is currently encumbered by a deed of trust or mortgage, ground lease or other similar encumbrance, Landlord shall deliver to Tenant on or before the commencement date hereof a non-disturbance agreement in a form reasonably acceptable to Tenant.

11. If (a) Tenant has not been informed of the current address of Landlord or its authorized agent, or (b) two or more of the monthly payments sent by Tenant are not deposited by Landlord within ninety (90) days after the last such payment is sent by Tenant, then no further rent shall be payable hereunder for the period commencing with the due date of the first such payment not deposited and continuing until Landlord (i) gives Tenant notice of its business address or that of its authorized agent or (ii) deposits all previous payments. In either case, Tenant's rent obligations shall be reinstated retroactively as if neither event described in (a) or (b) of this section had occurred.

12. Tenant shall indemnify and hold Landlord harmless from all injuries to the Property or third persons caused by Tenant, Tenant's employees, agents, licensees and contractors. Landlord shall indemnify and hold Tenant harmless from all injuries to Structures or third persons caused by Landlord, Landlord's employees, agents, licensees and contractors.

13. This Lease is binding upon the heirs, assigns and successors of both Landlord and Tenant. Landlord agrees not to assign this Lease to any competitor of Tenant without Tenant's written permission. Tenant shall have the absolute right to assign or sublet.

14. Any notice to any party under this Lease shall be in writing by certified or registered mail, and shall be effective on the earlier of (a) the date when delivered and receipted for by a person at the address specified within this Lease, or (b) the date which is three (3) days after mailing (postage prepaid) by certified or registered mail, return receipt requested, to such address; provided that in either case notices shall be delivered to such other address as shall have been specified in writing by such party to all parties hereto prior to the notice being delivered.

15. If suit is brought (or arbitration instituted) or an attorney is retained by any party to this Lease because the other party breached this Lease, the prevailing party shall be entitled to reimbursement for reasonable attorneys' fees and all related costs and expenses.

16. No adult entertainment, pro-life nor abortion material to be posted.

17. Neither Landlord nor Tenant shall be bound by any terms, conditions or oral representations that are not set forth in this Lease. This Lease represents the entire agreement of Tenant and Landlord with respect to the Structures and the Property and supercedes any previous agreement. Landlord hereby grants Tenant all rights necessary to record a memorandum of this Lease without Landlord's signature, including a limited power of attorney for such purpose. Landlord understands that the terms of this Lease are proprietary and confidential and Tenant would be damaged by the unauthorized disclosure of the terms. Therefore, Landlord agrees not to disclose the terms to any third party. Such agreement shall survive the termination of this Lease.

Clear Channel Outdoor Inc.

By: Orlando Ortiz
Its: President DATE 6/27/2012
Branch Address: 3405 N. Hydrualic
Wichita, KS 67219-3899

Tel No. (316) 838-0871

Lease # 01049

LANDLORD

By:
Its:
Printed Name of Landlord: City of Wichita
Address:

Tel No. ()
SS or Tax ID No.

ATTEST:

_____

City Clerk

Approved as to Form:

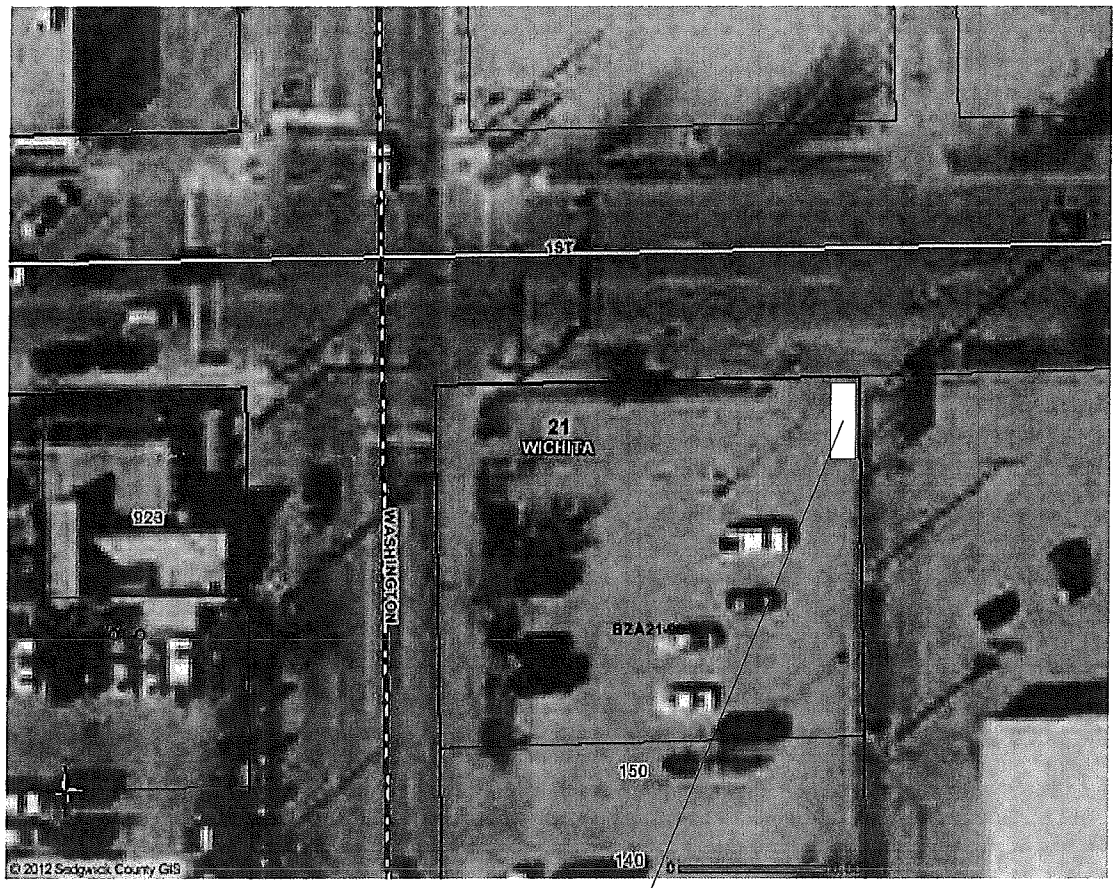
_____

Gary E. Rebenstorf, Director of Law

CLEARCHANNEL
OUTDOOR

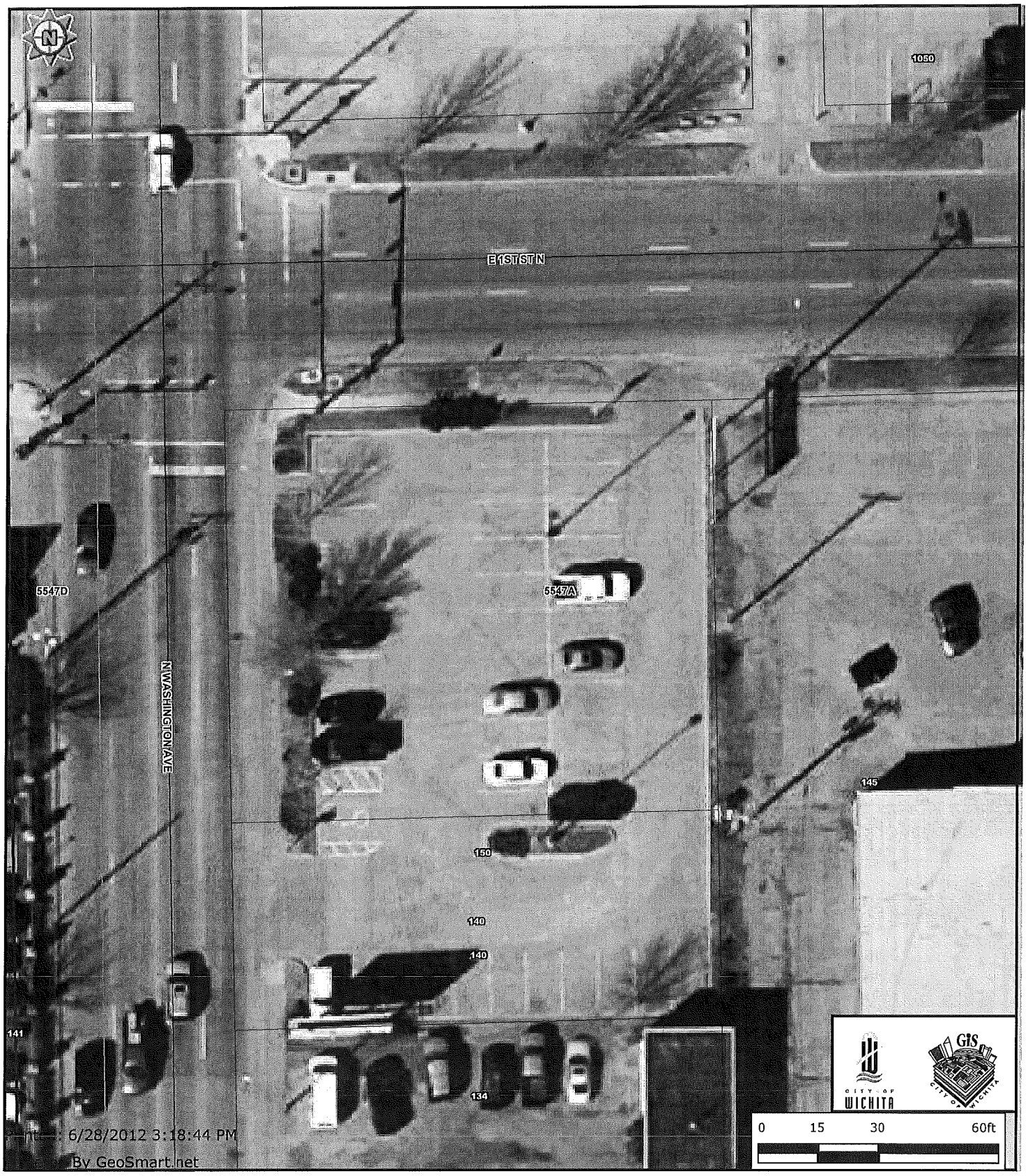
EXHIBIT A

Legal Description: BEG INTSEC S LI FIRST ST & E LI WASH AVE S 101 FT E 120 FT N 101 FT W TO BEG - BEING PT LOT 2 & S 2 FT RES A MATHEWSON'S ADD.
Property Owner Name: WICHITA CITY OF
Mailing Address: 455 N MAIN WICHITA KS 67202-1600
Geo Code: B 02198 PIN: 00120862 AIN: 125210130500200
Tax Unit: 6783 030R WICHITA U-259-GILBERT/MOSLEYRI



Legal non-conforming off-site sign

1005 East Washington



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Transcription Service from Net Transcripts, Inc.

INITIATED BY: Police Department

AGENDA: Consent

Recommendation: Approve the contract and authorize necessary signatures.

Background: The Police Department uses a Fusion Digital Voice Recording system to record reports from officers in the field. Additionally, Professional Standards and Investigations use digital voice recorders to memorialize interviews with victims, witnesses and suspects involved cases.

Currently, the Police Department Records Bureau, Transcription Unit transcribes reports called in from officers in the field and detectives. These reports, once transcribed, are attached to the police case within the records management system used by the department. Both Professional Standards and the Investigations Division use digital voice recorders to capture interviews and interrogations. The recordings are then transcribed by transcriptionists working within the work areas and in the Records Bureau. Due to the volume of recordings in the Fusion system and from Professional Standards and Investigations Division, there is a large backlog of cases that inhibits the police department's ability to maintain a timely response to complaints and criminal investigations.

The typed case reports and typed interviews must be available prior to trial for a number of offenses, including many Municipal Court cases, District Court cases and Federal Court cases. Additionally, Professional Standards investigation reports must be transcribed before the investigations are submitted for review by the Chief of Police. The Police Department has not been able to keep up with the current workload. The Records Bureau, Professional Standards Bureau, and Investigations Division are unable to transcribe reports at a rate that matches the need.

Analysis: Advances in file transfer make it possible to have transcription done anywhere in the United States and not just locally as was required in the past. Firms that specialize in law enforcement transcription have the expertise to save the Police Department time and effort because of their knowledge of police terminology and report requirements.

Proposals were solicited in April 2012 for transcription services; six bids were received and two vendors were interviewed. Each proposal was evaluated on the basis of qualifications, experience, references, and price. Net Transcripts, Inc. received all of the first place ratings from the committee members and has been selected as the preferred vendor.

Financial Considerations: The Wichita Police Department will fund the contract with 2010 Edward Byrne Memorial JAG grant, it is estimated the total project will cost $150,000.

Goal Impact: Safe and Secure community, this automated process will make the Wichita Police Department, Municipal Court and Prosecutor's Office and the prosecution of more serious cases more efficient.

Legal Considerations: The Law Department has reviewed and approved the original contract as to form.

Recommendations/Actions: It is recommended the City Council approve the contract for Net Transcripts, Inc. and authorize the necessary signatures.

Attachments: Net Transcripts, Inc. contract.

CONTRACT
for
TRANSCRIPTION SERVICES

BLANKET PURCHASE ORDER NUMBER BP240069

THIS CONTRACT entered into this 10th day of July, 2012, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **NET TRANSCRIPTS, INC.** (Vendor Code Number – 822933-001), whose principal office is at 425 South 48th Street, Suite 103, Tempe AZ 85281 Telephone Number (800) 942-4255, hereinafter called **"VENDOR"**.

WITNESSETH:

WHEREAS, the **CITY** has solicited proposals for **Transcription Services** (Formal Proposal – FP240030) [Commodity Code Number 96172]; and

WHEREAS, VENDOR has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY.**

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services. VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP240030 [Commodity Code Number 96172], which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal Number – FP240030, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation. CITY** agrees to pay to **VENDOR** the following **unit price** for **Transcription Services** for Formal Proposal – FP240030 [Commodity Code Number 96172], for the Police Department as shown below as compensation as per the proposal, plans, specifications, addenda and **VENDOR's** proposal of May 14, 2012 and as approved by the City Council on July 10, 2012.

ENGLISH TRANSCRIPTION	Per Minute	Per Page	Per Line	Per Word
Interviews (Multiple Speakers)				
Standard (3 business days)	$1.95	$3.12	$0.14	$0.016
Next Day (1 business day)	$2.60	$3.86	$0.17	$0.020
ASAP (3-6 hours)	$2.95	$4.38	$0.20	$0.0225

Dictation (Single Speaker)	Per Minute	Per Page	Per Line	Per Word
Standard (within 24 hours)	$1.20	$3.00	$0.10	$0.0125
ASAP (within 3-6 hours)	$1.65	$4.10	$0.14	$0.0175

SPANISH TRANSCRIPTION & TRANSLATION SERVICES	PRICING
From Digital Audio spoken in Spanish	
Spanish to English Interpretation	$7.50 /min
Spanish Transcription	$4.50 /min
Spanish Translation	$0.20 /word

VALUE ADDED SERVICES	PRICING
Audio/Video Processing (Mail-In Requests)	
Data CD	$5.00
.wav, .mp3, .wma, etc.	
Standard Audio Conversion	$10.00
Cassette/Micro Cassette Tapes	
Audio CDs	
Standard Format DVD Ripping	
Non-Standard Audio Conversion	$20.00
Special Player Required	
Real Time Video Conversion	$20.00
VHS, Special Format DVD, .divx, etc.	
Other Services	
Editing Audio Per Customer Request	$12.50
Archive Retrieval	$29.00
Hardcopy of Transcript (UPS Next Day)	$20.00
Transcript Burned to CD (UPS Next Day)	$10.00
Faxed Hardcopy (domestic calls only)	$40.00
Cancellation Fee	$25.00
Return Shipping (UPS Next Day)	Varies
Custom Template / Formatting	Per Quote

Payment Terms: Net 30 Days

3. **Term.** The term of this contract shall be effective from **July 10, 2012 through June 30, 2013**, with options to renew the contract under the same terms and conditions for two (2) successive one (1) year terms by mutual agreement of the parties. This contract is subject to cancellation by the city, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **VENDOR.**

4. Indemnification and Insurance.

a. **VENDOR** 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 **VENDOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

1. Comprehensive General Liability

Covering premises---operations, xcu hazards when applicable, Product/Completed 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

2. Comprehensive Automobile Liability

All Owned, Non-Owned, and Hired vehicles with minimum limits as follows:

Bodily Injury Liability Property Damage Liability	$500,000 Each Accident $500,000 Each Accident
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 Each Accident

3. Workers' Compensation	Statutory
Employers Liability	$500,000 Each Accident $500,000 Aggregate $500,000 Occupational Disease

The Insurance Certificate must contain the following:

Statement that the Contractual Liability includes the Liability of the City of Wichita assumed by the Contractor in the contract documents.

