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REVISION:
PULLED-New Business Item IV-1

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. July 12, 2011

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

-- Call to Order

-- Invocation

-- Pledge of Allegiance

-- Approve the minutes of the regular meeting on June 28, 2011

AWARDS AND PROCLAMATIONS

-- Proclamation:

Drums Across Kansas Day

-- Service Awards:

Thomas J. Steinkirchner
Mike Hampel

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 19)

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

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

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

1. Repair and removal of dangerous and unsafe structure and Memorandum of Agreement between the City of Wichita and the Kansas State Historic Preservation Officer regarding the demolition of the accessory structure of 935 North Ohio. (District I)

   RECOMMENDED ACTION: Adopt a resolution declaring the accessory structure at 935 North Ohio as dangerous and unsafe and direct staff to proceed with demolition and authorize the Mayor to sign the Memorandum of Agreement between the City of Wichita and the Kansas State Historic Preservation Officer.

IV. NEW COUNCIL BUSINESS

1. Request for Revocation of the Drinking Establishment/Restaurant Liquor Licenses for Big C Enterprises, LLC, dba Doobley's at 767 North West Street and Doobley's at 2415 West 31st Street South, in Wichita, Kansas. (Districts IV and VI)

   (PULLED PER LAW DEPARTMENT)

2. Public Hearing and Tax Exemption Request, Capps Manufacturing. (District IV)

   RECOMMENDED ACTION: Close the public hearing, and approve first reading of the ordinance granting Capps Manufacturing, Inc. an 80% tax exemption on the identified real property improvements for a five year term, plus an 80% tax exemption for a second five-year term, subject to City Council review.

3. Public Hearing and Issuance of Industrial Revenue Bonds, Bombardier Learjet. (Districts IV and V)

   RECOMMENDED ACTION: Close the public hearing and place on first reading the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Industrial Revenue Bonds for Learjet, Inc. in the amount not-to-exceed $2,564,275 and authorize the necessary signatures.

4. Public Hearing and Approval of a Façade Improvement Project - 1525 East Douglas. (District I)

   RECOMMENDED ACTION: Close the public hearing, approve the façade easement and place the maximum assessment ordinance for the 1525 East Douglas facade improvements on first reading.

5. 2012 Proposed Operating Budget.

   RECOMMENDED ACTION: Receive and file the 2012 City Manager's Proposed Operating Budget and receive public comment.

6. General Obligation Bond and Note Sale.

   RECOMMENDED ACTION: Direct the opening and reading of the bids; award the sale of the Bonds and Temporary Notes; and find and declare, upon the request of the Mayor, that a public emergency exists, requiring the final passage of the Bond and Note Ordinances on the date of their introduction, adopt the Bond and Note Ordinances and Resolutions and authorize the publication of the Bond and Note Ordinances.

7. Police and Fire Retirement System, Proposed Revisions of Charter Ordinance Section 1 through 40, inclusive.

   RECOMMENDED ACTION: Approve first reading of the Charter Ordinance revising Sections 1 through 40, inclusive, and repealing the original Charter Ordinance 214.

8. Wichita Employees' Retirement System, Proposed Revisions of City Code Section 2.28.090 and 2.28.110, and Repealing the originals of said sections.

   RECOMMENDED ACTION: Approve the first reading of the Ordinance revising City Code Sections 2.28.090 and 2.28.110, and repealing the originals of said sections.

9. Ordinance Amending Section 16.04.040 of the Sewer Code, Fees for Private Sanitary Sewer Line Construction, Maintenance and Cleaning Permits.

   RECOMMENDED ACTION: Approve first reading of the ordinance amending Section 16.04.040 of the Code of the City of Wichita.

10. Ordinance amendments relating to Traffic Control Devices (Red Lights) Section 11.20.060 of the Code of the City of Wichita.

    RECOMMENDED ACTION: Declare a public emergency and adopt the ordinance making the recommended amendments to Section 11.20.060.

11. Ordinance amendments relating to Passing of Vehicles, Section 11.38.200 of the Code of the City of Wichita.

    RECOMMENDED ACTION: Declare a public emergency and adopt the ordinances making the recommended amendments to Section 11.38.200.

12. Memorandum of Understanding with Friends of the Historic Fresh Air Baby Camp, Inc. to rehabilitate Fresh Air Baby Camp.

    RECOMMENDED ACTION: Approve the Memorandum of Understanding to rehabilitate the Historic Fresh Air Baby Camp Structure.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

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

V. NON-CONSENT PLANNING AGENDA

1. ZON2011-00011 – City Zone Change from SF-5 Single-Family Residential to TF-3 Two-Family Residential; generally located north of 47th Street South, midway between Meridian Avenue and the Big Ditch. (District IV)

   RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and approve the zone change, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required); OR 2) Deny the zone change request by making alternative findings, and override the MAPCs recommendation (two-thirds majority vote required); OR 3) Return the application to the MAPC for further consideration (simple majority vote required).

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

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

3. ZON2011-00015 and CON2011-00019 – City zone change request from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") with a Conditional Use (CON2011-19) for a Personal Improvement Service; generally located north of 2nd Street on the east side of Meridian Avenue, 318 North Meridian. (District VI)

   RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and approve the zone change to GO General Office ("GO") and Conditional Use, and authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required) and sign the resolution; OR 2) deny the zone change request by making alternative findings, and override the MAPCs recommendation (two-thirds majority vote required); OR 3) return the application to the MAPC for further consideration (simple majority vote required).

HOUSING AGENDA

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

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

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

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

VII. NON-CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

1. Approval of travel expenses for Mayor to attend The Governor's Water Summit in Colby, Kansas, July 20-21, 2011.

   RECOMMENDED ACTION: Approve the expenditures.

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 19)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated July 11, 2011.

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

2. Applications for Licenses for Licenses for Special Event:

Renewal	2011	Address
Chris Arnold	Wichita Hopps, LLC	Black Top Nationals Century II, August 25, 26, 27 and 28

   RECOMMENDED ACTION: Approve the licenses.

3. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2011	(Consumption off premises)
Cecilia Pinon	Super Del Centro South***	1560 South Main
Mandeep Sira	RNM Corporation dba Flying Eagle***	3405 South West Street
Amir Etezazi	EEI CS1***	2481 South Hillside
Amir Etezazi	EEI CS2***	731 North Ridge Road
Jeff Parker	Kwik Shop #714***	4811 South Seneca
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***	710 West 29th Street North
Jeff Parker	Kwik Shop#748***	2809 East Douglas
Jeff Parker	Kwik Shop#772***	2750 South Oliver

Renewal	2011	(Consumption on premises)
Chad Mullens	Tex Consolver Golf Course**	1931 South Tyler
Javier Chavez	Pimiento*	738 North Waco
Lisa Trang Bui	Kwan Court*	1443 North Rock Road

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

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

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

   RECOMMENDED ACTION: Receive and file.

5. Statement of Costs:
   a. Statement of Costs. (See Attached)

RECOMMENDED ACTION: Approve and file.

6. Consideration of Street Closures/Uses.
   a. Community Events: 9th Annual Community Day. (District I)

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) Certificate of Liability Insurance on file with the Community Events Coordinator.

7. Agreements/Contracts:
   a. Relocation of Westar Energy Inc. Utilities along Tyler Road, between 21st Street and 29th Street. (District V)
   b. Pipeline Relocation Agreements with Mid-Continent Market Center, LLC. (District V)
   c. Renewal of Contract – Kansas Department of Agriculture Food Service Establishment Inspection and Regulatory Services Contract.
   d. EJustice support and maintenance renewal.

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

8. Property Acquisitions:
   a. Acquisition of 2105 East 13th Street for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)
   b. Partial Acquisition of 1440 South Tapestry Lane for the West Kellogg Freeway Project. (Districts IV and V)
   c. Partial Acquisition of 1456 South Tapestry Lane for the West Kellogg Freeway Project. (Districts IV and V)
   d. Acquisition of 1509 South Wheat Lane for the West Kellogg Freeway Project. (Districts IV and V)
   e. Acquisition of a Temporary Construction Easement at 3107 South Seneca for the South Seneca, 31st Street South to Interstate 235 Road Improvement Project. (District IV)

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

9. Minutes of Advisory Boards/Commissions

Transit Advisory Board, June 10, 2011
Board of Appeals of Refrigeration, Air Conditioning, Warm Air Heating and Boiler, March 24, 2011
Board of Appeals of Refrigeration, Air Conditioning, Warm Air Heating and Boiler, May 26, 2011
Board of Appeals of Plumbers and Gas Fitters, May 4, 2011
Design Council, May 18, 2011
Police and Fire Retirement System, May 25, 2011

RECOMMENDED ACTION: Receive and file.

10. Drug Enforcement Agency - 2011 High Intensity Drug Trafficking Area Task Force (HIDTA).

RECOMMENDED ACTION: Approve the Memorandum of Understanding.

11. Issuance of General Obligation Local Sales Tax Bonds.

RECOMMENDED ACTION: Adopt the resolution declaring it necessary to issue general obligation bonds and to pledge local sales tax revenues for the payment of such bonds and provide for the giving of notice as required by law.

12. 2011 Federal Justice Assistance Grant (JAG) Memorandum of Understanding.

RECOMMENDED ACTION: Approve the Memorandum of Understanding and authorize the appropriate signatures.

13. Acquisition of Self Contained Breathing Apparatus.

RECOMMENDED ACTION: Adopt the amending resolution and authorize the necessary signatures.

14. Application for Street Resurfacing Project for Kellogg between Webb and Greenwich. (District II)

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

15. Lincoln Street Dam Grant Award. (Districts III and IV)

RECOMMENDED ACTION: Accept the NRTF grant award and authorize the appropriate signatures.

16. Second Reading Ordinances: (First Read June 28, 2011)
    a. List of Second Reading Ordinances.

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.

17. *SUB2010-00008 -- Plat of Greiffenstein Square Addition located on the south side of 21st Street North, east of 135th Street West. (District V)

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

18. *SUB2010-00018 -- Plat of Monarch Landing 3rd Addition located north of 21st Street North, on the west side of 159th Street East. (District II)

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

19. *A11-03 – Request by Michael E. and Kathy K. Smith to annex lands generally located one-half mile north of 21st Street North on the west side of 159th Street East. (District II)

    RECOMMENDED ACTION: Adopt the resolution initiating the "island" annexation process and instruct the City Clerk to file a certified copy of the resolution with the Board of County Commissioners of Sedgwick County.

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.

None

Agenda Item No. III-1

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council Members

SUBJECT: Repair and removal of dangerous and unsafe structure and Memorandum of Agreement between the City of Wichita and the Kansas State Historic Preservation Officer regarding the demolition of the accessory structure of 935 North Ohio (District I)

INITIATED BY: Office of Central Inspection

AGENDA ACTION: Unfinished Business

Recommendation: Adopt the resolution declaring the accessory structure at 935 North Ohio as dangerous and unsafe, and authorize the Mayor to sign the Memorandum of Agreement between the City of Wichita and the Kansas State Historic Preservation Officer to allow the demolition of the accessory structure at 935 North Ohio.

Background: On November 16, 2010, the City Council held a condemnation hearing on the property at 935 North Ohio. Action was deferred on the property and the exterior of the main structure was subsequently repaired to the point that it warranted removal from condemnation. Nothing was done to the accessory structure, which is dilapidated.

The City of Wichita is proposing to utilize HUD Community Development Block Grant (CDBG) funding to pay for demolition of the accessory structure, which is eligible for listing in the National Register of Historic Places. The use of HUD CDBG funding required a HUD environmental review, including a Section 106 Review, for compliance with federal historic preservation regulations. During the Section 106 Review process the City of Wichita determined, in consultation with the Kansas State Historic Preservation Officer (SHPO), that the accessory structure at 935 North Ohio was potentially eligible for listing in the National Register of Historic Places, and that demolition of the structure would have an adverse effect on places listed or eligible for listing on the National Register of Historic Places. Per the Section 106 Review regulations, the determination of the project's adverse effect requires the City to enter into a Memorandum of Agreement (MOA) with the Kansas SHPO in order to proceed with the demolition project.

Analysis: City staff has conducted extensive public outreach including facilitation of a public hearing (published in the Wichita Eagle on March 28, 2011 and held on Saturday April 9, 2011) for residents of the affected area. Based on input received, City staff also developed a variety of measures designed to mitigate demolition of the structure. The SHPO has been involved in the review process.

Upon adoption of a resolution to demolish the structure, and signing by the Mayor of the Memorandum of Agreement, the Memorandum of Agreement will be sent to the SHPO for their signature (as required by federal regulation and State statute). This will allow City staff to complete the HUD environmental review, at which time demolition of the dangerous and unsafe structure may proceed.

Financial Considerations: The mitigation actions outlined in the Memorandum of Agreement will involve some staff time, primarily of the Historic Preservation Officer, and some minor printing and/or mailing costs, estimated to be less than $500 (which will come from existing approved budget). The owner has been notified of the date and time of the hearing.

Goal Impact: This item impacts the Provide a Safe and Secure Community and the Support a Dynamic Core Area & Vibrant Neighborhoods goal indicators by addressing unsafe building conditions and blighting influences that are detrimental to Wichita neighborhoods.

Legal Considerations: The Memorandum of Agreement has been drafted in accordance with stipulations set forth in 36 CFR 800 and has been approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council adopt a resolution declaring the accessory structure at 935 North Ohio as dangerous and unsafe, direct staff to proceed with demolition, and authorize the Mayor to sign the Memorandum of Agreement between the City of Wichita and the Kansas State Historic Preservation Officer.

Attachment: Memorandum of Agreement between the City of Wichita and the Kansas State Historic Preservation Officer.

MEMORANDUM OF AGREEMENT

BETWEEN CITY OF WICHITA

AND THE

KANSAS STATE HISTORIC PRESERVATION OFFICER

REGARDING THE

DEMOLITION AT 935 NORTH OHIO, WICHITA, KANSAS

WHEREAS, the **CITY of Wichita** (CITY) plans to demolish the garage/carriage house structure at 935 N. Ohio (Project); and

WHEREAS, the CITY is acting as the Responsible Entity for the HUD environmental review, per 24 C.F.R. 58.2(a)(7); and

WHEREAS, the CITY plans to fund and carry out the demolition Project pursuant to the Housing and Community Development Act of 1974 as amended, thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 C.F.R. part 800; and

WHEREAS, the CITY has defined the undertaking's area of effect (A.P.E.) as all of the properties on the 900 block of North Ohio as described in Attachment A; and

WHEREAS, the CITY has determined that the undertaking may have an adverse effect on 935 N. Ohio, which is eligible for listing in the National Register of Historic Places, and has consulted with the Kansas State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. part 800; and

WHEREAS, the CITY, acting as the Responsible Entity, has published a public notice about the meeting and initiating a 15 day public comment period on March 28, 2011; and conducted public outreach by hosting a public meeting on April 9, 2011 and invited public comments regarding the effects of the undertaking on 935 S. Ohio; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the CITY has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination providing the specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii),

NOW, THEREFORE, the CITY and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on the historic properties.

STIPULATIONS

The CITY shall ensure that the following measures are carried out:

I. DISTRIBUTION OF EDUCATION MATERIALS

Packets containing educational materials about affordable home maintenance techniques including window repair, siding repair and proper preparation for painting that can preserve the historic integrity of structures will be distributed to all of the individuals/ organizations that own property within the Project A.P.E. A DVD with the CITY of Wichita Bob Yapp educational sessions, will be provided to the McAdams Neighborhood Association for property owners to check out from the association. The packet will also contain information about the CITY of Wichita historic loan programs.

The City of Wichita Historic Preservation Office will provide one, three-hour community education session regarding the African American history of the McAdams neighborhood. The presentation material will be based on the African American Resources in Wichita, Sedgwick County National Register Multiple Property Document.

Stone from the building will be salvaged and retained on site for repairs of remaining stone structures.

II. DURATION

This MOA will be null and void if its terms are not carried out within two (2) years from the date of its execution. At such time, and prior to work continuing on the undertaking, the CITY shall either (a) execute a MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. Prior to such time, the CITY may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below. The CITY shall notify the signatories as to the course of action it will pursue.

III. POST-REVIEW DISCOVERIES.

In the event that during the undertaking and implementation of the MOA stipulations, an unanticipated historic resource is discovered or event occurs, the CITY will immediately consult with the SHPO to determine if the MOA needs to be modified to address this resource/event.

IV. EMERGENCY SITUATIONS

In the event of an emergency during the undertaking and implementation of the MOA stipulations the CITY will immediately consult with the SHPO to determine if the MOA needs to be modified to address this resource/event.

V. MONITORING AND REPORTING.

Each year following the execution of this MOA until it expires or is terminated, the CITY shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in CITY's efforts to carry out the terms of this MOA.

VI. DISPUTE RESOLUTION.

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the CITY shall

consult with such party to resolve the objection. If the CITY determines, within 30 days, that such objection(s) cannot be resolved, CITY will:

A. Forward all documentation relevant to the dispute, including the CITY's proposed resolution to the ACHP. The ACHP shall provide the CITY with its advice on the resolution of the objection within thirty (30) days or receiving adequate documentation. Prior to reaching a final decision on the dispute, the CITY shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The CITY will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) time period, the CITY may make a final decision regarding the dispute and shall proceed accordingly. Prior to reaching such a final decision, the CITY shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. It is the City's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VII. AMENDMENTS AND NONCOMPLIANCE

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy is signed by all the signatories is filed with the ACHP.

VIII. TERMINATION

If the SHPO, City, or ACHP determines that the terms of the MOA will not or cannot be carried out, that party shall immediately consult with the other MOA signatories to attempt to develop an amendment per Stipulation I, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, the CITY must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The CITY shall notify the signatories as to the course of action it will pursue.

EXECUTION of this Memorandum of Agreement by the CITY and Kansas SHPO, and implementation of its terms evidence that the CITY has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

SIGNATORIES:

CITY of Wichita

_____ Date _____
Carl Brewer, Mayor

Kansas State Historic Preservation Officer

_____ Date _____
Jennie Chinn, State Historic Preservation Officer
Patrick Zollner, Deputy State Historic Preservation Officer for Jennie Chinn

Attest:

_____ _____
Karen Sublett, CITY Clerk Date

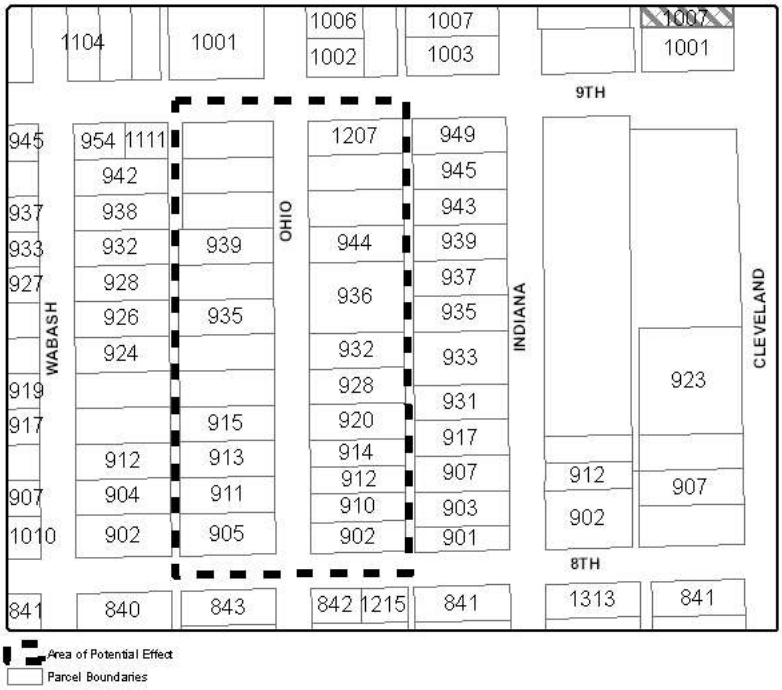
Approved as to Form:

_____ _____
Gary Rebenstorf Date
Director of Law

ATTACHMENT A
RESOURCES WITHIN THE AREA OF POTENTIAL EFFECT DETERMINED TO BE ADVERSELY AFFECTED

935 N. Ohio - Proposed Demolition

Area of Potential Effect



Resource	Eligibility Status
935 N. Ohio Avenue	Determined to be potentially eligible for listing on the NRHP per the SHPO letter 12/15/2010
944 N. Ohio Avenue	Determined not eligible by Wichita Historic Preservation Office 4/114/2011 non-original siding, significant alterations
936 N. Ohio Avenue	Determined not eligible by Wichita Historic Preservation Office 4/114/2011 non-original siding
928 N. Ohio Avenue	Determined not eligible by Wichita Historic Preservation Office 4/114/2011 non-original siding
920 N. Ohio Avenue	Determined not eligible by Wichita Historic Preservation Office 4/114/2011 non-original siding
914 N. Ohio Avenue	Determined not eligible by Wichita Historic Preservation Office 4/114/2011 non-original siding
912 N. Ohio Avenue	Determined not eligible by Wichita Historic Preservation Office 4/114/2011 non-original siding
902 N. Ohio Avenue	Determined not eligible by Wichita Historic Preservation Office 4/114/2011 new construction
905 N. Ohio Avenue	Determined not eligible by Wichita Historic Preservation Office 4/114/2011 non-original siding
911 N. Ohio Avenue	Determined not eligible by Wichita Historic Preservation Office 4/114/2011 non-original siding
913 N. Ohio Avenue	Determined to be potentially eligible Wichita Historic Preservation Office on 4/14/2011

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Public Hearing and Tax Exemption Request (Capps Manufacturing, Inc.) (District IV)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close the public hearing and place the Ordinance on first reading.

Background: Capps Manufacturing, Inc. ("Capps"), located at 2121 South Edwards, was created in 1983 as Capps Machine, Inc. and is a local aerospace manufacturing firm. The company manufactures precision aircraft parts using stretch forming, extrusion, heat treatment and chemical treatment processes. Capps has negotiated an agreement with Hawker Beechcraft Corporation to transfer certain manufacturing equipment to it. In addition to allowing expansion of a local aircraft supplier, the agreement will ensure that a portion of Hawker Beechcraft outsourcing will remain in Wichita. The equipment includes a 750-ton press, 400-ton skin stretch machine and a large-sized heat treat furnace. The cost to acquire, uninstall, move and reinstall the equipment is $821,384. The acquisition of the equipment will necessitate a 27,217 square foot building addition on the Capps campus at an estimated cost of $1,278,928.

After submitting a letter of intent to the City, Capps is now requesting approval of an Economic Development Tax Exemption ("EDX") on the construction of a building addition and newly acquired manufacturing equipment in conjunction with the expansion project.

Analysis: Since its inception in 1983, Capps has grown to a complete fabrication and assembly facility for aircraft products, manufacturing such items as tooling and components for the Boeing 737 sound suppressor, thrust reversers, winglets, door assemblies, detail sheetmetal parts and machined parts for most of the major aircraft companies. Capps Manufacturing, Inc. has the capability to manufacture most component parts with core competencies in stretch formed skins, stretch formed shapes, hydro formed parts, brake formed parts, punch press stamping and forming, certified welding and machined parts. Their operation has grown to include processing such as chemical processing, heat treating, finishing and non-destructive testing, with numerous industry certifications.

Capps currently has 150 employees and projects to add an additional 31 employees over the next two years at an average annual salary of $40,000. The expansion project includes construction of a 27,217 square foot building addition with a cost of $1,278,928 and integrally related equipment with a cost of $821,384.

Under the Economic Development Incentive Policy, Cox Machine is eligible for an 80%, 5+5-year property tax abatement based on the combined investment and job creation commitment.

Financial Considerations: Based on the 2010 mill levy, the estimated taxable value of exempted property for the first full year is approximately $38,387. The value of the 80% real property tax exemption as applicable to taxing jurisdictions is:

City	$ 8,255	State	$ 384
County	$ 7,510	USD 259	$ 14,561

Wichita State University's Center for Economic Development and Business Research performed a cost-benefit analysis indicating benefit-to-cost ratios, which are as follows:

City of Wichita	1.98 to one
City of Wichita – General Fund	1.83 to one
City of Wichita – Debt Service	2.25 to one
Sedgwick County	1.65 to one
USD 259	1.25 to one
State of Kansas	21.15 to one

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

Legal Considerations: The Law Department has approved the attached ordinance and Economic Development Incentive Agreement as to form.

Recommendations/Actions: It is recommended that City Council close the public hearing, and approve first reading of the ordinance granting Capps Manufacturing, Inc. a 80% tax exemption on the identified real property improvements for a five year term, plus a 80% tax exemption for a second five-year term, subject to City Council review.

Attachments: Ordinance, Economic Development Incentive Agreement

Economic Development Incentive Agreement

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (the "Agreement") is made and entered into on this ____ day of July, 2011, by and between the City of Wichita, Kansas, hereinafter referred to as the "City," and Capps Manufacturing, Inc. hereinafter referred to as the "Company."

WHEREAS, the Company currently operates a facility in Wichita, Kansas, for manufacturing of aerospace materials**,** and, as of January 1, 2012 will have completed an expansion by constructing and equipping an expansion to their facility; and

WHEREAS, both the City and the Company desire for the Company to continue operating its business in Wichita, Kansas; and

WHEREAS, the City desires to increase employment opportunities for the citizens of Wichita, Kansas, and to further the other goals advanced by its economic development incentive policy; and

WHEREAS, the Company warrants that it is capable of, and desires to, increase the number of employment positions at its Wichita, Kansas facility; and

WHEREAS, the City has designed an economic development incentive program to accomplish its goal of increasing employment opportunities in Wichita, Kansas; and

WHEREAS, the purpose of this Agreement is to state the terms and conditions under which the City will cooperate in furnishing said economic development incentives.

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

1. **THE COMPANY.** The Company agrees (to the extent not already hitherto performed) that it shall do the following:

   A. Between July 1, 2011 and January 1, 2012, the Company will have completed the construction of a new facility at its manufacturing facility, located at 2130 S. Edwards, Wichita, Kansas, at a cost of $1,278,928, to be used exclusively for the purposes of manufacturing articles of commerce;

   B. Maintain, throughout the period from the date of this Agreement to July 1, 2016, employment of not less than one hundred fifty (150) employees at the existing manufacturing facility;

C. On or prior to July 1, 2016, the Company will add an additional thrity-one (31) new jobs at the new manufacturing facility, and thereafter, maintain employment of not less than one hundred eighty-one (181) employees at combined manufacturing facility, through at least December 31, 2021;

D. During the entire term of this Agreement, the Company will continuously maintain the average wage paid to its employees at a level (1) equal to or greater than the average wage paid by businesses in the Wichita Metropolitan Statistical Area with the Company's NAICS classification, or alternatively, (2) greater than the average wage for all jobs in the Wichita Metropolitan Statistical Area excluding wages paid by businesses classified in NAICS Sector 326;

E. During the entire term of this Agreement, the Company will meet any Equal Employment Opportunity/Affirmative Action goals set forth in its periodic filings with the City, and will annually file its Equal Employment Opportunity/Affirmative Action Plan with the City;

F. During the entire term of this Agreement, the Company will timely pay all *ad valorem* property taxes levied on its real or personal property within Sedgwick County, Kansas;

G. During the entire term of this Agreement, the Company will ensure that it does not discriminate or permit discrimination against any person on the basis of race, color, national origin or ancestry, religion, sex, age, disability or marital status in its operations or services, and the Company will comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000, *et seq.*; the Code of the City of Wichita Section 2.12.950; and, any laws, amendments or regulations promulgated thereunder, including any Ordinance of the City of Wichita, Kansas, presently existing or hereafter enacted, which pertains to civil rights and equal employment opportunity;

H. During the entire term of this Agreement, the Company will comply with all applicable governmental laws, rules and regulations; and,

I. During the entire term of this Agreement, the Company will cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with conditions, including any annual reports required of the Company and any inspection of the Company's premises or interviews with the Company's staff.

2. **EFFECT OF COMPANY'S BREACH; REMEDIES**. The Company acknowledges that in the event of its noncompliance with any of its obligations or agreements under the foregoing Section 1, the City will not have received the social and economic development benefits expected in connection with its entry into this Agreement and its furnishing of the economic development incentives provided for hereunder, and the resulting loss to the City will be difficult to measure. In such event, Company shall be required to pay to the City, as liquidated damages, or as a payment in lieu of tax, an amount equal to the *ad valorem* taxes that would theretofore have been payable but for the tax exemption referred to in Section 3 of this Agreement, and the City shall be entitled to take action to cancel and revoke such exemption for any subsequent period. No delay or omission by the City to enforce any of its rights as provided for herein shall impair such right, nor shall any such delay or omission be construed to be a waiver of such right.

3. **THE CITY.** So long as the Company meets and performs its obligations under this Agreement, it is the City's intention that the 27,217 square foot building constructed by the Company pursuant to Section 1.A., above, shall be entitled to an 80% exemption from *ad valorem* taxation for a period of five (5) calendar years, commencing January 1, 2012, and provided proper application is made therefor. It is the City's further intention that the building expansion shall be entitled to a 80% exemption from *ad valorem* taxation for an additional period of five years from January 1, 2017 to December 31, 2021, subject to the approval, in 2016, of the then current governing body. The City agrees that, during the term of this Agreement, and so long as the Company continues to meet and perform all of its obligations under this Agreement, the City will reasonably cooperate with the Company's efforts to perfect the intended exemption before the Kansas Court of Tax Appeals, and to make all necessary annual filings required to maintain such *ad valorem* tax exemption in full force and effect during the term of this Agreement, in accordance with K.S.A. 79-210 *et seq.*

4. **TERM.** This Agreement shall commence on the date first written above, and shall end on December 31, 2021.

5. **INCORPORATION OF APPENDIX**. Appendix A (Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements) is attached hereto and made a part hereof as if fully set out herein.

6. **ENTIRE AGREEMENT.** This Agreement and any Appendices attached hereto contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor of any force or effect. In the event of a conflict between the terms of this Agreement and the terms

contained in an Appendix, Statement of Work or other attachment, the terms of this Agreement will control.

7. **NOTIFICATION.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

City: Office of Economic Development
Attn: Economic Development Administrator
455 North Main, 13th Floor
Wichita, Kansas 67202

and

Department of Law
Attn: City Attorney
455 North Main, 13th Floor
Wichita, Kansas 67202

Company: Capps Manufacturing, Inc.
ATTN: Ron L. Capps, Vice-President
2121 S. Edwards
Wichita, KS 67213

8. **AUTHORITY.** Each person executing this Agreement represents and warrants that they are duly authorized to do so on behalf of the entity that is a party hereto.

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

CITY OF WICHITA, KANSAS

ATTEST:

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

CAPPS MANUFACTURING, INC.

APPROVED AS TO FORM:

_____
Name: _____
Title: _____

_____
Gary Rebenstorf
Director of Law

APPENDIX 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.

_____FIRST PUBLISHED IN THE WICHITA EAGLE ON JULY 22, 2011_____

ORDINANCE NO. 49-033

AN ORDINANCE EXEMPTING PROPERTY FROM AD VALOREM TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES PURSUANT TO ARTICLE 11, SECTION 13, OF THE KANSAS CONSTITUTION; PROVIDING THE TERMS AND CONDITIONS FOR AD VALOREM TAX EXEMPTION; AND DESCRIBING THE PROPERTY OF CAPPS MANUFACTURING, INC., SO EXEMPTED.

WHEREAS, Article 11, Section 13, of the Kansas Constitution provides that the governing body of the City may, by Ordinance, exempt from all ad valorem taxation all or any portion of the appraised value of certain property meeting the requirements of the constitutional provision; and

WHEREAS, the City of Wichita has adopted an Economic Development Incentive Policy by which the City will consider granting tax exemptions upon a clear and factual showing of direct economic benefit including the creation of additional jobs or the upgrading of existing jobs and the stimulation of additional private investment; and

WHEREAS, Capps Manufacturing, Inc., requests an ad valorem tax exemption on a proposed expansion project of 80% for a five-plus-five year term on the construction of a new building located on land owned by Capps Manufacturing, Inc.; and

WHEREAS, Capps Manufacturing, Inc., has operated within the City for more than fifteen years as a manufacturer of aircraft parts; and

WHEREAS, Capps Manufacturing, Inc., proposes a $1,278,928 expansion by the construction of a new building expansion to be located at 2130 S. Edwards in Wichita; and

WHEREAS, the City Council of the City of Wichita has reviewed the application and supporting documentation supplied by Capps Manufacturing, Inc., has reviewed the impact statements provided by Staff, and the Cost-Benefit Analysis by the Wichita State University and has conducted a public hearing on such application on July 12, 2011; and

WHEREAS, the City Council of the City of Wichita has found and determined:

1. Capps Manufacturing, Inc. is an existing business located in Wichita, Kansas, and intends to expand its business by construction of a building expansion.

2. The construction of the expansion for which exemption is given occurred after July 12, 2011. No exemption will be given for construction which occurred before that date.

3. Such construction is to be used exclusively for manufacturing articles of commerce.

4. By such expansion, Capps Manufacturing, Inc. will create new employment for 31 employees within five years after the start of the project.

5. Tax exemption will be given only for the construction of a building expansion and acquisition of integrally-related machinery and equipment.

6. The property on which exemption is given will meet the requirements of the Kansas Constitution and the City of Wichita's Economic Development Incentive Policy.

7. Such ad valorem tax exemption is in the public interest providing for economic growth and benefit including the creation of jobs and stimulating additional private investment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS,

1. The City Council of the City of Wichita, Kansas hereby makes a factual determination that an ad valorem tax exemption of the type requested by Capps Manufacturing, Inc. is required to retain jobs in the State of Kansas, and that the property to be exempted is to be used exclusively for manufacturing articles of commerce.

2. Capps Manufacturing, Inc. is hereby granted an ad valorem tax exemption of 80% for a five-year term on the construction of a building expansion and 80% for a second five years, subject to approval by the then current governing body, located within the Wichita City limits at 2130 S. Edwards in Wichita, at an estimated cost of $1,278,928. Such exemption is to begin in the calendar year after the calendar year in which the expansion is completed, and may be terminated early (and Capps Manufacturing, Inc. may be required to repay amounts previously abated), in the event of any failure by Capps Manufacturing, Inc., to perform its obligations under the Economic Development Incentive Agreement it has executed with the City.

3. The Economic Development Incentive Agreement between the City of Wichita and Capps Manufacturing, Inc. is hereby approved.

4. The Office of Urban Development shall be responsible for monitoring the performance of Capps Manufacturing, Inc. and shall provide annual reports on such performance.

5. Such exemption is subject to verification that the level of employment at the time of the completion of the project is at least equal to the level of employment as stated in Capps Manufacturing, Inc.’s written request for ad valorem tax exemptions as presented to the City Council and to administrative staff and dated June 1, 2011 and as stated in Capps Manufacturing, Inc.’s annually approved EEO/AA Plan.

6. Such exemption may hereafter be withdrawn by the City Council upon a finding that Capps Manufacturing, Inc. no longer is entitled to such exemption in accordance with the Economic Development Incentive Agreement, which Capps Manufacturing, Inc. has executed with the City.

7. The City Council may, at its discretion, require Capps Manufacturing, Inc. to return all funds exempted if there is a failure to meet the terms and conditions of the Economic Development Incentive Agreement which Capps Manufacturing, Inc. has executed with the City.

8. Upon finding that Capps Manufacturing, Inc. has failed to meet its obligations under the Economic Development Incentive Agreement, the City Council shall require the repayment of all prior amounts of taxes that have been exempted and shall withhold any future exemption of taxes on Capps Manufacturing, Inc.'s expansion project. All repayments shall be redistributed to the local taxing authorities at the proper taxing rates.

9. This Ordinance shall be in full force and effect from and after its passage and publication in the official City paper.

Passed by the governing body of the City of Wichita, Kansas this 19th day of July, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, City Attorney

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Public Hearing and Issuance of Industrial Revenue Bonds (Bombardier Learjet) (Districts IV and V)

INITIATED BY: Office of Urban Development

AGENDA: New Business

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

Background: On November 6, 2007, the City Council approved a Letter of Intent for Industrial Revenue Bonds ("IRBs") in an amount not-to-exceed $79,188,000 for Bombardier Learjet ("Learjet") to finance expansion and modernization of its aircraft manufacturing plant located at Mid-Continent Airport in west Wichita. City Council also approved a 100% five-plus-five year property tax abatement on bond-financed property.

The City Council has approved a number of annual IRB issues for Learjet. In 2009, Learjet began requesting semiannual issues. On July 14, 2010, the City Council approved the issuance of $2,780,181.60 for investment made in the first half of 2010 and again approved an issuance in the amount not-to-exceed $892,983.01 on December 7, 2010 to finance its capital investments for the second half of 2010. Learjet is requesting issuance of IRBs in the amount not-to-exceed approximately $2,564,275 to finance its capital investments for the first half of 2011.

Analysis: Learjet is a wholly owned subsidiary of Bombardier, Inc. ("Bombardier"), a Canadian corporation headquartered in Montreal, Quebec, Canada. Bombardier is engaged in the design, development, manufacturing and marketing of transportation equipment, aerospace and defense products. Learjet is a member of the Bombardier Aerospace Group. Learjet is engaged in the manufacture and sales of business jet aircraft including the Learjet 40, the Learjet 60, the Learjet 45, and the newest model, the Learjet 85. Learjet's principal manufacturing facilities, corporate and marketing offices and the Bombardier Flight Test Center are located at One Learjet Way on Mid-Continent Airport.

Proceeds from the bonds will be used to finance capital investments made by Learjet in the first half of 2011 to expand and equip manufacturing facilities. Investments include building improvements and machinery and equipment to support the production and assembly of the new Learjet 85.

The law firm of Kutak Rock, LLP serves as bond counsel in the transaction. Learjet Inc. will purchase the bonds; bonds will not be offered to the public. Learjet has complied with the Standard Conditions contained in the City's IRB Policy.

Financial Considerations: Bombardier Learjet agrees to pay all costs of issuing the bonds and agrees to pay the City's $2,500 annual IRB administrative fee for the term of the bonds. The City Council has approved a 100% tax abatement of ad valorem property taxes on the expansion project. Bond-financed purchases are also exempt from state and local sales tax. Based on the 2010 mill levy, the estimated tax value of exempted real property for the first full year is approximately $76,966. This is based on estimated real property improvements of approximately $2,564,275.

The value of a 100% real property tax exemption as applicable to taxing jurisdictions**,** based on 2010 mill levies, is as follows:

City	$ 20,688.61	State	$ 961.60
County	$ 18,821.17	USD 259	$ 36,494.83

The cost/benefit analysis based on the fiscal and economic impact model of the Wichita State University's Center for Economic Development and Business Research was conducted in 2009, with the following benefit/cost ratios:

City overall	2.17 to one
City General Fund	1.24 to one
County	1.86 to one
USD 259	1.00 to one
State	46.79 to one

Goal Impact: Economic Vitality and Affordable Living. Providing tax abatements to manufacturing businesses helps stabilize the economic base of the community and ensures a steady supply of quality jobs.

Legal Considerations: The City's bond counsel has prepared documents needed for the issuance of bonds. The City Attorney's Office will review and approve as to form the bond documents prior to the issuance of any bonds.

Recommendations/Actions: It is recommended that the City Council close the public hearing and place on first reading the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Industrial Revenue Bonds for Learjet, Inc. in the amount not-to-exceed $2,564,275, and authorize necessary signatures.

Attachments: Bond Ordinance

ORDINANCE NO. 49-034

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS, TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $2,564,274.92 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 NINETEENTH 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 NINETEENTH 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.

WHEREAS, the City of Wichita, Kansas (the "Issuer") is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the "Act"), to acquire, purchase, construct, install and equip certain improvements and additions (as defined in the Act) for commercial, industrial and manufacturing purposes, and to enter into leases and lease-purchase agreements with any persons, firm or corporation for said facilities, and to issue revenue bonds for the purpose of paying the cost of any such facilities and to refund such revenue bonds previously issued; and

WHEREAS, pursuant to the Act, the Issuer's Governing Body has heretofore: (1) expressed its intent to issue Taxable Industrial Revenue Bonds (Learjet Inc.), in the original aggregate principal amount not to exceed $86,000,000, pursuant to a Letter of Intent dated September 10, 1996; and (2) expressed its intent to issue Taxable Industrial Revenue Bonds (Learjet Inc.), in the original aggregate principal amount not to exceed an additional $79,188,000, pursuant to a Letter of Intent dated November 16, 2007 (collectively, the "Letter of Intent"); all for the purpose of paying the cost of constructing, installing and equipping an expansion and improvements to existing aviation manufacturing and flight testing facilities (the "Project"); and

WHEREAS, pursuant to various ordinances of the Issuer, the Issuer has heretofore authorized the issuance of eighteen series of such taxable industrial revenue bonds, in the original aggregate principal amount of $107,339,641.79 (the "Outstanding Bonds"), for the purpose of constructing, equipping and installing portions of the Project; and

WHEREAS, in connection with the issuance of the Outstanding Bonds, the Issuer has heretofore authorized (i) the execution and delivery of a Trust Indenture dated as of

December 1, 1996, as supplemented and amended from time to time in accordance with the provisions thereof and together with the herein authorized and defined Nineteenth Supplemental Indenture (collectively, the "Indenture") with The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri (as successor to INTRUST Bank, N.A., Wichita, Kansas), as trustee (the "Trustee"), for the purpose of issuing and securing the Outstanding Bonds and any Additional Bonds (as defined therein), and (ii) the execution and delivery of a Lease Agreement dated as of December 1, 1996, as supplemented and amended from time to time in accordance with the provisions thereof and together with the herein authorized and defined Nineteenth Supplemental Lease (collectively, the "Lease"), by and between the Issuer, as lessor, and Learjet Inc., a Kansas corporation duly qualified to do business in the State of Kansas (the "Tenant"), as lessee, under which the proceeds of the Outstanding Bonds were used to pay a portion of the costs of the Project; and

WHEREAS, the Issuer has heretofore and does hereby find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue a Nineteenth series of its taxable industrial revenue bonds to be designated "City of Wichita, Kansas, Taxable Industrial Revenue Bonds, Series III, 2011 (Learjet Inc.)" in the original aggregate principal amount not to exceed $2,564,274.92 (the "Series III, 2011 Bonds"), for the purpose of installing the improvements to certain existing aviation manufacturing and flight testing facilities, as well as to acquire certain machinery and equipment for the Project (the "Series III, 2011 Additions"); and

WHEREAS, the Series III, 2011 Bonds are more fully described in the Nineteenth Supplemental Indenture and the Nineteenth Supplemental Lease hereinafter authorized; and

WHEREAS, the Series III, 2011 Bonds and the interest thereon shall not constitute an indebtedness of the Issuer within the meaning of any constitutional provision or statutory limitation, shall not constitute nor give rise to a pecuniary liability of the Issuer, nor shall any Series III, 2011 Bond or the interest thereon be a charge against the general credit or taxing powers of the Issuer; and

WHEREAS, the Series III, 2011 Bonds are not general obligations of the Issuer and are payable solely from certain fees, rentals, revenues and other amounts derived by the Issuer pursuant to the Lease, as the same may be further amended and supplemented and, under certain circumstances, from the proceeds of the Series III, 2011 Bonds and insurance and condemnation awards; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Series III, 2011 Bonds (i) to execute and deliver a Nineteenth Supplemental Trust Indenture dated as of July 1, 2011 (the "Nineteenth Supplemental Indenture"), for the purpose of issuing and securing the Series III, 2011 Bonds as provided therein; and (ii) to enter into a Nineteenth Supplemental Lease dated as of July 1, 2011 (the "Nineteenth Supplemental Lease"), pursuant to which the Issuer shall cause the Series III, 2011 Additions to be leased to the Tenant in consideration of payments of Series III, 2011 Supplemental Basic Rent, Series III, 2011 Supplemental Additional Rent and other charges provided for therein; and

WHEREAS, the Series III, 2011 Bonds shall be equally and ratably secured and on a parity with the Outstanding Bonds and any Additional Bonds (collectively referred to hereinafter as the "Bonds") subject to any partial redemption or release of pledged property permitted by the Lease or Indenture;

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

Section 1. Definition of Terms. All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Indenture and Lease.

Section 2. Authority to Cause the Series III, 2011 Additions to be Constructed, Installed and Equipped. The governing body of the Issuer hereby declares that the Series III, 2011 Additions, if in being, would promote the welfare of the City of Wichita, Kansas, and the Issuer is hereby authorized to cause the Series III, 2011 Additions to be constructed, installed and equipped all in the manner and as more particularly described in the Nineteenth Supplemental Indenture and in the Nineteenth Supplemental Lease hereinafter authorized.

Section 3. Authorization of and Security for the Series III, 2011 Bonds. There is hereby authorized and directed to be issued a series of the Issuer's taxable industrial revenue bonds in an original aggregate principal amount not to exceed $2,564,274.92 for the purpose of installing the improvements to certain existing aviation manufacturing and flight testing facilities and additions, as well as acquiring certain machinery and equipment to the existing facilities located in the City of Wichita, Kansas, such series of such taxable industrial revenue bonds to be designated "City of Wichita, Kansas, Taxable Industrial Revenue Bonds, Series III, 2011 (Learjet Inc.)." The Series III, 2011 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 in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The Series III, 2011 Bonds shall be equally and ratably secured and on a parity with the Outstanding Bonds and any Additional Bonds, subject to any partial redemption or release of pledged property permitted by the Lease or Indenture. The Series III, 2011 Bonds shall be special limited obligations of the Issuer payable solely from the revenues derived by the Issuer pursuant to the Lease, or otherwise in connection with the Project. The Series III, 2011 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the Issuer within the meaning of any constitutional or statutory provision and shall not be payable in any manner from tax revenues. The Series III, 2011 Bonds shall be secured under the provisions of the Indenture and are authorized hereby.

Section 4. Authorization of Nineteenth Supplemental Indenture. The Issuer is hereby authorized to enter into the Nineteenth Supplemental Trust Indenture dated as of July 1, 2011 (the "Nineteenth Supplemental Indenture"), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, as trustee (the "Trustee"), under which the Issuer shall pledge and assign to the Trustee, for the benefit of the holders of the Bonds, the Trust Estate referenced herein, all upon the terms and conditions set forth in the Indenture.

Section 5. Lease of the Series III, 2011 Additions. The Issuer shall cause the Series III, 2011 Additions to be leased by the Issuer to the Tenant pursuant to and in accordance with the provisions of the Nineteenth Supplemental Lease dated as of July 1, 2011 (the Nineteenth Supplemental Lease"), by and between the Issuer and the Tenant.

Section 6. Authorization of Bond Purchase Agreement. The Series III, 2011 Bonds shall be sold and delivered to Learjet Inc., upon the terms and subject to the provisions of the Bond Purchase Agreement herein authorized dated as of July 1, 2011 (the "Bond Purchase Agreement"), by and between the Issuer and Learjet Inc., as purchaser.

Section 7. Approval of Guaranty Agreement. The form of Guaranty Agreement, dated as of July 1, 2011, pursuant to which the Tenant guarantees to the Trustee, for the benefit of the Owners of the Series III, 2011 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the Series III, 2011 Bonds, is hereby approved.

Section 8. Authorization of Bill of Sale. The City is hereby authorized to deliver a Bill of Sale conveying the 1999 Additions from the City to the Tenant.

Section 9. Execution of Series III, 2011 Bonds and Agreements. The Mayor of the Issuer is hereby authorized and directed to execute the Series III, 2011 Bonds and deliver the same to the Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor or Vice Mayor is hereby further authorized and directed to execute and deliver the Nineteenth Supplemental Indenture, the Nineteenth Supplemental Lease and the Bond Purchase Agreement for and on behalf of and as the act and deed of the Issuer with such minor corrections or amendments thereto as the Mayor or Vice Mayor shall approve (which approval shall be evidenced by his execution thereof) and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk and any Deputy City Clerk of the Issuer are hereby authorized and directed to attest the execution of the Series III, 2011 Bonds, the Nineteenth Supplemental Indenture, the Nineteenth Supplemental Lease and the Bond Purchase Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 10. Pledge of the Project. The Issuer hereby pledges the Series III, 2011 Additions and the net revenues therefrom to the payment of the Outstanding Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Series III, 2011 Bonds shall be deemed to have been paid within the meaning of the Indenture, as the same may be amended.

Section 11. Further Authority. The Issuer shall, and the officers, agents and employees of the Issuer are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the Series III, 2011 Bonds, the Nineteenth Supplemental Indenture, the Nineteenth Supplemental Lease and the Bond Purchase Agreement all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

Section 12. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City of Wichita, Kansas and publication once in the official newspaper of the Issuer.

PASSED by the Governing Body of the City of Wichita, Kansas, and approved by the Mayor on July 19, 2011.

CITY OF WICHITA, KANSAS,
as Issuer

By:_____
Carl Brewer
Mayor

[SEAL]

ATTEST:

By: _____
Karen Sublett
City Clerk

Approved as to Form:

By:_____
Gary E. Rebenstorf
City Attorney

4843-3296-6665.2

City of Wichita
City Council Meeting
July 12, 2011

TO:	Mayor and City Council Members
SUBJECT:	Public Hearing and Approval of a Façade Improvement Project - 1525 East Douglas (District I)
INITIATED BY:	Office of Urban Development
AGENDA:	New Business

Recommendation: Close the public hearing and approve first reading of the maximum assessment ordinance.

Background: Since 2001, the City of Wichita has operated the Façade Improvement Program, which provides low-cost loans and grants to enhance the visual aesthetics of buildings located in defined areas needing revitalization, including the City's core area. The low-cost loans are funded through special assessment financing. In 2009, the Façade Improvement Program was revised to require that private funding for overall project costs be at least equal to public funding and that applicants show a financial need for public assistance in order to complete the project, based on the owner's ability to finance the project and assuming a market-based return on investment.

On June 21, 2011, the City Council accepted a petition from the owners of a building located at 1525 East Douglas to create a special assessment benefit district and adopted a resolution authorizing façade improvements as part of a larger private renovation project. Adoption of a maximum assessment ordinance is needed in order to proceed with the façade improvement project.

Analysis: The existing project is a two story building on the corner of Douglas Avenue and Greenwood that will be used as the new location for GLMV Architecture. The overall project includes a $3,490,000 renovation, including extensive interior and exterior improvements to the building. The $458,000 facade project will include cleaning and repairing the existing terra cotta and brick, new storefront glazing and doors, and additional work to restore the building per historic guidelines. The Office of Urban Development has reviewed the economic (gap) analysis of the project and determined a financial need for incentives based on the current market.

State law requires a formal public hearing to levy assessments for special assessment benefit districts. By using a maximum assessment ordinance, the City levies the assessments in advance of the improvements being constructed, which protects the City from a protest petition should the building change ownership during the construction period. Once the construction is complete and final costs are known, including financing costs, the assessment ordinance will be amended to reflect the actual costs.

Financial Considerations: The proposed maximum assessment amount is $500,000, based on the following uses of funds:

Façade improvement costs	$457,771
2% City administrative fee	8,555
Façade Improvement Grant	(30,000)
Financing costs	63,674
Maximum Assessment	$500,000

The actual amount to be assessed to the property, not to exceed $500,000, will be based on a final statement of costs following completion of construction and will be financed with 15-year special assessment general obligation bonds. The balance of the grant component funding allocated by the City Council for the Facade Improvement Program is $283,000. With the approval of the $30,000 grant for this project, $253,000 will be available for future projects.

To mitigate the City's risk that the special assessment cannot be spread to the property because the improvements are not completed, the owner will pay the construction costs until the façade project is completed. Once complete, as evidenced by an architect's certificate of completion, the property owner will submit a single draw request for the project. This will remove any impediment based on project completion to the City's ability to issue special assessment bonds and place a special tax lien on the property. Once special assessment bonds are issued, the City's risk will be secured by a tax lien on the property. If a tax foreclosure sale is required for repayment of the façade assessment, the City will have precedence over all other creditors. The maximum assessment amount is 66% of the purchase price of the property being improved. The maximum assessment amount of $500,000, including financing fees and temporary interest, is 15% of the overall reconstruction costs of $3,490,000.

Goal Impact: Economic Vitality and Affordable Living is advanced through the use of special assessment financing to partner with and leverage investment from property owners to create commercial and residential economic value within the City. This program addresses the Dynamic Core Area and Vibrant Neighborhoods goal by facilitating improvements to privately owned buildings in target areas.

Legal Considerations: State statutes provide the City Council authority to use special assessment funding for the project. A formal public hearing is required as part of the approval process. The petition that was approved on June 21, 2011, included a parcel that serves as the parking lot and is owned by the petitioners but that would not benefit from the improvements. The attached revised petition removes that parcel and identifies only the property with the building to be improved and assessed. The actual amount to be assessed at the completion of construction may be less, but it may not exceed the amounts included in the petition, resolution and ordinance. To avoid the need to reschedule the public hearing, the petitioners have provided the City with the attached Waiver and Consent, signed by 100% of the property owners, waiving the public hearing requirement.

The attached Maximum Assessment Ordinance and Façade Easement have been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council close the public hearing, approve the façade easement and place the maximum assessment ordinance for the 1525 East Douglas facade improvements on first reading.

Attachments: Maximum Assessment Ordinance
Façade Easement
Revised Façade Improvement Petition
Waiver and Consent

ORDINANCE NO. 49-035 028001

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. 11-151 OF THE CITY (1525 EAST DOUGLAS FACADE IMPROVEMENT DISTRICT).

WHEREAS, pursuant to Resolution No.11-151 of the City of Wichita, Kansas (the "City") adopted on June 21, 2011, the Governing Body has authorized the creation of an improvement district and the construction of the following improvements (the "Improvements"):

Facade Improvements at 1525 East Douglas abutting public ways, including Douglas Avenue and Greenwood Avenue.

WHEREAS, prior to commencement of construction of the Improvements, the City has determined the maximum amount of assessment against each lot, piece or parcel of land deemed to be benefited by the Improvements based on the approved estimate of cost of the Improvements and has held a public hearing on the proposed maximum special assessments to be levied against property in the improvement district for the cost of construction of the Improvements as required by K.S.A. 12-6a09; and

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

SECTION 1. Pursuant to K.S.A. 12-6a01 *et seq*., special assessments to pay the costs of the Improvements are hereby levied and assessed against the lots, pieces and parcels of land liable therefore as described on Exhibit A to this Ordinance, which is incorporated herein by reference, and in the amounts set forth on Exhibit A following the description of each lot, piece or parcel of land; provided, however, that if the final cost of the completed Improvements is less than the maximum amount of the assessments set forth on Exhibit A, the Governing Body of the City shall adjust the assessments to reflect the cost of the completed Improvements.

SECTION 2. The amounts so levied and assessed shall be due and payable from and after the date of publication of this Ordinance; and the City Clerk shall notify the owners of the affected properties of the amounts of their assessments, bonds will be issued therefore and such assessments will be levied concurrently with general taxes and be payable in 15 annual installments.

SECTION 3. The City Clerk shall certify to the County Clerk, in the same manner and at the same time as other taxes are certified, for a period of 15 years, all of the adjusted assessments as referred to in Section 1, together with interest on such amount thereof at a rate not exceeding the maximum rate as prescribed by the laws of the state of Kansas; and such amounts shall be placed on the tax rolls and collected as other taxes are collected, the levy for each year being a

portion of the principal amount of the assessment plus one year's interest on the amount remaining unpaid.

SECTION 4. This Ordinance shall take effect and be in force from and after its publication once in the official City newspaper. The City Clerk is directed to file this Ordinance with the Register of Deeds of Sedgwick County, Kansas.

PASSED by the Governing Body of the City of Wichita, Kansas, and approved by the Mayor on July 19, 2011.

(Seal)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, City Attorney

EXHIBIT A

Building Facade Improvement 1525 East Douglas

Property Subject to Assessment	**Proposed Maximum Assessment**
Lots Two Hundred and Eleven (211), Two Hundred and Thirteen (213), Two Hundred and Fifteen (215), Two Hundred and Seventeen (217); and Lot 209 EXCEPT the west 2.27 feet of said Lot 209, on Douglas Avenue, all in Knight's Addition to the City of Wichita, Sedgwick County, Kansas.	$500,000.00

FACADE EASEMENT
FACADE IMPROVEMENT PROGRAM

THIS FACADE EASEMENT made this 26th day of May, 2011, by Fifteen Twenty-Five LLC, hereinafter called Grantor and the City of Wichita, Kansas, hereafter called Grantee:

WITNESSETH THAT,

WHEREAS, the Grantee is a municipal corporation pursuant to state law; and

WHEREAS, the Grantee is authorized pursuant to K.S.A. 12-6a01 et. seq. to make or cause to be made improvements which confer a special benefit upon a property within a definable area of the city; and,

WHEREAS, the Grantee may levy and collect special assessments upon property deemed by the governing body to be benefitted by such improvement; and,

WHEREAS, the Grantee may acquire an interest in property when necessary for any purposes of the statute; and,

WHEREAS, the Grantee is authorized to accept easements necessary for improvements to be financed through special assessment financing pursuant to K.S.A. 12-6a01; and,

WHEREAS, the Grantor is the owner in fee simple of the improved real property consisting of a lot and building located at 1525 East Douglas, Wichita, Kansas; and,

WHEREAS, the Grantor has submitted a Facade Improvement Petition for special assessment financing to improve, restore and enhance the facade of the premises; and,

WHEREAS, the grant of a facade easement by the Grantor to the Grantee will assist in the improvement of the property;

NOW, THEREFORE, in consideration of the sum of ONE and NO/100 DOLLARS ($1.00), and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey to the Grantee, its successors and assigns, a 15-year facade easement in and to the premises described herein.

The easement granted herein (which is more particularly described in Attachment "A" and which is incorporated herein by reference) shall constitute a binding servitude upon the premises and shall be deemed to run with the said premises for a period of 15 years, with said 15th year period being contemporaneous with the period of time that the said premises are encumbered with special assessment payments related to the improvements made to its facade. As a further condition of said easement, Grantor agrees to the following covenants, restrictions and obligations related to said facade:

1. Without the express written consent of the Grantee, signed by an authorized representative of the Grantee, no construction, alteration, remodeling or other action shall be undertaken or permitted to be undertaken which would affect the exterior facade improvements on the premises (including, without limitation, the exterior walls, the roofs or chimneys) or which would adversely affect the structural soundness of improvements on the premises. In the event the Grantee does consent to construction, alteration, remodeling or other action which would affect the exterior facade of improvements on the premises, the Grantor agrees that such construction, alteration, remodeling or other action will conform with applicable local, state and federal standards for construction or restoration or rehabilitation of historic property. Grantor agrees on behalf of itself and any successor condominium owners association at all times to maintain the premises in good and sound state of repair and to bear the cost of all maintenance and repair of the premises.

2. The premises shall not be divided, diminished or subdivided nor shall the premises ever be devised or conveyed except that the premises may be divided into condominium units, the units may

be conveyed to buyers, and the remainder of the premises may be conveyed to a condominium owners association.

3. The premises shall only be used for a use consistent with the zoning ordinances of the City of Wichita.

4. No other structures may be constructed on the premises during the term of this facade easement without the express written permission of the Grantee, signed an authorized representative of the Grantee.

5. No utility transmission lines, except those required by the existing structures or by structures permitted by the Grantee, may be placed on or over the premises.

6. No topographical changes shall be made or allowed on the premises without the express written permission of the Grantee, signed by an authorized representative of the Grantee.

7. Grantor agrees that representatives of the Grantee, its successors or assigns, shall be permitted at all reasonable times to inspect the premises. Inspections will normally take place on the exterior of the structures on the premises; however, Grantor agrees that representatives of the Grantee, its successors and assigns shall be permitted to enter and inspect the structures on the premises to insure maintenance of structural soundness. Inspection of the interior of the structures will not take place more often than annually, in the absence of deterioration, and shall require prior notice to condominium owners. Inspection of the interior of the structures will be made at a time mutually agreed upon by the Grantor and Grantee, its successors or assigns, and Grantor will not unreasonably withhold their consent in determining a date and time for such inspections.

8. In the event of a violation of any covenant or restriction herein, the Grantee, its successors and assigns, following no less than 30 days' notice to Grantor of the violation, may institute suit to enjoin such violation and to require restoration of the premises in compliance with the covenants or restrictions herein. The Grantee, its successors or assigns shall also have available all legal and equitable remedies to enforce Grantor's obligations hereunder (following expiration of the 30-day notice and cure period set forth above), and in the event Grantor is found to have violated any of their obligations following expiration of such notice and cure period, Grantor shall reimburse Grantee, its successors and assigns for any costs or expenses incurred in connection therewith, including court costs and reasonable attorneys' fees. In addition, Grantor acknowledges that the Grantee has advanced or will advance $496,683 in public funds to defray costs of a portion of Grantor's facade improvements, and Grantor further acknowledges that, in the event of Grantor's violation of any covenant or restriction herein contained for the preservation, maintenance or repair of the facade improvements during the term of this easement, the Grantee will not have received the social and economic development benefits expected in connection with its advance of public funds, and the resulting loss to the Grantee will be difficult to measure. In such event, the Grantor covenants to repay to the Grantee, on demand, as contractual or liquidated damages, the amount of $496,683.

9. Grantor agrees that these covenants and restrictions will be inserted by it in any subsequent deed or other legal instrument by which it divests itself of either the fee simple title or its possessory interest in the premises, or any part thereof during the term of this facade easement. Grantor agrees to give Grantee written notice of any sale or mortgage of the premises or any part thereof within a reasonable time after such sale or mortgage other than sales of condominium units in the normal course of business.

10. Grantor agrees to maintain the facades of the premises in its original condition and configuration or in a condition or configuration which is agreed to by the Grantee.

11. Nothing herein contained shall impose any obligation or liability on the Grantee for the restoration, renovation, preservation or maintenance of the facades of the premises or any part of the premises. The Grantor shall indemnify and hold harmless the Grantee from any liability for any and all claims, demands, damages, judgments, costs or expenses in connection with the restoration, renovation, preservation and maintenance of the facades of the premises or any part thereof or in

connection with the failure to restore, renovate, preserve or maintain the facades of the premise or any part of the premises.

12. The grantor or a successor condominium owners association shall maintain insurance on the premises in such amount and on such terms as will allow the grantee to restore, repair or build the facade of the premises in the event the facade is damaged or destroyed. In the event of damage to or destruction of the facades of the premises, the Grantor alone may determine that the facade of the premises cannot be reasonably restored, repaired or reconstructed. In such event, the Grantee shall be entitled to receive from the Grantor the greater of the following: the fair market value of the easement granted herein at the time the easement was granted or the fair market value of the easement granted herein immediately before the facade of the premises was damaged or destroyed. However, any payment to the Grantee under the terms of this paragraph shall not terminate the easement granted herein, and the terms of the easement which are still applicable to the premises shall remain in full force and effect. The provisions of this paragraph shall apply whether or not the Grantor maintains the insurance coverage required by this paragraph. In the event the Grantee receives any payment under the terms of this paragraph, the Grantee shall use such payment in a manner consistent with the purpose of this easement.