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

6. Compliance with Laws. VENDOR shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

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

8. Non-Discrimination. VENDOR 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 hereto as Exhibit A.

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

10. No Arbitration. The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

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

12. Representative's Authority to Contract. By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.

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

ATTEST:

Janis Edwards
Deputy City Clerk

CITY OF WICHITA, KANSAS

Carl G. Brewer
Mayor

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

By SRD

NET TRANSCRIPTS, INC.

Signature

Shane Mirkovich
Print Name

COO
Title (President or Corporate Officer)

EXHIBIT A

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.

Agenda Report No. II-19.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: Drug Enforcement Agency – 2012 High Intensity Drug Trafficking Area Task Force (HIDTA).

INITIATED BY: Police Department

AGENDA: Consent

Recommendation: Approve the 2012 grant award.

Background: The Wichita Police Department (WPD) has participated in the Drug Enforcement Agency – High Intensity Drug Trafficking Area (HIDTA) Task Force since 2002. The mission is to combat the manufacture and importation of methamphetamine and disrupt poly-drug trafficking organizations, thereby reducing the availability of illegal drugs and reducing its impact in this area. The Kansas Bureau of Investigation (KBI) is the fiscal agent for award proceeds to be distributed to state and local agencies participating in the Midwest High Intensity Drug Trafficking Area Task Force.

Analysis: The Kansas Bureau of Investigation will reimburse the City of Wichita for overtime and related expenses for personnel assigned to the task force. Currently, the Wichita Police Department has one detective designated to the High Intensity Drug Trafficking Area Task Force.

Financial Considerations: The Kansas Bureau of Investigation will reimburse the Wichita Police Department up to $27,015 for overtime and related expenses incurred by personnel assigned to the task force. There is no local match requirement.

Goal Impact: Provide a Safe and Secure community by targeting high intensity drug trafficking areas.

Legal Considerations: The 2012 High Intensity Drug Trafficking Area award is outlined in the attached Memorandum of Understanding which has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Memorandum of Understanding.

Attachments: Memorandum of Understanding.

Kansas Bureau of Investigation

Kirk D. Thompson
Director

Derek Schmidt
Attorney General

June 14, 2012

Norman D. Williams, Chief
Wichita Police Department
455 N. Main
Wichita, KS 67202

Dear Chief Williams:

Attached for your signature is the 2012 MOU for Midwest HIDTA funds for the Wichita DEA Task Force. Please review the package carefully, as signatures are required on several separate documents. Please make a copy for your files and send me the original signature pages only. I will then acquire the other signatures and a copy of the signature pages only will be returned for your files.

Also attached to the 2012 MOU is Appendix I. There are excerpts from the ONDCP HIDTA Program Policy pertaining to initiative structure, fiscal and inventory requirements for any agency accepting HIDTA funds. To get the full version of the HIDTA Program Policy go to the web page nhac.org.

Please make sure that your accountant receives a copy of the Midwest HIDTA MOU and the reimbursement form (Appendix G). Your funding dates for 2012 are January 1, 2012 to December 31, 2013.

If you have any questions pertaining to this grant award, please feel free to contact me.

Sincerely,

Neet O'Connor

Neet O'Connor
Kansas Bureau of Investigation
HIDTA Accountant III
(785) 296-6782

Wichita Police Dept
Received
JUN 20 2012
Office of the Chief

CITY OF WICHITA

WICHITA POLICE DEPARTMENT

TO: Robert Layton, City Manager

FROM: Norman D. Williams, Chief of Police

SUBJECT: 2012 Midwest HIDTA MOU Funds

DATE: June 19, 2012

The purpose of this correspondence is to request Mayor Carl Brewer's signature on the designated pages of the attached 2012 Midwest HIDTA MOU for the Wichita DEA Task Force. The MOU has designated the amount of funds to be awarded to the Wichita DEA Task Force. The document will be placed on the July 10, 2012 City Council Agenda as a Consent item.

Once Mayor Brewer has signed the appropriate pages, please return to me for mailing to Neet O'Connor, HIDTA Accountant III with the Kansas Bureau of Investigation.

Please contact me in the office at 268-4158, should there be questions regarding this request.

Norman D. Williams
Chief of Police

Attachment:

- 2012 Midwest HIDTA MOU Agreement

Approved ☒ Not Approved ☐

Robert Layton, City Manager 6/20/12 Date

MIDWEST HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA)

MEMORANDUM OF UNDERSTANDING

WICHITA DEA TASK FORCE

G12MW0003A
01-01-2012 / 12-31-2013
CFDA number 95.001

The Office of National Drug Control Policy (ONDCP) has awarded HIDTA funding to federal, state and local law enforcement agencies in the region comprised of the states of Kansas, Missouri, Nebraska, Iowa, South Dakota and North Dakota for the purpose of combating the manufacture and importation of methamphetamine and the disruption of poly-drug trafficking organizations. The Kansas Bureau of Investigation (KBI) has been designated as the fiscal agent for award proceeds to be distributed to state and local agencies participating in the Midwest HIDTA program within Kansas and in selected regional initiatives. These funds shall be used for purposes designated in the WICHITA DEA TASK FORCE (Appendix A) and associated budget (Appendix B), as approved by ONDCP.

Scope of Service

The services carried out under this Memorandum of Understanding shall be consistent with those contained in the initiative proposal and budget as approved for funding by ONDCP. Changes shall not be made in the subject or the proposed objectives of the initiative without prior written approval from The Midwest HIDTA State Coordinator for Kansas, the Midwest HIDTA Executive Director and the Midwest HIDTA Executive Committee.

The signatories agree to provide written notice to the KBI and to the Midwest HIDTA Kansas State Coordinator, at least (30) days in advance of any planned withdrawal from this agreement. In the event of withdrawal from this initiative by any party, all property and equipment acquired with HIDTA funds by the withdrawing party, shall be re-distributed as per Midwest HIDTA policy and procedure. Upon the date specified in the written notice of withdrawal, this agreement shall become void with respect to the agency giving notice but shall remain in effect for all other participants. The KBI shall process all allowable reimbursement requests for the withdrawing agency through the date of the withdrawal.

Reprogramming of Funds

Reprogramming of funds within a HIDTA award requires different levels of approval based upon the amount to be reprogrammed and whether the reprogramming is inter-agency or inter-initiative. In all cases the recipient agency is responsible for forwarding a request for authorization for reprogramming to the KBI to be forwarded to the Midwest HIDTA State Coordinator for Kansas, the Midwest HIDTA Executive Director and Midwest HIDTA Executive Committee. The recipient agency is also responsible for maintaining detailed records of any reprogramming activities.

Reporting Requirement

All participants may be required to prepare a final report of initiative expenditures, which shall be submitted to the KBI within 30 days of the close of the program fiscal year. The financial report will be of a form approved by the KBI and shall contain a listing of expenditures/costs by cost category from the approved initiative budget (Appendix B). The report shall also contain a comparison of actual costs/expenditures against budget estimates. Failure to submit reports on a timely basis may result in the interruption or termination of the initiative funding for your agency. Detailed information on the financial reporting requirements is found in the HIDTA Program Policy and Budget Guidance publication and the Midwest HIDTA Policies and Standard Operating procedures document.

Program Standards

Each agency agrees to abide by the standards and rules defined in the HIDTA Program Policy and Budget Guidance publication and the Midwest HIDTA Policies and Standard Operating procedures document as well as all formal written program guidance regarding financial management standards, reporting, records retention, equipment, vehicles, and procurement and supplanting requirements for any agency accepting HIDTA funds. Excerpts ONDCP (Appendix I) you can download the full version from National HIDTA Assistance Center (NHAC) nhac.org.

Assurances

Each agency agrees to abide by the terms and conditions set out in OMB Form 424B, Assurances - Non-Construction Programs (Appendix D) and ONDCP Certifications regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; Drug Free Work Place Requirements; Federal Debt Status and Nondiscrimination Statutes and Implementing Regulations (Appendix E). Each agency will also submit a signed OMB form, Disclosure of Lobbying Activities (Appendix F) and will abide by all applicable special conditions included as a part of the award agreement (Appendix H).

Invoicing

Each agency receiving reimbursements shall invoice once per month, on or about the fifteenth of the month, for expenditures incurred during the prior month. Invoices shall be of a form approved by the KBI (Appendix G) and shall contain a listing of expenditures by category. Each agency shall retain the original supporting documentation and provide a copy to the KBI with the monthly report.

Inventory

Equipment purchased with HIDTA funds shall be identified by cost, type and serial number and reported to the Kansas State Coordinator on the Midwest HIDTA Inventory Form (Appendix C). The Kansas State Coordinator shall maintain an inventory of all equipment purchased and provide the same to HIDTA. A copy of all inventory transactions shall be provided to the KBI. Any change to the inventory of HIDTA purchased equipment shall be reported promptly and in writing to the KBI.

Operations

1. The KBI will serve as the purchasing agent for all services, equipment and supplies for the general use of the task force and will make direct payments from HIDTA funds. Individual agencies shall be responsible for the initial payment of costs for phones, pagers, travel and overtime associated with their agent/officer. Each agency agrees to compile those costs on a monthly basis and submit the same to the KBI for reimbursement as per the section of this document titled Invoicing. In the event all available travel funds for non-federal participants are expended, the DEA will assume responsibility for all necessary travel costs associated

with this initiative. Reimbursement to each agency is limited to the amount specified in the respective funding category, for that agency, as set out in the approved initiative budget and this agreement.

2. Signatories agree to provide all required statistical, financial and programmatic documentation to the Midwest HIDTA, including but not limited to non-supplanting agreements, monthly performance reports and yearly threat assessment information.

3. Signatories agree to participate in and support all Midwest HIDTA information and intelligence programs, including but not limited to, HIDTA SAFETYNET, EPIC NCLSS,

4. The signatories agree that in event that any additional funds are received from HIDTA for the benefit of the initiative, those funds shall be distributed pursuant to the written award authorizing those additional funds.

5. The KBI, **Wichita Police Department** shall agree to designate one commissioned officer to the Wichita DEA HIDTA Task Force pursuant to the terms and conditions of the DEA document titled State and Local HIDTA Task Force Agreement.

Acceptance

Acceptance of this MOU by participating agencies is acceptance of all standards and conditions of the HIDTA Award, included as Appendix A, B, C, D, E, F, G, H, and I.

Appendix A: Task Force Initiative
Appendix B: Task Force Budget
Appendix C: Midwest HIDTA Inventory Form
Appendix D: OMB Form 424B, Assurances - Non-Construction Programs
Appendix E: ONDCP Certifications regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; Drug Free Work Place Requirements; Federal Debt Status and Nondiscrimination Statutes and Implementing Regulations
Appendix F: OMB form, Disclosure of Lobbying Activities
Appendix G: HIDTA Reimbursement Form
Appendix H: HIDTA Award Agreement
Appendix I: ONDCP Excerpts Program Policy

Fiscal Contact KBI:
Neet O'Connor
Kansas Bureau of Investigation
1620 SW Tyler
Topeka, Kansas 66612
785-21-3029
785-296-0915 (FAX)
E-mail: neet.oconnor@kbi.state.ks.us

Project Manager KBI:
Kirk D. Thompson, Director
Kansas Bureau of Investigation
1620 SW Tyler
Topeka, Kansas 66612
785-296-8218
785-296-0915 (FAX)

Participating Agency:

Carl Brewer, Mayor
City of Wichita
455 N. Main
Wichita, KS 67201
316-268-4331

Project Manger WPD:

Norman D. Williams, Chief
Wichita Police Department
455 N. Main
Wichita KS 67201
316-268-4158

Fiscal Contact WPD:

Debbie Nguyen
Wichita Police Department
455 N. Main
Wichita, KS 67201
316-268-4115

State Coordinator:
Midwest HIDTA

Allan King
7700 Shawnee Mission Parkway, Suite 12
Overland Park, Kansas 66202
913-671-2051
913-671-2042 (FAX)

Participating Agency:
City of Wichita

Carl Brewer, Mayor — Date

through Wichita Police Department

Norman D. Williams, Chief — 6-18-2012 Date

Fiscal Agent:
Kansas Bureau of Investigation

Kirk D. Thompson, Director — Date

FY 2012 ENFORCEMENT INITIATIVE BUDGET PROPOSAL

HIDTA: **Midwest**

INITIATIVE TITLE: Wichita DEA Task Force

LEAD AGENCY(S): Drug Enforcement Administration

LOCATION: Wichita, KS

1. INITIATIVE DESCRIPTION

(Includes initiatives involved in investigative, prosecution, and interdiction activities.)

A. The Wichita DEA Task Force was organized to enhance the capabilities of the existing DEA State and Local Task Force in Wichita, Kansas, so that the existing methamphetamine and poly-drug problems (trafficking and manufacturing) may be aggressively pursued. The task force has been HIDTA funded since 2002.

The Wichita DEA Task Force will target mid-level and major drug traffickers and manufacturers of methamphetamine. This will be accomplished by combining local, state, and federal resources of law enforcement agencies in the area of Sedgwick County and implementing joint investigations. The Wichita DEA Task Force will coordinate these efforts with State and Federal prosecutors.

The Wichita DEA Task Force identifies, arrests, and prosecutes persons involved in the clandestine manufacture and distribution of methamphetamine; targets, and arrests individuals and chemical suppliers that are providing chemicals and lab equipment used in the illicit manufacture of methamphetamine; pursues the seizure of assets related to the sale and distribution of methamphetamine and other drugs; and coordinates intelligence information through the Midwest HIDTA Investigative Support Center. The Wichita DEA Task Force conducts covert surveillance activities and undercover purchases of controlled substances; prepares and executes search warrants; and gathers intelligence by means of pen registers and informants.

The Wichita DEA Task Force will advance the National Drug Control Strategy by coordinating methamphetamine and poly-drug related investigations, promoting continued and systematic cooperative efforts among HIDTA initiatives and participating agencies in the HIDTA, and conducting investigations that result in the dismantling or disruption of methamphetamine and poly-drug manufacturing and distribution organizations. The Wichita DEA Task Force will promote and support demand reduction programs.

The Wichita DEA Task Force is a Drug Enforcement Administration managed, full time collocated federal, state, and local task force located in Wichita, Kansas, in the DEA Wichita Resident Office.

B. Is this initiative collocated with other HIDTA initiatives?

☐ Yes
☑ No

C. Is this initiative staffed with fulltime federal and fulltime state/local personnel?

☑ Yes
☐ No

(If not, attach Program Policy Waiver Request.)

(Note: If this initiative only funds a prosecutor, a waiver is not required.)

D. Are fulltime members of the initiative collocated and commingled with federal and state/local personnel?

Budget Detail

2012 - Midwest
Initiative - Wichita DEA Task Force
Award Recipient - Kansas Bureau of Investigation (G12MW0003A) **Investigation**
Resource Recipient - Kansas Bureau of Investigation

Awarded Budget (as approved by ONDCP)		***$187,414.00***	
Personnel	**Quantity**	**Amount**	**Comments**
Investigative - Law Enforcement Officer	1	$63,578.00	KBI Special Agent
Total Personnel		**$63,578.00**	
Fringe	**Quantity**	**Amount**	**Comments**
Investigative - Law Enforcement Officer	1	$18,736.00	KBI SA
Total Fringe		**$18,736.00**	
Overtime	**Quantity**	**Amount**	**Comments**
Investigative - Law Enforcement Officer	3	$39,033.00	13011 each Sedgwick SO, Wichita PD, KBI
Total Overtime		**$39,033.00**	
Travel	**Quantity**	**Amount**	**Comments**
Investigative/Operational	1	$6,600.00	KBI Mileage
Total Travel		**$6,600.00**	
Services	**Quantity**	**Amount**	**Comments**
Communications - data lines	0	$600.00	
Communications - mobile phones & pagers	0	$7,404.00	7 cells KBI 1200, Wichita 3204, Sedgwick 3,000
Contractor - Analyst - Intelligence	1	$25,000.00	
Vehicle lease - passenger	2	$15,600.00	Wichita PD and Sedgwick County SO
Total Services		**$48,604.00**	
Equipment	**Quantity**	**Amount**	**Comments**
Technical investigative equipment - audio	0	$4,863.00	1 Cellebrite
Total Equipment		**$4,863.00**	
Supplies	**Quantity**	**Amount**	**Comments**
Investigative/operational	0	$6,000.00	Fuel Sedgwick SO and Wichita PD
Total Supplies		**$6,000.00**	
Total		**$187,414.00**	
Total All Budgets		***$187,414.00***	

Midwest HIDTA Inventory Action Form

Appendix C

Grantee: _____

Funding Year _____

Date: _____

Funding NO# _____

Agency Inventory #	Vendor Name	Date Purchased	Item Description Description/Model/Brand	Location	Purchase Price	Serial Number

_____ Authorizing Officer

_____ Title

_____ Telephone

ASSURANCES – NON-CONTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program, if you have questions, please contact the awarding agency. Further, certain Federal-awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost) to ensure proper planning, management and completion of the project describe in this application.
2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all record, books, paper, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U. U. C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C. F. R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U. S. C. 1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U. S. C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U. S. C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P. L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P. L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U. S. C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U S C. 3601 et seq), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (I) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocations Assistance and Real Property Acquisition Policies Act of 1970 (P. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assistance programs. These requirements apply to all interest in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U. S.C. 1501-1508 and 7324-7328) which limit the political activities are funded in whole or in part with Federal Funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U. S. C. 276a to 276a – 7), the Copeland Act (40 U. S. C. 276c and 18 U. S. C. 874), and the Contract Work Hours and Safety Standards Act (40 U. S. C. 327-333), regarding labor standards for federally assisted construction sub agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et esq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176 (c) if the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et esq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L..93-205).
12. Will comply with the Wild and Scenic: Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties) and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Subawardee Name and Address: City of Wichita
455 N Main
Wichita, Kansas 67201

Applicant Number and/or Project Name: G12MW0003A
Midwest HIDTA
Kansas Bureau of Investigation Enforcement/Response Initiative
Wichita DEA HIDTA Task Force Initiative

Grantee IRS/Vendor Number:_____

Carl Brewer, Mayor
Type Name & Title of Authorized Representative

_____ _____
Signature Date

OFFICE OF NATIONAL DRUG CONTROL POLICY

CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS; FEDERAL DEBT STATUS, AND NONDISCRIMINATION STATUS AND IMPLEMENTING REGULATIONS

Instructions for the certifications

General Requirements
The Office of National Drug Control Policy (ONDCP) is required to obtain from all applicants' certifications regarding federal debt status, debarment and suspension, and a drug free workplace. Applicants requesting monies greater than $100,000 in grants funds must also certify regarding lobbing activities and may be required to submit a Disclosure of Lobbying Activities" (Standard Form LLL). Institutional applicants are required to certify that they will comply with the nondiscrimination statues and implementing regulations.

Applicants should refer to the regulations cited below to determine the certifications to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of the form provides for compliance with certification requirements under 21 CFR part 1405, "New Restrictions on Lobbying" and 21 CFR part 1414, Government wide Debarment and Suspension.
(Non procurement), Certification Regarding Federal debt Status (OMB Circular A-129), and Certification Regarding the Nondiscrimination Statutes and Implementing Regulations. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Office of National Drug Control Policy determines to award the covered cooperative agreement

1. LOBBYING
As required by Section 1352, Title 31 of the U.S. Code, and implemented in 21 CFR part 1405, for persons entering into a cooperative agreement over $100,000, as defined at 21 CFR Part 1405, the applicant certifies that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.
(b) If any funds other than Federal appropriated funds have been paid or will being paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Grant or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;
(c) The undersigned shall require that the language of this certification be included in the award document for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTER (DIRECT RECIPIENT)
As required by Executive Order 12549, Debarment and Suspension and implemented at 21 CFR Part 1404, for prospective participants in primary covered transactions

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency:
(b) Have not within a three-year period preceding this application been convicted of or and a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State, or local) transaction or contract under a public transaction' violation of Federal or State antitrust statures or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
(c) Are not presently indicted for o otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) terminated for cause or default;and

B. Where the applicant is unable to certify to any of the statements in this certification. He or she shall attach an explanation to the application.

2. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)
As required by the Drug Free Workplace Act of 1988, and implemented at 21 CFR Part 1404 Subpart F.
A. The applicant certifies that it will or will continue to provide a drug free workplace by:

(a). Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(b) Establishing an on-going drug free awareness program to inform employees about

(1) The dangers of drug abuse in the workplace;
(2) The applicant's policy of maintaining a drug free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violation occurring in the workplace;

(d) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
(e) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will

(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction:

(f) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) form an employee or otherwise receiving actual notice of such convictions. Employers of convicted employees must provide notice including position title, to: The Assistance Center, 8401 Northwest 53rd Terrace, suite 200, Miami, Florida 33166. Notice shall include the identification number of each affected grant;

(g) Taking one of the following actions within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State, or local health, law enforcement, or other appropriate agency;
(h) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The applicant may insert in the space provided below the site(s) for the performance of work done in connection with the specific cooperative agreement:

Place of Performance (street address, city, country, state, zip code)

Kansas Bureau of Investigation

Check ☐ if there are workplaces on file that are not identified here.

The regulations provide that a recipient that is a State may elect of make one certification in each Federal fiscal year. A copy of which should be included with each application for ONDCP Funding.

DRUG FREE WORKPLACE (RECIPIENTS WHO ARE INDIVIDUALS)
As required by the Drug Free Workplace Act of 1988, and implemented at 21 CFR Part 1404 Subpart F.

A. as a condition of the cooperative agreement, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conduction any activity with the grant; and
B. If convicted of a criminal drug offense resulting form a violation occurring during the conduct of any grant activity, I will report the conviction in writing, within 10 calendar days of the conviction, to: The Assistance Center, 8401 Northwest 53rd Terrace, Suite 208, Miami, Florida 33166.

4. CERTIFICATION REGARDING FEDERAL DEBT STATUS (OMB Circular A-129)

The Applicant certifies to the best of its knowledge and belief, that it is not delinquent in the repayment of any federal debt.

5. CERTIFICATION REGARDING THE NONDISCRIMINATIN STATUTES AND IMPLEMENTING REGULATIONS

The applicant certifies that it will comply with the following nondiscrimination statues and their implementing regulations: (a) title VI of the Civil right Act of 1964 (42 U.S.C. 2000D et seq.) which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity for which the applicant received federal financial assistance; (b) Section 504 if the rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs and activities receiving federal financial assistance; (c) title IX of the Education Amendments of 1972m as amended (20 U.S.C. 1981 et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving federal financial assistance; and (d) the Age Discrimination Act of 1975, and amended (42 U.S.C. 6101 et seq.) which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance, except that actions which reasonably take age into account as a factor necessary for the normal operation or achievement of any statutory objective of the project or activity shall not violate this statute

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Subawardee Name and Address: City of Wichita
455 N Main
Wichita, Kansas 67201

Applicant Number and/or Project Name: G12MW0003A
Midwest HIDTA
Kansas Bureau of Investigation Enforcement/Response Initiative
Wichita DEA HIDTA Task Force Initiative

Grantee IRS/Vendor Number:_____

Carl Brewer, Mayor
Type Name & Title of Authorized Representative

_____ _____
Signature Date

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action	2. Status of Federal Action	3. Report Type
a. Contract b. Grant X c. Cooperative agreement c. Loan d. Loan guarantee e. Loan insurance	X a. Bid/offer/application b. Initial award c. Post-award	X a. Initial filing b. material change For Material change only Year: Quarter: Date of last report:

4. Name and Address of reporting Entity	5. If reporting entity in No. 4 is Subawardee, Enter Name and address of Prime:
Prime ☐ Subawardee Tier *if known*: Congressional District, *if known*	CITY OF WICHITA 455 N MAIN WICHITA, KS 67201 Congressional District, *if known*
6. Federal Department/Agency: **ONDCP**	7. Federal Program Name/Description: **HIDTA**
8. Federal Action Number, *if known* ***G12MW0003A***	9. Award Amount, *if known* *$27,015*
10. a. Name and Address of Lobbying Entity *(if individual, list name, first name, MI)* **None** (attach	a. Individuals Performing Services (including address if different from No. 10a) **None** Continuation Sheet (s) SF-LLL-A, if necessary)
11. Amount of Payment (check all that apply): $ actual planned 12. Form of Payment (check all that apply): a. cash b. in-kind; specify: nature value	13. Type of Payment (check all that apply) a. Retainer b. one-time fee c. commission d. contingent fee e. deferred f. other; specify:

14. Brief Description of Services Performed or to be Performed and Date (s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11.

None

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: Yes ☐ **No**

15. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is requested pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: Print Name: Carl Brewer Title: Mayor Telephone: 316-268-4331 Date:
Federal Use Only:	Authorized for local reproduction Standard Form – LLL

ATTACHMENT F

MIDWEST HIDTA
Reimbursement Form

Agency
Wichita Police Department
455 N. Main
Wichita, KS 67201

Dept. Code
KBI use only
Grant #815

Invoice for the month of:

_____

2012 Funding Year 1/1/12 to 12/31/13
Initiative: Wichita DEA HIDTA Task Force G12MW0003A
CFDA # 95.001

Enter Data This Column only

Category	2012 Allocation	Expenditures through	Balance Available	Expenditures This Period
Overtime	$ 13,011.00		13,011.00	
Vehicle Lease	$ 7,800.00		7,800.00	
Cell Phone/Pager	$ 3,204.00		3,204.00	
Supplies	$ 3,000.00		3,000.00	
Total	$ 27,015.00	0.00	27,015.00	

Agency Authorization / Date	Midwest HIDTA Authorization/Date	KBI Authorization / Date
Captain, Joe Dessenberger jdessenberger@wichita.org		
Finance Officer Please Print Debbie Nguyen	Phone Number (316) 268-4115 (316) 858-7704	

Please attach all supporting documents

Appendix G

Executive Office of the President Office of National Drug Control Policy	Grant Agreement	
1. Recipient Name and Address Director Kirk D. Thompson Kansas Bureau of Investigation 1620 SW Tyler Topeka, KS 66612	4. Award Number: G12MW0003A 5. Grant Period: From 01/01/2012 to 12/31/2013	
1A. Recipient IRS/Vendor No.: 1486029925L2	6. Date: 2/27/2012	7. Action
Subrecipient Name and Address	8. Supplement Number	[X] Initial Supplemental
2A. Subrecipient IRS/Vendor No.:	9. Previous Award Amount:	
3. Project Title Multiple	10. Amount of This Award:	$4,030,514.00
	11. Total Award:	$4,030,514.00
12. This Grant is approved subject to such conditions or limitations as are set forth on the attached four (4) pages.		
13. Statutory Authority for Grant: Public Law 112-74		
AGENCY APPROVAL	RECIPIENT ACCEPTANCE	
14. Typed Name and Title of Approving Official Ellen Scrivner, Ph.D. National HIDTA Director	15. Typed Name and Title of Authorized Official Kirk D. Thompson Kansas Bureau of Investigation	
16. Signature of Approving ONDCP Official Ellen Scrivner	17. Signature of Authorized Recipient/Date 3/15/2012	
AGENCY USE ONLY		
18. Accounting Classification Code DUNS: 150943496 EIN: 1486029925L2	19. HIDTA AWARD OND10B3SE1213 OND2000000 OC4101	

Received

MAR 14 2012

Midwest HIDTA Administration

GRANT CONDITIONS

A. General Provisions

1. This grant is subject to:

   - OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Government; or, if applicable, OMB Circular A-21, Cost Principles for Educational Institutions;
   - OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments; or, if applicable, OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations;
   - OMB Circular A-133, Audits of States, Local Governments and Non-Profit Institutions;
   - Government-wide Debarment and Suspension (Non procurement), codified at 21 CFR § 1401 et. seq.;
   - Government-wide Requirements for Drug-Free Workplace (Grants), codified at 21 CFR § 1401 et. seq.;
   - New Restrictions on Lobbying, codified at 18 USC § 1903 and 31 USC § 1352;
   - Nondiscrimination in Federally Assisted Programs and Equal Opportunity Plans requirements are codified at USC, Title VI (42 USC § 2000d et seq.); and
   - Immigration and Naturalization Service Employment Eligibility Verification Form (I-9).

2. Audits conducted pursuant to OMB Circular A-133, "Audits of State and Local Governments", must be submitted no later than 9 months after the close of the grantee's audited fiscal year. A copy of the audit report and management letter must be sent to:

   EOP/ONDCP
   Attention: Michael Reles
   GSD/RDF (202) 395-6608
   Anacostia Naval Annex
   Bldg 410/Door 123
   250 Murray Lane, SW
   Washington, DC 20509
   or:
   mreles@ondcp.eop.gov

3. Grantees are required to submit Federal Financial Reports (FFR) to the Department of Health and Human Services, Division of Payment Management (HHS/DPM). Other reporting requirements are specified in the HIDTA Program Policy and Budget Guidance.

4. The recipient gives the awarding agency or the Government Accountability Office, through any authorized representative, access to, and the right to examine, all paper or electronic records related to the grant.

5. Recipients of HIDTA funds are not agents of ONDCP. Accordingly, the HIDTA, its fiscal agent(s), HIDTA employees, HIDTA contractors, as well as state, local, and federal HDTA participants, either on a collective basis or on a personal level, shall not hold themselves out as being part of, or representing, the Executive Office of the President or ONDCP.

B. Special Conditions HIDTA Grants

The following special conditions are incorporated into each award document.