13. Grantor acknowledges that the easement granted herein gives rise to a property right, vested immediately, with fair market value that is a minimum ascertainable portion of the fair market value of the premises. Thus, if a subsequent unexpected change in the conditions surrounding the premises makes it impossible or impracticable to preserve the premises for the purposes for which the easement was granted and restrictions imposed by the easement granted herein are terminated by judicial proceedings, the Grantee, on a subsequent sale, exchange or involuntary conversion of the premises, will be entitled to a portion of the proceeds determined on the date of this Facade Easement is executed, unless state law determines that the Grantor is entitled to full proceeds from the conversion without regard to the terms of the prior restrictions imposed by the Facade Easement. In the event the Grantee receives such proceeds from the subsequent sale, exchange or involuntary conversion of the premises, the Grantee shall use such proceeds in a manner consistent with the terms conservation/ enhancement purposes of the easement.

As used herein, "Grantor" shall include any successor condominium owners association.

The covenants and restrictions imposed by the aforesaid shall not only be binding upon the Grantor, but also upon their heirs, assigns, and all other successors in interest, and shall continue as a servitude running for the 15-year term of the Facade Easement with the land and shall survive the Grantor and any termination of the Grantee's existence. All rights reserved herein to the Grantee shall run for the benefit of and be exercised by its successors, assigns, or by its designee duly authorized.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

[SIGNATURES FOLLOW ON PAGES BELOW]

GRANTOR:

Fifteen Twenty-Five, LLC

By: _____ 5/26/11
William B. Livingston, Member (Date)

State of Kansas)
County of Sedgwick) 5/26/11 (Date)

Signed or attested before me on
5/26/11 by
William B. Livingston

Carol E. Wooten
Notary Public

(Seal)

CAROL E. WOOTEN
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 3-4-15

My appointment expires: 3/4/15

GRANTEE:

By Direction of the City Council

_____ _____
Carl Brewer, (Date)
Major

ATTEST:

_____ _____
Karen Sublett, (Date)
City Clerk

APPROVED AS TO FORM:

_____ _____
Gary E. Rebenstorf, (Date)
City Attorney and Director of Law
of the City of Wichita

State of _____)
County of _____) _____ (Date)

Signed or attested before me on
_____ by
_____

_____
Notary Public

(Seal)

My appointment expires: _____

FACADE IMPROVEMENT PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

Lots Two Hundred and Eleven (211), Two Hundred and Thirteen (213), Two Hundred and Fifteen (215), Two Hundred and Seventeen (217); and Lot 209 EXCEPT the west 2.27 feet of said Lot 209, on Douglas Avenue, all in Knight's Addition to the City of Wichita, Sedgwick County, Kansas.

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et. seq. as amended, as follows:

(a) That it is in the public interest to construct improvements to area walls on public way or land abutting public ways consisting of face improvements to the portion of 1525 East Douglas that abuts public ways, including abutting streets/right-of-way, East Douglas Avenue and Greenwood (Fannie) Avenue.

(b) That the estimated and probable cost of the foregoing improvement being Five Hundred Thousand Dollars ($500,000), exclusive of the cost of interest on borrowed money, with Five Hundred Thousand Dollars ($500,000) payable by the improvement district none payable by the City at Large.

(c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any stage during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

(d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a square foot basis.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE

IMPROVEMENT DISTRICT

Lots Two Hundred and Eleven (211), Two Hundred and Thirteen (213), Two Hundred and Fifteen (215), Two Hundred and Seventeen (217); and Lot 209 EXCEPT the west 2.27 feet of said Lot 209, on Douglas Avenue, all in Knight's Addition to the City of Wichita, Sedgwick County, Kansas.

[SIGNATURES FOLLOW ON PAGES BELOW]

FIFTEEN TWENTY-FIVE, LLC

By: _____
William B. Livingston, Member

State of Kansas)
County of Sedgwick)

Signed or attested before me on July 6, 2011 by William B. Livingston member, Fifteen Twenty-Five, LLC.

Carol E. Wooten
Notary Public

July 6, 2011
(Date)

(Seal)

CAROL E. WOOTEN
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 3-4-2015

My appointment expires: March 4, 2015

WAIVER AND CONSENT RELATING TO SPECIAL ASSESSMENTS BY THE CITY OF WICHITA, KANSAS, IN CONNECTION WITH CERTAIN IMPROVEMENTS AUTHORIZED BY RESOLUTION NO. 11-151 OF THE CITY OF WICHITA, KANSAS.

TO THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

The undersigned (hereinafter called the "Owner"), does hereby state that the undersigned is the owner of record of real estate located in Sedgwick County, Kansas, set forth in *Exhibit* A attached hereto (hereinafter called the "Property"), which Property is liable for special assessments for the costs of constructing the following described improvements.

Facade Improvements at 1525 East Douglas abutting public ways, including Douglas Avenue and Greenwood Avenue; and (hereinafter called the "Improvements") in the City of Wichita, Kansas (the "City"), as heretofore authorized by Resolution No. 11-151 of the City (the "Resolution").

The Owners also acknowledge that they have submitted a revised petition relating to the Improvements to the City and have requested that land described constituting an improvement district be amended from the description shown in Resolution No. 11-151 to the description set forth below in this Waiver and Consent:

> Lots Two Hundred and Eleven (211), Two Hundred and Thirteen (213), Two Hundred and Fifteen (215), Two Hundred and Seventeen (217); and Lot 209 EXCEPT the west 2.27 feet of said Lot 209, on Douglas Avenue, all in Knight's Addition to the City of Wichita, Sedgwick County, Kansas.

The Owner hereby further states that the Owner (a) waives any formal notice of the holding of a public hearing by the City for the purpose of considering the Special Assessments; (b) consents to the levy of Special Assessments in 15 annual installments against the Property by appropriate proceedings of the City in the amount shown on Exhibit A plus interest in an amount sufficient to retire the City's general obligation bonds issued to provide permanent financing for the cost of the Improvements, all without formal or further notice to the Owner; (c) waives any formal additional notice of the final Special Assessments; and (d) waives all right to prepay the Special Assessments without interest immediately following the publication of the ordinance of the City levying the Special Assessments; (e) waives the 30-day statute of limitation provided in K.S.A. 12-6a11.

[SIGNATURES FOLLOW ON PAGES BELOW]

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

Grantor:

By: FIFTEEN TWENTY-FIVE, LLC

Name: [illegible]

Title: MEMBER Date: 7/6/2011

State of Kansas)
County of Sedgwick)

Signed or attested before me on this 6th day of July, 2011.
William B. Livingston.

Carol E. Wooten My appointment expires March 4, 2015
Notary Public

CAROL E. WOOTEN
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 3-4-2015

EXHIBIT A

Property Liable for Special Assessments	Amount of Special Assessments
Lots Two Hundred and Eleven (211), Two Hundred and Thirteen (213), Two Hundred and Fifteen (215), Two Hundred and Seventeen (217); and Lot 209 EXCEPT the west 2.27 feet of said Lot 209, on Douglas Avenue, all in Knight's Addition to the City of Wichita, Sedgwick County, Kansas.	$500,000

Agenda Item No. IV-5.

City of Wichita
City Council Meeting
July 12, 2011

TO:	Mayor and City Council
SUBJECT:	2012 Proposed Operating Budget
INITIATED BY:	City Manager's Office
AGENDA:	New Business

Recommendations: Receive and file the 2012 City Manager's Proposed operating budget.

Background: The City Council has received the City Manager's Proposed 2012/2013. The Council is scheduled to receive public comment at its regular Council meetings through August 9, 2011.

Analysis: The Proposed 2012 annual operating budget is $549,313,783, which does not include internal service funds, capital projects, grant funds, trust funds or interfund transfers. The 2012 Proposed Budget would require a mill levy estimated at 32.272 mills – equal to the rate levied in 2011, and projected to remain unchanged for the eighteenth consecutive year. The 2012 General Fund budget is balanced, with an ending balance projected to be within City Council policy of 10 percent of expenditures.

The 2012 Proposed budget seeks to continue efforts to right size the organization to ensure financial sustainability going forward. It has been developed with feedback from the City Council, the District Advisory Boards, Wichita Independent Neighborhoods, citizens and employees. It is consistent with the core strategic priorities outlined by the Council: protecting property; ensuring physical safety; protecting infrastructure; and creating a growing and sustainable community.

Financial Considerations: The proposed operating budget does not include a mill levy increase as presented, based on the budgeted taxes to be levied and the estimated assessed valuation provided by the Sedgwick County Clerk's Office.

Goal Impact: The City Budget serves as the strategic management guide for allocating resources to be consistent with the goals of the City Council. It includes performance targets for each service, to demonstrate the level of performance that is expected based on the recommended funding levels.

Legal Considerations: As required by law, the City of Wichita must hold two public hearings on the budget. One public hearing is required to formally adopt the budget. This must be held at least 10 days prior to August 25; it is scheduled for August 9, 2011. A second public hearing is required to publish notice of the 2012 Proposed Budget, including notice of the maximum amount of taxes to be levied. This public hearing must be at least 10 days prior to the date of budget adoption (August 9th); it is scheduled for July 19, 2011.

Recommendation/Action: It is recommended that the City Council receive and file the 2012 City Manager's Proposed Operating Budget and receive public comment.

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council Members

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 one series of general obligation temporary notes in a principal amount not to exceed $67,355,000 (Series 246) and one series of general obligation bonds (Series 806) in a principal amount not to exceed $3,480,000 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 246 Improvement and Renewal Notes will be used to provide interim financing for City-at-large, Airport, improvement district projects and other public improvements. The proceeds from the sale of the Series 806 Bonds will be used to permanently finance neighborhood improvements located in special improvement districts.

Bids will be accepted electronically via ***PARITY*** Electronic Bid Submission System until 10:00 a.m. CST 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 246 Temporary Notes will mature on August 10, 2012 and will be retired using cash, the proceeds of permanent financing bonds and/or renewal notes issued at that time or other sources. The Series 806 Bonds will mature serially over 15 and 20 years and will be paid from special assessments that are levied against benefited property. The Series 806 Bonds are callable on and after December 1, 2020 at par.

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

Legal Considerations: Bond Counsel will review and approve the bids and the Law Department will approve the authorizing Ordinances and Resolutions which have been prepared by Bond Counsel.

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; and (3) find and declare, upon the request of the Mayor, that a public emergency exists, requiring the final passage of the Bond and Note Ordinances on the date of their introduction, adopt the Bond and Note Ordinances and Resolutions and authorize the publication of the Bond and Note Ordinances.

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

REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, July 12, 2011, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 806, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $3,480,000, 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 806 Bonds occur on the same day bids are received and to enable the City to deliver the Series 806 Bonds authorized by said Ordinance on August 11, 2011.

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

EXECUTED at Wichita, Kansas, on July 12, 2011.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit,* July 12, 2011, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 246, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $67,355,000, 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 246 Notes occur on the same day bids are received and to enable the City to deliver the Series 246 Notes authorized by said Ordinance on August 11, 2011.

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

EXECUTED at Wichita, Kansas, on July 12, 2011.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

ORDINANCE NO. 49-029

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 246, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $67,355,000, 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 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 242, dated February 10, 2011 (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. 11-142 duly adopted June 14, 2011, the Governing Body advertised for bids at a public sale approximately $67,355,000 principal amount of the City's General Obligation Renewal and Improvement Temporary Notes, Series 246, for the purpose of renewing interim financing for the Original Improvements and providing new interim financing for the Improvements and such public sale has been duly held and the Governing Body has awarded the Notes to the best bidder therefor; and

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

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

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

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

Section 2. Authorization of and Security for the Notes. It is hereby authorized, ordered and directed that in order to provide the necessary funds to renew 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. 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.

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.

[Remainder of Page Intentionally Left Blank]

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on July 12, 2011.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

4827-9033-4729.2

ORDINANCE NO. 49-030

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 806, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $3,480,000, 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; 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 $3,480,000, 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 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 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. 11-142 duly adopted June 14, 2011, the Governing Body advertised for bids at a public sale approximately $3,480,000 principal amount of the City's General Obligation Bonds, Series 806, for the aforesaid purpose; and such public

sale has been duly held and the Governing Body has awarded the Bonds to the best bidder therefor; and

WHEREAS, the Governing Body, on November 16, 2010, adopted Ordinance No. 48-900 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 herein referenced.

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

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon 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.

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 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 12, 2011.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

4838-8655-3097.1

RESOLUTION NO. 11-159

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 12, 2011

AUTHORIZING THE ISSUANCE OF

$67,355,000

GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES SERIES 246

DATED AUGUST 11, 2011

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RESOLUTION NO. 11-159

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 246, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF $67,355,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE NOTES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE NOTES, AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Note Ordinance (as herein defined), has authorized the issuance of the Notes in the aggregate principal amount of $67,355,000 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 242, dated February 10, 2011 (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 ordinances and statutes 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 11, 2011.

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

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

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

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

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

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

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

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

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

"Improvement Account" shall mean the Improvement Account 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 10, 2012.

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

"Maturity Date" means August 10, 2012.

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

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

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

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

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

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

"Notes" shall mean the $67,355,000 original principal amount of General Obligation Renewal and Improvement Temporary Notes, Series 246, dated August 11, 2011, of the City of Wichita, Kansas, which are authorized by and will be issued pursuant to the authority of the Note Ordinance and this Resolution.

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

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

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

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

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

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

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

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

"Principal Payment Date" shall mean the Maturity Date.

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

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

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

"Resolution" or "Note Resolution" shall mean this Resolution adopted by the Governing Body of the City on July 12, 2011, prescribing the terms and details of the Notes.

"State" shall mean the State of Kansas.

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

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

ARTICLE II
AUTHORIZATION, ISSUANCE AND DELIVERY OF NOTES

Section 2.01 Authorization of and Security for Notes. Pursuant to the Note Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to provide interim financing for 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 issued in the total principal amount of $67,355,000, and shall be designated "City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 246." 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 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 9, 2012 (the date being so set for redemption and payment being referred to as the "Redemption Date"). Notes called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount), of 100% of the principal amount, plus accrued interest to the Redemption Date.

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

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

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

All notices of redemption given under the provisions of this Article shall state (i) the Redemption Date, (ii) the redemption price, (iii) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Notes to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Note or portion thereof which

has been selected for redemption, and that the interest thereon shall cease to accrue from and after the Redemption Date, and (v) that the Notes so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

Section 3.04 **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Notes or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Notes selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000 units of face value represented by any Note is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Note or Notes in the amount of the unredeemed portion of such Note as provided by **Section 3.02** above. All Notes selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

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

ARTICLE IV
FUNDS AND ACCOUNTS

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

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 246;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 246, 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 246.

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

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

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

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Notes and the purchase price premium, if any, shown on **Exhibit A** to be deposited in the Principal and Interest Account; and

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

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

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

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

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

Section 5.05 Disposition of Improvement Account. Moneys in the Improvement Account shall be used solely for the purpose of paying the Improvement Costs including paying 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 a bank(s) or Federal or state chartered savings and loan association(s) with offices located within Sedgwick County, Kansas, whose deposits are insured by Federal Deposit Insurance Corporation, and all such deposits shall be adequately secured by the bank(s) or savings and loan association(s) holding such deposits 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.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on July 12, 2011.

_____
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 246 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 12, 2011, and authorizing and providing for the issuance of the Notes.

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

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

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

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

RESOLUTION NO. 11-160

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 12, 2011

AUTHORIZING THE ISSUANCE OF

$3,480,000

GENERAL OBLIGATION BONDS
SERIES 806

DATED AUGUST 1, 2011

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RESOLUTION NO. 11-160

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 806, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF $3,480,000, 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 of $3,480,000 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" 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 $3,480,000 original principal amount of General Obligation Bonds, Series 806, dated August 1, 2011, 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.

"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, 2011.

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

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

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

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

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

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

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

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

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

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

"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, 2012, and ending December 1, 2031, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

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

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

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

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

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

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

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

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

"Paying Agent" shall mean the 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, 2012, and ending December 1, 2031, 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 12, 2011, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

"Substitute Improvements" means 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 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, there shall be issued general obligation bonds of the City (the "Bonds"). In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and 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 issued in the total principal amount of $3,480,000 and shall be designated "City of Wichita, Kansas, General Obligation Bonds, Series 806." 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 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 of Kansas, 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 of Kansas, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act. The Governing Body hereby approves the form and text of the certificates to be prepared for the Bonds, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Bonds and hereby further authorizes, orders and directs Bond Counsel, in the event the Bonds in certificated form are issued at any time after the initial issuance and delivery of the Bonds, to prepare the form of and cause such certificated Bonds to be printed.

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

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

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

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

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

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

Section 2.11 Execution and Delivery of Bonds. The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Bonds without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement bond certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution and when executed the Bonds shall be registered in the Office of the City Clerk and in the Office of the State Treasurer, as required by law and as hereinbefore provided, and shall thereupon be deposited with the

Fiscal Agent for authentication. When the Bonds shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the Purchase Price therefor and the proceeds of the Bonds shall immediately be applied by the City as hereinafter in this Resolution provided.

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

ARTICLE III
REDEMPTION OF BONDS

Section 3.01 **Optional Redemption**. The Bonds maturing December 1, 2012, 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 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**. The City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than sixty (60) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Bonds so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

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

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 806;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Bonds, Series 806, 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 806.

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 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 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 of Kansas and having full trust power; at or prior to the maturity or redemption date of the Bonds, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Bonds, the premium, if any, and the interest thereon to the date of maturity or the Redemption Date, as the case may be; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments, provided always that if any Bonds shall be redeemed prior to the maturity thereof, the City shall have elected to redeem such Bonds and notice of such redemption shall have been given as provided by the terms of this Resolution. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank in trust for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

ARTICLE XI
MISCELLANEOUS PROVISIONS

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

The Governing Body hereby further covenants that it will use and expend the proceeds of the Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Bonds or any other funds of the City, or take or omit to take

any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Bonds for so long as any of the Bonds remain outstanding and unpaid.

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

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

Section 11.03 Further Authority. The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Resolution. The Governing Body hereby further authorizes, orders and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body 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 12, 2011.

_____
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 806 BONDS

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

"Bond Ordinance" means Ordinance No. _____ of the City, passed by the Governing Body on July 12, 2011, and authorizing and providing for the issuance of the Bonds.

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

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

["20__ Term Bonds" shall mean the Bonds maturing in the year 20__.

"20__ Term Bonds" shall mean the Bonds maturing in the year 20__.

"20__ Term Bonds" shall mean the Bonds maturing in the year 20__.]

Maturity Schedule. All of the Bonds shall be become due on the dates and shall bear interest as the rates per annum as follows:

Maturity Date	Maturing Principal	Interest Rate
December 1, 2012	$165,000	%
December 1, 2013	175,000	
December 1, 2014	185,000	
December 1, 2015	190,000	
December 1, 2016	195,000	
December 1, 2017	200,000	
December 1, 2018	210,000	
December 1, 2019	220,000	
December 1, 2020	225,000	
December 1, 2021	230,000	
December 1, 2022	240,000	
December 1, 2023	245,000	
December 1, 2024	255,000	
December 1, 2025	265,000	
December 1, 2026	275,000	
December 1, 2027	40,000	
December 1, 2028	40,000	
December 1, 2029	40,000	
December 1, 2030	40,000	

December 1, 2031	45,000

[TERM BONDS

Principal Payment Date	**Amount of Principal Payment**
December 1, 20__	$,000
December 1, 20__	,000

Mandatory Redemption. Each of the 20__ Term Bonds shall also be subject to mandatory redemption and payment on December 1, 20__, or on any Principal Payment Date thereafter, pursuant to the redemption schedule set out below, at the principal amount, plus accrued interest to date fixed for redemption and payment, without premium. The City agrees to redeem the following principal amounts of the 20__ Term Bonds in each of the following years:

Year	**Principal Amount**
20__	$,000
20__	,000
20__	,000
20__*	,000

*Final maturity]

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

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Police and Fire Retirement System
Proposed Revisions of Charter Ordinance Sections 1 through 40, inclusive

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendation: Approve first reading of the Charter Ordinance.

Background: Ice Miller, the Police and Fire Retirement System's outside legal counsel, advised the City Attorney and the Board of Trustees that it would be prudent for the System to file for an updated determination letter with the Internal Revenue Service (IRS) to ensure the continuation of the System's current tax treatment. On June 9, 2009 and December 14, 2010, the City Council approved changes to various sections of the City Code to comply with recent updates made to the Internal Revenue Code (IRC) and qualify for an updated determination letter. The last favorable IRS determination letter received by the Retirement System is dated November 7, 2002.

Charter Ordinance 214, Section 12, provides investment authority for the assets of the System. The Joint Investment Committee (JIC) is charged with the duty of investing all assets of the Joint Fund. The JIC invests the Fund's assets in a diversified mix of assets through the purchase of individual securities, partnership agreements and securities held in pooled arrangements such as commingled funds which are operated by a qualified investment counselor or bank.

Analysis: In 2009, Ice Miller submitted the System's Charter Ordinance 209 to the IRS with an application for an updated determination letter. In 2009 and 2010, revised Ordinances with IRC required amendments were submitted to the IRS for review. In 2011, Ice Miller provided the Board with a final required amendment. This amendment sets forth an affirmative statement regarding the non-forfeitability of vested benefits upon a member's attainment of normal retirement age. Accordingly, Section 14 of the Ordinance that specifies the System's retirement eligibility requirements has been revised to further comply with this IRC requirement. On April 29, 2011, the IRS issued the System a favorable determination letter, contingent upon the adoption of this final amendment.

As a separate issue, the JIC invests in several commingled group trusts to obtain exposure to various investment products which include index products such as the Standard and Poor's (S&P) 500 Index. The IRS has issued various revenue rulings, most recently Revenue Ruling 2011-1, that require that tax qualified plans investing through such vehicles adopt the group trust and make it part of the retirement plan. Section 12 of the Ordinance has been amended to address this requirement.

These proposed revisions to Charter Ordinance 214 were unanimously approved by the Board of Trustees at their meeting on May 25, 2011.

Financial Considerations: The updated favorable determination letter, dated April 29, 2011, and the continuation of the tax-exempt status of the Retirement System are dependent upon the revisions to Section 14 of the Charter Ordinance.

Goal Impact: The City of Wichita, by offering this Retirement System, impacts the Internal Perspective goal by increasing employee motivation and satisfaction.

Legal Considerations: The Law Department has approved the proposed revisions to the Charter Ordinance as to form.

Recommendation/Actions: It is recommended that the City Council approve the first reading of the Charter Ordinance revising Sections 1 through 40, inclusive, and repealing the original of Charter Ordinance 214.

Attachments: Charter Ordinance amending Sections 1 through 40, inclusive, and repealing the original Charter Ordinance 214.
Delineated version of Charter Ordinance 214.

(Published in the Wichita Eagle on July 22 and July 29, 2011)

CHARTER ORDINANCE NO. 215

A CHARTER ORDINANCE OF THE CITY OF WICHITA KANSAS, AMENDING CHARTER ORDINANCE NO. 214 RELATING TO THE POLICE AND FIRE RETIREMENT SYSTEM OF THE CITY OF WICHITA AND REPEALING THE ORIGINAL OF SAID CHARTER ORDINANCE.

WHEREAS, the City of Wichita, Kansas, has created and continued, by various charter ordinances, a retirement system for commissioned officers of the Wichita Police Department and Wichita Fire Department (the "Retirement System"); and,

WHEREAS, since their original adoption, the charter ordinances providing for the creation, modification and continuation of the Retirement System have been from time to time amended, supplemented and/or replaced; and,

WHEREAS, as part of the process to update its IRS determination letters, the City of Wichita desires to amend certain provisions of the retirement plans within the Retirement System; and,

WHEREAS, the Governing Body desires the investment committee to have the ability to invest in investment products that are offered through commingled group trust investment vehicles, and applicable revenue rulings (most recently, Revenue Ruling 2011-1), requiring that tax qualified plans investing through such vehicles must adopt the group trust(s) as part of the investing retiree benefit plan.

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

SECTION 1

The City of Wichita, Kansas, a city of the first class, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby continues its election, initially made in Charter Ordinance No. 19 of the City of Wichita, and preserved in subsequent charter ordinances amendatory thereto, to exempt itself from and makes inapplicable to it Section 13-14a01 through and including Section 13-14a14 of the Kansas Statutes Annotated; and further, the City hereby enacts the following sections hereof in substitution of, and as a complete replacement for, all currently existing provisions of Charter Ordinance No. 214 of the City of Wichita.

SECTION 2

Name and Effective Date.

The Police & Fire Retirement System of Wichita, Kansas, hereinafter referred to as the “Retirement System” is hereby established to provide retirement, survivor, death and other benefits for Police and Fire Officers of the City of Wichita and their dependents, continuing the provisions of the Retirement System, which was established January 1, 1965.

SECTION 3

Definitions.

The following words and phrases as used in this ordinance, unless a different meaning is plainly required by the context, shall have the following meanings:

“Act of Duty” means an act performed by a Member within the scope of occupational duties inherently involving special risks not generally assumed by a citizen in the ordinary

walks of life, for the purpose of protecting life or property, including any act of heroism as a Member.

"Actuarial Tables" means such tables of mortality and rates of interest as may be adopted by the Board.

"Board" means the Board of Trustees of the Police & Fire Retirement System.

"City" means the municipal government of the City of Wichita, Kansas.

"City Council" means the governing body of the City of Wichita, Kansas.

"Deferral Period" means that period of time between the date a vested employee leaves Service and the date upon which the employee is eligible for and begins to receive a pension benefit.

"Deferred Retiree" means a vested Member who has withdrawn from Service, has not elected to receive a refund of contributions and any applicable interest, and is eligible to receive retirement benefits at a future date.

"Disability" means total inability to perform permanently the duties of the position held by the Member at date of Disability due to a physical or mental incapacity resulting from external force or violence or disease.

"DROP" means the Deferred Retirement Option Plan available to Retirement System Members for a maximum period of five (5) years. The DROP is to be phased in over a three (3) year period starting on January 1, 2000. From January 1, 2000 to December 31, 2000, no Member may utilize the DROP; beginning January 1, 2001 to December 31, 2001, Members may select a backward DROP of up to one (1) year; beginning January 1, 2002 to December 31, 2002, Members may select a backward DROP of up to three (3) years; beginning January 1, 2003, Members may select a backward DROP of up to five (5) years.

"DROP Period" means the number of months between the actual retirement date under the DROP and the Member's date of Withdrawal from Service.

"Final Average Salary" means the average annual Salary for the three (3) highest consecutive years of Service within the last ten (10) years of Service as a Member, and which shall be computed on the basis of the seventy-eight (78) consecutive pay periods within which the Salary is the highest.

"Fund" means the Police & Fire Retirement Fund as first established by Charter Ordinance No. 5 of the City of Wichita, Kansas.

"Internal Revenue Code" refers to the Internal Revenue Code of 1986 or 1954, as applicable to governmental plans, and regulations promulgated with respect to the Internal Revenue Code.

"Member" means any Police or Fire Officer of the City receiving compensation and contributing to the Police & Fire Retirement System of Wichita.

"Minor Child" or "Minor Children" eligible for consideration under the provisions of the ordinance means children of the blood and adopted children, provided the proceedings for adoption shall have been initiated at least one (1) year prior to the date of death of the Member or Retiree.

"Police or Fire Officer" means, in the case of a Police Officer, any employee of the Police Department of the City holding the rank of Police Officer, including probationary Police Officers or any higher rank; and, in the case of a Fire Officer, any employee of the Fire Department of the City holding the rank of fire fighter, including probationary fire fighter or any higher rank; and in any case, commissioned officers. Effective June 29, 1996, the term "Police or Fire Officer" includes safety officers employed by the Wichita Airport Authority who shall be considered Fire Officers for purposes of electing representatives to the Board. The term "Police or Fire Officer" shall not include: (1) any person privately employed as a Police or Fire Officer; (2) any person temporarily employed as a Police or Fire Officer for an emergency; (3) any civilian employee in the Police or Fire departments; or, (4) any person permanently appointed to the position of Chief of Police under an offer of employment which provides the option of either membership in this Retirement System or the International City Management

Association deferred compensation and/or retirement programs, unless such person files in writing a selection of membership in this Retirement System within ninety (90) days of commencing employment, such selection of membership is irrevocable.

"Prior Service" means service rendered by a Member prior to January 1, 1965.

"Regular Interest" means interest at seven percent (7%) per annum, compounded monthly.

"Retiree" means a Police or Fire Officer who is receiving a retirement benefit from the Retirement System.

"Salary" means the base monthly rate of pay being paid in accordance with a Salary ordinance (and shall include longevity pay, educational pay, EMT pay, MICT, acting, Kelly, court appearance, bomb tech pay, flight pay, standby pay, and shift differential in the computation of benefits). Salary in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded.

"Service" means employment with the City as a Police or Fire Officer and those periods of military service, Sick Leave, and/or Disability for which Members are entitled to Service credit under the provisions of this ordinance.

"Service-Connected Disability" means any physical or mental incapacity resulting from external force, violence, or occupational disease occasioned by an Act of Duty as a Police or Fire Officer, imposed by the ordinance or rules and regulations of the City, or any other Disability, which may be directly attributable to the performance of an Act of Duty.

"Service-Connected Disease" shall be applicable to any Member having five (5) years of Service or more, and shall mean any sickness, disease, or illness of the heart, lungs, or respiratory tract of a Member which may be determined to be directly attributable to his or her employment as a Police or Fire Officer, including exposures to heat and extreme cold, inhalation of heavy smoke, fumes or poisonous, toxic or chemical gases, while in the performance of an Act of Duty.

"Sick Leave" shall be defined as part of Service: provided that unused accumulated Sick Leave shall not be used to meet the existing age or Service requirements heretofore established under Plans A, B, and C-79.

"Withdrawal from Service" means complete severance of employment of any Member as an employee of the City by resignation, discharge, or dismissal.

SECTION 4

Continuation of Three Plans.

There are hereby continued in existence Plans A, B, and C-79. Plan A applies to all Police and Fire Officers entering the Service of the City between December 31, 1964 and January 1, 1979. Plan B applies to those Police and Fire Officers with Prior Service who chose to participate in Plan B. Plan C-79 applies to Police and Fire Officers newly employed or re-employed by the City on or after January 1, 1979.

It is the intent that the Police & Fire Retirement System of Wichita, KS plan be established as a qualified governmental pension plan under Section 401(a) and 414(d) of the Internal Revenue Code. Retirement plan assets are to be held in a trust as required under Section 401(a) of the Internal Revenue Code. The Board shall distribute the corpus and income of the retirement plan to the members and their beneficiaries in accordance with the retirement plan's law. At no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries shall any part of the corpus and income be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries. Upon complete or partial termination of the retirement plan, the rights of members to benefits accrued to the date of termination, to the extent funded, or to the amounts in their accounts are nonforfeitable, and amounts in their accounts may be distributed to them.

SECTION 5

Membership.

Membership of the Retirement System shall include:

(a) Any person becoming a Police or Fire Officer on or after January 1, 1965.

(b) Any person who was a Police or Fire Officer on December 31, 1964. Any Police or Fire Officer who was temporarily absent on December 31, 1964, due to sickness or Disability, and any such person on an approved leave of absence on said date for any cause, provided such leave shall not have extended for more than one (1) year continuously, except for military service, shall be considered as a Police or Fire Officer on such date.

SECTION 6

Retirement System Funding.

An annual determination shall be made of the actuarial reserve requirements for the benefits provided herein for the Members and their beneficiaries based upon such Member's current and future Services. In addition to interest income and other income accruing to the Retirement System, these requirements shall be by Member contributions and City contributions as follows:

(a) From and after August 7, 1999, each Member of Plan A shall contribute eight percent (8%) of Salary earned and accruing after such date, each Member of Plan B shall contribute six percent (6%) of Salary earned and accruing after such date, and each Member of Plan C-79 shall contribute seven percent (7%) of Salary earned and accruing after such date as their share of the cost of the benefits provided herein.

These contributions shall be made in the form of a deduction from Salary.

(b) The City shall make bi-weekly contributions in an amount, which will be sufficient to provide actuarial reserves for earned benefits and the expenses of plan administration. In the event that Police and Fire Officers are paid other than on a bi-weekly basis, the City shall make such contributions with the same frequency as Police and Fire Officers are paid.

(1) To provide for any unfunded accrued liability, the City shall contribute a sum sufficient to amortize such liability over a period of not more than twenty years.

(2) The amount of City contribution provided in this section shall be established by applying percentage rates of contribution as actuarially determined to the salaries being paid to the Members during each payroll period, and the resulting amounts shall be remitted by the City to the Retirement System concurrently with the payment of the salaries of the Members.

(3) For the purpose of funding all obligations of the Retirement System under the provisions of this ordinance over and above Member contributions and other income accruing to the Retirement System, as herein provided, the City may levy a tax, which levy shall be in addition to the levies now authorized by law for corporate or other purposes.

(4) The City shall pick up the employee contribution required by subsection (a) of this section for all Salary earned after the effective date of this subsection. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code. The City shall pick up these employee contributions from funds established and available in the salaries account, which fund would otherwise have been designated as employee contributions

and paid to the Retirement System. Employer contributions picked up by the City pursuant to this subsection shall be treated for all other purposes of this and other laws of the City in the same manner and to the same extent as employer contributions made prior to the effective date of this subsection. This subsection is effective for pay periods beginning on and after January 1, 1994.

(5) Forfeitures may be used to reduce City contributions but should not be used to increase benefits, in compliance with Section 401(a)(8) of the Internal Revenue Code.

SECTION 7

Composition; Expenditures.

(a) The Fund shall consist of all moneys received from contributions made by employees, refunds made by employees on re-employment, investments, earnings, and moneys paid into the Fund by the City.

(b) All benefits paid from the Retirement System shall be distributed in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. This is being adopted in accordance with Section 823 of the Pension Protection Act of 2006. In order to meet these requirements, the Retirement System shall be administered in accordance with the following provisions:

(1) Distribution of a Member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the Member attains age 70 ½ or April 1 of the year following the calendar year in which the Member retires. If a Member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit as required by this rule in the form provided in Sections 13 or 15;

(2) The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated beneficiary, or over a period not extending beyond the life expectancy of the Member or of the Member and a designated beneficiary. The life expectancy of a Member or the Member's spouse may not be recalculated after the benefits commence;

(3) The Retirement System, pursuant to a qualified domestic relations order, may establish separate benefits for a Member and nonmember;

(4) If a Member dies before the required distribution of the Member's benefits has begun, the Member's entire interest much be either:

(A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year in which the Member died; or

(B) distributed within five years of the Member's death;

(5) If a Member dies after the required distribution of benefits has begun, the remaining portion of the Member's interest must be distributed at least as rapidly as under the method of distribution before the Member's death;

(6) The amount of an annuity paid to a Member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and

the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A 2;

(7) The death and disability benefits provided by the Retirement System are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code, and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the Members' benefits received from the Retirement System; and

(8) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

(c) The Board is authorized to expend funds for the following purposes: clerical and secretarial work, stationery, supplies and printing; and professional services of actuaries, accountants, physicians, and attorneys, the foregoing list not being intended to limit or exclude expenditures for other proper purposes.

(d) The Board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(e) Effective as of July 1, 1989, the Board will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board by rule; such benefits will not be subject to employer discretion. The Board rules adopted for this purpose are incorporated into this section as part of the plan document.

SECTION 8

Accounting and Actuarial.

(a) The assets of the Retirement System shall be held for the express purposes set forth in the provisions of this ordinance. An adequate system of accounts and records shall be established and maintained.

(b) An actuarial experience study of the Retirement System shall be made at least once every five (5) years by an actuary engaged by the Board to check demographic and economic assumptions used in the calculations of liabilities and costs. An annual actuarial valuation of the Retirement System shall be made as of December 31st of each year for the purpose of establishing its financial condition and checking its current operating experience.

(c) Any excess balance in the Retirement System as determined in such valuation shall be applied to reduce the City's rate of contribution in succeeding years. Such contribution adjustments shall be made upon recommendation of the actuary.

SECTION 9

Management-Policy Direction.

The Retirement System continued and maintained by this ordinance shall be construed to be a trust, separate and distinct from all other entities. The responsibility for the direction and operation of the Retirement System, and for making effective the provisions hereof, is hereby vested in a Board. The Board shall consist of sixteen (16) Members, as follows:

(a) The City Manager, or an individual appointed by the City Manager (the City Manager's Designee);

(b) The Chief of the Police Department and the Chief of the Fire Department;

(c) Seven (7) trustees appointed by the City Council who need not be employees of the City. Trustees appointed by the Council shall be appointed for such terms and shall be subject to such limitation of terms as adopted by ordinance;

(d) Three (3) Police Officers and three (3) Fire Officers, each having at least five (5) years of Service, who shall be Members of the Retirement System and shall be elected by the Members from the respective occupational groups according to rules of election to be adopted by the Board. Elected trustees shall serve four-year terms expiring on December 31st of the fourth year following their election;

(e) The City Manager's designee shall serve a two (2) year term ending on August 31st of the second year following appointment;

(f) An elected or appointed trustee shall continue in office until the trustee's successor is elected or appointed, and has qualified. Any elected trustee shall be disqualified to serve in that capacity upon termination of Service with the City. If a vacancy occurs in the office of elected trustees, a successor shall be elected for the unexpired term of office within thirty (30) days by a special election, unless the regular bi-annual election occurs sooner. If a vacancy occurs in the office of an appointive trustee, such vacancy shall be filled for the unexpired term in the same manner as the office was previously filled;

(g) Each trustee shall take an oath that, so far as it devolves upon the trustee, the trustee will diligently and honestly administer the affairs of the Board, and that the trustee will not knowingly or willfully permit to be violated any of the provisions of the ordinances applicable to the Retirement System. Such oath shall be subscribed by the trustee making it, and certified by the officer before whom it is taken, and immediately filed with the City Clerk. A trustee shall be deemed to have qualified for membership on the Board when such oath shall have been filed;

(h) Subject to the limitations prescribed herein, the Board shall from time to time establish rules and regulations for the administration of the Retirement System and to implement the provisions of this ordinance as may be required. It shall hold regular meetings at least quarterly in each year and such special meetings as may be deemed necessary. The annual meeting shall be held in the month of January of each year. All meetings shall be open to the public. A record of proceedings of all meetings shall be kept by the Board;

(i) Each trustee shall be entitled to one (1) vote on the Board, and the concurrence of a majority vote of the trustees present at the meeting shall be necessary; provided, however, that in all matters relating to: (1) changes in the ordinances requiring City Council action; (2) Disability applications; (3) hiring or dismissal of consultants; and (4) alteration of the Investment Committee's recommendations for investment advisor, actuary, asset allocation plan and investment policy, at least nine (9) affirmative votes shall be required for passage; and

(j) A trustee shall receive no Salary while serving in that capacity, provided, however, that Police and Fire Officers elected to the Board shall be permitted to receive their regular Salary from the City of Wichita.

SECTION 10

Officers and Their Duties.

The Board shall have the following officers, whose duties shall be prescribed by the by-laws to be adopted by the Board:

(a) A President, a First Vice President, and a Second Vice President shall be elected from among its trustees.

(b) The Administrator of the Retirement System shall be the Pension Manager who is appointed to such position by the City Manager.

(c) The City Treasurer, ex-officio, shall be treasurer of the Retirement System.

(d) The City Attorney, ex-officio, shall be legal counsel to the Board, and shall represent the Board in all litigation affecting the Retirement System.

(e) An actuary shall be appointed to serve as technical advisor in the administration of the Retirement System on matters pertaining to the technical and actuarial aspects thereof.

(f) A specializing physician or physicians shall be appointed at the discretion of the Board to pass upon claims for Service–Connected and non-Service Connected Disability benefits, on medical questions pertaining to such claims, and on any other matters requiring medical advice that may arise in administration of the Retirement System.

SECTION 11

Administration.

Subject to the direction of the Board, the Administrator of the Retirement System shall:

(a) Employ such clerical and professional services as may be required for the proper operation of the Retirement System, whose compensation shall be fixed by the City Council;

(b) Establish and maintain records, files, and accounts in such form and scope as will give effect to the requirements of the Retirement System in accordance with the provisions hereof;

(c) Accumulate actuarial data concerning the operating experience of the Retirement System in such form as is necessary for the annual actuarial valuations and periodic actuarial studies in accordance with the recommendations of the actuary;

(d) Prepare periodic reports as may be required for the efficient administration of the Retirement System;

(e) The Administrator shall also prepare each year the annual report of the Board, to be submitted to the City Council embodying, among other things, a statement of assets, liabilities and reserves certified by the actuary, an accountant's balance sheet supported by a statement of income and expenditures, a listing of investments owned by the Retirement System, a detailed statement of investments acquired and disposed of during the year covered by the report, and such other financial and statistical data as may be deemed necessary for a proper interpretation of the condition of the Retirement System and the results of its operations. The Board shall cause to be distributed among the Members of the Retirement System a synopsis of such annual report.

SECTION 12

Investments.

(a) The Board shall invest and reinvest any portion of the Fund not needed for immediate benefit payments through a joint investment fund comprised of assets of the Wichita Employees' and Police & Fire Retirement Systems. The joint investment fund shall be overseen by an investment committee comprised of trustee representatives elected from both Boards and a City Manager's designee. The administrator shall be an ex-officio, non-voting Member of the investment committee.

(b) To achieve the investment objective of making the Fund as productive as possible, the following standards and limitations are set forth:

(1) In investing and reinvesting monies in the Fund and in acquiring, retaining, managing, and disposing of investments of the Fund, there shall be exercised the judgment and care under the circumstances then

prevailing which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard and subject to the following requirements, there may be acquired, retained, managed, and disposed of as investments of the Fund every kind of investment which people of prudence, discretion, and intelligence acquire, retain, manage, and dispose of for their own account;

(2) The proportion of the funds invested in corporate preferred and common stocks shall not exceed seventy percent (70%);

(3) Investments may be made in any pooled arrangement such as a mutual fund, separate account, or commingled fund operated by a qualified investment counselor, an insurance company, or a bank;

(4) Investments managed by in-house staff will be restricted to high-grade marketable fixed income securities;

(5) Other investments separately managed by a qualified investment counselor, an insurance company, or a bank, who represent that they act as a fiduciary, will be handled similarly to most other clients of the managing firm, except for holdings of money market instruments or their equivalent;

(6) The Board shall impose whatever limitations are deemed appropriate under its investment policy statement;

(7) The proportion of the Fund invested in securities of a corporation organized under the laws of a country other than the United States of America and securities issued by a foreign country or political subdivision thereof shall not exceed a total of thirty-five percent (35%)~~.~~;

(8) Notwithstanding any contrary provision in this ordinance, assets of the Retirement System may be transferred to a group trust meeting the requirements of Revenue Ruling 2011-1 that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets of pension, profit-sharing and stock bonus trusts or custodial accounts qualifying under Section 401(a) of the Internal Revenue Code that are exempt under Section 501(a) of such Code; individual retirement accounts that are exempt under Section 408(e) of the Internal Revenue Code; eligible governmental plan trusts or custodial accounts under Section 457(b) of the Internal Revenue Code that are exempt under Section 457(g) of such Code; custodial accounts under Section 403(b)(7) of the Internal Revenue Code; retirement income accounts under Section 403(b)(9) of the Internal Revenue Code; and governmental plans under Section 401(a)(24) of the Internal Revenue Code. Following the investment committee's selection of such a group trust for investment, and upon the transfer of assets of the Retirement System to such group trust, the group trust shall be deemed adopted as a part of each of the plans of the Retirement System as required by Revenue Ruling 2011-1 for the duration of such investment.

For purposes of valuation, the value of the interest maintained by the plan in such group trust shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

(c) Nothing in this ordinance, however, shall be construed so as to give the Board at any time authority to invest directly or indirectly in any:

(1) Real estate; except in pooled arrangements such as a mutual fund, separate account or commingled fund operated by a qualified investment counselor or an insurance company. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(2) Private equity; except in a commingled fund-of-funds vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(3) Timber; except in a commingled fund vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(4) Mortgages secured by real estate, except insured mortgages under Titles 203, 207, 220 and 221 of the Federal Housing Act;

(5) Oil and gas leases or royalties; or

(6) Commodities (including but not limited to wheat, gold, gasoline, options, or financial futures); provided, however, that the restriction on investments contained in this paragraph shall not apply to funds which are invested in a mutual fund, separate account or commingled fund operated by a registered investment advisor or insurance company.

(d) The Board shall have the power to hold, purchase, sell, assign, transfer, and dispose of any of the securities in which monies of the Retirement System have been invested, as well as the proceeds from such investments, and any other property belonging to the Retirement System.

(e) All investments shall be clearly marked to indicate ownership of the Retirement System, and to the extent possible, shall be registered in its name. No securities shall be purchased or sold, or in any manner hypothecated, except by action of the Board duly entered in the record of its proceedings.

(f) Any limitations affecting the purchase of securities shall be applicable only at the time of purchase and shall not require the liquidation of an investment at any time.

(g) No trustee or employee of the Board shall have any direct interest in the income or gains from any investment made by the Board, nor shall any such person receive any pay or emolument for services in connection with any investment. No trustee or employee of the Board shall become an endorser or surety, or in any manner an obligor for money loaned or borrowed from the Retirement System. Proof that any such person has violated any of these restrictions shall make him guilty of a misdemeanor or larceny, as the case may be, and such person shall be punishable therefore as provided by law.

SECTION 13

Distribution of Contributions.

(a) Any Member withdrawing from Service prior to retirement shall be entitled to a distribution, in a single sum, of the Member's accumulated contributions. Those Members withdrawing from Service after December 31, 1999 shall receive interest at the rate of five percent (5%) per year on such contributions, which shall be credited to accumulated contributions as of the last day of December of each year beginning with the year 1999 through the year 2006. Beginning January 31, 2007 interest shall be credited monthly to accumulated contributions at the rate of five percent (5%) per year, compounded monthly. No interest shall be allowed in any case in which the contributions, and any prior interest earned, were in the fund for any period following termination. The payment of a distribution under the provisions of this section shall

automatically effect a waiver and forfeiture of all of such Member's accrued rights and benefits in the Retirement System. The Board may, in its sole discretion, withhold payment of a distribution for a period of not to exceed ninety (90) days after receipt of a written request for the same.

(b) Any Member who has received such distribution shall be considered a new Member under Plan C-79 upon re-employment provided that if such Member shall render at least three (3) years of Service following such Member's latest re-employment, such Member shall be entitled to regain his or her previously forfeited Service credits upon repayment of all amounts received as refunds, including Regular Interest from date of refund to date of repayment. The time and manner of making such repayments shall be fixed by the Board. Any Member who terminates employment and leaves the Member's contributions in the Retirement System, if rehired, shall be classified as a Member under Plan C-79.

(c) Upon death of a Member leaving no survivors eligible for a benefit from the Retirement System, such Member's accumulated contributions plus interest, if applicable, shall be paid in a single sum to such person or persons as the member shall have nominated by written designation duly executed and filed with the Board. If no such designation shall have been made, payment shall be made to the Member's legal representative.

(d) After termination of all benefit payments to the Member, surviving spouse, and/or Minor Children, a distribution shall be made to the designated beneficiary or legal representative of the Member, surviving spouse, or Minor Children consisting of the excess, if any, of the Member's accumulated contributions, together with interest thereon if applicable, over all such benefit payments made by the Retirement System to or for the benefit of the Member.

(e) Optional direct transfer of eligible rollover distribution shall be as required under Section 401(a)(31) of the Internal Revenue Code.

SECTION 14

Eligibility for Service Retirement; Indexing Deferred Benefits.

(a) Under Plan A or Plan B, any Member having at least twenty (20) years of Service may retire and receive a Service retirement benefit.

(b) Under Plan C-79, all Police and Fire Officers employed on or after January 1, 1979, having at least twenty (20) years of Service, and having attained age fifty (50), may retire on a Service retirement benefit; provided, that from and after January 1, 1979, any Member who has completed thirty (30) years of Service shall be eligible to receive, regardless of age, a retirement benefit, computed in accordance with a Service retirement benefit.

(c) A Member under Plan C-79 having at least twenty (20) years of Service may retire prior to the attainment of age fifty (50) by leaving active Service as a Police or Fire Officer of the City; leaving the Member's contributions in the Retirement Fund; and deferring the payment of the Member's retirement benefits until the Member has attained age fifty (50). If such Member has a Deferral Period of at least one (1) full month, such Member shall be entitled to a retirement benefit calculated as follows:

(1) A base retirement benefit calculated under Section 15 and

(2) A benefit (which may calculate as no actual increase in benefits), which shall be calculated for each calendar year or full months, in the case of a partial year in such Member's Deferral Period.

(3) The benefit calculation in subparagraph (2) shall be the base benefit calculation in subparagraph (1) adjusted annually for each calendar year

or full months in the Member's Deferral Period. The determination of whether a Member is due a benefit increase for a specific calendar year in which the Member has at least one (1) full month of Deferral Period shall be made by determining, for that calendar year, the smaller of (1) 1.055; or (2) the ratio of national average earnings for the second preceding calendar year to national average earnings for the third preceding calendar year. If the smaller of these two amounts is greater than 1.0, the Member shall be entitled to a benefit increase for that calendar year equal to the Member's base retirement benefit, as calculated under subparagraph (1), multiplied by such smaller amount. Any benefit increase for a partial year in the Member's Deferral Period shall be pro-rated for each month, based on the full year increase.

(d) A Member under Plan C-79 with at least ten (10) years of Service may withdraw from Service and elect to leave such Member's contributions in the Retirement System until such time as such Member is eligible to receive a retirement benefit. If such Member has a Deferral Period of at least one (1) full month, such Member shall be entitled to a retirement benefit calculated as provided for above.

(e) For purposes of compliance with the Internal Revenue Code and related guidance, the normal retirement benefit, which is the benefit calculated under Section 15(c), for a Member under Plan C-79 is nonforfeitable upon attainment of normal retirement age, which is age fifty-five (55), and the completion of ten (10) years of service, whichever is later. The retirement benefit is only payable after a Withdrawal from Service and is subject to the provisions of Sections 31 and 32. This subsection is not to be construed as a reduction or limitation of rights heretofore existing, nor as an indication that vested benefits would be forfeitable before the stated age is attained.

SECTION 15

Calculation of Retirement Benefit.

(a) Any Member in Plan A or Plan B having twenty (20) years or more of Service may make application to be retired, and if such application is made, the Board shall retire such Member and shall pay such Member a monthly benefit in an amount equal to fifty percent (50%) of such Member's Final Average Salary at date of his or her retirement, plus an additional two and one-half percent (2.50%) per year for each year above twenty (20) years up to a maximum of seventy-five percent (75%) of Final Average Salary. For purposes of computing a retirement benefit, unused Sick Leave will be added to Service so long as the computed benefit does not exceed seventy-five percent (75%) of Final Average Salary. The accumulated, unused Sick Leave shall not be used to meet the twenty (20) year Service requirement. A fractional period of Service of less than a full year shall be considered in the calculation of the benefit.

(b) Any Member in Plan C-79 having twenty (20) years or more of Service and who has attained the age of fifty (50) years may make application to be retired, and if such application is made, the Board shall retire such Member and shall pay such Member a monthly benefit in an amount equal to fifty percent (50%) of such Member's Final Average Salary at date of retirement, plus an additional two and one-half percent (2.50%) per year for each year above twenty (20) years up to a maximum of seventy-five percent (75%) of Final Average Salary. For purposes of computing the retirement benefit, unused Sick Leave will be added to Service so long as the computed benefit does not exceed seventy-five percent (75%) of Final Average Salary. The accumulated, unused Sick Leave shall not be used to meet the twenty (20) year Service requirement. A fractional period of Service of less than a full year shall be considered in the calculation of the benefit.

(c) Any Member having ten (10) years and less than twenty (20) years of Service may become a Deferred Retiree by electing to leave such Member's contributions and interest, if any, in the Retirement System. If such Member leaves the Member's contributions and interest in the Retirement System until the Member reaches age fifty-five (55) years, the Member shall be entitled to a retirement benefit as calculated in Section 14(d) herein. (Such benefit shall be calculated by multiplying the Member's years of Service by an amount equal to two and one-half percent (2.50%) and multiplying that product by the Member's Final Average Salary.) Upon retirement and commencement of the receipt of the retirement benefit, such Member shall not be entitled to any survivor's benefits.

SECTION 16
Military Service.

(a) Notwithstanding any provisions of this plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

(b) Effective with respect to deaths occurring on or after January 1, 2007, while a Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a Member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the Member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the Member's death while employed.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, a Member receiving differential wage payments (while the Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated Members in a reasonably equivalent manner.

SECTION 17
Monthly Payments.

Any benefit hereunder shall be payable in monthly installments.

SECTION 18
Optional Annuity.

An optional annuity, as herein provided, means a benefit computed according to the approximate equivalent formula recommended by the actuary and adopted by the Board, payable during the lifetime of the specified beneficiary only if such beneficiary survives the Retiree who was receiving a reduced Service retirement annuity. If the specified beneficiary predeceases the Retiree, the Retiree's reduced Service retirement annuity shall revert to the Service retirement annuity calculated for the Member had the Member not selected the optional annuity. This recalculated Service retirement annuity shall be payable beginning the first of the month following notice of the beneficiary's death.

The amount of the optional annuity shall be that specified in the Member's notice of election, and shall not, in any event, be more than the amount of the Member's reduced Service retirement annuity.

The optional annuity shall begin on the day following the death of the Retiree.

SECTION 19

Permanent Service-Connected Disability Benefits.

Any Member, who shall, while engaged in the performance of his or her duties, be permanently injured or disabled, other than as the result of an occupational disease, and upon an examination by a physician or physicians appointed by the Board of Trustees, be found to be physically or mentally disabled as a result of such permanent Disability or injury so as to render him incapable to perform the duties of the position held by the Member at date of Disability, shall be entitled to be retired, and the Board of Trustees shall thereupon order such Member's retirement and upon being retired, the Member shall be paid a benefit equal to seventy-five percent (75%) of the Salary in effect on the date when Salary payments ceased. The benefit shall be established according to the charter ordinance that is in effect at the time Salary payments ceased.

Any Police or Fire Officer incurring an occupational disease due to service-connected causes, who upon examination by a physician or physicians appointed by the Board is found by at least two (2) out of three (3) such physicians to be physically or mentally disabled as the direct result and proximate cause of such disease so as to render him incapable to perform the duties of the position held by the Member at date of Disability, shall be entitled to be retired at a benefit equal to fifty percent (50%) of his or her Salary in effect upon the date when Salary payments ceased. The benefit shall be established according to the charter ordinance that is in effect at the time Salary payments ceased.

The Board of Trustees may, when they deem it advisable, call back for re-examination by a physician, any Member retired by reason of permanent Disability under the provisions of this ordinance, and if said examination discloses that said Member is then able to perform his or her duties in said department, he or she may be returned to Service; and if said Member, upon request, fails or refuses to return to duty, then all payments from said System shall cease.

The Disability benefit shall be recomputed when the Member attains age fifty-five (55). At such time the Member attains age fifty-five (55), the Disability benefit shall be recomputed in the same manner as a Service retirement benefit which would have been received had the Member been continuously in Service in the grade occupied at date absence on account of Disability began, subject to periodic Salary changes in such grade. In such a case, Service credit shall be granted during the period of payment of the Disability benefit, prior to attainment of age fifty-five (55), toward the recomputed Disability benefit.

SECTION 20

Non-Service Connected Disability.

Any Member having at least seven (7) years of credited Service, under the age of fifty-five (55) years, who becomes totally and permanently disabled due to any cause other than Service-Connected Disability, while an employee of the City, shall be entitled to a Non-Service Connected Disability benefit. The benefit shall be equal to thirty percent (30%) of the Final Average Salary plus one (1) percentage point for each year of Service above seven (7) years, up to a maximum of fifty percent (50%) of Final Average Salary. Accumulated unused Sick Leave will be added to Service so long as the computed benefit does not exceed fifty percent (50%) of Final Average Salary. The benefit shall be reduced by any amounts received by the Member from public funds as Salary, or other forms of compensation during Disability, exclusive of payments under Federal Social Security.

Non-Service Connected Disability shall be considered total and permanent if it results in some impairment of mind or body due to mental or physical incapacity resulting from external force, or violence, or disease that substantially precludes a Member from performing with reasonable regularity the substantial and material parts of any gainful work or occupation that the Member would be competent to perform were it not for the fact that the impairment is founded upon conditions which render it reasonably certain that it will continue indefinitely.

The benefit shall be payable during continuing Disability of the Member, but the Member shall be subject to periodic medical examinations as herein provided.

Should a Member recover from Disability and re-enter the Service of the City as a Police or Fire Officer, and shall render at least three (3) years of Service thereafter, the Member shall be credited for Service retirement benefit purposes with the periods of time during which the Member shall have received a Non-Service Connected Disability benefit; otherwise, such Member re-entering Service shall not be entitled to Service credit for the periods of such Disability.

Disability incurred while in military service shall not be considered for benefits under the provisions of this ordinance.

A Non-Service Connected Disability shall begin to accrue upon commencement of Disability, provided that if the Member is receiving Salary, the benefit shall begin to accrue from the date Salary has ceased. If written application for the benefit shall not have been filed with the Board prior to the expiration of ninety (90) days from date of Disability, the benefit shall begin to accrue from the date application therefore has been filed, but in no event prior to the time when payments to the Member on account of Salary have ceased.

SECTION 21

Administration of Disability Annuities.

(a) The determination of Disability from any cause shall be made upon the basis of reports of examinations made by at least two (2) physicians designated by the Board.

(b) A Member receiving service-connected or non-Service Connected Disability benefits shall be required, at the discretion by the Board of Trustees, to submit to an examination at least once each year by a physician or physicians designated by the Board to establish that the Member is incapacitated for active Service as a Police or Fire Officer and is entitled to continue to receive a Disability benefit. The Board may terminate a Disability benefit upon evidence that the Member is no longer disabled for Service. If such termination occurs and the Member does not re-enter the Service, he or she shall be entitled to a refund of the excess, if any, of the contributions made by the Member, without interest, over the amounts received by the Member on the Disability benefit.

If medical examination or an investigation made by the Board discloses that the Member is engaged in or is able to engage in any gainful occupation resulting in earnings for services rendered in any capacity, payment of the Disability benefit shall be reduced to an amount which, when added to the Member's income from such gainful occupation, does not exceed the rate of Salary currently being paid for the rank similar to that held by the Member at commencement of Disability.

(c) Each Member in receipt of a Disability benefit shall submit to the Board at least once each year, an authenticated copy or duplicate original of the Member's complete United States Income Tax Return, being a statement of income from gainful occupation for the preceding twelve (12) months. Any adjustment in benefit payments, as aforesaid, shall be based upon such statement of income.

(d) Should any Member receiving a Disability benefit refuse to submit to a medical examination or supply the Board with required statements of income, as herein above provided, benefit payments by the Retirement System shall be discontinued until compliance with the provisions hereof. Should such refusal continue for one (1) year, all rights of the Member to any Disability benefit shall be revoked by the Board. Upon finding that a Member receiving a Disability benefit has deliberately falsified information contained in his or her statement of

income, all rights of the Member in any Disability benefit shall be revoked by the Board.

SECTION 22

Backward Deferred Retirement Option Plan (DROP).

(a) Any Member eligible to retire on or after January 1, 2001 may, at the time of applying for retirement benefits, elect a backward DROP benefit with payment as provided herein. A Member electing a backward DROP must select an effective backward DROP date. The Member must be eligible to receive a Service retirement benefit on the effective backward DROP date.

(b) The maximum allowable DROP Period for a backward DROP is sixty (60) months. The DROP Period is the period between the Member's effective backward DROP date and the date of the Member's Withdrawal from Service.

(c) For purposes of benefit calculations, the Member's retirement date will be the effective backward DROP date.

(d) A Member's unused Sick Leave credit at the Member's date of election of the backward DROP may be added to the Member's Service at the Member's effective backward DROP date.

(e) The Member's monthly retirement benefit is calculated as of the Member's effective backward DROP date and is payable at the Member's Withdrawal from Service.

(f) The Member's DROP benefit is calculated by:

(1) multiplying the Member's monthly retirement benefit from (e), times the number of months selected by the Member as the backward DROP Period;

(2) plus any applicable post-retirement adjustments;

(3) plus interest at an annual rate of five percent (5%) compounded monthly.

(g) Application for withdrawal of the DROP account balance shall be made within ninety (90) days of the Member's Withdrawal from Service. Payment of the amount calculated in (f) shall be made only in a lump sum payment, a direct rollover, or some combination of the two.

SECTION 23

Service-Connected Death.

(a) Upon death of a Member, regardless of the Member's age or length of Service, resulting directly from service-connected causes; or an occupational disease if the Member had at least five (5) years of Service, and in the case of an occupational disease if death occurred within three (3) years from the date of commencement of the disease and the cessation of Salary payments to the Member, whichever is later, a surviving spouse shall be entitled to a benefit equal to fifty percent (50%) of the Member's final Salary at the date of the Member's death. This benefit payable to a surviving spouse hereunder shall be payable during such surviving spouse's lifetime.

(b) If such Member is also survived by a Minor Child or Minor Children, each such child shall be entitled to a benefit of ten percent (10%) of such Member's final Salary. Such benefit shall be paid to the custodial parent or guardian/conservator of each such child. The combined payments to a surviving spouse and Minor Children shall in no event exceed seventy-five percent (75%) of such Member's final Salary. In the event that the combined payments do exceed such amount, the benefit of the surviving spouse shall be reduced so that combined payments equal seventy-five percent (75%) of such Member's final Salary. At the time that combined payments no longer exceed

such amount, the benefit of the surviving spouse shall be increased so that combined payments equal seventy-five percent (75%) of such Member's final Salary, but in no event shall the benefit of the surviving spouse be an amount greater than fifty percent (50%) of such Member's final Salary.

(c) If such Member dies leaving no surviving spouse, each Minor Child of such Member then surviving shall be entitled to a benefit of twenty percent (20%) of such Member's final Salary. Such benefit shall be paid to the custodial parent or guardian/conservator of each child. The combined payments on account of such Minor Children shall not exceed sixty percent (60%) of such Member's final Salary. In the event that combined payments exceed such amount, the benefits for such children shall be reduced pro rata so that total payments equal sixty percent (60%) of such Member's final Salary.(d) Benefits paid on account of Minor Children shall terminate upon the first to occur of the following:

(1) The Minor Child reaching the age of eighteen (18) years;

(2) Death of the Minor Child; or

(3) Marriage of the Minor Child.

(e) The determination of whether death is Service-Connected or not shall be made in the manner provided for in the administration of Disability benefits.

SECTION 24

Non-Service Connected Death.

(a) Upon death of a Member who has at least three (3) years of Service:

(1) whose death is not due to Service-Connected causes; or

(2) who is on Sick Leave receiving Salary on the date of death and whose death is not due to Service-Connected causes; or

(3) who is on approved leave of absence extending not more than twelve (12) continuous months on the date of death and whose death is not due to Service-Connected causes,

the surviving spouse of such Member shall be eligible to receive a benefit if such surviving spouse was the lawfully wedded spouse at the time of the death of such Member. Such surviving spouse shall continue to be eligible to receive a benefit for such spouse's lifetime. The amount of such benefit shall be as calculated in subparagraph (c) below and shall be subject to adjustment as provided in subparagraph (e) below.

(b) Upon death of a Retiree:

(1) who is receiving Service or Non-Service Connected Disability pension benefits on the date of death; or

(2) who is receiving a Service retirement benefit or is a Deferred Retiree and has at least twenty (20) years of Service at the date of death,

the surviving spouse of such Retiree shall be eligible to receive a benefit if i) such surviving spouse was the lawfully wedded spouse of such Retiree on the date such Retiree retired or began receiving either a Service or Non-Service Connected Disability pension benefit, and ii) such surviving spouse is at least forty (40) years of age at the time of the death of such Retiree, or if less than forty (40) years of age has, at the time of death of such Retiree, the care and custody of a Minor Child or Children of such Retiree. A surviving spouse who is not eligible to receive a benefit because such surviving spouse is less than forty (40) years of age shall become eligible to receive a benefit on the date that such surviving spouse attains the age of forty (40) years, so long as such surviving spouse has not remarried. A surviving spouse who is eligible to receive a benefit shall continue to receive a benefit for such spouse's lifetime so long as such surviving spouse does not remarry after the date such Retiree dies and prior to

such surviving spouse attaining the age of forty (40) years. The amount of such benefit shall be calculated as provided in subparagraph (c) below and shall be subject to adjustment as provided in subparagraph (e) below.

(c) Subject to adjustment because of the requirements of subparagraph (e) below, the benefit to be paid to a surviving spouse who is eligible to receive such a benefit under either paragraph (a) or (b) above, shall be equal to thirty-five percent (35%) of such Member or Retiree's Final Average Salary, increased by one percentage point for each year of Service greater than three (3) years, up to a maximum benefit of fifty percent (50%) of Final Average Salary. Provided, however, for a Member or Retiree under Plan B, such benefit shall be equal to fifty percent (50%) of such Member or Retiree's final Salary.

(d) If a Member or Retiree dies under circumstances set out in subsection (a) or (b) above, each surviving Minor Child of such Member or Retiree shall be entitled to a benefit as calculated herein and subject to adjustment because of the requirements of subparagraph (e) below. The amount of such benefit, if a benefit is also being paid to a surviving spouse of such Member or Retiree, shall be ten percent (10%) of such Member or Retiree's Final Average Salary. The amount of such benefit, if no benefit is being paid to a surviving spouse of such Member or Retiree, shall be fifteen percent (15%) of such Member or Retiree's Final Average Salary. The benefit for a Minor Child shall be paid to the custodial parent or conservator of each such Minor Child. When a Minor Child is receiving a ten percent (10%) benefit and the benefit being paid to a surviving spouse of the Member or Retiree on account of whose death each benefit was initially paid is terminated, the benefit to be paid to such Minor Child shall increase to fifteen percent (15%) of such Member or Retiree's Final Average Salary.

(e) (1) The combined monthly benefit payment to a surviving spouse and Minor Children shall not exceed sixty-six and two-thirds percent (66 2/3%) of the Final Average Salary of the Member or Retiree on account of whose death the benefits are being paid. In the event that the calculation of such benefit results in such combined monthly benefit payment in excess of that amount, the benefit of the surviving spouse shall be reduced so that the combined monthly benefit payment equals sixty-six and two-thirds percent (66 2/3%) of such Member or Retiree's Final Average Salary. The benefit for such surviving spouse shall be increased at such time as the combined monthly benefit payment no longer exceeds such sixty-six and two-thirds percent (66 2/3%) limit, but in no event shall such increase result in such surviving spouse's benefit exceeding the amount originally calculated under subsection (c). When no benefit is being paid to a surviving spouse because the benefit calculated for the surviving spouse has been reduced to zero because of the adjustment set out above, any adjustment to the benefits paid to Minor Children because the combined monthly benefit payments exceed sixty-six and two-thirds percent (66 2/3%) of such Member or Retiree's Final Average Salary shall be made pro rata among such Member or Retiree's Minor Children, and such adjustment shall continue until the combined monthly benefit payment can be paid to eligible Minor Children without exceeding such sixty-six and two-thirds percent (66 2/3%) limit.

(2) The combined monthly benefit payment to Minor Children where there is no benefit being paid to a surviving spouse because no surviving spouse is eligible for such a benefit shall not exceed fifty percent (50%) of the

Final Average Salary of the Member or Retiree on account of whose death the benefits are being paid. In the event that combined monthly payments exceed such amount, the benefit of each such Minor Child shall be reduced pro rata so that combined monthly payments equal fifty percent (50%) of such Member or Retiree's Final Average Salary. In no event shall the benefit paid a Minor Child exceed fifteen percent (15%).

(3) The combined monthly benefit payment to a surviving spouse and Minor Children or to Minor Children shall not exceed the amount of the monthly Service retirement or Disability retirement benefit being paid on the date of the death of the Retiree on account of whose death such benefit payments are being made. In the event that the calculation of such benefit results in a combined monthly benefit payment in excess of such amount, i) the benefit of the surviving spouse shall be reduced so that the combined monthly benefit payment equals such Service retirement or Disability retirement benefit; or ii) if no benefit payment is being paid to a surviving spouse, the benefits of all Minor Children shall be reduced pro rata so that the combined monthly benefit payment equals such Service retirement or Disability retirement benefit. Once reduced, these benefit payments shall be increased in the same manner and subject to the same limitations as set forth in (e) (1) and (e) (2) above.

(f) Benefit payments for a Minor Child shall terminate upon such child reaching eighteen (18) years of age, the death of such child, or the marriage of such child, whichever shall occur first.

(g) The surviving spouse of a Retiree who retired on or after January 1, 2000 and thereafter dies under circumstances set out in subsections (b)(1) or (b)(2) above, shall not be limited by either the age requirement or the remarriage limitations set forth in subparagraph (b) herein. Provided, however that such surviving spouse, in order to be eligible to receive a benefit, shall have been such Retiree's lawfully wedded spouse for at least twelve (12) months immediately preceding the death of such Retiree.

(h) A Member who, on or after January 1, 2000, selects an effective backward DROP date which is prior to January 1, 2000, shall nevertheless be considered to have retired on or after January 1, 2000 for the purposes of determining the eligibility of such Member's surviving spouse for a benefit.

(i) For a Member or Retiree under Plan B, benefit payments on account of Minor Children shall be paid only if such Member or Retiree dies leaving no surviving spouse or dies leaving a surviving spouse who remarries prior to age forty (40). Under either such circumstance, the Minor Children of such Member or Retiree shall share equally a benefit equal to fifty percent (50%) of such Member or Retiree's final Salary.

SECTION 25

Post Retirement Adjustments.

For all Members retiring for any reason from and after February 1, 1974, upon completion of thirty-six (36) months of retirement, the monthly retirement benefits payable to such Retiree, or the monthly retirement benefits payable to the spouse or the Minor Child or Children of such Retiree, shall be increased two percent (2%) per year based on the original benefit, not compounded.

SECTION 26

Funeral Benefit.

The designated beneficiary of a Member who retired after November 21, 1973 under either Plan A, Plan B, or Plan C-79 shall be paid a funeral benefit of seven hundred fifty dollars ($750.00).

SECTION 27

Assignments Prohibited.

The right to a refund or a service retirement, Disability, death, or any benefit under the provisions of this ordinance, whatever name called, is personal with the recipient thereof, and the assignment or transfer of any such benefit, or any part thereof shall be void, except as may be provided herein. Any such refund or benefit shall not answer for debts contracted by the person receiving the same, and it is the intention of this ordinance that they shall not be subject to execution, attachment, garnishment, or affected by any judicial proceedings, except such benefit or any accumulated contributions due and owing from the System to any recipient are subject to claims of an alternate payee under a "qualified domestic relations order".

SECTION 28

Qualified Domestic Relations Orders.

As used in this section, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the Internal Revenue Code. The City of Wichita shall not be a party to any action under Article 10 of Chapter 60 of the Kansas Statutes Annotated but is subject to orders from such actions issued by the district court of the county where such action was filed and may also accept orders which it deems to be qualified under this section from courts having jurisdiction of such actions outside the State of Kansas. Orders from such actions shall specify either a specific amount or specific percentage of the amount of the benefit or any accumulated contributions due and owing from the Fund and to be distributed to the alternate payee. The order must contain the following information:

(a) Name, address, and social security number of the employee and alternate payee;

(b) Clearly identifies the appropriate Police & Fire Retirement System and plan;

(c) Creates or recognizes the existence of an alternate payee's rights to, or assigns to an alternate payee the right to receive a portion of the benefits otherwise payable to the employee;

(d) The date of marriage and divorce/separation;

(e) Statement that the benefit is payable only at the time of retirement of the employee or at the time the employee withdraws from Service, if the employee withdraws his or her contributions from the Fund;

(f) That the benefit is payable only during the lifetime of the retired employee or alternate payee should the alternate payee predecease the employee;

(g) Payment to the alternate payee shall be a lump sum if payment to the employee is lump sum, monthly if payment to the employee is monthly; and

(h) An employee who elects to participate in the DROP shall be treated as having retired for the purposes of a qualified domestic relations order.

The order to be qualified cannot allow the calculation of the lump sum payment or monthly benefit to be calculated in a manner which results in a payment or benefit in excess of the limits of the plan; cannot allow the alternate payee to be named as a surviving spouse or a survivor at the death of the retired employee; and cannot allow the alternate payee to name a beneficiary.

SECTION 29

Current Retiree Benefit Catch-Up Provision.

For Retirees who have been receiving a Service or Disability retirement benefit for ten (10) years or more as of January 1, 2000, and for the surviving spouses of deceased Retirees who retired and began receiving a Service or Disability retirement benefit prior to January 1, 1990, the pension benefit payable to such Retirees and such surviving spouses shall be increased by a factor of two percent (2%) per year for each year since such Retiree or the deceased Retiree began receiving a Service retirement benefit. This increase is a one-time benefit adjustment. This increase shall be applied to both the base pension benefit and any post-retirement adjustment, combined. The increased pension benefit calculated under this section shall in no event exceed $8,183.00 annually.

SECTION 30

Special Provisions for Safety Officers Employed by the Wichita Airport Authority.

Safety officers employed by the Wichita Airport Authority of the City of Wichita on June 29, 1996 shall be transferred on that date from the Wichita Employees' Retirement Plans to the Police and Fire Retirement System's Plan C-79. Notwithstanding provisions of any other sections contained herein, the following provisions shall be applicable for such safety officers transferred as of June 29, 1996:

(a) Service credit under the Wichita Employees' Retirement Plans shall be considered Service for purposes of meeting Service eligibility requirements for benefits under the Police and Fire Retirement System Plan C-79;

(b) Service under the Wichita Employees' Retirement Plans shall not be considered in the determination of the amount of any benefit payable by the Police and Fire Retirement System Plan C-79; and

(c) Under no circumstances will the total retirement benefit payable to a safety officer as a result of this transfer exceed an amount equal to seventy-five percent (75%) of his or her Final Average Salary regardless whether the source of the benefit is the Wichita Employees' Retirement System or the Police and Fire Retirement System.

SECTION 31

Re-employment of Retirees.

(a) Any Member under the Retirement System who is receiving a retirement benefit and who is re-employed as a commissioned Police or Fire Officer with the City of Wichita, or in a non-commissioned position under the Wichita Employee's Retirement System, shall have such Member's retirement benefit immediately suspended, and no benefit payments shall be made during the entire time such Member is so employed. However, nothing is intended to prohibit such member from participation in the appropriate retirement system and the accrual of additional Service for credit.

(b) Upon termination of such employment as a commissioned officer, payment of the retirement benefit shall be resumed; provided, however, nothing herein shall be construed to prohibit the employment of a retired police or fire commissioned officer in an advisory or consultant capacity on an independent contractor basis.

(c) Under no circumstances will the total retirement benefit payable to a re-employed Member exceed an amount equal to seventy-five percent (75%) of his or her Final Average Salary regardless whether the source of the benefit is the Wichita Employees' Retirement System or the Police and Fire Retirement System.

SECTION 32

Fraud.

Any person who knowingly makes a false statement in connection with the application for or the receipt of benefits, or falsifies or permits to be falsified, any record or records of this Retirement System, in an attempt to defraud the Retirement System, shall forfeit all rights to benefits hereunder. The Retirement System and the City shall have the right to recover by setoff or otherwise, any payments based on such false statement or falsified record.

SECTION 33

Limited Extension of Option and its Effective Date.

Any Police or Fire Officer who had previously elected to participate in Plan B shall have an option at any time prior to retirement to elect participation in Plan A by paying into the Retirement System a sum of money, without interest, equal to the difference in contributions which would have been paid by such Police or Fire Officer had they elected Plan A on January 1, 1965; provided, that once having made such election, such Police or Fire Officer shall not be permitted to revert back to Plan B.

SECTION 34

Benefit and Disability Rights Under Prior Laws Saved.

This ordinance shall not affect the rights nor decrease the Disability or retirement benefits of any Member or such Member's beneficiaries, who has died, been permanently disabled, or retired under any previously authorized and existing pension or retirement system. Any Member in service at the time of the effective date of this ordinance, who is at said time entitled to a benefit under any previously authorized pension or Retirement System shall not have such benefit reduced by virtue of the application of the provisions of this ordinance.

SECTION 35

Invalidity of Part.

If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance, which can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are declared to be severable.

SECTION 36

Compliance with Code Section 415 Limitations on Contributions and Benefits.

a) Notwithstanding any other provisions of the Retirement System to the contrary, the Member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.

(b) *Participation in Other Qualified Plans: Aggregation of Limits.*

(1) The 415(b) limit with respect to any Member who at any time has been a Member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the Member has been a Member were payable from one (1) plan.

(2) The 415(c) limit with respect to any Member who at any time has been a Member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total annual additions under

all such defined contributions plans in which the Member has been a Member were payable from one (1) plan.

(c) *Basic 415(b) Limitation.*

(1) Before January 1, 1995, a Member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a Member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the Retirement System. In no event shall a Member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(d) *Adjustments to Basic 415(b) Limitation for Form of Benefit.*

If the benefit under the plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any) payable to the Member under the plan commencing at the same annuity starting date as the form of benefit to the Member, or

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after

December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code; or

(C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(e) *Benefits Not Taken into Account for 415(b) Limitation.*

For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) *Other Adjustments in 415(b) Limitation.*

(1) In the event the Member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar ($160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the Member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in (1) above shall not apply.

(3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) *Ten Thousand Dollar ($10,000) Limit.*

Notwithstanding the foregoing, the retirement benefit payable with respect to a Member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such Member under this plan and under all other qualified defined benefit pension plans to which the Member's employer contributes, do not exceed ten thousand dollars ($10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the Member participated.

(h) *Effect of COLA without a Lump Sum Component on 415(b) Testing.*

Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a Member with no lump sum benefit, the following will apply:

(1) a Member's applicable Limit will be applied to the Member's annual benefit in the Member's first limitation year without regard to any cost of living adjustments under Section 25;

(2) to the extent that the Member's annual benefit equals or exceeds the Limit, the Member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a Member's annual benefit, including any cost of living increases under Section 25, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(i) *Effect of COLA with Lump Sum Component on 415(b) Testing.*

On and after January 1, 2009, with respect to a Member who receives a portion of the Member's annual benefit in a lump sum, a Member's applicable Limit will be applied taking into consideration cost of living increases as required by

Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(j) *Section 415(c) Limitations on Contributions and Other Additions.*

After-tax Member contributions or other annual additions with respect to a Member may not exceed the lesser of $40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the Member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, Member contributions, and forfeitures credited to a Member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that Member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

(A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code.

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a Member's severance from employment or the end of the limitation year that includes the date of the Member's severance from employment if:

(I) the payment is regular compensation for services during the Member's regular working hours, or compensation for services outside the Member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the Member while the Member continued in employment with the employer; or

(II) the payment is for unused accrued bona fide sick, vacation or other leave that the Member would have been able to use if employment had continued; or

(III) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Member at the same time if the Member had continued employment with the employer and only to the extent that the payment is includible in the Member's gross income.

Any payments not described in paragraph (B) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to a Member who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the Member would have received if the Member had continued to perform services for the employer rather than entering qualified military service.

A Member who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the Member would have received during such period if the Member were not in qualified military service, determined based on the rate of pay the Member would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the Member would have received during such period was not reasonably certain, the Member's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(C) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a Member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

(k) *Service Purchases under Section 415(n).*

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

(1) the requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or

(2) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

(3) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subparagraph and will not fail to meet the

percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit-

(A) recognized by the system for purposes of calculating a Member's benefit under the system,

(B) which such Member has not received under the system, and

(C) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (B), may include service credited in order to provide an increased benefit for service credit which a Member is receiving under the system.

(5) The system will fail to meet the requirements of this section if-

(A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the system.

(6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to-

(A) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of repayment described in Section 415(k)(3) of the Internal Revenue Code),

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(C) service as an employee of an association of employees who are described in clause (A), or

(D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.

In the case of service described in clause (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a Member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to

whether the transfer is made between plans maintained by the same employer)-

(A) the limitations of paragraph (5) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible Member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible Member is an individual who first became a Member in the system before January 1, 1998.

(l) *Modifications of Contributions for 415(c) and 415(n) Purposes.*

Notwithstanding any other provision of law to the contrary, the system may modify a request by a Member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the Member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the system may either reduce the Member's contribution to an amount within the limits of those sections or refuse the Member's contribution.

(m) *Repayments of Cashouts.*

Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the Retirement System shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(n) *Reduction of Benefits Priority.*

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such Member.

SECTION 37

Direct Rollovers of Defined Benefit Plan Distributions.

(a) Except as otherwise indicated herein, this section shall apply to all rollovers made after December 31, 2001.

(b) For purposes of compliance with Section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than $200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of an eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

(2) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(A) an individual retirement account described in Section 408(a) of the Internal Revenue Code;

(B) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;

(C) an annuity plan described in Section 403(a) of the Internal Revenue Code;

(D) a qualified trust described in Section 401(a) of the Internal Revenue Code;

(E) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;

(F) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the Retirement System; or

(G) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(c) Rollover contributions and/or direct rollovers of distributions made after December 31, 2001 will be accepted for the purchase of prior or future service credit from the types of plans specified.

(d) The plan will accept a direct rollover of an eligible rollover distribution from:

(1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.

(2) An annuity contract described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state.

(e) The plan will accept a participant contribution of an eligible rollover distribution from:

(1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.

(2) An annuity contract described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state.

(f) The plan will accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408 (b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income.

SECTION 38

The Original of Charter Ordinance No. 214 of the City of Wichita, Kansas, is hereby repealed.

SECTION 39
Publication.

This ordinance shall be published once each week for two (2) consecutive weeks in the official city newspaper.

SECTION 40
Petition for Referendum.

This is a charter ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3), of the Constitution of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED by the governing body of the City of Wichita, Kansas, and signed by the Mayor, this 19th day of July, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

(Published in the Wichita Eagle on _____ and _____)

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE OF THE CITY OF WICHITA KANSAS, AMENDING CHARTER ORDINANCE NO. 214 RELATING TO THE POLICE AND FIRE RETIREMENT SYSTEM OF THE CITY OF WICHITA AND REPEALING THE ORIGINAL OF SAID CHARTER ORDINANCE.

WHEREAS, the City of Wichita, Kansas, has created and continued, by various charter ordinances, a retirement system for commissioned officers of the Wichita Police Department and Wichita Fire Department (the "Retirement System"); and,

WHEREAS, since their original adoption, the charter ordinances providing for the creation, modification and continuation of the Retirement System have been from time to time amended, supplemented and/or replaced; and,

WHEREAS, as part of the process to update its IRS determination letters, the City of Wichita desires to amend certain provisions of the retirement plans within the Retirement System; and,

WHEREAS, the Governing Body desires the investment committee to have the ability to invest in investment products that are offered through commingled group trust investment vehicles, and applicable revenue rulings (most recently, Revenue Ruling 2011-1), requiring that tax qualified plans investing through such vehicles must adopt the group trust(s) as part of the investing retiree benefit plan.

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

SECTION 1

The City of Wichita, Kansas, a city of the first class, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby continues its election, initially made in Charter Ordinance No. 19 of the City of Wichita, and preserved in subsequent charter ordinances amendatory thereto, to exempt itself from and makes inapplicable to it Section 13-14a01 through and including Section 13-14a14 of the Kansas Statutes Annotated; and further, the City hereby enacts the following sections hereof in substitution of, and as a complete replacement for, all currently existing provisions of Charter Ordinance No. 214 of the City of Wichita.

SECTION 2

Name and Effective Date.

The Police & Fire Retirement System of Wichita, Kansas, hereinafter referred to as the "Retirement System" is hereby established to provide retirement, survivor, death and other benefits for Police and Fire Officers of the City of Wichita and their dependents, continuing the provisions of the Retirement System, which was established January 1, 1965.

SECTION 3

Definitions.

The following words and phrases as used in this ordinance, unless a different meaning is plainly required by the context, shall have the following meanings:

"Act of Duty" means an act performed by a Member within the scope of occupational duties inherently involving special risks not generally assumed by a citizen in the ordinary

walks of life, for the purpose of protecting life or property, including any act of heroism as a Member.

"Actuarial Tables" means such tables of mortality and rates of interest as may be adopted by the Board.

"Board" means the Board of Trustees of the Police & Fire Retirement System.

"City" means the municipal government of the City of Wichita, Kansas.

"City Council" means the governing body of the City of Wichita, Kansas.

"Deferral Period" means that period of time between the date a vested employee leaves Service and the date upon which the employee is eligible for and begins to receive a pension benefit.

"Deferred Retiree" means a vested Member who has withdrawn from Service, has not elected to receive a refund of contributions and any applicable interest, and is eligible to receive retirement benefits at a future date.

"Disability" means total inability to perform permanently the duties of the position held by the Member at date of Disability due to a physical or mental incapacity resulting from external force or violence or disease.

"DROP" means the Deferred Retirement Option Plan available to Retirement System Members for a maximum period of five (5) years. The DROP is to be phased in over a three (3) year period starting on January 1, 2000. From January 1, 2000 to December 31, 2000, no Member may utilize the DROP; beginning January 1, 2001 to December 31, 2001, Members may select a backward DROP of up to one (1) year; beginning January 1, 2002 to December 31, 2002, Members may select a backward DROP of up to three (3) years; beginning January 1, 2003, Members may select a backward DROP of up to five (5) years.

"DROP Period" means the number of months between the actual retirement date under the DROP and the Member's date of Withdrawal from Service.

"Final Average Salary" means the average annual Salary for the three (3) highest consecutive years of Service within the last ten (10) years of Service as a Member, and which shall be computed on the basis of the seventy-eight (78) consecutive pay periods within which the Salary is the highest.

"Fund" means the Police & Fire Retirement Fund as first established by Charter Ordinance No. 5 of the City of Wichita, Kansas.

"Internal Revenue Code" refers to the Internal Revenue Code of 1986 or 1954, as applicable to governmental plans, and regulations promulgated with respect to the Internal Revenue Code.

"Member" means any Police or Fire Officer of the City receiving compensation and contributing to the Police & Fire Retirement System of Wichita.

"Minor Child" or "Minor Children" eligible for consideration under the provisions of the ordinance means children of the blood and adopted children, provided the proceedings for adoption shall have been initiated at least one (1) year prior to the date of death of the Member or Retiree.

"Police or Fire Officer" means, in the case of a Police Officer, any employee of the Police Department of the City holding the rank of Police Officer, including probationary Police Officers or any higher rank; and, in the case of a Fire Officer, any employee of the Fire Department of the City holding the rank of fire fighter, including probationary fire fighter or any higher rank; and in any case, commissioned officers. Effective June 29, 1996, the term "Police or Fire Officer" includes safety officers employed by the Wichita Airport Authority who shall be considered Fire Officers for purposes of electing representatives to the Board. The term "Police or Fire Officer" shall not include: (1) any person privately employed as a Police or Fire Officer; (2) any person temporarily employed as a Police or Fire Officer for an emergency; (3) any civilian employee in the Police or Fire departments; or, (4) any person permanently appointed to the position of Chief of Police under an offer of employment which provides the option of either membership in this Retirement System or the International City Management

Association deferred compensation and/or retirement programs, unless such person files in writing a selection of membership in this Retirement System within ninety (90) days of commencing employment, such selection of membership is irrevocable.

"Prior Service" means service rendered by a Member prior to January 1, 1965.

"Regular Interest" means interest at seven percent (7%) per annum, compounded monthly.

"Retiree" means a Police or Fire Officer who is receiving a retirement benefit from the Retirement System.

"Salary" means the base monthly rate of pay being paid in accordance with a Salary ordinance (and shall include longevity pay, educational pay, EMT pay, MICT, acting, Kelly, court appearance, bomb tech pay, flight pay, standby pay, and shift differential in the computation of benefits). Salary in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded.

"Service" means employment with the City as a Police or Fire Officer and those periods of military service, Sick Leave, and/or Disability for which Members are entitled to Service credit under the provisions of this ordinance.

"Service-Connected Disability" means any physical or mental incapacity resulting from external force, violence, or occupational disease occasioned by an Act of Duty as a Police or Fire Officer, imposed by the ordinance or rules and regulations of the City, or any other Disability, which may be directly attributable to the performance of an Act of Duty.

"Service-Connected Disease" shall be applicable to any Member having five (5) years of Service or more, and shall mean any sickness, disease, or illness of the heart, lungs, or respiratory tract of a Member which may be determined to be directly attributable to his or her employment as a Police or Fire Officer, including exposures to heat and extreme cold, inhalation of heavy smoke, fumes or poisonous, toxic or chemical gases, while in the performance of an Act of Duty.

"Sick Leave" shall be defined as part of Service: provided that unused accumulated Sick Leave shall not be used to meet the existing age or Service requirements heretofore established under Plans A, B, and C-79.

"Withdrawal from Service" means complete severance of employment of any Member as an employee of the City by resignation, discharge, or dismissal.

SECTION 4

Continuation of Three Plans.

There are hereby continued in existence Plans A, B, and C-79. Plan A applies to all Police and Fire Officers entering the Service of the City between December 31, 1964 and January 1, 1979. Plan B applies to those Police and Fire Officers with Prior Service who chose to participate in Plan B. Plan C-79 applies to Police and Fire Officers newly employed or re-employed by the City on or after January 1, 1979.

It is the intent that the Police & Fire Retirement System of Wichita, KS plan be established as a qualified governmental pension plan under Section 401(a) and 414(d) of the Internal Revenue Code. Retirement plan assets are to be held in a trust as required under Section 401(a) of the Internal Revenue Code. The Board shall distribute the corpus and income of the retirement plan to the members and their beneficiaries in accordance with the retirement plan's law. At no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries shall any part of the corpus and income be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries. Upon complete or partial termination of the retirement plan, the rights of members to benefits accrued to the date of termination, to the extent funded, or to the amounts in their accounts are nonforfeitable, and amounts in their accounts may be distributed to them.

SECTION 5

Membership.

Membership of the Retirement System shall include:

(a) Any person becoming a Police or Fire Officer on or after January 1, 1965.

(b) Any person who was a Police or Fire Officer on December 31, 1964. Any Police or Fire Officer who was temporarily absent on December 31, 1964, due to sickness or Disability, and any such person on an approved leave of absence on said date for any cause, provided such leave shall not have extended for more than one (1) year continuously, except for military service, shall be considered as a Police or Fire Officer on such date.

SECTION 6

Retirement System Funding.

An annual determination shall be made of the actuarial reserve requirements for the benefits provided herein for the Members and their beneficiaries based upon such Member's current and future Services. In addition to interest income and other income accruing to the Retirement System, these requirements shall be by Member contributions and City contributions as follows:

(a) From and after August 7, 1999, each Member of Plan A shall contribute eight percent (8%) of Salary earned and accruing after such date, each Member of Plan B shall contribute six percent (6%) of Salary earned and accruing after such date, and each Member of Plan C-79 shall contribute seven percent (7%) of Salary earned and accruing after such date as their share of the cost of the benefits provided herein.

These contributions shall be made in the form of a deduction from Salary.

(b) The City shall make bi-weekly contributions in an amount, which will be sufficient to provide actuarial reserves for earned benefits and the expenses of plan administration. In the event that Police and Fire Officers are paid other than on a bi-weekly basis, the City shall make such contributions with the same frequency as Police and Fire Officers are paid.

(1) To provide for any unfunded accrued liability, the City shall contribute a sum sufficient to amortize such liability over a period of not more than twenty years.

(2) The amount of City contribution provided in this section shall be established by applying percentage rates of contribution as actuarially determined to the salaries being paid to the Members during each payroll period, and the resulting amounts shall be remitted by the City to the Retirement System concurrently with the payment of the salaries of the Members.

(3) For the purpose of funding all obligations of the Retirement System under the provisions of this ordinance over and above Member contributions and other income accruing to the Retirement System, as herein provided, the City may levy a tax, which levy shall be in addition to the levies now authorized by law for corporate or other purposes.

(4) The City shall pick up the employee contribution required by subsection (a) of this section for all Salary earned after the effective date of this subsection. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code. The City shall pick up these employee contributions from funds established and available in the salaries account, which fund would otherwise have been designated as employee contributions

and paid to the Retirement System. Employer contributions picked up by the City pursuant to this subsection shall be treated for all other purposes of this and other laws of the City in the same manner and to the same extent as employer contributions made prior to the effective date of this subsection. This subsection is effective for pay periods beginning on and after January 1, 1994.

(5) Forfeitures may be used to reduce City contributions but should not be used to increase benefits, in compliance with Section 401(a)(8) of the Internal Revenue Code.

SECTION 7

Composition; Expenditures.

(a) The Fund shall consist of all moneys received from contributions made by employees, refunds made by employees on re-employment, investments, earnings, and moneys paid into the Fund by the City.

(b) All benefits paid from the Retirement System shall be distributed in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. This is being adopted in accordance with Section 823 of the Pension Protection Act of 2006. In order to meet these requirements, the Retirement System shall be administered in accordance with the following provisions:

(1) Distribution of a Member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the Member attains age 70 ½ or April 1 of the year following the calendar year in which the Member retires. If a Member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit as required by this rule in the form provided in Sections 13 or 15;

(2) The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated beneficiary, or over a period not extending beyond the life expectancy of the Member or of the Member and a designated beneficiary. The life expectancy of a Member or the Member's spouse may not be recalculated after the benefits commence;

(3) The Retirement System, pursuant to a qualified domestic relations order, may establish separate benefits for a Member and nonmember;

(4) If a Member dies before the required distribution of the Member's benefits has begun, the Member's entire interest much be either:

(A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year in which the Member died; or

(B) distributed within five years of the Member's death;

(5) If a Member dies after the required distribution of benefits has begun, the remaining portion of the Member's interest must be distributed at least as rapidly as under the method of distribution before the Member's death;

(6) The amount of an annuity paid to a Member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and

the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A 2;

(7) The death and disability benefits provided by the Retirement System are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code, and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the Members' benefits received from the Retirement System; and

(8) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

(c) The Board is authorized to expend funds for the following purposes: clerical and secretarial work, stationery, supplies and printing; and professional services of actuaries, accountants, physicians, and attorneys, the foregoing list not being intended to limit or exclude expenditures for other proper purposes.

(d) The Board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(e) Effective as of July 1, 1989, the Board will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board by rule; such benefits will not be subject to employer discretion. The Board rules adopted for this purpose are incorporated into this section as part of the plan document.

SECTION 8

Accounting and Actuarial.

(a) The assets of the Retirement System shall be held for the express purposes set forth in the provisions of this ordinance. An adequate system of accounts and records shall be established and maintained.

(b) An actuarial experience study of the Retirement System shall be made at least once every five (5) years by an actuary engaged by the Board to check demographic and economic assumptions used in the calculations of liabilities and costs. An annual actuarial valuation of the Retirement System shall be made as of December 31st of each year for the purpose of establishing its financial condition and checking its current operating experience.

(c) Any excess balance in the Retirement System as determined in such valuation shall be applied to reduce the City's rate of contribution in succeeding years. Such contribution adjustments shall be made upon recommendation of the actuary.

SECTION 9

Management-Policy Direction.

The Retirement System continued and maintained by this ordinance shall be construed to be a trust, separate and distinct from all other entities. The responsibility for the direction and operation of the Retirement System, and for making effective the provisions hereof, is hereby vested in a Board. The Board shall consist of sixteen (16) Members, as follows:

(a) The City Manager, or an individual appointed by the City Manager (the City Manager's Designee);

(b) The Chief of the Police Department and the Chief of the Fire Department;

(c) Seven (7) trustees appointed by the City Council who need not be employees of the City. Trustees appointed by the Council shall be appointed for such terms and shall be subject to such limitation of terms as adopted by ordinance;

(d) Three (3) Police Officers and three (3) Fire Officers, each having at least five (5) years of Service, who shall be Members of the Retirement System and shall be elected by the Members from the respective occupational groups according to rules of election to be adopted by the Board. Elected trustees shall serve four-year terms expiring on December 31st of the fourth year following their election;

(e) The City Manager's designee shall serve a two (2) year term ending on August 31st of the second year following appointment;

(f) An elected or appointed trustee shall continue in office until the trustee's successor is elected or appointed, and has qualified. Any elected trustee shall be disqualified to serve in that capacity upon termination of Service with the City. If a vacancy occurs in the office of elected trustees, a successor shall be elected for the unexpired term of office within thirty (30) days by a special election, unless the regular bi-annual election occurs sooner. If a vacancy occurs in the office of an appointive trustee, such vacancy shall be filled for the unexpired term in the same manner as the office was previously filled;

(g) Each trustee shall take an oath that, so far as it devolves upon the trustee, the trustee will diligently and honestly administer the affairs of the Board, and that the trustee will not knowingly or willfully permit to be violated any of the provisions of the ordinances applicable to the Retirement System. Such oath shall be subscribed by the trustee making it, and certified by the officer before whom it is taken, and immediately filed with the City Clerk. A trustee shall be deemed to have qualified for membership on the Board when such oath shall have been filed;

(h) Subject to the limitations prescribed herein, the Board shall from time to time establish rules and regulations for the administration of the Retirement System and to implement the provisions of this ordinance as may be required. It shall hold regular meetings at least quarterly in each year and such special meetings as may be deemed necessary. The annual meeting shall be held in the month of January of each year. All meetings shall be open to the public. A record of proceedings of all meetings shall be kept by the Board;

(i) Each trustee shall be entitled to one (1) vote on the Board, and the concurrence of a majority vote of the trustees present at the meeting shall be necessary; provided, however, that in all matters relating to: (1) changes in the ordinances requiring City Council action; (2) Disability applications; (3) hiring or dismissal of consultants; and (4) alteration of the Investment Committee's recommendations for investment advisor, actuary, asset allocation plan and investment policy, at least nine (9) affirmative votes shall be required for passage; and

(j) A trustee shall receive no Salary while serving in that capacity, provided, however, that Police and Fire Officers elected to the Board shall be permitted to receive their regular Salary from the City of Wichita.

SECTION 10

Officers and Their Duties.

The Board shall have the following officers, whose duties shall be prescribed by the by-laws to be adopted by the Board:

(a) A President, a First Vice President, and a Second Vice President shall be elected from among its trustees.

(b) The Administrator of the Retirement System shall be the Pension Manager who is appointed to such position by the City Manager.

(c) The City Treasurer, ex-officio, shall be treasurer of the Retirement System.

(d) The City Attorney, ex-officio, shall be legal counsel to the Board, and shall represent the Board in all litigation affecting the Retirement System.

(e) An actuary shall be appointed to serve as technical advisor in the administration of the Retirement System on matters pertaining to the technical and actuarial aspects thereof.

(f) A specializing physician or physicians shall be appointed at the discretion of the Board to pass upon claims for Service–Connected and non-Service Connected Disability benefits, on medical questions pertaining to such claims, and on any other matters requiring medical advice that may arise in administration of the Retirement System.

SECTION 11

Administration.

Subject to the direction of the Board, the Administrator of the Retirement System shall:

(a) Employ such clerical and professional services as may be required for the proper operation of the Retirement System, whose compensation shall be fixed by the City Council;

(b) Establish and maintain records, files, and accounts in such form and scope as will give effect to the requirements of the Retirement System in accordance with the provisions hereof;

(c) Accumulate actuarial data concerning the operating experience of the Retirement System in such form as is necessary for the annual actuarial valuations and periodic actuarial studies in accordance with the recommendations of the actuary;

(d) Prepare periodic reports as may be required for the efficient administration of the Retirement System;

(e) The Administrator shall also prepare each year the annual report of the Board, to be submitted to the City Council embodying, among other things, a statement of assets, liabilities and reserves certified by the actuary, an accountant's balance sheet supported by a statement of income and expenditures, a listing of investments owned by the Retirement System, a detailed statement of investments acquired and disposed of during the year covered by the report, and such other financial and statistical data as may be deemed necessary for a proper interpretation of the condition of the Retirement System and the results of its operations. The Board shall cause to be distributed among the Members of the Retirement System a synopsis of such annual report.

SECTION 12

Investments.

(a) The Board shall invest and reinvest any portion of the Fund not needed for immediate benefit payments through a joint investment fund comprised of assets of the Wichita Employees' and Police & Fire Retirement Systems. The joint investment fund shall be overseen by an investment committee comprised of trustee representatives elected from both Boards and a City Manager's designee. The administrator shall be an ex-officio, non-voting Member of the investment committee.

(b) To achieve the investment objective of making the Fund as productive as possible, the following standards and limitations are set forth:

(1) In investing and reinvesting monies in the Fund and in acquiring, retaining, managing, and disposing of investments of the Fund, there shall be exercised the judgment and care under the circumstances then

prevailing which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard and subject to the following requirements, there may be acquired, retained, managed, and disposed of as investments of the Fund every kind of investment which people of prudence, discretion, and intelligence acquire, retain, manage, and dispose of for their own account;

(2) The proportion of the funds invested in corporate preferred and common stocks shall not exceed seventy percent (70%);

(3) Investments may be made in any pooled arrangement such as a mutual fund, separate account, or commingled fund operated by a qualified investment counselor, an insurance company, or a bank;

(4) Investments managed by in-house staff will be restricted to high-grade marketable fixed income securities;

(5) Other investments separately managed by a qualified investment counselor, an insurance company, or a bank, who represent that they act as a fiduciary, will be handled similarly to most other clients of the managing firm, except for holdings of money market instruments or their equivalent;

(6) The Board shall impose whatever limitations are deemed appropriate under its investment policy statement;

(7) The proportion of the Fund invested in securities of a corporation organized under the laws of a country other than the United States of America and securities issued by a foreign country or political subdivision thereof shall not exceed a total of thirty-five percent (35%)~~.~~:

(8) Notwithstanding any contrary provision in this ordinance, assets of the Retirement System may be transferred to a group trust meeting the requirements of Revenue Ruling 2011-1 that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets of pension, profit-sharing and stock bonus trusts or custodial accounts qualifying under Section 401(a) of the Internal Revenue Code that are exempt under Section 501(a) of such Code; individual retirement accounts that are exempt under Section 408(e) of the Internal Revenue Code; eligible governmental plan trusts or custodial accounts under Section 457(b) of the Internal Revenue Code that are exempt under Section 457(g) of such Code; custodial accounts under Section 403(b)(7) of the Internal Revenue Code; retirement income accounts under Section 403(b)(9) of the Internal Revenue Code; and governmental plans under Section 401(a)(24) of the Internal Revenue Code. Following the investment committee's selection of such a group trust for investment, and upon the transfer of assets of the Retirement System to such group trust, the group trust shall be deemed adopted as a part of each of the plans of the Retirement System as required by Revenue Ruling 2011-1 for the duration of such investment.

For purposes of valuation, the value of the interest maintained by the plan in such group trust shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

(c) Nothing in this ordinance, however, shall be construed so as to give the Board at any time authority to invest directly or indirectly in any:

(1) Real estate; except in pooled arrangements such as a mutual fund, separate account or commingled fund operated by a qualified investment counselor or an insurance company. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(2) Private equity; except in a commingled fund-of-funds vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(3) Timber; except in a commingled fund vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(4) Mortgages secured by real estate, except insured mortgages under Titles 203, 207, 220 and 221 of the Federal Housing Act;

(5) Oil and gas leases or royalties; or

(6) Commodities (including but not limited to wheat, gold, gasoline, options, or financial futures); provided, however, that the restriction on investments contained in this paragraph shall not apply to funds which are invested in a mutual fund, separate account or commingled fund operated by a registered investment advisor or insurance company.

(d) The Board shall have the power to hold, purchase, sell, assign, transfer, and dispose of any of the securities in which monies of the Retirement System have been invested, as well as the proceeds from such investments, and any other property belonging to the Retirement System.

(e) All investments shall be clearly marked to indicate ownership of the Retirement System, and to the extent possible, shall be registered in its name. No securities shall be purchased or sold, or in any manner hypothecated, except by action of the Board duly entered in the record of its proceedings.

(f) Any limitations affecting the purchase of securities shall be applicable only at the time of purchase and shall not require the liquidation of an investment at any time.

(g) No trustee or employee of the Board shall have any direct interest in the income or gains from any investment made by the Board, nor shall any such person receive any pay or emolument for services in connection with any investment. No trustee or employee of the Board shall become an endorser or surety, or in any manner an obligor for money loaned or borrowed from the Retirement System. Proof that any such person has violated any of these restrictions shall make him guilty of a misdemeanor or larceny, as the case may be, and such person shall be punishable therefore as provided by law.

SECTION 13

Distribution of Contributions.

(a) Any Member withdrawing from Service prior to retirement shall be entitled to a distribution, in a single sum, of the Member's accumulated contributions. Those Members withdrawing from Service after December 31, 1999 shall receive interest at the rate of five percent (5%) per year on such contributions, which shall be credited to accumulated contributions as of the last day of December of each year beginning with the year 1999 through the year 2006. Beginning January 31, 2007 interest shall be credited monthly to accumulated contributions at the rate of five percent (5%) per year, compounded monthly. No interest shall be allowed in any case in which the contributions, and any prior interest earned, were in the fund for any period following termination. The payment of a distribution under the provisions of this section shall

automatically effect a waiver and forfeiture of all of such Member's accrued rights and benefits in the Retirement System. The Board may, in its sole discretion, withhold payment of a distribution for a period of not to exceed ninety (90) days after receipt of a written request for the same.

(b) Any Member who has received such distribution shall be considered a new Member under Plan C-79 upon re-employment provided that if such Member shall render at least three (3) years of Service following such Member's latest re-employment, such Member shall be entitled to regain his or her previously forfeited Service credits upon repayment of all amounts received as refunds, including Regular Interest from date of refund to date of repayment. The time and manner of making such repayments shall be fixed by the Board. Any Member who terminates employment and leaves the Member's contributions in the Retirement System, if rehired, shall be classified as a Member under Plan C-79.

(c) Upon death of a Member leaving no survivors eligible for a benefit from the Retirement System, such Member's accumulated contributions plus interest, if applicable, shall be paid in a single sum to such person or persons as the member shall have nominated by written designation duly executed and filed with the Board. If no such designation shall have been made, payment shall be made to the Member's legal representative.

(d) After termination of all benefit payments to the Member, surviving spouse, and/or Minor Children, a distribution shall be made to the designated beneficiary or legal representative of the Member, surviving spouse, or Minor Children consisting of the excess, if any, of the Member's accumulated contributions, together with interest thereon if applicable, over all such benefit payments made by the Retirement System to or for the benefit of the Member.

(e) Optional direct transfer of eligible rollover distribution shall be as required under Section 401(a)(31) of the Internal Revenue Code.

SECTION 14

Eligibility for Service Retirement; Indexing Deferred Benefits.

(a) Under Plan A or Plan B, any Member having at least twenty (20) years of Service may retire and receive a Service retirement benefit.

(b) Under Plan C-79, all Police and Fire Officers employed on or after January 1, 1979, having at least twenty (20) years of Service, and having attained age fifty (50), may retire on a Service retirement benefit; provided, that from and after January 1, 1979, any Member who has completed thirty (30) years of Service shall be eligible to receive, regardless of age, a retirement benefit, computed in accordance with a Service retirement benefit.

(c) A Member under Plan C-79 having at least twenty (20) years of Service may retire prior to the attainment of age fifty (50) by leaving active Service as a Police or Fire Officer of the City; leaving the Member's contributions in the Retirement Fund; and deferring the payment of the Member's retirement benefits until the Member has attained age fifty (50). If such Member has a Deferral Period of at least one (1) full month, such Member shall be entitled to a retirement benefit calculated as follows:

(1) A base retirement benefit calculated under Section 15 and

(2) A benefit (which may calculate as no actual increase in benefits), which shall be calculated for each calendar year or full months, in the case of a partial year in such Member's Deferral Period.

(3) The benefit calculation in subparagraph (2) shall be the base benefit calculation in subparagraph (1) adjusted annually for each calendar year

or full months in the Member's Deferral Period. The determination of whether a Member is due a benefit increase for a specific calendar year in which the Member has at least one (1) full month of Deferral Period shall be made by determining, for that calendar year, the smaller of (1) 1.055; or (2) the ratio of national average earnings for the second preceding calendar year to national average earnings for the third preceding calendar year. If the smaller of these two amounts is greater than 1.0, the Member shall be entitled to a benefit increase for that calendar year equal to the Member's base retirement benefit, as calculated under subparagraph (1), multiplied by such smaller amount. Any benefit increase for a partial year in the Member's Deferral Period shall be pro-rated for each month, based on the full year increase.

(d) A Member under Plan C-79 with at least ten (10) years of Service may withdraw from Service and elect to leave such Member's contributions in the Retirement System until such time as such Member is eligible to receive a retirement benefit. If such Member has a Deferral Period of at least one (1) full month, such Member shall be entitled to a retirement benefit calculated as provided for above.

(e) For purposes of compliance with the Internal Revenue Code and related guidance, the normal retirement benefit, which is the benefit calculated under Section 15(c), for a Member under Plan C-79 is nonforfeitable upon attainment of normal retirement age, which is age fifty-five (55), and the completion of ten (10) years of service, whichever is later. The retirement benefit is only payable after a Withdrawal from Service and is subject to the provisions of Sections 31 and 32. This subsection is not to be construed as a reduction or limitation of rights heretofore existing, nor as an indication that vested benefits would be forfeitable before the stated age is attained.

SECTION 15

Calculation of Retirement Benefit.

(a) Any Member in Plan A or Plan B having twenty (20) years or more of Service may make application to be retired, and if such application is made, the Board shall retire such Member and shall pay such Member a monthly benefit in an amount equal to fifty percent (50%) of such Member's Final Average Salary at date of his or her retirement, plus an additional two and one-half percent (2.50%) per year for each year above twenty (20) years up to a maximum of seventy-five percent (75%) of Final Average Salary. For purposes of computing a retirement benefit, unused Sick Leave will be added to Service so long as the computed benefit does not exceed seventy-five percent (75%) of Final Average Salary. The accumulated, unused Sick Leave shall not be used to meet the twenty (20) year Service requirement. A fractional period of Service of less than a full year shall be considered in the calculation of the benefit.

(b) Any Member in Plan C-79 having twenty (20) years or more of Service and who has attained the age of fifty (50) years may make application to be retired, and if such application is made, the Board shall retire such Member and shall pay such Member a monthly benefit in an amount equal to fifty percent (50%) of such Member's Final Average Salary at date of retirement, plus an additional two and one-half percent (2.50%) per year for each year above twenty (20) years up to a maximum of seventy-five percent (75%) of Final Average Salary. For purposes of computing the retirement benefit, unused Sick Leave will be added to Service so long as the computed benefit does not exceed seventy-five percent (75%) of Final Average Salary. The accumulated, unused Sick Leave shall not be used to meet the twenty (20) year Service requirement. A fractional period of Service of less than a full year shall be considered in the calculation of the benefit.

(c) Any Member having ten (10) years and less than twenty (20) years of Service may become a Deferred Retiree by electing to leave such Member's contributions and interest, if any, in the Retirement System. If such Member leaves the Member's contributions and interest in the Retirement System until the Member reaches age fifty-five (55) years, the Member shall be entitled to a retirement benefit as calculated in Section 14(d) herein. (Such benefit shall be calculated by multiplying the Member's years of Service by an amount equal to two and one-half percent (2.50%) and multiplying that product by the Member's Final Average Salary.) Upon retirement and commencement of the receipt of the retirement benefit, such Member shall not be entitled to any survivor's benefits.

SECTION 16
Military Service.

(a) Notwithstanding any provisions of this plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

(b) Effective with respect to deaths occurring on or after January 1, 2007, while a Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a Member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the Member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the Member's death while employed.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, a Member receiving differential wage payments (while the Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated Members in a reasonably equivalent manner.

SECTION 17
Monthly Payments.

Any benefit hereunder shall be payable in monthly installments.

SECTION 18
Optional Annuity.

An optional annuity, as herein provided, means a benefit computed according to the approximate equivalent formula recommended by the actuary and adopted by the Board, payable during the lifetime of the specified beneficiary only if such beneficiary survives the Retiree who was receiving a reduced Service retirement annuity. If the specified beneficiary predeceases the Retiree, the Retiree's reduced Service retirement annuity shall revert to the Service retirement annuity calculated for the Member had the Member not selected the optional annuity. This recalculated Service retirement annuity shall be payable beginning the first of the month following notice of the beneficiary's death.

The amount of the optional annuity shall be that specified in the Member's notice of election, and shall not, in any event, be more than the amount of the Member's reduced Service retirement annuity.

The optional annuity shall begin on the day following the death of the Retiree.

SECTION 19

Permanent Service-Connected Disability Benefits.

Any Member, who shall, while engaged in the performance of his or her duties, be permanently injured or disabled, other than as the result of an occupational disease, and upon an examination by a physician or physicians appointed by the Board of Trustees, be found to be physically or mentally disabled as a result of such permanent Disability or injury so as to render him incapable to perform the duties of the position held by the Member at date of Disability, shall be entitled to be retired, and the Board of Trustees shall thereupon order such Member's retirement and upon being retired, the Member shall be paid a benefit equal to seventy-five percent (75%) of the Salary in effect on the date when Salary payments ceased. The benefit shall be established according to the charter ordinance that is in effect at the time Salary payments ceased.

Any Police or Fire Officer incurring an occupational disease due to service-connected causes, who upon examination by a physician or physicians appointed by the Board is found by at least two (2) out of three (3) such physicians to be physically or mentally disabled as the direct result and proximate cause of such disease so as to render him incapable to perform the duties of the position held by the Member at date of Disability, shall be entitled to be retired at a benefit equal to fifty percent (50%) of his or her Salary in effect upon the date when Salary payments ceased. The benefit shall be established according to the charter ordinance that is in effect at the time Salary payments ceased.

The Board of Trustees may, when they deem it advisable, call back for re-examination by a physician, any Member retired by reason of permanent Disability under the provisions of this ordinance, and if said examination discloses that said Member is then able to perform his or her duties in said department, he or she may be returned to Service; and if said Member, upon request, fails or refuses to return to duty, then all payments from said System shall cease.

The Disability benefit shall be recomputed when the Member attains age fifty-five (55). At such time the Member attains age fifty-five (55), the Disability benefit shall be recomputed in the same manner as a Service retirement benefit which would have been received had the Member been continuously in Service in the grade occupied at date absence on account of Disability began, subject to periodic Salary changes in such grade. In such a case, Service credit shall be granted during the period of payment of the Disability benefit, prior to attainment of age fifty-five (55), toward the recomputed Disability benefit.

SECTION 20

Non-Service Connected Disability.

Any Member having at least seven (7) years of credited Service, under the age of fifty-five (55) years, who becomes totally and permanently disabled due to any cause other than Service-Connected Disability, while an employee of the City, shall be entitled to a Non-Service Connected Disability benefit. The benefit shall be equal to thirty percent (30%) of the Final Average Salary plus one (1) percentage point for each year of Service above seven (7) years, up to a maximum of fifty percent (50%) of Final Average Salary. Accumulated unused Sick Leave will be added to Service so long as the computed benefit does not exceed fifty percent (50%) of Final Average Salary. The benefit shall be reduced by any amounts received by the Member from public funds as Salary, or other forms of compensation during Disability, exclusive of payments under Federal Social Security.

Non-Service Connected Disability shall be considered total and permanent if it results in some impairment of mind or body due to mental or physical incapacity resulting from external force, or violence, or disease that substantially precludes a Member from performing with reasonable regularity the substantial and material parts of any gainful work or occupation that the Member would be competent to perform were it not for the fact that the impairment is founded upon conditions which render it reasonably certain that it will continue indefinitely.

The benefit shall be payable during continuing Disability of the Member, but the Member shall be subject to periodic medical examinations as herein provided.

Should a Member recover from Disability and re-enter the Service of the City as a Police or Fire Officer, and shall render at least three (3) years of Service thereafter, the Member shall be credited for Service retirement benefit purposes with the periods of time during which the Member shall have received a Non-Service Connected Disability benefit; otherwise, such Member re-entering Service shall not be entitled to Service credit for the periods of such Disability.

Disability incurred while in military service shall not be considered for benefits under the provisions of this ordinance.

A Non-Service Connected Disability shall begin to accrue upon commencement of Disability, provided that if the Member is receiving Salary, the benefit shall begin to accrue from the date Salary has ceased. If written application for the benefit shall not have been filed with the Board prior to the expiration of ninety (90) days from date of Disability, the benefit shall begin to accrue from the date application therefore has been filed, but in no event prior to the time when payments to the Member on account of Salary have ceased.

SECTION 21

Administration of Disability Annuities.

(a) The determination of Disability from any cause shall be made upon the basis of reports of examinations made by at least two (2) physicians designated by the Board.

(b) A Member receiving service-connected or non-Service Connected Disability benefits shall be required, at the discretion by the Board of Trustees, to submit to an examination at least once each year by a physician or physicians designated by the Board to establish that the Member is incapacitated for active Service as a Police or Fire Officer and is entitled to continue to receive a Disability benefit. The Board may terminate a Disability benefit upon evidence that the Member is no longer disabled for Service. If such termination occurs and the Member does not re-enter the Service, he or she shall be entitled to a refund of the excess, if any, of the contributions made by the Member, without interest, over the amounts received by the Member on the Disability benefit.

If medical examination or an investigation made by the Board discloses that the Member is engaged in or is able to engage in any gainful occupation resulting in earnings for services rendered in any capacity, payment of the Disability benefit shall be reduced to an amount which, when added to the Member's income from such gainful occupation, does not exceed the rate of Salary currently being paid for the rank similar to that held by the Member at commencement of Disability.

(c) Each Member in receipt of a Disability benefit shall submit to the Board at least once each year, an authenticated copy or duplicate original of the Member's complete United States Income Tax Return, being a statement of income from gainful occupation for the preceding twelve (12) months. Any adjustment in benefit payments, as aforesaid, shall be based upon such statement of income.

(d) Should any Member receiving a Disability benefit refuse to submit to a medical examination or supply the Board with required statements of income, as herein above provided, benefit payments by the Retirement System shall be discontinued until compliance with the provisions hereof. Should such refusal continue for one (1) year, all rights of the Member to any Disability benefit shall be revoked by the Board. Upon finding that a Member receiving a Disability benefit has deliberately falsified information contained in his or her statement of

income, all rights of the Member in any Disability benefit shall be revoked by the Board.

SECTION 22

Backward Deferred Retirement Option Plan (DROP).

(a) Any Member eligible to retire on or after January 1, 2001 may, at the time of applying for retirement benefits, elect a backward DROP benefit with payment as provided herein. A Member electing a backward DROP must select an effective backward DROP date. The Member must be eligible to receive a Service retirement benefit on the effective backward DROP date.

(b) The maximum allowable DROP Period for a backward DROP is sixty (60) months. The DROP Period is the period between the Member's effective backward DROP date and the date of the Member's Withdrawal from Service.

(c) For purposes of benefit calculations, the Member's retirement date will be the effective backward DROP date.

(d) A Member's unused Sick Leave credit at the Member's date of election of the backward DROP may be added to the Member's Service at the Member's effective backward DROP date.

(e) The Member's monthly retirement benefit is calculated as of the Member's effective backward DROP date and is payable at the Member's Withdrawal from Service.

(f) The Member's DROP benefit is calculated by:

(1) multiplying the Member's monthly retirement benefit from (e), times the number of months selected by the Member as the backward DROP Period;

(2) plus any applicable post-retirement adjustments;

(3) plus interest at an annual rate of five percent (5%) compounded monthly.

(g) Application for withdrawal of the DROP account balance shall be made within ninety (90) days of the Member's Withdrawal from Service. Payment of the amount calculated in (f) shall be made only in a lump sum payment, a direct rollover, or some combination of the two.

SECTION 23

Service-Connected Death.

(a) Upon death of a Member, regardless of the Member's age or length of Service, resulting directly from service-connected causes; or an occupational disease if the Member had at least five (5) years of Service, and in the case of an occupational disease if death occurred within three (3) years from the date of commencement of the disease and the cessation of Salary payments to the Member, whichever is later, a surviving spouse shall be entitled to a benefit equal to fifty percent (50%) of the Member's final Salary at the date of the Member's death. This benefit payable to a surviving spouse hereunder shall be payable during such surviving spouse's lifetime.

(b) If such Member is also survived by a Minor Child or Minor Children, each such child shall be entitled to a benefit of ten percent (10%) of such Member's final Salary. Such benefit shall be paid to the custodial parent or guardian/conservator of each such child. The combined payments to a surviving spouse and Minor Children shall in no event exceed seventy-five percent (75%) of such Member's final Salary. In the event that the combined payments do exceed such amount, the benefit of the surviving spouse shall be reduced so that combined payments equal seventy-five percent (75%) of such Member's final Salary. At the time that combined payments no longer exceed

such amount, the benefit of the surviving spouse shall be increased so that combined payments equal seventy-five percent (75%) of such Member's final Salary, but in no event shall the benefit of the surviving spouse be an amount greater than fifty percent (50%) of such Member's final Salary.

(c) If such Member dies leaving no surviving spouse, each Minor Child of such Member then surviving shall be entitled to a benefit of twenty percent (20%) of such Member's final Salary. Such benefit shall be paid to the custodial parent or guardian/conservator of each child. The combined payments on account of such Minor Children shall not exceed sixty percent (60%) of such Member's final Salary. In the event that combined payments exceed such amount, the benefits for such children shall be reduced pro rata so that total payments equal sixty percent (60%) of such Member's final Salary.(d) Benefits paid on account of Minor Children shall terminate upon the first to occur of the following:

(1) The Minor Child reaching the age of eighteen (18) years;

(2) Death of the Minor Child; or

(3) Marriage of the Minor Child.

(e) The determination of whether death is Service-Connected or not shall be made in the manner provided for in the administration of Disability benefits.

SECTION 24

Non-Service Connected Death.

(a) Upon death of a Member who has at least three (3) years of Service:

(1) whose death is not due to Service-Connected causes; or

(2) who is on Sick Leave receiving Salary on the date of death and whose death is not due to Service-Connected causes; or

(3) who is on approved leave of absence extending not more than twelve (12) continuous months on the date of death and whose death is not due to Service-Connected causes,

the surviving spouse of such Member shall be eligible to receive a benefit if such surviving spouse was the lawfully wedded spouse at the time of the death of such Member. Such surviving spouse shall continue to be eligible to receive a benefit for such spouse's lifetime. The amount of such benefit shall be as calculated in subparagraph (c) below and shall be subject to adjustment as provided in subparagraph (e) below.

(b) Upon death of a Retiree:

(1) who is receiving Service or Non-Service Connected Disability pension benefits on the date of death; or

(2) who is receiving a Service retirement benefit or is a Deferred Retiree and has at least twenty (20) years of Service at the date of death,

the surviving spouse of such Retiree shall be eligible to receive a benefit if i) such surviving spouse was the lawfully wedded spouse of such Retiree on the date such Retiree retired or began receiving either a Service or Non-Service Connected Disability pension benefit, and ii) such surviving spouse is at least forty (40) years of age at the time of the death of such Retiree, or if less than forty (40) years of age has, at the time of death of such Retiree, the care and custody of a Minor Child or Children of such Retiree. A surviving spouse who is not eligible to receive a benefit because such surviving spouse is less than forty (40) years of age shall become eligible to receive a benefit on the date that such surviving spouse attains the age of forty (40) years, so long as such surviving spouse has not remarried. A surviving spouse who is eligible to receive a benefit shall continue to receive a benefit for such spouse's lifetime so long as such surviving spouse does not remarry after the date such Retiree dies and prior to

such surviving spouse attaining the age of forty (40) years. The amount of such benefit shall be calculated as provided in subparagraph (c) below and shall be subject to adjustment as provided in subparagraph (e) below.

(c) Subject to adjustment because of the requirements of subparagraph (e) below, the benefit to be paid to a surviving spouse who is eligible to receive such a benefit under either paragraph (a) or (b) above, shall be equal to thirty-five percent (35%) of such Member or Retiree's Final Average Salary, increased by one percentage point for each year of Service greater than three (3) years, up to a maximum benefit of fifty percent (50%) of Final Average Salary. Provided, however, for a Member or Retiree under Plan B, such benefit shall be equal to fifty percent (50%) of such Member or Retiree's final Salary.

(d) If a Member or Retiree dies under circumstances set out in subsection (a) or (b) above, each surviving Minor Child of such Member or Retiree shall be entitled to a benefit as calculated herein and subject to adjustment because of the requirements of subparagraph (e) below. The amount of such benefit, if a benefit is also being paid to a surviving spouse of such Member or Retiree, shall be ten percent (10%) of such Member or Retiree's Final Average Salary. The amount of such benefit, if no benefit is being paid to a surviving spouse of such Member or Retiree, shall be fifteen percent (15%) of such Member or Retiree's Final Average Salary. The benefit for a Minor Child shall be paid to the custodial parent or conservator of each such Minor Child. When a Minor Child is receiving a ten percent (10%) benefit and the benefit being paid to a surviving spouse of the Member or Retiree on account of whose death each benefit was initially paid is terminated, the benefit to be paid to such Minor Child shall increase to fifteen percent (15%) of such Member or Retiree's Final Average Salary.