1. This grant is awarded for the initiative(s) named above. Variation from the description of activities approved by ONDCP and/or from the budget attached to this letter must comply with the reprogramming requirements as set forth in ONDCP's HIDTA Program Policy and Budget Guidance.

2. This award is subject to the requirements in ONDCP's HIDTA Program Policy and Budget Guidance.

3. No HIDTA funds shall be used to supplant state or local funds that would otherwise be made available for the same purposes.

4. The requirements of 28 CFR Part 23, which pertain to information collection and management of criminal intelligence systems, shall apply to any such systems supported by this award.

5. Special accounting and control procedures must govern the use and handling of HIDTA Program funds for confidential expenditures; i.e. the purchase of information, evidence, and services for undercover operations. Those procedures are described in Section 6-12 of the HIDTA Program Policy and Budget Guidance.

6. The grant recipient agrees to account for and use program income in accordance with the "Common Rule" and the HIDTA Program Policy and Budget Guidance. Asset forfeiture proceeds generated by the HIDTA-funded initiatives shall not be considered as program income earned by HIDTA grantees.

7. Property acquired with these HIDTA grant funds is to be used for activities of the Midwest HIDTA. If your agency acquires property with these funds and then ceases to participate in the HIDTA, this equipment must be made available to the HIDTA's Executive Board for use by other HIDTA participants.

8. All law enforcement entities that receive funds from this grant must report all methamphetamine laboratory seizure data to the National Clandestine Laboratory Database/National Seizure System at the El Paso Intelligence Center.

C. Payment Basis

1. A request for Advance or Reimbursement shall be made using the HHS/DPM system (www.dpm.psc.gov). Copies of invoices or payroll registers must accompany the payment confirmation number to provide documentation for the reimbursement request. Requests for advances must be accompanied by details specifying the need for the advance. Documentation of how the advance was spent must be submitted within 21 days and before another advance or reimbursement will be approved.

2. The HIDTAs, or their respective grantees, must utilize the HIDTA program Financial Management System's (FMS) Disbursement module each time they submit a disbursement request to the NHAC. Requests for payment in the DPM system will not be approved unless the required disbursements have been entered into the FMS. Payments will be made via Electronic Fund Transfer to the award recipient's bank account. The bank must be FDIC insured. The account must be interest bearing.

3. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to HHS/DPM at the address provided below. When submitting your checks, please provide a detailed explanation which should include: reason for check (remittance of interest earned on HIDTA advance payments), check number, grantee name, grant number, interest period covered, and contact name and number.

   Ms. Janet Fowler
   Division of Payment Management
   Department of Health and Human Services

   Via U.S. Postal Mail:
   P.O. Box 6021
   Rockville, MD 20852

   Via FedEx:
   7700 Wisconsin Avenue
   10th Floor
   Bethesda, MD 20814

RECIPIENT ACEPTANCE OF SPECIAL CONTITIONS

Norman Williams
Typed Name

Chief
Title

6-18-2012
(Signature) Date

4.0 COMPOSITION OF INITIATIVES

4.1 PURPOSE

Encouraging and facilitating collaboration between and among federal, state, local and tribal law enforcement is a role of the HIDTA program. To promote this collaboration, HIDTA initiatives must be multi-agency efforts comprised of federal, state, local and tribal law enforcement personnel who are collocated and commingled. This section describes those requirements.

4.2 MULTI-AGENCY PARTICIPATION

1. Multi-agency participation means full-time federal and full-time state or local (optimally both state and local) agency personnel participating in an initiative and any subcomponents of an initiative (i.e., task force, squad, group, or unit) under a single initiative leader or commander. Any participating federal, state, local or tribal agency may lead an initiative.

2. Full-time participation means agency personnel are assigned to the initiative as their exclusive work assignment. A liaison position does not meet the requirement for full-time participation.

3. Except where indicated otherwise in this document, initiatives that combine single-agency squads, groups, or units do not meet the requirement for a full-time, multi-agency participation unless the HIDTA provides a clear explanation in the Initiative Budget Proposal of how these separate entities cooperate and coordinate their activities under a unified command structure. This justification must detail the expected benefits from combining these entities and explain how the combination will improve enforcement. ONDCP may require HIDTAs to separate these entities into different initiatives or place reprogramming or other restrictions on such initiatives.

4.3 COLLOCATION AND COMMINGLING OF PARTICIPANTS

1. ONDCP requires all full-time federal, state, local and tribal law enforcement personnel assigned to HIDTA Law Enforcement or Intelligence and Information Sharing initiatives to be collocated and commingled. Collocation means working in or from the same facility, preferably with shared or contiguous workspace. Commingling means that all participants in an initiative have free and open access and interaction with other participants in the same initiative.

2. Whenever possible, HIDTAs should try to house multiple initiatives together, in a central location and in a space without barriers that could hinder the interaction and commingling among participants of the various initiatives.

3. The requirement for collocation and commingling does not apply to Management and Coordination, Support, Treatment or Prevention Initiatives. However, ONDCP encourages that personnel assigned to demand reduction and prosecution initiatives be collocated and commingled.

4.4 TYPES OF INITIATIVES

There are four types of HIDTA initiatives: Enforcement; Intelligence and Information Sharing; Support; and Management and Coordination. Each HIDTA is required to have at least one initiative of each type.

1. Enforcement Initiatives: Enforcement Initiatives include multi-agency investigative, interdiction, and prosecution activities targeting drug trafficking and money laundering organizations, drug production organizations, drug gangs, drug fugitives, and other serious crimes with a drug nexus.
2. Intelligence and Information Sharing Initiatives: Intelligence and Information Sharing Initiatives include intelligence analysis (tactical, operational, and strategic), deconfliction services (event and case/subject), information collection and dissemination, and other analytical support for HIDTA initiatives and participating agencies.
3. Support Initiatives: Support Initiatives include activities beyond the core Enforcement and Intelligence and Information Sharing Initiatives, e.g. - training, treatment, prevention, crime and forensic labs, and information technology initiatives.
4. Management and Coordination Initiatives: Management and Coordination Initiatives fund the basic overhead of the HIDTA, e.g. - salaries and fringe benefits for the Director, Deputy Director, and other administrative staff positions approved by the Executive Board, rent and facilities charges for administrative staff, etc.

6.0 FINANCIAL MANAGEMENT

6.1 PURPOSE

This section describes major financial management requirements, including limitations on the use of funds, for the HIDTA program. It is primarily intended for use by HIDTA Executive Boards and Directors and senior representatives of fiduciary agencies who need to be familiar with federal grant management requirements but who are not responsible for day-to-day financial management. This section is not intended to be a substitute for more detailed financial management requirements and guidelines established by the Office of Management and Budget. (See Section 6.6 for a list of the relevant circulars and rules.)

6.2 HIDTA AWARDS

ONDCP uses a threat-driven process that requires each HIDTA Executive Board to assess the drug trafficking activities in its region, design a strategy to attack those activities, plan initiatives to carry out the strategy, and develop a budget that is sufficient to carry out the planned initiatives. ONDCP awards funds to HIDTAs based on a review and assessment of the Threat Assessment, Strategy, Initiative Description and Budget Proposals that each HIDTA submits to ONDCP.

HIDTAs are not legal entities under federal law but rather a grant program to coordinate drug law enforcement activities of federal, state, local, and tribal law enforcement agencies in designated areas. Consequently, ONDCP cannot award funds directly to a HIDTA but instead must provide the funds to one or more legal entities, such as federal, state, or local agencies to act as the fiduciaries for agencies participating in the HIDTA. In this fiduciary role, the entity receiving HIDTA funds is accountable for the use of HIDTA funds and must comply with all applicable federal statutes and regulations and with its own regulations and policies.

6.3 SUPPLANTING OF FUNDS

HIDTA funds must be used to supplement existing activities and must not replace (supplant) funds that have been appropriated for the same purpose. ONDCP will review all HIDTA budget submissions for potential supplanting. If there appears to be supplanting, ONDCP shall require the grantee to supply a written certification, through the HIDTA Director, stating that federal funds will not be used to supplant state or local funds. ONDCP will also review for supplanting of state, local and tribal funds during on-site monitoring and financial audits.

6.4 AWARD PERIODS AND GRANT EXTENSIONS

ONDCP awards HIDTA program funds to state, local & tribal agencies in the form of two-year grants, and to federal agencies in the form of intra-governmental fund transfers for two years. The two year period for Federal transfers commences on October 1st of the Federal Fiscal Year for which the funds are appropriated; for State, Local and Tribal grants, the two-year period commences on January 1st within the Federal Fiscal Year for which funds are appropriated. However, a HIDTA Director may request one-year extensions of these grants on behalf of the HIDTA's state, local and tribal fiduciary agencies. These requests must be submitted in the HIDTA automated

Financial Management System (FMS) outlined in 6.10.4. Grant extension requests will be approved on a case by case basis.

6.5 DOCUMENTATION FOR GRANTS TO STATE OR LOCAL AGENCIES OR INSTITUTIONS OF HIGHER EDUCATION

After ONDCP approves the proposed initiatives and budgets submitted by a HIDTA, state, local and tribal agencies and institutions of higher education must submit an SF-424, "Application for Federal Assistance," and the associated certifications and representations, through the HIDTA Director to the NHAC. ONDCP will not release funds for disbursement until the completed SF-424 and Award Letter are received by the NHAC.

ONDCP executes approved funding requests or grant modifications for state, local and tribal agencies by issuing a Grant Agreement. The grant recipient must sign a copy of the Grant Agreement and return it through the HIDTA Director to the NHAC. The Grant Agreement contains General Provisions, which describe requirements that apply to all federal grants, and Special Conditions that apply specifically to that grant. ONDCP may impose additional reporting or monitoring requirements, or require prior approval of certain actions to grantees that fail to comply with these requirements.

6.6 GOVERNMENT-WIDE GRANT REQUIREMENTS

The HIDTA Program Policy and Budget Guidance incorporates by reference the provisions of the Office of Management and Budget (OMB) circulars and government-wide common rules applicable to grants and cooperative agreements. These circulars and common rules include the following:

- OMB Circular A-21 "Cost Principles for Educational Institutions." (Codified at 2 CFR Part 220)
- OMB Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments." (Codified at 2 CFR Part 225)
- OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments." (Codified at 21 CFR 1403)
- OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." (Codified at 2 CFR Part 215)
- OMB Circular A-122 "Cost Principles for Nonprofit Organizations." (Codified at 2 CFR Part 230)
- OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Institutions."
- "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Units of Governments," (Codified at 21 CFR Part 1403)
- Grants Management Common Rule for State and Local Units of Governments," (Codified at 21 CFR Part 1404)
- "Government-wide Debarment and Suspension (Nonprocurement)," (Codified at 21 CFR Part 1404)

- "Government-wide Requirements for Drug-free Workplace (Financial Assistance)" (Codified at 21 CFR Part 1405).
- "New Restrictions on Lobbying" (Codified at 28 CFR Part 69).

Grantees and HIDTA Financial Managers must keep apprised of changes in relevant government-wide regulations and OMB circulars.

6.7 DOCUMENTATION REQUIRED FOR TRANSFERS TO A FEDERAL AGENCY

Federal agencies receiving HIDTA funds from ONDCP shall sign a Memorandum of Agreement (MOA) with ONDCP prior to the transfer of HIDTA funds. The MOA establishes requirements pertaining to the scope of the initiatives, reprogramming of funds, reporting requirements, and financial management standards. ONDCP may require an agency that fails to comply with the requirements of the MOA to repay the funds transferred.

Each federal agency receiving HIDTA funds shall provide to its representative in each HIDTA a copy of the MOA and an approved budget for each initiative in that HIDTA for which it has received HIDTA funds. The signed MOAs will be posted in FMS.

6.8 RESTRICTIONS ON HIDTA FUNDS

6.8.1 HIDTA-Funded Positions

Grantees and sub-grantees may use HIDTA funds to hire employees or to enter into contracts with individuals to manage and staff the HIDTA. In either case, the individual becomes an employee of/contractor for that grantee, and the hiring agency's employment and contracting rules and regulations apply to those positions. In addition, to the extent they do not conflict with the hiring agency's rules and regulations, the following restrictions apply to HIDTA-funded positions.

6.8.1.1 Non-Law Enforcement Positions

HIDTA Directors and Deputy Directors–Compensation for the HIDTA Director shall not exceed the annual salary established by the Office of Personnel Management for a GS-15 step 5 (including locality adjustments) for the location of the HIDTA office. New HIDTA Directors shall begin at a GS-15 step 1 salary (including locality adjustments) and the Executive Board may adjust that compensation in subsequent years, based upon performance.

Compensation for the HIDTA Deputy Director shall not exceed the annual salary established by the Office of Personnel Management for a GS-14 step 5 (including locality adjustments). New HIDTA Deputy Directors shall begin at a GS-14 step 1 salary (including locality adjustments) and the Executive Board may adjust that compensation in subsequent years, based upon performance.

Fringe benefits packages, or compensation in lieu of fringe benefits, for the Director and Deputy Director should not exceed 30 percent of the salary for that position. Car allowances, cell phone allowances, and liability insurance premiums are not considered compensation or fringe benefits.

6.8.1.2 Other Non-Law Enforcement Positions

Positions Authorized–In addition to the HIDTA Director position, HIDTA funds may be used to support other positions that an Executive Board determines are necessary for the efficient functioning of the HIDTA. These positions must directly and exclusively support the HIDTA, and the hiring agency must submit the certification described below.

Hiring agencies must document the policies and procedures for all personnel administration issues, including compensation and advancement, for all HIDTA-funded positions.

6.8.1.3 Hiring Agency Certification

Each agency that uses HIDTA funds to support positions within that agency must submit a semi-annual certification to the HIDTA Director on agency letterhead. These certifications must be signed by a supervisory official having first-hand knowledge of the work performed by the employee. Each certification shall be maintained at the HIDTA Director's office and shall be made available to ONDCP upon request. Hiring agencies must provide semi-annual certifications for employees that are supported, wholly or in part, by HIDTA funds.

The certification must attest, verbatim, to each of the following statements:

- The [Number and Title of Position(s)] does not supplant any part of the [Name of Agency] budget. HIDTA funds for this position(s) do not replace funds that have been appropriated for the same purpose.
- Each of these positions is exclusively dedicated to the HIDTA and a position description is on file and will be made available on request.
- The HIDTA-funded position(s) would be terminated if the funding were not available.
- There is no alternative funding available to support the salary(ies) and benefits for these positions.
- The Agency will be responsible for tracking overtime billing to ensure that HIDTA, Organized Crime Drug Enforcement Task Force (OCDETF), or other grant programs do not pay for the same hours worked by this officer(s).

6.8.1.4 Compensation Levels

HIDTA Executive Boards shall establish compensation in accordance with the hiring agency's pay scale for defined agency positions or positions with comparable duties and responsibilities. Executive Boards may recommend the compensation levels established in the federal General Schedule where a demonstrated lack of qualified candidates makes it difficult to fill a position.

No HIDTA funds may be used to compensate a person hired for a position other than Director, at a rate greater than a GS-14, Step 5, as specified in the General Schedule (GS) Locality Pay Tables in effect at that time for the area where the person is located.

6.8.1.5 Law Enforcement and Prosecutorial Positions

HIDTAs that propose using Program funds to pay all or part of the salary of a state or local law enforcement officer, a prosecutor, or prosecutorial support staff must submit a detailed justification explaining why it is necessary to use HIDTA funds for this purpose. ONDCP reviews of such requests will consider the number and salaries of the positions to be supported, the total amount of HIDTA funds requested for this purpose, the number of officers in the agency that will be reimbursed, and other factors. If ONDCP does not approve such a request, the grantee will be notified in writing of the reasons for the disapproval.