(e) (1) The combined monthly benefit payment to a surviving spouse and Minor Children shall not exceed sixty-six and two-thirds percent (66 2/3%) of the Final Average Salary of the Member or Retiree on account of whose death the benefits are being paid. In the event that the calculation of such benefit results in such combined monthly benefit payment in excess of that amount, the benefit of the surviving spouse shall be reduced so that the combined monthly benefit payment equals sixty-six and two-thirds percent (66 2/3%) of such Member or Retiree's Final Average Salary. The benefit for such surviving spouse shall be increased at such time as the combined monthly benefit payment no longer exceeds such sixty-six and two-thirds percent (66 2/3%) limit, but in no event shall such increase result in such surviving spouse's benefit exceeding the amount originally calculated under subsection (c). When no benefit is being paid to a surviving spouse because the benefit calculated for the surviving spouse has been reduced to zero because of the adjustment set out above, any adjustment to the benefits paid to Minor Children because the combined monthly benefit payments exceed sixty-six and two-thirds percent (66 2/3%) of such Member or Retiree's Final Average Salary shall be made pro rata among such Member or Retiree's Minor Children, and such adjustment shall continue until the combined monthly benefit payment can be paid to eligible Minor Children without exceeding such sixty-six and two-thirds percent (66 2/3%) limit.

(2) The combined monthly benefit payment to Minor Children where there is no benefit being paid to a surviving spouse because no surviving spouse is eligible for such a benefit shall not exceed fifty percent (50%) of the

Final Average Salary of the Member or Retiree on account of whose death the benefits are being paid. In the event that combined monthly payments exceed such amount, the benefit of each such Minor Child shall be reduced pro rata so that combined monthly payments equal fifty percent (50%) of such Member or Retiree's Final Average Salary. In no event shall the benefit paid a Minor Child exceed fifteen percent (15%).

(3) The combined monthly benefit payment to a surviving spouse and Minor Children or to Minor Children shall not exceed the amount of the monthly Service retirement or Disability retirement benefit being paid on the date of the death of the Retiree on account of whose death such benefit payments are being made. In the event that the calculation of such benefit results in a combined monthly benefit payment in excess of such amount, i) the benefit of the surviving spouse shall be reduced so that the combined monthly benefit payment equals such Service retirement or Disability retirement benefit; or ii) if no benefit payment is being paid to a surviving spouse, the benefits of all Minor Children shall be reduced pro rata so that the combined monthly benefit payment equals such Service retirement or Disability retirement benefit. Once reduced, these benefit payments shall be increased in the same manner and subject to the same limitations as set forth in (e) (1) and (e) (2) above.

(f) Benefit payments for a Minor Child shall terminate upon such child reaching eighteen (18) years of age, the death of such child, or the marriage of such child, whichever shall occur first.

(g) The surviving spouse of a Retiree who retired on or after January 1, 2000 and thereafter dies under circumstances set out in subsections (b)(1) or (b)(2) above, shall not be limited by either the age requirement or the remarriage limitations set forth in subparagraph (b) herein. Provided, however that such surviving spouse, in order to be eligible to receive a benefit, shall have been such Retiree's lawfully wedded spouse for at least twelve (12) months immediately preceding the death of such Retiree.

(h) A Member who, on or after January 1, 2000, selects an effective backward DROP date which is prior to January 1, 2000, shall nevertheless be considered to have retired on or after January 1, 2000 for the purposes of determining the eligibility of such Member's surviving spouse for a benefit.

(i) For a Member or Retiree under Plan B, benefit payments on account of Minor Children shall be paid only if such Member or Retiree dies leaving no surviving spouse or dies leaving a surviving spouse who remarries prior to age forty (40). Under either such circumstance, the Minor Children of such Member or Retiree shall share equally a benefit equal to fifty percent (50%) of such Member or Retiree's final Salary.

SECTION 25

Post Retirement Adjustments.

For all Members retiring for any reason from and after February 1, 1974, upon completion of thirty-six (36) months of retirement, the monthly retirement benefits payable to such Retiree, or the monthly retirement benefits payable to the spouse or the Minor Child or Children of such Retiree, shall be increased two percent (2%) per year based on the original benefit, not compounded.

SECTION 26

Funeral Benefit.

The designated beneficiary of a Member who retired after November 21, 1973 under either Plan A, Plan B, or Plan C-79 shall be paid a funeral benefit of seven hundred fifty dollars ($750.00).

SECTION 27

Assignments Prohibited.

The right to a refund or a service retirement, Disability, death, or any benefit under the provisions of this ordinance, whatever name called, is personal with the recipient thereof, and the assignment or transfer of any such benefit, or any part thereof shall be void, except as may be provided herein. Any such refund or benefit shall not answer for debts contracted by the person receiving the same, and it is the intention of this ordinance that they shall not be subject to execution, attachment, garnishment, or affected by any judicial proceedings, except such benefit or any accumulated contributions due and owing from the System to any recipient are subject to claims of an alternate payee under a "qualified domestic relations order".

SECTION 28

Qualified Domestic Relations Orders.

As used in this section, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the Internal Revenue Code. The City of Wichita shall not be a party to any action under Article 10 of Chapter 60 of the Kansas Statutes Annotated but is subject to orders from such actions issued by the district court of the county where such action was filed and may also accept orders which it deems to be qualified under this section from courts having jurisdiction of such actions outside the State of Kansas. Orders from such actions shall specify either a specific amount or specific percentage of the amount of the benefit or any accumulated contributions due and owing from the Fund and to be distributed to the alternate payee. The order must contain the following information:

(a) Name, address, and social security number of the employee and alternate payee;

(b) Clearly identifies the appropriate Police & Fire Retirement System and plan;

(c) Creates or recognizes the existence of an alternate payee's rights to, or assigns to an alternate payee the right to receive a portion of the benefits otherwise payable to the employee;

(d) The date of marriage and divorce/separation;

(e) Statement that the benefit is payable only at the time of retirement of the employee or at the time the employee withdraws from Service, if the employee withdraws his or her contributions from the Fund;

(f) That the benefit is payable only during the lifetime of the retired employee or alternate payee should the alternate payee predecease the employee;

(g) Payment to the alternate payee shall be a lump sum if payment to the employee is lump sum, monthly if payment to the employee is monthly; and

(h) An employee who elects to participate in the DROP shall be treated as having retired for the purposes of a qualified domestic relations order.

The order to be qualified cannot allow the calculation of the lump sum payment or monthly benefit to be calculated in a manner which results in a payment or benefit in excess of the limits of the plan; cannot allow the alternate payee to be named as a surviving spouse or a survivor at the death of the retired employee; and cannot allow the alternate payee to name a beneficiary.

SECTION 29

Current Retiree Benefit Catch-Up Provision.

For Retirees who have been receiving a Service or Disability retirement benefit for ten (10) years or more as of January 1, 2000, and for the surviving spouses of deceased Retirees who retired and began receiving a Service or Disability retirement benefit prior to January 1, 1990, the pension benefit payable to such Retirees and such surviving spouses shall be increased by a factor of two percent (2%) per year for each year since such Retiree or the deceased Retiree began receiving a Service retirement benefit. This increase is a one-time benefit adjustment. This increase shall be applied to both the base pension benefit and any post-retirement adjustment, combined. The increased pension benefit calculated under this section shall in no event exceed $8,183.00 annually.

SECTION 30

Special Provisions for Safety Officers Employed by the Wichita Airport Authority.

Safety officers employed by the Wichita Airport Authority of the City of Wichita on June 29, 1996 shall be transferred on that date from the Wichita Employees' Retirement Plans to the Police and Fire Retirement System's Plan C-79. Notwithstanding provisions of any other sections contained herein, the following provisions shall be applicable for such safety officers transferred as of June 29, 1996:

(a) Service credit under the Wichita Employees' Retirement Plans shall be considered Service for purposes of meeting Service eligibility requirements for benefits under the Police and Fire Retirement System Plan C-79;

(b) Service under the Wichita Employees' Retirement Plans shall not be considered in the determination of the amount of any benefit payable by the Police and Fire Retirement System Plan C-79; and

(c) Under no circumstances will the total retirement benefit payable to a safety officer as a result of this transfer exceed an amount equal to seventy-five percent (75%) of his or her Final Average Salary regardless whether the source of the benefit is the Wichita Employees' Retirement System or the Police and Fire Retirement System.

SECTION 31

Re-employment of Retirees.

(a) Any Member under the Retirement System who is receiving a retirement benefit and who is re-employed as a commissioned Police or Fire Officer with the City of Wichita, or in a non-commissioned position under the Wichita Employee's Retirement System, shall have such Member's retirement benefit immediately suspended, and no benefit payments shall be made during the entire time such Member is so employed. However, nothing is intended to prohibit such member from participation in the appropriate retirement system and the accrual of additional Service for credit.

(b) Upon termination of such employment as a commissioned officer, payment of the retirement benefit shall be resumed; provided, however, nothing herein shall be construed to prohibit the employment of a retired police or fire commissioned officer in an advisory or consultant capacity on an independent contractor basis.

(c) Under no circumstances will the total retirement benefit payable to a re-employed Member exceed an amount equal to seventy-five percent (75%) of his or her Final Average Salary regardless whether the source of the benefit is the Wichita Employees' Retirement System or the Police and Fire Retirement System.

SECTION 32

Fraud.

Any person who knowingly makes a false statement in connection with the application for or the receipt of benefits, or falsifies or permits to be falsified, any record or records of this Retirement System, in an attempt to defraud the Retirement System, shall forfeit all rights to benefits hereunder. The Retirement System and the City shall have the right to recover by setoff or otherwise, any payments based on such false statement or falsified record.

SECTION 33

Limited Extension of Option and its Effective Date.

Any Police or Fire Officer who had previously elected to participate in Plan B shall have an option at any time prior to retirement to elect participation in Plan A by paying into the Retirement System a sum of money, without interest, equal to the difference in contributions which would have been paid by such Police or Fire Officer had they elected Plan A on January 1, 1965; provided, that once having made such election, such Police or Fire Officer shall not be permitted to revert back to Plan B.

SECTION 34

Benefit and Disability Rights Under Prior Laws Saved.

This ordinance shall not affect the rights nor decrease the Disability or retirement benefits of any Member or such Member's beneficiaries, who has died, been permanently disabled, or retired under any previously authorized and existing pension or retirement system. Any Member in service at the time of the effective date of this ordinance, who is at said time entitled to a benefit under any previously authorized pension or Retirement System shall not have such benefit reduced by virtue of the application of the provisions of this ordinance.

SECTION 35

Invalidity of Part.

If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance, which can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are declared to be severable.

SECTION 36

Compliance with Code Section 415 Limitations on Contributions and Benefits.

a) Notwithstanding any other provisions of the Retirement System to the contrary, the Member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.

(b) *Participation in Other Qualified Plans: Aggregation of Limits.*

(1) The 415(b) limit with respect to any Member who at any time has been a Member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the Member has been a Member were payable from one (1) plan.

(2) The 415(c) limit with respect to any Member who at any time has been a Member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total annual additions under

all such defined contributions plans in which the Member has been a Member were payable from one (1) plan.

(c) *Basic 415(b) Limitation.*

(1) Before January 1, 1995, a Member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a Member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the Retirement System. In no event shall a Member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(d) *Adjustments to Basic 415(b) Limitation for Form of Benefit.*

If the benefit under the plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any) payable to the Member under the plan commencing at the same annuity starting date as the form of benefit to the Member, or

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after

December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code; or

(C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(e) *Benefits Not Taken into Account for 415(b) Limitation.*

For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) *Other Adjustments in 415(b) Limitation.*

(1) In the event the Member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar ($160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the Member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in (1) above shall not apply.

(3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) *Ten Thousand Dollar ($10,000) Limit.*

Notwithstanding the foregoing, the retirement benefit payable with respect to a Member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such Member under this plan and under all other qualified defined benefit pension plans to which the Member's employer contributes, do not exceed ten thousand dollars ($10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the Member participated.

(h) *Effect of COLA without a Lump Sum Component on 415(b) Testing.*

Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a Member with no lump sum benefit, the following will apply:

(1) a Member's applicable Limit will be applied to the Member's annual benefit in the Member's first limitation year without regard to any cost of living adjustments under Section 25;

(2) to the extent that the Member's annual benefit equals or exceeds the Limit, the Member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a Member's annual benefit, including any cost of living increases under Section 25, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(i) *Effect of COLA with Lump Sum Component on 415(b) Testing.*

On and after January 1, 2009, with respect to a Member who receives a portion of the Member's annual benefit in a lump sum, a Member's applicable Limit will be applied taking into consideration cost of living increases as required by

Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(j) *Section 415(c) Limitations on Contributions and Other Additions.*

After-tax Member contributions or other annual additions with respect to a Member may not exceed the lesser of $40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the Member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, Member contributions, and forfeitures credited to a Member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that Member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

(A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code.

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a Member's severance from employment or the end of the limitation year that includes the date of the Member's severance from employment if:

(I) the payment is regular compensation for services during the Member's regular working hours, or compensation for services outside the Member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the Member while the Member continued in employment with the employer; or

(II) the payment is for unused accrued bona fide sick, vacation or other leave that the Member would have been able to use if employment had continued; or

(III) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Member at the same time if the Member had continued employment with the employer and only to the extent that the payment is includible in the Member's gross income.

Any payments not described in paragraph (B) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to a Member who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the Member would have received if the Member had continued to perform services for the employer rather than entering qualified military service.

A Member who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the Member would have received during such period if the Member were not in qualified military service, determined based on the rate of pay the Member would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the Member would have received during such period was not reasonably certain, the Member's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(C) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a Member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

(k) *Service Purchases under Section 415(n).*

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

(1) the requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or

(2) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

(3) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subparagraph and will not fail to meet the

percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit-

(A) recognized by the system for purposes of calculating a Member's benefit under the system,

(B) which such Member has not received under the system, and

(C) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (B), may include service credited in order to provide an increased benefit for service credit which a Member is receiving under the system.

(5) The system will fail to meet the requirements of this section if-

(A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the system.

(6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to-

(A) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of repayment described in Section 415(k)(3) of the Internal Revenue Code),

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(C) service as an employee of an association of employees who are described in clause (A), or

(D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.

In the case of service described in clause (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a Member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to

whether the transfer is made between plans maintained by the same employer)-

(A) the limitations of paragraph (5) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible Member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible Member is an individual who first became a Member in the system before January 1, 1998.

(l) *Modifications of Contributions for 415(c) and 415(n) Purposes.*

Notwithstanding any other provision of law to the contrary, the system may modify a request by a Member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the Member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the system may either reduce the Member's contribution to an amount within the limits of those sections or refuse the Member's contribution.

(m) *Repayments of Cashouts.*

Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the Retirement System shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(n) *Reduction of Benefits Priority.*

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such Member.

SECTION 37

Direct Rollovers of Defined Benefit Plan Distributions.

(a) Except as otherwise indicated herein, this section shall apply to all rollovers made after December 31, 2001.

(b) For purposes of compliance with Section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than $200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of an eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

(2) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(A) an individual retirement account described in Section 408(a) of the Internal Revenue Code;

(B) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;

(C) an annuity plan described in Section 403(a) of the Internal Revenue Code;

(D) a qualified trust described in Section 401(a) of the Internal Revenue Code;

(E) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;

(F) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the Retirement System; or

(G) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(c) Rollover contributions and/or direct rollovers of distributions made after December 31, 2001 will be accepted for the purchase of prior or future service credit from the types of plans specified.

(d) The plan will accept a direct rollover of an eligible rollover distribution from:

(1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.

(2) An annuity contract described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state.

(e) The plan will accept a participant contribution of an eligible rollover distribution from:

(1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.

(2) An annuity contract described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state.

(f) The plan will accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408 (b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income.

SECTION 38

The Original of Charter Ordinance No. 214 of the City of Wichita, Kansas, is hereby repealed.

SECTION 39
Publication.

This ordinance shall be published once each week for two (2) consecutive weeks in the official city newspaper.

SECTION 40
Petition for Referendum.

This is a charter ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3), of the Constitution of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

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

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Wichita Employees' Retirement System
Proposed Revisions of City Code Sections 2.28.090 and 2.28.110, and Repealing the originals of said sections

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendation: Approve first reading of the Ordinance.

Background: Ice Miller, the Wichita Employees' Retirement System's outside legal counsel, advised the City Attorney and the Board of Trustees that it would be prudent for the System to file for an updated determination letter with the Internal Revenue Service (IRS) to ensure the continuation of the System's current tax treatment. On June 9, 2009 and December 14, 2010, the City Council approved changes to various sections of the City Code to comply with recent updates made to the Internal Revenue Code (IRC) and qualify for an updated determination letter. The last favorable IRS determination letter received by the Retirement System is dated April 19, 2001.

City Code Section 2.28.090 provides investment authority for the assets of the System. The Joint Investment Committee (JIC) is charged with the duty of investing all assets of the Joint Fund. The JIC invests the Fund's assets in a diversified mix of assets through the purchase of individual securities, partnership agreements and securities held in pooled arrangements such as commingled funds which are operated by a qualified investment counselor or bank.

Analysis: In 2009, Ice Miller submitted Chapter 2.28 of the City Code to the IRS with an application for an updated determination letter. In 2009 and 2010, revised Ordinances with IRC required amendments were submitted to the IRS for review. In 2011, Ice Miller provided the Board with a final required amendment. This amendment sets forth an affirmative statement regarding the non-forfeitability of vested benefits upon a member's attainment of normal retirement age. Accordingly, Section 2.28.110 of the Ordinance that specifies the System's retirement eligibility requirements has been revised to further comply with this IRC requirement. On April 29, 2011, the IRS issued the System a favorable determination letter, contingent upon the adoption of this final amendment.

As a separate issue, the JIC invests in several commingled group trusts to obtain exposure to various investment products which include index products such as the Standard and Poor's (S&P) 500 Index. The IRS has issued various revenue rulings, most recently Revenue Ruling 2011-1, that require that tax qualified plans investing through such vehicles adopt the group trust and make it part of the retirement plan. Section 2.28.090 of the Ordinance has been amended to address this requirement.

The proposed revisions to Sections 2.28.090 and 2.28.110 of the City Code were unanimously approved by the Board of Trustees at their meeting on May 18, 2011.

Financial Considerations: An updated favorable determination letter and the continuation of the tax-exempt status of the Retirement System are dependent upon the revisions to Section 2.28.110 of the City Code.

Goal Impact: The City of Wichita, by offering this Retirement System, impacts the Internal Perspective goal by increasing employee motivation and satisfaction.

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

Recommendation/Actions: It is recommended that the City Council approve the first reading of the Ordinance revising City Code Sections 2.28.090 and 2.28.110, and repealing the originals of said sections.

Attachments: Ordinance amending Sections 2.28.090 and 2.28.110, and repealing the originals of said sections of the City Code.
Delineated version of the Ordinance.

(Published in The Wichita Eagle July 22, 2011)

ORDINANCE NO 49-036

AN ORDINANCE AMENDING SECTIONS 2.28.090 AND 2.28.110 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ADMINISTRATION OF THE WICHITA EMPLOYEES' RETIREMENT SYSTEM, AND REPEALING THE ORIGINALS OF SAID SECTIONS OF THE CODE OF THE CITY OF WICHITA.

WHEREAS, the City's Pension Office is in the process of seeking updated determination letters from the Internal Revenue Service on the tax qualification of the benefit plans comprising the Wichita Employees' Retirement System; and,

WHEREAS, the Internal Revenue Service, as a condition of granting favorable determination letters, now requires that the plan provisions be amended to set forth an affirmative statement concerning non-forfeitablity of vested benefits upon attainment of normal retirement age, which changes have been approved and recommended by the Board of Trustees of the Wichita Employees' Retirement System; and,

WHEREAS, the Governing Body desires the investment committee to have the ability to invest in investment products that are offered through commingled group trust investment vehicles, and applicable revenue rulings (most recently, Revenue Ruling 2011-1), requiring that tax qualified plans investing through such vehicles must adopt the group trust(s) as part of the investing retiree benefit plan;

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

SECTION 1. Section 2.28.090 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.090 Investment Authority.

(a) Except as provided in subsection (c), the board shall invest and reinvest any portion of the fund not needed for immediate benefit payments through a unitized joint investment fund comprised of assets of the Wichita employees' and police and fire retirement systems. The joint investment fund shall be invested by an investment committee comprised of members from both boards and a city manager's designee. The executive secretary shall be an ex officio, non-voting member of the investment committee. To achieve the investment objective which is to make the moneys as productive as possible, certain standards and limitations (based on cost at time of purchase) are set forth in this section as follows:

(1) In investing and reinvesting moneys in the fund and in acquiring, retaining, managing and disposing of investments of the fund there shall be exercised the judgment and care under the circumstances then prevailing which people of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard and subject to the following requirements, there may be acquired, retained, managed and disposed of as investments of the fund every kind of investment which people of

prudence, discretion and intelligence acquire, retain, manage and dispose of for their own account;

(2) The proportion of the funds invested in corporate, preferred and common stocks shall not exceed seventy percent;

(3) The proportion of the fund invested in securities of a corporation organized under the laws of a country other than the United States of America and securities issued by a foreign country or political subdivision thereof shall not exceed a total of thirty-five percent;

(4) Investments managed by in-house staff will be restricted to high-grade marketable fixed income securities;

(5) Investments may be made in any pooled arrangement such as a mutual fund, separate account, or commingled fund operated by a qualified investment counselor, an insurance company or a bank;

(6) Other investments separately managed by a qualified investment counselor, an insurance company or a bank, who represent that they act as a fiduciary, will be handled similarly to most other clients of the managing firm, except for holdings of money market instruments or their equivalent;

(7) The board shall impose whatever limitations are deemed appropriate under its investment policy statement~~.~~;

(8) Notwithstanding any contrary provision in Chapter 2.28 of the Code of the City of Wichita, assets of the Fund may be transferred to a group trust meeting the requirements of Revenue Ruling 2011-

1 that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets of pension, profit-sharing and stock bonus trusts or custodial accounts qualifying under Section 401(a) of the Internal Revenue Code that are exempt under Section 501(a) of such Code; individual retirement accounts that are exempt under Section 408(e) of the Internal Revenue Code; eligible governmental plan trusts or custodial accounts under Section 457(b) of the Internal Revenue Code that are exempt under Section 457(g) of such Code; custodial accounts under Section 403(b)(7) of the Internal Revenue Code; retirement income accounts under Section 403(b)(9) of the Internal Revenue Code; and governmental plans under Section 401(a)(24) of the Internal Revenue Code. Following the investment committee's selection of such a group trust for investment, and upon the transfer of assets of the Fund to such group trust, the group trust shall be deemed adopted as a part of the retirement plan for the duration of such investment.

For purposes of valuation, the value of the interest maintained by the plan in such group trust shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

(b) Nothing in this chapter, however, shall be construed so as to give the board at any time authority to invest directly or indirectly in any:

(1) Real estate, except in pooled arrangement such as a mutual fund, separate account or commingled fund operated by a qualified investment counselor or an insurance company. The amount of such investments shall not exceed ten percent (10%) of the Fund;

(2) Private equity; except in a commingled fund-of-funds vehicle operated by a registered advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(3) Timber; except in a commingled fund vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(4) Mortgages secured by real estate, except insured mortgages under Titles 203, 207, 220 and 221 of the Federal Housing Act;

(5) Oil and gas leases or royalties; or

(6) Commodities (including but not limited to wheat, gold or gasoline, or financial futures); provided, however, that the restriction on investment contained in this paragraph shall not apply to funds which are invested in a mutual fund,

separate account or commingled fund operated by a registered investment advisor or insurance company.

(c) The board shall not be responsible for investing or reinvesting any portion of an employee's vested account for which an employee has assumed self-direction responsibility of the investing and reinvesting of such an employees' vested account as provided for in Section 2.28.060 of this chapter.

SECTION 2. Section 2.28.110 of the Code of the City of Wichita, Kansas is amended to read as follows:

Sec. 2.28.110. Eligibility for defined benefit retirement on account of age and service.

(a) *For employees under Plan No. 1:*

(1) For purposes of compliance with the Internal Revenue Code and related guidance, upon attaining the age of sixty years, and having at least seven years of service (whichever is later), an employee has a nonforfeitable right to his or her normal retirement benefit, which is the benefit calculated under Section 2.28.120(a)(1). The retirement benefit is only payable upon the employee's retirement. This subsection is not to be construed as a reduction or limitation of rights heretofore existing, nor as an indication that vested benefits would be forfeitable before the stated age is attained.

(2) An employee who has completed at least thirty years of service shall be eligible to receive a retirement benefit regardless of age. The amount of such benefit shall be calculated as provided in Section 2.28.120.

(3) An employee who has completed at least seven years of service and desires

to retire voluntarily after having attained the age of fifty-five years and who has not yet attained the age of sixty years shall be eligible to receive a reduced retirement benefit. The amount of such benefit shall be calculated as provided in Section 2.28.120.

(4) An employee who has completed at least seven years of service may, upon terminating employment before age sixty, receive a refund of his or her contributions with interest at five percent per year compounded monthly. Such employee may elect to leave his or her contribution in the fund and such employee shall be eligible for a retirement benefit at such time as the employee satisfies the age requirements of subsections (a)(1) or (3) of this section. The amount of such benefit shall be calculated as provided in Section 2.28.120 and Section 2.28.140.

(b) *For employees under Plan No. 2:*

(1) For purposes of compliance with the Internal Revenue Code and related guidance, upon attaining the age of sixty-two years, and having at least seven years of service (whichever is later), an employee has a nonforfeitable right to his or her normal retirement benefit, which is the benefit calculated under Section 2.28.120(b)(1). The retirement benefit is only payable upon the employee's retirement. This subsection is not to be construed as a reduction or limitation of rights heretofore existing, nor as an indication that vested benefits would be forfeitable before the stated age is attained.

(2) An employee who has completed at least seven years of service and desires to retire voluntarily after having attained the age of fifty-five years and who has

not yet attained the age of sixty-two years shall be eligible to receive a reduced retirement benefit. The amount of such benefit shall be calculated as provided in Section 2.28.120.

(3) An employee who has completed at least seven years of service may, upon terminating employment before age sixty-two, receive a refund of his or her contributions with interest at five percent per year compounded monthly. Such employee may elect to leave his or her contribution in the fund and such employee shall be eligible for a retirement benefit at such time as the employee satisfies the age requirements of subsections (1) or (2) of this section. The amount of such benefit shall be calculated as provided in Section 2.28.120 and Section 2.28.140.

SECTION 3. The prior versions of Sections 2.28.090 and 2.28.110 of the Code of the City of Wichita, Kansas are hereby repealed.

SECTION 4. 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, and signed by the Mayor this 19th day of July, 2011.

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

Approved as to Form:

_____

Gary E. Rebenstorf, Director of Law

(Published in The Wichita Eagle _____, 2011)

ORDINANCE NO _____

AN ORDINANCE AMENDING SECTIONS 2.28.090 AND 2.28.110 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ADMINISTRATION OF THE WICHITA EMPLOYEES' RETIREMENT SYSTEM, AND REPEALING THE ORIGINALS OF SAID SECTIONS OF THE CODE OF THE CITY OF WICHITA.

WHEREAS, the City's Pension Office is in the process of seeking updated determination letters from the Internal Revenue Service on the tax qualification of the benefit plans comprising the Wichita Employees' Retirement System; and,

WHEREAS, the Internal Revenue Service, as a condition of granting favorable determination letters, now requires that the plan provisions be amended to set forth an affirmative statement concerning non-forfeitablity of vested benefits upon attainment of normal retirement age, which changes have been approved and recommended by the Board of Trustees of the Wichita Employees' Retirement System; and,

WHEREAS, the Governing Body desires the investment committee to have the ability to invest in investment products that are offered through commingled group trust investment vehicles, and applicable revenue rulings (most recently, Revenue Ruling 2011-1), requiring that tax qualified plans investing through such vehicles must adopt the group trust(s) as part of the investing retiree benefit plan;

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

SECTION 1. Section 2.28.090 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.090 Investment Authority.

(a) Except as provided in subsection (c), the board shall invest and reinvest any portion of the fund not needed for immediate benefit payments through a unitized joint investment fund comprised of assets of the Wichita employees' and police and fire retirement systems. The joint investment fund shall be invested by an investment committee comprised of members from both boards and a city manager's designee. The executive secretary shall be an ex officio, non-voting member of the investment committee. To achieve the investment objective which is to make the moneys as productive as possible, certain standards and limitations (based on cost at time of purchase) are set forth in this section as follows:

(1) In investing and reinvesting moneys in the fund and in acquiring, retaining, managing and disposing of investments of the fund there shall be exercised the judgment and care under the circumstances then prevailing which people of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard and subject to the following requirements, there may be acquired, retained, managed and disposed of as investments of the fund every kind of investment which people of

prudence, discretion and intelligence acquire, retain, manage and dispose of for their own account;

(2) The proportion of the funds invested in corporate, preferred and common stocks shall not exceed seventy percent;

(3) The proportion of the fund invested in securities of a corporation organized under the laws of a country other than the United States of America and securities issued by a foreign country or political subdivision thereof shall not exceed a total of thirty-five percent;

(4) Investments managed by in-house staff will be restricted to high-grade marketable fixed income securities;

(5) Investments may be made in any pooled arrangement such as a mutual fund, separate account, or commingled fund operated by a qualified investment counselor, an insurance company or a bank;

(6) Other investments separately managed by a qualified investment counselor, an insurance company or a bank, who represent that they act as a fiduciary, will be handled similarly to most other clients of the managing firm, except for holdings of money market instruments or their equivalent;

(7) The board shall impose whatever limitations are deemed appropriate under its investment policy statement~~.~~;

(8) Notwithstanding any contrary provision in Chapter 2.28 of the Code of the City of Wichita, assets of the Fund may be transferred to a group trust meeting the requirements of Revenue Ruling 2011-

1 that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets of pension, profit-sharing and stock bonus trusts or custodial accounts qualifying under Section 401(a) of the Internal Revenue Code that are exempt under Section 501(a) of such Code; individual retirement accounts that are exempt under Section 408(e) of the Internal Revenue Code; eligible governmental plan trusts or custodial accounts under Section 457(b) of the Internal Revenue Code that are exempt under Section 457(g) of such Code; custodial accounts under Section 403(b)(7) of the Internal Revenue Code; retirement income accounts under Section 403(b)(9) of the Internal Revenue Code; and governmental plans under Section 401(a)(24) of the Internal Revenue Code. Following the investment committee's selection of such a group trust for investment, and upon the transfer of assets of the Fund to such group trust, the group trust shall be deemed adopted as a part of the retirement plan for the duration of such investment.

For purposes of valuation, the value of the interest maintained by the plan in such group trust shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

(b) Nothing in this chapter, however, shall be construed so as to give the board at any time authority to invest directly or indirectly in any:

(1) Real estate, except in pooled arrangement such as a mutual fund, separate account or commingled fund operated by a qualified investment counselor or an insurance company. The amount of such investments shall not exceed ten percent (10%) of the Fund;

(2) Private equity; except in a commingled fund-of-funds vehicle operated by a registered advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(3) Timber; except in a commingled fund vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(4) Mortgages secured by real estate, except insured mortgages under Titles 203, 207, 220 and 221 of the Federal Housing Act;

(5) Oil and gas leases or royalties; or

(6) Commodities (including but not limited to wheat, gold or gasoline, or financial futures); provided, however, that the restriction on investment contained in this paragraph shall not apply to funds which are invested in a mutual fund,

separate account or commingled fund operated by a registered investment advisor or insurance company.

(c) The board shall not be responsible for investing or reinvesting any portion of an employee's vested account for which an employee has assumed self-direction responsibility of the investing and reinvesting of such an employees' vested account as provided for in Section 2.28.060 of this chapter.

SECTION 2. Section 2.28.110 of the Code of the City of Wichita, Kansas is amended to read as follows:

Sec. 2.28.110. Eligibility for defined benefit retirement on account of age and service.

(a) *For employees under Plan No. 1:*

(1) ~~An employee shall be eligible for retirement and to receive a retirement benefit upon attaining the age of sixty years, and having at least seven years of service.~~ For purposes of compliance with the Internal Revenue Code and related guidance, upon attaining the age of sixty years, and having at least seven years of service (whichever is later), an employee has a nonforfeitable right to his or her normal retirement benefit, which is the benefit calculated under Section 2.28.120(a)(1). The retirement benefit is only payable upon the employee's retirement. This subsection is not to be construed as a reduction or limitation of rights heretofore existing, nor as an indication that vested benefits would be forfeitable before the stated age is attained.

(2) An employee who has completed at least thirty years of service shall be eligible to receive a retirement benefit regardless of age. The amount of such benefit shall be calculated as provided in Section 2.28.120.

(3) An employee who has completed at least seven years of service and desires to retire voluntarily after having attained the age of fifty-five years and who has not yet attained the age of sixty years shall be eligible to receive a reduced retirement benefit. The amount of such benefit shall be calculated as provided in Section 2.28.120.

(4) An employee who has completed at least seven years of service may, upon terminating employment before age sixty, receive a refund of his or her contributions with interest at five percent per year compounded monthly. Such employee may elect to leave his or her contribution in the fund and such employee shall be eligible for a retirement benefit at such time as the employee satisfies the age requirements of subsections (a)(1) or (3) of this section. The amount of such benefit shall be calculated as provided in Section 2.28.120 and Section 2.28.140.

(b) *For employees under Plan No. 2:*

(1) ~~An employee shall be eligible for retirement and to receive a retirement benefit upon attaining the age of sixty-two years and having at least seven years of service.~~ For purposes of compliance with the Internal Revenue Code and related guidance, upon attaining the age of sixty-two years, and having at least seven years of service (whichever is later), an employee has a nonforfeitable right to his or her normal retirement benefit, which is the benefit calculated under

Section 2.28.120(b)(1). The retirement benefit is only payable upon the employee's retirement. This subsection is not to be construed as a reduction or limitation of rights heretofore existing, nor as an indication that vested benefits would be forfeitable before the stated age is attained.

(2) An employee who has completed at least seven years of service and desires to retire voluntarily after having attained the age of fifty-five years and who has not yet attained the age of sixty-two years shall be eligible to receive a reduced retirement benefit. The amount of such benefit shall be calculated as provided in Section 2.28.120.

(3) An employee who has completed at least seven years of service may, upon terminating employment before age sixty-two, receive a refund of his or her contributions with interest at five percent per year compounded monthly. Such employee may elect to leave his or her contribution in the fund and such employee shall be eligible for a retirement benefit at such time as the employee satisfies the age requirements of subsections (1) or (2) of this section. The amount of such benefit shall be calculated as provided in Section 2.28.120 and Section 2.28.140.

SECTION 3. The prior versions of Sections 2.28.090 and 2.28.110 of the Code of the City of Wichita, Kansas are hereby repealed.

SECTION 4. 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, and signed by the Mayor this _____day of _____, 2011.

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

Approved as to Form:

_____

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council Members

SUBJECT: Ordinance Amending Section 16.04.040 of the Sewer Code – Fees for Private Sanitary Sewer Line Construction, Maintenance and Cleaning Permits

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendation: Approve first reading of the ordinance amending Section 16.04.040 of the Code of the City of Wichita pertaining to permit fees for construction, maintenance and cleaning of private sanitary sewers.

Background: Section 16.04.040 of the Code of the City of Wichita sets forth permit fees for construction, extension, repair or cleaning of private sanitary sewer service lines connected to City sewer mains. The current $30 sewer permit fee has not been increased since 1994. During the current City budget process, it was determined that the $30 sewer permit fee does not cover the cost of providing private sanitary sewer permitting, inspection and enforcement services, and that the permit fee should be substantially increased. The proposed ordinance increases the sewer permit fee from $30 to $60.

Analysis: Due to the depth of most sanitary sewer service lines (generally between eight to fifteen feet near the City main), it is critical that accurate, detailed information about the location and depth of sanitary sewer mains and lines be provided to sewer contractors. This keeps contractor digging and trenching to a minimum as private sanitary sewer lines are installed, replaced, extended or repaired, and helps ensure the least amount of damage to private property, easements, alleys and/or streets. This information is provided to contractors through the sewer permit review process. Required permit inspections and enforcement by the Office of Central Inspection and Public Works & Utilities (water tap crew) help ensure that private sanitary sewer lines are installed, extended or repaired correctly, per City Code, and that necessary repairs and/or shoring of existing public sewer mains are made while private sewer line connections to the public main are uncovered.

Based on current costs to support a sewer clerk (permit review and issuance) in the Office of Central Inspection, as well as necessary/required sewer installation and/or repair inspections by Office of Central Inspection and/or Public Works & Utilities staff, the average cost for each sewer permit is between $60 and $65. The proposed ordinance increases the sewer permit fee to $60.

Financial Considerations: There are no costs to the City associated with adoption of the ordinance. Adoption of the amended sewer permit fees will substantially recover the cost of services associated with sewer permits (permit review, inspections and enforcement).

Goal Impact: This item impacts the Provide and Safe and Secure Community goal indicator by providing appropriate sewer permit fee revenue to support required and necessary permitting and inspections of new, replaced, extended or repaired private sanitary sewer lines.

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

Recommendation/Action: It is recommended that the City Council approve first reading of the ordinance amending Section 16.04.040 of the Code of the City of Wichita.

Attachments: Delineated ordinance amending Section 16.04.040 of the Code of the City of Wichita.

First Published in The Wichita Eagle on July 22, 2011

CLEAN 06/27/2011

ORDINANCE NO. 49-037

AN ORDINANCE AMENDING SECTION 16.04.040 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PERMIT FEES FOR CONSTRUCTION, MAINTENANCE AND CLEANING OF SEWERS, AND REPEALING THE ORIGINAL OF SECTION 16.04.040 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1. Section 16.04.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 16.04.040. Permit Fees.

Before a permit is issued as provided for in Section 16.04.020, the following permit fees shall be paid:

1. (a) for connecting to the city sewer $60.00;

   (b) for repair or extension permit $60.00;

   (c) for seal off permit $60.00;

   (d) for tap fee (Section 16.04.110) $70.00;

   (e) permit(s) shall be obtained as provided within Section 16.04.020 of this Code, and failure or unreasonable delay in obtaining such permit(s) shall mandate a double permit fee;

   (f) reinspection fee - failure to comply with job readiness requirements $30.00.

2. In addition to the above fees, there shall be added the following amounts for the following purposes:

(a) In Absence of Assessment for Lateral Sewer. When no assessment has been made for the lateral sewer against any property or premises to be connected to the city sewer, an amount as determined to be appropriate by the Director of the Public Works and Utilities Department.

(b) In Absence of Assessment of Lateral Sewer and Main Sewer. If the cost of neither lateral sewer nor main sewer has been assessed against the property to be connected, an amount as determined to be appropriate by the Director of the Public Works and Utilities Department.

In determining the appropriateness of amounts to be assessed as set out in subsections (a) and (b) of this subsection (2), the Director of the Public Works and Utilities Department shall utilize recent historical cost of constructing lateral and main sanitary sewers of similar or representative type to the system serving the building site to be connected to the sewerage system calculated on a square foot or frontage foot basis.

If, in the opinion of the Director of the Public Works and Utilities Department, the use of the connecting property applying for connection under the terms of subsections (a) or (b) of this subsection (2) constitutes an extraordinary use of the sewerage system and/or shall potentially place extraordinary demand on the sewerage system, a charge commensurate with such use shall be determined by the Director of the Public Works and Utilities Department and shall be assessed against the connecting property in lieu of the amount set out in subsections (a) and (b) of this subsection (2).

If the cost of sewer lateral and/or main sewer has been financed by a private entity and if the cost of such main or lateral has been included in the purchase price of the lot and improvements thereon, then the amounts set out in subsections (a) and (b) of this subsection (2) shall not be assessed.

The appropriateness of the application of the ordinance provision codified in this section shall be discretionary and shall be based on the interpretation of written policy guidelines by the Director of the Public Works and Utilities Department and the Director of Planning and/or other parties as designated by the City Manager.

(Ord. No. 43-769 § 1)

SECTION 2. The original of Section 16.04.040 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 19th day of July, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED 06/27/2011

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTION 16.04.040 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PERMIT FEES FOR CONSTRUCTION, MAINTENANCE AND CLEANING OF SEWERS, AND REPEALING THE ORIGINAL OF SECTION 16.04.040 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1. Section 16.04.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Sec. 16.04.040. Permit Fees.

Before a permit is issued as provided for in Section 16.04.020, the following permit fees shall be paid:~~.~~

1. (a) ~~F~~for connecting to the city sewer $60.00; ~~$30.00~~

   (b) ~~F~~for repair or extension permit $60.00; ~~30.00~~

   (c) ~~F~~for seal off permit $60.00; ~~30.00~~

   (d) ~~F~~for ~~T~~tap fee (Section 16.04.110) $70.00;

   (e) ~~P~~permit(s) shall be obtained as provided within Section 16.04.020 of this Code, and failure or unreasonable delay in obtaining such permit(s) shall mandate a double permit fee;~~.~~

   (f) ~~R~~reinspection ~~F~~fee~~.~~ - ~~F~~failure to comply with job readiness requirements $30.00.~~15.00~~

2. In addition to the above fees, there shall be added the following amounts for the following purposes:

(a) In Absence of Assessment for Lateral Sewer. When no assessment has been made for the lateral sewer against any property or premises to be connected to the city sewer, an amount as determined to be appropriate by the Director of the Public Works and Utilities Department ~~city engineer and the director of water and sewer shall be paid~~.

(b) In Absence of Assessment of Lateral Sewer and Main Sewer. If the cost of neither lateral sewer nor main sewer has been assessed against the property to be connected, an amount as determined to be appropriate by the Director of the Public Works and Utilities Department ~~city engineer and director of water and sewer shall be paid~~.

In determining the appropriateness of amounts to be assessed as set out in subsections (a) and (b) of this subsection (2), the Director of the Public Works and Utilities Department ~~city engineer~~ shall utilize recent historical cost of constructing lateral and main sanitary sewers of similar or representative type to the system serving the building site to be connected to the sewerage system calculated on a square foot or frontage foot basis.

If, in the opinion of the Director of the Public Works and Utilities Department ~~director of water and sewer and city engineer~~, the use of the connecting property applying for connection under the terms of subsections (a) or (b) of this subsection (2) constitutes an extraordinary use of the sewerage system and/or shall potentially place extraordinary demand on the sewerage system, a charge commensurate with such use shall be determined by the Director of the Public

Works and Utilities Department ~~director of water and sewer~~ and shall be assessed against the connecting property in lieu of the amount set out in subsections (a) and (b) of this subsection (2).

If the cost of sewer lateral and/or main sewer has been financed by a private entity and if the cost of such main or lateral has been included in the purchase price of the lot and improvements thereon, then the amounts set out in subsections (a) and (b) of this subsection (2) shall not be assessed.

The appropriateness of the application of the ordinance provision codified in this section shall be discretionary and shall be based on the interpretation of written policy guidelines by the Director of the Public Works and Utilities Department ~~director of water and sewer, the city engineer,~~ and the D~~d~~irector of P~~p~~lanning and/or other parties as designated by the C~~c~~ity M~~m~~anager.

(Ord. No. 43-769 § 1)

SECTION 2. The original of Section 16.04.040 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 _____, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____

Gary E. Rebenstorf
Director of Law

CITY OF WICHITA
City Council Meeting
July 12, 2011

TO: Mayor and City Council Members

SUBJECT: Ordinance amendments relating to Traffic Control Devices (Red Lights), Section 11.20.060 of the Code of the City of Wichita.

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Approve the Mayor's Request for Declaration of Emergency and pass the ordinance amending Section 11.20.060 of the Code of the City of Wichita, on a single reading.

Background: The Kansas Legislature recently amended the state statutes regarding traffic control devices. The amendments regulate motorcycles and bicycles which approach intersections and the traffic control device fails to change or cycle from red to a green light. These amendments became effective July 1, 2011.

Analysis: The proposed amendments allow motorcyles and/or bicycles which approach an intersection with a red light to stop at the red light and then proceed through the interesection under certain conditions. If the light fails to cycle or change to green after a reasonable period of time and the operator has yielded for any oncoming traffic in or near the intersection the operator may proceed through the intersection on a red light.

The amendments are necessary to bring the City's ordinances into compliance with the applicable state statutes.

Financial Considerations: None

Goal Impact: Provide a Safe and Secure Community.

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

Recommendations/Actions: It is recommended that the City Council declare a public emergency and adopt the ordinances making the recommended amendments to Sections 11.20.060.

Attachment: Delineated and clean copies of the proposed ordinance and the Request for Declaration of Emergency.

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 12, 2011, of an ordinance entitled:

ORDINANCE NO. _____

" AN ORDINANCE AMENDING SECTION 11.20.060 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO TRAFFIC CONTROL SIGNALS AND REPEALING THE ORIGINALS OF SAID SECTIONS."

The general nature of such emergency lies in the need to pass and publish this ordinance to conform to the legislative changes regarding what is commonly referred to as the "Dead Red" law, which means that motorcycles and bicycles may proceed on a red light after a reasonable time, if it is safe to do so. The City's ordinance requires amendment to conform to state statutes. Since the state law became effective on July 1, 2011, the amendment to the City's ordinance needs to be effective immediately.

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 this 12th day of July, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf
Director of Law

040006

First Published in The Wichita Eagle on July 15, 2011

07/05/2011

ORDINANCE NO. 49-031

AN ORDINANCE AMENDING SECTION 11.20.060 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO TRAFFIC CONTROL SIGNALS AND REPEALING THE ORIGINALS OF SAID SECTIONS.

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

SECTION1. Section 11.20.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Lights.** Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green Indication.

(1) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection at the time such signal is exhibited.

(2) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the

intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless otherwise provided by a pedestrian control signal, as provided in Section 11.20.070 of this chapter, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) Steady Yellow Indication.

(1) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(2) Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian control signal as provided in Section 11.20.070 of this chapter, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(c) Steady Red Indication.

(1) Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the

intersection, and shall remain standing until an indication to proceed is shown, except as provided in subsection (c) (2), (3) and (4) of this subsection. Any turn provided for in said paragraphs (2), (3) and (4) shall be governed by the applicable provisions of Section 11.28.030 of the Code of the City of Wichita.

(2) Unless a sign is in place prohibiting a turn, vehicular traffic facing a steady red signal may cautiously enter the intersection to make a right turn after stopping as required by subsection (c)(1) of this section. After stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within the adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless a sign is in place prohibiting a turn, vehicular traffic upon a roadway restricted to one-way traffic facing a steady red signal at the intersection of such roadway with another roadway restricted to one-way traffic which is proceeding to the left of such vehicular traffic, may cautiously enter the intersection to make a left turn after stopping as required by subsection (c) (1) of this section. After stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the

intersection or junction of roadways. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(4) The driver of a motorcycle or a person riding a bicycle facing any steady red signal, which fails to change to a green light within a reasonable period of time because of a signal malfunction or because the signal has failed to detect the arrival of the motorcycle or bicycle because of its size or weight, shall have the right to proceed subject to the rules stated herein.

After stopping, the driver or rider shall yield the right-of-way to any vehicle in or near the intersection or approaching on a roadway so closely as to constitute an immediate hazard during the time such driver or rider is moving across or within the intersection or junction of roadways. Such motorcycle or bicycle traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(5) Unless otherwise directed by a pedestrian-control signal as provided in K.S.A. 8-1509, and amendments thereto, pedestrians facing a steady circular red or red arrow signal alone shall not enter the roadway.

(d) Steady Red with Green Arrow.

(1) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow, but

shall not interfere with other traffic or endanger pedestrians lawfully within a crosswalk.

(2) No pedestrian facing such signal shall enter the roadway.

(e) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made, but in the absence of any such sign or marking, the stop shall be made at the signal.

SECTION 2. The original of Section 11.20.060 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 12th day of July, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED 07/05/2011

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTION 11.20.060 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO TRAFFIC CONTROL SIGNALS AND REPEALING THE ORIGINALS OF SAID SECTIONS.

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

SECTION1. Section 11.20.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Lights.** Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green Indication.

(1) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection at the time such signal is exhibited.

(2) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such

other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless otherwise provided by a pedestrian control signal, as provided in Section 11.20.070 of this chapter, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) Steady Yellow Indication.

(1) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(2) Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian control signal as provided in Section 11.20.070 of this chapter, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(c) Steady Red Indication.

(1) Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and shall remain standing until an indication to proceed is

shown, except as provided in subsection (c) (2), (3) and (4) of this subsection. Any turn provided for in said paragraphs (2), (3) and (4) shall be governed by the applicable provisions of Section 11.28.030 of the Code of the City of Wichita.

(2) Unless a sign is in place prohibiting a turn, vehicular traffic facing a steady red signal may cautiously enter the intersection to make a right turn after stopping as required by subsection (c)(1) of this section. After stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within the adjacent crosswalk and to other traffic lawfully using the intersection.

~~(3)~~ ~~No pedestrian facing such signal shall enter the roadway~~.

~~(4)~~ (3) ~~When indicated by an appropriate sign,~~ Unless a sign is in place prohibiting a turn, vehicular traffic upon a roadway restricted to one-way traffic facing a steady red signal at the intersection of such roadway with another roadway restricted to one-way traffic which is proceeding to the left of such vehicular traffic, may cautiously enter the intersection to make a left turn after stopping as required by subsection (c) (1) of this section. After stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Such

vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(4) The driver of a motorcycle or a person riding a bicycle facing any steady red signal, which fails to change to a green light within a reasonable period of time because of a signal malfunction or because the signal has failed to detect the arrival of the motorcycle or bicycle because of its size or weight, shall have the right to proceed subject to the rules stated herein.

After stopping, the driver or rider shall yield the right-of-way to any vehicle in or near the intersection or approaching on a roadway so closely as to constitute an immediate hazard during the time such driver or rider is moving across or within the intersection or junction of roadways. Such motorcycle or bicycle traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(5) Unless otherwise directed by a pedestrian-control signal as provided in K.S.A. 8-1509, and amendments thereto, pedestrians facing a steady circular red or red arrow signal alone shall not enter the roadway.

(d) Steady Red with Green Arrow.

(1) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow, but shall not interfere with other traffic or endanger pedestrians lawfully within a crosswalk.

(2) No pedestrian facing such signal shall enter the roadway.

(e) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made, but in the absence of any such sign or marking, the stop shall be made at the signal.

SECTION 2. The original of Section 11.20.060 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 _____, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and Members of the City Council

SUBJECT: Issuance of General Obligation Local Sales Tax Bonds

INITIATED BY: Finance Department

AGENDA: Consent

Recommendation: Adopt the resolution.

Background: Voters approved a one percent sales tax in 1985 to reduce property tax and to provide revenues for a roadway construction program, with special emphasis on freeway construction. The City has largely completed the construction of the K-96/Northeast Expressway, reconstruction of major portions of Kellogg/US-54 from Rock Road (East) to Maize Road (West), as well as supporting $4 million to $6 million in annual arterial road and bridge construction using local sales tax dollars, federal/state highway funding and bonding.

The City previously issued General Obligation (GO) Local Sales Tax Bonds -- $50 million in 1992, which matured in 2002; $25 million in 1996, with a $7.5 million remaining balance refunded in 2003; $46 million in 2002, with a $28.49 million remaining balance refunded in 2009; $49 million in 2003; and, $36 million in 2004, with a $23.93 million remaining balance refunded in 2010, to supplement current sales tax revenues in financing the freeway construction program.

Analysis: Based on freeway construction expenditures and projections through the year 2011, the City has determined it necessary to issue additional GO Sales Tax Bonds in the amount of $9,025,000 to reimburse and continue the development and reconstruction of Kellogg/US-54 to the east and west. Fifteen-year bonds with level principal and interest payments will be sold in September 2011.

In accordance with State statute, before GO Local Sales Tax Bonds can be issued, a resolution regarding the City's intent to issue such bonds must be published once each week for two consecutive weeks in the City's official newspaper and a protest period of 30 days following the date of the last publication must be satisfied.

Financial Considerations: The City's intent to issue $9,025,000 in GO Local Sales Tax Bonds serves to provide reimbursement for previous capital expenditures. Fifteen-year bonds with level principal and interest payments will be sold in September 2011. As with the issuance of previous Local Sales Tax Bonds, fifty percent (50%) of the revenues received by the City from the county-wide retailer's sales tax will be pledged for the payment of the bonds.

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

Legal Considerations: The resolution was prepared by the City's Bond Counsel and has been approved by the Law Department. The resolution will be published twice in the City's official newspaper and will be subjected to a 30-day protest period.

Recommendation/Action: It is recommended the City Council adopt the resolution declaring it necessary to issue general obligation bonds and to pledge local sales tax revenues for the payment of such bonds and provide for the giving of notice as required by law.

Attachment: Resolution

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 12, 2011, of an ordinance entitled:

ORDINANCE NO. _____

"AN ORDINANCE AMENDING SECTION 11.38.200 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PASSING RULESAND REPEALING THE ORIGINALS OF SAID SECTION. "

The general nature of such emergency lies in the need to pass and publish this ordinance to conform to the legislative changes regarding passing bicycles. The City's ordinance requires amendment to conform to state statutes. Since the state law became effective on July 1, 2011, the amendment to the City's ordinance needs to be effective immediately.

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 this 12th day of July, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf
Director of Law

040006

First Published in The Wichita Eagle on July 15, 2011

07/05/2011

ORDINANCE NO. 49-032

AN ORDINANCE AMENDING SECTION 11.38.200 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PASSING RULESAND REPEALING THE ORIGINALS OF SAID SECTION.

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

SECTION1. Section 11.38.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Passing – Rules.** The following rules shall govern the overtaking and passing of vehicles and bicycles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

(c) (1) The driver of a vehicle overtaking a bicycle proceeding in the same direction shall pass to the left thereof at a distance of not less than three feet and shall not again drive to the right side of the roadway until safely clear of the overtaken bicycle.

(2) The driver of a vehicle may pass a bicycle proceeding in the same direction in a no-passing zone with the duty to execute the pass only when it is safe to do so.

SECTION 2. The original of Section 11.38.200 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 12th day of July, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED 07/05/2011

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTION 11.38.200 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PASSING RULESAND REPEALING THE ORIGINALS OF SAID SECTION.

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

SECTION1. Section 11.38.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Passing – Rules.** The following rules shall govern the overtaking and passing of vehicles and bicycles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

(c) (1) The driver of a vehicle overtaking a bicycle proceeding in the same direction shall pass to the left thereof at a distance of not less than three feet and shall not again drive to the right side of the roadway until safely clear of the overtaken bicycle.

(2) The driver of a vehicle may pass a bicycle proceeding in the same direction in a no-passing zone with the duty to execute the pass only when it is safe to do so.

SECTION 2. The original of Section 11.38.200 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 _____, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

CITY OF WICHITA
City Council Meeting
July 12, 2011

TO: Mayor and City Council Members

SUBJECT: Memorandum of Understanding with Friends of the Historic Fresh Air Baby Camp, Inc. to rehabilitate Fresh Air Baby Camp.

INITIATED BY: Park and Recreation Department

AGENDA: New Business

Recommendation: Approve the Memorandum of Understanding to rehabilitate the Historic Fresh Air Baby Camp structure.

Background: Recently, the Park Board was approached by a non-profit organization, the Friends of the Historic Fresh Air Baby Camp, Inc. (Friends) regarding establishing a joint effort to rehabilitate the Historic Fresh Air Baby Camp, formerly known as the Girl Scout House located in Riverside Park. On June 20, 2011 the Park Board, subject to final Council approval, approved entering into a Memorandum of Understanding with Friends to rehabilitate the building.

The structure was built in 1920 as a Fresh Air Baby Camp. A fresh air baby camp was used to house newborn children and their mothers to provide fresh air to help newborn infants remain healthy. It is only one of a few existing fresh air baby camps left in the United States. In 2007, it was listed on the Historic Register of Historic Places. The current structure is badly damaged, and the roof is collapsing. Without immediate intervention, the building could become damaged beyond repair. Friends has agreed to assist with fund raising efforts and rehabilitation of the structure.

Analysis: The Memorandum of Understanding establishes a three year time frame for rehabilitation of the structure by Friends. The organization will raise the necessary funding and/or in kind donations to complete renovation. Friends will maintain all necessary workers compensation and liability insurance during the renovation process. The organization will also complete all repairs and rehabilitation in accordance with state and federal laws regarding rehabilitation of historic structures.

The City will agree to keep the property secure, fund the necessary fees for permits, and as owner of the property, assist in the preparation of applications for grant funding. Additionally, the City will provide Friends copies of all previous drawings and plans regarding restoration of the building.

All renovations to the structure will require the approval of the Historical Preservation Board, and the Kansas State Historic Preservation Office.

Following renovation, the Parks Department will be responsible for determining appropriate public uses and scheduling of such uses for the building.

Financial Considerations: It is estimated that complete rehabilitation of the structure will be in excess of $500,000. The costs to the City will be limited to the cost of permit fees for the rehabilitation, paid from the Park and Recreation operating funds.

Goal Impact: The rehabilitation of the structure will enhance Quality of Life for the community and

support a Vibrant Neighborhood.

Legal Considerations: The Memorandum of Understanding has been prepared and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Memorandum of Understanding with the Friends of the Historic Fresh Air Baby Camp, Inc.

Attachment: Memorandum of Understanding.

SECOND DRAFT
MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING, (the MOU) is entered into this __ day of _____, 2011, between FRIENDS OF THE HISTORIC FRESH AIR BABY CAMP, INC., a Kansas Not-for-Profit Corporation (FHFABC), whose mailing address is 731 West Tenth Street North, Wichita, Kansas 67203-3574, and the CITY OF WICHITA, a Kansas Municipal Corporation (City), to memorialize the agreement of the parties concerning the rehabilitation of the structure in North Riverside Park listed on the National Register of Historic Places under the name FRESH AIR BABY CAMP (Baby Camp).

Recitals

WHEREAS, FHFABC was organized to provide assistance in the coordination of volunteer labor, contractors and fundraising efforts necessary to the rehabilitation of the building known as the Baby Camp;

AND, WHEREAS the parties agree that the Baby Camp is an historic structure in need of repair and rehabilitation;

AND, WHEREAS it is the intent of the City and of the FHFABC to work in cooperation and as a public-private partnership to help each other in the rehabilitation of the Baby Camp;

Agreement

NOW, THEREFORE, for these reasons and in consideration of the conditions, covenants and agreements set forth below, the parties to this agreement do agree as follows:

1. Relationship Between the Parties. The parties agree that their relationship is as between two separate and independent entities. This is not a joint venture, partnership, employer/employee or principal/agent relationship.
2. Scope of Agreement. Understanding that time is of the essence, FHFABC proposes and agrees to complete the rehabilitation as contemplated in this Agreement and to finish the project within three (3) years from and after the date of the parties' execution of this Agreement. Such rehabilitation shall comply with the applicable requirements of the City, State and Federal law regarding rehabilitation of buildings on the National Register of

Historic Places, including applicable provisions of the Secretary of the Interior's Guidelines for historic rehabilitation. All rehabilitation measures shall be reviewed and approved by applicable and necessary bodies having jurisdiction over buildings on the National Register, after approval by the parties to this Agreement.

FHFABC's Responsibilities

Phases and Requirements

Within a reasonable time after the date of this Agreement:

a. FHFABC will determine the scope of rehabilitation work required.
b. FHFABC will prepare a complete cost estimate to rehabilitate the entire building according to the Secretary of the Interior's Standards for Rehabilitation.
c. FHFABC will secure an environmental review and prepare preliminary drawings for the building's rehabilitation (interior and exterior) for planning, approval and fundraising purposes.
d. FHFABC will establish a fund with the Park Foundation, the Wichita Community Foundation, or both, to receive tax-deductible donations to pay any necessary and applicable costs of rehabilitation.
e. FHFABC shall finish required architectural documents and secure balance of contributions sufficient to complete replacement of the roof.
f. FHFABC will prepare a capital campaign case statement and seek donations sufficient to accomplish roof replacement, including materials, labor and other necessary costs.
g. FHFABC will submit such plans and documentation to the City outlining each subsequent construction phase with a corresponding fundraising goal for each such phase. It is estimated at the time of this Agreement that there shall be a minimum of four construction phases: roofing phase, completion of exterior phase, mechanical and plumbing systems phas, and interior finish phase.
h. FHFABC shall undertake a public launch of a capital campaign to raise funds and shall provide to the City the names and addresses of members of the Capital Campaign Committee.
i. FHFABC shall complete the roof replacement during the construction year 2011, or the City may terminate or modify this MOU after appropriate written notice to FHFABC.

j. Within one year following the date of this Agreement, FHFABC shall provide to the City for approval all plans, drawings and other documentation for rehabilitation of the remaining phases of construction beyond roof replacement.
k. FHFABC shall obtain all necessary building permits and inspections of each phase prior to commencement of construction.
l. FHFABC shall maintain liability and worker's compensation insurance coverage for workers and volunteers assisting in rehabilitation efforts.
m. FHFABC shall allow the City the right to review all financial statements, bills, invoices and receipts regarding the rehabilitation of the structure.
n. Within two years following the date of this Agreement, the exterior phase of construction will be completed.
o. Within three years following the date of this Agreement, the remaining phases of construction will be completed.

City of Wichita's Responsibilities Throughout the Rehabilitation Process

The City will:

a. Tarp the roof to mitigate leaks.
b. Keep the structure securely boarded.
c. Provide access as necessary for the purpose of preparing drawings and securing estimates.
d. Provide FHFABC the cost estimates prepared by City Staff, as well as any CAD drawings, measurements, surveys or other documentation that exists from previous evaluations.
e. Provide FHFABC timely approval of all drawings, plans and other documentation regarding rehabilitation.
f. Grant FHFABC approval to proceed with roof replacement as soon as funding or in-kind donations of roof replacement labor and materials has been secured.
g. Provide appropriate approval, as owner of the structure, for grant applications and historic preservation tax credits and other applicable financial aid and incentives which FHFABC cannot obtain without the assistance or consent of the owner. Any and all applications shall require the approval of both parties prior to submission.
h. The City will issue, at no cost, building, electrical, plumbing and mechanical permits, plans, check fees and connection charges for the rehabilitation of the structure.