6.8.2 Overtime

6.8.2.1 Eligibility for Overtime

Only state, local, and tribal law enforcement officers and uniformed federal agents (e.g. uniformed Customs and Border Protection and U.S. Forest Service) are eligible for HIDTA-funded overtime. In unusual circumstances, non-law enforcement personnel may receive HIDTA-funded overtime if the overtime is performed exclusively for a HIDTA-funded activity.

6.8.2.2 Authorized Uses

HIDTA funds shall be used to pay overtime only if the participant is eligible for such compensation by his/her parent agency and the overtime was performed in support of a HIDTA designated Enforcement Initiative or Intelligence and Information Sharing Initiative. HIDTA funds shall not be used to pay overtime related to training attendance, financial management, drug treatment, drug demand reduction or prevention, or non-investigative related administrative work.

6.8.2.3 OCDETF Overtime

Once an investigation receives OCDETF designation, the OCDETF Program should pay for overtime. While there is no absolute prohibition on the use of HIDTA funds for overtime related to OCDETF cases, HIDTA funds should not be considered the first source of overtime or be used routinely for OCDETF cases.

- **MAXIMUM OVERTIME AMOUNTS**. HIDTA-funded overtime for individual state, local, and tribal law enforcement personnel and uniformed federal agents shall not exceed the lower of: (1) applicable state, local, and tribal regulations of officer's parent agency; or (2) 25 percent of the federal GS-12, Step 1 level pay scale for Rest of U.S" in effect at the beginning of the calendar

year, the parent agency's fiscal year, or other 12-month period selected by the parent agency.

- For non-law enforcement officers, the maximum amount shall be the lower of: (1) the applicable state, local, and tribal regulations of the agency hiring or contracting with the individual; or (2) 25 percent of the federal GS-12 step 1 level pay scale in the General Schedule ("Rest of U.S.") in effect at the beginning of the calendar year, the parent agency's fiscal year, or other 12-month period selected by the parent agency.

6.8.2.4 Responsibilities for Compliance

The parent agency or initiative commander of the individual receiving HIDTA-funded overtime shall ensure the maximum allowable amounts are not exceeded, that the overtime is for HIDTA-related activities, and that the individual does not receive overtime compensation from another funding source for the same hours worked.

6.8.2.5 Non-Compliance

ONDCP shall require repayment by the parent agency if overtime payments to an individual exceed the maximum limit or if the hours charged to overtime are found not to be for HIDTA-related activities. If ONDCP finds that a parent agency's recordkeeping is deficient, ONDCP may impose additional reporting requirements on that agency.

6.8.3 Vehicles

6.8.3.1 Eligible Uses of HIDTA Funds

HIDTA funds may be used to (1) pay the purchase price of special purpose vehicles, such as a surveillance van, for a participating agency; (2) provide vehicle allowance to a participating agency to lease or purchase a vehicle; and (3) provide a vehicle allowance for the use of privately-owned vehicles.

HIDTA funds may be used to purchase, lease, or provide a vehicle allowance only for the HIDTA Director, Deputy Director, and State, local and tribal law enforcement officers assigned full-time to a HIDTA initiative and who are on 24-hour recall status.

HIDTA funds may be used to provide vehicles or a vehicle allowance for other positions if prior approval is obtained from ONDCP annually. ONDCP will grant approval in such cases if the HIDTA Executive Board demonstrates: (1) the position requires frequent travel to multiple locations within the HIDTA region on official HIDTA business; and (2) reimbursement of actual expenses or current IRS mileage rates would exceed the cost of the vehicle or vehicle allowance.

6.8.3.2 Use of HIDTA-Funded Vehicles

Vehicles leased or purchased with HIDTA funds shall be used only for official HIDTA-related business in accordance with parent agency regulations. Participating agencies that choose to apply a vehicle allowance toward the purchase of a vehicle shall ensure the vehicle is assigned to investigators working full-time in a HIDTA initiative and is used exclusively for HIDTA-related activities. For each HIDTA-funded vehicle, the agency or initiative using the vehicle must document its assignment in support of HIDTA activities. For each HIDTA-funded vehicle, the agency or initiative using the vehicle must document its assignment in support of HIDTA activities and provide a copy of the documentation to the HIDTA on an annual basis.

6.8.3.3 Federal Agency Prohibition

HIDTA funds shall not be used to purchase or lease vehicles, aircraft, or watercraft for assignment to federal agency personnel, and shall not be used for fuel, repair, and maintenance for vehicles purchased, leased, or otherwise acquired by federal agencies.

6.8.4 Liability Insurance

HIDTA funds may be used to purchase liability insurance for the Director and the Deputy Director of a HIDTA if liability insurance is not provided or available through the agency/contracting agent employing the HIDTA Director and Deputy Director. The coverage purchased with HIDTA funds shall be limited to the typical coverage provided for a public official in the HIDTA region.

HIDTA funds may be used to supplement existing liability insurance if that insurance is inadequate. In such cases, HIDTA funds may be used to acquire only the additional coverage needed to provide typical coverage for a public official in the HIDTA region.

If HIDTA funds are used to purchase liability insurance, the cost of that insurance shall be listed as a line item expense in the budget submission for the HIDTA's Management and Coordination Initiative.

6.8.5 Costs Related to Prosecutions

HIDTA funds may not be used for salaries of attorneys, paralegals, or other staff involved in prosecuting criminal offenders or providing other legal assistance unless the activity clearly contributes to the Strategy of the HIDTA.

6.8.6 Foreign Travel

HIDTA funds may not be used for foreign travel costs by State, Local or Tribal participants without the prior approval of ONDCP. Each separate foreign trip must receive such written approval. Requests for foreign travel need not contain "law enforcement sensitive" information; the case number, a summary of the investigative purpose, and roster of personnel required to travel is sufficient. For purposes of this provision, "foreign travel" includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions.

6.9 PROHIBITED USES OF HIDTA FUNDS

OMB Circular A-87 and 21 CFR 1403 contain federal regulations governing the expenditure of federal funds. In addition to the disallowable items listed in OMB Circular A-87 Attachment B, ONDCP prohibits the use of HIDTA funds for the following purposes:

- Clothing or clothing allowances
- Food and beverage items, including coffee makers
- Personal hygiene or medication items, except for: (1) items such as toilet paper, hand-towels, soap and other items that are standard supplies for an office; and (2) special hygiene products for the mitigation of risks from contact with communicable pathogens or hazardous substances that arise from tasks performed by HIDTA participants, e.g. - disinfectant wipes and liquids used after handling persons, evidence, seized materials, or exercising a search warrant.
- Professional association or bar dues
- Promotional or representational items (e.g. - hats, pins, T-shirts, or other memorabilia)
- Gifts, except for plaques and other commemorative items not exceeding $150 awarded to recognize service to an individual HIDTA or the HIDTA Program;
- Real property
- Travel that does not clearly benefit the HIDTA Program
- Weapons and holsters
- Ammunition
- Standard issue departmental-type raid/tactical gear

6.10 REPROGRAMMING

ONDCP awards funds to HIDTAs based on a review and assessment of the HIDTA's strategy and the initiatives described in the annual budget proposals that each HIDTA submits to ONDCP. Consequently, with the exception of funds reprogrammed following the procedures described below, HIDTA program funds must be used by recipients to carry out only those activities approved by ONDCP.

There are two levels of reprogramming: Level A reprogramming, which requires approval from ONDCP before the proposed reprogramming can be executed; and Level B reprogramming, which can be approved by the HIDTA Director subject to procedures established by the HIDTA's Executive Board. Only ONDCP and HIDTA Directors are authorized to approve a reprogramming. Participating agencies and initiative commanders do not have approval authority for reprogramming of HIDTA funds.

6.10.1 Approval Authority

6.10.1.1 Level A Reprogramming—ONDCP Approval Required

6.10.1.1.1. Changes to Grant or Transfer Totals

Approval from ONDCP is required for any proposed reprogramming that involves moving funding from a federal agency or state, local or tribal grantee to another federal agency or state, local or tribal grantee. Such reprogramming may require an amendment to the total amount of funds awarded to a grantee or the amount of funds transferred to a federal agency. Because both of these actions require changes to account balances established by ONDCP with the Department of the Treasury, any such reprogramming, regardless of the amount involved, must be approved by ONDCP.

6.10.1.1.2. Substantial Changes to Initiative Budgets

- Initiatives with budgets of $100,000 or more–Approval from ONDCP is required for any reprogramming of an amount equal to or greater than twenty (20) percent of the initiative's currently approved budget.
- Initiatives with budgets of less than $100,000–Approval from ONDCP is required for any reprogramming of an amount equal to or greater than thirty-five (35) percent of the initiative's currently approved budget.

6.10.1.2 Level B Reprogramming – HIDTA Director Approval

HIDTA Directors and SWB Regional Directors, subject to procedures established by the Executive Board, may approve any reprogramming not subject to the requirements for a Level A reprogramming.

6.10.2 Reprogramming Deadlines

6.10.2.1 Requests to reprogram funds from one federal agency to another or between a federal agency and a state or local agency will be collated and processed twice annually, on September 30th and March 31st. The final deadline for such reprogramming is March 31st of the final year following the appropriation of the funds. In other words, if the grant is a two year award the reprogramming must be submitted by March 31st of the second year of the award.

6.10.2.2 Terminated Initiatives –

If a HIDTA terminates an initiative that has not expended all funds budgeted for that initiative, the HIDTA shall reprogram the remaining funds within 90 days of the termination. The Annual Report shall

identify any outputs that were accomplished by the initiative before it was terminated. Reprogramming of funds of terminated initiatives shall be considered Level A reprogramming.

6.10.3 Reprogramming Limitations

Due to limitations enacted in Section 301 of the ONDCP Reauthorization Act, no HIDTA funds shall be used to establish or expand a drug treatment program that was not in existence on October 21, 1998. In addition, the Act requires the Director to ensure that not more than five percent of the Federal funds appropriated for the Program are expended for the establishment of drug prevention programs.

6.10.4 Administrative Requirements

6.10.4.1 - Each HIDTA Executive Board shall establish procedures to ensure that all reprogramming requests comply with administrative and financial requirements of participating agencies and with all HIDTA Program requirements established by ONDCP.

6.10.4.2 - All reprogramming requests must be submitted to ONDCP by the HIDTA Director using the HIDTA Financial Management System (FMS).

6.10.4.3 - Each request for a reprogramming shall include sufficient detail to enable ONDCP to assess the request; e.g., a request to reprogram funds into equipment must include a list of equipment to be purchased.

6.11 FORFEITURE PROCEEDS

Asset forfeiture proceeds generated by the HIDTA-funded initiatives shall not be considered as program income earned by HIDTA grantees. ONDCP encourages HIDTA Executive Boards to establish procedures for using asset forfeiture proceeds generated by HIDTA activities to supplement HIDTA-funded activities.

6.12 CONFIDENTIAL PAYMENTS

HIDTA Program funds may be used by participating agencies for the confidential purchase of services, evidence, and information subject to the requirements of this subsection. These provisions apply to all grantees, subgrantees, and HIDTA staff involved in the use of HIDTA grants for confidential funds.

6.12.1 Definition

Confidential funds are those monies allocated to:

Purchase of Services (P/S)

This category includes travel or transportation of an informant; the lease of an apartment, business front, luxury-type automobiles, aircraft or boat, or similar effects to create or establish the appearance of affluence; and/or meals, beverages, entertainment, and similar expenses (including buy money and flash rolls, etc.) for undercover purposes, within reasonable limits.

Purchase of Evidence (P/E)

This category is for the purchase of evidence and/or contraband, such as narcotics and other dangerous drugs, firearms, stolen property, counterfeit tax stamps, documents, etc., required to determine the existence of a crime or to establish the identity of a participant in a crime.

Purchase of Specific Information (P/I)

This category includes the payment of monies to an informant for specific information. All other informant expenses would be classified under P/S and charged accordingly.

6.12.2 Written Procedures

Special accounting and control procedures should govern the use and handling of HIDTA Program funds for confidential expenditures. It is important that expenditures are accurately reported as PE/PI/PS. It is only in this manner that these funds may be properly accounted for and accurate forecasts of projected need be made. Each agency authorized to disburse confidential funds must develop and follow written procedures that incorporate the elements listed below. This information must be made available to the HIDTA Director or his representatives, or to representatives of ONDCP upon request. If an agency does not have such procedures, the HIDTA Director is responsible for working with that agency to develop adequate procedures.

Transaction records that clearly reflect:

- Case identifier
- The date of payment(s) of confidential funds
- The name of the payer and a witness to the payment
- The name of the person approving the payment
- The purpose for which the funds were used.
- Informant number or other non-sensitive identifier
- Adequate explanation to allow an auditor to determine that the funds were properly categorized

Confidential records (for agency use only)

Document informant identities, actual receipts, and other information that the agency deems appropriate.

Documentation

Purchase of Service expenditures, when not endangering the safety of the officer or informant, must be supported by canceled tickets, receipts, lease agreements, etc. If not available, the office head, or his immediate subordinate, must certify that the expenditures were necessary, and justify why supporting documents were not obtained.

6.13 FINANCIAL REPORTING

Officials requesting HIDTA funds must assist in coordinating the administration of HIDTA funds with their agency's administrative offices, the HIDTA Director, the NHAC for state, local, and tribal agencies, and ONDCP.

6.13.1 Federal Financial Report

Commencing January 1, 2010, HIDTA grantees are required to electronically submit, via the Department of Health & Human Services, Division of Payment Management (DPM) website, the Federal Financial Report (FFR) on a quarterly basis within 30 days after the reporting period. The OMB form SF 269 will no longer be prepared and submitted to the ONDCP Financial Management Office. All fields formerly required on the SF 269 are still required to be completed electronically on-line for the Federal Financial Report (FFR). Failure to submit the report on a timely basis will result in suspension of payment requests.

6.13.2 Request for Reimbursement

In accordance with the Grant Agreement, state, local, and tribal agencies are required to submit a Detailed Expenditure Worksheet (DEW) and supporting documentation at least quarterly to request reimbursement. Requests for Reimbursement shall be submitted through the HIDTA Director to the NHAC using the FMS. All other provisions for submission of Requests for Reimbursement are contained in the Attachment to the Grant Agreement.

6.13.3 Federal Agency Quarterly Expenditure Reporting

In accordance with the HIDTA MOA, federal agencies are required to submit a quarterly report of initiative obligations and expenditures.

6.13.4 HIDTA Financial Management System

The HIDTAs and ONDCP are required to use the automated HIDTA Financial Management System (FMS) to perform the following tasks:

Budgeting

- Prepare and submit budget requests
- Review and approve budget requests
- Adjust and track budgets requested

Managing disbursements and grant balances

- Record and approve reimbursements and advances. HIDTAs that have outstanding discrepancies between FMS and DPM balances shall provide to ONDCP a timeline for reconciling the differences.

Recording reprogramming entries

- Submit, review, and approve reprogramming entries

Processing Grant Extensions

- Submit, review and approve requests for the extension of grants.

Tracking Grant Balances

- Create summary reports for internal use.