3. Governing Law. The parties agree that the law of the State of Kansas shall govern this Agreement, and that any suit or cause of action by either party against the other shall be filed in the Eighteenth Judicial District Court, Sedgwick County, Kansas.
4. Indemnification. The parties each agree to indemnify and hold harmless the other, its governing board, officers, agents and employees against any and all claims, damage, liability, injury, expense, demands, causes of action, judgments including court costs and attorneys' fees, arising out of or resulting from the negligence or intentional acts of its officers, agents or employees. In the event such loss is proximately caused by the acts of the parties and their officers, agents or employees, each shall be responsible for its proportionate share of claimant's damages under the law of the State of Kansas, PROVIDED, HOWEVER that such indemnification shall not be required to the extent that the City has a defense against or limitation of its liability under the Kansas Tort Claims Act.
5. Assignment. The parties agree that this MOU may be assigned with the prior approval of both parties hereto, but not otherwise, and that such assignment shall relieve assigning party of all responsibility and liability hereunder for future acts pursuant hereto.
6. Complete Agreement. The parties agree that this MOU constitutes the entire agreement of the parties and that no prior agreement or representations, oral or written, shall be binding or of any force or effect. Further, this MOU may not be amended, modified, altered or enlarged except in a writing signed by the duly authorized representatives of the parties hereto, their successors or assigns.
7. Agreement Binding. The parties agree that this MOU shall be binding upon the successors and legal representatives of the parties hereto.
8. Term. The term of this MOU shall be from three (3) years from and after the date of the parties' execution of same. Either party may terminate this MOU for cause by providing thirty (30) days' written notice to the respective party.
9. Notices. All notices with respect to this MOU shall be given by first-class mail or hand-delivery to the parties as follows:

City	FHFABC
Doug Kupper Director of Parks & Recreation City Hall – 11th Floor Wichita, Kansas 67202	Jim Guy Attorney at Law 731 West Tenth Street North Wichita, Kansas 67203-3575

10. Severability. If any term, provision, covenant or condition of this MOU is ruled invalid, void or unenforceable by a court of competent jurisdiction, this MOU will nevertheless remain in full force and effect as to all remaining terms, provisions, covenants and conditions hereof.
11. Scope of Agreement. FHFABC proposes and agrees to complete the rehabilitation work as set forth in this Agreement within three (3) years from and after the date of the parties' execution of this Agreement. Such renovation shall comply with the requirements of City, State and Federal law regarding rehabilitation of buildings on the National Register of Historic Places, including the Secretary of the Interior's Standards for Rehabilitation.
12. Disposition of Improvements to Structure and Use of Structure. All permanent improvements, alterations, rehabilitative changes and appliances shall be and remain the property of the City of Wichita upon termination of this MOU or completion of rehabilitation of the structure. The parties agree that, upon completion of rehabilitation, they shall submit to the City Manager and the Board of Park Commissioners a plan for the use and maintenance of the structure.

CITY OF WICHITA

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebensdorf
City Attorney

FRIENDS OF THE HISTORIC
FRESH AIR BABY CAMP, INC.

_____
Jim Guy, President

Agenda Item No. V- 1

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: ZON2011-00011 – City zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential; generally located north of 47th Street South, midway between Meridian Avenue and the Big Ditch. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendation: Approve (10-0).

MAPD Staff Recommendation: Approve.

Background: The applicant requests a zone change from SF-5 Single-Family Residential ("SF-5") to TF-3 Two-Family Residential ("TF-3") on Lots 11-41 (all), Block B, and Lots 1-18 (all), Block D, all in the Angel Fire Addition. The applicant proposes to build duplexes on these lots. The site's subdivision is currently zoned both SF-5 and TF-3 and is partially developed with single-family residences and duplexes.

The area is located on the edge of the Wichita city limits, with a mix of uses and zoning around it. There is a large (approximately 80 acres) MH Manufactured Housing ("MH") zoned manufactured home park abutting the north side of the subject lots and their subdivision. There is also a developed SF-5 zoned subdivision abutting the northeast corner of the site's subdivision. An adjacent portion (30 lots, located south and west of the site) of the site's subdivision is zoned TF-3 (ZON2000-49) and is being developed with duplexes. Abutting and adjacent eastern and southern portions of the site's subdivision are developed as SF-5 zoned residences. East of the site's subdivision there is undeveloped SF-20 Single-Family Residential ("SF-20") zoned land. South of 47th Street South are SF-20 and SF-5 zoned subdivisions, a few large tract residences and undeveloped land. There are undeveloped LC Limited Commercial ("LC") zoned tracts on the northeast and southeast corners of West St. and 47th Street South. There is an LC zoned residence and night club on the southwest corner of West St. and 47th Street South. The northwest corner of 47th Street South and West St. is the south end of an extensive area of LI Limited Industrial ("LI") zoned developments, with the Sedgwick County maintenance yard being located on this south end. The subject lots are located in the Angel Fire Addition, which previously had 30 lots rezoned from SF-6 Single-Family Residential (SF-6 is now SF-5 zoning) to TF-3; ZON2000-49, January 23, 2001, thus the request does not introduce TF-3 zoning into the area.

Analysis: At the MAPC meeting held March 26, 2011, the MAPC voted (10-0) to approve the request. There were no protests at the MAPC's hearing. Staff has received two (2) protests, but they were both outside the 200-foot protest area and as such have appeal standing (see attached protest map). A simple majority of the Wichita City Council is needed to approve the zoning request.

Financial Considerations: All improvements will be to City standards and at the applicant's expense.

Goal Impact: The application supports the City's goal to promote Economic Vitality.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the zone change, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required); or
2. Deny the zone change request by making alternative findings, and override the MAPCs recommendation (two-thirds majority vote required); or
3. Return the application to the MAPC for further consideration (simple majority vote required).

Attachments:

- Ordinance
- MAPC Minutes
- Protest map

OCA 150004

ORDINANCE NO. 49-038

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. ZON2011-00011

Zone change from SF-5 Single-Family Residential ("SF-5") to TF-3 Two Family Residential ("TF-3") on an 11.46-acre property described as:

Lots 11 - 41, inclusive, Block B, Lots 1 -18, inclusive, Block D, all in the Angel Fire Addition; generally located north of 47rth Street South, midway between Meridian Avenue and the Big Ditch, Wichita, Sedgwick County, Kansas.

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.

_____
Carl Brewer - Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

Approved as to form: _____
Gary E. Rebenstorf, City Attorney

EXCERPT MINUTES OF THE MAY 26, 2011 PLANNING COMMISSION MEETING

Case No.: ZON2011-11 – Caywood, LLC, c/o Matt Eck (applicant/owner) and Baughman Company, PA, c/o Phil Meyer (agent) request a City zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential zoning on property described as:

Lots 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41, Block B and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18, Block D, Angel Fire Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant requests a zone change from SF-5 Single-Family Residential ("SF-5") to TF-3 Two-Family Residential ("TF-3") on Lots 11-41 (all), Block B, and Lots 1-18 (all), Block D, all in the Angel Fire Addition. The applicant proposes to build duplexes on these lots. The site's subdivision is currently zoned both SF-5 and TF-3, and is partially developed with single-family residences and duplexes.

The area is located on the edge of the Wichita city limits, with a mix of uses and zoning around it. There is a large (approximately 80-acres) MH Manufactured Housing ("MH") zoned manufactured home park abutting the north side of the subject lots and their subdivision. There is also a developed SF-5 zoned subdivision abutting the northeast corner of the site's subdivision. An adjacent portion (30 lots, located south and west of the site) of the site's subdivision is zoned TF-3 (ZON2000-49) and is being developed with duplexes. Abutting and adjacent eastern and southern portions of the site's subdivision are developed as SF-5 zoned residences. East of the site's subdivision there is undeveloped SF-20 Single-Family Residential ("SF-20") zoned land. South of 47th Street South are SF-20 and SF-5 zoned subdivisions, a few large tract residences and undeveloped land. There are undeveloped LC Limited Commercial ("LC") zoned tracts on the northeast and southeast corners of West and 47th. There is an LC zoned residence and night club on the southwest corner of West Street and 47th Street South. The northwest corner of 47th and West is the south end of an extensive area of LI Limited Industrial ("LI") zoned developments, with a Sedgwick County maintenance yard being located on this south end.

CASE HISTORY: The Angel Fire Addition was recorded with the Sedgwick County Register of Deeds March 23, 2001. Lots 42-54, Block B and Lots 1-17, Block D, of the subdivision were approved for rezoning (ZON2000-49) from SF-6 Single-Family Residential (now SF-5 zoning) to TF-3, in January 23, 2001, contingent on platting.

ADJACENT ZONING AND LAND USE:

NORTH:	MH, SF-5	Manufactured home park, single-family residences
SOUTH:	TF-3, SF-5, LC, SF-20	Duplexes, single-family residences, vacant land, night club
EAST:	SF-5, SF-20	Single-family residence, vacant land
WEST:	LI	Sedgwick County maintenance yard

PUBLIC SERVICES: The subject lots are located along the platted (but undeveloped) residential streets 45th Street South, Kessler Court and Kessler and Angle Streets. The Angel Fire Addition (subject subdivision) has two points of access onto the paved, two-lane arterial 47th Street South and one point of access onto the paved, two-lane arterial West Street. 47th dead ends, to the west, less than a ¼-mile from its intersection with West Street, at the Big Ditch. The 2030 Transportation Plan shows no change to 47th, but projects West to become a four-lane arterial. Public water, sewer service and all other utilities are available to serve the site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan (2030 Plan) designates this area as appropriate for "Urban Residential" development. The Urban Residential category includes all housing types found in the municipality, including duplexes. The Comprehensive Plan contains the following objective: encourage residential redevelopment, infill, and higher density residential development, which maximize the public investment in existing and planned facilities and services. The objective is intended to be achieved through several strategies, including using zoning as tools to promote mixed-use development, higher density residential environments, and appropriate buffering. The proposed TF-3 zoning promotes mixed-use residential development, at a higher density than its current SF-5 zoning, which would maximize the public investment in existing and planned facilities and services. The subject lots are located in the Angel Fire Addition, which previously had 30 lots rezoned from SF-6 to TF-3; ZON2000-49, January 23, 2001. Because of ZON2009-49, the request does not introduce TF-3 zoning into the area. Most of these 30 TF-3 zoned lots are now duplexes or are being developed as duplexes. The requested TF-3 zoning conforms to the 2030 Plan and is not out of character with the zoning in this area.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area is located on the edge of the Wichita city limits, with a mix of uses and zoning around it. There is a large (approximately 80-acres) MH Manufactured Housing ("MH") zoned manufactured home park abutting the north side of the subject lots and their subdivision. There is also a developed SF-5 zoned subdivision abutting the northeast corner of the site's subdivision. An adjacent portion (30 lots, located south and west of the site) of the site's subdivision is zoned TF-3 (ZON2000-49) and is being developed with duplexes. Abutting and adjacent eastern and southern portions of the site's subdivision are developed as SF-5 zoned residences. East of the site's subdivision there is undeveloped SF-20 Single-Family Residential ("SF-20") zoned land. South of 47th Street South are SF-20 and SF-5 zoned subdivisions, a few large tract residences and undeveloped land. There are undeveloped LC Limited Commercial ("LC") zoned tracts on the northeast and southeast corners of West and 47th. There is an LC zoned residence and night club on the southwest corner of West and 47th. The northwest corner of 47th and West is the south end of an extensive area of LI Limited Industrial ("LI") zoned developments, with the Sedgwick County maintenance yard being located on this south end.

2. The suitability of the subject property for the uses to which it has been restricted: The undeveloped SF-5 zoned lots could be developed as single-family residential. There are existing TF-3 zoned (ZON2000-49) duplexes located adjacent to the south and west sides of the subject site, therefore the proposed TF-3 zoning does not introduce TF-3 zoning into the area. The proposed TF-3 zoning would promote development of vacant property, into duplexes, which would maximize the public investment in existing and planned facilities and services.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Typical concerns expressed by neighbors in regards to duplex development is declining property values of the neighborhood brought on by poor maintenance of what is typically rental housing, i.e., the duplexes. Poor maintenance of rental property is not an absolute, nor is there any guarantee that a single-family residence will be maintained by its owner.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan designates

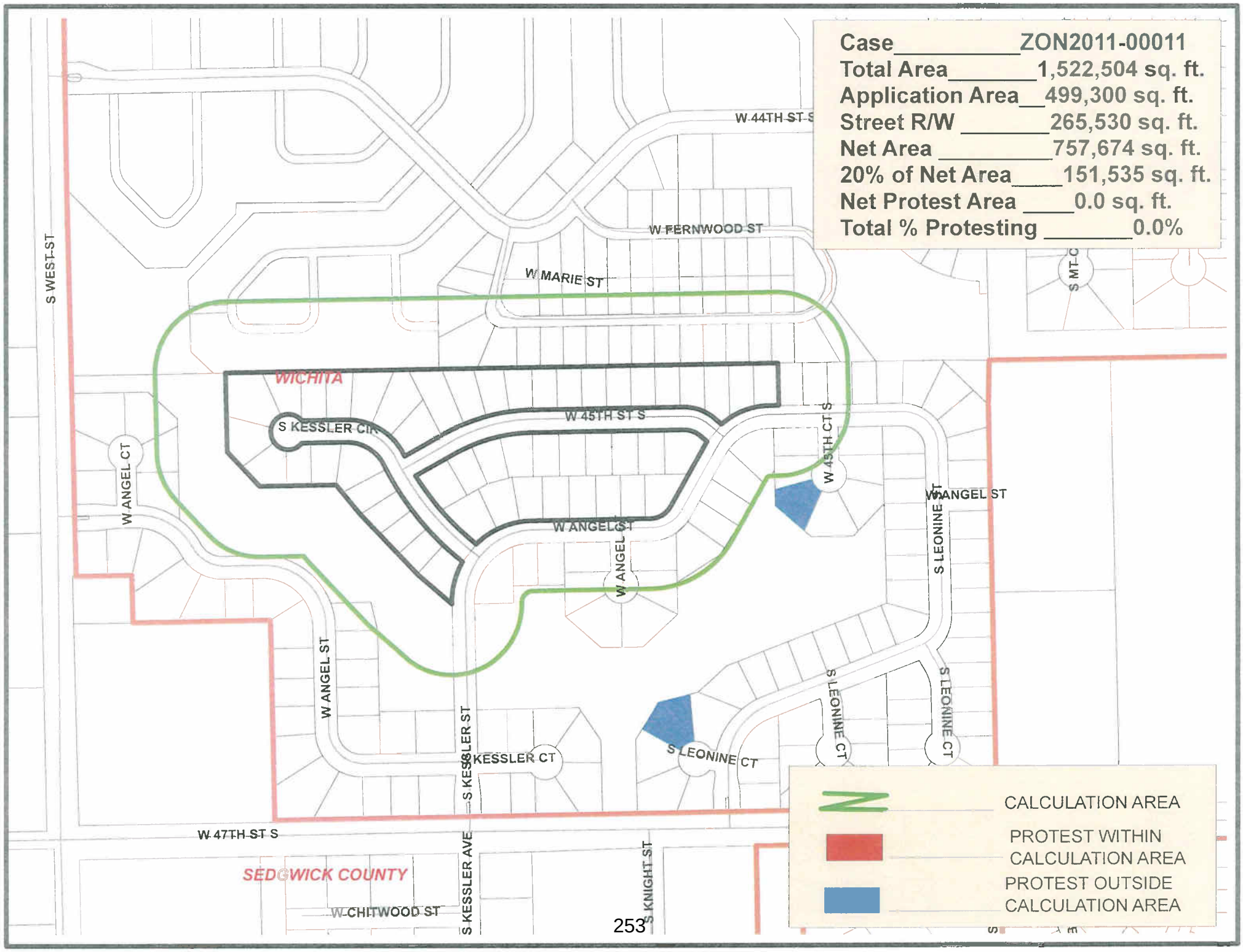
this area as appropriate for "Urban Residential" development. The Urban Residential category includes all housing types found in the municipality, including duplexes. The Comprehensive Plan contains the following objective: encourage residential redevelopment, infill, and higher density residential development, which maximize the public investment in existing and planned facilities and services. The objective is intended to be achieved through several strategies, including using zoning as tools to promote mixed-use development, higher density residential environments, and appropriate buffering. The proposed TF-3 zoning promotes mixed-use residential development, at a higher density than its current SF-5 zoning, which would maximize the public investment in existing and planned facilities and services. The subject lots are located in the Angel Fire Addition, which previously had 30 lots rezoned from SF-6 to TF-3; ZON2000-49, January 23, 2001, thus the request does not introduce TF-3 zoning into the area. Most of these 30 lots are now or are being developed as duplexes. The requested TF-3 zoning conforms to the 2030 Plan and is not of character with the zoning in this area.

5. Impact of the proposed development on community facilities: To the public, traffic and drainage will have the most noticeable on community facilities. All other impact on community facilities should be more efficient due to the minor increase in density.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

HILLMAN moved**, JOHNSON** seconded the motion, and it carried (10-0).


Case ZON2011-00011
Total Area 1,522,504 sq. ft.
Application Area 499,300 sq. ft.
Street R/W 265,530 sq. ft.
Net Area 757,674 sq. ft.
20% of Net Area 151,535 sq. ft.
Net Protest Area 0.0 sq. ft.
Total % Protesting 0.0%
W 44TH ST S
W FERNWOOD ST
W MARIE ST
S WEST ST
WICHITA
S KESSLER CIR
W 45TH ST S
W 45TH CT S
W ANGEL CT
W ANGEL ST
S LEONINE ST
S LEONINE CT
S KESSLER ST
S KESSLER CT
S KESSLER AVE
S KNIGHT ST
W 47TH ST S
SEDGWICK COUNTY
W CHITWOOD ST
CALCULATION AREA
PROTEST WITHIN CALCULATION AREA
PROTEST OUTSIDE CALCULATION AREA

Agenda Item No. V-2

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

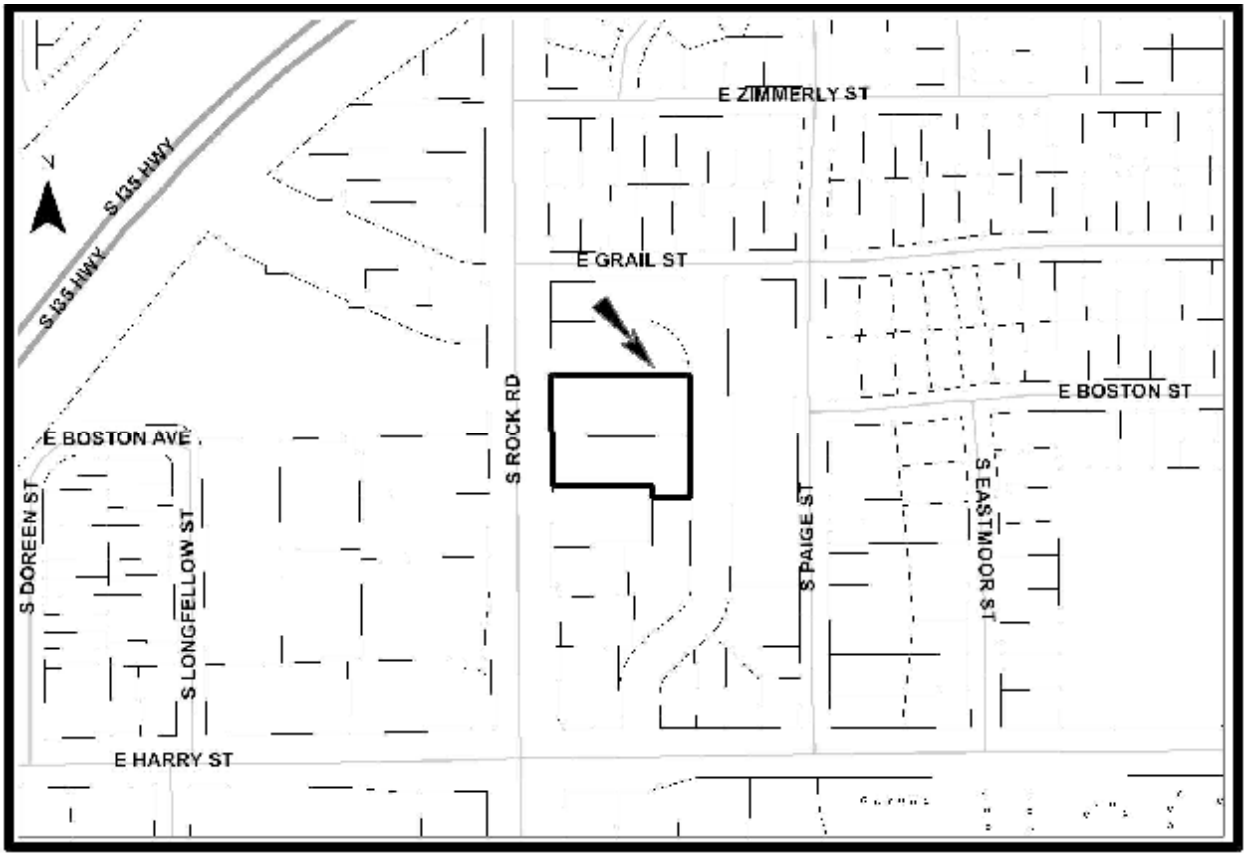
SUBJECT: CON2011-00015 – City Conditional Use for Nightclub in the City; generally located on the east side of Rock Road, 1/8 mile north of Harry Street (1208 South Rock Road) (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendation: The MAPC recommendation comes as a recommendation to deny the request due to a tie vote that constitutes a failure to recommend approval (5-5).

MAPD Staff Recommendation: The MAPD staff recommended approval, subject to conditions of the Conditional Use.



Background: The applicant is seeking a Conditional Use to permit a Nightclub in the City on property zoned LC Limited Commercial ("LC"), generally located on the east side of Rock Road, 1/8 mile north of Harry Street (1208 South Rock Road). The proposed lease is located in a one-story strip center except for the center portion (1206 and 1208 South Rock Road) where the applicant proposes to operate a nightclub on the top floor. The bottom story is vacant and is not included in the proposed Conditional Use. Other businesses located in the north and south wings of the strip center include three personal care service businesses (cleaners, alterations, tanning salon) and two restaurants.

The applicant's statement (attached) states that he intends to operate a club (Seven Night Club) that would provide alcoholic drinks (drinking establishment), recorded music and recorded video entertainment for patrons 25 years of age and up. Other activities could include live entertainment by comedians, poetry readings and open mike. According to the applicant's statement, the business cannot qualify as a drinking establishment/restaurant (50 percent food sales) due to the lack of kitchen facilities. Regardless, the provision of the music and entertainment would trigger the designation of nightclub because it is within 300 feet of property zoned residentially. The site abuts a drainage ditch zoned B Multi-Family ("B"), which is located next to an apartment development also zoned B.

Nightclubs have been licensed and operated from the bottom floor, addressed as 1206 South Rock Road, at least since the mid-1990s. Most of the time, the top floor was licensed and used as part of the 1206 operation. Past records show a variety of clubs have been licensed to 1206 South Rock Road. The names of the previous clubs were (listed from most recent to earlier): The Groove, Club LaFaye, Kat Eyes Inc., Cocktails, Club Groove, Max S, Jammers (top floor) and Jo-Jo's Down Under (bottom floor). None of the licenses were issued to the 1208 address. The last nightclub (The Groove) has been closed for over a year, but less than two years. The occupancy associated with all these clubs has remained the same: 210 person occupancy on the top floor and 115 person occupancy on the bottom floor.

Access to the top floor appears to be by way of an exterior iron stairway. No ADA accessibility is provided at the main entrance, but a ramp is attached to the rear of the building.

The Unified Zoning Code requires that any nightclub located within 300 feet of residential zoning be subject to Conditional Use review to determine if the particular site is suitable for the operation of a nightclub. As previously mentioned, the upper floor has been part of a two-story nightclub operation in the past, although the operation is now closed and the applicant is seeking to establish his club only on the top floor which has not been licensed independently. Other restaurant and personal care services are located in the same strip center and share the parking lot. The property does not have any buffering or screening of its own along the abutting drainage ditch. The apartment development has its own fence and landscaping to screen the apartments from the commercial use and view.

Most properties located nearby on both sides of Rock Road are zoned LC. Two fast-food restaurants (one vacant), a vacant retail use and a convenience store are located to the south. Another restaurant is located to the north. More fast-food restaurants and a tire store are located to the west, across Rock Road. A mini-storage warehouse, zoned GC General Commercial ("GC"), is located west of Rock Road. Residential uses are located directly east across the previously mentioned drainage ditch, in the apartment development zoned B fronting onto Paige Street. Single-family residential houses, zoned SF-5 Single-Family Residential, are located on the east side of Paige Street and to the north of the drainage ditch.

Analysis: At the MAPC meeting held May 26, 2011, the MAPC voted (5-5) to approve the request; the tie vote represents a failure to approve the request. No alternate motion was made. Therefore, the case comes to the Wichita City Council with a recommendation of denial due to failure to recommend approval by the Planning Commission. At the MAPC meeting held May 23, the owners of the apartment complex to the southeast, the manager of the apartment complex to the east and home owners in the vicinity objected to approval of a Conditional Use for a nightclub. Those speaking brought up issues

with past operation of nightclubs based on the license issued to the lower level of this structure, 1206 South Rock Road (the applicant submitted the request for operating a Nightclub in the City apart from a restaurant and only for the upper story or 1208 South Rock Road, which previously had no license for a nightclub operation solely on the upper premises). The neighbors commented on problems with people congregating in the parking lot associated with past club operations, especially after closing at 2:00 a.m., that the noise from the people in the parking lots disrupted those living in the nearby apartments and residences, fights and other violence in the parking lot, traffic (including people on foot) from the nightclub traveling through the neighborhood late at night, trash and litter found in the parking lot of businesses across Rock Road. One citizen presented a report of past police calls to the location associated with previous clubs.

Roosevelt Hunt, the applicant seeking to operate the nightclub, addressed these comments and reiterated that he intended to make his operation different and avoid neighborhood impacts. He said he was in agreement with the recommendations contained in the MAPD staff report designed to mitigate the neighborhood impacts addressed by the citizens at the public hearing. In addition to testimony given by citizens at the meeting, a number of written and verbal correspondences have been received concerning the case and are attached to this referral. No formal protests were filed by the neighbors after the MAPC vote for failure to approve constituting a recommendation of denial. The applicant has filed an appeal of the MAPC action to the Wichita City Council.

Financial Considerations: There are no financial considerations in regards to the Conditional Use request.

Goal Impact: The recommendation of the MAPC is designed to promote Economic Vitality.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

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

Attachments:
- Resolution based on MAPD staff report
- Site plan
- MAPC Minutes
- Appeal from applicant dated May 31. 2011
- Applicant's original statement of intent for operation filed with the Conditional Use Request
- Correspondence from Angelita Rivera dated May 26, 2011
- Copy of police responses to 1206 S. Rock Road, submitted by Justin Demal on May 25, 2011
- Correspondence from Dixie Swanson dated May 24, 2011
- Correspondence from Todd Hying dated May 24, 2011
- Correspondence from Kayla Garrett dated May 24, 2011
- Correspondence from Diane Marshall dated May 24, 2011
- Comment from Donald E. and Evelyn G. Page

RESOLUTION No. 11-161

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO PERMIT A NIGHTCLUB IN THE CITY, ON APPROXIMATELY 1.48 ACRES ZONED LC LIMITED COMMERCIAL ("LC"), GENERALLY LOCATED ON THE EAST SIDE OF ROCK ROAD 1/8 MILE NORTH OF HARRY STREET (1208 SOUTH ROCK ROAD), WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 48-451, AS AMENDED.

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

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, a Conditional Use to allow a Nightclub in the City, on approximately 1.48 acres zoned LC Limited Commercial, subject to the conditions listed below:

Case No. CON2011-00015

A Conditional Use to permit a Nightclub in the City on approximately 1.48 acres zoned LC Limited Commercial.

Lot 2 and Lot 3, except the South 25 feet of the West 200 feet, in Triple J Addition, Wichita, Sedgwick County, Kansas, Wichita, Sedgwick County, Kansas, generally located on the east side of Rock Road 1/8 mile north of Harry Street (1208 South Rock Road).

SUBJECT TO THE FOLLOWING CONDITIONS:
APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan and in compliance with all city ordinances, including but not limited to: zoning, landscaping, sign code, building, fire, health codes or licensing requirements.
2. A revised site plan shall be provided within 60 days of approval of the Conditional Use by the governing body to indicate the location and method of screening of the trash receptacles, location of lighting, parking spaces, location and method of screening, landscaping, and other site requirements per the Unified Zoning Code and Landscape Ordinance.
3. Construction of improvements shall be completed within one year of approval of the Conditional Use by the governing body.
4. The parking lot shall be kept free of all trash and debris.
5. No loitering, congregating or excessive noise shall be permitted in the parking lot.
6. No outside loudspeakers or entertainment, including dancing, shall be permitted.
7. Operation of the Nightclub in the City shall be limited to:
   Wednesday 8:00 p.m. – midnight
   Thursday 8:00 p.m. – midnight
   Friday 8:00 p.m. - Saturday 2:00 a.m.
   Saturday 8:00 p.m. - Sunday 2:00 a.m.
8. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

SECTION 2. That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION 3. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date July 12, 2011.

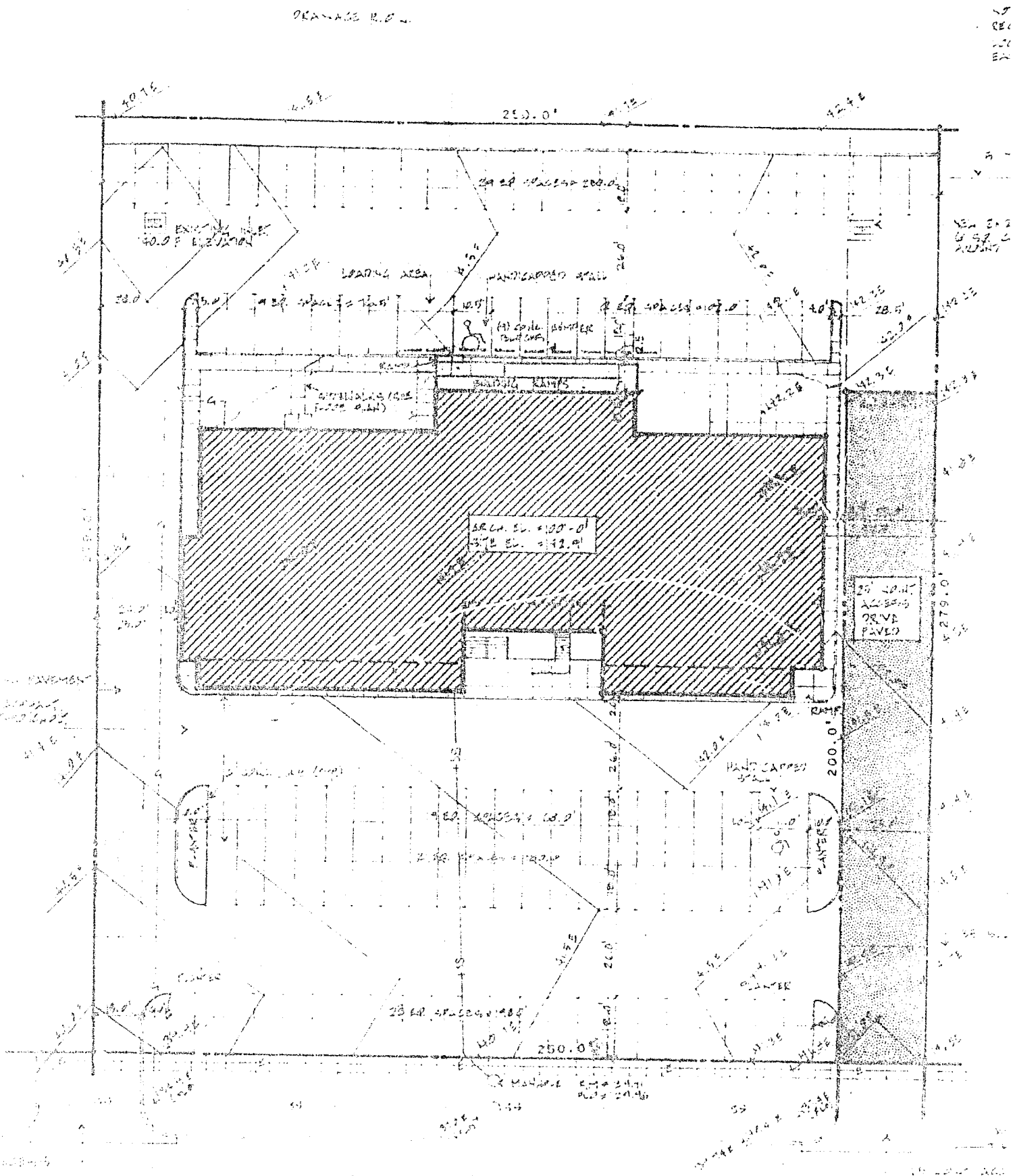
_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney



SITE PLAN
CON 2011-259015

EXCERPT MINUTES OF THE MAY 26, 2011 PLANNING COMMISSION HEARING

Case No.: CON2011-15 - TDFW LLC (owner) c/o Steven R. Barrett and Brad Mitchell, Roosevelt Hunt (applicant) request a City Conditional Use to permit a Night Club in the City on property zoned LC Limited Commercial on property described as:

Lot 3, except the South 25 feet of the West 200 feet, in Triple J Addition, Wichita, Sedgwick County, Kansas

BACKGROUND: The applicant is seeking a Conditional Use to permit a Nightclub in the City on property zoned LC Limited Commercial ("LC"), generally located on the east side of Rock Road 1/8 mile north of Harry Street (1208 South Rock Road). The proposed lease is located in a one-story strip center except for the center portion (1206 and 1208 South Rock Road) where the applicant proposes to operate a nightclub on the top floor. The bottom story is vacant and is not included in the proposed Conditional Use. Other businesses located in the north and south wings of the strip center include three personal care service businesses (cleaners, alterations, tanning salon) and two restaurants.

The applicant's statement (attached) states that he intends to operate a club (Seven Night Club) that would provide alcoholic drinks (drinking establishment), recorded music and recorded video entertainment for patrons 25 years of age and up. Other activities could include live entertainment by comedians, poetry readings and open mike. According to the applicant's statement, the business cannot qualify as a drinking establishment/restaurant (50 percent food sales) due to the lack of kitchen facilities. Regardless, the provision of the music and entertainment would trigger the designation of nightclub because it is within 300 feet of property zoned residentially. The site abuts a drainage ditch zoned B Multi-Family ("B"), which is located next to an apartment development also zoned B.

Nightclubs have been licensed and operated from the bottom floor, addressed as 1206 South Rock Road at least since the mid-1990s. Most of the time, the top floor was licensed and used as part of the 1206 operation. Past records show a variety of clubs have been licensed to 1206 South Rock Road. The names of the previous clubs were (listed from most recent to earlier): The Groove, Club LaFaye, Kat Eyes Inc., Cocktails, Club Groove, Max S, Jammers (top floor) and Jo-Jo's Down Under (bottom floor). None of the licenses were issued to the 1208 address. The last nightclub (The Groove) has been closed for over a year, but less than two years. The occupancy associated with all these clubs has remained the same: 210 person occupancy on the top floor and 115 person occupancy on the bottom floor.

Access to the top floor appears to be by way of an exterior iron stairway. No ADA accessibility is provided at the main entrance, but a ramp is attached to the rear of the building.

The Unified Zoning Code requires that any nightclub located within 300 feet of residential zoning be subject to Conditional Use review to determine if the particular site is suitable for the operation of a nightclub. As previously mentioned, the upper floor has been part of a two-story nightclub operation previously, although the operation is now closed and the applicant is seeking to establish his club only on the top floor which has not been licensed independently. Other restaurant and personal care services are located in the same strip center and share the parking lot. The property does not have any buffering or screening of its own along the abutting drainage ditch. The apartment development has its own fence and landscaping to screen the apartments from the commercial use and view.

Most properties located nearby on both sides of Rock Road are zoned LC. Two fast-food restaurants (one vacant), a vacant retail use and a convenience store are located to the south. Another restaurant is located to the north. More fast-food restaurants and a tire store are located to the west, across Rock Road. A mini-storage warehouse, zoned GC General Commercial ("GC"), is located west of Rock Road.

Residential uses are located directly east in the apartment development zoned B fronting onto Paige Street. Single-family residential houses, zoned SF-5 Single-Family Residential, are located on the east side of Paige Street and to the north of the drainage ditch.

CASE HISTORY: The property is platted as Triple J Addition, recorded November 1, 1973.

ADJACENT ZONING AND LAND USE:

NORTH:	LC, SF-5	Personal care, restaurants, drainage ditch, single-family residential
SOUTH:	LC	Personal care, restaurants, retail, convenience store
EAST:	B, SF-5	Drainage ditch, garden apartments, single-family residential
WEST:	LC, GC	Restaurants, tire store, mini-storage warehouse

PUBLIC SERVICES: The site has direct access onto Rock Road, a major arterial street with four lanes and center turn lanes. 2006 annual average daily traffic counts were 27,663 on northbound Rock Road and 25,500 on southbound Rock Road. All normal public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this site as "Local Commercial." The zoning is in conformance with this designation. The property is not part of a CUP, and does not have any special site development regulations for use restrictions, buffering, screening, and other site regulations except shared signage and shared parking to conform with **Commercial Goal/Objective B** of "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses. It does not have its own screening or buffering along the drainage ditch and relies on that provided by the less intensive, adjacent residential use. It has no landscaping along the arterial street, reflecting its development prior to the Landscape Ordinance and not being a part of a CUP.

RECOMMENDATION: The property has been part of the nightclub operated out of the lower level of the building for many years until being closed over a year ago. Now, the applicant is seeking to operate the upper floor as a Nightclub in the City separate from the lower level. An 80-foot wide drainage ditch separates the use from the nearest residential zoning and use. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan and in compliance with all city ordinances, including but not limited to: zoning, landscaping, sign code, building, fire, health codes or licensing requirements.
2. A revised site plan shall be provided within 60 days of approval of the Conditional Use by the governing body to indicate the location and method of screening of the trash receptacles, location of lighting, parking spaces, location and method of screening, landscaping, and other site requirements per the Unified Zoning Code and Landscape Ordinance.
3. Construction of improvements shall be completed within one year of approval of the Conditional Use by the governing body.
4. The parking lot shall be kept free of all trash and debris.
5. No loitering, congregating or excessive noise shall be permitted in the parking lot.
6. No outside loudspeakers or entertainment, including dancing, shall be permitted.
7. Operation of the Nightclub in the City shall be limited to:

   Wednesday 8:00 p.m. – midnight
   Thursday 8:00 p.m. – midnight

Friday 8:00 p.m. - Saturday 2:00 a.m.
Saturday 8:00 p.m. - Sunday 2:00 a.m.

8. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The proposed leasehold has been part of a two-story nightclub operation previously, although the operation is now closed and the applicant is seeking to establish his club only on the top floor which has not been licensed independently. Other restaurant and personal care services are located in the same strip center and share the parking lot. The property does not have any buffering or screening of its own along the abutting drainage ditch. The apartment development has its own fence and landscaping to screen the apartments from the commercial use and view. Most properties located nearby on both sides of Rock Road are zoned LC. Two fast-food restaurants (one vacant), a vacant retail use and a convenience store are located to the south. Another restaurant is located to the north. More fast-food restaurants and a tire store are located to the west, across Rock Road. A mini-storage warehouse, zoned GC is located west of Rock Road. Residential uses are located directly east in the apartment development zoned B fronting onto Paige Street. Single-family residential houses, zoned SF-5 Single-Family Residential, are located on the east side of Paige Street and to the north of the drainage ditch.

2. The suitability of the subject property for the uses to which it has been restricted: The building could be remodeled to be used for a wide variety of LC uses allowed by the current zoning.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Nightclubs have been licensed and operated from the bottom floor, addressed as 1206 South Rock Road at least since the mid-1990s. Most of the time, the top floor was licensed and used as part of the 1206 operation. The proposed conditions spell out that outside noise, loudspeakers, congregating, trash and debris are prohibited and better parking lot screening and landscaping near the residential area is requested. If enforced, these requirements should help mitigate the past conflicts from the nightclub patrons' activities spilling over into the parking lots and surrounding neighborhoods.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this site as "Local Commercial." The zoning is in conformance with this designation. The property is not part of a CUP, and does not have any special site development regulations for use restrictions, buffering, screening, and other site regulations except shared signage and shared parking to conform with **Commercial Goal/Objective B** of "Develop future retail/commercial areas which complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses. It does not have its own screening or buffering along the drainage ditch and relies on that provided by the less intensive, adjacent residential use. It has no landscaping along the arterial street, reflecting its development prior to the Landscape Ordinance and not being a part of a CUP.

5. Impact of the proposed development on community facilities: The project should have no significant impact on streets and utility services. Like all liquor-related uses, it will increase the need for oversight from the police to ensure compliance with licensing requirements and other conditions of approval.

DONNA GOLTRY, Planning Staff presented the Staff Report. She referred Commissioners to handouts regarding the case. She reported that she has heard from neighbors, the apartment manager to the east, and the business owner across the street regarding issues with past practices at the site. She mentioned noise and incidents in the parking lot after 2:00 a.m. after the club closed. She reminded the Commission that this is a land issue decision as to whether the proposed application was appropriate land use, not how the land is managed per se.

MARNELL asked who came up with the hours of operation.

GOLTRY replied the applicant; however, she extended them.

SHERMAN asked the applicant why he was leasing 1208 S. Rock Road (the second story of the ion of the building) instead of leasing 1206 S. Rock Road (the first floor of the building).

ROOSEVELT HUNT, 1208 SOUTH ROCK ROAD, APPLICANT said he understands there have been problems at the location in past; however, he added that he felt it had a lot to do with club ownership and other things. He commented that he is from the small town of Liberal, Kansas where he graduated from Fort Hays State College and received his Masters Degree from Baker University. He said he has a wife and 3 children to go home to and that he would not open an operation that would put him in jeopardy. He said the previous owners left him a road map of what not to do. He mentioned the environment in the parking lot of the last club and that patrons could get in at 18 years of age, but had to be 21years of age to drink. He said he is not talking about that type of establishment. He said he wants to run a bar for patrons between the ages of 26 to mid 40's to go and relax and have a cocktail. He said there will be no hip-hop, baggy clothes or boom music. He asked Commissioners to consider his proposal and what he says he will do and make a decision based on that, not on what has happened at the property in the past.

HILLMAN said he appreciates Mr. Hunt's social awareness and that he can market to the right group. He said he is more interested in physical access to the parking lot and control of activities in the lot.

HUNT said controlling the parking lot is his biggest issue and commented that once last call is called they will not allow people to loiter in the parking lot. He said he will have security with cones to keep people moving and that there will be a 5 minute cut off. He said while the club is open people will be asked to come into the club or leave the property. He mentioned that he has on option on 1206 S. Rock Road also and is thinking about the possibility of opening a restaurant at that location.

SHERMAN asked why Mr. Hunt is going to the second story of the building when the lower floor has a kitchen.

HUNT replied that initially the main focus was to do a bar/nightclub which does not have the 50 % income from food sales requirement.

SHERMAN asked why he chose this location with its history.

HUNT said he reviewed 8-9 different properties around town. He said he likes the demographics which include older people, people in the military and professionals from Boeing, Cessna, and Raytheon. He

said he is looking for people with mortgages around his age that would like to have a few cocktails and unwind.

JUSTIN DEMEL, 8413 OXFORD CIRCLE WITH FIDELITY MANAGEMENT, DANISH VILLAGE APTS, 1109-1217 S. PAIGE STREET said Danish Village is an apartment community located directly east of the subject location. He said they oppose approval of the conditional use permit and are in opposition to having a club at this location due to the noise and crime problems it brings to the area. He said there were clubs of various kinds with various operators at this location over the past years. He said the clubs came and went and the last club closed in October 2009, which was a real blessing. He said club patrons caused noise disturbances in the parking areas in the late evening and early morning hours after the clubs closed. He referred Commissioners to a listing of police responses to the clubs from 2007-2009 for various disturbances and unlawful activity. He said these only reflect the times the police were called, not other noise disturbances. He noted that there were a number of firearms violations including a police involved shooting. He said not long after the police involved shooting there was another "shots fired" police call to the location and the club was finally shut down. He said any problems that brought police to the location brought safety concerns to the residents of the apartment community and the shooting incidents were extremely disturbing. He said there were occurrences when patrons of the club would end up in the apartment parking areas creating disturbances, affecting residents and their feeling of safety. He said a club establishment at this location has proven to bring safety concerns to residents of the apartment complex and therefore; a negative impact on their business. He asked the Commission to consider whether they would want this establishment adjacent to their back yard.

FARNEY asked if Mr. Demel ever had communications with the building owner or land owner.

DEMEL said he contacted the building owner by phone within the last week.

HILLMAN said he is familiar with the apartment complex and mentioned the drainage ditch which was a huge moat and difficult to cross, including a fence. He asked how patrons are getting from the club parking lot over to the apartments.

DEMEL acknowledged that it was not easy to walk over there, but said people do it.

SHERMAN asked if Mr. Demel's feelings would change if the tenant was on the first floor with 50% of the income from food sales.

DEMEL said club operators have come and gone and that they all have the greatest of intentions but the same thing occurs every time. He said he is opposed to a drinking establishment period.

SHERMAN commented that lawfully the club can be there.

DEMEL said then lawfully there is nothing he can do about it. He added that he did not think Commissioner Sherman would want this in his backyard. He said this is a bad thing for the neighborhood and added that a drinking establishment leads to other problems.

SHERMAN clarified that Mr. Demel doesn't want anyone drinking at this location.

CLAY BASTIAN, 100 EAST ENGLISH, OWNER, DANISH VILLAGE APARTMENTS mentioned the e-mails from residents and said he has the same concerns. He said it is tough enough to attract and retain residents at the complex because of the noise, crime and drunken people spilling into the neighborhood. He said he doesn't care what type of bar or whether it is upstairs or downstairs. He said any establishment open until 2:00 a.m. on the weekend is a magnet for these types of activities.

HILLMAN said he is still confused as to how people from the bar end up in the apartment area.

SHERMAN reiterated that the business can lawfully be there. He asked Mr. Bastian if it would make the situation any better for them if it was a restaurant/bar as opposed to a bar/nightclub or is it that they just don't want any kind of drinking establishment at that location.

BASTIAN responded that most restaurants close long before 2:00 a.m. and staff is on their way home by 10:00-11:00 p.m. He said he doesn't think that will make any difference in activities.

HUNT said he understands their concerns; however, he asked the Commission not to focus on what has happened at the location in the past. He said he will hire off duty security and even went to the Patrol East Wichita Police Department Substation to find out about the possibility of hiring off-duty Wichita Police Department Officers. He said he was contemplating offering security for the whole strip mall and the club would just be a part of it. He said he wants to have a police presence in the area. He said he wants to be safe so he can go home to his wife and children too. He said he does not want to have his name on something where someone gets shot or killed.

HILLMAN asked Mr. Hunt if he spoke with the police about a plan to correct the problem in the parking lot.

HUNT said when people come to the parking lot after the club has closed, he really doesn't know what they are doing. He speculated that they may be interacting with people who have come out of the club. He added that some people don't want to spend money in a bar or it could be drug deals. He said people seemed to be focused on everything that has happened at this location before, but he said that is not the type of operation he will be running. He said he believes he will not have the problems because of who is there, his target audience. He said if the Commission wanted to make it a requirement that he use off-duty police as security as part of the conditions, he would be willing to do that.

SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY clarified that off-duty police officers are not allowed to work at drinking establishments. She said the City has established some additional requirements for clubs including a security plan and a plan covering where patrons wait to get into a club. She said some of the issues being discussed may be addressed by existing ordinances.

HILLMAN asked if Mr. Hunt would be willing to reduce the hours and close at midnight.

HUNT said yes he would be willing to do that temporarily and show he could operate and not have noise for a period of time and show that it wouldn't be a problem, and then perhaps hours could be extended.

SHERMAN asked the applicant if he has ever owned a club before.

HUNT replied that he has not been an actual operator, but he does have some experience with clubs. He said he has been to other locations where police are present all the time, which gives the impression that they are working for that bar owner. He reiterated that he would be willing to provide security for the entire strip mall and not necessarily just the club.

SHERMAN said he applauded what Mr. Hunt was trying to do but added that this location has a history of violent crime. He also mentioned that if Mr. Hunt agrees to close at midnight the club will probably tank within 6 months so he might want to put some thought into what he is willing to do to appease concerns. He mentioned that he has owned a club himself. He asked if Mr. Hunt he had a Plan B or

another location. He concluded by saying that if Mr. Hunt were to use the first floor (1206 South Rock Road) he would not have to go through the conditional use permit procedure.

HUNT said he had a Plan B but he would not like to have to exercise it.

SHERMAN clarified that the Commission was only deciding whether the applicant can put a nightclub upstairs at the location.

DIRECTOR SCHLEGEL replied yes.

> **MOTION:** To approve subject to staff recommendation.
>
> **MARNELL** moved, **DENNIS** seconded the motion, and it failed (5-5). **FOSTER, HILLMAN, JOHNSON, MITCHELL, SHERMAN** - No.

RECEIVED
JUN - 6 2011
METROPOLITAN PLANNING
ROUTE ☐ _____
☐ _____

RECEIVED
JUN 06 '11
CITY CLERK OFFICE

Metropolitan Area Planning Department
City Hall 10th Floor
455 North Main
Wichita, Kansas 67202
316-268-4421
Date 5/31/11

1208 South Rock Road
Wichita, Kansas 67207
T 316-847-2851
C 316-573-2722
Roosevelt-huntjr@Cox.net

Dear Planning Department,

I would like to appeal the May 26th, 2011 decision on Con2011-00015 City Conditional use for Nightclub in the City on property zoned LC Limited Commercial, generally located on the east side of Rock Road 1/8 mile north of Harry Street (1208 S Rock Road). I would like to move this forward for a final decision by the governing body.

At it's regular meeting the MAPC considered the request and their action was Failure To Approve. I think their decision was the wrong decision and the way they arrived at that decision was also incorrect. Most of the discussion about the location focused on past use of the parking lot, which has a very negative past to say the least. They mentioned fights in the parking lot, and other problems including an officer shooting a patron in that same lot. What happened in the past at the location has nothing to do with me as an owner and how I would operate my business now. To address the issue of the parking lot I offered to have security in the lot, also mentioned using off duty Wichita PD, which should have been enough given I have no past history of operating a bar in a negative way. Thank you.

Sincerely,

Roosevelt Hunt

Owner/Manager Seven NightClub

T (316) 847-2851

ROOSEVELT HUNT LLC

EMAIL: ROOSEVELT-HUNTJR@COX.NET

Applicant Roosevelt Hunt LLC, doing business as Seven Night Club, seeking a conditional use of property listed in application, for use as a Night Club/Drinking Establishment in the city of Wichita, Kansas. The proposed location at 1208 S. Rock Road Wichita, Kansas would be used to provide alcoholic drinks, recorded music, and recorded video entertainment to adults 25 years of age and up. The property is currently zoned to include 50 % food sales requirement, which would be impossible to reasonably meet, as the location (1208) has no kitchen, just a bar, sinks, and restrooms. The location is approximately 70 feet from a residential area to the direct east.

5-26-11 MAPC HANDOUT ITEM # 11

Crockett, Maryann

From: wtraverzo@sbcglobal.net
Sent: Thursday, May 26, 2011 10:09 AM
To: Crockett, Maryann
Subject: CON2011-00015 Nighclub 1206 S Rock Road

METROPOLITAN PLANNING COMMITTEE MEMBERS:

We are long time residents and homeowner residing in the neighborhood in the area of the possible re-creation of a nightclub.

We strongly oppose the Permit for a nightclub in this neighborhood for many reasons.

The police records/reports speak for themselves. There have been numerous incidents of criminal activity during the timeframe of previous nightclub operation, of which some of these include criminal activity using firearms, and aggravated assault-battery in late hours of the night. (2007-2009) This is extremely frightening for the entire area.

We wish to avoid future turbulence in this peaceful and quiet neighborhood so we ask that no Permit be granted. Please consider the safety of the ciitizens who drive and do business and live in this part of town.

Thank you for considering our opinions and concerns.

Angelita Rivera 8010 E Grail, Wichita KS 67207
Wanda Traverzo

Crockett, Maryann

From: Justin Demel [jdemel@fidelitybank.com]
Sent: Wednesday, May 25, 2011 10:15 AM
To: Schiffelbein, Jim
Cc: Crockett, Maryann
Subject: MAPC Case #: CON2011-00015
Attachments: DOC_2011-05-25_09.54.19.pdf

Attached is a copy of written material I wish to present at the above referenced case. Will you provide copies for the Commission members or do I need to bring copies for distribution?

Thanks

Justin Demel
Fidelity Management Corporation
316-291-5953
jdemel@fidelitybank.com

5-26-11 MAPC HANDOUT ITEM #11

POLICE RESPONSE TO - 1206 S. Rock Road
2007 - 2009

04/14/2007 # 1 - 0405 **AGGRAVATED BATTERY - FIREARMS - - ORIGINAL REPORT**
04/15/2007 # 1 - 0410 AGGRAVATED BATTERY OTHER - - ORIGINAL REPORT
04/28/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT Outside Assist case, usually an arrest with a warrant from a different jursidiction
05/06/2007 # 1 - 6100 MISC REPORT - - ORIGINAL REPORT
05/14/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT
05/18/2007 # 1 - 1715 PURCHASE OR CONSUMPTION BY A MINOR - - ORIGINAL REPORT
05/19/2007 # 1 - 0410 AGGRAVATED BATTERY OTHER - - ORIGINAL REPORT
05/19/2007 # 1 - 0410 AGGRAVATED BATTERY OTHER - - ORIGINAL REPORT
05/20/2007 # 1 - 0810 BATTERY - - ORIGINAL REPORT
06/02/2007 # 1 - 2673 DESTRUCT TO AUTO - - ORIGINAL REPORT
06/10/2007 # 1 - 0811 BATTERY / DV - - ORIGINAL REPORT
06/24/2007 # 1 - 1920 DIST PEACE FIGHTING - - ORIGINAL REPORT
06/24/2007 # 1 - 1790 OTHER LIQUOR VIOL - - ORIGINAL REPORT
06/24/2007 # 1 - 2210 DRIVE UNDER INFLUENCE - BAC .114 @ 0318 HRS - ORIGINAL REPORT
07/01/2007 # 1 - 6410 SUSP CHAR OTHER - - ORIGINAL REPORT
07/05/2007 # 1 - 1720 POSSESS/CONSUMPTION BY MINOR PROHIBITED - - ORIGINAL REPORT
07/07/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT
07/07/2007 # 1 - 2210 DRIVE UNDER INFLUENCE - BAC REFUSED @ 0151 HRS - ORIGINAL REPORT
07/22/2007 # 1 - 1790 OTHER LIQUOR VIOL - - ORIGINAL REPORT
07/28/2007 # 1 - 6308 LARC B FROM AUTO - - ORIGINAL REPORT
07/29/2007 # 1 - 1920 DIST PEACE FIGHTING - - ORIGINAL REPORT
07/29/2007 # 1 - 2420 RESTRIC ZONE/NO PARK ZONE - - ORIGINAL REPORT
07/29/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT
07/29/2007 # 1 - 0426 **AGGRAVATED ASSAULT/DRIVE BY FIREARMS - - ORIGINAL REPORT**
07/29/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT
07/29/2007 # 1 - 2420 RESTRIC ZONE/NO PARK ZONE - - ORIGINAL REPORT
08/12/2007 # 1 - 1790 OTHER LIQUOR VIOL - - ORIGINAL REPORT
08/12/2007 # 1 - 1790 OTHER LIQUOR VIOL - - ORIGINAL REPORT
08/12/2007 # 1 - 1614 POSSESSION OF PARAPHERNALIA - - ORIGINAL REPORT
08/12/2007 # 1 - 2699 OTHER MISC OFFENSES - - ORIGINAL REPORT
08/12/2007 # 1 - 2590 OTHER TRAFFIC VIOL - - ORIGINAL REPORT
08/12/2007 # 1 - 0410 AGGRAVATED BATTERY OTHER - - ORIGINAL REPORT
08/13/2007 # 1 - 2390 VRDL-OTHER VIOL - - ORIGINAL REPORT
09/16/2007 # 1 - 1225 **CRIMINAL DISCHARGE OF FIREARM - - ORIGINAL REPORT**
09/16/2007 # 1 - 0410 AGGRAVATED BATTERY OTHER - - ORIGINAL REPORT
10/05/2007 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT
10/19/2007 # 1 - 2699 OTHER MISC OFFENSES - - ORIGINAL REPORT

02/24/2008 # 1 - 6100 MISC REPORT - - ORIGINAL REPORT
03/09/2008 # 1 - 0845 SIMPLE ASSAULT - - ORIGINAL REPORT
03/08/2008 # 1 - 0810 BATTERY - - ORIGINAL REPORT
03/30/2008 # 1 - 0850 INTIMIDATION - - ORIGINAL REPORT

04/06/2008 # 1 - 0430 **AGG ASSAULT FIREARMS - SHOTS FIRED - - OR**
04/19/2008 # 1 - 6100 MISC REPORT - - ORIGINAL REPORT
04/20/2008 # 1 - 1203 **POSS OF FIREARM BY A FELON - - ORIGINAL RE**
04/20/2008 # 1 - 0845 SIMPLE ASSAULT - - ORIGINAL REPORT
04/20/2008 # 1 - 2697 TRESPASS - - ORIGINAL REPORT
08/03/2008 # 1 - 0810 BATTERY - - ORIGINAL REPORT
08/09/2008 # 1 - 0850 INTIMIDATION - - ORIGINAL REPORT
09/07/2008 # 1 - 1920 DIST PEACE FIGHTING - - ORIGINAL REPORT
10/09/2008 # 1 - 6105 PRVT PROP NON-INJURY ACCIDENT - - ORIGINA
11/02/2008 # 1 - 630B LARC B FROM AUTO - - ORIGINAL REPORT

07/11/2009 # 1 - 0405 **AGGRAVATED BATTERY - FIREARMS - - ORIGIN**
07/11/2009 # 1 - 2610 RESIST/OBSTRUCT ARREST - - ORIGINAL REPOR
07/12/2009 # 1 - 630B LARC B FROM AUTO - - ORIGINAL REPORT
07/17/2009 # 1 - 2698 CITY CODE NUISANCE VIOL - - ORIGINAL REPOR
07/17/2009 # 1 - 2565 AUTO LIC VIOL - - ORIGINAL REPORT
07/19/2009 # 1 - 2697 TRESPASS - - ORIGINAL REPORT
08/09/2009 # 1 - 6400 SUSP CHAR SEX SUSPECTED - - ORIGINAL REPO
08/11/2009 # 1 - 2697 TRESPASS - - ORIGINAL REPORT
08/16/2009 # 1 - 2630 VIOLATION OF DISTRICT COURT ORDER - - ORIG
09/06/2009 # 1 - 1790 OTHER LIQUOR VIOL - - ORIGINAL REPORT
09/06/2009 # 1 - 0810 BATTERY - - ORIGINAL REPORT
09/19/2009 # 1 - 2673 DESTRUCT TO AUTO - - ORIGINAL REPORT
09/19/2009 # 1 - 1225 **CRIMINAL DISCHARGE OF FIREARM - - ORIGIN**
09/19/2009 # 1 - 2630 VIOLATION OF DISTRICT COURT ORDER - - ORIG
11/06/2009 # 1 - 6200 MISC OFFICERS - - ORIGINAL REPORT

6-26-11 MAPC HANDOUT ITEM # 11

Crockett, Maryann

From: Dixie Swanson [dswan7091@cox.net]
Sent: Tuesday, May 24, 2011 1:47 PM
To: Crockett, Maryann
Subject: Case # CON2011-00015

As property owners of 8022 E. Grail, we wish to state our opposition to granting conditional use for a night club at 1208 S. Rock Road.

We have lived at this address when previous clubs were at that location. Disturbances often spilled onto our residential street in the middle of the night, especially when police arrived to stop drunken fights and assaults in the parking lot or to investigate shootings. The homes in the 8000 block of Grail are close enough to be affected by any criminal activity that might develop if another night club is allowed at this location. We'd like to preserve our neighborhood status as much as possible.

For these reasons, we hope the MAPC will deny the request for the zoning change.

Manning L. Swanson, Jr. and Dixie S. Swanson
8022 E. Grail Street

5-26-11 MAPC HAND OUT ITEM # 11

Crockett, Maryann

From: Jim's Tire and Auto [jimstire@sbcglobal.net]
Sent: Tuesday, May 24, 2011 1:39 PM
To: Crockett, Maryann
Subject: Potential nightclub at 1208 S. Rock Rd.

Hello-

I am the General Manager at Jim's Tire & Auto Service at 1205 S. Rock Rd. I wanted to voice my concern of potentially yet another nightclub going in across the street from us. In the past this has caused nothing but violence, littering, loitering, and wasting more and more time of the Wichita Police Dept. Even though we had the necessary signs in our lot stating that it was not legal to park in our lot it still happened. Each morning after the club was opened we would find broken bottles, empty cans, misc. trash, cigarette butts, vomit, and other disgusting things I don't care to mention in our parking lot and in our front yard. Needless to say this caused us much grief and more and more wasted unpaid hours of cleaning up. I'm all for small businesses and the free enterprise system, however when they start effecting my business in a negative way, not by being competition, but by costing us uneccessary labor cost etc then I take great issue with it. This part of town has declined substantially in the quality of people it attracts, and bringing in another nightclub is not going to benefit the quality at all. It has been proven in the past with all the other nightclubs that have went in there, so this time isn't going to be any different.
So for the record Jim's Tire & Auto is completely AGAINST this nightclub being approved.
Lets learn from our past mistakes and not repeat history.

Thank you-

Todd Hying
Jim's Tire & Auto
1205 S. Rock Rd.
Wichita, KS 67207
316-683-5684

5-26-11 MAPC HANDOUT ITEM # 11

05/24/2011

To Whom it May Concern:

This is concerning the application for a "Conditional Use Permit" to open a club at 1208 S. Rock Road.

I live and work at a business across the street at 1175 S. Rock Road. It has been very quite the last several months with the club closed. No loud bass at 2:00 in the morning, no gun shots in the middle of the night and the police waking us up to check for damage to the buildings and our vehicles.

I think it would really be much safer to all business and properties in this area if the application were to be turned down. We can really do without the noise, fighting, and criminal activity that a club at this location seems to bring.

Thank you,

Kayla Garrett

Kayla Garrett

5-26-11 MAPC HAND OUT ITEM # 11

Crockett, Maryann

From: Diane Marshall [d.e.marshall28@gmail.com]
Sent: Tuesday, May 24, 2011 2:46 PM
To: Crockett, Maryann
Subject: Personal Statement Against Permit for Night Club at 1208 S. Rock Road
Attachments: Personal Statement to MAPC.doc

Dear Metropolitan Area Planning Commission,

I have prepared a personal statement against the permit request for a night club to be opened at 1208 S. Rock Road in southeast Wichita, KS. I have attached the statement as a Microsoft Word document to this e-mail.

Thank you,

Concerned Homeowner

May 24, 2011

Notice of Public Hearing, Metropolitan Area Planning Commission
Wichita City Hall, 10th Floor
455 N. Main St.
Wichita, Kansas 67202-1688

Dear Metropolitan Area Planning Commission,

For the past 19 years, I have been a homeowner on the neighborhood street just north of the property at 1208 S. Rock Road. In the 2 year span between 2007 and 2009, frequent criminal activities were reported at the night clubs that occupied this property. From my residence, I have heard gun shots and observed wreckless driving, public intoxication and fighting. Not only do these infractions occur in front of the club, but have spread into the adjacent neighborhood. Some of these club-goers park their vehicles on our residential street and private driveways, where their late night yelling and fighting disturb the peace of our neighborhood. On numerous occasions, several Wichita Police officers have been called out to disperse large, unruly crowds of club-goers during the late night hours. In addition, my family and I have observed police cruisers patrolling our street and a helicopter flying over our home on the nights in which a disturbance occurred at the club. However, during the times that the clubs were closed, the peace of our neighborhood was restored and my family felt safer.

Please let me know if you have any questions.

Sincerely,

Concerned Homeowner

Comment from Citizen:

Donald E. and Evelyn G. Paige, 1105 Paige Street, asked staff to convey their comments because they did not feel able to attend the MAPC meeting.

The citizens expressed opposition to the proposed Conditional Use. One of their main concerns with the previous club was that after 2:00 a.m. they could hear noise from the parking lot and felt like people leaving the club were breaking the law (referring to fights in parking lot) were moving through the neighborhood.

Agenda Item No. V-3

City of Wichita
City Council Meeting
July 12, 2012

TO: Mayor and City Council

SUBJECT: ZON2011-00015 and CON2011-00019 – City zone change request from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") with a Conditional Use (CON2011-19) for a Personal Improvement Service; generally located north of 2nd Street on the east side of Meridian Avenue (318 N. Meridian) (District VI)

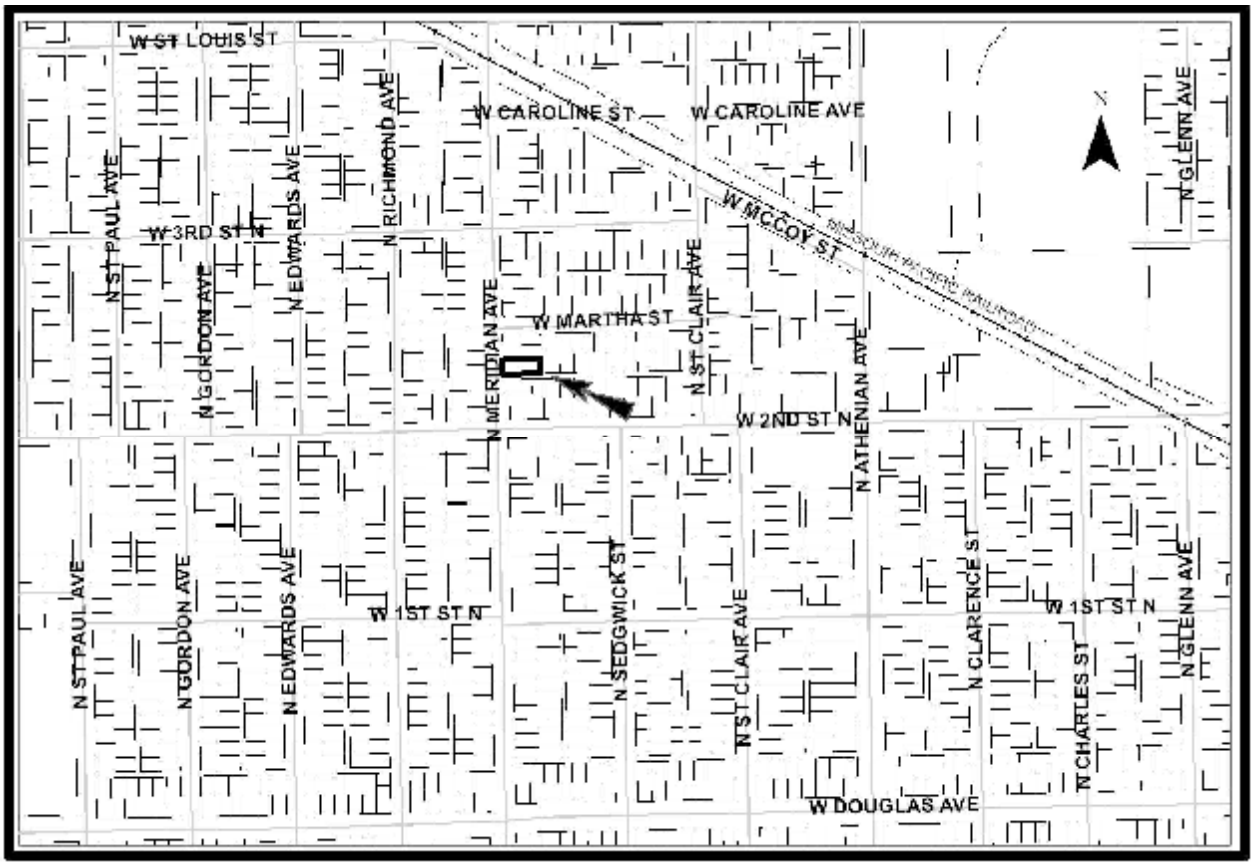
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve, subject to staff recommendations (11-0)

MAPD Staff Recommendations: Approve, subject to conditions

DAB VI Recommendations: Deny (8-0)



Background: The applicant requests a zone change from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") with a Conditional Use for a Personal Improvement Service on 0.15 acre. The site is located north of 2nd Street (across an alley) on the east side of Meridian Avenue, and was originally developed with a single-family residence. The applicant runs a pottery studio, teaches pottery classes and operates related retail on the LC Limited Commercial ("LC") zoned property located south of the alley. The applicant intends to develop the subject property with a structure that could be used for additional pottery teaching classrooms, pottery supplies storage, and an accessory apartment with a garage.

There are SF-5 zoned single-family residences located to the north, south and east of the subject site. Also located south of the subject site is the previously mentioned applicant's LC zoned property. Properties located west of the subject site, across Meridian, are zoned TF-3 Two-family Residential ("TF-3"), and are developed with a duplexes and single-family residences.

Analysis: This case was heard at the District VI Advisory Board (DAB) meeting held on June 6, 2011. At that meeting, the DAB voted (8-0) to deny the request. The DAB members denied the request due to the request not conforming to the Comprehensive Land Use Guide or Delano Overlay District guidelines. The Delano Design Review Board reviewed and approved the proposed design of the site. At the DAB meeting there were not any citizens present to speak on the request.

At the MAPC meeting held June 9, 2011, MAPC voted (11-0) to recommend approval of the zone change and Conditional Use request, subject to staff recommendations. One Planning Commissioner had a question in regards to what constituted a Personal Improvement Service; staff answered that a pottery studio falls under the classification of a Personal Improvement Service. There was not anyone from the public to speak against the application.

The action of the MAPC was to approve the request subject to the following conditions:

A. Approve the zone change (ZON2011-00015) to GO General Office ("GO").

B. Approve the Conditional Use (CON2011-00019), to allow a Personal Improvement Service, specifically additional pottery teaching classrooms, pottery supplies storage, and an accessory apartment with a garage subject to the following conditions:

1. The site shall conform to the approved site plan.

2. The site shall conform to the Landscape Ordinance.

3. Buildings on the site shall conform to the Delano Overlay design guidelines.

4. The site shall be developed in conformance with all codes, policies, and regulations, including but not limited to zoning, building, health, and access management codes, policies, and regulations.

5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

Financial Considerations: There are no financial considerations in regards to the zoning request.

Goal Impact: The application will support the City's goal to promote Economic Vitality.

Legal Considerations: The ordinance and the resolution have been reviewed and approved as to form by the Law Department.

Recommendation/Actions: 1) Adopt the findings of the MAPC and approve the zone change to GO General Office ("GO") and Conditional Use, and authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required) and sign the resolution; or 2) deny the zone change request by making alternative findings, and override the MAPCs recommendation (two-thirds majority vote required); or 3) return the application to the MAPC for further consideration (simple majority vote required).

Attachments:

- Ordinance
- Resolution
- MAPC Minutes
- DAB Memo
- Site Plan

OCA CODE 150004

ORDINANCE NO. 49-039

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. ZON2011-00015

Zone change request from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") on property described as:

Lots 12 and 13, Whitney's Addition to Wichita, Sedgwick County, Kansas; generally located north of 2nd Street on the east side of Meridian Avenue.

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 19th day of July, 2011.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

OCA 150004

RESOLUTION No. 11-162

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO PERMIT A PERSONAL IMPROVEMENT SERVICE, ON APPROXIMATELY 0.15 ACRES ZONED GO GENERAL OFFICE ("GO"), GENERALLY LOCATED NORTH OF 2ND STREET ON THE EAST SIDE OF MERIDIAN AVENEUE (318 N. MERIDIAN), WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 48-451, AS AMENDED.

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

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, a Conditional Use to permit a Personal Improvement Service, on approximately 0.15 acres zoned GO General Office, subject to the conditions listed below:

Case No. CON2011-00019

A Conditional Use to permit a Personal Improvement Service on approximately 0.15 acres zoned GO General Office.

Lots 12 and 13, Whitney's Addition to Wichita, Sedgwick County, Kansas, generally located north of 2nd Street on the east side of Meridian Avenue (318 N. Meridian).

SUBJECT TO THE FOLLOWING CONDITIONS:

1. The site shall conform to the approved site plan.

2. The site shall conform to the Landscape Ordinance.

3. Buildings on the site shall conform to the Delano Overlay design guidelines.

4. The site shall be developed in conformance with all codes, policies, and regulations, including but not limited to zoning, building, health, and access management codes, policies, and regulations.

5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

SECTION 2. That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION 3. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date July 12, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney

EXCERPT OF THE JUNE 9, 2011 METROPOLITAN AREA PLANNING COMMISSION MINUTES

Case No.: ZON2011-15 and CON2011-19 - Ronn and Jill Houtz (Owner/Applicant) request a City zone change from SF-5 Single-Family Residential to GO General Office and City Conditional Use for Personal Improvement on property zoned SF-5 Single Family Residential on property described as:

Lots 12 and 13, Whitney's Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant requests a zone change from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") with a Conditional Use for a Personal Improvement Service on .15 acres. The site is located north of 2nd Street on the east side of Meridian Avenue, and was originally developed with a single-family residence. The applicant runs a pottery studio and teaches pottery on the property located south of the alley. The applicant intends to develop the property with a structure that could be used for additional pottery storage, possible future classrooms, vehicle garage and an accessory apartment.

There are SF-5 zoned single-family residences to the north, south and east of the subject site. Also, south of the site is LC Limited Commercial ("LC") zoned property developed with a retail business. Property west of the subject site, across Meridian, is zoned TF-3 Two-family Residential ("TF-3"), and is developed with a duplex.

CASE HISTORY: The subject property was platted as Lots 12 - 13 of the Whitney's Addition in March 14, 1887.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family Residence
SOUTH:	LC and SF-5	Retail Store and Single-family Residence
EAST:	SF-5	Single-family Residence
WEST:	TF-3	Single-family Residence and Duplex

PUBLIC SERVICES: The subject property has frontage along North Meridian Avenue, a three-lane paved minor arterial with a 60-foot street right-of-way (ROW) at this location. Meridian, at the site, has a center-turn lane. Current traffic volumes on this portion of Meridian are 21,500 vehicles per day. The 2030 Transportation Plan shows this portion of Meridian remaining a three lane paved minor arterial. The site has municipal water and sewer.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for "Urban Residential" use. The subject site is also located in the Delano Neighborhood. The Delano Neighborhood Plan also recommends the site as appropriate for single-family residential use. The Office Locational Guidelines of the Comprehensive Plan recommend that office sites be located adjacent to arterial streets. The guidelines also indicate that low-density offices can serve as a transitional land use between residential uses and higher intensity uses.

The Unified Zoning Code (UZC) requires screening between single-family residential development and the proposed development on this site, and would require setbacks from all property lines. The Landscape Ordinance would require a landscape plan for the proposed development.

RECOMMENDATION: This request does not conform to the Comprehensive Plan Land Use Guide nor the Delano Neighborhood Plan; however, it does meet the Plan's Office Locational Guidelines, and would serve as a zoning transition between commercial zoning to the south and residential to the north. It should also be noted that homes located along arterials tend to transition to other non-residential uses as the traffic on the arterial increases and the lot's desirability for single-family use decreases. General or Neighborhood Office zoning has been a preferred transition zoning. The standards of the UZC and Landscape ordinance should mitigate any negative affects on the residences north and east of this site.

Based upon the information available prior to the public hearings, planning staff recommends that the request for a change in zoning to GO General Office ("GO") and a Conditional Use for a Personal Improvement Service be APPROVED, subject to the following Conditional Use conditions:

1. The site shall conform to the approved site plan.

2. The site shall conform to the Landscape Ordinance.

3. Buildings on the site shall conform to the Delano Overlay design guidelines.

4. The site shall be developed in conformance with all codes, policies, and regulations, including but not limited to zoning, building, health, and access management codes, policies, and regulations.

5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood**: There are SF-5 zoned single-family residences to the north, south and east of the subject site. Also, south of the site is LC Limited Commercial ("LC") zoned property developed with a retail business. Property west of the subject site, across Meridian, is zoned TF-3 Two-family Residential ("TF-3") and is developed with a duplex.

2. **The suitability of the subject property for the uses to which it has been restricted:** The subject property is zoned SF-5 and could continue to be used for single-family residences. The site may not be desirable for residences due to arterial street frontage and LC zoned property to the south of the site.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Permitted land uses under the requested GO zoning will be more intense than those permitted under the current residential zoning. However, the standards of the Unified Zoning Code and the Landscape Ordinance should limit noise, lighting, and other activity from adversely impacting the nearby single-family residential areas. If the site is developed in conformance with current drainage and traffic access policies, the proposed development should have little to no affect on nearby property.

4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for "Urban Residential" use. The Office Locational Guidelines of the Comprehensive Plan recommend that office sites be located adjacent to arterial streets.

The guidelines also indicate that low-density offices can serve as a transitional land use between residential uses and higher intensity uses.

5. **Impact of the proposed development on community facilities:** Provided that drainage and traffic access policies are met, community facilities should not be impacted by the proposed development.

DERRICK SLOCUM, Planning Staff presented the Staff Report. He reported that the Delano Neighborhood Design Review Board approved the Option B site plan. He added that DAB VI recommended disapproval of the application 8-0.

MITCHELL asked for clarification as to what constituted Personal Improvement Service.

SLOCUM said this application was for expansion of a pottery studio with classrooms. He said the classrooms classify this application as "personal improvement."

RONN HOUTZ, 300 NORTH MERIDIAN, APPLICANT said they are limited in the number of students they can have per class because each student has a shelf for their work. He said the amount of floor space is at the maximum. He said they would like to convert the two car garage for kilns and other large equipment. He said they intend to use the 3-car garage for their personal use and the apartment above for his father. He said the rest of the land will be converted to parking to allow them to take on more students.

MOTION: To approve subject to staff recommendation.

JOHNSON moved, **HILLMAN** seconded the motion, and it carried (11-0).

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: MAPC Members

FROM: Terri Dozal, Neighborhood Assistant, District VI

SUBJECT: **CON2011-00019 318 N. Meridian / ZON2011-00015 318 N. Meridian**
City zone change from SF-5 Single-Family Residential to GO General Office (ASSOC. w/CON2011-19); generally located north of 2nd street on the east side of Meridian Avenue and a City Conditional Use for Personal Improvement on property zoned SF-5 Single-Family Residential (Assoc. w ZON2011-15); generally located north of 2nd street, on the east side of Meridian Avenue.

DATE: June 7, 2011

On Monday, June 6, 2011 the District VI Advisory Board (DAB) considered a City zone change from SF-5 Single-Family Residential to GO General Office (ASSOC. w/CON2011-19); generally located north of 2nd street on the east side of Meridian Avenue and a City Conditional Use for Personal Improvement on property zoned SF-5 Single-Family Residential (Assoc. w ZON2011-15); generally located north of 2nd street, on the east side of Meridian Avenue

The members were provided the MAPD staff report for review prior to the meeting. *Derek Slocum,* Planner presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked the following questions/comments:

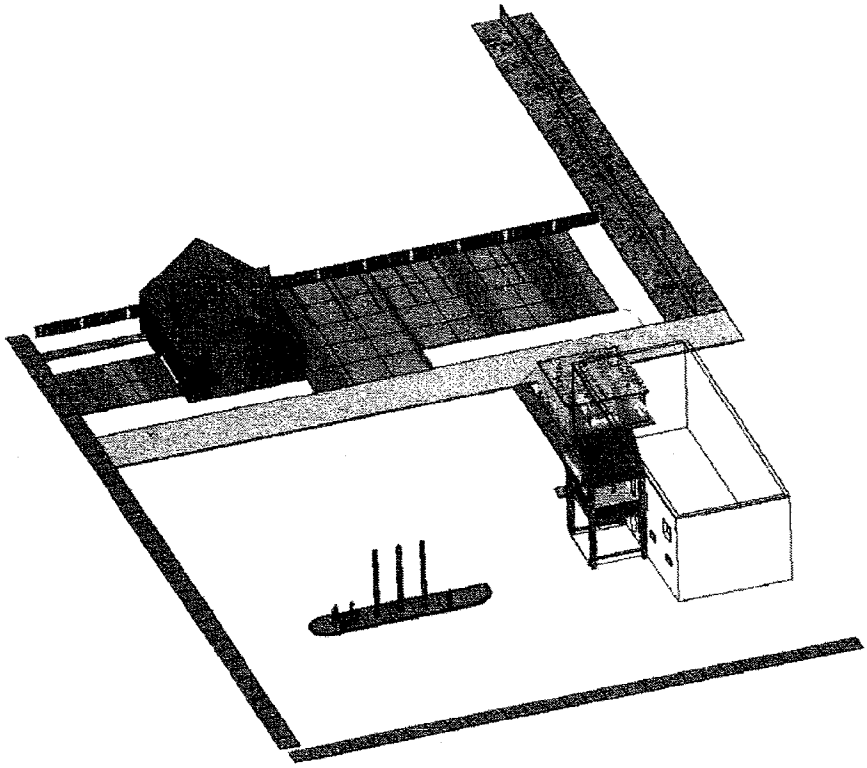
- If DAB was to decide between the two options presented.
- This plan does not conform to the Land Use or Delano Plan.
- How long has the applicant run a business?
- This is taking away residential area.
- Where will the primary access to the building be?
- Has the Preservation Board reviewed this plan?
- Concern there is lack of input from Delano.
- Has there been a request to vacate the alley?
- This won't be a 9-5 business because of the classes they will hold.

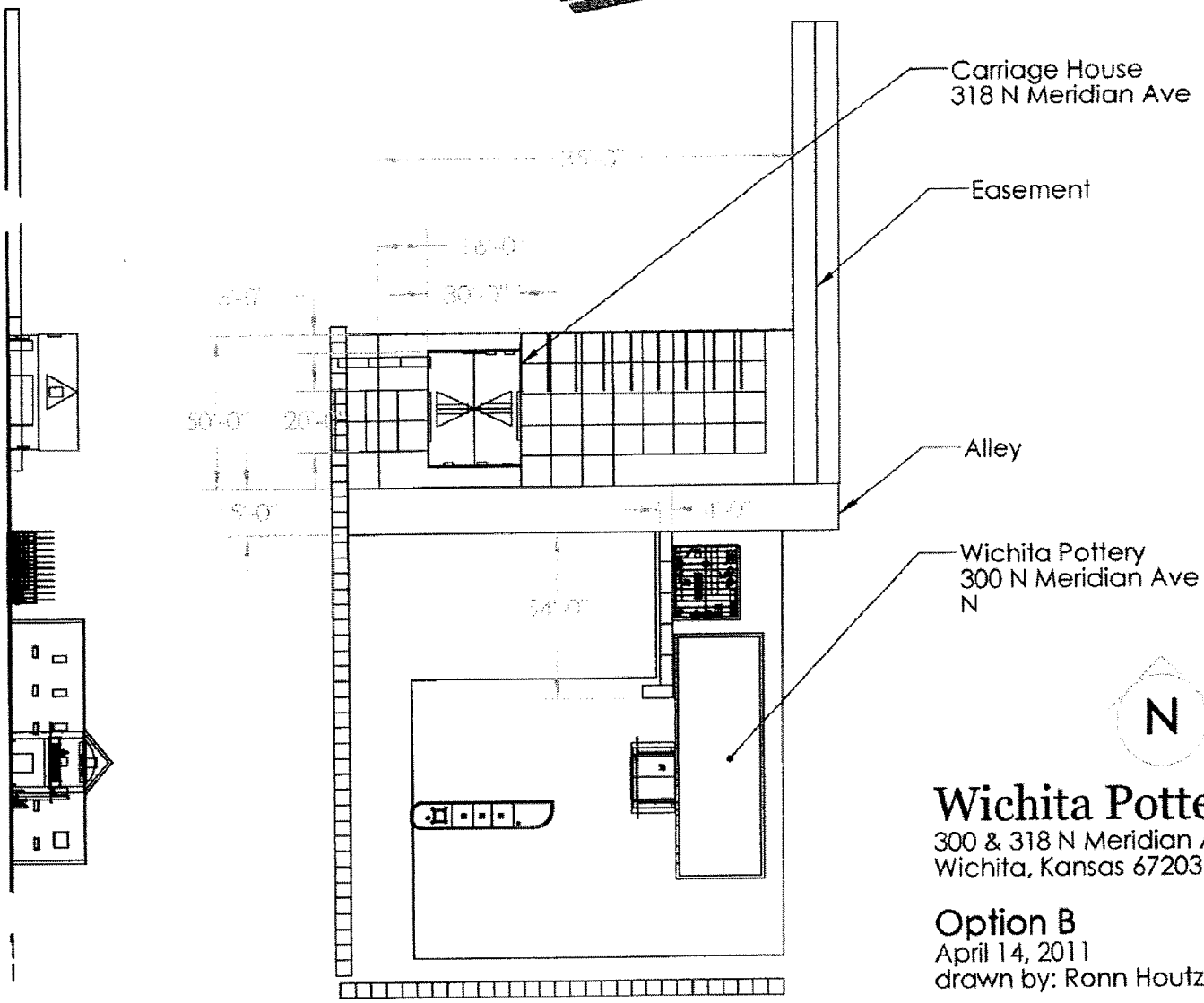
There were no members of the public to speak in favor or opposition of this case.

****Action:** The District VI Advisory Board members made a motion to recommend to City Council Denial of the zone change and the conditional use request based on this request does not conform to the Comprehensive Land Use Guide and does not conform to the Delano Plan. **(8-0)**

Please review this information when **CON2011-00019 / ZON2011-00015 318 N. Meridian** is considered.

mtd





Wichita Pottery

300 & 318 N Meridian Ave
Wichita, Kansas 67203

Option B

April 14, 2011
drawn by: Ronn Houtz

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL JULY 12, 2011

a. 2011 Sanitary Sewer Reconstruction Phase 3 (north of 21st Street North, west of Hillside) (468-84774/620579/661695) Traffic to be maintained during construction using flagpersons and barricades. (District I) - $57,000.00

b. Water Distribution System to serve Turkey Creek 3rd Addition (north of Pawnee, east of 135th Street West) (448-90263/735464/470137) Does not affect existing traffic. (District V) - $136,000.00

c. Systemwide Vegetation Maintenance, Phase 3 Wichita-Valley Center Local Flood Protection Project (WVLFPP) (Wichita Certified Levee System) (468-84767/660811/ 869001) Local traffic shall be maintained with minimal street closures not to exceed 48 hours. (District I,II,III,IV,V,VI) - $1,325,912.00

Statements of Cost:

PAVING

a. Paving on Victor from Hillside to the east line of Parkstone Addition; Rutan fro Douglas to 1st Street; parking on the south side of 1st Street from the west line to the east line of Parkstone Addition (north of Douglas, east of Hillside). Total Cost - $2,474,917.68 (plus idle fund interest - $5,567.45, plus temporary note interest - $25,014.87. Financing to be issued at this time - $2,505,500.00 (766166/472-84571/490-184).

b. Paving on Mariposa and Pueblo from Ridge to Sierra, and Sierra from Mariposa between Mariposa and Kellogg to serve Airport Industrial Addition (south of Kellogg, east of Ridge). Total Cost - $991,361.12 [plus idle fund interest – ($12.61), plus temporary note interest - $5,301.49]. Financing to be issued at this time - $996,650.00. (766198/472-84646/490-216).

c. Paving on Bristol Circle consisting of removal of existing pavement, replacing pavement and constructing cul-de-sac to serve Cedar View Village Addition (east of Greenwich, south of Kellogg). Total Cost - $183,086.53 (plus idle fund interest - $320.51, plus temporary note interest - $2,542.96). Financing to be issued at this time - $185,950.00. (766210/472-84637/490-228).

d. Paving on New Jersey, Valley Forge Road, and Brandywine Road to serve Washington Heights Addition (east of Oliver, north of 31st Street South). Total Cost - $360,669.93 (plus idle fund interest - $205.74, plus temporary note interest - $1,774.33). Financing to be issued at this time - $362,650.00. (766216/472-84718/490-234).

e. Paving on Mainsgate, Chelmsford, Chelmsford Court, and Flutter Circle to serve Monarch Landing 2nd Addition (north of 21st Street North, west of 159th Street East). Total Cost - $431,814.22 [plus idle fund interest – ($486.03), plus temporary note interest - $2,771.81]. Financing to be issued at this time - $434,100.00. (766229/472-84613/490-247).

f. Paving on Elm from the west line of Dougherty to the east line of Young to serve Dougherty Place Addition (north of Central, west of West Street). Total Cost - $67685.82 [plus idle fund interest – ($27.65), plus temporary note interest - $341.83]. Financing to be issued at this time - $68,000.00 (766233/472-84778/490-251).

g. Paving on Elm from the west line of Nevada to the west line of Dougherty to serve Central Place & Andrew Walker Additions (north of Central, west of West Street). Total Cost - $132,497.41 [plus idle fund interest – ($67.91), plus temporary note interest - $670.50]. Financing to be issued at this time - $133,100.00 (766234/472-84777/490-252).

h. Paving on New Jersey, Bunkerhill Drive to serve Washington Heights Addition (east of Oliver, north of 31st Street South). Total Cost - $436,258.59 (plus idle fund interest - $81.15, plus temporary note interest - $1,710.26). Financing to be issued at this time - $438,050.00. (766236/472-84783/490-254).

i. Paving on Franklin from the east line of Arapahoe Avenue to the west line about 125 feet east of Gilda Street to serve Avery & West Central Gardens 3rd Addition (north of Central, west of I-235). Total Cost - $174,160.26 (plus idle fund interest - $53.39, plus temporary note interest - $686.35). Financing to be issued at this time - $174,900.00. (766240/472-84816/490-258).

j. Paving and Sidewalk on Shadybrook, west of 127th Street East to east of Garrett; sidewalk on Garrett from south of 21st Street North to the north line of Shadybrook to serve Summit Crossing Addition (south of 21st Street North, west of 127th Street East). Total Cost $140,228.14 (plus idle fund interest - $104.22, plus temporary note interest - $467.64). Financing to be issued at this time - $140,800.00. (766246/472-84797/490-246).

k. Paving on Michelle, Casa Bella, Tara Falls, Michelle Circle to serve Casa Bella and Casa Bella 2nd Additions (north of Pawnee, west of 127th Street East). Total Cost - $278,170.58 (plus idle fund interest - $43.10, plus temporary note interest - $1,286.32). Financing to be issued at this time - $279,500.00. (766248/472-84874/490-266).

l. Paving on Toben from the south line of Comotara Industrial Park 5th Addition to the south line of 34th Street North to serve Firepoint Addition (west of Webb Road, south of 37th Street North). Total Cost - $218,280.00 (plus idle fund interest - $96.82, plus temporary note interest - $823.18). Financing to be issued at this time - $219,200.00. (766250/472-84885/490-268).

m. Paving on Lark Court from the east line of Lark, east to and including the cul-de-sac to serve Steve Kelley 6th Addition (south of Kellogg, west of Maize). Total Cost - $55,748.24 (plus idle fund interest - $151.76, plus temporary note interest - $0). Financing to be issued at this time - $55,900.00. (766252/472-84889/490-270).

n. Paving on Sycamore Circle from the south line of 51st Street South to and including cul-de-sac to serve Cornfield Addition (north of 55th Street South, east of Seneca). Total Cost - $68,284.13 (plus idle fund interest $165.87, plus temporary note interest - $0). Financing to be issued at this time - $68,450.00. (766253/472-84871/490-271).

Agenda Item No. II-6a

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Community Events – 9th Annual Community Day (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, Schaunta James-Boyd, E. C. Tyree Health & Dental Clinic is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

9th Annual Community Day 7:30 am to 4:30 pm, July 30, 2011.

§ Lorraine Street, 15th Street to 16th Street.

The client 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 sponsor is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

Agenda Item No. II-7a

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Relocation of Westar Energy Inc. Utilities along Tyler Road, between 21st Street and 29th Street (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: On March 11, 2011, the City Council approved a project to improve Tyler Road, between 21st Street and 29th Street. A portion of the necessary work requires relocation by Westar Energy, Inc. of street lights located on the east side of Tyler. The original installation of these street lights was completed in 2002. Per the franchise agreement, it is the responsibility of the City of Wichita to pay the costs of utility relocation when relocation is required within ten years of the original installation date.

Analysis: Cost to relocate the street lights is not to exceed $59,363. An agreement has been prepared to authorize these expenditures.

Financial Considerations: Funds are available in the project to provide for utility relocation costs. The funding source is General Obligation bonds.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through an important transportation corridor.

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

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Electric Line Modification/Relocation agreement.

ELECTRIC LINE MODIFICATION/RELOCATION AGREEMENT

WESTAR ENERGY, INC., a Kansas corporation ("WESTAR"), hereby agrees with the City of Wichita, ("CUSTOMER"), that WESTAR will provide the labor, equipment, materials and supplies to modify or relocation the electric power line on the property herein described, according to the terms and conditions set forth below.

1. The parties agree that the line modification/relocation is necessary to improve the following described real property, so that the property will be suitable for CUSTOMER'S intended use:

   Relocate/replace existing street light/poles o the east side of Tyler Road between 21st N. to 29th N., SW1/4, Sec 4, T27S, R01W, all in Wichita, Sedgwick County, Kansas.

2. CUSTOMER shall be liable for the final cost of the line modification/relocation. The final cost shall be based on the actual labor, equipment, supplies, materials and property acquisition (such as easements or rights of way), needed to modify or relocate the line in accordance with standard industry practice and in order for the line to comply with WESTAR standards and the National Electric Safety Code. WESTAR estimates at this time that the cost of the line modifications/relocation will be $59,363.33. In the event the actual costs incurred for the work performed to relocate WESTAR electric power line exceeds the estimated amount as stated, WESTAR will forward an itemized invoice to CUSTOMER reflecting the amount equal to 100% of the actual reasonable costs incurred about the estimated amount. CUSTOMER agrees to pay all actual costs other than those which may be arbitrary or capricious.

3. CUSTOMER shall make the payment for the final costs upon receipt of invoice after completion of work.

4. Provided the foregoing conditions have been met, WESTAR shall begin work on the line on or before July 8th, 2011 and shall have the modification or relocation completed on or before August 15, 2011. However, WESTAR shall refund the balance to the CUSTOMER within 90 days of the completion of the work.

5. When the line modification or relocation is complete, WSESTAR shall submit to CUSTOMER an invoice for the final modification/relocation costs, less any amount CUSTOMER has already paid. CUSTOMER shall then have 30 days from receipt of the invoice to pay WESTAR the amount due. If modification/relocation costs are less than the amount already paid by CUSTOMER, WESTAR shall refund the balance to the CUSTOMER within 90 days of the completion of the work.

6. The Kansas Overhead Power Line Accident Prevention Act, K.S.A. 66-1709 et seq., prohibits certain activity which is likely to place people, machinery or equipment within 10 feet of an overhead power line. Both to and after completion of the line modification/relocation, CUSTOMER shall be responsible for limiting or prohibiting any work or activity on the above-described property, which activity is likely to violate the Overhead Power Line Act or to otherwise risk bodily injury or damage. CUSTOMER agrees to indemnify, hold harmless and defend WESTAR for any claims arising from CUSTOMER'S duties described in this paragraph.

Executed this _____ day of _____, 2011.

WESTAR ENERGY, INC.

By: _____ By: _____

Print: _____ Print: _____

Title: _____

Attest: _____

Title: _____

Attest: _____

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Pipeline Relocation Agreements with Mid-Continent Market Center, LLC (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreements.

Background: The improvement of West Kellogg to a freeway at 119th and 135th Street West requires the relocation of a 16" natural gas pipeline, and a building containing valves and measuring instruments which are owned by Mid-Continent Market Center, LLC (Mid-Continent). The pipeline crosses Kellogg west of 151st Street West. Agreements with Mid-Continent have been prepared that authorize the work and establish the basis for reimbursement by the City.

Analysis: The proposed Kellogg improvement is frontage roads from 135th to 151st Street West. Frontage roads will provide access to adjacent businesses.

Financial Considerations: The agreements provide that the relocation cost will not exceed $1,402,742 with $1,047,272 paid by the City and $355,470 paid by Mid-Continent. Funding for the City share is available in the approved project budget. The funding source is the Local Sales Tax.

Goal Impact: The improvement addresses the Efficient Infrastructure goal by continuing the Kellogg Freeway program.

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

Recommendation/Action: It is recommended that the City Council approve the agreements and authorize the necessary signatures.

Attachments: Agreements.

AGREEMENT# 1

Between
Mid-Continent Market Center, L.L.C.
and
The City of Wichita, KS
for
Relocation of 16" MCMC Pipeline K-04
To Accommodate Construction of
City of Wichita Highway Project# 472-84842

RECEIVED
JUN 17 2011
CITY - ENGINEERING

Agreement No. _____

UTILITY AGREEMENT

Dated: _____

Sedgwick County

City of Wichita Project: 472-84842

General Location: US 54 (Kellogg Ave) @ W 151st Street

THIS AGREEMENT is entered into between the City Manager of the City of Wichita and Mid-Continent Market Center L.L.C. (Company).

WHEREAS, the City proposes a highway improvement project on Highway No. 54 and W 151st Street, described above by Project Number and Location and shown on the Project Plans, and

WHEREAS, the Company is owner of certain facilities located between 151st Street Stations 7+50 and 34+50 as shown on the Project Plans (facilities) and these facilities are located on private right-of-way, in whole or in part, and not now entirely located upon existing highway right-of-way, and

WHEREAS, the Company's facilities need to be adjusted, altered, or relocated so the City may construct the Project and the Company may maintain its present services.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree:

1. Upon receipt of formal written authorization from the City, the Company will proceed without unnecessary delay to make the changes to its facilities described in Exhibit A (utility plans) in accordance with Paragraph 16 of this Agreement. The Company prepared Exhibit A, which is attached to and incorporated into this Agreement.

2. Company certifies that its facilities are located on private right-of-way, in whole or in part, and are not now located entirely upon existing highway right-of-way or other public property. The estimated costs of right-of-way, preliminary engineering, labor, equipment, materials issued, materials returned, overhead and other items, as well as any credits which may be due the City for Company elected betterments, salvaged materials and extended service life (where applicable) are listed in detail on Exhibit B. The Company has included Exhibit B all estimated costs anticipated in relocating those parts of the Company's facilities (16" pipeline, K-04) affected by City Highway Project 472-84842.
See Paragraph 17 D for City's pro rata share of total costs.
Exhibit B is attached to and incorporated into this Agreement.

Noted: NEW _____ for Company _____ for City

3. This Agreement is subject to and the Parties agree to comply with 23 C.F.R. Part 645 Subpart A ("Utility Relocations, Adjustments, and Reimbursement") (23 C.F.R. 645.101 *et seq.*), 23 C.F.R. Part 645 Subpart B ("Accommodation of Utilities")(23 C.F.R. 645.201 *et seq.*), and the current Kansas Department of Transportation Utility Accommodation Policy (UAP). The UAP is incorporated by reference into this Agreement.

4. The City grants the Company the right to locate and maintain its facilities upon highway right-of-way as shown on said Exhibit A.

5. If future road work requires any changes to or relocations of Company's facilities, previously located on private right(s)-of-way but now located upon highway right-of-way as shown on Exhibit A, the City will pay the cost of such changes or relocations.

6. The Company's easement rights or other interests in the property included in the proposed highway right-of-way as shown on Exhibit A are subordinate to the City's right and privilege to use the highway right-of-way without restriction or limitation as long as the City is using such right-of-way for public highway purposes. The City's rights extend to all air rights, surface rights, and below-surface rights appropriate for the construction, operation, and maintenance of the highway. Providing the Company does not interfere with highway construction, operation, and maintenance, the Company may maintain its relocated or altered facilities; construct additional facilities under, over, through, and across the property if the Company's easement allows such construction; or perform any other act the Company's easement allows. In exercising its rights, the Company shall conform to all federal and state law, statutes, and regulations.

7. Company certifies and has provided evidence showing the Company has right of occupancy on private right-of-way by holding the fee, an easement, or other property interest. Company certifies that no deed, easement, agreement, or other document granting Company's existing right of occupancy on the private right-of-way requires Company to relocate its facilities for public purposes at Company's own expense.

8. City certifies that payment for the utility relocation does not violate Kansas law or any existing contract between the Company and the City.

9. Company shall notify the City of Wichita's City Engineer at Wichita, Kansas by phone, Mike Jacobs, (316) 268-4235 five days in advance of the time it expects to start work under this Agreement.

10. The Company shall notify Mike Jacobs, City of Wichita's City Engineer in charge of said project when beginning, discontinuing, resuming, and upon completing the work.

11. The method of computing the actual relocation costs shall be:

Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by 23 C.F.R. 645 Subpart A.

12. Company shall keep a detailed and accurate account of all labor, materials, supplies, incidentals, and all other costs involved in performing the work for three years after the date the Company receives final payment. City Engineer in charge of said project or any authorized agent of City or the Federal Highway Administration (FHWA) shall have access at all times to such records.

13. Upon completion of the work in accordance with said plans and estimates and upon receipt of a detailed final statement of cost prepared in accordance with the 23 C.F.R. 645 Subpart A, the City will reimburse the Company for 95% of the total amount of final billing pending final audit. Upon completion of final audit, the City will reimburse the Company for the total amount of the final billing found eligible for payment by audit by the City and/or FHWA. It is fully understood by and between the parties hereto that the required work in connection with the Company's facilities may be directly related to a City of Wichita road project providing for Federal reimbursement of a percentage of the cost. It is further agreed and understood that the Company will reimburse the City, on demand, any sums disallowed to the City by the Federal Highway Administration, for non-compliance by the Company with the terms and conditions set out in the 23 C.F.R. 645 Subpart A, hereinbefore referred to. Local governmental units and Indian Tribal governments shall comply with OMB A-128.

14. At Company's request, the City will reimburse the Company for 95% of the cost reflected on monthly progress statements for partially completed work. However, the Company shall submit no monthly progress statement with an amount earned of less than $50,000. The Company shall submit supporting statements with the Company's request for such intermediate progress payments.

After the Company completes the work according to the utility plans and after the City receives a detailed final cost statement that complies with 23 C.F.R. 645 Subpart A, the City will reimburse the Company for 95% of the total amount of final billing less intermediate progress payments, pending final audit. Upon completing the final audit, the City will reimburse the Company the total amount of the final billing that City and/or FHWA find eligible for payment by audit less intermediate progress payments.

The work required in this Agreement is being funded in whole or in part with federal funds. The Company will reimburse the City any sums disallowed under 23 C.F.R. Part 645 or under 48 C.F.R. Part 31 ("Contract Cost Principles and Procedures") (48 C.F.R. 31.000 *et seq.*). Sums disallowed include expenses paid for relocating the Company's facilities from existing highway right-of-way or other public property to the proposed highway right-of-way and expenses paid when the Company had an existing obligation to relocate at its own expense, among others. Local governmental units and Indian Tribal governments shall comply with OMB A-128.

15. To be eligible for reimbursement, changes in the original scope of work or additional adjustments not covered in Paragraph 17 of this Agreement shall be submitted on a supplemental agreement (or change order) and approved by the Company and the City before the Company makes such changes or adjustments.

16. Additional costs or revision in ratio or participation resulting from changes or adjustments under Paragraph 15 will become effective with submission of a final change order prior to or concurrent with final billing. Approval of such change order and/or ratio of participation will place the billing in line for audit and payment.

17. A. Description of work to be performed:

Relocate 2,700 of 16" steel natural gas pipeline and appurtenances thereto to clear the proposed highway construction as shown on Exhibits A, A1 and B.

B. Method of accomplishing work shall be by Contract. (The Company has furnished the City with evidence that it is not adequately staffed or equipped to perform the work and agrees to comply with 23 C.F.R. 645 Subpart A.)

C. Estimated total cost of work to be accomplished is $1,077,182.

D. The percentage of total actual costs of completed work to be borne by the City is 67%. Salvage value to be credited to project.

E. Time for Completion of Work: 150 days after receipt of Authorization to Proceed from the City, unless extended for unusually severe weather. Unusually severe weather is adverse weather that at the time of year in which it occurred is abnormal for the place in which it occurred.

F. The Company or the Company's contractor will furnish and erect the required traffic control signing and devices according to the attached Exhibits and the "Manual of Uniform Traffic Control Devices".

G. Special Provisions:

"All backfill within the highway right-of-way limits is to be compacted to a density equal to or greater than the density of the surrounding soil."

18. The Company shall maintain and pay all expenses necessary to maintain the Company's facilities located within the right-of-way of Project No. 472-84872. The Company shall take necessary and reasonable safety measures to protect the traveling public.

If the Company's maintenance obligation requires work within the highway right-of-way, the Company shall first obtain a written work permit from the proper authority. This permit shall contain reasonable regulations relating to such maintenance.

The Company may open and disturb the surface of the highway right-of-way without a work permit if an emergency exists that endangers the public's safety and requires immediate preventive action or repair. Immediately upon discovering the emergency, the Company shall notify the Kansas Highway Patrol and the KDOT Bureau of Construction and Maintenance. The Company shall request a work permit from the proper authority no later than the second working day following the emergency.

The Company shall not service its facilities from the highway, highway shoulder, or highway ramps. Exception: if an emergency exists that makes other ingress and egress temporarily impossible, the Company may use the surfaced area of the highway right-of-way to approach the distressed lines or facilities and the Company may use the surfaced shoulder for temporary parking.

19. The Company agrees to hold the City and the City's authorized representatives harmless from and indemnify the City for all claims, suits, damages (whether property damages, personal injury damages, or economic damages) and costs (reasonable attorney's fees and defense costs) resulting from the Company's failure to comply with its contract obligations under this Agreement, resulting from the Company's negligent acts, errors, or omissions in relocating its facilities as provided in Paragraph 16, or all of the above. The Company's liability for personal injuries and property damage shall not exceed the liability limits in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* The Company shall have no obligation to hold the City or the City's authorized representatives harmless from and indemnify these persons for the City's or the City's representatives' own negligence.

20. The City agrees to hold the Company and the Company's authorized representatives harmless from and indemnify the Company for all claims, suits, damages (whether property damages, personal injury damages, or economic damages) and costs (reasonable attorney's fees and defense costs) resulting from the City's failure to comply with its contract obligations under this Agreement. The City's liability for personal injuries and property damage shall not exceed the liability limits in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* The City shall have no obligation to hold the Company or the Company's authorized representatives harmless from and indemnify these persons for the Company's or the Company's representatives' own negligence.

21. Kansas law governs this Agreement.

22. Kansas law (K.S.A. 46-239(c)) requires this agency to report all contracts entered into with any legislator, or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. Consequently, please indicate below if this contract is being entered into with a legislator or a firm in which a legislator is a member.

_____ Yes, this contract is with a legislator or a firm in which a legislator is a member.

That legislator is: _____

Business Phone _____

Address (Street, City, State, Zip Code)

_____

_____

X No, this contract is not being entered into with a legislator or a firm in which a legislator is a member.

23. This Agreement creates no third party beneficiaries and authorizes no third party to maintain a suit for damages under this Agreement as a third party beneficiary or in any other capacity.

24. This Agreement binds the Parties and the Parties' successors and assigns.

25. In signing this Agreement, the Parties and the individual person signing represent that the person signing has the authority and capacity to execute and legally bind the respective entity to this Agreement.

Executed by the COMPANY this

2 day of June 2011

COMPANY: Mid-Continent Market Center L.L.C.

BY: Michel E Nelson

Michel E. Nelson

TITLE: Senior VP, Natural Gas Pipelines

ATTEST:

Kristy L. Smith

FEIN # _____

Send checks to: _____

_____

Executed by the CITY this

_____ day of _____ 2011

CITY OF WICHITA

BY: _____

Carl Brewer

TITLE: Mayor, City of Wichita

ATTEST:

_____

Gary E. Rebenstorf /AMO

Gary E. Rebenstorf
Director of Law

EXHIBIT B PIPELINE K-04 RELOCATION COST ESTIMATE

MCMC relocation project for City of Wichita Project# 472-84842
US Hwy 54 / SH 400 (W Kellogg Street) @ 151st Street West

OFS AFE#:

	Current Estimate				
	Quantity	Unit Cost		Cost	Total Cost
Project Management					$ 79,000
Project Engineering			$	41,000	
Construction Inspection			$	20,000	
Mill Inspection					
X-Ray Inspection			$	8,500	
Contract Survey			$	5,000	
Contract Pig Run (Geometry)			$	4,500	
Vehicle Maintenance/Fuel					
Misc Supplies/Equipment					
Material					$ 285,948
16" OD, 62.58 #/ft, 0.375" wt, X-42, ERW, FBE/2040	900 ft	$ 80	$	72,000	
16" OD, 62.58 #/ft, 0.375" wt, X-42, ERW, FBE	850 ft	$ 60	$	51,000	
16" OD, 52.27#/ft, 0.312" wt, X-52, ERW, FBE	1260 ft	$ 50	$	63,000	
16" Weld Ells, Std, 45°, 3R, Y-60	9 ea	$ 2,000	$	18,000	
16" TDW stopple fitting, ANSI 600 complete	2 ea	$ 18,395	$	36,790	
16" TDW tapping fitting, ANSI 600	2 ea	$ 5,885	$	11,770	
2" T-O-R Fitting, ASTM A333, Grade 6,Buna-N Seals	4 ea	$ 717	$	2,870	
Coating for field joints	1 lot		$	10,000	
Misc Material	1 lot		$	20,519	
Land					$ 30,500
ROW Options					
ROW / Damages			$	12,000	
Contractor Costs			$	6,000	
Sites					
Environmental Permitting			$	12,500	
Construction					$ 427,780
Mainline, bypass, fittings - install, hydro test & tie-in		Lump Sum	$	380,000	
TDW Tapping Services		Lump Sum	$	47,780	
Contingencies (10%)					$ 74,423
TOTAL COST					$ 897,652
Admin & General (20%)					$ 179,530
TOTAL COST W/A&G					$ 1,077,182

FINANCIAL RESPONSIBILITY:
Reimbursement of 67% of **actual costs** by City of Wichita $721,711.97

Estimate prepared by RJ Dice - QIS
for ONEOK Field Services 5/20/10
rev w matl quotes 5/26/10
rev add TBS & Environmental 6/14/10
rev add TDW Fittings & services 6/26/10
rev based on survey footage 2/1/2011
**** final revision 3/21/2011 ****

AGREEMENT# 2

Between
Mid-Continent Market Center, L.L.C.
And
The City of Wichita, KS
For
Relocation of MCMC Wichita West Town Border Station
To Accommodate Construction of
City of Wichita Highway Project# 472-84842

Agreement No. _____

UTILITY AGREEMENT

Dated: _____

Sedgwick County

City of Wichita Project: 472-84842

General Location: US 54 (Kellogg Ave) @ W 151st Street

THIS AGREEMENT is entered into between the Mayor of the City of Wichita and Mid-Continent Market Center L.L.C. (Company).

WHEREAS, the City proposes a highway improvement project on Highway No. 54 and W 151st Street, described above by Project Number and Location and shown on the Project Plans, and

WHEREAS, the Company is owner of certain facilities located within West Town Border Station site adjacent to W 151st street and Woodbine Lane as shown on the Project Plans (facilities) and these facilities are located on private right-of-way, in whole or in part, and not now entirely located upon existing highway right-of-way, and

WHEREAS, the Company's facilities need to be adjusted, altered, or relocated so the City may construct the Project and the Company may maintain its present services.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree:

1. Upon receipt of formal written authorization from the City, the Company will proceed without unnecessary delay to make the changes to its facilities described in Exhibit A (utility plans) in accordance with Paragraph 17 of this Agreement. The Company prepared Exhibit A, which is attached to and incorporated into this Agreement.

2. Company certifies that its facilities are located on private right-of-way, in whole or in part, and are not now located entirely upon existing highway right-of-way or other public property. The estimated costs of right-of-way, preliminary engineering, labor, equipment, materials issued, materials returned, overhead and other items, as well as any credits which may be due the City for Company elected betterments, salvaged materials and extended service life (where applicable) are listed in detail on Exhibit B. The Company has not included in Exhibit B and shall not charge the City for any expense incurred in relocating those parts of the Company's facilities located on existing highway right-of-way or other public property. Exhibit B is attached to and incorporated into this Agreement.

3. This Agreement is subject to and the Parties agree to comply with 23 C.F.R. Part 645 Subpart A ("Utility Relocations, Adjustments, and Reimbursement") (23 C.F.R. 645.101 *et seq.*), 23 C.F.R. Part 645 Subpart B ("Accommodation of Utilities") (23 C.F.R. 645.201 *et seq.*), and the current Kansas Department of Transportation Utility Accommodation Policy (UAP). The UAP is incorporated by reference into this Agreement.

4. The City grants the Company the right to locate and maintain its facilities upon highway right-of-way as shown on said Exhibit A.

5. If future road work requires any changes to or relocations of Company's facilities, previously located on private right(s)-of-way but now located upon highway right-of-way as shown on Exhibit A, the City will pay the cost of such changes or relocations.

6. The Company's easement rights or other interests in the property included in the proposed highway right-of-way as shown on Exhibit A are subordinate to the City's right and privilege to use the highway right-of-way without restriction or limitation as long as the City is using such right-of-way for public highway purposes. The City's rights extend to all air rights, surface rights, and below-surface rights appropriate for the construction, operation, and maintenance of the highway. Providing the Company does not interfere with highway construction, operation, and maintenance, the Company may maintain its relocated or altered facilities; construct additional facilities under, over, through, and across the property if the Company's easement allows such construction; or perform any other act the Company's easement allows. In exercising its rights, the Company shall conform to all federal and state law, statutes, and regulations.

7. Company certifies and has provided evidence showing the Company has right of occupancy on private right-of-way by holding the fee, an easement, or other property interest. Company certifies that no deed, easement, agreement, or other document granting Company's existing right of occupancy on the private right-of-way requires Company to relocate its facilities for public purposes at Company's own expense.

8. City certifies that payment for the utility relocation does not violate Kansas law or any existing contract between the Company and the City.

9. Company shall notify the City of Wichita's City Engineer at Wichita, Kansas by phone Mike Jacobs, (316) 268-4235, five days in advance of the time it expects to start work under this Agreement.

10. The Company shall notify City of Wichita's City Engineer in charge of said project when beginning, discontinuing, resuming, and upon completing the work.

11. The method of computing the actual relocation costs shall be:

Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by 23 C.F.R. 645 Subpart A.

12. Company shall keep a detailed and accurate account of all labor, materials, supplies, incidentals, and all other costs involved in performing the work for three years after the date the Company receives final payment. City Engineer in charge of said project or any authorized agent of City or the Federal Highway Administration (FHWA) shall have access at all times to such records.

13. Upon completion of the work in accordance with said plans and estimates and upon receipt of a detailed final statement of cost prepared in accordance with the 23 C.F.R. 645 Subpart A, the City will reimburse the Company for 95% of the total amount of final billing pending final audit. Upon completion of final audit, the City will reimburse the Company for the total amount of the final billing found eligible for payment by audit by the City and/or FHWA. It is fully understood by and between the parties hereto that the required work in connection with the Company's facilities may be directly related to a City of Wichita road project providing for Federal reimbursement of a percentage of the cost. It is further agreed and understood that the Company will reimburse the City, on demand, any sums disallowed to the City by the Federal Highway Administration, for non-compliance by the Company with the terms and conditions set out in the

23 C.F.R. 645 Subpart A, hereinbefore referred to. Local governmental units and Indian Tribal governments shall comply with OMB A-128.

14. At Company's request, the City will reimburse the Company for 95% of the cost reflected on monthly progress statements for partially completed work. However, the Company shall submit no monthly progress statement with an amount earned of less than $50,000. The Company shall submit supporting statements with the Company's request for such intermediate progress payments.

After the Company completes the work according to the utility plans and after the City receives a detailed final cost statement that complies with 23 C.F.R. 645 Subpart A, the City will reimburse the Company for 95% of the total amount of final billing less intermediate progress payments, pending final audit. Upon completing the final audit, the City will reimburse the Company the total amount of the final billing that City and/or FHWA find eligible for payment by audit less intermediate progress payments.

The work required in this Agreement is being funded in whole or in part with federal funds. The Company will reimburse the City any sums disallowed under 23 C.F.R. Part 645 or under 48 C.F.R. Part 31 ("Contract Cost Principles and Procedures") (48 C.F.R. 31.000 *et seq.*). Sums disallowed include expenses paid for relocating the Company's facilities from existing highway right-of-way or other public property to the proposed highway right-of-way and expenses paid when the Company had an existing obligation to relocate at its own expense, among others. Local governmental units and Indian Tribal governments shall comply with OMB A-128.

15. To be eligible for reimbursement, changes in the original scope of work or additional adjustments not covered in Paragraph 17 of this Agreement shall be submitted on a supplemental agreement (or change order) and approved by the Company and the City before the Company makes such changes or adjustments.

16. Additional costs or revision in ratio or participation resulting from changes or adjustments under Paragraph 15 will become effective with submission of a final change order prior to or concurrent with final billing. Approval of such change order and/or ratio of participation will place the billing in line for audit and payment.

17. A. Description of work to be performed:

Relocate natural gas pipelines and appurtenances thereto located within the West Town Border Station to clear the proposed highway construction as shown on Exhibits A and B.

B. Method of accomplishing work shall be by Contract. (The Company has furnished the City with evidence that it is not adequately staffed or equipped to perform the work and agrees to comply with 23 C.F.R. 645 Subpart A.)

C. Estimated total cost of work to be accomplished is $ 325,559.54.

D. The percentage of total actual costs of completed work to be borne by the City is 100 %. Salvage value to be credited to project.

E. Time for Completion of Work: 150 days after receipt of Authorization to Proceed from the City, unless extended for unusually severe weather. Unusually severe weather is adverse weather that at the time of year in which it occurred is abnormal for the place in which it occurred.

F. The Company or the Company's contractor will furnish and erect the required traffic control signing and devices according to the attached Exhibits and the "Manual of Uniform Traffic Control Devices".

G. Special Provisions:

"All backfill within the highway right-of-way limits is to be compacted to a density equal to or greater than the density of the surrounding soil."

18. The Company shall maintain and pay all expenses necessary to maintain the Company's facilities located within the right-of-way of Project No. 472-84872. The Company shall take necessary and reasonable safety measures to protect the traveling public.

If the Company's maintenance obligation requires work within the highway right-of-way, the Company shall first obtain a written work permit from the proper authority. This permit shall contain reasonable regulations relating to such maintenance.

The Company may open and disturb the surface of the highway right-of-way without a work permit if an emergency exists that endangers the public's safety and requires immediate preventive action or repair. Immediately upon discovering the emergency, the Company shall notify the Kansas Highway Patrol and the KDOT Bureau of Construction and Maintenance. The Company shall request a work permit from the proper authority no later than the second working day following the emergency.

The Company shall not service its facilities from the highway, highway shoulder, or highway ramps. Exception: if an emergency exists that makes other ingress and egress temporarily impossible, the Company may use the surfaced area of the highway right-of-way to approach the distressed lines or facilities and the Company may use the surfaced shoulder for temporary parking.

19. The Company agrees to hold the City and the City's authorized representatives harmless from and indemnify the City for all claims, suits, damages (whether property damages, personal injury damages, or economic damages) and costs (reasonable attorney's fees and defense costs) resulting from the Company's failure to comply with its contract obligations under this Agreement, resulting from the Company's negligent acts, errors, or omissions in relocating its facilities as provided in Paragraph 16, or all of the above. The Company's liability for personal injuries and property damage shall not exceed the liability limits in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* The Company shall have no obligation to hold the City or the City's authorized representatives harmless from and indemnify these persons for the City's or the City's representatives' own negligence.

20. The City agrees to hold the Company and the Company's authorized representatives harmless from and indemnify the Company for all claims, suits, damages (whether property damages, personal injury damages, or economic damages) and costs (reasonable attorney's fees and defense costs) resulting from the City's failure to comply with its contract obligations under this Agreement. The City's liability for personal injuries and property damage shall not exceed the liability limits in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* The City shall have no obligation to hold the Company or the Company's authorized representatives harmless from and indemnify these persons for the Company's or the Company's representatives' own negligence.

21. Kansas law governs this Agreement.

22. Kansas law (K.S.A. 46-239(c)) requires this agency to report all contracts entered into with any legislator, or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. Consequently, please indicate below if this contract is being entered into with a legislator or a firm in which a legislator is a member.

_____ Yes, this contract is with a legislator or a firm in which a legislator is a member.

That legislator is: _____

Business Phone _____

Address (Street, City, State, Zip Code)

_____

_____

X No, this contract is not being entered into with a legislator or a firm in which a legislator is a member.

23. This Agreement creates no third party beneficiaries and authorizes no third party to maintain a suit for damages under this Agreement as a third party beneficiary or in any other capacity.

24. This Agreement binds the Parties and the Parties' successors and assigns.

25. In signing this Agreement, the Parties and the individual person signing represent that the person signing has the authority and capacity to execute and legally bind the respective entity to this Agreement.

Executed by the COMPANY this

2 day of June 2011

COMPANY: Mid-Continent Market Center L.L.C.

BY: Michel E. Nelson

Michel E. Nelson

TITLE: Senior VP, Natural Gas Pipelines

ATTEST:

Kristy L. Smith

FEIN # _____

Send checks to: _____

_____

Executed by the CITY this

_____ day of _____ 2011

CITY OF WICHITA

BY: _____

Carl Brewer

TITLE: Mayor, City of Wichita

ATTEST:

_____

Gary E. Rebenstorf

Gary E. Rebenstorf
Director of Law

2011 - Cost estimate for relocation of Line K-04 West TBS for widening project in Wichita

MCMC AFE#:

	Current Estimate				
	Quantity	Unit Cost		Cost	Total Cost
Project Management					$ 38,800
Project Engineering			$	25,000	
Construction Inspection			$	12,000	
Mill Inspection					
X-Ray Inspection			$	1,800	
Contract Survey					
Contract Pig Run (Geometry)					
Vehicle Maintenance/Fuel					
Misc Supplies/Equipment					
Material					$ 202,097
Meter Skid w/ 3" Coreolis Meter	1 ea	$79,638	$	79,638	
RTU Building	1 ea	$57,088	$	57,088	
16" Mainline Yoke Valve Setting	1 ea	$57,121	$	57,121	
6" Pipe & Fittings	1 lot	$2,500	$	2,500	
Additional Site Fencing	1 lot	$5,500	$	5,500	
Miscellaneous Material (Joint Coating, etc.)	1 lot	$250	$	250	
Land					$ 4,500
ROW Options					
ROW / Damages			$	-	
Contractor Costs			$	1,200	
Sites (Possible Site Extension)			$	2,500	
Environmental Permitting			$	800	
Construction					$ 40,000
Mainline Valve Installation, Meter & RTU Bldg		Lump Sum	$	40,000	
Installation, Hydro Test & Tie-in					
Contingencies (10%)					$ 24,660
TOTAL COST					$ 310,057
Admin & General (5%)					$ 15,503
TOTAL COST W/A&G					$ 325,560

FINANCIAL RESPONSIBILITY:
Reimbursement of 100% of **actual costs** by City of Wichita $ 325,559.54

Estimate prepared by Bryan Harding - PTS
for MCMC (3-30-11)

Agenda Item No. II-7c

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Renewal of Contract – Kansas Department of Agriculture Food Service Establishment Inspection and Regulatory Services Contract (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve renewal of the contract.

Background: The office of Environmental Health conducts inspections of food service establishments within Wichita and Sedgwick County on behalf of the Kansas Department of Agriculture (KDA). Environmental Health staff enforces state regulations and initiates state enforcement mechanisms as appropriate. KDA remits 80% of license revenue (as established by state statute) to the City and provides enforcement assistance and training for local staff. KDA has proposed renewal of the contract for state fiscal year 2012.

Analysis: Contract inspections by local entities reduce duplication of effort, provide a single source of contact for industry and citizens, and contribute substantially to local food protection budgets. The use of Kansas regulations and enforcement procedures promotes consistency with other jurisdictions within the state. The state contract provides leverage for operating city grocery inspections, tobacco control and grease compliance programs at a relatively minimal cost to the City.

Financial Consideration: Staff estimates the value of the contract at approximately $364,000. The City of Wichita receives 80% of the licensing revenue collected by KDA from licensed food service establishments in Sedgwick County. This KDA revenue represents approximately 75% of the Environmental Health food inspection budget. The remaining 25% is offset by City grocery license fees, charges for on-site food handler classes, and grease program revenue.

Goal Impact: This contract addresses the Safe and Secure Community goal by providing inspection, education, and enforcement actions to reduce the risk of food-borne illness.

Legal Consideration: The contract has been approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council approve the KDA contract and authorize the appropriate signatures.

Attachment: SFY 2012 KDA contract and Contractual Provisions.

CONTRACT
between
KANSAS DEPARTMENT OF AGRICULTURE
and
CITY OF WICHITA DEPARTMENT OF PUBLIC WORKS
for
FOOD SERVICE ESTABLISHMENT INSPECTIONS AND REGULATORY SERVICES

This CONTRACT, to be effective July 1, 2011, and to terminate June 30, 2012, states the agreement of the parties, the Kansas Department of Agriculture (KDA) and the City of Wichita Department of Public Works (LOCAL AGENCY), relating to the inspection of food service establishments, as defined in K.S.A. 36-501, located in Sedgwick County, Kansas, in order to protect the health of the public.

WHEREAS the Secretary of the Kansas Department of Agriculture, authorized by K.S.A. 36-501, has determined that the LOCAL AGENCY is qualified political subdivision of the State of Kansas and is authorized to act under contract as an agent of the KDA in providing food service establishment inspection and regulatory services. KDA has further determined that it is feasible and proper to contract with the LOCAL AGENCY for such purposes.

1. History. Senate Bill 584 transferred all the powers, duties and functions under the Kansas Food Service and Lodging Act, K.S.A. 36-501 *et seq*. concerning food service to the KDA, effective October 1, 2008.