6.13.5 Payment Management System (PMS)

Agencies must use the Payment Management System (PMS) to request payment of grant funds. PMS is managed by the Division of Payment Management of the U.S. Department of Health and Human Services (HHS). Immediately after requesting payments in the PMS and again after the reimbursements are received, agencies or HIDTAs must record the disbursement details in the HIDTA FMS to ensure a current grant balance.

8.0 PROPERTY MANAGEMENT

8.1 PURPOSE

HIDTA grantees, HIDTA Directors, participating agencies, and initiative participants share responsibility for ensuring that equipment purchased with HIDTA funds is used to the maximum benefit of the HIDTA and that its use complies with all ONDCP requirements pertaining to equipment management. This section describes the minimum standards for meeting those requirements.

8.2 GENERAL REQUIREMENTS

The requirements established in this section apply to all tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $1,000 or more per unit at the time of purchase.

Each HIDTA grantee that acquires or holds HIDTA-purchased equipment must have a property management system that meets the requirements of this section.

If a HIDTA grantee or subgrantee does not have an adequate system for meeting the requirements of this section, the HIDTA Director shall work with the initiative to establish a system that meets these requirements.

HIDTA-purchased equipment shall be retained at the initiative for which it was purchased, unless there are compelling reasons to do otherwise. The HIDTA Director must authorize off-site storage in writing.

8.3 USE OF HIDTA-PURCHASED EQUIPMENT

Equipment purchased with HIDTA funds is intended for use in HIDTA-funded initiatives. HIDTA Executive Boards may authorize the use of such equipment in non-HIDTA activities if those activities: are consistent with the HIDTA's strategy; do not interfere with the work of HIDTA initiatives; and do not become the primary use of the equipment.

HIDTA Directors are required to establish a mechanism for sharing HIDTA-purchased equipment among HIDTA initiatives and for tracking the location of shared equipment.

Prior to disposing of any HIDTA-funded equipment, all HIDTA grantees must make the equipment available to the HIDTA Director for possible use by another HIDTA participant.

8.4 EQUIPMENT TRACKING SYSTEM

8.4.1 Tracking System Required

Each HIDTA grantee or subgrantee that acquires or holds HIDTA-purchased equipment must maintain a tracking system to account for all HIDTA-purchased equipment, vehicles, and other items valued at $1,000 or more at the time of purchase. Grantees are encouraged to include lower-cost, high-risk items such as digital cameras, palm pilots, and GPS devices, in this tracking system.

8.4.2 Required Information

The HIDTA inventory list shall include for each piece of HIDTA-purchased equipment:

1. A description of the property;
2. A serial number or other identification number;
3. The source of property (manufacturer);
4. Who holds title (purchasing agency);
5. The acquisition date and the cost of the property (from invoice);
6. The percentage of the purchase price that came from HIDTA funds;
7. The location, use, and condition of the property;
8. Any reported loss, damage, or theft of the equipment; and
9. The date of and reason for disposal, transfer to another HIDTA participant, or sale of the equipment; including, if relevant, the sales price of the equipment.

8.5 IDENTIFICATION OF HIDTA EQUIPMENT

All HIDTA-purchased equipment must be clearly marked as such and have a unique identifier that links the equipment to the HIDTA's inventory tracking system.

8.6 INVENTORY REQUIREMENTS

Grantees or subgrantees that use HIDTA funds to purchase equipment must maintain a current inventory of HIDTA-purchased equipment and must provide that inventory to the HIDTA Director or an ONDCP employee upon request.

HIDTA Directors must be able to provide a copy of each such inventory upon request.

Each HIDTA grantee must conduct a 100-percent physical inventory of HIDTA-purchased equipment at least every two years and provide a copy of that inventory to the HIDTA Director. An inventory conducted at the direction of the HIDTA Director is adequate for this purpose.

As part of the HIDTA's annual internal review, the HIDTA Director shall perform a physical inventory of a sample of equipment purchased by each HIDTA grantee.

The results of the most recent 100 percent inventory and the most recent internal review, along with all supporting documentation, shall be retained for Program Review purposes.

8.7 DISPOSITION OF EQUIPMENT

The purchasing agency should use its own policies for determining the end of the useful life of HIDTA-purchased equipment and for disposing of and accounting for any

HIDTA-purchased equipment. Purchasing agencies must document the disposition of any HIDTA equipment and provide that documentation to the HIDTA Director.

8.8 PROTECTION OF SENSITIVE INFORMATION

Initiative supervisors shall ensure that all sensitive information is removed from the hard drives of a computer before it leaves the HIDTA premises for repair or disposal.

8.9 ACCOUNTABILITY FOR EQUIPMENT

Initiative commanders shall immediately report any item that is lost, stolen, or otherwise unaccounted for to the HIDTA Director. The purchasing agency's procedures shall be followed to investigate the loss or theft of any equipment. The initiative commander must also inform the HIDTA Director of efforts to find the item.

Second Reading Ordinances for July 10, 2012 (first read on July 3, 2012)

A. <u>Public Hearing and Issuance of Industrial Revenue Bonds (Bombardier Learjet)</u> (Districts IV and V)

ORDINANCE NO. 49-299

An ordinance authorizing the City of Wichita, Kansas, to issue its taxable industrial revenue bonds in the original aggregate principal amount not to exceed $5,901,383.61 for the purpose of providing funds to finance the installation of improvements to certain existing aviation manufacturing and flight testing facilities as well as to finance the acquisition of certain machinery and equipment for such facilities located in the City of Wichita, Kansas; prescribing the form and authorizing execution of a twenty-first supplemental trust indenture by and between the City and the Bank of New York Mellon Trust Company, N.A.., St. Louis, Missouri (the "trustee"), as trustee with respect to the bonds; prescribing the form and authorizing the execution of a twenty-first supplemental lease by and between Learjet Inc. and the City; approving the form of a guaranty agreement; and authorizing the execution of a bond purchase agreement by and between the City and Learjet inc., as purchaser of the bonds.

B. **<u>Public Hearing and Approval of a Façade Improvement Project – 700/704 East Douglas</u> (District VI)**

ORDINANCE NO. 49-300

An ordinance levying and assessing maximum special assessments on certain lots, pieces and parcels of land liable for such special assessments to pay the costs of internal improvements in the city of Wichita, Kansas, as authorized by Resolution No. 12-144 of the City (700 and 704 East Douglas Facade Improvement District).

C. <u>Acquisition by Eminent Domain of a Tract Required for the Central: 119th to 135th Street Road Improvement Project</u> (District V)

ORDINANCE NO. 49-301

An ordinance providing for the acquisition by eminent domain of certain private property, easements and right-of-way therein, for the purpose of acquiring real property for the construction of improvements to central avenue from 119th Street West to 135th Street West in the City of Wichita, Sedgwick County, Kansas; designating the lands required for such purposes and directing the city attorney to file a petition in the District Court of Sedgwick County, Kansas, for acquisition of the lands and easements therein taken and providing for payment of the cost thereof.

D. <u>A12-05 – Annexation of right-of-way for 159th Street East, from Kellogg Drive to Central Avenue (District II)</u>

ORDINANCE NO. 49-302

An ordinance including and incorporating certain blocks, parcels, pieces and tracts of land within the limits and boundaries of the city of Wichita, Kansas. (A12-05)

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

SUBJECT: ZON2012-00016 – Zone change request from SF-5 Single-family Residential ("SF-5") and B Multi-family Residential ("B") to LC Limited Commercial ("LC") on property located on the east side of North West Street, 350 feet south of West St. Louis Avenue (south of Central Avenue, 438 and 442 North West Street). (District VI)

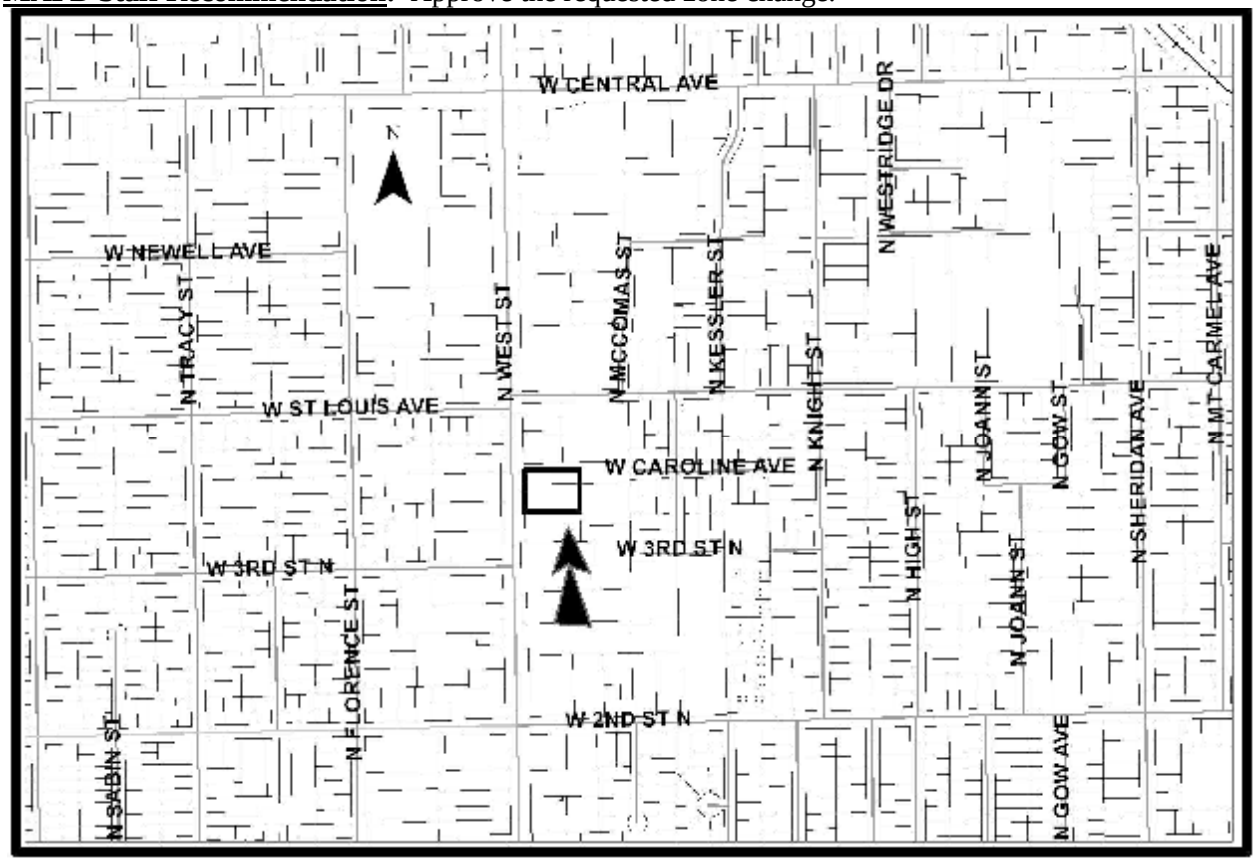
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: Approve the requested zone change (8-0).

DAB Recommendation: Approve the requested zone change (8-0).

MAPD Staff Recommendation: Approve the requested zone change.



Background: The application area is located on the east side of North West Street, approximately 350 feet south of West St. Louis Avenue (which is located south of West Central Avenue). The subject property is the western 230 feet of Lot 27, Knight Acres Addition, and contains 1.08 acres. The approximately western 163 feet of the application area is zoned B Multi-family Residential ("B") while the approximately eastern 67 feet is zoned SF-5 Single-family Residential ("SF-5"). The applicant is seeking LC Limited Commercial ("LC") zoning for the property. The property is currently developed with two single-family residences that are addressed as 438 and 442 North West Street. Each residence has an access drive to West Street. It is proposed that the two existing residences will be demolished and a new commercial building will be built.

Surrounding properties located to the north, south and west are zoned LC, and are developed with a restaurant or retail stores. One LC zoned lot located west of West Street is vacant. Property to the east is zoned SF-5, and is vacant. The applicant owns approximately the northern 80 feet of the land located east of the site. Another person owns the remainder of the SF-5 zoned land located east of the application area.

West Street is a significant commercial arterial, which in 2006 carried in both directions approximately 39,000 vehicles on an average day. Most of the property fronting West Street, between Kellogg Avenue and Central Avenue, has been previously zoned to LC or more intense zoning.

If approved, a six-foot solid screening fence or landscaping or berms or some combination of the three will be required to provide a buffer for the SF-5 zoned land located east (rear) of the site. A minimum rear yard building setback of 15 feet is also required (where LC zoning abuts SF-5 or TF-3 zoning). Building heights are limited to a maximum of 35 feet when located within fifty feet of SF-5 or TF-3 zoned land. Dumpsters and refuse receptacles must be located at least twenty feet from SF-5 or TF-3 zoned property. Roof-mounted equipment, trash receptacles, mechanical equipment and outdoor work and storage areas are required to be screened from ground view from any residential zoning district or public street right-of-way located within 150 feet of those uses. Lighting sources are limited to fifteen feet in height when located within 200 feet of residential zoning districts.

Analysis: District Advisory Board VI heard the request on June 4, 2012, and recommended approval (8-0). There was not anyone present to speak in opposition.

At the Metropolitan Area Planning Commission (MAPC) meeting held June 7, 2012, the MAPC voted (8-0) to recommend approval of LC zoning.

Staff did not receive any valid official protests; therefore, the application may be approved, as recommended by the MAPC and DAB, with a simple majority vote.

Financial Considerations: Approval of this request will not create any financial obligations for the City.

Goal Impact: The application will promote Economic Vitality.

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

Recommendation/Actions: Adopt the findings of the MAPC and approve the zone change to the LC Limited Commercial district, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority vote required).

Attachments: MAPC minutes, ordinance, DAB memo.

(150004) Published in The Wichita Eagle on July 20, 2012

ORDINANCE NO. 49-310

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. ZON2012-00016

Zone change request from SF-5 Single-family Residential ("SF-5") and B Multi-family Residential ("B") to LC Limited Commercial ("LC"), on property described as:

> North 1/3 of Lot 37 except that part deeded to the City for street and the West 250 feet of Lot 37, Except the South 60 feet thereof, Knight Acres, an Addition to Wichita, Sedgwick County, Kansas, except the West 20 feet thereof for street, generally located on the west side of North West Street, 350 feet south of West St. Louis Avenue (438 and 442 North West Street).

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 _____ day of _____, 2012.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

EXCERPT MINUTES OF THE JUNE 7, 2012 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING

Case No.: ZON2012-16 - Harris3, LLC (applicant)/Mark Savoy (agent) request City request for LC Limited Commercial zoning on property zoned B Multi-Family Residential and SF-5 Single Family Residential on property described as:

The West 250 feet of the North one-third of Lot 37 except the North 30 feet thereof, Knight Acres, Sedgwick County, Kansas, except the West 20 feet thereof for street.

AND

The West 250 feet of the South two-thirds of Lot 37, except the South 60 feet thereof, Knight Acres, Sedgwick County, Kansas, except the West 20 feet thereof for street.

BACKGROUND: The application area is located on the east side of North West Street, approximately 350 feet south of West St. Louis Avenue (which is located south of West Central Avenue). The subject property is the western 230 feet of Lot 27, Knight Acres Addition, and contains 1.08 acres. The approximately western 163 feet of the application area is zoned B Multi-family Residential ("B") while the approximately eastern 67 feet is zoned SF-5 Single-family Residential ("SF-5"). The applicant is seeking LC Limited Commercial ("LC") zoning for the property. The property is currently developed with two single-family residences that are addressed as 438 and 442 North West Street. Each residence has an access drive to West Street. It is proposed that the two existing residences will be demolished and a new commercial building will be built.