2. Definitions.

   2.1 <u>County</u> refers to Sedgwick County, Kansas

   2.2 <u>Kansas Food Service and Lodging Act</u> refers to that act which is published at K.S.A. 36-501 *et seq*., and amendments thereto, and rules and regulations adopted thereunder.

   2.3 <u>Food service establishment</u> means any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside stand, industrial-feeding establishment, catering kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge (K.S.A. 36-501 (e)).

   2.4 <u>Kansas Food Code</u> refers to the food code adopted in K.A.R. 4-28-8 through 4-28-16.

   2.5 Regulatory Staff means LOCAL AGENCY staff who perform inspections pursuant to this contract.

3. KDA agrees to:

   3.1 Designate and accept LOCAL AGENCY as the agent of the KDA to provide inspection and regulatory services as necessary for food establishments located in the county as required under the Kansas Food Service and Lodging Act.

   3.2 Provide consultation, training opportunities and program evaluation services to the LOCAL AGENCY to assure that the provided are adequate.

   3.3 Pay the LOCAL AGENCY compensation for such food service establishment inspections and regulatory services an amount equal to 80% of the license and application fees

received from food service establishments in the county served by the LOCAL AGENCY. All expenditures from the Food Safety Fund shall be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the secretary of KDA, or the Secretary's designee. All payments will be made quarterly and shall be initiated on October 15, 2011, and on the fifteenth day of the first month after the start of a new quarter (January 15, April 15, and July 15) thereafter for the term of this contract.

3.4 Provide an annual performance standards report addressing the requirement in section 4 of this contract.

4. In consideration of the above, the **LOCAL AGENCY agrees to:**

4.1 Inspection Staff. Provide adequate number of trained staff to maintain food service establishment inspection services in the county consistent with KDA Division of Food Safety and Lodging. Maintain at least one (1) full time employee (FTE) or FTE equivalent dedicated to food safety and continue to maintain a satisfactory number of full time employees to adequately fulfill the necessary regulator services. The recommended ration of full time employees to establishments is 1:400. Adequate and trained regulatory staff shall include, but not be limited to, the following:

4.1.1 All new Regulatory Staff shall satisfactorily complete field training as prescribed by the KDA Division of Food Safety and Lodging.

4.1.2 All new Regulatory Staff shall satisfactorily complete the Kansas Level I Training Plan within two (2) years of hire.

4.1.3 All Regulatory Staff shall successfully complete standardization certification within the timeframe specified in the KDA Kansas Level I Training Plan and every three years after.

4.1.4 All Regulatory Staff shall satisfactorily complete at least ten (10) contact hours of continuing education during the contract year. Documentation of contact hours shall be submitted to the KDA Division of Food Safety and Lodging quarterly with the information required in section 4.8of this contract.

4.1.5 All newly hired regulatory Staff shall have earned at least a Bachelor's Degree of Science in a biological or physical science. AT KDA's discretion related work experience may be substituted for education.

4.1.6 All Regulatory Staff shall participate in training conducted by KDA, or approved by KDA prior to the training.

4.1.7 The LOCAL AGENCY will provide such other staff related assurances and training as requested by the KDA Division of Food Safety and Lodging.

4.1.8 The LOCAL AGENCY will ensure that inspection staff who only conduct food service inspections on a part time or back-up basis must meet the requirements stated in the KDA policy regarding Maintenance of Inspector Number implemented on December 16, 2008.

4.2 **Routine Inspection**. Provide inspection and regulatory services for all food service establishments as required by the Kansas Food Service and Lodging Establishment Act and in accordance with the KDA Division of Food Safety and Lodging as follows:

4.2.1 To provide inspections which identify uncontrolled hazards and critical risk factors.

4.2.2 To fill out inspection reports that completely and accurately document food safety conditions and compliance in the food service establishment.

4.2.3 Provide at least one (1) annual inspection between July 1, 2011, and June 30, 2012, per licensed food service establishment, as required by K.S.A. 36-505.

4.2.4 To provide professional inspection equipment, including test strips, 35 mm or digital camera, digital thermometer or thermocouple, flashlight and hair restraints.

4.3 **Non-Routine Inspections and Investigations.** Conduct non-routine inspections and investigations as follows.

4.3.1 All plan reviews and pre-licensing inspections.

4.3.2 All consumer complaint investigations.

4.3.3 All foodborne illness investigations. Foodborne illness investigations shall be conducted in accordance with KDA and or KDHE. Epidemiological Services (Epi) policy and procedures. When a foodborne illness outbreak occurs at a food establishment, a HACCP inspection shall be conducted by HACCP trained staff as directed by KDA or KDHE Epi.

4.3.4 Follow up inspections conducted after a routine or non-routine inspection or investigation.

4.4 **Reports and forms**. Report required information to KDA as follows:

4.4.1 All inspection reports and other documentation shall be on the appropriate reporting forms provided by KDA, as directed by the KDA Division of Food Safety and Lodging.

4.4.2 All inspection reports and other required documentation shall be submitted to the KDA on a weekly basis.

4.4.3 The LOCAL AGENCY shall submit completed inspection reports and other documentation to KDA electronically using the inspection software pursuant to section 4.10.

4.5 Enforcement Actions. Initiate appropriate enforcement actions necessary to minimize the recurrence of uncontrolled hazards and critical risk factors as directed and approved by the KDA Division of Food Safety and Lodging, including the following provisions:

4.5.1 On-site corrective actions of risk factor violations of the Kansas Food Code; issuing a Notice of Non-compliance; requesting voluntary closure of a facility; requesting voluntary destruction of adulterated or misbranded food products; and embargoing product upon prior authorization from KDA when a product reasonably constitutes a threat to public safety.

4.5.2 Requesting administrative review from KDA in accordance with the KDA Division of Food Safety and Lodging enforcement policies.

4.5.3 The LOCAL AGENCY will direct any request for a hearing or other legal process to the KDA Division of Food Safety and Lodging. Any legal action shall be determined and administered by the KDA.

4.5.4 Upon request by KDA, the LOCAL AGENCY shall make its personnel and resources available to provide relevant testimony, photo documentation, and other resources necessary for the prosecution of agency actions.

4.5.5 Enforcement action initiation by the LOCAL AGENCY does not include any enforcement action that require assessment of civil penalties; closure, other than voluntary closure; the denial, modification, suspension or revocation of the food service establishment license; or publication of inspection reports or enforcement action.

4.6 Cooperate with investigations and surveys or program audits in order to evaluate and determine the effectiveness of the work and services being performed by the LOCAL AGENCY.

4.7 Submit any proposed system of grading or scoring of food-worker certification and food-handler certification to the KDA for review and approval before implementation thereof.

4.8 Provide the KDA a quarterly report (October 15, 2011, January 15, 2012, April 15, 2012, and July 15, 2012) indicating the total number of inspections, complaint investigations, disaster investigations, HACCP inspections and any other program activities as requested by the KDA Division of Food Safety and Lodging. Quarterly reports shall be submitted on the forms provided by the KDA or through electronic submission. All training activities provided by the LOCAL AGENCY shall be documented and reported to KDA at least quarterly.

4.9 Use funds allocated to the LOCAL AGENCY for the purpose of regulatory work as required herein. Carry-over of funds to the next fiscal year will be allowed with written permission from the KDA prior to the end of the contract year. The LOCAL AGENCY may claim indirect costs at 15% of the amount paid hereunder. The LOCAL AGENCY shall submit quarterly budgetary reports (October 15, 2011, January 15, 2012, April 15, 2012, and July 15, 2012) to the KDA Division of Food Safety and Lodging Contract Manager regarding the use of inspection funds provided as compensation for food service establishment inspections. Quarterly reports shall be submitted in a format approved by the KDA.

4.10 The LOCAL AGENCY will perform all required activities pursuant to the KDA Quality Assurance Plan.

5. It is further agreed by the parties:

5.1 The LOCAL AGENCY shall repeal all ordinances, regulations and/or resolutions related to food service establishments required to be licensed by the KDA and cease collection of all fees assessed thereunder. This paragraph shall not prohibit the adoption of any ordinance, regulation and/or resolutions solely related to food service worker training or food service manager training, provided that such training shall be coordinated and approved by the KDA. Any request for exception to this paragraph must be submitted I writing to the Secretary of KDA or the Secretary's designee.

5.2 **Media and legislative contact**. The LOCAL AGENCY shall refer to KDA any and all media or legislative inquiries about food safety inspections performed under contract with KDA. The LOCAL AGENCY shall notify the KDA upon receipt of any such contact.

5.3 **Open records requests**. All records generated pursuant to this contract are the property of KDA and any requests for information and records shall be handled by KDA. Requests for open records can be submitted at the KDA website, www.ksda.gov.

5.4 The provisions found in Contractual Provisions Attachment (Ford DA-146a), which is attached hereto, are hereby incorporated.

5.5 The KDA and the LOCAL AGENCY will carry out joint activities as may be appropriate to develop training, promote coordination, and protect the public health.

5.6 **Nonperformance**. If the LOCAL AGENCY does not perform the regulatory services under this contract or if this contract is terminated, the KDA may, at its sole discretion, perform said services for the LOCAL AGENCY and be entitled to all reasonable costs, expenses and/or reimbursement for said services to be paid to the KDA by the LOCAL AGENCY. Reimbursement will be determined based on the current license fee and the number of establishments not inspected by LOCAL AGENCY during the state fiscal year.

5.7 Termination. This contract shall terminate on the 30th day of June 2012, unless terminated at an earlier date. This contract may be terminated by either party by giving thirty (30) days written notice of termination to the other party. The parties may extend this contract, with the KDA exercising this option by notifying the LOCAL AGENCY in writing of its intent to extend the contract. The LOCAL AGENCY may then, in writing to KDA, accept such extension.

5.8 Invalidity or illegality of any part. If any provision or application of this contract is held invalid or illegal, the invalidity or illegality shall not affect other provisions or applications of this agreement, which can be given effect without the invalid or illegal provision or application, and to this end, the provisions of the contract are declared to be severable.

5.9 The signatories to this contract have authority to bind the parties to the term of this contract.

KANSAS DEPARTMENT OF AGRICULTURE

_____ _____

Dale Rodman, Secretary Date
Kansas Department of Agriculture

Division of Food Safety and Lodging
109 SW 9th Steet-3rd Floor
Topeka, KS 66612

LOCAL AGENCY

_____ _____

City of Wichita Date Date

APPROVED AS TO FORM

_____

Director of Law and City Attorney Date

Address to send KDA warrants:
City of Wichita
1900 E 9th
Wichita, KS 67214-3115
FEIN: 48-6000653

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: EJustice support and maintenance renewal

INITIATED BY: Information Technology (IT)

AGENDA: Consent

Recommendation: Approve the contract extension.

Background: Information Technology, Wichita Municipal Court and Wichita Police Department are requesting an extension to the EJustice System support and maintenance contract. Implemented in 2005, the EJustice system is the primary case management tool used by the Wichita Police Department and Wichita Municipal Court. In 2006, the EJustice Steering Committee was formed to evaluate whether to continue to use the current software, or to purchase a new system. After reviewing the market alternatives (nine records management systems were reviewed), it was decided that this system is the best one available. That decision has been revisited, including earlier this year by the steering committee, and EJustice continues to be the best choice for public safety records management.

All Public Safety personnel (system owners) and the steering committee have discussed and approved the extension. Normally IT negotiates the contract on an annual basis to determine increases in maintenance fees and monitor the vendor relationship. Because the contract is being extended beyond a single year, it is presented to Council for consent.

Analysis: The EJustice System is a complex application; there are few competitors that provide a system that includes the functionality required by Court and Police in a single system. There are a number of benefits to extending this contract - switching costs to move to another platform would be extensive, and the current budget situation does not lend itself to a large expenditure and the e-citations project slated for 2012 that relies on the system. Typical maintenance contracts increase anywhere from 5 to 10% annually; by committing to four years, this can be reduced to 2% each year. This contract will make budget projections easier. Based on the analysis, extending the contract provides little risk and several quantifiable benefits.

Financial Considerations: The maintenance renewal contract will be four years in length and provides for a 2% annual increase. The price and payment schedule for the term of this Extension is as follows:

The term of this Extension shall be July 1, 2011 through June 30, 2015.

Payment Date	**Amount**
July 1, 2011	$115,110.27
July 1, 2012	$117,412.48
July 1, 2013	$119,760.73
July 1, 2014	$122,155.94
Total	$474,439.42

Goal Impact: This project addresses the Safe and Secure goal by improving the efficiency of the Public Safety Records Management System.

Legal Considerations: The contract extension has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the extended maintenance contract for the EJustice system.

Attachments: Wichita EJustice Extension 2011

EJUSTICE SOLUTIONS, LLC
MAINTENANCE AND SUPPORT CONTRACT EXTENSION for
THE CITY OF WICHITA

ARTICLE I BACKGROUND

The City of Wichita (the "City") and EJustice Solutions, LLC ("the Company"), collectively "the Parties," entered into a maintenance and support contract for EJustice Enterprise Software dated August 18, 2010 (the "Contract"). This Maintenance and Support Contract Extension (the "Extension") is an addendum to the Contract. Except as noted below, all terms and conditions of the Contract shall remain in full force and effect.

ARTICLE II TERM

The term of this Extension shall be July 1, 2011 through June 30, 2015.

ARTICLE III COMPENSATION – MAINTENANCE AND SUPPORT

The price and payment schedule for the term of this Extension is as follows:

Payment Date	Amount
July 1, 2011	$115,110.27
July 1, 2012	117,412.48
July 1, 2013	119,760.73
July 1, 2014	122,155.94
Total	$474,439.42

ARTICLE IV STATE LAW COMPLIANCE

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

ARTICLE V APPENDIX

The attached Appendix H, Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Addendum, is hereby incorporated into this Extension. There are no other appendices.

SIGNATURES:

EJustice Solutions, LLC:

_____
David E. Hawkins
Chief Financial Officer

_____
Date

City of Wichita:

_____
Carl Brewer
Mayor

_____
Date

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney

_____
Date

Attested by:

_____
Karen Sublett, City Clerk

_____
Date

PROJECT: **13th Street North Improvement Project** **DATE:** March 13, 2011

COUNTY: **Sedgwick** **TRACT NO.:** **13**

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

STATE OF KANSAS
COUNTY OF SEDGWICK

1. PARTIES:

DIANE BARKER, a single person (an undivided one-half Interest)
4180 Marlton Avenue, Building F, Apartment 30, Los Angeles, CA 90008
AND
TONY C. BARKER, a single person (an undivided one-half interest)
2105 East 13th Street North, Wichita, KS 67214 (SELLERS / LANDOWNERS)

Agree to sell and convey to **CITY OF WICHITA, STATE OF KANSAS** (PURCHASER) and Purchaser agrees to buy from Sellers the Property described below.

2. PROPERTY: (a) *Land:* Address: **2105 E. 13th Street North, Wichita, KS 67214** or more specifically described as: **Lots 97 and 99, on Tilford, now Ash Street, Eleventh Street Addition to Wichita, Sedgwick County, Kansas** or as described in Exhibit "A" attached hereto and made a part hereof. (b) *Improvements:* The house, garage, storage shed, wood privacy fence, and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any:, all valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Sellers and attached to the above described real property. The land and improvements are collectively referred to as the "Property".

3. PURCHASE PRICE: The Total Price shall be **$60,250.00** payable as follows:

ALL CASH OR CERTIFIED FUNDS, excepting an additional $2,000.00 in moving expenses payable to or on behalf of Tony C. Barker under K.S.A. 26-518. All payable within Sixty (60) days after the warranty deed conveying said property free of encumbrance has been delivered, and not later than August 31, 2011.

4. TERMS / CONTINGENCIES: Property is sold in "As Is" condition. It is agreed to by the parties hereto that Sellers will vacate and surrender possession of the property within Thirty (30) days from the date of closing, which shall be not later than September 30, 2011. The consideration set forth in Item 3 above is in full payment of said property and all damages arising from the transfer of said property. The above stated consideration is contingent upon approval by the Wichita City Council. Purchaser's financing is not a contingency of this sale. Sellers agree to convey property free from encumbrances, but Purchaser shall pay the cost of any policy of title insurance. Fitness of the property for Purchaser's intended use of the property as right of way is not a contingency of this sale, and Sellers make no warranties, expressed or implied, regarding the fitness of the property for Purchaser's intended purpose. In the event of relocation of Seller(s), they agree and covenant that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments,

damages to persons or property or claims of any nature related to the relocation of Seller(s) during the time the City becomes legally entitled to the property and the date of relocation. In no event will Seller(s) be required to move until Purchasers are legally entitled to the property which shall be not later than August 31, 2011.

5. TITLE INSURANCE: Sellers agree to furnish to Purchaser a standard form title insurance commitment, issued by a company qualified to insure titles in the State of Kansas, in the amount of the purchase price, insuring against loss on account of any defect or encumbrance in the title; however, Purchaser shall pay for the cost of such title insurance commitment. Said property is sold and is to be conveyed subject to any mineral and mining rights not owned by the undersigned Sellers and subject to present zoning classification.

6. PRORATIONS & HAZARD INSURANCE: The taxes, as determined on the date of closing, are to be prorated between Sellers and Purchaser as of the date of delivery of the deed. Sellers shall keep in force sufficient hazard insurance on the property to protect all interests until this sale is closed and the deed delivered. If the property is destroyed or materially damaged between the date hereof and the closing and Sellers are unable or unwilling to restore it to its previous condition prior to closing, Purchaser shall accept the property in its damaged condition, and any insurance proceeds otherwise payable to Sellers by reason of such damage shall be first applied to offset the purchase price stated above, and the sale shall be completed. The balance of any insurance proceeds remaining after completion of the sale shall be divided equally between Purchaser and Sellers.

7. CLOSING COSTS & DATE: The sale shall be closed and the deed delivered within sixty (60) days from the execution of this Agreement by all parties, and not later than August 31, 2011, except Sellers shall have a reasonable length of time within which to perfect title or cure defects in the title to the said property. The Purchaser agrees to pay the cost of deed preparation and a title insurance policy, all other closing costs shall be paid by Purchaser.

8. CONVEYANCE: Sellers agree to convey a good merchantable title and General Warranty Deed of said property insuring that property is free of all encumbrances, except as hereinabove set out and Sellers and Purchaser agree that any encumbrances shall be paid in full at the time of closing from sales proceeds.

9. CONDITION OF PROPERTY: (a) *General Provisions and Obligations of Parties:* It shall be the responsibility of Purchaser, at Purchaser's expense, to satisfy himself/herself that all conditions of this contract are satisfied before closing. After closing, all conditions of the property, as well as any aforementioned items and systems, are the responsibility of Purchaser and shall be deemed purchased AS-IS. Any inspections, treatments, or repairs, including treatments for wood destroying insects, shall be at Purchaser's expense. (b) *Completion of Repairs and Treatments*: Unless otherwise agreed in writing, Purchaser shall complete all agreed repairs and treatments prior to the Closing Date. All required permits must be obtained, and repairs and treatments must be performed by persons who are licensed or otherwise authorized by law to provide such repairs or treatments. At Purchaser's election, any transferable warranties received by Sellers with respect to the repairs and treatments will be transferred to Purchaser at Purchaser's expense. (c) *Environmental Matters:* Purchaser is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Purchaser's intended use of the Property. Sellers make no warranties, expressed or implied regarding the foregoing matters, and Purchaser must rely upon inspections and reports obtained by Purchaser, at Purchaser's expense, if Purchaser is concerned about these matters.

10. SELLER'S WARRANTIES: Sellers warrant that Sellers have not received notification from any lawful authority regarding any assessments, repairs, replacements or alterations to said premises that have not been satisfactorily made.

11. MEDIATION: Any dispute between Purchaser and Sellers related to this contract that is not resolved through informal discussion [*choose one:*]_____XX____will _____ will not be submitted to a mutually acceptable mediation service or provider. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

12. SURVIVAL OF CONTRACT: All terms, conditions and warranties not performed at the time of delivery of the deed shall survive such delivery.

13. COMMISSION FEES: Purchaser and Sellers agree that said contract was negotiated at arms length without assistance of any real estate agents or brokers and that no such fees shall be paid by either party in connection with this contract or sale.

14. ENTIRE AGREEMENT: This contract states the entire agreement between the parties and merges in this agreement all statements, representations, and covenants heretofore made, regarding the subject matter.

15. SUCCESSORS AND ASSIGNS: This contract shall be binding upon any heirs, successors and assigns of Sellers or Purchaser.

16. REVOCATION OF OFFER BY PURCHASER: This contract has been first executed by Purchaser and if not accepted by all parties by noon on _____, 20____, this offer shall be void.

17. DISCLOSURES: A Lead Based Paint Disclosure Addendum may be attached to this agreement after execution by all parties if the same is required under Federal or State Law to complete the sale.

[SIGNATURE PAGE 1]

SELLER(S) / LANDOWNER(S):

BY: Diane Barker

DIANE BARKER, a single person (an undivided one-half interest)

PURCHASER:

THE CITY OF WICHITA

BY:_____
MAYOR

ATTEST:

BY:_____
CITY CLERK

MEMORANDA

Exact and full name of owner, as name appears of record:

Diane Barker (an undivided one-half) and Tony C. Barker (an undivided one-half)
If mortgage or other liens, show names of holders: N/A

REMARKS:

PIN/APN 125150210300200
Security Title File Number 1090233

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Joe Vorstenbosch, Project Manager

[SIGNATURE PAGE 2]

SELLER(S) / LANDOWNER(S):

BY: _____
Chastity Johnson, as agent under a Power of Attorney Authorization for TONY C. BARKER, a single person (an undivided one-half interest)

PURCHASER:

THE CITY OF WICHITA

BY:_____
MAYOR

ATTEST:

BY:_____
CITY CLERK

MEMORANDA

Exact and full name of owner, as name appears of record:

Diane Barker (an undivided one-half) and Tony C. Barker (an undivided one-half)
If mortgage or other liens, show names of holders: N/A

REMARKS:

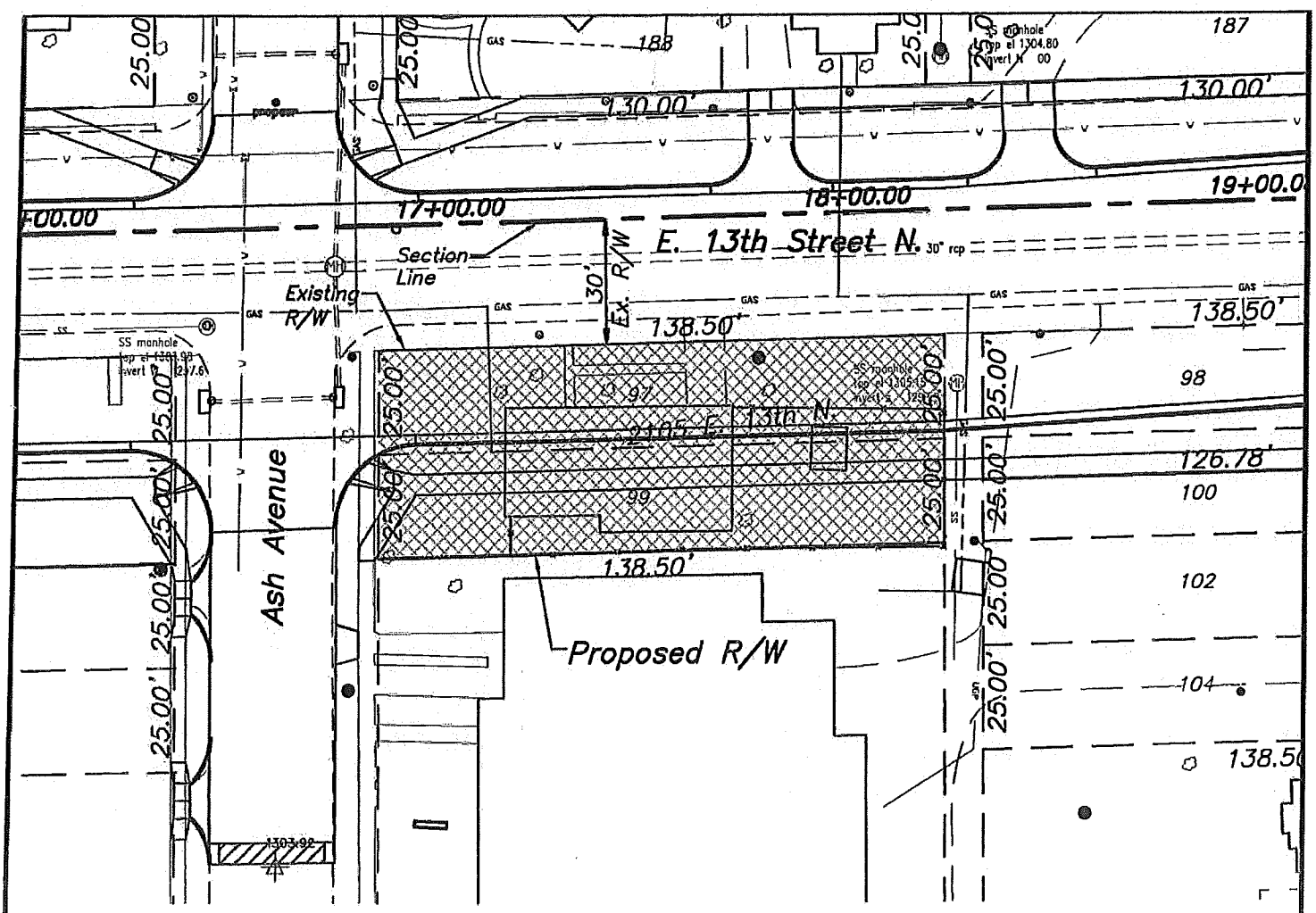
PIN/APN 125150210300200
Security Title File Number 1090233

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Joe Vorstenbosch, Project Manager



PROPOSED R/W ACQ. LEGAL:

All of Lots 97 & 99, Eleventh Street Addition, an addition to Wichita, Sedgwick County, Kansas.

TAX KEY #: C00950

R/W ACQUISITION SIZE: 6,925 sq. ft.

PROPOSED R/W ACQUISITION

13th STREET
HYDRAULIC AVENUE TO OLIVER

TRACT MAP

ALDENE BARKER
SEC 15-T27-R1E

SCALE: 1" = 40'

Tract No. 13

2105 East 13th Street North

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Agenda Item No. II-8a

CITY OF WICHITA
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of 2105 East 13th Street for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On November 6, 2007, the City Council approved the design concept and proposed Public Works project to widen East 13th Street North from Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The road corridor improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. The property at 2105 East 13th Street is improved with a single-family residence. The proposed project impacts the improvements thereby making it is necessary to acquire the property in its entirety. The 1,231 square foot house will be razed and the remnant land will be used as green space.

Analysis: The owner rejected the appraised offer of $46,500, or $37.77 per square foot. The owner commissioned an appraisal which valued the property at $58,000. The owner agreed to accept the average of the two appraisals, $52,250. Relocation and moving benefits, estimated at $8,000 were included in the contract amount for a total settlement of $60,250.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $71,250 is requested. This includes $52,250 for the acquisition, $8,000 for relocation benefits and moving costs, $10,000 for demolition and, $1,000 for title work and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

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

Recommendation/Action: It is recommended that the City Council 1) Approve the Real Estate Purchase Agreement; 2) Approve the budget; and 3) Authorize the necessary signatures.

Attachments: Real Estate Purchase Agreement, tract map and aerial map.

CITY OF WICHITA
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 1440 South Tapestry Lane for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. The properties consist of single-family residences, commercial properties, vacant land, and billboards. The property located at 1400 South Tapestry Lane backs up to 151st Street West. An acquisition for road right-of-way along 151st is required to facilitate the project. The proposed right-of-way consists of 710 square feet. The proposed road improvements impact landscaping, mature trees, and a fence.

Analysis: The owner rejected the appraised offer of $1,670, or $1,065 for the land and $605 towards landscaping and countered at $38,214. The counter offer rejected by the City included compensation for $27,000 of the $38,214 counter was for the purpose of building a private sound wall. After negotiation, the owner did agree to convey the necessary right-of-way for $11,000. This amount includes the $1,065 for the right-of-way; $7,100 to relocate the fence; and $2,835 for loss of trees and landscaping.

Financial Considerations: A budget of $12,500 is requested. This includes $11,000 for the acquisition and $1,500 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal Grant Funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

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

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

PROJECT: West Kellogg **DATE:** January 20, 2011

COUNTY: Sedgwick **TRACT NO.:** 0001

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED WITH ACCESS CONTROL

THIS AGREEMENT Made and entered into this 17 day of January, 2011, by and between

Larry L. Lee and Donna J. Delaney

1440 S Tapestry Lane, Wichita, KS 67052
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed with Access Control to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
709.72 with access control (Sq. Ft.) $ 1,065.00
Temporary Easement for construction:
N/A (Sq. Ft.) $ N/A

Improvement & Buildings acquired with right of way:
9,935.00

TOTAL: $ 11,000.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: _____
Larry L. Lee

By: _____
Donna J. Delaney

THE CITY OF WICHITA

By: _____
Carl Brewer, Mayor

ATTEST:

By: _____
Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

Larry L. Lee and Donna J. Delaney
If mortgage or other liens, show names of holders:
Fidelity Bank

REMARKS:

PIN/APN 148270410101000
Security Title File Number 2001674

APPROVED TO FORM:

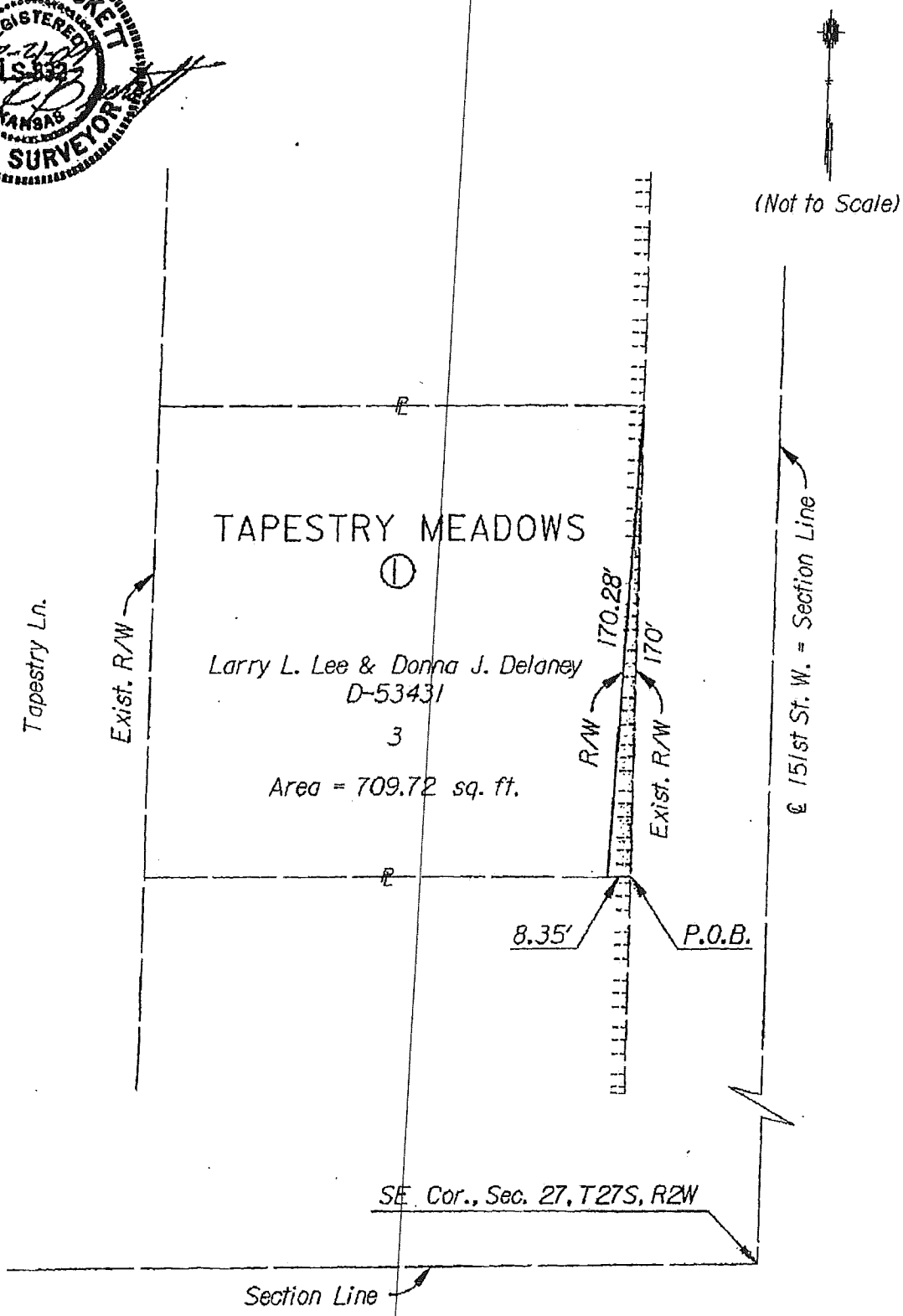
_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Joe Vorstenbosch, Project Manager

Tract #1A - D-53431
Easement for Right of Way

JAMES R. BECKETT
REGISTERED
LS-833
KANSAS
LAND SURVEYOR

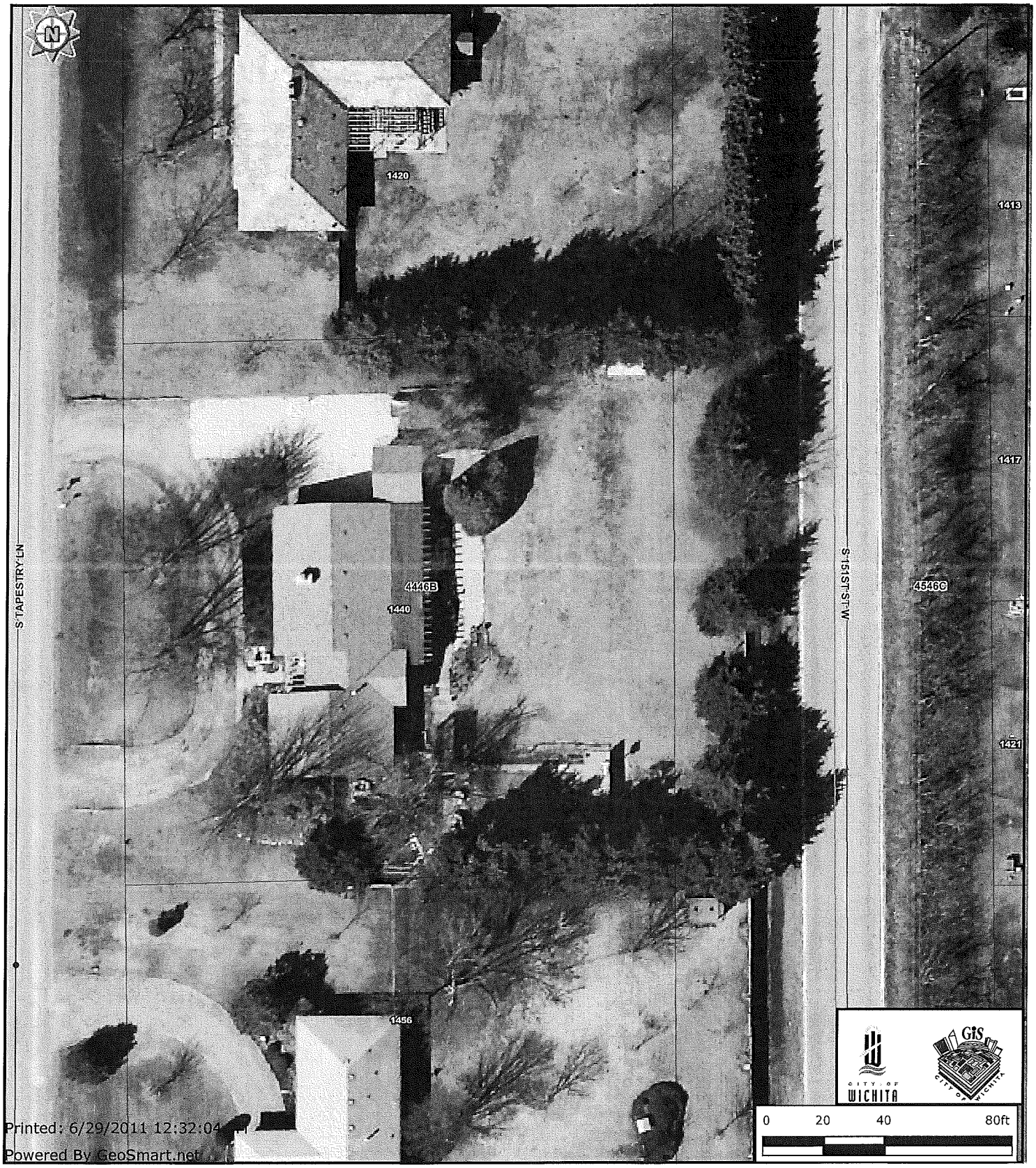


Tract #1A – D-53431
Larry L. Lee & Donna J. Delaney
Easement for Right-of-Way

Beginning at the Southeast Corner of Lot 3, Block 1, Tapestry Meadows Addition to Sedgwick County, Kansas; thence West along the South line of said Lot 3 a distance of 8.35 feet; thence Northeasterly for a distance of 170.28 feet to the Northeast Corner of said Lot 3; thence South along the East line of said Lot 3 a distance of 170 feet to the point of beginning, containing 709.72 square feet more or less.

JAMES R. BECKETT
REGISTERED
LS-832
KANSAS
LAND SURVEYOR

1440 South Tapestry



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CITY OF WICHITA
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 1456 South Tapestry Lane for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. The properties consist of single-family residences, commercial properties, vacant land, and billboards. The property located at 1456 South Tapestry Lane backs up to 151st Street West. An acquisition for road right-of-way along 151st is required to facilitate the project. The proposed right-of-way consists of 2,129 square feet. The proposed road improvements impact landscaping, mature trees, the fence, a shed, and an in ground sprinkler system.

Analysis: The owner rejected the appraised offer of $3,860, or $3,190 for the land and $670 towards landscaping and countered at $21,033. The counter offer rejected by the City included compensation for trees located within the existing right-of-way and costs for items such as the shed, fence and sprinkler system which were not considered by the appraiser. These items are typically handled as a moving expense separate from the acquisition which is why it was not included in the appraisal. A proposed settlement of $10,600 was agreed upon. This amount is comprised of the original offer of $3,190 for the land; $1,000 for the relocation of the sprinkler system; $1,000 for the relocation of the shed; $3,520 for fencing; and $1,890 for loss of landscaping and mature trees. The proposed settlement at $10,600 includes all moving expense items.

Financial Considerations: A budget of $12,100 is requested. This includes $10,600 for the acquisition and $1,500 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal Grant Funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

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

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

PROJECT: West Kellogg **DATE:** January 20, 2011

COUNTY: Sedgwick **TRACT NO.:** 0002

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED WITH ACCESS CONTROL

THIS AGREEMENT Made and entered into this 16 day of June, 2011, by and between

Sylvia Diane Smith and Kathleen Ray Hill

1456 S. Tapestry Ln., Wichita, KS 67052
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed with Access Control to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
2,129 with access control (Sq. Ft.) $ 3,190.00
Temporary Easement for construction:
N/A (Sq. Ft.) $ N/A

Improvement & Buildings acquired with right of way:
Landscaping and trees 7,410.00

TOTAL: $ 10,600.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: Sylvia Diane Smith

By: Kathleen R. Hill

THE CITY OF WICHITA

By: Carl Brewer, Mayor

ATTEST:

By: Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears on Title
Sylvia Diane Smith and Kathleen R. Hill

If mortgage or other liens, show names of holders:
Loan Number 5300143111 Balance $76,256.79 Chase

REMARKS:

PIN/APN 148270410101100
Security Title File Number 2001675

APPROVED TO FORM:

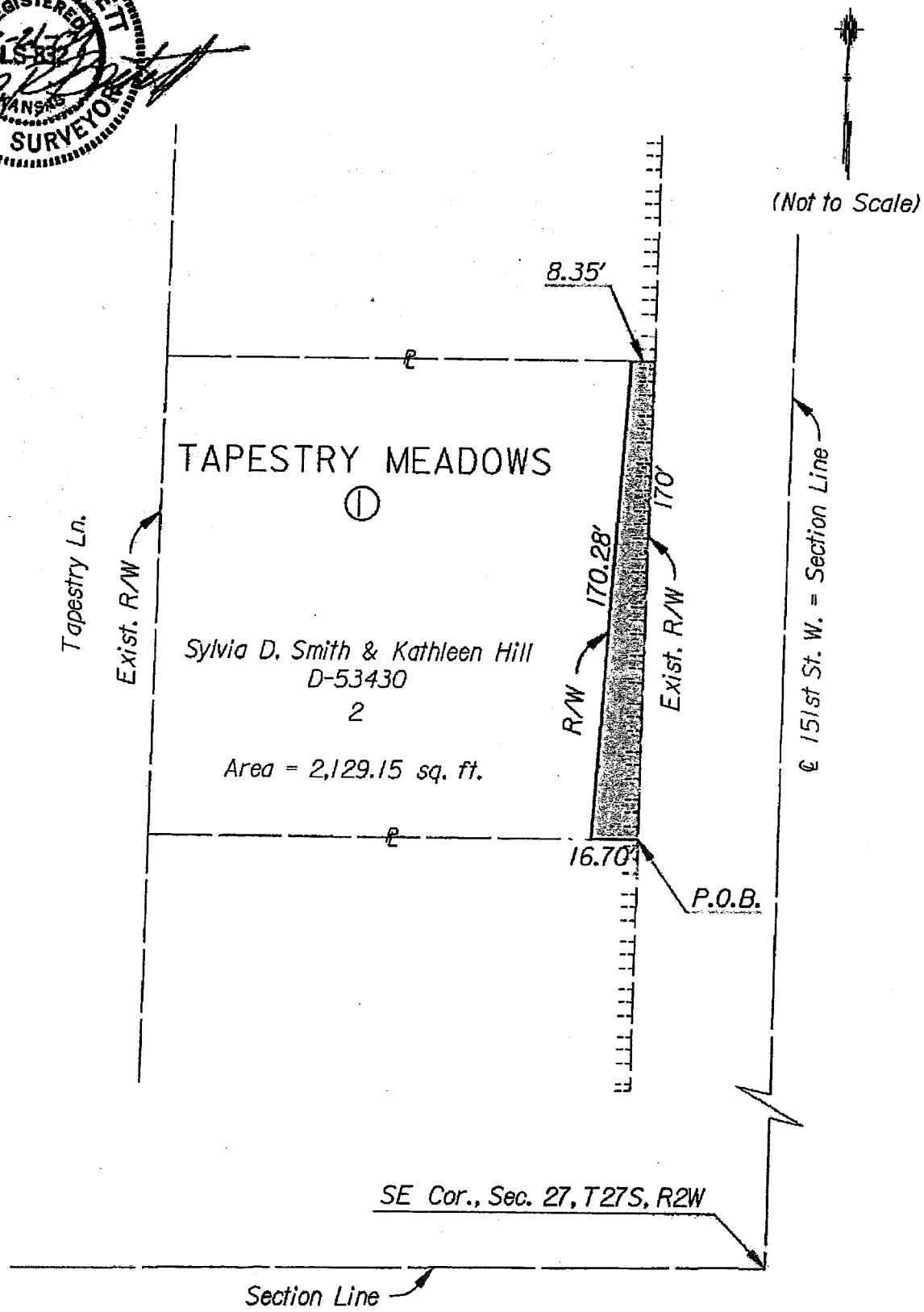
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

Joe Vorstenbosch, Project Manager

Tract #2A - D-53430
Easement for Right of Way

JAMES R. BECKETT
REGISTERED
12-21-09
LS-832
KANSAS
LAND SURVEYOR

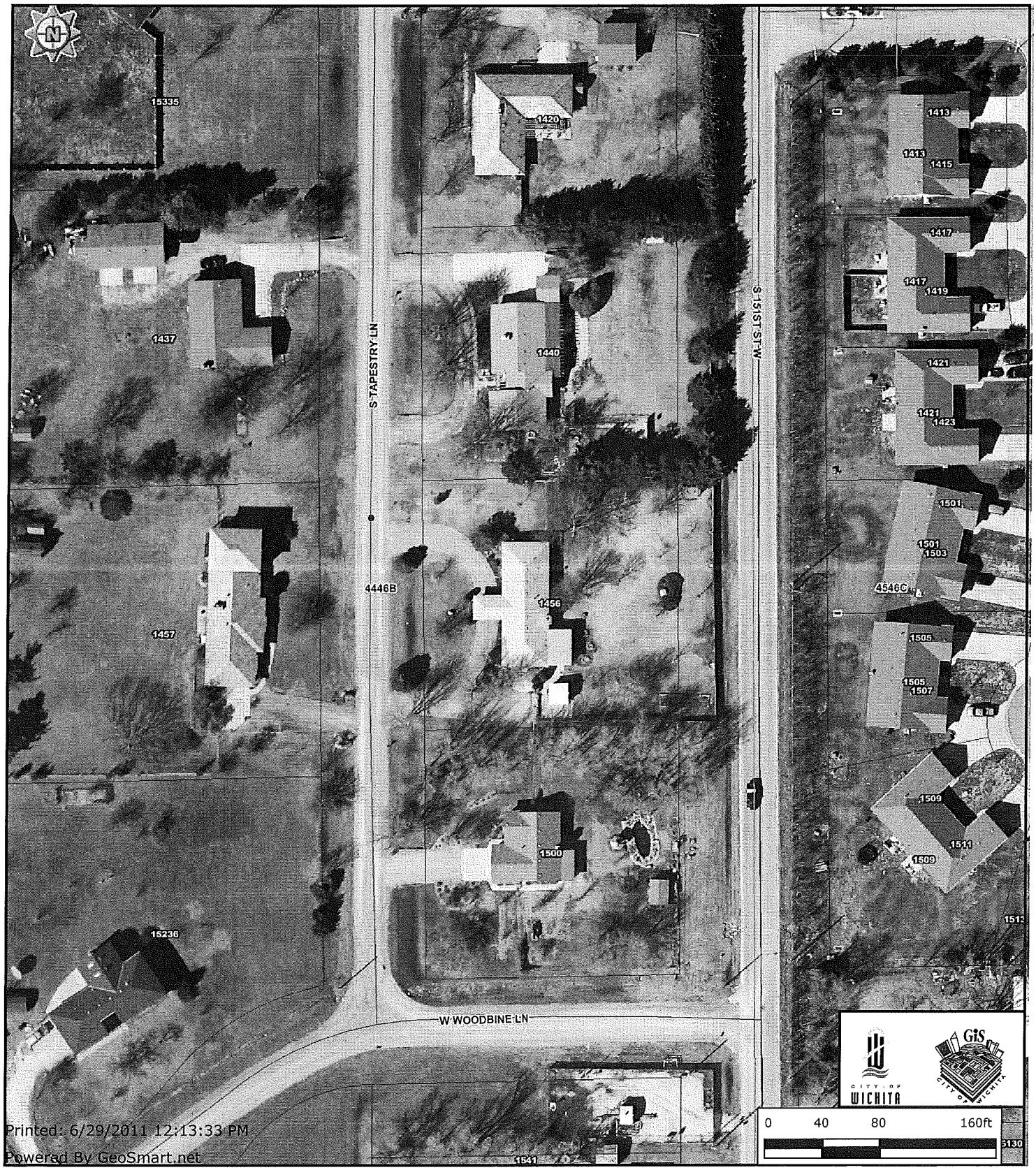


Tract #2A – D-53430
Sylvia D. Smith & Kathleen Hill
Easement for Right-of-Way

Beginning at the Southeast Corner of Lot 2, Block 1, Tapestry Meadows Addition to Sedgwick County, Kansas; thence West along the South line of said Lot 2 a distance of 16.70 feet; thence Northeasterly for a distance of 170.28 feet to a point on the North line of said Lot 2 and 8.35 feet West of the Northeast Corner of said Lot 2; thence East along said North line a distance of 8.35 feet to said Northeast Corner; thence South along the East line of said Lot 2 a distance of 170 feet to the point of beginning, containing 2,129.15 square feet more or less.

JAMES R. BECKETT
REGISTERED
12-21-07
LS-832
KANSAS
LAND SURVEYOR

1456 South Tapestry



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CITY OF WICHITA
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of 1509 South Wheat Lane for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. The properties consist of single-family residences, commercial properties, vacant land, and billboards. The property located at 1509 South Wheat is a 2,200 square foot single-family residence on a .57-acre lot. The improvements are impacted by the project causing a full acquisition and relocation of the occupants.

Analysis: The owner rejected the appraised offer of $135,000. Through negotiations, the owner has agreed to $172,500. The property is relatively unique in that it was converted into a residential unit from a former, open span, commercial property thus making it difficult to value. There is a mortgage balance of $167,310 on the property. An increase in value to $172,500 includes reestablishment benefits the owner would be eligible for and covers the owner's mortgage. Settlement at $172,500 avoids the risk associated with eminent domain and saves the City the associated administrative costs and time involved with the process. The personal property will be removed from the property at an estimated $2,000. This is in addition to the purchase price.

Financial Considerations: A budget of $176,000 is requested. This includes $172,500 for the acquisition, $2,000 for moving the personal property, and $1,500 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal Grant Funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

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

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

PROJECT: West Kellogg **DATE:** _____

COUNTY: Sedgwick **TRACT NO.:** 11

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 31st day of MAY, 2011, by and between

Darlene F. Mullin, a single person

1509 S. Wheat Ln., Wichita, KS 67235
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
.31 (Acres) ACCESS CONTROL ~~$170,500.00~~ $172,000.

Temporary Easement for construction:
N/A (Acres) $ N/A

Improvement & Buildings acquired with right of way:
Residence and attached garage.

TOTAL: $ ~~170,500.00~~ $172,000.00

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. It is understood and agreed that the above stated consideration for said real estate is contingent upon approval by the Wichita City Council.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: Darlene F. Mullin
Darlene F. Mullin

THE CITY OF WICHITA

By: _____
Mayor

ATTEST:

By: _____
City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

Darlene F. Mullin

If mortgage or other liens, show names of holders:
Beneficial Mortgage Co. of Kansas

REMARKS:

PIN/APN 147260330000200
Security Title File Number 2002206

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Joe Vorstenbosch, Project Manager

Tract #11A – D-1050-UP
Gale S. & Darlene F. Mullin
Easement for Right of Way

That part of the Southwest Quarter of Section 26, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, described as commencing from a point 294 feet East of the West line of said Southwest Quarter, at a point on the North line of U.S. Highway 54; thence East along said North highway right-of-way line a distance of 132 feet; thence North, parallel with said West line, a distance of 141.8 feet to the point of beginning; thence continuing North, parallel to said West line, a distance of 63.20 feet; thence Northwesterly for a distance of 153.70 feet to a point 285 feet North of said North highway right-of-way line; thence South, parallel with said West line, a distance of 139.80 feet; thence East 132 feet more or less to the point of beginning, containing 0.31 acres more or less.

JAMES R. BECKETT
REGISTERED
12-10-09
LS-832
KANSAS
LAND SURVEYOR

Tract #11B – D-1050-UP
Gale S. & Darlene F. Mullin
All Right of Access

All right of access to and from the abutting public roadway over and across a line in the Southwest Quarter of Section 26, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Commencing from a point 294 feet East of the West line of said Southwest Quarter, at a point on the North line of U.S. Highway 54; thence East along said North highway right-of-way line a distance of 132 feet; thence North, parallel with said West line, a distance of 205 feet to the point of beginning; FIRST COURSE, thence Northwesterly for a distance of 153.70 feet to a point 285 feet North of said North highway right-of-way line.

JAMES R. BECKETT
REGISTERED
2-10-09
LS-832
KANSAS
LAND SURVEYOR

1509 S Wheat Ln (wide)

D-1050-UP

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 12, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of a Temporary Construction Easement at 3107 South Seneca for the South Seneca, 31st Street South to Interstate 235 Road Improvement Project (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On April 6, 2010, the City Council approved the design concept and the funding to acquire right-of-way for the Seneca Street improvement project between 31st Street South and Interstate 235. The roadway will be widened to five lanes with four through lanes and a center, two-way turn lane. There will be new sidewalks on each side of Seneca. The traffic signals and the drainage system will be upgraded during construction. It is necessary to obtain two temporary construction easements from the retail property located at 3107 South Seneca. The easements will be at the driveways along Seneca to allow the matching of the driveway grade to the road project. No improvements are impacted as a result of the project.

Analysis: The seller agreed to convey the necessary easement for estimated appraised value of $250, of $0.31 per square foot.

Financial Considerations: The funding source for the acquisition is General Obligations Bonds. A budget of $400 is requested. This includes $250 for the acquisition area and $150 for closing costs and related charges.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

Legal Considerations: The Law Department has approved the Temporary Construction Easement as to form.

Recommendation/Action: It is recommended that the City Council accept the easement and approve the budget.

Attachments: Temporary construction easement and tract maps.

PREPARED BY AND UPON
RECORDING RETURN TO:
ANN MCGILL, ESQ.
KUTAK ROCK LLP
1650 FARNAM STREET
OMAHA, NE 68102-2186

Wichita (Seneca/31st), Kansas
Store No. 5991-00

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT (this "**Easement**") is made this ____ day of _____, 2011 by **WAL-MART REAL ESTATE BUSINESS TRUST,** a Delaware statutory trust ("**Grantor**") in favor of the **CITY OF WICHITA**, a municipal corporation (the "**City**").

PRELIMINARY STATEMENTS

Grantor is the fee simple owner of certain real property located in Wichita, Kansas as described in Exhibit A attached hereto and incorporated herein (the "**Grantor Property**"). In connection with the City's construction of certain improvements to Seneca Street known as Project Number 87-N-0243-01 (the "**Improvements**"), which is located adjacent to the Grantor Property, City has requested, and Grantor has agreed, to grant to City and its agents a temporary easement to enter upon a portion of the Grantor Property in connection with the construction of the Improvements, subject to the terms and conditions set forth in this Agreement.

AGREEMENT

For and in consideration of $10 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby agrees as follows:

1. **Grant of Temporary Easement**. Subject to any restrictions, easements or other matters of record, Grantor hereby grants to City a non-exclusive temporary easement to construct, maintain and repair road right-of-way upon that portion of the Grantor Property depicted in the attached Exhibit B attached hereto and incorporated herein (the "**Easement Area**"). Grantor hereby reserves the right to use the Easement Area for all purposes not inconsistent with the easement herein granted, including without limitation, the right of ingress, egress and passage by Grantor's lessees and invitees and reserves the right to grant non-exclusive easements over, across and upon the Easement Area to other parties for any purpose which shall not unreasonably interfere with City's use of and rights in the Easement Area as set forth and created herein.

2. **Term of Easement**. This Easement and all interests granted hereby shall automatically expire and terminate upon the earlier of (a) City's completion of the Improvements or (b) two years from the date of this Easement.

3. **Use of Easements**. City agrees to use due care in any use of the rights herein granted so as not to unreasonably disturb Grantor's use of its property and agrees to restore the Grantor Property to its condition which existed prior to City's use of the rights granted hereunder. City agrees that the grant of the easement rights hereunder are expressly subject to the following agreements and limitations: (a) any construction activities performed by City or its agents on the Grantor Property or Easement Area pursuant to this Easement shall be performed only after thirty (30) days prior notice to Grantor; (b) any and all construction activities performed by City or its agents on the Grantor Property or Easement Area pursuant to this Easement shall, weather permitting, be completed no later than two weeks after the commencement of any such work on the Grantor Property or Easement Area; (c) access to the Grantor Property from Seneca Street through the Easement Area will not be closed for more than two weeks, weather permitting, after the commencement of any construction activities by City or its agents on the Grantor Property or Easement Area and (d) during any period of time that access to the Grantor Property from Seneca Street through the Easement Area is closed, City agrees that it will not simultaneously close access from Seneca Street to the property located directly north of and adjacent to the Grantor Property, as depicted on the attached Exhibit C (the "***Alternate Access***") and that the Alternate Access will be kept open at all times during the construction of the Improvements.

4. **Hold Harmless and Indemnification**. City will forever waive and hold Grantor harmless for, and defend Grantor against, any claims, losses, causes of action, and suits which arise from City's, its agents', employees' or invitees' acts or omissions with respect to the exercise of any rights hereunder, including but not limited to the use of the Easement herein granted and will indemnify Grantor for any losses suffered due to any such claims, losses, causes of action or suits.

5. **Compliance with Law**. City shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for, the Improvements. City shall comply with any and all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to, those governing the prevention, abatement and elimination of pollution and/or protection of the environment and the employment of its workers and all immigration laws, statutes, rules, codes and regulations.

6. **Binding Upon Property**. The easement, rights and obligations created pursuant to the terms of this Easement shall run with and be binding upon the Grantor Property and the Easement Area, including future subdivisions and/or reconfigurations of such properties, and shall be binding on all entities having or acquiring any right, title or interest in such properties and shall inure to the benefit of the City and each owner, tenant, subtenant, employee or invitee thereof.

7. **No Dedication**. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Area to the general public, or for any public use, or purpose whatsoever. No rights, privileges or immunities of any party hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained in this Easement.

8. **Title**. Grantor confirms with City and its assigns that Grantor is seized in fee of the Easement Area, subject to matters of record, and it has the right to grant and convey the easement and rights granted herein, and that it will warrant and defend such easement and rights to City and its assigns against the lawful claims and demands of all persons.

9. **Notices**. All notices given pursuant to this Easement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, addressed to the appropriate party at the address set forth below:

Wal-Mart:	c/o Wal-Mart Stores, Inc. Attn: Real Estate Manager—Kansas (Store No. 5991-00) 2001 S.E. 10th Street Bentonville, AR 72716-0550
With a Copy to:	c/o Wal-Mart Stores, Inc. Attn: Real Estate Counsel—Kansas (Store No. 5991-00) 2001 S.E. 10th Street Bentonville, AR 72716-0550

10. **Counterparts**. This Easement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original, and all of which shall constitute collectively one agreement.

[Remainder of page intentionally left blank – Signature page to follow]

IN WITNESS WHEREOF, this Easement has been executed by Grantor as of the day and year first above written.

GRANTOR:

WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust

By _____
John Clarke
Vice President – Real Estate

STATE OF Arkansas)
) SS.
COUNTY OF Benton)

The foregoing instrument was acknowledged before me on June 6, 2011 by John E. Clarke, Vice President of Real Estate of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, on behalf of the trust.

_____
Notary Public

My Commission Expires:
3-13-2012

Jane Bennett
County of Benton
Notary Public - Arkansas
My Commission Exp. 03/13/2012

CITY:

CITY OF WICHITA, KANSAS, a municipal corporation

By _____
Name _____
Its _____

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 20__ by _____, _____ of City of Wichita, Kansas, a municipal corporation, on behalf of the corporation.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A

GRANTOR PROPERTY

A portion of Lots 7, 8, 9, 10 and 11, in Block 11, and a portion of Block 13, and a portion of the vacated alley lying West of Block 13 in Replat of Iva Fultz Gardens, Wichita, Sedgwick County, Kansas described as commencing at the southeast corner of said Block 13;

THENCE N00° 00'00"W(assumed), along the east line of said Block 13, 206.00 feet to the Point of Beginning;

THENCE S89°46'00"W, parallel with the south line of said Block 13, 332.25 feet;

THENCE S00°00'47"E, 13.53 feet;

THENCE N89°55'28"W, 205.67 feet to a point on the east line of a 20 foot alley as platted between said Block 11 and said Block 13;

THENCE N00°08'11"W, along said 20 foot alley, 12.38 feet to a point 20 feet north of the south line of said Lot 11, as extended east to the east line of said 20 foot alley;

THENCE S89°46'00"W, parallel with the south line of said Lot 11, 140.00 feet to a point on the west line of said Lot 11, said point being 20 feet north of the southwest corner of said Lot 11;

THENCE N00°06'58"W, along the west line of said Lots 7, 8, 9, 10 and 11, 244.61 feet, to a point 16.52 feet north of the southwest corner of said Lot 7;

THENCE S89°55'28"E, 346.33 feet;

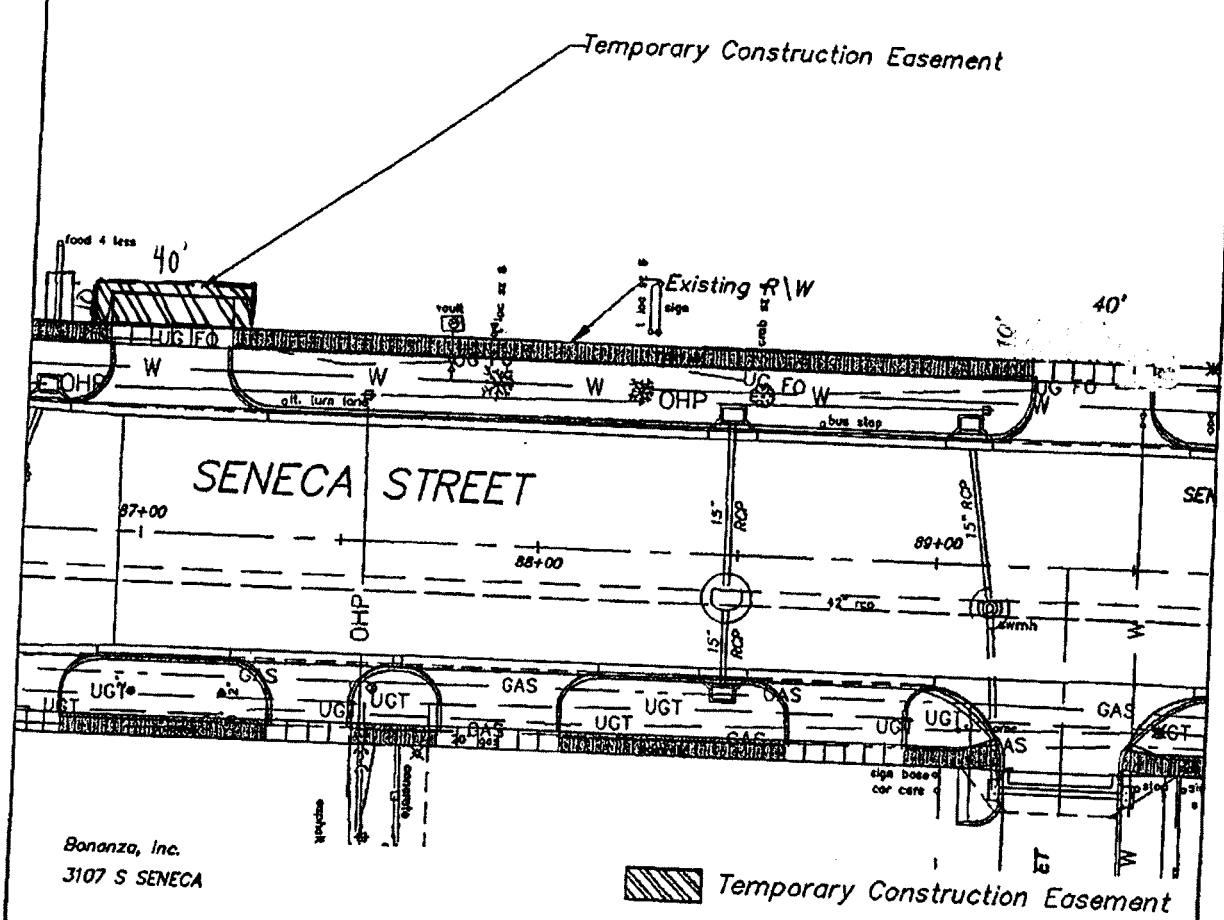
THENCE S00°00'47"E, 25.68 feet; THENCE N89°46'00"E, parallel with the south line of said Block 13, 332.11 feet to a point on the east line of said Block 13;

THENCE S00°00'00"E, along the east line of said Block 13, 216.96 feet to the Point of Beginning.