Surrounding properties located to the north, south and west are zoned LC, and are developed with a restaurant or retail stores. One LC zoned lot located west of West Street is vacant. Property to the east is zoned SF-5, and is vacant. The applicant owns approximately the northern 80 feet of the land located east of the site. Another person owns the remainder of the SF-5 zoned land located east of the application area.

West Street is a significant commercial arterial, which in 2006 carried in both directions approximately 39,000 vehicles on an average day. Most of the property fronting West Street, between Kellogg Avenue and Central Avenue, has been previously zoned to LC or more intense zoning.

If approved, a six-foot solid screening fence or landscaping or berms or some combination of the three will be required to provide a buffer for the SF-5 zoned land located east (rear) of the site. A minimum rear yard building setback of 15 feet is also required (where LC zoning abuts SF-5 or TF-3 zoning). Building heights are limited to a maximum of 35 feet when located within fifty feet of SF-5 or TF-3 zoned land. Dumpsters and refuse receptacles must be located at least twenty feet from SF-5 or TF-3 zoned property. Roof-mounted equipment, trash receptacles, mechanical equipment and outdoor work and storage areas are required to be screened from ground view from any residential zoning district or public street right-of-way located within 150

feet of those uses. Lighting sources are limited to fifteen feet in height when located within 200 feet of residential zoning districts.

CASE HISTORY: Knight Acres Addition was recorded in 1918. A new plat (the Bruce Harris Addition) encompassing the zoning application area has been submitted, and was heard by the Subdivision Committee on May 10, 2012. The plat requested two points of access to North West Street and depicts a ten-foot utility easement located along the north and east property lines.

ADJACENT ZONING AND LAND USE:

NORTH:	LC Limited Commercial; restaurant
SOUTH:	LC Limited Commercial; retail store
EAST:	SF-5 Single-family Residential; single-family residence
WEST:	LC Limited Commercial; retail store, vacant

PUBLIC SERVICES: West Street at this location has fifty-feet of half-street right-of-way, and is developed as a four-lane arterial. The site is located in an area that is fully served by municipal and private utilities.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map depicts the property as being appropriate for "local commercial" uses. The "local commercial" designation contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses 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: The property has frontage on North West Street, which is a significant commercial arterial, which in 2006 carried in both directions approximately 39,000 vehicles on an average day. Most of the properties fronting West Street, between Kellogg Avenue and Central Avenue, have been previously zoned to LC or more intense zoning and developed with restaurants, retail sales or personal service or personal care uses. Land to the east of the lots fronting North West Street are zoned SF-5 and are vacant or developed with residential uses.

2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned B and SF-5. Those two residential zoning districts are less suited to the location today given the extensive amount of LC or more intense zoning found on lots fronting North West Street north and south of the application area. Also, the site's split zoning probably limits the property's development potential.

DRAFT

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The development standards required by the various codes should minimize anticipated impacts should the request is approved.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would presumably be an economic loss to the applicant. Approval would provide the public with additional commercial building sites along West Street.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts the property as being appropriate for "local commercial" uses. The "local commercial" designation contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses 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: Existing community facilities are in place or can be guaranteed as part of the subdivision process.

DALE MILLER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **FOSTER** seconded the motion, and it carried (8-0).

DRAFT

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: MAPC Members

FROM: Terri Dozal, Neighborhood Assistant, District VI

SUBJECT: **ZON2012-00016** City request for LC Limited Commercial zoning on property zoned B Multi-Family Residential and amp: SF-5 Single-Family Residential, located midway Central Avenue and 2nd Street, south of St. Louis on the east side of West Street.

DATE: June 5, 2012

On Monday June 4, 2012 the District VI Advisory Board (DAB) considered a City request for LC Limited Commercial zoning on property zoned B Multi-Family Residential and amp: SF-5 Single-Family Residential, located midway Central Avenue and 2nd Street, south of St. Louis on the east side of West Street.

The members were provided the MAPD staff report for review prior to the meeting. *John Schlegel, Planning Director,* presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked/made the following questions/comments:

- Why hasn't the city changed this part of property to LC already?

There were no public to speak in favor or opposition of this request.

****Action:** The District VI Advisory Board members made a motion to recommend to the City Council **Approval** **(8-0)** of the zone change request based upon planning staff recommendations the site is subject to platting within 1-year.

Please review this information when **CON2012-00023** is considered.

mtd

Agenda Item No. II-22.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

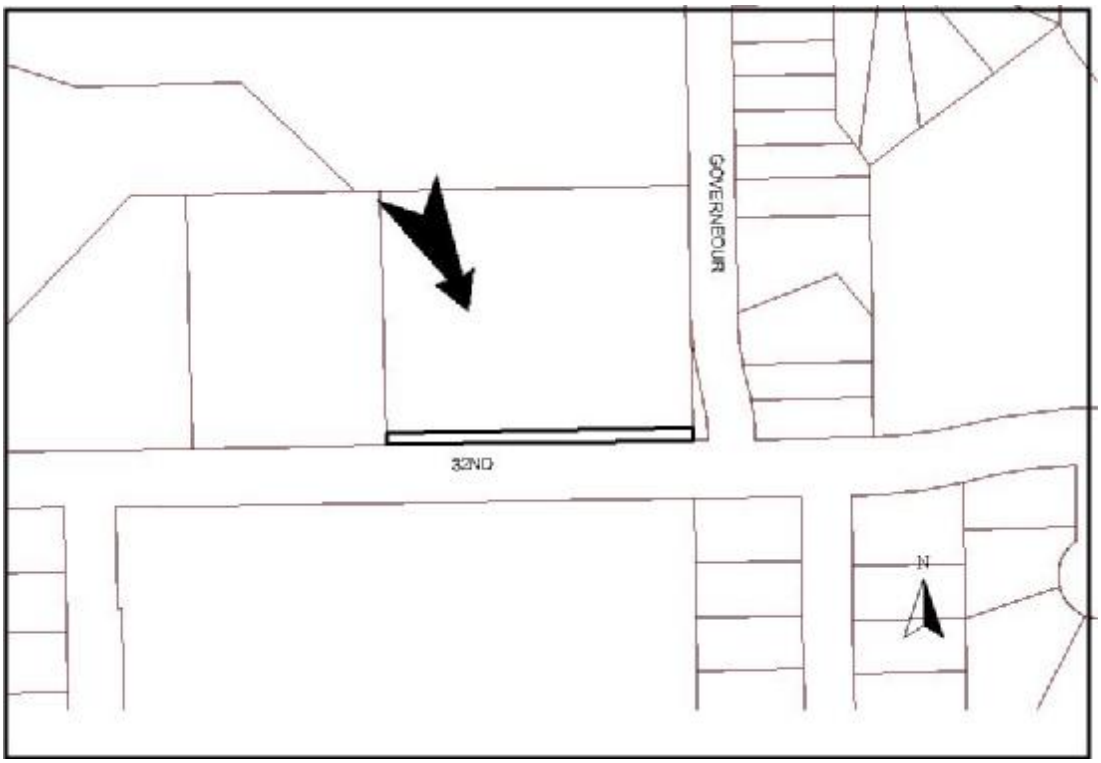
SUBJECT: VAC2012-00016 - Request to vacate a portion of platted complete access control; generally located east of Woodlawn Boulevard, on the northwest corner of 32nd Street North and Goveneour Circle. (District I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Department Commission (MAPC) recommends approval of the vacation request.



Background: The applicant proposes to vacate a portion of platted access control for Lot 2, Block 1, Fantasea II Addition along the site's 32nd Street North frontage to provide two additional access openings. In accordance with the plat, two existing openings for Lot 2 serve the existing development and are located west of the proposed openings. A lot split (LSP2012-00010) has been submitted creating an additional lot (Parcel 2) for the proposed two openings. The proposed easternmost opening would be located 100 feet from Governeour Circle, 100 feet from the other proposed opening.

Traffic Engineering has no objection to the proposed vacation to allow two additional openings to Lot 2 since 32nd Street is not an arterial street. Stormwater Management and City of Wichita Public Works and Utilities Department also have no objection to the proposed vacation.

Westar Energy and Cox Communications have no objection to the proposed vacation, however they advise of equipment located along 32nd Street North. Both companies advise that any relocation or removal of utilities made necessary by this vacation request would be at the applicant's expense. The Fantasea II Addition was recorded with the Register of Deeds on September 22, 1986.

The applicant has provided a Drive Approach Certificate to insure that required improvements will be made in accordance with the City's design standards.

Analysis: The MAPC voted (8-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

Goal Impact: The application supports the City's goal to ensure an Efficient Infrastructure.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Drive Approach Certificate and Vacation Order. A certified copy of the Vacation Order will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the document and Vacation Order, and authorize the necessary signatures.

Attachment: Drive Approach Certificate

Agenda Item No. II-23.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

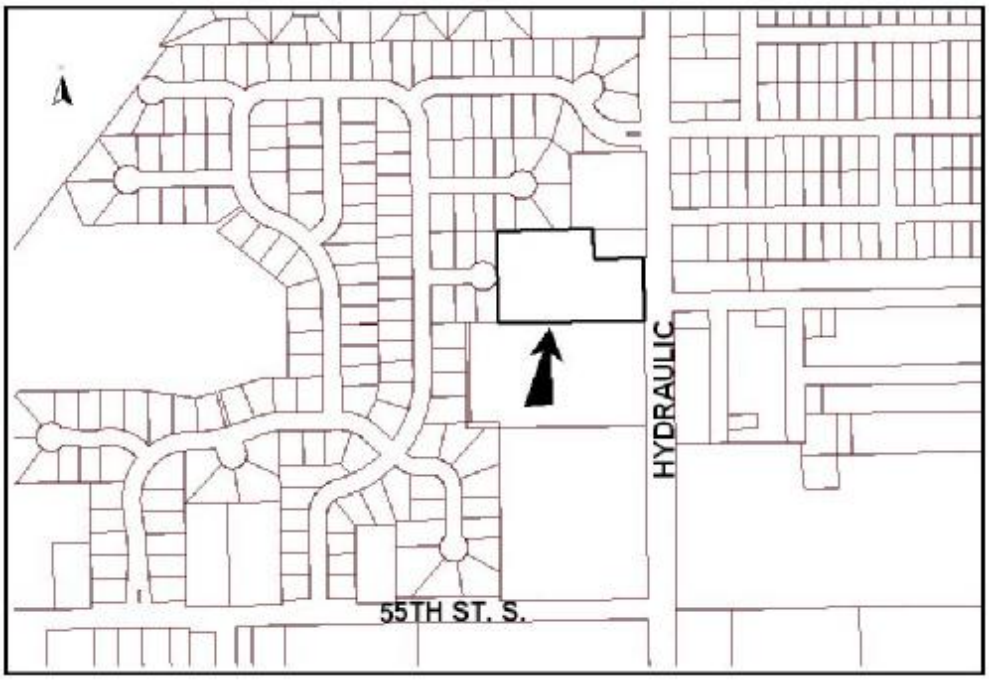
SUBJECT: SUB2009-00068 -- Plat of Dan Schmidt Addition located on the west side of Hydraulic, ¼ mile north of 55th Street South. (District III)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)



Background: The site, consisting of three lots on 3.56 acres, is located within Wichita and is zoned SF-5 Single-family Residential.

Analysis: Water services are available to serve the site. A petition for sewer services has been previously submitted in conjunction with the abutting plat to the south. The applicant has submitted a Cross-lot Drainage Agreement as requested by Stormwater Management. The applicant has submitted a Joint Access Easement as denoted on the plat.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Financial Considerations: There are no financial considerations associated with the plat.

Goal Impact: Approval of the plat will ensure Efficient Infrastructure through the integration of streets,

utilities and other public facilities.

Legal Considerations: The Cross-lot Drainage Agreement and Joint Access Easement 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 approve the documents and plat and authorize the necessary signatures.

Attachments: Cross-lot Drainage Agreement
Joint Access Easement

COPY

CROSS-LOT DRAINAGE AGREEMENT

This agreement, executed this 13 day of June, 2012.

WITNESSETH: That,

WHEREAS, the undersigned is in the process of platting certain real property to be known as Lots 1, 2 and 3, Block A, Dan Schmidt Addition, Wichita, Sedgwick County, Kansas, and

WHEREAS, an application for subdivision approval has been filed with the Metropolitan Area Planning Commission Application No. SUB 2009-68, and

WHEREAS, Subdivision approval is conditional upon a Cross-Lot Drainage Agreement being established, and

NOW THEREFORE, the undersigned does hereby subject convenant and agree as follows:

1. For the benefit of Lots 1, 2 and 3, Block A, Dan Schmidt Addition, Wichita, Sedgwick County, Kansas, that any and all surface drainage of any and all storm water runoff from Lots 1, 2 and 3, Block A, Dan Schmidt Addition, Wichita, Sedgwick County, Kansas, together with improvements which may, from time to time, be constructed, altered, modified and maintained thereon, may flow and run onto, over, upon and across the respective Lots.
2. It is hereby covenanted that such cross-lot drainage shall be a perpetual easement until and unless amended, revoked or released by all of the parties in interest or their successors or assigns and that the same shall be a covenant running with the land and shall be binding upon the grantors herein, their grantees, their heirs, assigns, licensees, successors and assignees in interest.

WITNESS our signatures attached with the respect to each of the properties owned the day and year above stated.

Schmidt Family Enterprises Corp

Dan B. Schmidt President
Dan B. Schmidt

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

The foregoing instrument acknowledged before me this 13 day of June, 2012, by Dan B. Schmidt, President of Schmidt Family Enterprises Corp. on behalf of the corporation.

Linda S Hamby Notary Public

My Appointment Expires: 10/30/15

LINDA S. HAMBY
NOTARY PUBLIC
STATE OF KANSAS

Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

JOINT ACCESS AGREEMENT

This agreement, executed this 13 day of June, 2012.

WITNESSETH: That,

WHEREAS, the undersigned is in the process of platting certain real property to be known as Dan Schmidt Addition, Wichita, Sedgwick County, Kansas, and

WHEREAS, an application for subdivision approval has been filed with the Metropolitan Area Planning Commission Application No. SUB 2009-68, and

WHEREAS, Subdivision approval is conditional upon a Joint Access Agreement being established for Lots 3 and 4, Block A, Dan Schmidt Addition, Wichita, Sedgwick County, Kansas, and

WHEREAS, the City of Wichita requires mutual and joint access over the North 10 feet of Lot 2 and the South 10 feet of Lot 3, of said properties for ingress and egress purposes, and

WHEREAS, it is determined it is in the best interests of the parties and their successors and assigns that common access for ingress and egress be established and conveyed for the use and benefit of all parties hereto, their successors, assigns and licensees.

NOW, THEREFORE, be it known that the undersigned does hereby grant and convey for themselves, their successors, grantees, licensees and assigns in interest, for ingress and egress purposes the right of access across the North 10 feet of Lot 2 and the South 10 feet of Lot 3.

The maintenance of the easement herein granted shall be borne equally between the owners of Lot 2 and 3, Dan Schmidt Addition, Wichita, Sedgwick County, Kansas.

It is hereby covenanted that such joint access shall be a perpetual easement until and unless amended, revoked or released by all of the parties in interest or their successors or assigns and that the same shall be a covenant running with the land and shall be binding upon the grantors herein, their grantees, their heirs, assigns, licensees, successors and assignees in interest.