EXHIBIT B

EASEMENT AREA

[See attached]



Proposed Temporary Construction Easement Legal Description:

A tract of land lying in the Southeast Quarter, Section 7, Township 28 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas more particularly described as follows:

The North 40 feet of the South 613 feet of the East 10 feet of Block 13, Replat of Iva Fultz Gardens Addition, Wichita, Kansas;

Tax Key # D 12302
Proposed Right-of-way Acquisition Size: 400 Sq. Ft. +/-

SENECA STREET
I-235 TO 31st STREET
TRACT MAP
BONANZA, INC.
SEC 7-T28S-R1E

SCALE: 1"=40'

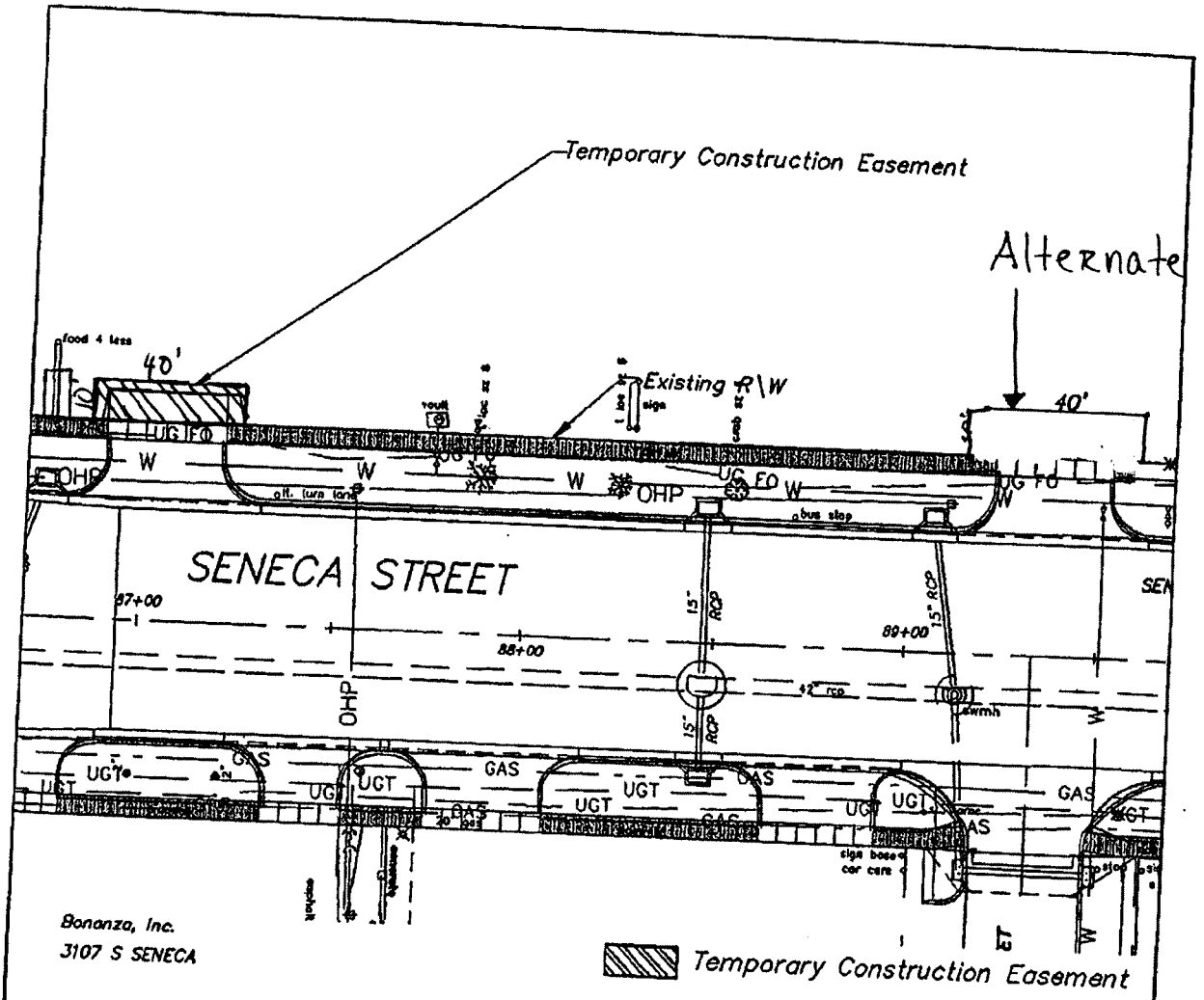
March 22, 2010

SHT: TMPMAP21

EXHIBIT C

ADJACENT ACCESS DRIVE

[See attached]



Bonanza, Inc.
3107 S SENECA

Proposed Temporary Construction Easement Legal Description:

A tract of land lying in the Southeast Quarter, Section 7, Township 28 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas more particularly described as follows:

The North 40 feet of the South 613 feet of the East 10 feet of Block 13, Replat of Iva Fultz Gardens Addition, Wichita, Kansas;

Tax Key # D 12302
Proposed Right-of-way Acquisition Size: 400 Sq. Ft. +/-

SENECA STREET
I-235 TO 31st STREET
TRACT MAP
BONANZA, INC.
SEC 7-T28S-R1E
SCALE: 1"=40'

March 22, 2010

SHT: TMPMAP21

Agenda Report No. II-10

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Drug Enforcement Agency – 2011 High Intensity Drug Trafficking Area Task Force (HIDTA).

INITIATED BY: Wichita Police Department

AGENDA: Consent

Recommendation: Approve the 2011 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 their 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 Investigations 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 Investigations 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 2011 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

Robert E. Blecha
Director

Derek Schmidt
Attorney General

May 11, 2011

Norman D. Williams, Chief
Wichita Police Department
455 N. Main
Wichita, KS 67202

Dear Chief Williams:

Attached for your signature is the 2011 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 copy. I will then acquire the other signatures and a copy of the signature pages only will be returned for your files.

New to the 2011 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 2011 are January 1, 2011 to December 31, 2012.

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

MIDWEST HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA)

MEMORANDUM OF UNDERSTANDING

WICHITA DEA TASK FORCE

G11MW0003A
01-01-2011 / 12-31-2012
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:
Tony Weingartner, Assistant 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

5-19-11
Carl Brewer, Mayor — Date

through Wichita Police Department

5.19.2011
Norman D. Williams, Chief — Date

Fiscal Agent:
Kansas Bureau of Investigation

6-13-11
Tony Weingartner/Assistant Director — Date

FY 2011 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

2011 - Midwest

Initiative - Wichita DEA Task Force

Award Recipient - Kansas Bureau of Investigation (G11MW0003A)

Resource Recipient - Kansas Bureau of Investigation

Awarded Budget (as approved by ONDCP)	***$4,147,264.00***	
Personnel	**Quantity**	**Amount**
Investigative - Law Enforcement Officer	1	$63,578.00
Total Personnel		**$63,578.00**
Fringe	**Quantity**	**Amount**
Investigative - Law Enforcement Officer	1	$18,736.00
Total Fringe		**$18,736.00**
Overtime	**Quantity**	**Amount**
Investigative - Law Enforcement Officer	3	$39,033.00
Total Overtime		**$39,033.00**
Travel	**Quantity**	**Amount**
Investigative/Operational	1	$6,600.00
Total Travel		**$6,600.00**
Services	**Quantity**	**Amount**
Communications - mobile phones & pagers		$6,804.00
Communications - office phones		$1,200.00
Contractor - Analyst - Intelligence	1	$25,000.00
Software - maintenance		$3,200.00
Vehicle lease - passenger	2	$15,600.00
Total Services		**$51,804.00**
Supplies	**Quantity**	**Amount**
Investigative/operational		$6,000.00
Office		$1,363.00
Total Supplies		**$7,363.00**
Other	**Quantity**	**Amount**
Administrative costs		$300.00
Total Other		**$300.00**
Total Budget		**$187,414.00**

Midwest HIDTA Inventory Action Form

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

Appendix - C

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: Wichita Kansas Police Department
455 N Main
Wichita, Kansas 67202

Applicant Number and/or Project Name: G11MW0003A
Midwest HIDTA
Kansas Bureau of Investigation Enforcement/Response Initiative
Wichita DEA HIDTA Task Force Initiative

Grantee IRS/Vendor Number:_____

Norman Williams, Chief
Type Name & Title of Authorized Representative

Signature

6.9.2011
Date

Signature Page
Appendix D

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: Wichita Kansas Police Department
455 N Main
Wichita, Kansas 67202

Applicant Number and/or Project Name: G11MW0003A
Midwest HIDTA
Kansas Bureau of Investigation Enforcement/Response Initiative
Wichita DEA HIDTA Task Force Initiative

Grantee IRS/Vendor Number:_____

Norman Williams, Chief
Type Name & Title of Authorized Representative

Signature

6-9-2011
Date

Signature Page
Appendix E

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*	WICHITA KANSAS POLICE DEPARTMENT 455 N MAIN WICHITA, KS 67202 Congressional District, *if known*
6. Federal Department/Agency: **ONDCP**	7. Federal Program Name/Description: **HIDTA**
8. Federal Action Number, *if known* ***G11MW0003A***	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: Norman Williams Title: Chief Telephone: 316-268-4155 Date:
Federal Use Only:	Authorized for local reproduction Standard Form – LLL

ATTACHMENT F

MIDWEST HIDTA
Reimbursement Form

Agency	Dept. Code
Wichita Police Department 455 N. Main Wichita, KS 67201	KBI use only

Invoice for the month of:
Jan-11

2011 Funding Year 1/1/11 to 12/31/12
Initiative: Wichita DEA HIDTA Task Force G11MW0003A
CFDA # 95.001

Enter Data This Column only

Category	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 Robert Blecha Kansas Bureau of Investigation 1620 SW Tyler Topeka, KS 66612	4. Award Number: G11MW0003A 5. Grant Period: From 01/01/2011 to 12/31/2012	
1A. Recipient IRS/Vendor No.: 1486029925L2	6. Date: 3/11/2011	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: $1,741,850 11. Total Award: $1,741,850	

12. Consistent with Public Law 111-322, the Continuing Appropriations Act, 2011, this document provides a total budget and spending ceiling as reflected in Block 10 of the Grant Award document, which represents funding at the rate of 42% of the fiscal year 2010 funding level. Accordingly, the sum of all budgets cannot exceed the award amount reflected in Block 10 of the Grant Award document. The Office of National Drug Control Policy acknowledges that the aforementioned funding level is below the stated budget requirements; however, additional funding cannot be made available until enacted through public law.

13. Statutory Authority for Grant: Public Law 111-322

14. Typed Name and Title of Approving Official Michael K. Gottlieb Acting National HIDTA Director	15. Typed Name and Title of Authorized Official Robert Blecha Kansas Bureau of Investigation
16. Signature of Approving ONDCP Official Michael K. Gottlieb	17. Signature of Authorized Recipient/Date Robert Blecha, Director 21 MAR 2011
18. Accounting Classification Code DUNS: 150943496 EIN: 1486029925L2	19. HIDTA AWARD OND10B3SE1112 OND2000000 OC4101

Received

MAR 17 2011

Midwest HIDTA Administration

Appendix H

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 nine (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 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

4. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative purposes.

RECIPIENT ACEPTANCE OF GRANT CONTITIONS

Signature: _____ Date: 6-9-2011

Name: Norman D. Williams, Chief

Organization: Wichita Police Department

Signature Page
Appendix – H

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.

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and Members of the City Council

SUBJECT: Issuance of General Obligation Local Sales Tax Bonds

INITIATED BY: Finance Department

AGENDA: Consent

Recommendation: Adopt the resolution.

Background: Voters approved a one percent sales tax in 1985 to reduce property tax and to provide revenues for a roadway construction program, with special emphasis on freeway construction. The City has largely completed the construction of the K-96/Northeast Expressway, reconstruction of major portions of Kellogg/US-54 from Rock Road (East) to Maize Road (West), as well as supporting $4 million to $6 million in annual arterial road and bridge construction using local sales tax dollars, federal/state highway funding and bonding.

The City previously issued General Obligation (GO) Local Sales Tax Bonds -- $50 million in 1992, which matured in 2002; $25 million in 1996, with a $7.5 million remaining balance refunded in 2003; $46 million in 2002, with a $28.49 million remaining balance refunded in 2009; $49 million in 2003; and, $36 million in 2004, with a $23.93 million remaining balance refunded in 2010, to supplement current sales tax revenues in financing the freeway construction program.

Analysis: Based on freeway construction expenditures and projections through the year 2011, the City has determined it necessary to issue additional GO Sales Tax Bonds in the amount of $9,025,000 to reimburse and continue the development and reconstruction of Kellogg/US-54 to the east and west. Fifteen-year bonds with level principal and interest payments will be sold in September 2011.

In accordance with State statute, before GO Local Sales Tax Bonds can be issued, a resolution regarding the City's intent to issue such bonds must be published once each week for two consecutive weeks in the City's official newspaper and a protest period of 30 days following the date of the last publication must be satisfied.

Financial Considerations: The City's intent to issue $9,025,000 in GO Local Sales Tax Bonds serves to provide reimbursement for previous capital expenditures. Fifteen-year bonds with level principal and interest payments will be sold in September 2011. As with the issuance of previous Local Sales Tax Bonds, fifty percent (50%) of the revenues received by the City from the county-wide retailer's sales tax will be pledged for the payment of the bonds.

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

Legal Considerations: The resolution was prepared by the City's Bond Counsel and has been approved by the Law Department. The resolution will be published twice in the City's official newspaper and will be subjected to a 30-day protest period.

Recommendation/Action: It is recommended the City Council adopt the resolution declaring it necessary to issue general obligation bonds and to pledge local sales tax revenues for the payment of such bonds and provide for the giving of notice as required by law.

Attachment: Resolution

Published in *The Wichita Eagle* on July 15 and July 22, 2011

RESOLUTION NO. 11-163

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT TO BE NECESSARY TO ISSUE GENERAL OBLIGATION BONDS FOR THE PURPOSE OF PAYING THE COSTS OF CONSTRUCTING ROADS, HIGHWAYS AND BRIDGES IN THE CITY, AND TO PLEDGE SALES TAX REVENUES FOR THE PAYMENT OF SUCH GENERAL OBLIGATION BONDS, AS PROVIDED BY K.S.A. 12-195b; AND PROVIDING FOR THE GIVING OF NOTICE THEREOF IN THE MANNER REQUIRED BY LAW.

WHEREAS, the City of Wichita, Kansas (the "City"), is authorized under the laws of the State of Kansas to issue general obligation bonds to construct roads, highways and bridges in the City; and

WHEREAS, the City is the recipient of funds derived from a county-wide retailer's sales tax in Sedgwick County, Kansas, pursuant to K.S.A. 12-187 *et seq.*, and is authorized under K.S.A. 12-195b to issue general obligation bonds for the payment of the costs of public facilities or improvements and to pledge the revenues received by the City from a county-wide retailer's sales tax for the payment of such general obligation bonds; and

WHEREAS, the Governing Body of the City has adopted Ordinance No. 41-815 pledging one-half of the revenues received by the City from the county-wide retailer's sales tax for the purpose of financing the construction of roads, highways and bridges in the City; and

WHEREAS, the Governing Body hereby finds and determines it to be necessary to issue general obligation bonds for the purpose of financing $9,025,000 of the costs of constructing additional roads, highways and bridges in the City through the issuance of general obligation bonds under the authority of K.S.A. 12-195b, and to pledge fifty percent (50%) of the revenues received by the City from the county-wide retailer's sales tax for the payment of such general obligation bonds;

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

SECTION 1. That it is hereby determined and declared to be necessary to issue general obligation bonds of the City, under the authority of K.S.A. 12-195b, in the aggregate principal amount of $9,025,000, to pay the costs of constructing additional roads, highways and bridges in the City, which general obligation bonds shall be paid from fifty percent (50%) of the revenues received by the City derived from a local county-wide retailer's tax, and if not so paid, then such general obligation bonds shall be paid from ad valorem taxes which may be levied by the City for such purpose without limit as to rate or amount.

SECTION 2. That it is hereby further determined and declared to be necessary to pledge fifty percent (50%) of the revenues received by the City from the county-wide retailer's sales tax to the payment of such general obligation bonds.

SECTION 3. That before such general obligation bonds can be issued and revenues received by the City from the county-wide retailer's sales tax pledged to the payment thereof, this Resolution shall be published once each week for two (2) consecutive weeks in the City's official

newspaper as required by K.S.A. 12-195b; and that if, within thirty (30) days from and after the date of the last such publication, there shall be filed with the Sedgwick County Commissioner of Elections a written petition requesting an election on the proposition of issuing such general obligation bonds and pledging such sales tax revenues, which petition is signed by not less than five percent (5%) of the electors of the City who voted at the last preceding general election, then such general obligation bonds shall not be issued or such sales tax revenues pledged for the payment thereof unless the proposition is submitted to and approved by a majority of the voters of the City voting at an election held thereon. If a sufficient petition requesting such election is not filed within said thirty (30) day period, then the Governing Body shall have the authority to authorize and proceed with the issuance of the general obligation bonds and the pledging of sales tax revenues for the payment thereof as herein provided.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on July 12, 2011.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By_____
Gary E. Rebenstorf, Director of Law

Agenda Item No. II-12

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: 2011 Federal Justice Assistance Grant (JAG) Memorandum of Understanding

INITIATED BY: Wichita Police Department

AGENDA: Consent

Recommendation: Approve the Memorandum of Understanding between the City of Wichita and Sedgwick County.

Background: The City of Wichita Police Department and Sedgwick County Sheriff's Office have received notification they are eligible to receive 2011 Edward Byrne Memorial Justice Assistance Grant (JAG) funding. The allocations established by the Bureau of Justice Assistance are $223,180.50 to the City of Wichita, and $223,180.50 to Sedgwick County. The application is due July 21, 2011.

The City of Wichita and Sedgwick County are required to submit a disparate certification for JAG funding, specifying the amount of the funds that are to be distributed to each of the units of local government and the purposes for which the funds will be used.

A disparate allocation occurs when a city or municipality is scheduled to receive one and one-half times (150 percent) more than a county with concurrent jurisdiction, while that county bears more than 50 percent of the costs associated with prosecution or incarceration of the municipality's Part 1 violent crime. JAG disparate jurisdictions are certified by the Director of the Bureau of Justice Assistance (BJA), based in part on input from the State's Attorney General.

Jurisdictions certified as disparate must identify a fiscal agent that will submit a joint application for the total eligible allocation. The joint application must specify the award distribution to each unit of local government and the purposes for which the funds will be used. Sedgwick County will be the applicant/fiscal agent for the joint funds. A Memorandum of Understanding between both agencies outlining the administration and distribution of funding is required to accompany the application.

Analysis: The Wichita Police Department will use their share of the JAG funding for Law Enforcement purposes to ensure a Safe and Secure Community.

Financial Considerations: The City of Wichita will receive $223,180.50 in 2011 Justice Assistance Grant funding. There is no local match requirement.

E-Citation System	$150,000
Rental Cars and fuel for special assignments	$10,000
Police Equipment	$43,180.50
Target System for the Firearms Range	$20,000
Total	**$223,180.50**

Goal Impact: Under the City of Wichita's Safe and Secure Initiative, the additional funding will help to ensure the police department can continue its emphasis on the community policing philosophy. This philosophy relies on the positive interactions between the police, other public servants and community

members to serve our community's needs regarding safety, crime prevention, and crime-related quality-of-life issues.

Legal Considerations: The required Memorandum of Understanding has been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended that the City Council approve the Memorandum of Understanding and authorize the appropriate signatures.

Attachments: Memorandum of Understanding between the City of Wichita and Sedgwick County.

GMS APPLICATION NUMBER: **2011-H4586-KS-DJ**
(Mandatory)

COUNTY CLERK
CONTRACT NO. _____

AGREEMENT BETWEEN
THE CITY OF WICHITA, KANSAS AND COUNTY OF SEDGWICK

2011 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This Agreement is made and entered into this____day of_____, 2011, by and between The COUNTY of Sedgwick, acting by and through its governing body, the Board of County Commissioners, hereinafter referred to as COUNTY, and the CITY of Wichita, acting by and through its governing body, the City Council, hereinafter referred to as CITY, both of Sedgwick County, State of Kansas, witnesseth:

WHEREAS, this Agreement is made under the authority of K.S.A. 12-2908, et seq; and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement; and

WHEREAS, the COUNTY agrees to provide the CITY $223,180.50 from the JAG award for the 2011 Safe and Secure Community Program; and

WHEREAS, the CITY and COUNTY believe it to be in their best interests to reallocate the JAG funds.

NOW THEREFORE, the COUNTY and CITY agree as follows:

Section 1.
COUNTY agrees to pay CITY a total of $223,180.50 of JAG funds.

Section 2.
CITY agrees to use $223,180.50 for the 2011 Safe and Secure Community Program until 9-30-2014.

Section 3.

Nothing in the performance of this Agreement shall impose any liability for claims against COUNTY other than claims for which liability may be imposed by the Kansas Tort Claims Act.

Section 4.

Nothing in the performance of this Agreement shall impose any liability for claims against CITY other than claims for which liability may be imposed by the Kansas Tort Claims Act.

Section 5.

Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 6.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 7.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

GMS APPLICATION NUMBER: **2011-H4586-KS-DJ**
(Mandatory)

ATTEST:

SEDGWICK COUNTY, KANSAS

_____
KELLY ARNOLD
County Clerk

_____
DAVID M. UNRUH, Chairman
County Commissioner, 1st District

APPROVED AS TO FORM:

_____
JENNIFER MAGAÑA
Deputy County Counselor

GMS APPLICATION NUMBER: **2011-H4586-KS-DJ**
(Mandatory)

ATTEST:

CITY OF WICHITA, KANSAS

_____
KAREN SUBLETT
City Clerk

_____
CARL BREWER, Mayor

APPROVED AS TO FORM:

_____
GARY REBENSTORF
City Attorney

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of Self Contained Breathing Apparatus (All Districts)

INITIATED BY: Fire Department

AGENDA: Consent

Recommendations: Adopt the amending resolution.

Background: On March 9, 2010, the City Council approved a project to purchase self contained breathing apparatus for the Fire Department. There was an error in the required legal publication of the bonding resolution.

Analysis: An amending resolution has been prepared to provide proper authority to finance the project through the issuance of municipal bonds.

Financial Considerations: The approved project budget of $1,800,000 is unaffected.

Goal Impact: This project supports the Safe and Secure Community goal by increasing citizen safety and improving operational safety and effectiveness at public safety incidents.

Legal Considerations: The Law Department has approved the amending resolution as to legal form.

Recommendation/Actions: It is recommended that the City Council adopt the amending resolution and authorize the necessary signatures.

Attachments: Amending resolution.

132019

Published in the Wichita Eagle on _____

RESOLUTION NO.

A RESOLUTION AMENDING RESOLUTION NO. 1**0-060** FINDING IT NECESSARY TO REPLACE CAPITAL EQUIPMENT FOR THE WICHITA FIRE DEPARTMENT AND AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE.

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

SECTION 1. SECTIONS 3, 4 and 5 of Resolution No. 1**0-060** are hereby amended to read as follows:

"SECTION 3. That the advisability of making said improvements, to properly equip public buildings used by the Wichita Fire Department, is established as authorized by K.S.A. 12-1736."

"SECTION 4. That the cost shall not exceed **One Million Eight Hundred Thousand Dollars ($1,800,000)** exclusive of the interest on borrowed money, and to be paid for by the issuance of general obligation bonds under authority of K.S.A 12-1736."

"SECTION 5. The City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper which shall be effective from and after said publication."

SECTION 2. The original Sections 3, 4 and 5 of Resolution No. 1**0-060** are hereby rescinded.

SECTION 3. The City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper which shall be effective from and after said publication.

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

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Application for Street Resurfacing Project for Kellogg, between Webb and Greenwich (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the application.

Background: The Kansas Department of Transportation (KDOT) provides funding for a street resurfacing (KLINK) program for cities which have highway connecting links within their city limits. The KLINK program is intended for resurfacing improvements on the connecting links, which are maintained by the cities.

KDOT has advised the City of Wichita that KLINK Fiscal Year 2013 funds in the amount of $200,000 are available. The program requires recipient cities to provide matching funding.

Analysis: KLINK funding is available for resurfacing of Kellogg (US-54/400), between Webb and Greenwich. The current pavement condition index is 77 and will be in the low 60's by 2013. It will be in the 40's in 5 years if no action is taken. Maintenance costs increase exponentially as the pavement condition decreases. Therefore, making this maintenance investment now will reduce the overall operating costs for the public until the pavement is replaced as Kellogg is converted to a freeway.

The majority of the current pavement will be in service until at least 2017. It is anticipated that the existing pavement will be taken out of service near the end of the life of this maintenance action.

Financial Considerations: The estimated project cost is $413,338, with $213,338 paid the City and $200,000 paid by KDOT. Funding for the City's share is included in the Capital Improvement Program as the Street Rehabilitation Program. The funding source is General Obligation bonds.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing needed maintenance of a major roadway in east Wichita.

Legal Considerations: The Law Department has reviewed the application and approved the same as to form.

Recommendation/Action: It is recommended that the City Council approve the application and authorize the necessary signatures.

Attachment: Map and application.

CITY OF WICHITA

Department of Public Works

June 17, 2011

Mr. David Marten II, Program Specialist
Bureau of Local Projects
Kansas Department of Transportation
Eisenhower State Office Building
700 SW Harrison St.
Topeka, Kansas 66603-3754

via email

RE: Application for KLINK Resurfacing Project – Fiscal Year 2013

Dear Mr. Marten,

Please find an application attached for a proposed KLINK Resurfacing Project for the City of Wichita, funding request for Fiscal Year 2013. Pertinent project information, as shown on the application, is as follows:

- Requesting Agency: City of Wichita
- Name and Location of Project: Kellogg (US-54/400), between Webb Road and Greenwich Road
- Type of Work: Mill and Overlay with base and shoulder repairs
- 2013 Total Project Cost: $413,338 ($200,000 State/$213,338 City)
- Date of City Council Approval: To be presented to City Council on July 12, 2011.

Thank you for your consideration of funding for this project, and please contact Gary Janzen, Chief Design Engineer, at (316)268-4450 or gjanzen@wichita.gov with any questions.

Sincerely,

James L. Armour, P.E.
City Engineer

Engineering Division

City Hall • Seventh Floor • 455 North Main • Wichita, Kansas 67202-1606

T 316.268.4501 **F** 316.268.4114

www.wichitagov.org

Kansas
Department of Transportation

T WORKS

City Connecting Links* "KLINK" Resurfacing Program

Fiscal Year 2013
Submittal Date: June 30, 2011

1. General Applicant Information

a. Name of Governmental Unit: City of Wichita Public Works & Utilities
Should be the unit who is completing this application

County of Project location: Sedgwick

City of Project location: City of Wichita, Kansas

Population of City: 372,186

State Highway of Project: US 54 / E Kellogg

b. Name and title of primary contact person: Gary Janzen, Chief Design Engineer
Should be an elected official or employee of the governmental unit

Address: Public Works, 455 N Main, 7th FL, Wichita, KS 67202

Phone Number: (316) 268-4450

Email: GJanzen@wichita.gov

c. Governmental official name and title *(if applicable)*: _____

Address: _____

Phone Number: _____

Email: _____

d. Public works official name and title *(if applicable)*: _____

Address: _____

Phone Number: _____

Email: _____

*A City Connecting Link is that part of the State Highway System that is within the city limits. It is not a local roadway that intersects with or leads to the state highway.

2. Project Location and Description – *Attach additional sheets as necessary*

a. Project Location: US 54/E Kellogg, Webb to Greenwich

b. Project length *(in miles or feet)*: 5,250 feet

c. Project scope *(description of work; Milling, Overlay, etc.)* Mill & Overlay with Base Repair

3. Estimated Cost of the Project – *(2011)*

a.	Construction	369,757.5
b.	Construction Engineering/Inspection	38,824.54
c.	Inflation Amount (sum a & b x 1.164)	4,755.8949456
d.	Total Estimated Cost (sum of lines a-c)	413,337.9349456
e.	Local Match* (25 or 50% required, depending on population)	213,337.93
f.	Total Requested Amount from KDOT (subtract line e from d, not to exceed $200,000)	200,000

**KDOT will participate in the cost of construction and construction engineering at the rate of 75% for cities with a population of less than 10,000 or 50% for cities with a population of 10,000 or greater, not to exceed $200,000of state funds.*

4. Coordination information

a. Describe any known KDOT or other projects that may need coordination: _____

b. Has the proposed project been discussed or reviewed by any KDOT field staff? YES ○ NO ⊙

If so, who? _____

Attachment Checklist

- Project map
- Completed detailed cost estimate (LINK)
- Submit Application by mail to:

  Kansas Department of Transportation
  Attn: David L. Marten II
  Bureau of Local Projects
  Eisenhower State Office Building
  700 Harrison, 10th Floor
  Topeka KS 66603

- Complete applications may also be emailed to David L. Marten II at damarten@ksdot.org. To ensure receipt, if you do not receive an email response, please follow up with a call to the Bureau of Local Projects at 785.296.3861.

Email

Estimate

Project Location: US 54/E Kellogg, Webb Rd to Greenwich Rd

Roadway Width: 64 FT (AVG)

Surfacing Type & Thickness: asphalt over concrete & 10"

Estimate By: City of Wichita, Public Works

Date: June 16, 2011

ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
Clearing and Grubbing				
Common Excavation				
Common Exc. (Contractor Furnished)				
Rock Excavation				
Compaction of Earthwork				
Entrance Pipe				
Crossroad Pipe				
End Sections				
Storm Sewer				
Inlets				
Slope Drains				
Steel Plate Guard Fence				
Field Office & Lab				
Mobilization (10%)				
Contractor Staking (2%)				
Seeding & Erosion Control				
Pavement Marking	7,043	LF	$0.50	$3,521.50
Curb & Gutter				
Concrete Pavement				
Portland Cement Treated Base				
Lime Treated Subgrade				
Milling	37,450	SQYD	$2.00	$74,900.00
Patching				
Bituminous Surfacing	37,450	SQYD	$5.00	$187,250.00
RCB Extensions				
Traffic Control (4%)				$14,086.00
Other				
Concrete Base Repair	900	SQYD	$100.00	$90,000.00
			Subtotal	$369,757.50
	Construction Inspection and		Contingencies	$43,580.43
			Total	$413,337.93

2013 KLINK Resurfacing Location: E Kellogg, Webb Rd to Greenwich Rd

Agenda Item No. II-15

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: Lincoln Street Dam Grant Award (Districts III and IV)

INITIATED BY: Department of Park and Recreation

AGENDA: Consent

Recommendation: Accept the Award.

Background: The Lincoln Street Dam and Bridge project over the Arkansas River is currently under construction. Improvements include building a new bridge and relocating the dam downstream. A fish passage and boat passage around the dam are a part of these improvements. On September 1, 2009, the City Council authorized staff to pursue grant funding for the two passages. On April 8, 2010, a grant request was submitted to the Kansas Department of Wildlife and Parks (KDWP) for $125,000 from the National Recreational Trails Fund (NRTF). On June 21, 2011, KDWP notified the Department of Park and Recreation that the request was approved for the full amount.

Analysis: These funds will be used to help finance the construction of the safe boat passage for recreational use.

Financial Considerations: Acceptance of this award will reduce the City's total cost of this improvement. The grant award will be reimbursed upon dollars spent on the boat passage portion of the project.

Goal Impact: The acceptance of this grant award will improve the Quality of Life by creating a safe method of navigation through the dam and improving recreational activities for our citizens,

Legal Considerations: The Law Department has reviewed and approved the grant award as to form.

Recommendation/Action: It is recommended that the City Council accept the NRTF grant award and authorize the appropriate signatures.

Attachments: National Recreational Trails Fund Grant Award.

Operations Office
512 SE 25th Ave.
Pratt, KS 67124-8174

Kansas
Department of Wildlife, Parks
and Tourism

Phone: (620) 672-5911
Fax: 620-672-6020
www.kdwp.state.ks.us

Robin Jennison, Secretary

Sam Brownback, Governor

KANSAS WILDLIFE AND PARKS NRH-001-1
LOCAL PROJECT AGREEMENT

PROJECT SPONSOR: City of Wichita SPONSOR FED ID #: _____

PROJECT NAME: Lincoln Street Dam PROJECT #: NRH-001-1

PROJECT PERIOD: June 21, 2011, to June 30, 2012

PROJECT SCOPE: AS DETAILED IN PROJECT APPLICATION 2010

TOTAL APPROVED PROJECT COST: $1,021,324

MAXIMUM REIMBURSEMENT TO PROJECT SPONSOR: $125,000

The Kansas Department of Wildlife and Parks and the City of Wichita mutually agree to perform this agreement in accordance with the National Recreational Trails Funding Act of 1991 and the following conditions:

1. The trail will be designed, constructed, and maintained to comply with Architectural Barriers Act of 1968 and Section 504, Rehabilitation Act of 1973, 1978, and the Americans with Disabilities Act (ADA) of 1990.
2. The trail will be constructed and maintained in accordance with all applicable Federal, State, and local laws and regulations.
3. The trail project will be completed, maintained, and open to the public as specified in the project application.
4. The Project Sponsor will comply with Section 106 of the National Historic Preservation Act of 1966 as amended.
5. The Project Sponsor will comply with Executive Order 12432, "Minority Business Enterprise Development" in the purchase of materials and/or labor.
6. The Project Sponsor will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's list of Violating Facilities and agrees to comply with the Clean Air Act of 1970.
7. The Project Sponsor will retain and allow the department and the Federal Highway Administration reasonable access to any books, documents, papers, or other records pertinent to the grant project for a period of 3 years from the close of the KDWP grant with Federal Highway Administration.
8. The Project Sponsor certifies it will comply with the Drug-Free Workplace Act of 1988.
9. The Project Sponsor certifies it is in compliance with Federal Lobbying Regulations, Section 1352, Title 31, U.S. Code.
10. The Project Sponsor will comply with Title VI and the Civil Rights Act of 1964 and regulations promulgated pursuant to the Civil rights Act of 1964.
11. The Department may terminate this grant at any time if any of the above conditions are not met and cause the Project Sponsor to bring the trail to a point of recreational usefulness at the Project Sponsor's expense.

The Kansas Department of Wildlife and Parks promises, in consideration of the promises made by the Project Sponsor herein, to obligate and pay to the Project Sponsor a sum of money not to exceed $125,000. The Project Sponsor promises to execute the project described in accordance with the terms of this agreement as described in the grant application.

By_____
Linda Lanterman for KDWP
Date:_____

By_____
City of Wichita
Date:_____

Second Reading Ordinances for July 12, 2011 (first read on June 28, 2011)

ZON2011-00010 – City zone change from B Multi-family Residential ("B") to GC General Commercial ("GC"); generally located west of Broadway and north of 24th St. North. (District VI)

ORDINANCE NO. 49-025

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.

ZON2011-00017 associated with CUP2011-00015 – a zone change from LI Limited Industrial and LC Limited Commercial to GC General Commercial, and DP-254 Kiser West Commercial Community Unit Plan Amendment #1; generally located on the southwest corner of 13th Street North and Greenwich Road. (District II)

ORDINANCE NO. 49-026

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.

SUB2011-00023 -- Plat of Kiser West 2nd Addition located on the southwest corner of 13th Street North and Greenwich. (District II)

ORDINANCE NO. 49-027

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.

A11-02 – Request by Hawker Beechcraft Corporation and Venture Seven Development, LLC to annex lands generally located near the southwest corner of 13th Street North and Greenwich. (District II)

ORDINANCE NO.49-028

An ordinance including and incorporating certain blocks, parcels, pieces and tracts of land within the limits and boundaries of the City of Wichita, Kansas. (A11-02)

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

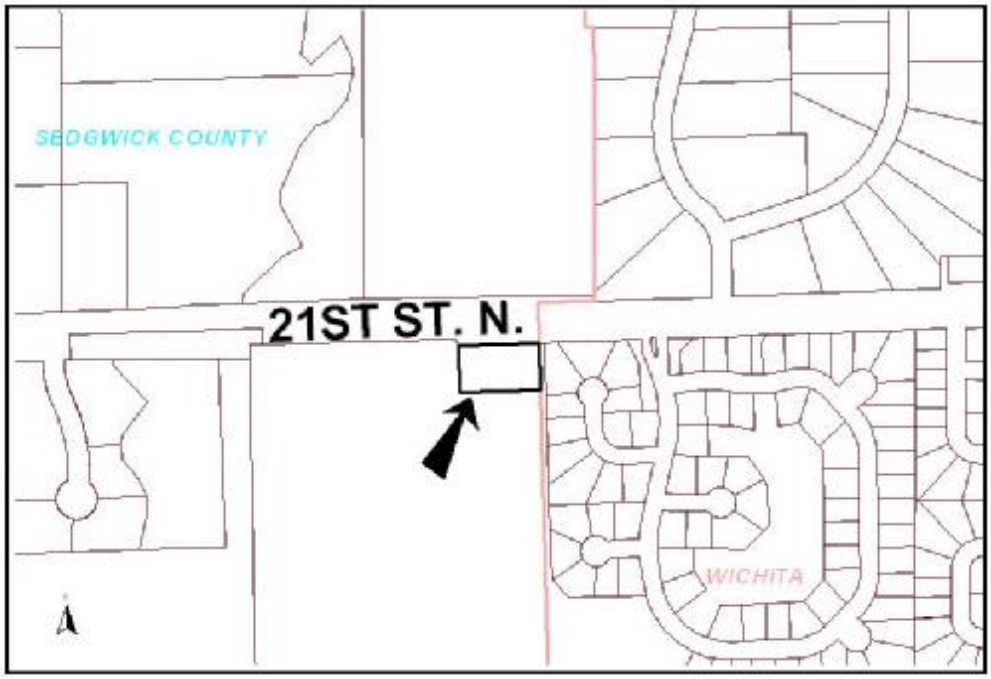
SUBJECT: SUB2010-00008 -- Plat of Greiffenstein Square Addition located on the south side of 21st Street North, east of 135th Street West. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (12-0)



Background: The site, consisting of one lot on .99 acres, was annexed in April 2010. A zone change (ZON 2009-00037) has been approved from SF-20 Single-family Residential to GO General Office.

Analysis: Municipal services are available to serve the site. The applicant has submitted a Restrictive Covenant to provide for the ownership and maintenance of the reserve.

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 Restrictive Covenant has been approved as to form by the Law Department and will be recorded with the Register of Deeds.

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 document and plat, authorize the necessary signatures and place the Ordinance on first reading.

Attachments: Restrictive Covenant
Ordinance

(OCA15000)

Published in The Wichita Eagle on July 22, 2011

ORDINANCE NO. 49-040

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. ZON2009-00037

Zone change request from SF-20 Single-family Residential to GO General Office on property described as:

Lot 1, Block A, Greiffenstein Square Addition, Wichita, Sedgwick County, Kansas.

Generally located on the south side of 21st Street North, east of 135th Street West.

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 19th day of July, 2011.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

RESTRICTIVE COVENANT

THIS DECLARATION made this 17th day of June, 2011, by the undersigned, the "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

Lot 1, Block A,
Greiffenstein Square, an Addition to
Wichita, Sedgwick County, Kansas

WHEREAS, the Declarant is desirous in connection therewith that various provisions for the maintenance and responsibility for the maintenance be placed of record for Reserve "A ", Greiffenstein Square, an Addition to, Wichita, Sedgwick County, Kansas.

NOW, THEREFORE, Declarant hereby declares and covenants:

1. That Reserve "A" is hereby reserved for Drainage Purposes and other related uses.

2. That Reserve "A" shall be owned and maintained by the owner of the above described Lot 1.

3. That the Owner hereby grants an irrevocable easement to whichever appropriate governing body or authority has jurisdiction, to enter upon the common areas, as defined, for the purposes of maintaining such common areas. 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 reserve 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 the above-described real property in Greiffenstein Square Addition, respectively, and shall be considered a lien thereon and be treated in the same manner as a special assessment.

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10/1/96

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.

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 title to all lots, as platted in said Greiffenstein Square, an Addition to Wichita, Sedgwick County, Kansas.

Executed the date and year first above written.

Ian T. Dopps

Kamra L. Dopps

STATE OF KANSAS)
SEDGWICK COUNTY) SS

Personally appeared before me a notary public in and for the County and State aforesaid came Ian T. Dopps and Kamra L. Dopps, husband and wife to me personally known to be the same persons who executed the foregoing instrument of writing and said persons duly acknowledged the execution thereof.

Dated at Wichita, Kansas, this 17th day of June, 2011.

Notary Public

(My Appointment Expires 4-19-15)

KIMBERLY BUGNER
NOTARY PUBLIC
STATE OF KANSAS
My Appt Exp 4-19-15

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

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10/1/96

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

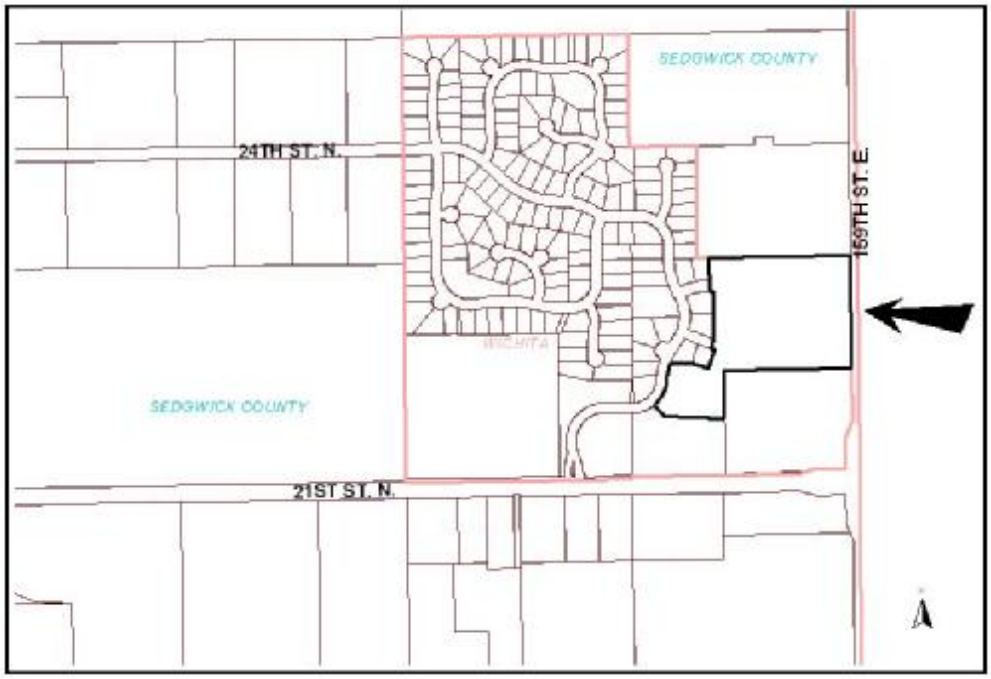
SUBJECT: SUB2010-00018 -- Plat of Monarch Landing 3rd Addition located north of 21st Street North, on the west side of 159th Street East. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (12-0)



Background: The site, consisting of 41 lots on 15.83 acres, consists of the east portion of the overall preliminary plat and represents the second phase of development. The site is located within Wichita and is zoned SF-5 Single-family Residential.

Analysis: The applicant has submitted 100 percent Petitions and a Certificate of Petitions for water, sewer, drainage and paving improvements. The applicant has submitted a Restrictive Covenant to provide for the ownership and maintenance of the reserves and also to restrict the use of a 15-foot street, drainage and utility easement adjoining a narrow street right-of-way.

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 Certificate of Petitions, Restrictive Covenant and Resolutions have been approved as to form by the Law Department and will be recorded by the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures and adopt the Resolutions.

Attachments: Certificate of Petitions
Restrictive Covenant
Resolutions

CERTIFICATE

Sedgwick County) SS
State of Kansas)

I, Kevin Mullen, President, Ritchie Development Corporation, Manager, Monarch Landing, LLC, a Kansas Limited Liability Company, owner and plattor of Monarch Landing Third Addition, do hereby certify that petitions for the following improvements have been submitted to the City Council of Wichita, Sedgwick County, Kansas;

1. Paving Petitions (2)
2. Water Distribution System Petition (1)
3. Sanitary Sewer Lateral Petition (1)
4. Storm Water Sewer Petition (1)

As a result of the above mentioned petitions for improvements, lots within Monarch Landing Third Addition may be subject to special assessments assessed thereto for the cost of constructing the above described improvements.

Signed this 16 day of May, 2011.

MONARCH LANDING, LLC,
A Kansas Limited Liability Company

By: _____
Kevin Mullen, President
Ritchie Development Corporation, Manager

Sedgwick County) SS
State of Kansas)

Be it remembered that on this 16 day of May, 2011, before me a Notary Public in and for said State and County, came Kevin Mullen, President, Ritchie Development Corporation, Manager Monarch Landing, LLC, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

(SEAL) CYNTHIA A. WOMACK
Notary Public - State of Kansas
My Appt. Expires 2/7/2013

Notary Public: Cynthia A. Womack

My Appointment Expires: February 7, 2013

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law
City of Wichita, Kansas

RESTRICTIVE COVENANT

This covenant, executed this 16 day of May, 2011.

W I T N E S S E T H: That,

WHEREAS, the undersigned is in the process of platting that certain real property to be known as Monarch Landing Third Addition, an addition to Wichita, Sedgwick County, Kansas; and

WHEREAS, as a part of the platting process certain requirements have been made by The City of Wichita regarding maintenance of reserves, the establishment of an owners association, providing for the maintenance of reserves being platted, and regarding restriction to lot owner use of "street drainage and utility easements".

NOW, THEREFORE, the undersigned does hereby subject Monarch Landing Third Addition, an addition to Wichita, Sedgwick County, Kansas, to have the following covenants and restrictions.

1. At such time as the property shall become developed by erection of improvements thereon the undersigned agrees to cause an association to be formed to provide for the care, maintenance and upkeep of the reserves, and the common areas.
2. The reserves located in said Addition will be conveyed to the association at such time as the project is sold to or occupied by owners or tenants other than the undersigned.
3. Until said reserves are so conveyed, the ownership and maintenance of the reserves shall be by the undersigned.
4. The owners of the reserves shall bear the cost of any repair or replacement of improvements within said reserves resulting from street construction, repair or maintenance.
5. No retaining wall, fence, earth berm, or mass planting shall be placed or permitted within the fifteen (15) foot street, drainage and utility easements adjacent to the public streets being platted, nor shall any other planting be permitted therein which would materially interfere with the flow of storm water run-off through said easement. Any change of grade is prohibited.
6. 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.
7. In the event that the Undersigned or the association, its' successors or assigns, shall fail at any time to maintain the Reserves dedicated for Drainage or fail in any manner to fulfill their obligation relating to the Reserves dedicated for Drainage, City of Wichita may serve a written Notice of Delinquency upon the Undersigned or the Association setting forth the manner in which the Undersigned or the Association has failed to fulfill its' obligations. Such Notice shall include a statement describing the obligation that has not been fulfilled and shall grant twenty (20) days within which the Undersigned or the Association may fulfill the obligation. If said obligation is not fulfilled within the time specified, the City of Wichita, in order to preserve the taxable value of the properties within the Addition and to prevent the Reserves dedicated for Drainage from becoming

a nuisance, may enter upon said Reserves dedicated for Drainage and perform the obligations listed in the Notice of Delinquency. All costs incurred by the City of Wichita in carrying out the obligations of the Undersigned or the Association may be assessed against the Reserves in the same manner as provided by law for such assessments and said assessments may be established as liens upon said Reserves. Should the Undersigned or the Association, its successors or assigns, upon receipt of said Notice of Delinquency believe that the obligations described in said Notice are not proper for any reason, it may, within the twenty-day period to be provided in said Notice, apply for a hearing before the City Council to appeal said assessments, and any further proceedings under said Notice shall be suspended pending the outcome of any proceedings with respect to such appeal.

This covenant runs with the land and is binding on future owners and assigns.

IN WITNESS WHEREOF THIS covenant has been executed by the undersigned as its act and deed upon this 16 day of May, 2011.

MONARCH LANDING, LLC,
A Kansas Limited Liability Company

By: _____
Kevin Mullen, President
Ritchie Development Corporation, Manager

Sedgwick County) SS
State of Kansas)

Be it remembered that on this 16 day of May, 2011, before me, a notary public in and for said County and State, came Kevin Mullen, President, Ritchie Development Corporation, Manager Monarch Landing, LLC, a Kansas Limited Liability Company, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledge the execution of same.

Signed this 16 day of May, 20___.

CYNTHIA A. WOMACK
Notary Public - State of Kansas
My Appt. Expires 2/7/2013

Cynthia A. Womack
Notary Public

My Appointment Expires: February 7, 2013

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law
City of Wichita, Kansas

132019

First Published in the Wichita Eagle on July 15, 2011

RESOLUTION NO. 11-165

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING THE IMPROVEMENT OF WATER DISTRIBUTION SYSTEM NUMBER 448-90528 (NORTH OF 21ST, WEST OF 159TH ST. EAST) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING WATER DISTRIBUTION SYSTEM NUMBER 448-90528 (NORTH OF 21ST, WEST OF 159TH ST. EAST) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve Water Distribution System Number 448-90528 (north of 21st, west of 159th St. East).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Ninety-Six Thousand Dollars ($96,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011, exclusive of the costs of temporary financing.

That, in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing water main, such benefit fee to be in the amount of Sixteen Thousand Eight Hundred Eighty-Nine Dollars ($16,889)

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MONARCH LANDING THIRD ADDITION
Lots 1 through 22, Block 1
Lots 1 through 13, Block 2
Lots 1 through 6, Block 3

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through 22, Block 1; Lots 1 through 13, Block 2; and Lots 1 through 6, Block 3; MONARCH LANDING THIRD ADDITION shall each pay 1/41 of the total cost of the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of July, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF,
DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on July 15, 2011

RESOLUTION NO. 11-166

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 2, MAIN 23, FOUR MILE CREEK SEWER (NORTH OF 21ST, WEST OF 159TH ST. EAST) 468-84770 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF LATERAL 2, MAIN 23, FOUR MILE CREEK SEWER (NORTH OF 21ST, WEST OF 159TH ST. EAST) 468-84770 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Lateral 2, Main 23, Four Mile Creek Sewer (north of 21st, west of 159th St. East) 468-84770.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Hundred Fifty-Five Thousand Dollars ($155,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MONARCH LANDING THIRD ADDITION
Lots 1 through 22, Block 1
Lots 1 through 13, Block 2
Lots 1 through 6, Block 3

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

> That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through 22, Block 1; Lots 1 through 13, Block 2; and Lots 1 through 6, Block 3; MONARCH LANDING THIRD ADDITION shall each pay 1/41 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6 That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of July, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on July 15, 2011

RESOLUTION NO. 11-167

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER SEWER NO. 661 (NORTH OF 21ST, WEST OF 159TH ST. EAST) 468-84771 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER SEWER NO. 661 (NORTH OF 21ST, WEST OF 159TH ST. EAST) 468-84771 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve Storm Water Sewer No. 661 (north of 21st, west of 159th St. East) 468-84771.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Two Hundred Seventy-Seven Thousand Dollars ($277,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MONARCH LANDING THIRD ADDITION
Lots 1 through 22, Block 1
Lots 1 through 13, Block 2
Lots 1 through 6, Block 3

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis:

> That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through 13, Block 1; and Lots 1 through 8, Block 2; MONARCH LANDING THIRD ADDITION shall each pay 335/10000 of the total cost payable by the improvement district. Lots 14 through 22, Block 1; Lots 1 through 6, Block 3; MONARCH LANDING THIRD ADDITION shall each pay 149/10000 of the total cost payable by the improvement district. Lots 9 through 13, Block 2; MONARCH LANDING THIRD ADDITION shall each pay 146/10000 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested
thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of July, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on July 15, 2011

RESOLUTION NO. 11-168

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON CAMDEN CHASE, FROM THE WEST LINE OF 159TH STREET EAST TO THE SOUTHWEST CORNER OF LOT 6, BLOCK 3; AND PAVING FLUTTER COURT FROM THE EAST LINE OF FLUTTER LANE FOR APPROXIMATELY 325 FEET SERVING LOTS 14 THROUGH 22, BLOCK 1 (NORTH OF 21ST, WEST OF 159TH ST. EAST) 472-84999 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON CAMDEN CHASE, FROM THE WEST LINE OF 159TH STREET EAST TO THE SOUTHWEST CORNER OF LOT 6, BLOCK 3; AND PAVING FLUTTER COURT FROM THE EAST LINE OF FLUTTER LANE FOR APPROXIMATELY 325 FEET SERVING LOTS 14 THROUGH 22, BLOCK 1 (NORTH OF 21ST, WEST OF 159TH ST. EAST) 472-84999 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing pavement on Camden Chase, from the west line of 159th Street East to the southwest corner of Lot 6, Block 3; and paving Flutter Court from the east line of Flutter Lane for approximately 325 feet serving Lots 14 through 22, Block 1 (north of 21st, west of 159th St. East) 472-84999. Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Two Hundred Thirty-Six Thousand Dollars ($236,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MONARCH LANDING THIRD ADDITION
Lots 14 through 22, Block 1
Lots 9 through 13, Block 2
Lots 1 through 6, Block 3

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 14 through 22, Block 1; Lots 9 through 13, Block 2; and Lots 1 through 6, Block 3; MONARCH LANDING THIRD ADDITION shall each pay 1/20 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of July, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF, DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on July 15, 2011

RESOLUTION NO. 11-169

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON BOXTHORN FROM THE EAST LINE OF FLUTTER LANE TO THE SOUTH LINE OF CAMDEN CHASE (NORTH OF 21ST, WEST OF 159TH ST. EAST) 472-85000 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON BOXTHORN FROM THE EAST LINE OF FLUTTER LANE TO THE SOUTH LINE OF CAMDEN CHASE (NORTH OF 21ST, WEST OF 159TH ST. EAST) 472-85000 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing pavement on Boxthorn from the east line of Flutter Lane to the south line of Camden Chase (north of 21st, west of 159th St. East) 472-85000. Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Hundred Thirty-Six Thousand Dollars ($136,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MONARCH LANDING THIRD ADDITION
Lots 1 through 13, Block 1
Lots 1 through 8, Block 2

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

> That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through 13, Block 1; and Lots 1 through 8, Block 2; MONARCH LANDING THIRD ADDITION shall each pay 1/21 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of July, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF, DIRECTOR OF LAW

City of Wichita
City Council Meeting
July 12, 2011

TO: Mayor and City Council

SUBJECT: A11-03 – Request by Michael E. and Kathy K. Smith to annex lands generally located one-half mile north of 21st Street North on the west side of 159th Street East (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Recommendation: Initiate the "island" annexation process.

Background: The City has received a request to annex 19.89 acres of land generally located one-half mile north of 21st Street North and on the west side of 159th Street East. The annexation area abuts the City of Wichita to the west and south of the property; however, the abutting property was annexed through "island" annexation procedures. Since there is intervening territory between the abutting property and other properties in the City limits, the subject property also must be annexed through "island" annexation procedures, which requires the City to petition the Sedgwick County Commission for a finding that the annexation will not hinder the proper growth and development of the area or that of any other incorporated city in Sedgwick County. Once the Sedgwick County Commission makes such a finding, the City can annex the property by passing an annexation ordinance.

Analysis:
Land Use and Zoning: The annexation area consists of approximately 19.89 acres zoned "RR" Residential and is developed with a single family residence. The property owner has requested that upon annexation the zoning of the property become "SF-10" Single Family. An ordinance changing the zoning to "SF-10" Single Family will be presented to the City Council for consideration at the future meeting when the annexation ordinance is considered. The adjacent property to the north is zoned "RR" Rural Residential and is undeveloped. The adjacent property to the south is zoned "RR" Rural Residential and is developed with a single family residence. The adjacent property to the east is located in Butler County and is developed with a school. The adjacent properties to the west are zoned "SF-5" Single Family and are developing with single family residences.

Public Services: Water service is available to serve the subject property from a 16-inch main located in 159th Street East. In order to connect to water services, the subject property will have to pay connection fees ($2,370) and in lieu of assessment fees for transmission and distribution lines ($23,942). Sanitary sewer service is available to serve the subject property from an eight-inch main located along the rear of the subject property. In order to connect to sanitary sewer services, the subject property will have to pay connections fees ($1,350) and in lieu of assessment fees for sewer main and laterals ($59,521).

Street System: The subject property has access to 159th Street East, a three-lane arterial street.

Public Safety: Fire protection is currently provided to the area on the basis of a first-responder agreement between the City and County, and that service will continue following annexation. Sedgwick County Fire Station No. 38 at 1010 N. 143rd St. E. is the nearest fire station to the site. The nearest City station is Fire Station No. 18 at 2808 N. Webb. Upon annexation, police protection will be provided to the area by the Patrol East Bureau of the Wichita Police Department, headquartered at 350 S. Edgemoor.

Parks: Undeveloped park land near the intersection of Central and Bristol, located approximately three miles southwest of the subject property at 11608 E. Central, is the nearest park. Plans for improvements to the undeveloped park land are underway. The Parks, Recreation and Open Space Plan identifies proposed new park target areas approximately one mile north and one mile south of the subject property.

School District: The annexation property is part of Unified School District 385 (Andover School District). Annexation will not change the school district.

Comprehensive Plan: The proposed annexation is consistent with the Wichita-Sedgwick County Comprehensive Plan. The annexation property falls within the Wichita 2030 Urban Growth Area as shown in the Plan.

Financial Considerations: The current approximate appraised value of the proposed annexation lands, according to County records, is $436,850 with a total assessed value of $50,360. Using the current City levy ($32.272/$1000 x assessed valuation), roughly yields $1,625 in City annual property tax revenues for the property upon annexation. No additional future development is proposed for the subject property that would generate additional property tax revenues.

Goal Impact: Approving the annexation request would impact Wichita's goal to ensure Efficient Infrastructure, and annexation of this property would assist the City in satisfying the demand for new infrastructure needed to support growth and development.

Legal Considerations: The property is eligible for annexation under K.S.A. 12-519, *et seq*. The resolution has been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended that the City Council adopt the resolution initiating the "island" annexation process and instruct the City Clerk to file a certified copy of the resolution with the Board of County Commissioners of Sedgwick County.

Attachment: Map Sheet
Resolution

RESOLUTION NO. 11-170

A RESOLUTION OF THE CITY OF WICHITA, KANSAS REQUESTING THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS TO MAKE CERTAIN FINDINGS REGARDING THE ANNEXATION OF PROPERTY.

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

SECTION 1. The governing body of the City of Wichita, Kansas hereby finds that a request for annexation of the following described land has been presented to it by the following property owners.

> Beginning at the Northeast corner of the Northeast Quarter of said Southeast Quarter; thence South along the East line of the Northeast Quarter of said Southeast Quarter, 666.0 feet; thence West parallel to the North line of the Northeast Quarter of said Southeast Quarter, 480.0 feet; thence North parallel to the East line of the Northeast Quarter of said Southeast Quarter, 41.0 feet; thence West parallel to the North line of the Northeast Quarter of said Southeast Quarter, 110.0 feet;, thence South parallel to the East line of the Northeast Quarter of said Southeast Quarter, 41.0 feet; thence West parallel to the North line of the Northeast Quarter of said Southeast Quarter to a point on the West line of the Northeast Quarter of said Southeast Quarter, said point being 666.0 feet South of the North line of the Northeast Quarter of said Southeast Quarter, thence North along the West line of the Northeast Quarter of said Southeast Quarter 666.0 feet to the Northwest corner of the Northeast Quarter of the Southeast Quarter; thence East along the North line of the Northeast Quarter of said Southeast Quarter to the point of beginning, subject to road Rights-of-Way of record on the East.

Property Address -	2525 North 159th Street East
Property Location -	One-half mile north of 21st Street North and on the west side of 159th Street East
Property Key Number -	MI-3-2
Property Owners -	Michael E. and Kathy K. Smith

The governing body further finds that the above-described properties adjoin land within the boundaries of the City of Wichita annexed under the provisions of K.S.A. 12-520c., and the intervening territory has not been annexed. The governing body further finds that such annexation, at the request of the property owner, is advisable, desirable, and beneficial and in the interest of the public.

SECTION 2. The City of Wichita, Kansas hereby respectfully requests that the Board of County Commissioners of Sedgwick County, Kansas find and determine that the annexation of such land will not hinder or prevent the proper growth and development of the area or that of any other incorporated city located within Sedgwick County, Kansas, all as provided in K.S.A. 12-520c.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, this 12th day of July, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

Planning Agenda

Item: A11-03 Attachment No. 1

An ordinance including and incorporating certain blocks, parcels, pieces, and tracts of land within the limits and boundaries of the City of Wichita, Kansas, and relating thereto.

General Location: One-half mile north of 21st Street North on the west side of 159th Street East

Address: 2525 N. 159th St. E.

19.89	Area in Acres	X	Request
2	Existing population (est.)		Unilateral
1	Existing dwelling units	X	Island
0	Existing industrial/commercial units		Other:

Reason(s) for Annexation:

Existing zoning:	"RR" Rural Residential

A11-03
WICHITA
SEDGWICK COUNTY

Software: ArcGIS
Map Data Sources: City of Wichita, Sedgwick County
Prepared: 2/5/09

It is understood that while the City of Wichita Data Center Geographical Information Systems Department have no intication and reason to believe that there are inaccuracies in information incorporated in the base map, the Data Center-GIS personnel make no warranty or representation, either expressed or implied, with respect to the information or data displayed.
Note: Public property represented on this map is not intended to be inclusive.