It is further contracted and covenanted that the development of subject properties shall be accomplished in a manner so as not to impede, inconvenience and/or impede joint access for the general purposes herein set forth.

EXECUTED, the day and year above written.

WITNESS our signatures attached with the respect to each of the properties owned the day and year above stated.

Schmidt Family Enterprises Corp

Dan B. Schmidt President

Dan B. Schmidt

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

The foregoing instrument acknowledged before me this 13th day of June, 2012, by Dan B. Schmidt, President of Schmidt Family Enterprises Corp. on behalf of the corporation.

Linda S. Hamby Notary Public

My Appointment Expires: 10/30/15.

LINDA S. HAMBY
NOTARY PUBLIC
STATE OF KANSAS

Approved as to form:

Gary E. Rebenstorf, Director of Law

Agenda Item No. II-24.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

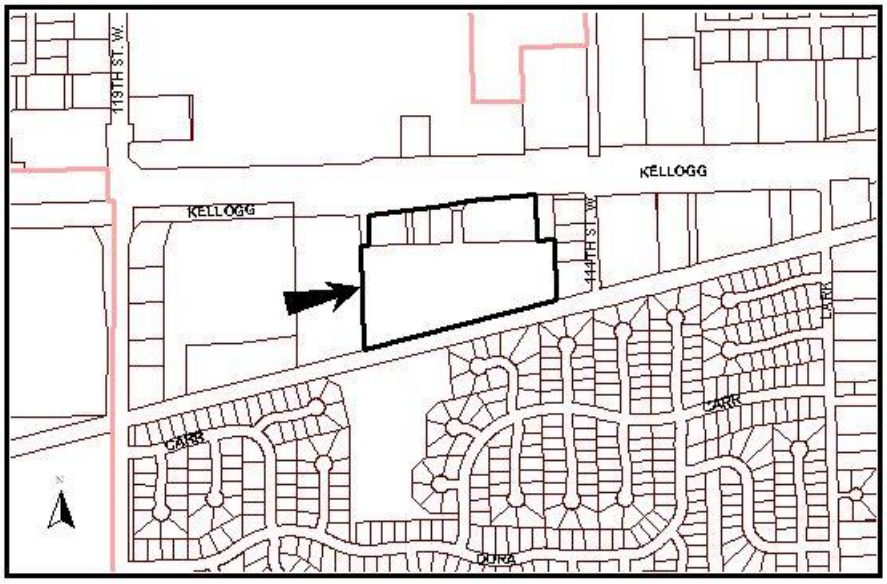
SUBJECT: SUB2012-00002 -- Plat of Mel Hambelton 2nd Addition located ¼ mile east of 119th Street West, on the south side of Kellogg. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (12-0-1)



Background: The site, consisting of one lot on 16.86 acres, is a replat of the Blasi Park Addition in addition to unplatted property. The site is located within Wichita and is zoned LI Limited Industrial and GC General Commercial.

Analysis: Water and sewer services are available to serve the site. The applicant has submitted a Restrictive Covenant to provide for the ownership and maintenance of the reserves. The applicant has submitted a Drive Approach Certificate regarding the driveways required to be closed by access controls, which are being dedicated by the plat.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Financial Considerations: There are no financial considerations associated with the plat.

Goal Impact: Approval of the plat will ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The Restrictive Covenant and Drive Approach Certificate 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 approve the documents and plat and authorize the necessary signatures.

Attachments: Restrictive Covenant
Drive Approach Certificate

COPY

RESTRICTIVE COVENANT

THIS DECLARATION made this 12th day of June, 2012, by Out of the Box Investments, LLC, a Kansas limited liability company, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

MEL HAMBELTON 2ND ADDITION
Lot 1, Block A

WHEREAS, Declarant is desirous in connection therewith that various provisions for the maintenance and responsibility for the maintenance be placed of record for Reserves "A", "B", and "C", Mel Hambelton 2nd Addition, Wichita, Sedgwick County, Kansas.

NOW, THEREFORE, Declarant hereby declares and covenants:

1. That Reserve "A" is reserved for open space, lakes, berms, landscaping, drainage purposes, and utilities as confined to easements.

Reserves "B" and "C" are hereby reserved for open space, landscaping, private drives, public access purposes including drainage maintenance equipment, drainage purposes, and utilities as confined to easements. Private drives and public access purposes shall be restricted to the east 20.00 feet of said Reserve "B" provided, however, that one public access cross shall be allowed over the west 30.00 feet of said Reserve "B".

Drainage structures shall be allowed within said Reserves "A" and "B" provided, however, that no drainage structure within said Reserve "A" or within the east 20.00 feet of said Reserve "B" shall restrict or deny any access purposes. Any open drainage channels in said Reserve "B" shall be restricted to the west 30.00 feet of said Reserve "B".

Reserves "A", "B" and "C" shall be owned by the owner of Lot 1, Block A.

Reserve "B" shall be maintained by the City of Wichita, Kansas. At the time of site development the City of Wichita, Kansas shall retain the right to continue the maintenance of Rserve "B" or to relinquish the responsibility of all or part of the maintenance of said Reserve "B" to the owner of Lot 1, Block A. The City of Wichita, Kansas shall have the right to assume the responsibility for all or part of the maintenance of said Reserve "B" at any time.

2. That the owners hereby grant an irrevocable easement to whichever appropriate governing body or authority has jurisdiction, to enter upon the Reserves, as defined, for the purposes of maintaining such Reserves. This easement is conditioned upon the following event or events happening:

A. That the Declarant or the Lot Owner, as may be appropriate, has failed to maintain the reserves in a reasonable and prudent manner.

and,

B. That the appropriate governing body has given written notice to the Declarant or the Lot Owner and neither entity has responded in initiating corrective action within thirty (30) days of such notice. If the governing body has taken action to maintain the reserve under this covenant, the Declarant or Lot Owner shall pay promptly the costs expended. If the costs are not paid within thirty (30) days of the rendering of an account, the costs shall be considered an assessment against Lot 1, Block A, Mel Hambelton 2nd Addition, and shall be considered a lien thereon and be treated in the same manner as a special assessment.

This covenant shall be binding on the owner, their heirs, or successors or assigns and is a covenant running with the land and is binding on all successors in interest to Lot 1, Block A, in Mel Hambelton 2nd Addition, Wichita, Sedgwick County, Kansas.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

EXECUTED the day and year first written.

Out of the Box Investments, LLC

By: _____
Lisa A. Hambelton, Member

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 12th day of June, 2012, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Lisa A. Hambelton, as Member of Out of the Box Investments, LLC, a Kansas limited liability company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Trina R Willis
Notary Public

(My Appointment Expires: 06/10/2014)

Notary Public State of Kansas
Trina R Willis
My Appt Exp 06/10/2014

Approved as to form:

Gary E. Rebenstorf, Director of Law

DRIVE APPROACH CERTIFICATE

Sedgwick County)
) SS
State of Kansas)

Out of the Box Investments, LLC, a Kansas limited liability company, owner(s) of that certain real property to be known as Mel Hambelton 2nd Addition, Wichita, Sedgwick County, Kansas, is in the process of platting said property, and does hereby acknowledge that in accordance with the requirements of the platting process as set forth by the City of Wichita, any existing drive approaches on Kellogg Drive in excess of the four allowed per said platting requirements shall be closed.

This is to place on notice the owner(s) of the above-described property and subsequent owners thereof that, as a result of the above-cited platting requirements, said owner and subsequent owners thereof are responsible for seeing that such drive approach or approaches are removed and closed per City of Wichita specifications for such work, and that sufficient guaranty of such closure(s), in a form acceptable to the City of Wichita (e.g. – bond, cash, letter of credit, etc.) and/or acknowledgement that the City of Wichita may withhold the issuance of an occupancy permit for any future building construction, will be a pre-condition of the issuance of any future building permit for all development on the above-described property.

Signed this 12th day of June, 2012.

Out of the Box Investments, LLC

By: Lisa A. Hambelton, Member

STATE OF KANSAS)
SEDGWICK COUNTY) SS:

BE IT REMEMBERED, that on this 12th day of June, 2012, before me, the undersigned, a Notary Public, in and for the County and State aforesaid came Lisa A. Hambelton as Member of Out of the Box Investments, LLC, a Kansas limited liability company, personally known to me to be the same person who executed the within instrument of writing and such persons duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Trina R. Willis
Notary Public

(My Appointment Expires: 06/10/2014)

Notary Public State of Kansas
Trina R Willis
My Appt Exp 06/10/2014

Approved as to form:

Gary E. Rebenstorf, Director of Law

Agenda Item No. II-25.

City of Wichita
City Council Meeting
July 10, 2012

TO: Mayor and City Council

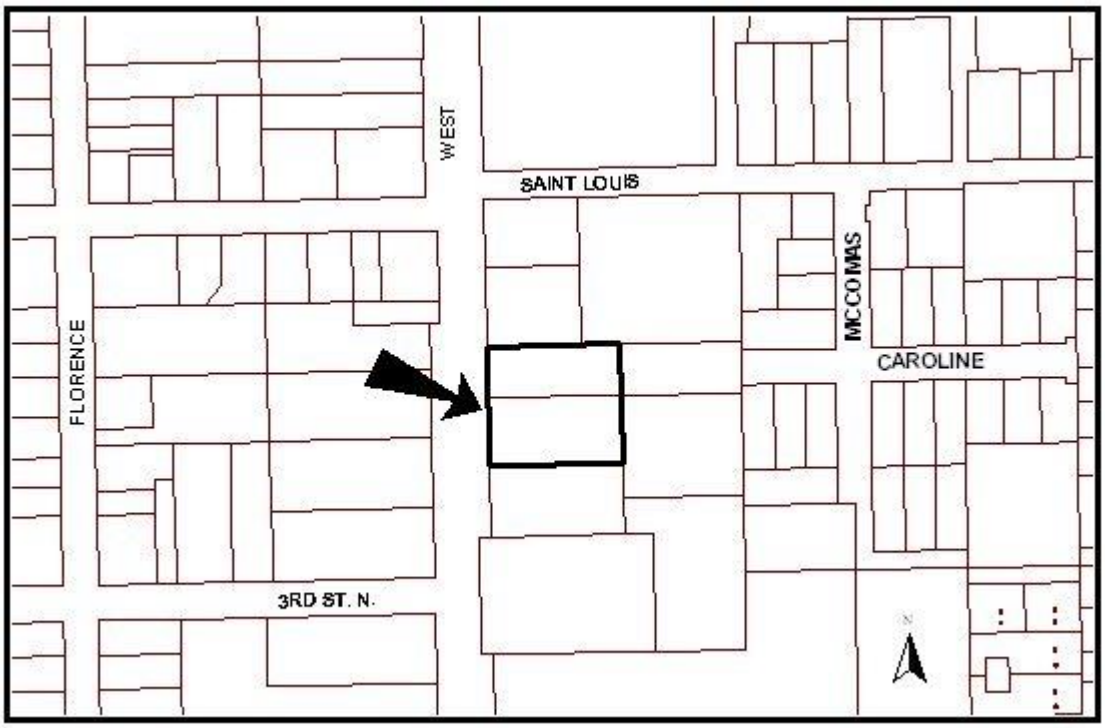
SUBJECT: SUB2012-00009 -- Plat of Bruce Harris Addition located on the east side of West Street, ½ mile south of Central (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (8-0)



Background: The site, consisting of one lot on .92 acres, is a replat of a portion of the Knight Acres Addition. A zone change (ZON 2012-00016) has been approved from SF-5 Single-family Residential and B Multi-Family to LC Limited Commercial.

Analysis: Water and sewer services are available to serve the site.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

Financial Considerations: There are no financial considerations associated with the plat.

Goal Impact: Approval of the plat will ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The Ordinance has been approved as to form by the City's Law Department.

Recommendations/Actions: It is recommended that the City Council approve the plat, authorize the necessary signatures and place the Ordinance on first reading.

Attachments: Ordinance

(OCA150004 BID 37529-009 CID #76383)

Published in The Wichita Eagle on July 20, 2012

ORDINANCE NO. 49-311

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. ZON2012-00016

Zone change request from SF-20 Single-family Residential and B Multi-family Residential to LC Limited Commercial on property described as:

Lot 1, Block A, Bruce Harris Addition, Wichita, Sedgwick County, Kansas.

Generally located on the east side of West Street, ½ mile south of Central.

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 _____ day of _____, 20____.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

Wichita, Kansas
July 3, 2012
10:00 a.m., Monday
First Floor Board Room

MINUTES - BOARD OF BIDS AND CONTRACTS*

The Board of Bids and Contracts met with Alan King, Director of Public Works & Utilities, Engineering in the Chair; Kelly Carpenter Director of Finance, Mark Manning Budget Officer, Melinda Walker Purchasing Manager, Clarence Rose, Senior Buyer, representing Purchasing, Megan Buckmaster representing the City Manager's Office, Karen Sublett, City Clerk, and members of the general public present.

Minutes of the regular meeting dated July 2, 2012, were read and on motion approved.

Bids were opened on February 24,, 2012, pursuant to advertisements published on:

WICHITA AIRPORT AUTHORITY/ENGINEERING: Wichita Mid-Continent Airport – Air Capital Terminal 3 – New Terminal Building Bid Protest.

Board of Bids returned to deliberate the Dondlinger/Hunt joint venture bid protest on Tuesday July 3, 2012 at 1:00 p.m. in the Board Room, 1st Floor of City Hall. Alan King, Kelly Carpenter, Mark Manning and Megan Buckmaster were present.

On motion the Board of Bids recessed further deliberations in executive session. The Board of Bids returned to open session after deliberating, with no action taken.

On motion, the Board of Bids voted 4-0 "that the appeal be denied for the reason that we have reviewed the letter of 28 June from Foulston Siefkin, considered the contents therein, and determined that each issue has been fully addressed in the report of Victor White and confirmed by the review of Chris Haislett."

Upon denial of the appeal, no further business was noted. On motion, meeting adjourned.

_____
Alan King, Director
Public Works and Utilities

_____
Karen Sublett, MMC
City Clerk

Wichita, Kansas
July 9, 2012
10:00 a.m., Monday
Conference Room, 12th Floor

MINUTES - BOARD OF BIDS AND CONTRACTS*

The Board of Bids and Contracts met with Martha Strayer, Administrative Assistant, Public Works Engineering in the Chair; Stephen Coberley, Senior Accountant, Finance, representing the Director of Finance, Elizabeth Goltry Wadle, Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, Jason Earl Management Fellow, representing the City Manager's Office, and Janis Edwards, Deputy City Clerk, present.

Minutes of the regular meeting dated July 2, 2012, were read and on motion approved.

Bids were opened on July 6, 2012, pursuant to advertisements published on:

WICHITA AIRPORT AUTHORITY/OPERATIONS DIVISION: Carpet Installation at AOPA Insurance Building.

Star Lumber and Supply Company Inc. - $60,911.60 Base Bid
$1,879.50 Option 1
$586.88 Option 2

The Purchasing Division recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

On motion the Board recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

Bids were opened on February 24, 2012, pursuant to advertisements published on:

WICHITA AIRPORT AUTHORITY/ENGINEERING DIVISION: Wichita Mid-Continent Airport- Air Capital Terminal 3 - New Terminal Building.

Key/Walbridge a Joint Venture - $101,500,542.00 Base Bid*

*****Defer Award to July 17, 2012 due to pending protest

On motion the Board of Bids adjourned.

_____
Martha Strayer, Administrative Assistant,
Department of Public Works

_____
Janis Edwards, CMC
Deputy City Clerk